

## Memorandum

**To:** Santa Fe Board of County Commissioners  
**From:** Teresa Martinez, Finance Director *TM*  
**Thru:** Katherine Miller, County Manager  
**Date:** April 26, 2011  
**Re:** *Requesting a budget increase to the Sheriff's Operating Fund (\$19,737)*

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### **ISSUE:**

The County Manager's Office Finance Division is requesting approval of a General Fund (101) transfer out from the General Fund capital set-aside to the Sheriff's Operating Fund (246) to budget for the purchase and installation of an enhanced building security system at the Public Safety Complex, Sheriff's Office located at 35 Camino Justicia.

### **BACKGROUND:**

As a result of a recent Finance Division audit of the Sheriff's Office evidence room, a recommendation was made to improve security around the evidence room specifically, and the Sheriff's Office in general, to better document the movement of personnel into and out of restricted areas as well as document the date and time various restricted areas are accessed.

The Sheriff's Office capital budget is utilized for the Office's vehicle replacement schedule and was significantly reduced from the original capital request in FY2011, thus funding is not available within its current budget for the recommended enhanced building security systems.

### **RECOMMENDATION:**

Please approve the attached budget resolution to transfer \$19,737 out from the General Fund capital set-aside to the Sheriff's Operating Fund to purchase and install an enhanced building security system. The transfer will increase the Sheriff's Operating Fund (246) by \$19,737.

# SANTA FE COUNTY

## RESOLUTION 2011 - \_\_\_\_\_

### A RESOLUTION REQUESTING AUTHORIZATION TO MAKE THE BUDGET ADJUSTMENT DETAILED ON THIS FORM

Whereas, the Board of County Commissioners meeting in regular session on April 26, 2011, did request the following budget adjustment:

Department / Division: CMO/Finance Division & Sheriff's Office Fund Name: General Fund & Sheriff's Operating Fund

Budget Adjustment Type: Increase Fiscal Year: 2011 (July 1, 2010 - June 30, 2011)

BUDGETED REVENUES: (use continuation sheet, if necessary)

FUND CODE XXX	DEPARTMENT/DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/OBJECT XXXX	REVENUE NAME	INCREASE AMOUNT	DECREASE AMOUNT
246	0000	390	0101	Sheriff's Operating Fund/Transfers In	\$19,737	
<b>TOTAL (if SUBTOTAL, check here )</b>					\$19,737	

BUDGETED EXPENDITURES: (use continuation sheet, if necessary)

FUND CODE XXX	DEPARTMENT/DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/OBJECT XXXX	CATEGORY / LINE ITEM NAME	INCREASE AMOUNT	DECREASE AMOUNT
101	0000	490	0246	General Fund/Transfers Out	\$19,737	
101	0303	412	8003	General Fund Capital Set Aside		\$19,737
246	1201	424	8003	Sheriff's Operating Fund/Capital Equipment & Machinery	\$19,737	
<b>TOTAL (if SUBTOTAL, check here )</b>					\$39,474	\$19,737

Requesting Department Approval: [Signature] Title: Finance Director Date: 4/17/11

Finance Department Approval: \_\_\_\_\_ Date: \_\_\_\_\_ Entered by: \_\_\_\_\_ Date: \_\_\_\_\_

County Manager Approval: \_\_\_\_\_ Date: \_\_\_\_\_ Updated by: \_\_\_\_\_ Date: \_\_\_\_\_

# SANTA FE COUNTY

## RESOLUTION 2011 - \_\_\_\_\_

ATTACH ADDITIONAL SHEETS IF NECESSARY.

DEPARTMENT CONTACT: Name: Carole Jaramillo Dept/Div: CMO/Finance Phone No.: 505-986-6321

DETAILED JUSTIFICATION FOR REQUESTING BUDGET ADJUSTMENT (If applicable, cite the following authority: State Statute, grant name and award date, other laws, regulations, etc.):

- 1) Please summarize the request and its purpose.

*This Budget Resolution is to increase the General Fund transfers out and reduce the General Fund capital set-aside, and to increase the Sheriff's Operating Fund transfers in and increase the capital equipment and machinery line item in the Sheriff's Operating Fund for the purchase and install an enhanced building security system including additional security equipment.*

a) Employee Actions

Line Item	Action (Add/Delete Position, Reclass, Overtime)	Position Type (permanent, term)	Position Title

b) Professional Services (50-xx) and Capital Category (80-xx) detail:

Line Item	Detail (what specific things, contracts, or services are being added or deleted)	Amount
8003	Enhanced building security system/equipment w/electronic locks, cameras, recorder, etc.	\$4,780

- 2) Is the budget action for RECURRING expense \_\_\_\_\_ or for NON-RECURRING (one-time only) expense  \_\_\_\_\_

SANTA FE COUNTY

RESOLUTION 2011 - \_\_\_\_\_

ATTACH ADDITIONAL SHEETS IF NECESSARY.

DEPARTMENT CONTACT: Name: Carole Jaramillo Dept/Div: CMO/Finance Phone No.: 505-986-6321

DETAILED JUSTIFICATION FOR REQUESTING BUDGET ADJUSTMENT (If applicable, cite the following authority: State Statute, grant name and award date, other laws, regulations, etc.):

- 3) Does this request impact a revenue source? YES If so, please identify (i.e. General Fund, state funds, federal funds, etc.), and address the following: Sheriff's Operating Fund(transfers in).
  - a) If this is a state special appropriation, YES \_\_\_\_\_ NO x  
If YES, cite statute and attach a copy.
  - b) Does this include state or federal funds? YES \_\_\_\_\_ NO x  
If YES, please cite and attach a copy of statute, if a special appropriation, or include grant name, number, award date and amount, and attach a copy of a award letter and proposed budget.
  - c) Is this request is a result of Commission action? YES \_\_\_\_\_ NO x  
If YES, please cite and attach a copy of supporting documentation (i.e. Minutes, Resolution, Ordinance, etc.).
  - d) Please identify other funding sources used to match this request.

**SANTA FE COUNTY**

**RESOLUTION 2011 - \_\_\_\_\_**

**NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Santa Fe County that the Local Government Division of the Department of Finance and Administration is hereby requested to grant authority to adjust budgets as detailed above.

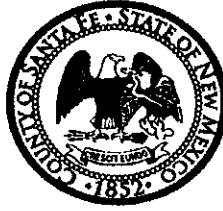
**Approved, Adopted, and Passed This 26th Day of April, 2011.**

**Santa Fe Board of County Commissioners**

\_\_\_\_\_  
Virginia Vigil, Chairperson

**ATTEST:**

\_\_\_\_\_  
Valerie Espinoza, County Clerk



## Memorandum

**To:** Santa Fe Board of County Commissioners

**From:** Teresa Martinez, Finance Director *TM*

**Thru:** Katherine Miller, County Manager

**Date:** April 26, 2011

**Re:** *Requesting a budget increase to the Sheriff's Operating Fund (\$4,780)*

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### **ISSUE:**

The County Manager's Office Finance Division is requesting approval of a General Fund (101) transfer out from the General Fund capital set-aside to the Sheriff's Operating Fund (246) to budget for the purchase of two (2) noise meters.

### **BACKGROUND:**

On October 27, 2009 the Board of County Commissioners adopted Ordinance 2009-11, an ordinance to prohibit excessive, unnecessary and unreasonable noise and public nuisances. Among the purposes of the ordinance is the prevention and regulation of excessive sound wherever it is deemed harmful to the health, safety, welfare and quality of life of Santa Fe County's citizens. The ordinance tasks the Santa Fe County Sheriff with enforcement of the ordinance with respect to excessive sound. Ordinance 2009-11 dictates:

"If [sound] measurements are made, they shall be made with a sound level meter. The sound level meter shall be an instrument in good operating condition, meeting the requirements of a Type I or Type II meter, as specified in ANSI Standard 1.4-1971."

The Sheriff's Office currently lacks the necessary sound level meters for enforcement of this ordinance. The Sheriff's Office capital budget is utilized for the Office's vehicle replacement schedule and was significantly reduced from the original capital request in FY2011, thus funding is not available within its current budget for this sound measurement equipment.

### **RECOMMENDATION:**

Please approve the attached budget resolution to transfer \$4,780 out from the General Fund capital set-aside to the Sheriff's Operating Fund to purchase sound level meters. The transfer will increase the Sheriff's Operating Fund (246) by \$4,780.

SANTA FE COUNTY

RESOLUTION 2011 - \_\_\_\_\_

A RESOLUTION REQUESTING AUTHORIZATION TO MAKE THE BUDGET ADJUSTMENT DETAILED ON THIS FORM

Whereas, the Board of County Commissioners meeting in regular session on April 26, 2011, did request the following budget adjustment:

Department / Division: CMO/Finance Division & Sheriff's Office Fund Name: General Fund & Sheriff's Operating Fund

Budget Adjustment Type: Increase Fiscal Year: 2011 (July 1, 2010 - June 30, 2011)

BUDGETED REVENUES: (use continuation sheet, if necessary)

FUND CODE XXX	DEPARTMENT/DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/OBJECT XXXX	REVENUE NAME	INCREASE AMOUNT	DECREASE AMOUNT
246	0000	390	0101	Sheriff's Operating Fund/Transfers In	\$4,780	
<b>TOTAL (if SUBTOTAL, check here )</b>					\$4,780	

BUDGETED EXPENDITURES: (use continuation sheet, if necessary)

FUND CODE XXX	DEPARTMENT/DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/OBJECT XXXX	CATEGORY / LINE ITEM NAME	INCREASE AMOUNT	DECREASE AMOUNT
101	0000	490	0246	General Fund/Transfers Out	\$4,780	
101	0303	412	8003	General Fund Capital Set Aside		\$4,780
246	1201	424	8099	Sheriff's Operating Fund/Capital Inventory Exempt	\$4,780	
<b>TOTAL (if SUBTOTAL, check here )</b>					\$9,560	\$4,780

Requesting Department Approval: [Signature] Title: Finance Director Date: 4/17/11

Finance Department Approval: \_\_\_\_\_ Entered by: \_\_\_\_\_ Date: \_\_\_\_\_

County Manager Approval: \_\_\_\_\_ Updated by: \_\_\_\_\_ Date: \_\_\_\_\_

# SANTA FE COUNTY

## RESOLUTION 2011 - \_\_\_\_\_

ATTACH ADDITIONAL SHEETS IF NECESSARY.

DEPARTMENT CONTACT: Name: Carole Jaramillo Dept/Div: CMO/Finance Phone No.: 505-986-6321

DETAILED JUSTIFICATION FOR REQUESTING BUDGET ADJUSTMENT (If applicable, cite the following authority: State Statute, grant name and award date, other laws, regulations, etc.):

- 1) Please summarize the request and its purpose.

*This Budget Resolution is to increase the General Fund transfers out and reduce the General Fund capital set-aside, and to increase the Sheriff's Operating Fund transfers in and capital inventory exempt line item in the Sheriff's Operating Fund for the purchase of two noise meters to be used for enforcement of the County's noise ordinance 2009-11 the Santa Fe County Noise Control and Public Nuisance Ordinance.*

a) Employee Actions

Line Item	Action (Add/Delete Position, Reclass, Overtime)	Position Type (permanent, term)	Position Title

b) Professional Services (50-xx) and Capital Category (80-xx) detail:

Line Item	Detail (what specific things, contracts, or services are being added or deleted)	Amount
8099	Quest Sound Patrol DP-2200 Class 2 noise meter with printer and accessories x 2	\$4,780

- 2) Is the budget action for RECURRING expense \_\_\_\_\_ or for NON-RECURRING (one-time only) expense  X \_\_\_\_\_



SANTA FE COUNTY

RESOLUTION 2011 - \_\_\_\_\_

ATTACH ADDITIONAL SHEETS IF NECESSARY.

DEPARTMENT CONTACT: Name: Carole Jaramillo Dept/Div: CMO/Finance Phone No.: 505-986-6321

DETAILED JUSTIFICATION FOR REQUESTING BUDGET ADJUSTMENT (If applicable, cite the following authority: State Statute, grant name and award date, other laws, regulations, etc.):

• 3) Does this request impact a revenue source? YES If so, please identify (i.e. General Fund, state funds, federal funds, etc.), and address the following: Sheriff's Operating Fund(transfers in).

• a) If this is a state special appropriation, YES \_\_\_\_\_ NO x  
If YES, cite statute and attach a copy.

• b) Does this include state or federal funds? YES \_\_\_\_\_ NO x  
If YES, please cite and attach a copy of statute, if a special appropriation, or include grant name, number, award date and amount, and attach a copy of a award letter and proposed budget.

• c) Is this request is a result of Commission action? YES \_\_\_\_\_ NO x  
If YES, please cite and attach a copy of supporting documentation (i.e. Minutes, Resolution, Ordinance, etc.).

• d) Please identify other funding sources used to match this request.

**SANTA FE COUNTY**

**RESOLUTION 2011 - \_\_\_\_\_**

**NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Santa Fe County that the Local Government Division of the Department of Finance and Administration is hereby requested to grant authority to adjust budgets as detailed above.

**Approved, Adopted, and Passed This 26th Day of April, 2011.**

**Santa Fe Board of County Commissioners**

\_\_\_\_\_  
Virginia Vigil, Chairperson

**ATTEST:**

\_\_\_\_\_  
Valerie Espinoza, County Clerk



## REGION III DRUG ENFORCEMENT TASK FORCE

Law Enforcement Working Together to Serve Santa Fe, Los Alamos, Rio Arriba and Taos Counties in New Mexico

P. O. Box 23118  
Santa Fe, NM 87502  
(505) 471-1715 or (800) 662-6660

### BOARD OF DIRECTORS

Captain Scott Weaver  
Chairman  
New Mexico State Police

V/C Abram Anaya  
Vice-Chairman  
Santa Fe Police  
Department

Sheriff Robert Garcia  
Secretary-Treasurer  
Santa Fe County Sheriff's  
Department

DATE: April 5, 2011

TO: The Board of County Commissioners  
Santa Fe County, Santa Fe, New Mexico

FROM: Ralph W. Lopez, Region III  
Program Manager

VIA: Robert Garcia, Sheriff  
Santa Fe County Sheriff's Department

RE: ARRA Grant Award Budget Increase.

As Program Manager for the Region III Drug Task Force, I am requesting approval from the Board of County Commissioners, that **\$1,835.00** be budgeted into the ARRA Grant Cost-Center 246-1218. This request is to realign the Fiscal Year 2011 budget with the available grant balance from the 09 Recovery Act grant awarded through the Department of Public Safety in the amount of \$375,632.00.

Your approval of this request is respectfully submitted.

SANTA FE COUNTY

RESOLUTION 2011 - \_\_\_\_\_

A RESOLUTION REQUESTING AUTHORIZATION TO MAKE THE BUDGET ADJUSTMENT DETAILED ON THIS FORM

Whereas, the Board of County Commissioners meeting in regular session on April 26, 2011, did request the following budget adjustment:

Department / Division: Sheriff / Region III Fund Name: Federal Funds: JAG Recovery Act.

Budget Adjustment Type: Budget Increase Fiscal Year: 2011 (July 1, 2010 - June 30, 2011)

BUDGETED REVENUES: (use continuation sheet, if necessary)

FUND CODE XXX	DEPARTMENT/ DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/ OBJECT XXXX	REVENUE NAME	INCREASE AMOUNT	DECREASE AMOUNT
246	1218	372	0800	Federal Grants / Drug Enforcement (Region III)	1,835.00	
246	9000	385	0100	Budgeted Cash		781.00
<b>TOTAL (if SUBTOTAL, check here)</b>					<b>1,835.00</b>	<b>781.00</b>

BUDGETED EXPENDITURES: (use continuation sheet, if necessary)

FUND CODE XXX	DEPARTMENT/ DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/ OBJECT XXXX	CATEGORY / LINE ITEM NAME	INCREASE AMOUNT	DECREASE AMOUNT
246	1218	425	20-01	FICA - Regular	99.00	
246	1218	425	70-42	Sheriff's Expense	836.00	
246	1218	425	80-09	Vehicles	900.00	
246	9028	425	30-05	Gas & Oil		781.00
<b>TOTAL (if SUBTOTAL, check here)</b>					<b>1,835.00</b>	<b>781.00</b>

Requesting Department Approval: \_\_\_\_\_ Title: Sheriff Date: 4-5-11

Finance Department Approval: [Signature] Date: 4/7/11

County Manager Approval: \_\_\_\_\_ Date: \_\_\_\_\_

Entered by: \_\_\_\_\_ Date: \_\_\_\_\_

Updated by: \_\_\_\_\_ Date: \_\_\_\_\_

# SANTA FE COUNTY

## RESOLUTION 2011 - \_\_\_\_\_

ATTACH ADDITIONAL SHEETS IF NECESSARY.

DEPARTMENT CONTACT: Name: Ralph Lopez / Region III Dept/Div: County Sheriff / Region III Phone No.: 473-7021

DETAILED JUSTIFICATION FOR REQUESTING BUDGET ADJUSTMENT (If applicable, cite the following authority: State Statute, grant name and award date, other laws, regulations, etc.):

- 1) Please summarize the request and its purpose.  
The amount of \$1,835.00 is a baseline increase to bring the budgeted amount equal with the Grant Awarded amount through the Department of Public Safety for Fiscal Year 2009.

a) Employee Actions

Line Item	Action (Add/Delete Position, Reclass, Overtime)	Position Type (permanent, term)	Position Title
2001	Amount increased to complete fiscal year		

b) Professional Services (50-xx) and Capital Category (80-xx) detail:

Line Item	Detail (what specific things, contracts, or services are being added or deleted)	Amount

- 2) Is the budget action for RECURRING expense XX or for NON-RECURRING (one-time only) expense \_\_\_\_\_

# SANTA FE COUNTY

## RESOLUTION 2011 - \_\_\_\_\_

*ATTACH ADDITIONAL SHEETS IF NECESSARY.*

**DEPARTMENT CONTACT:**

Name: Ralph Lopez Dept/Div: Sheriff's Dept. / Region III Phone No.: 473-7021

**DETAILED JUSTIFICATION FOR REQUESTING BUDGET ADJUSTMENT (If applicable, cite the following authority: State Statute, grant name and award date, other laws, regulations, etc.):**

- 3) Does this request impact a revenue source? If so, please identify (i.e. General Fund, state funds, federal funds, etc.), and address the following:
  - a) If this is a state special appropriation, YES NO NO XX  
If YES, cite statute and attach a copy.
  - b) Does this include state or federal funds? YES XX NO NO  
If YES, please cite and attach a copy of statute, if a special appropriation, or include grant name, number, award date and amount, and attach a copy of a award letter and proposed budget. These monies are a Federal Award through the ARRA Grant FY09 which is a two year Award. amount is \$248,724.00. Sub Grant Agreement RA-JAG-Region III-SFY10
  - c) Is this request is a result of Commission action? YES NO NO XX  
If YES, please cite and attach a copy of supporting documentation (i.e. Minutes, Resolution, Ordinance, etc.).
  - d) Please identify other funding sources used to match this request.

**SANTA FE COUNTY**

**RESOLUTION 2011 - \_\_\_\_\_**

**NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Santa Fe County that the Local Government Division of the Department of Finance and Administration is hereby requested to grant authority to adjust budgets as detailed above.

**Approved, Adopted, and Passed This 26th Day of April, 2011.**

**Santa Fe Board of County Commissioners**

\_\_\_\_\_  
Virginia Vigil, Chairperson

**ATTEST:**

\_\_\_\_\_  
Valerie Espinoza, County Clerk

**Daniel "Danny" Mayfield**  
*Commissioner, District 1*

**Virgina Vigil**  
*Commissioner, District 2*

**Robert A. Anaya**  
*Commissioner, District 3*



**Kathy Holian**  
*Commissioner, District 4*

**Liz Stefanics**  
*Commissioner, District 5*

**Katherine Miller**  
*County Manager*

## ***MEMORANDUM***

**DATE:** *April 11, 2011*

**TO:** *Board of County Commissioners*

**FROM:** *Robert Martinez, Transportation Manager RM*

**VIA:** *Katherine Miller, County Manager*

**ITEM AND ISSUE:** *BCC Meeting April 26, 2011*

**A RESOLUTION TO INCREASE THE GENERAL FUND (101) FOR AN AGREEMENT BETWEEN SANTA FE COUNTY AND THE RESIDENTS FROM COUNTY ROAD 72E – ARROYO LA CUEVAS FOR MAINTENANCE, REPAIR AND IMPROVEMENTS TO SAID ROAD / \$64,369.63**

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**BACKGROUND AND SUMMARY:**

An agreement was executed by Santa Fe County and the residents of CR 72E. This was an agreement that the residents of CR 72E would fund the chip seal maintenance of the intersection of CR 72E in the amount of \$64,369.63.

**ACTION REQUESTED:**

The Public Works Department requests approval to budget the residents funding of CR 72E's Road Improvement Project for Santa Fe County.



# SANTA FE COUNTY

## RESOLUTION 2010 - \_\_\_\_\_

### A RESOLUTION REQUESTING AUTHORIZATION TO MAKE THE BUDGET ADJUSTMENT DETAILED ON THIS FORM

Whereas, the Board of County Commissioners meeting in regular session on \_\_\_\_\_, did request the following budget adjustment:

Department / Division: Public Works / Administration Fund Name: CR 72A Agreement

Budget Adjustment Type: Budget Increase Fiscal Year: 2011 (July 1, 2010 - June 30, 2011)

BUDGETED REVENUES: (use continuation sheet, if necessary)

FUND CODE XXX	DEPARTMENT/DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/OBJECT XXXX	REVENUE NAME	INCREASE AMOUNT	DECREASE AMOUNT
101	6174	360	0190	CR 72E Arroyo La Cuevas Contribution donation & agreement	\$64,369.63	
<b>TOTAL (if SUBTOTAL, check here)</b>					<b>\$64,369.63</b>	

BUDGETED EXPENDITURES: (use continuation sheet, if necessary)

FUND CODE XXX	DEPARTMENT/DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/OBJECT XXXX	CATEGORY / LINE ITEM NAME	INCREASE AMOUNT	DECREASE AMOUNT
101	6174	453	8010	CR 72E Arroyo La Cuevas / chip seal	\$64,369.63	
<b>TOTAL (if SUBTOTAL, check here)</b>					<b>\$64,369.63</b>	

Requesting Department Approval: Robert Markley Title: Transportation Manager Date: 4-11-11  
 Finance Department Approval: Wanda C. Martinez Date: 4/11/11 Entered by: \_\_\_\_\_ Date: \_\_\_\_\_  
 County Manager Approval: \_\_\_\_\_ Date: \_\_\_\_\_ Updated by: \_\_\_\_\_ Date: \_\_\_\_\_

# SANTA FE COUNTY

## RESOLUTION 2010 - \_\_\_\_\_

*ATTACH ADDITIONAL SHEETS IF NECESSARY.*

DEPARTMENT CONTACT: Name: Robert Martinez Dept/Div: Public Works / Roads Phone No.: 992-3010

DETAILED JUSTIFICATION FOR REQUESTING BUDGET ADJUSTMENT (If applicable, cite the following authority: State Statute, grant name and award date, other laws, regulations, etc.):

- 1) Please summarize the request and its purpose. To place the funding that was donated by the residents of CR 72A with an agreement to chip seal approximately 3,800 feet at the intersection of CR 72A and Tano Norte and ending at Kia Road & CR72A. See attached agreement accepted by the Board Of County Commissioner on March 21, 2011.
- 2) Is the budget action for RECURRING expense \_\_\_\_\_ or for NON-RECURRING (one-time only) expense X
- 3) Does this request impact a revenue source? If so, please identify (i.e. General Fund, state funds, federal funds, etc.), and address the following:
  - a) If this is a state special appropriation, YES \_\_\_\_\_ NO X  
If YES, cite statute and attach a copy.
  - b) Does this include state or federal funds? YES \_\_\_\_\_ NO X  
If YES, please cite and attach a copy of statute, if a special appropriation, or include grant name, number, award date and amount, and attach a copy of a award letter and proposed budget.
  - c) Is this request is a result of Commission action? YES \_\_\_\_\_ NO X  
If YES, please cite and attach a copy of supporting documentation (i.e. Minutes, Resolution, Ordinance, etc.).
  - d) Please identify other funding sources used to match this request. No county match is required.

**SANTA FE COUNTY**

**RESOLUTION 2010 - \_\_\_\_\_**

**NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Santa Fe County that the Local Government Division of the Department of Finance and Administration is hereby requested to grant authority to adjust budgets as detailed above.

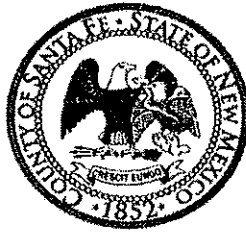
Approved, Adopted, and Passed This \_\_\_\_\_ Day of \_\_\_\_\_, 2011.

Santa Fe Board of County Commissioners

\_\_\_\_\_  
Virginia Vigil, Chairperson

**ATTEST:**

\_\_\_\_\_  
Valerie Espinoza, County Clerk



## Memorandum

**To:** Santa Fe Board of County Commissioners

**From:** Donna Morris, Senior Accountant

**Thru:** Katherine Miller, County Manager *DM*

**Date:** April 5, 2011

**Re:** *Requesting a budget increase to the Turquoise Trail Fire District Impact Fee Fund (\$133,000)*

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### **ISSUE:**

The CSD Fire Department division is requesting an increase to the Turquoise Trail Fire District Impact Fee Fund (216) in the amount of \$133,000.

### **BACKGROUND:**

In accordance with the Santa Fe County Five Year Plan the Turquoise Trail Fire District is requesting to budget impact fee money to contribute to the purchase of a new fire engine for their district. In addition to these impact fees the fire district has been saving a portion of their annual fire fund allotment allocations that will also supplement the funding for the purchase of this emergency response vehicle. The need for a new engine in the Turquoise Trail Fire District has been identified and this purchase will benefit the fire response capabilities in the communities in which this fire district provides public safety.

### **SUMMARY:**

Please approve the attached budget resolution to increase the budget in the Turquoise Trail Fire District Impact Fee Fund (216) by the amount of \$133,000.

**SANTA FE COUNTY**  
**RESOLUTION 2011 - \_\_\_\_\_**

**A RESOLUTION REQUESTING AUTHORIZATION TO MAKE THE BUDGET ADJUSTMENT DETAILED ON THIS FORM**

Whereas, the Board of County Commissioners meeting in regular session on April 26, 2011, did request the following budget adjustment:

Department / Division: Fire Department/Fire Administration Fund Name: Turquoise Trail Fire District Impact Fees (216)

Budget Adjustment Type: Budget Increase Fiscal Year: 2011 (July 1, 2010 - June 30, 2011)

**BUDGETED REVENUES: (use continuation sheet, if necessary)**

FUND CODE XXX	DEPARTMENT/ DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/ OBJECT XXXX	REVENUE NAME	INCREASE AMOUNT	DECREASE AMOUNT
216	0839	341	16-02	Impact Fees/Special Assessments	133,000	
					133,000	

**BUDGETED EXPENDITURES: (use continuation sheet, if necessary)**

FUND CODE XXX	DEPARTMENT/ DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/ OBJECT XXXX	CATEGORY /LINE ITEM NAME	INCREASE AMOUNT	DECREASE AMOUNT
216	0839	422	80-09	Capital Expenditures/Vehicles	133,000	
					133,000	

Requesting Department Approval: [Signature] Title: Interim Fire Chief Date: 4-4-11

Finance Department Approval: [Signature] Date: 4/4/11 Entered by: \_\_\_\_\_ Date: \_\_\_\_\_

County Manager Approval: \_\_\_\_\_ Date: \_\_\_\_\_ Updated by: \_\_\_\_\_ Date: \_\_\_\_\_

**SANTA FE COUNTY**

**RESOLUTION 2011 - \_\_\_\_\_**

**ATTACH ADDITIONAL SHEETS IF NECESSARY.**

DEPARTMENT CONTACT: Name: Donna Morris Dept/Div: Fire Department/Administration Phone No.: 992-3082

**DETAILED JUSTIFICATION FOR REQUESTING BUDGET ADJUSTMENT (If applicable, cite the following authority: State Statute, grant name and award date, other laws, regulations, etc.):**

- 1) Please summarize the request and its purpose.

Requesting BCC approval for a budget increase to the Turquoise Trail impact fee fund (216) to budget the available cash balance of impact fees to purchase a fire engine for the Turquoise Trail Fire District in accordance with the five year plan; and, will benefit the fire response capabilities in the communities in which they provide public safety.

**a) Employee Actions**

Line Item	Action (Add/Delete Position, Reclass, Overtime)	Position Type (permanent, term)	Position Title

**b) Professional Services (50-xx) and Capital Category (80-xx) detail:**

Line Item	Detail (what specific things, contracts, or services are being added or deleted)	Amount
80-09	Fire Engine for the Turquoise Trail Fire District	133,000

- 2) Is the budget action for RECURRING expense \_\_\_\_\_ or for NON-RECURRING (one-time only) expense X

# SANTA FE COUNTY

## RESOLUTION 2011 - \_\_\_\_\_

**ATTACH ADDITIONAL SHEETS IF NECESSARY.**

**DEPARTMENT CONTACT:**

Name: Donna Morris Dept/Div: Fire Department/Administration Phone No.: 992-3082

**DETAILED JUSTIFICATION FOR REQUESTING BUDGET ADJUSTMENT (if applicable, cite the following authority: State Statute, grant name and award date, other laws, regulations, etc.):**

- 3) Does this request impact a revenue source? If so, please identify (i.e. General Fund, state funds, federal funds, etc.), and address the following:
  - a) If this is a state special appropriation, YES X NO \_\_\_\_\_

**Fire District Impact Fees**

- b) Does this include state or federal funds? YES \_\_\_\_\_ NO X  
If YES, please cite and attach a copy of statute, if a special appropriation, or include grant name, number, award date and amount, and attach a copy of a award letter and proposed budget.
- c) Is this request is a result of Commission action? YES \_\_\_\_\_ NO X  
If YES, please cite and attach a copy of supporting documentation (i.e. Minutes, Resolution, Ordinance, etc.).

- d) Please identify other funding sources used to match this request.

N/A

**SANTA FE COUNTY**  
**RESOLUTION 2011 - \_\_\_\_\_**

**NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Santa Fe County that the Local Government Division of the Department of Finance and Administration is hereby requested to grant authority to adjust budgets as detailed above.

Approved, Adopted, and Passed This 26th Day of April, 2011.

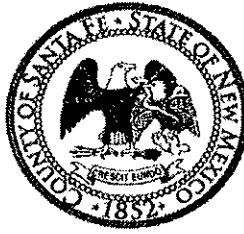
**Santa Fe Board of County Commissioners**

\_\_\_\_\_  
Virginia Vigil, Madam Chair


**ATTEST:**

\_\_\_\_\_  
Valerie Espinoza, County Clerk





## Memorandum

**To:** Santa Fe Board of County Commissioners  
**From:** Donna Morris, Senior Accountant   
**Thru:** Katherine Miller, County Manager  
**Date:** April 5, 2011  
**Re:** *Requesting a budget increase to the Emergency Preparedness Fund (\$166,127)*

---

### **ISSUE:**

The CSD Fire Department division is requesting an increase to the Fire Department Emergency Preparedness Fund (244) to budget Homeland Security Grant 2010-SS-TO-0011-Santa Fe County in the amount of \$166,127.

### **BACKGROUND:**

The Fire Department has been awarded a Homeland Security Grant to be expended on the following projects:

Project #1: WEPI Sirens/Reverse 911 - \$20,000 - to be used to purchase a mobile community warning siren to be utilized to prepare for, prevent, and respond to hazard events.

Project #2: USAR Trailer Project Completion - \$76,027 – to be used to complete the initial Urban Search and Rescue Trailer by purchasing PPE (personal protective gear), a search snake camera used for victim searches in collapsed structures, various rescue equipment such as hand tools, shovels, etc., and equipment for pneumatic rescue systems.

Project #3: Rad/Nuc Operations Training – \$57,600 - Operations level Radiological/Nuclear mobile training program for all paid field personnel to be taught by the Nevada Test Site personnel here in Santa Fe. This grant money will be used to cover the overtime cost for back filling shifts vacated for training.

Project #4: Mandatory Exercise - \$12,500 – A full scale multi-agency exercise to demonstrate all hazard response capabilities. The funding will be used to purchase safety equipment, rehabilitation supplies, triage tags, landing zone equipment, etc.

**SUMMARY:**

Please approve the attached budget resolution to increase the Fire Department Emergency Preparedness Fund (244) by \$166,127 to assist in the ability of Santa Fe County to prepare for, prevent, and respond to all hazard events.

**SANTA FE COUNTY**  
**RESOLUTION 2011 - \_\_\_\_\_**

**A RESOLUTION REQUESTING AUTHORIZATION TO MAKE THE BUDGET ADJUSTMENT DETAILED ON THIS FORM**

Whereas, the Board of County Commissioners meeting in regular session on April 26<sup>th</sup>, 2011, did request the following budget adjustment:

Department / Division: Fire Department/Fire Administration Fund Name: Emergency Preparedness Fund (244)

Budget Adjustment Type: Budget Increase Fiscal Year: 2011 (July 1, 2010 - June 30, 2011)

BUDGETED REVENUES: (use continuation sheet, if necessary)

FUND CODE XXX	DEPARTMENT/ DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/ OBJECT XXXX	REVENUE NAME	INCREASE AMOUNT	DECREASE AMOUNT
244	0808	372	00-00	EMPG Grant/Federal	166,127	
<b>TOTAL (if SUBTOTAL, check here )</b>					<b>166,127</b>	

BUDGETED EXPENDITURES: (use continuation sheet, if necessary)

FUND CODE XXX	DEPARTMENT/ DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/ OBJECT XXXX	CATEGORY / LINE ITEM NAME	INCREASE AMOUNT	DECREASE AMOUNT
244	0808	422	10-25	Salaries & Wages/Overtime	57,600	
244	0808	422	60-01	Supplies/Inventory Exempt	6,027	
244	0808	422	60-02	Supplies/Safety Supplies	28,000	
244	0808	422	60-12	Supplies/Food Provisions	3,000	
244	0808	422	80-03	Capital Purchases/Equipment & Machinery	71,500	
<b>TOTAL (if SUBTOTAL, check here )</b>					<b>166,127</b>	

Requesting Department Approval: *[Signature]* Title: Interim Fire Chief Date: 4-4-11  
 Finance Department Approval: *[Signature]* Date: 4/7/11 Entered by: \_\_\_\_\_ Date: \_\_\_\_\_  
 County Manager Approval: \_\_\_\_\_ Date: \_\_\_\_\_ Updated by: \_\_\_\_\_ Date: \_\_\_\_\_

**SANTA FE COUNTY**  
**RESOLUTION 2011 - \_\_\_\_\_**

**ATTACH ADDITIONAL SHEETS IF NECESSARY.**

**DEPARTMENT CONTACT:** Name: Donna Morris Dept/Div: Fire Department/Administration Phone No.: 992-3082

**DETAILED JUSTIFICATION FOR REQUESTING BUDGET ADJUSTMENT (If applicable, cite the following authority: State Statute, grant name and award date, other laws, regulations, etc.):**

- 1) Please summarize the request and its purpose.

Requesting BCC approval for a budget increase to the Emergency Preparedness (244) Fund for an Emergency Preparedness Grant in the amount of \$166,127 to be utilized for the purpose of purchasing a WEPI warning siren, the completion of the USAR Trailer Project, Rad/Nuc Ops Training (utilizing project code HOMESG for overtime expenditures), and a mandatory exercise project. This grants activities are to be used to support activities essential to the ability of Santa Fe County to prepare for, prevent, and respond to terrorist attacks and other all-hazard events. (Grant Attached)

Line Item	Position Type (permanent, term)	Position Title

b) Professional Services (50-xx) and Capital Category (80-xx) detail:

Line Item	Detail (what specific things, contracts, or services are being added or deleted)	Amount
80-03	Rescue equipment	71,500

- 2) Is the budget action for RECURRING expense \_\_\_\_\_ or for NON-RECURRING (one-time only) expense X

SANTA FE COUNTY

RESOLUTION 2011 - \_\_\_\_\_

ATTACH ADDITIONAL SHEETS IF NECESSARY.

DEPARTMENT CONTACT:

Name: Donna Morris Dept/Div: Fire Department/Administration Phone No.: 992-3082

DETAILED JUSTIFICATION FOR REQUESTING BUDGET ADJUSTMENT (If applicable, cite the following authority: State Statute, grant name and award date, other laws, regulations, etc.):

- 3) Does this request impact a revenue source? If so, please identify (i.e. General Fund, state funds, federal funds, etc.), and address the following:
  - a) If this is a state special appropriation, YES \_\_\_\_\_ NO X
  - b) Does this include state or federal funds? YES X NO \_\_\_\_\_  
If YES, please cite and attach a copy of statute, if a special appropriation, or include grant name, number, award date and amount, and attach a copy of a award letter and proposed budget **NM Department of Homeland Security. Please see the attached grant.**
  - c) Is this request a result of Commission action? YES \_\_\_\_\_ NO X  
If YES, please cite and attach a copy of supporting documentation (i.e. Minutes, Resolution, Ordinance, etc.).

- d) Please identify other funding sources used to match this request.

There is no match requirement.

**SANTA FE COUNTY**  
**RESOLUTION 2011 - \_\_\_\_\_**

Page 4 of 4

**NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Santa Fe County that the Local Government Division of the Department of Finance and Administration is hereby requested to grant authority to adjust budgets as detailed above.

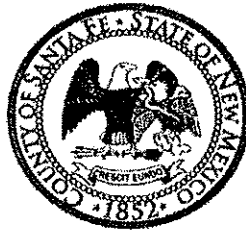
Approved, Adopted, and Passed This 26th Day of April, 2011.

**Santa Fe Board of County Commissioners**

\_\_\_\_\_  
Virginia Vigil, Madam Chair

**ATTEST:**

\_\_\_\_\_  
Valerie Espinoza, County Clerk



## Memorandum

**To:** Santa Fe Board of County Commissioners

**From:** Donna Morris, Senior Accountant *DM*

**Thru:** Katherine Miller, County Manager

**Date:** April 5, 2011

**Re:** *Requesting a budget increase to the Rancho Viejo Station Project Fund (\$1,242,048)*

---

### ISSUE:

The CSD Fire Department division is requesting an increase to the Rancho Viejo Station Project Fund (244) in the amount of \$1,242,048.

### BACKGROUND:

The Fire Department is requesting to budget prior years available cash in the amount of \$1,242,048 to proceed with the construction of the Rancho Viejo Station Project in accordance with the five year plan. IFB #2011-0139-CSD/MS has been advertised and this budget will allow the construction to begin prior to the end of this fiscal year.

### SUMMARY:

Please approve the attached budget resolution to increase the budget in the Rancho Viejo Station Project Fund (244) by the amount of \$1,242,048.

SANTA FE COUNTY

RESOLUTION 2011 - \_\_\_\_\_

A RESOLUTION REQUESTING AUTHORIZATION TO MAKE THE BUDGET ADJUSTMENT DETAILED ON THIS FORM

Whereas, the Board of County Commissioners meeting in regular session on April 26, 2011, did request the following budget adjustment:

Department / Division: Fire Department/Fire Administration Fund Name: Rancho Viejo Station Fund (244)

Budget Adjustment Type: Budget Increase Fiscal Year: 2011 (July 1, 2010 - June 30, 2011)

BUDGETED REVENUES: (use continuation sheet, if necessary)

FUND CODE XXX	DEPARTMENT/DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/OBJECT XXXX	REVENUE NAME	INCREASE AMOUNT	DECREASE AMOUNT
244	0000	385	02-00	Budgeted Cash/Fire Operations	1,242,048	
TOTAL (if SUBTOTAL, check here )					1,242,048	

BUDGETED EXPENDITURES: (use continuation sheet, if necessary)

FUND CODE XXX	DEPARTMENT/DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/OBJECT XXXX	CATEGORY/LINE/ITEM NAME	INCREASE AMOUNT	DECREASE AMOUNT
244	8004	421	80-01	Capital Purchases/Buildings & Structures	1,242,048	
TOTAL (if SUBTOTAL, check here )					1,242,048	

Requesting Department Approval: [Signature] Title: Interim Fire Chief Date: 4-5-11

Finance Department Approval: [Signature] Date: 4/17/11 Entered by: \_\_\_\_\_ Date: \_\_\_\_\_

County Manager Approval: \_\_\_\_\_ Date: \_\_\_\_\_ Updated by: \_\_\_\_\_ Date: \_\_\_\_\_



# SANTA FE COUNTY

## RESOLUTION 2011 - \_\_\_\_\_

**ATTACH ADDITIONAL SHEETS IF NECESSARY.**

**DEPARTMENT CONTACT:** Name: Donna Morris Dept/Div: Fire Department/Administration Phone No.: 992-3082

**DETAILED JUSTIFICATION FOR REQUESTING BUDGET ADJUSTMENT (if applicable, cite the following authority: State Statute, grant name and award date, other laws, regulations, etc.):**

- 1) Please summarize the request and its purpose.

Requesting BCC approval for a budget increase to the Rancho Viejo Station Project Fund (244) to budget prior years available cash from the fire operations fund to proceed with the station construction costs this fiscal year after IFB #2011-0139-CSD/MS has been awarded.

Line Item	Position Type (permanent, term)	Position Title

b) Professional Services (50-xx) and Capital Category (80-xx) detail:

Line Item	Detail (what specific things, contracts, or services are being added or deleted)	Amount
80-01	Rancho Viejo Station Construction	1,242,048

- 2) Is the budget action for RECURRING expense \_\_\_\_\_ or for NON-RECURRING (one-time only) expense X

# SANTA FE COUNTY

## RESOLUTION 2011 - \_\_\_\_\_

ATTACH ADDITIONAL SHEETS IF NECESSARY.

DEPARTMENT CONTACT:

Name: Donna Merris Dept/Div: Fire Department/Administration Phone No.: 992-8082

DETAILED JUSTIFICATION FOR REQUESTING BUDGET ADJUSTMENT (If applicable, cite the following authority: State Statute, grant name and award date, other laws, regulations, etc.):

- 3) Does this request impact a revenue source? If so, please identify (i.e. General Fund, state funds, federal funds, etc.), and address the following:
  - a) If this is a state special appropriation, YES \_\_\_\_\_ NO X
  - b) Does this include state or federal funds? YES \_\_\_\_\_ NO X  
If YES, please cite and attach a copy of statute, if a special appropriation, or include grant name, number, award date and amount, and attach a copy of a award letter and proposed budget .
  - c) Is this request a result of Commission action? YES \_\_\_\_\_ NO X  
If YES, please cite and attach a copy of supporting documentation (i.e. Minutes, Resolution, Ordinance, etc.).
  - d) Please identify other funding sources used to match this request.

N/A

**SANTA FE COUNTY**

**RESOLUTION 2011 - \_\_\_\_\_**

**NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Santa Fe County that the Local Government Division of the Department of Finance and Administration is hereby requested to grant authority to adjust budgets as detailed above.

**Approved, Adopted, and Passed This 26th Day of April, 2011.**

**Santa Fe Board of County Commissioners**

\_\_\_\_\_  
Virginia Vigil, Madam Chair

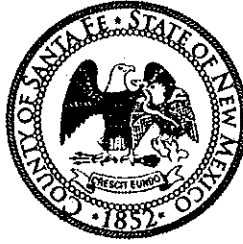
**ATTEST:**

\_\_\_\_\_  
Valerie Espinoza, County Clerk

**Daniel "Danny" Mayfield**  
Commissioner, District 1

**Virginia Vigil**  
Commissioner, District 2

**Robert A. Anaya**  
Commissioner, District 3



**Kathy Holian**  
Commissioner, District 4

**Liz Stefanics**  
Commissioner, District 5

**Katherine Miller**  
County Manager

## **MEMORANDUM**

**DATE:** *April 11, 2011*

**TO:** *Board of County Commissioners*

**FROM:** *Robert Martinez, Transportation Manager RM jmm*

**VIA:** *Katherine Miller, County Manager*

**ITEM AND ISSUE:** *BCC Meeting April 26, 2011*

**A RESOLUTION TO INCREASE THE ROAD PROJECT FUND (311) FOR A NOVATION (REPLACEMENT) OF COOPERTIVE AGREEMENT AWARDED THROUGH NM DEPARTMENT OF TRANSPORTATION FOR CR 98 IMPROVEMENTS / \$112,500.**

**BACKGROUND AND SUMMARY:**

This novation (replacement) agreement from the New Mexico Department of Transportation was approved, for the project and corresponding amount listed below, at the January 25, 2011 Board of County Commissioners meeting. Under the NMDOT Cooperative Local Government Road Fund Program their portion is seventy five percent (75%) of the funding for this project. The following is a list of the project, agreement and the corresponding funding level:

<b>PROJECT NAME</b>	<b>AGREEMENT NUMBER</b>	<b>STATE FUNDS</b>	<b>COUNTY MATCH</b>	<b>AGREEMENT TOTAL</b>
CR 98	D13098/1	\$112,500	\$37,500	\$150,000

**ACTION REQUESTED:**

The Public Works Department requests approval to budget the NMDOT's portion of the 2010/2011 Novation (replacement) funding agreement for CR 98 Road Improvement Projects for Santa Fe County.

# SANTA FE COUNTY

## RESOLUTION 2010 - \_\_\_\_\_

### A RESOLUTION REQUESTING AUTHORIZATION TO MAKE THE BUDGET ADJUSTMENT DETAILED ON THIS FORM

Whereas, the Board of County Commissioners meeting in regular session on \_\_\_\_\_, did request the following budget adjustment:

Department / Division: Public Works Fund Name: Road Projects

Budget Adjustment Type: Budget Increase Fiscal Year: 2011 (July 1, 2010 - June 30, 2011)

BUDGETED REVENUES: (use continuation sheet, if necessary)

FUND CODE XXX	DEPARTMENT/ DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/ OBJECT XXXX	REVENUE NAME	INCREASE AMOUNT	DECREASE AMOUNT
311	6170	372	1100	State Grant Agreement / CR 98 Juan Medina Road	\$112,500	
<b>TOTAL (if SUBTOTAL, check here)</b>					\$112,500	

BUDGETED EXPENDITURES: (use continuation sheet, if necessary)

FUND CODE XXX	DEPARTMENT/ DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/ OBJECT XXXX	CATEGORY / LINE ITEM NAME	INCREASE AMOUNT	DECREASE AMOUNT
311	6170	453	8010	State Grant Agreement / CR 98 Juan Medina Road	\$112,500	
<b>TOTAL (if SUBTOTAL, check here)</b>					\$112,500	

Requesting Department Approval: *Robert Martinez* Title: Transportation Manager Date: 4-11-11

Finance Department Approval: *Wendy Martinez* Date: 4/11/11 Entered by: \_\_\_\_\_ Date: \_\_\_\_\_

County Manager Approval: \_\_\_\_\_ Date: \_\_\_\_\_ Updated by: \_\_\_\_\_ Date: \_\_\_\_\_

# SANTA FE COUNTY

## RESOLUTION 2010 - \_\_\_\_\_

### ATTACH ADDITIONAL SHEETS IF NECESSARY.

DEPARTMENT CONTACT: Name: Gabriella Trujillo Dept/Div: Public Works Phone No.: 992-3031

DETAILED JUSTIFICATION FOR REQUESTING BUDGET ADJUSTMENT (If applicable, cite the following authority: State Statute, grant name and award date, other laws, regulations, etc.):

- 1) Please summarize the request and its purpose. Request is for additional funding that is coming from NMDOT CONTRACT#DI13098/1 for CR 98 Juan Medina Road.
- 2) Is the budget action for RECURRING expense \_\_\_\_\_ or for NON-RECURRING (one-time only) expense X \_\_\_\_\_
- 3) Does this request impact a revenue source? If so, please identify (i.e. General Fund, state funds, federal funds, etc.), and address the following:
  - a) If this is a state special appropriation, YES X NO \_\_\_\_\_  
If YES, cite statute and attach a copy.
  - b) Does this include state or federal funds? YES X NO \_\_\_\_\_  
If YES, please cite and attach a copy of statute, if a special appropriation, or include grant name, number, award date and amount, and attach a copy of a award letter and proposed budget.
  - c) Is this request is a result of Commission action? YES \_\_\_\_\_ NO X \_\_\_\_\_  
If YES, please cite and attach a copy of supporting documentation (i.e. Minutes, Resolution, Ordinance, etc.).
  - d) Please identify other funding sources used to match this request. Match already funded by the 1/4% GRT.

**SANTA FE COUNTY**  
**RESOLUTION 2010 - \_\_\_\_\_**

**NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Santa Fe County that the Local Government Division of the Department of Finance and Administration is hereby requested to grant authority to adjust budgets as detailed above.

Approved, Adopted, and Passed This \_\_\_\_\_ Day of \_\_\_\_\_, 2011.

Santa Fe Board of County Commissioners

\_\_\_\_\_  
Virginia Vigil, Chairperson

**ATTEST:**

\_\_\_\_\_  
Valerie Espinoza, County Clerk

# Memorandum

**To:** Santa Fe Board of County Commissioners  
**From:** Teresa C. Martinez, Finance Director *JCM*  
**Via:** Katherine Miller, County Manager  
**Date:** April 26, 2011  
**Re:** *Financial report for the quarter ending 03/31/2011*

---

**ISSUE:**

Enclosed is a report summarizing the financial activities of the County through the quarter ending March 31, 2011

**BACKGROUND:**

The following is intended to summarize financial activity on a quarterly basis for the General fund and those funds classified as "troubled funds" which include Fire and Corrections Funds as well as the Health Division. Please note that the classification of a "troubled fund" status is very much tied to the current economy and the program(s) strong reliance on gross receipt tax revenue.

**GENERAL FUND**

**Net Activity:** The third quarter revealed total year-to-date revenue collections of \$40,060,504 and year-to-date expenditures of \$35,554,233 resulting in a positive operational variance (surplus) of \$4,506,271.

**Revenues:** The General Fund witnessed increased collections over the budgeted amount(s) for animal licenses, wireless communication fees, animal pound fees, landfill fees, printing and copying charges, rental fees, and archaeological review fees. We also witnessed decreased collections materializing less than the budgeted amounts for microfiche fees, map sales, investment income and grant reimbursements.

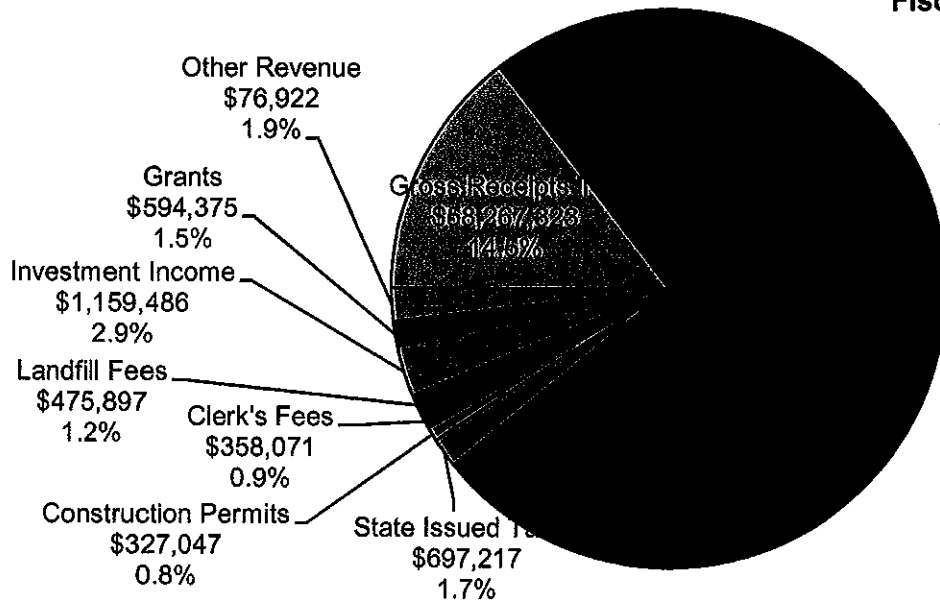
**Compared to the Prior Year:** In total, general fund revenue collections are down 11.5% when compared to revenue collected in FY 2010 for July through March. This is attributable to lesser state and federal grants and investment income. Investment income is down by \$715,514 when compared to budget and is down \$566,865 when compared to the previous fiscal year. Additionally, the General Fund was reimbursed a total of \$4.2 million from bond proceeds for water rights acquisitions.

**Compared to the Budget:** Total revenue collections materialized at 73% of the budgeted amount through March 31, 2011. There are revenue line items that are better than budgeted as well as those that are under budget through March 2011. Some of the revenues are significantly under budget, but are also cyclical in that the collections do not materialize until the latter part of the fiscal year. Improvements were noted on the third quarter report, e.g. business licenses have a due date in March and collections totaled \$183,390. This amount is up \$102,110 from December.

The charts below identify the major revenue sources for the General Fund. Also included are charts reflecting specific activity for property taxes and gross receipt taxes.

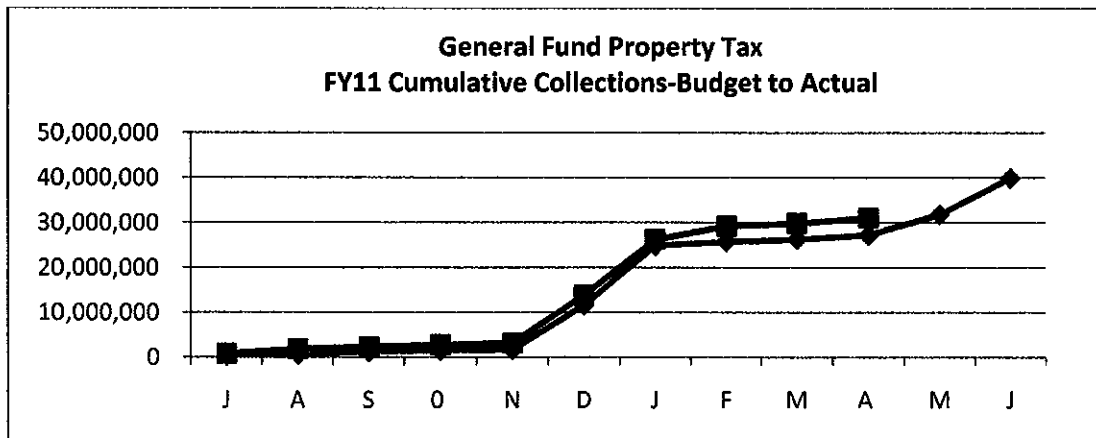


**Percentage of Total Revenue  
General Fund  
Fiscal Year 2011**

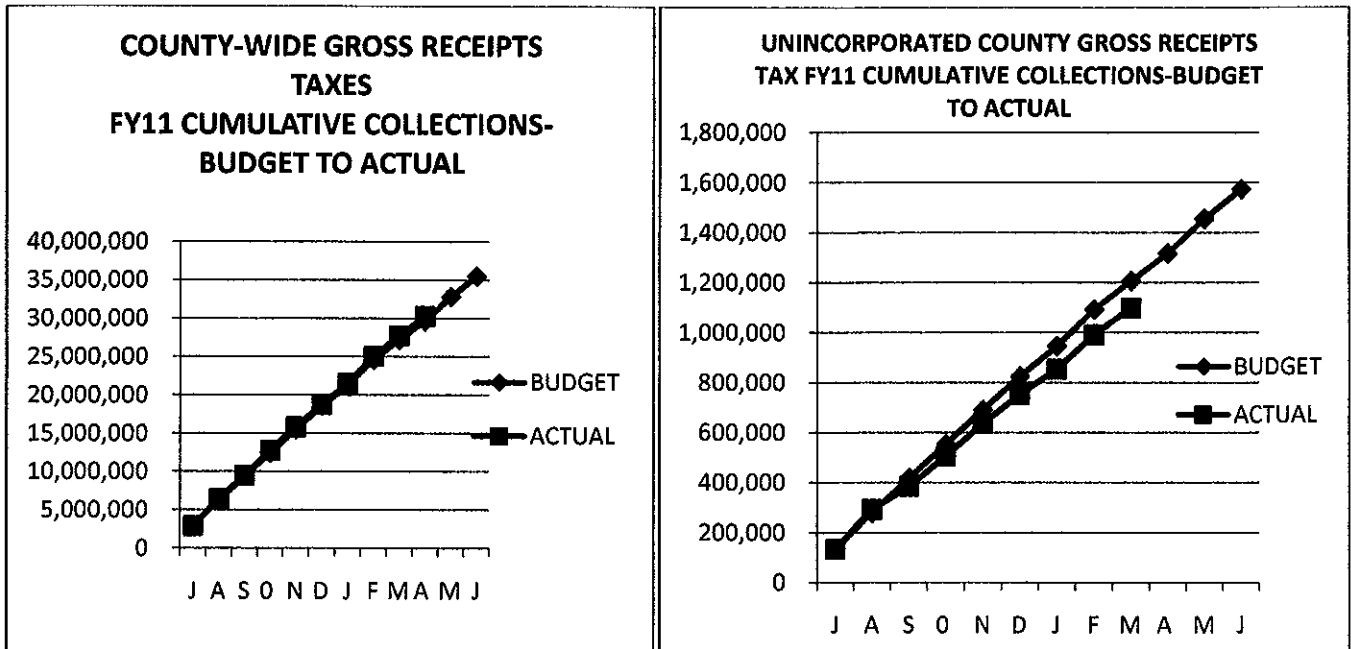


The investment income collections will more than likely not materialize at the level budgeted for FY 2011. As revenues overall continue to meet budget or fall just under budget Finance will process a resolution with any necessary budgetary adjustments (up or down) in May as we approach the fiscal year end.

Property tax collections are better than budget at this time. It is important to note that the December, January, May and June collections for the property tax budget are material (\$34.9 million of total budget \$38.0 million) and usually gauge whether or not additional cuts are necessary. At this time we are not recommending additional cuts. Finance will continue to monitor collections and keep the BCC updated each month. Also keep in mind that the Treasurer's Office still has two staff members dedicated to the collection of delinquent taxes. To this point, delinquent taxes collected by assigned staff total \$1.7 million for the County.

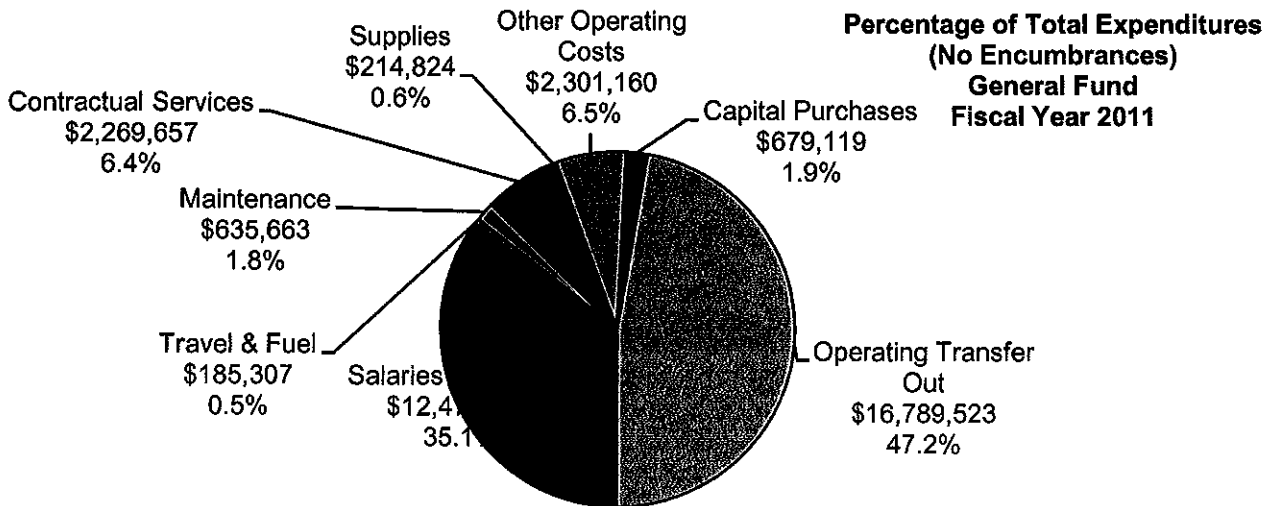


Total cumulative gross receipt collections were slightly higher than budget. The total gross receipt collections equal \$28,779,109, which is \$355,695 over the budgeted amount of \$28,423,414. FY 2011 gross receipt tax collections are down 1.7% from budget and down 4% from the previous year's actual collections for the same time period.



Expenditures: Santa Fe County expended a total of \$35.5 million for all General Fund expenditure categories. The largest share of the County's general fund budget is comprised of salaries and benefits with a budget of \$18.8 million and actual expenditures of \$12.5 million.

All General Fund expenditure categories are under budget through March 31<sup>st</sup> with salaries and benefits being the largest expenditure at 46% of the total budget. Overall, the County has expended a total of 56% or \$35,554,233 of the \$62,991,137 budget.



Troubled Funds:

During FY 2010, the County classified several funds as “troubled funds”. This classification was assigned to these funds largely because they are supported by revenue sources such as gross receipt taxes, fee charges and grant funding. These funding sources have experienced significant downturns in this recessed economy. The troubled fund status ensures that we closely monitor revenue sources and expenditures, and forecast potential shortfalls and threats to cash. For purposes of this report, detailed information will be provided for the Fire and Corrections Funds. Summary information shall be provided for the Health Division and the RECC, with similar discussions for funds that have associated staff and no recurring funding source.

FIRE FUNDS:

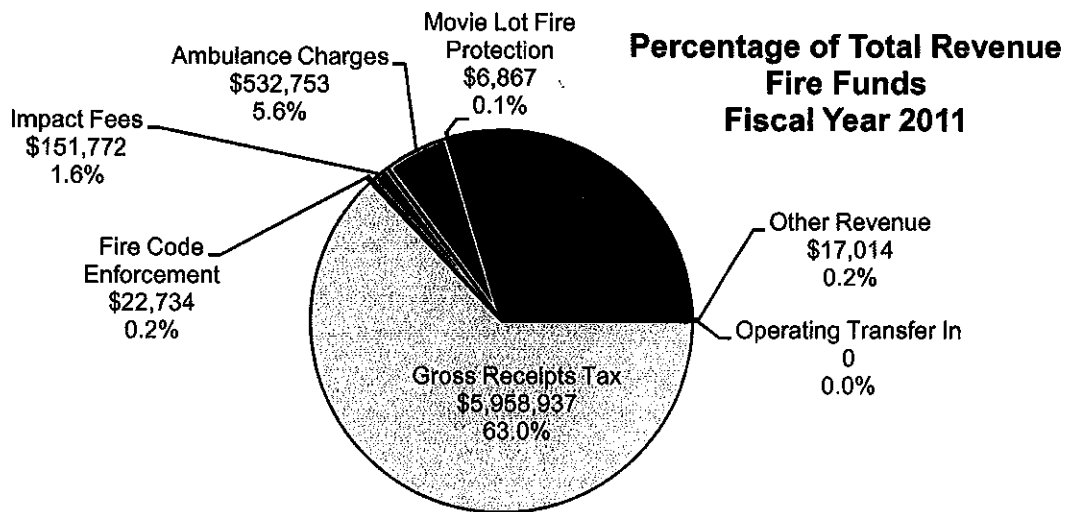
**Net Activity:** The third quarter revealed total year-to-date revenue collections of \$9,465,314 and year-to-date expenditures of \$9,039,980 resulting in a positive operational variance (surplus) of \$425,334.

**Revenues:** The Fire Funds witnessed increased collections over the budgeted amount(s) for movie lot fire protection, state grants, and joint power agreements (JPA’s). The Fire Funds also witnessed decreased collections materializing less than the budgeted amounts for fire code enforcement fees, impact fees, and ambulance charges. (The reference of Fire Funds includes all funds relative to the operations of the Fire Division and include the EMS fund, Fire Protection fund, Impact Fee fund, Fire Excise Tax Fund, Fire operations fund and any corresponding bond funds).

**Compared to the Prior Year:** In total, Fire Funds revenue collections are up 1.1% when compared to revenue collected in FY 2010 for July through March. The gross receipts tax that supports Fire Operations is down 3.7% from FY 2010.

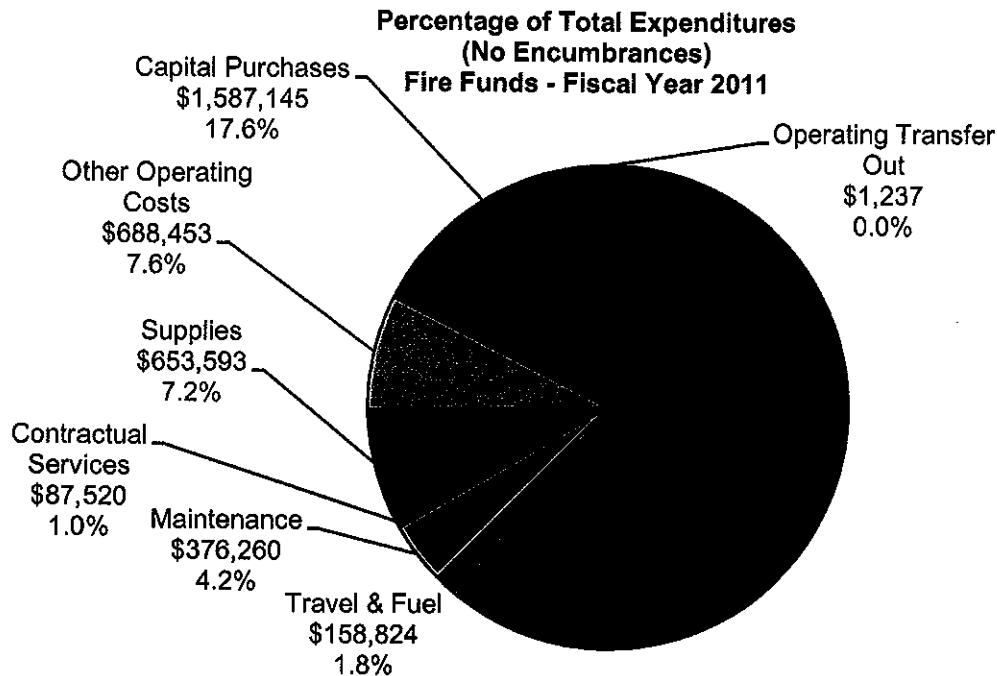
**Compared to the Budget:** Total revenue collections materialized just at 74% of the budgeted amount through March 31, 2010. Gross Receipt tax collections are very slightly better than budget at 52.5% through March. This includes \$43,680 in receipts from the “sunsetting” Fire Excise Tax that continues to come in from late filings and penalties which is not budgeted.

The chart below identifies the major revenue sources for all Fire Funds:



**Expenditures:** The Fire Funds expended a total of \$9.0 million for all expenditure categories. The largest share of the Fire Funds budget is comprised of salaries and benefits and capital purchases. Salaries and benefits total \$8.7 million of the total budget and witnessed actual expenditures of \$5.5 million. Capital purchases total \$17.8 million of the total budget and witnessed actual expenditures of \$1,587,145.

All Fire Funds expenditure categories are under budget through March 31<sup>st</sup> with the largest expenditure categories of salaries and benefits at 28% of the total budget and capital purchases at 57% of the total budget. Overall, the Fire Division has expended a total of 29% or \$9,039,980 of the \$31,073,281 budget.



**CORRECTIONS FUNDS:**

**Net Activity:** The third quarter revealed total year-to-date revenue collections of \$17,488,857 and year-to-date expenditures of \$19,665,105 resulting in a negative operational variance (shortfall) of \$2,176,248.

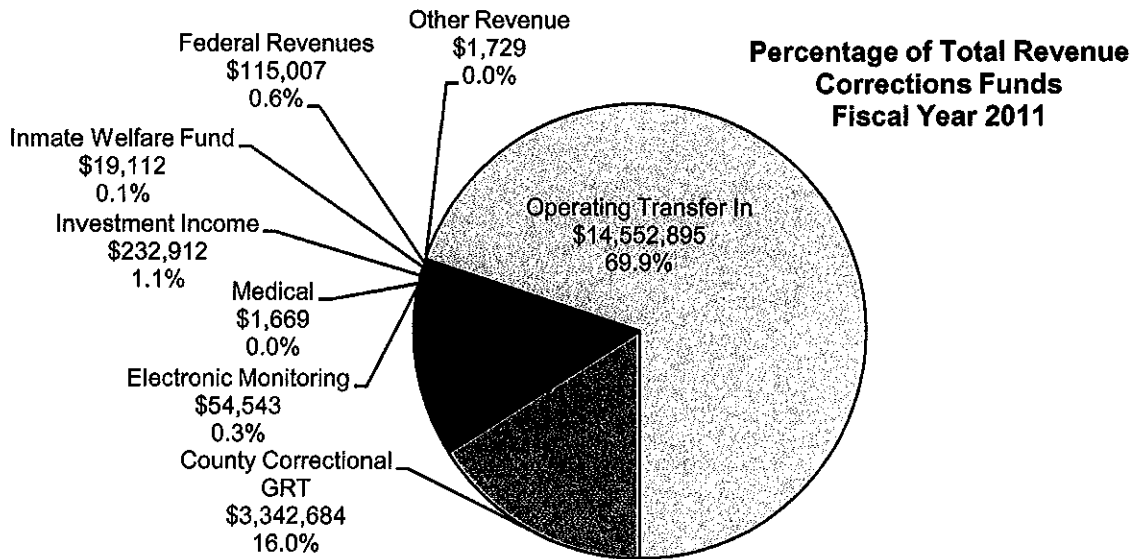
**Revenues:** The Corrections Funds witnessed decreased collections materializing less than the budgeted amounts for care of prisoner charges and electronic monitoring charges. (The reference of Corrections Funds includes all funds relative to the Corrections operations, which are the County Correctional Gross Receipt Tax fund, the Corrections Operations fund and the Debt Service fund).

**Compared to the Prior Year:** Charges for Service Revenue (including Care of Prisoners) in Fiscal Year 2011 is down through March by 9% or \$248,150 from the same period in FY 2010. Through March the Correctional Gross Receipts Tax is down 3.9% from the same period in FY 2010.

**Compared to the Budget:** Total revenue collections of \$2,935,962 (without operating transfers in of \$14,552,895) materialized at 55% of the budgeted amount through March 31, 2011. Total revenue collections including operating transfers in totaled \$17,488,857 and materialized at 81% of the budgeted amount. Gross Receipt tax collections are just better than budget at \$3,342,684 or 78.19% through March. Past discussions by the County have included reductions to the overall corrections budget, which would

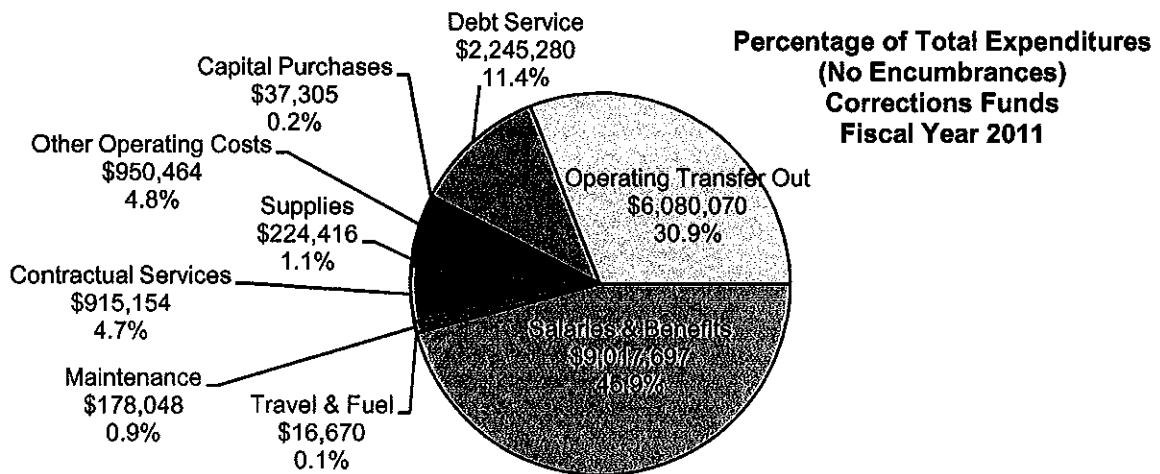
involve the closing of programs. Other options included declaring a level of operation and the common knowledge that the operations would always require a certain level of support from other funds. These discussions will continue as we approach the FY 2012 budget study session and the submission of the interim budget.

The charts below identify the major revenue sources for the Corrections Funds:



**Expenditures:** The Corrections operations expended a total of \$19,665,105 for all expenditure categories. The largest share of the Corrections Funds budget is comprised of salaries and benefits, which total \$14 million of the total budget and witnessed actual expenditures of \$9 million.

All Corrections Funds expenditure categories are under budget through March 31<sup>st</sup> with the largest expenditure categories of salaries and benefits at 46% of the total budget. Overall, the Corrections Department has expended a total of 71.6% or \$19,665,105 of the \$27,465,367 budget. Please note that included in the total budget numbers is the debt service component that totals \$2,251,380.



**OTHER TROUBLED FUNDS:**

Serious discussion has centered on the operations of the Health Division, the RECC, the jail medical component and the County's Sole Community Provider Commitment payment for the last several fiscal years. Mainly due to the fact that all program components as they exist today have surpassed the available funding sources. The GRT's are no longer sufficient to carry County programs and the SCP payment.

The lack of sufficient resources has in the past, and will in the future, impact the programs supported by the General Fund, EMS and Indigent GRT's as well as the Fire operations. In previous years, the County has been fortunate to have cash balances sufficient to carry the programs. To this end, the County made a difficult decision to commit a reduced SCP commitment of \$2.1 million versus the \$6.8 million committed in FY 2011.

The County has several programs that lack in sufficient secured funding or have no dedicated funding source. The Health Division has a total of \$2.4 million of non-grant funded health programs. The RECC has a total budget of \$3,406,525 and includes a total of 49 FTE's, 45 funded and 4 frozen positions. The RECC has relied on the EMS tax and EMS cash reserves for funding. The medical component itself is not sustained by a dedicated funding source. Ultimately, the generation of care of prisoner revenue should sustain the corrections operations including the medical component. Lastly, the Affordable Housing and Open Space programs have assigned staff and no real secure source of funding.

**UPDATE OF BUDGET CUTS MADE BY COUNTY MANAGER'S OFFICE (JUNE 8<sup>th</sup>):**

The budget cuts have continued for the most part with exception given to the filling of several frozen positions and the maintenance of some take-home vehicles that were initially earmarked for reduction. The summary below provides an update as to what level the budget cuts will be maintained at:

**STATUS OF FY 2011 BUDGET CUTS  
PRESENTED IN FY 2011 FINAL BUDGET**

<b>Actions Taken by County Manager</b>	<b>FY11 Approved Budget Reduction</b>	<b>Revised Est. Savings</b>	<b>Variance</b>
Hard Freeze Positions	1,400,000	1,239,092	(160,908)
Non-Personnel Related Cuts by Directors	967,000	908,892	(58,108)
Eliminate all Travel & Seminars (exc. statutorily required)	210,000	174,766	(35,234)
Reduce Salary of Employees Earning >\$80K	121,000	106,682	(14,318)
Cut Temps & Casual	103,000	45,043	(57,957)
Eliminate Take Home Vehicles (exc. SO and Fire)	22,500	3,000	(19,500)
Eliminate Cell Phones (staff exc. SO, Fire and Dept. Dir.)	73,000	28,000	(45,000)
Change Employee Uniform Vendor and Process	37,000	37,000	0
Restructure Satellite Offices	51,000	26,000	(25,000)
Reduce or Terminate Contract Services	50,000	50,000	0
<b>TOTAL FROM ACTIONS TAKEN BY THE COUNTY MANAGER</b>	<b>3,034,500</b>	<b>2,618,475</b>	<b>(416,025)</b>
<b>Board Directives/Cuts Not Materializing</b>	<b>FY11 Approved Budget Reduction</b>	<b>Revised Est. Savings</b>	<b>Variance</b>
Move staff out of leased Office Space	128,620	50,032	(78,588)
Transition of Services to CSV - Medical Director	45,000	0	(45,000)
Transition of Services to CSV - Pharmaceuticals	268,000	249,680	(18,320)
Espanola Ambulance Service	66,000	33,000	(33,000)
Boys & Girls Club	50,000	35,000	(15,000)
<b>TOTAL BOARD DIRECTIVES/CUTS NOT MATERIALIZING</b>	<b>557,620</b>	<b>367,712</b>	<b>(189,908)</b>
<b>TOTAL CUTS NOT MATERIALIZED</b>	<b>3,592,120</b>	<b>2,986,187</b>	<b>(605,933)</b>

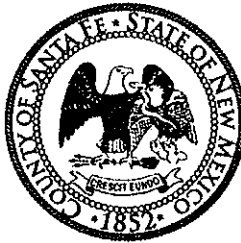
**CLOSING:**

The Finance Division is not recommending any additional cuts at this time. Budget hearings in preparation for FY2012 were just completed. Finance will compile all the budget requests and capital requests as received for FY 2012. A budget study session with the BCC is tentatively planned for May 10<sup>th</sup>. The interim budget must be completed and submitted to DFA by May 31<sup>st</sup>.

**Daniel "Danny" Mayfield**  
Commissioner, District 1

**Virginia Vigil**  
Commissioner, District 2

**Robert A. Anaya**  
Commissioner, District 3



**Kathy Holian**  
Commissioner, District 4

**Liz Stefanics**  
Commissioner, District 5

**Katherine Miller**  
County Manager

## MEMORANDUM

**DATE:** APRIL 11, 2011

**TO:** BOARD OF COUNTY COMMISSIONERS

**VIA:** KATHERINE MILLER, COUNTY MANAGER

**FROM:** ROBERT MARTINEZ, PUBLIC WORKS TRANSPORTATION MANAGER *RM*

**SUBJECT:** APRIL 26, 2011  
REQUEST AUTHORIZATION TO ENTER INTO A LIGHTING AGREEMENT  
WITH THE NEW MEXICO DEPARTMENT OF TRANSPORTATION (NMDOT)  
FOR INSTALLATION OF INTERSECTION LIGHTING ON NM 14 AND SANTA  
FE STUDIOS ROAD (AKA MONTANAS DE ORO) FOR THE SANTA FE STUDIOS  
DEVELOPEMENT (PUBLIC WORKS DEPARTMENT)

---

### Background and Summary

As part of the Santa Fe Studios development plan, the NMDOT has set forth conditions for off site improvements to NM 14. In Phase 1A of the NM 14 roadway improvements for this project, the installation of roadway lighting (3 streetlights) will promote traffic safety. It is anticipated that a future phase of this project will necessitate the installation of a traffic signal however a new and distinct signal and lighting agreement will be required between the parties at that time.

After the subject roadway lighting system has been constructed, Santa Fe County will be required to provide all electric energy, lighting fixtures and routine maintenance. At present, the yearly cost to provide electrical energy for a typical lighted intersection (streetlights only) of this nature is approximately seven hundred dollars (\$700.00) dollars a year. The funding for this electrical energy is budgeted in the Traffic Division budget. Also, ample provision must be made in the yearly budget for the costs associated to maintain this lighting system.

(Public Works Department)

### Action Requested:

The Public Works Department requests approval to enter into a Lighting Agreement with the New Mexico Department of Transportation (NMDOT) for the installation of roadway lighting at this location.



CONTRACT NO.: \_\_\_\_\_

VENDOR NO: \_\_\_\_\_

**SIGNALIZATION AND LIGHTING AGREEMENT**

THIS AGREEMENT, made and entered into pursuant to the provisions of NMSA 1978, Section 67-3-28, as amended, this \_\_\_\_ day of \_\_\_\_\_, 2011, by and between the NEW MEXICO DEPARTMENT OF TRANSPORTATION, acting by and through the SECRETARY, (hereinafter called the DEPARTMENT), and SANTA FE COUNTY, New Mexico, acting by and through its duly elected officials, (hereinafter called the PUBLIC ENTITY), and (hereinafter collectively called the Parties).

**RECITALS:**

WHEREAS, the PUBLIC ENTITY contemplates the letting of a contract for the construction of a highway project within the boundaries of the PUBLIC ENTITY, said project being identified as Phase IA of the NM 14 Roadway Improvements, and within the boundaries of SANTA FE COUNTY;

WHEREAS, the PUBLIC ENTITY and the DEPARTMENT agree with the need for installation of intersection lighting on Type III standards that are recognized as uniform state and federal standards (hereinafter Type III Standards);

WHEREAS, the PUBLIC ENTITY and the DEPARTMENT agree that the Lighting Project will be without a mast-arm at the intersection of NM 14 and Montanas de Oro, and the exact design, which shall be determined by the DEPARTMENT, will be in conformance with applicable laws, regulations and recognized uniform standards;

WHEREAS, the installation of the intersection lighting will promote traffic safety;

WHEREAS, the PUBLIC ENTITY and the DEPARTMENT anticipate that there may be a need for the installation of a traffic signal light at the intersection of NM 14 and Montanas de Oro in the future.

WHEREAS, the DEPARTMENT will require a traffic signal warrant study in the future that will determine when a traffic signal light is warranted at said intersection.

WHEREAS, a new and distinct signal and lighting agreement between the Parties will be required prior to installation of any future traffic light signal;

WHEREAS, it is the desire of the Parties to set forth their understandings and agreements pursuant to which improvements shall be made, and subsequently operated and maintained as required; and

WHEREAS, the Parties to this Agreement only contemplate Phase IA, the installation of lighting and applicable signage at the intersection of NM 14 and Montanas de Oro,

NOW THEREFORE, the Parties enter into this Agreement as follows:

**SECTION I: THE DEPARTMENT SHALL:**

Review and approve the necessary plans and estimates and all other documents required for the construction of the Project in the manner provided by law and in accordance with applicable laws, regulations and standards.

**SECTION II: THE PUBLIC ENTITY SHALL:**

1. Provide the necessary plans and estimates and other documents required for the review, approval and construction of the Project and cause the Project to be constructed in the manner provided by law and in accordance with such plans and documents approved by the DEPARTMENT.
2. Provide and install meter pedestal, footings, foundations for Type III standards, pull boxes, underground conduits, Type III standards without mast-arm, with luminaires on extended shaft, for intersection lighting and anticipated future signalization for the following intersection in conformance with the approved plans and specifications of the DEPARTMENT.
3. After the subject lighting system has been constructed, provide, at its own expense, all electrical energy, routine maintenance such as bulb and/or luminaire replacement, and that in case of accidental damage to the Type III standards or fixtures, replace them with the same kind or brand for continued satisfactory operation of the said roadway lighting system.
4. Make ample future provisions in its budget each year for the cost of maintaining and providing energy to the lighting system.
5. Follow all applicable procurement laws and regulations and obtain the necessary approvals prior to making the necessary expenditures for the Project.

**SECTION III: THIRD PARTY BENEFICIARIES:**

It is not intended by any of the provisions of any part of this AGREEMENT to create in the public or any member thereof a third party beneficiary or to authorize anyone not a party to the AGREEMENT to maintain a suit(s) for wrongful death(s), bodily and/or personal injury(ies) to person(s), damage(s) to property(ies), and/or any other claim(s) whatsoever pursuant to the provisions of this AGREEMENT.

#### SECTION IV: NEW MEXICO TORT-CLAIMS ACT:

As between the DEPARTMENT and PUBLIC ENTITY, neither Party shall be responsible for liability incurred as a result of the other Party's acts or omissions in connection with this AGREEMENT. Any liability incurred in connection with this AGREEMENT is subject to the immunities and limitations of New Mexico Tort Claims Act (Section 41-4-1, et seq. N.M.S.A. 1978) and any amendments thereto. This paragraph is intended only to define the liabilities between the Parties hereto and it is not intended to modify, in any way, the Parties' liabilities as governed by common law or the New Mexico Tort Claims Act. By entering this AGREEMENT, the DEPARTMENT and the PUBLIC ENTITY, and their "public employees" as defined in the New Mexico Tort Claims Act, do not waive any sovereign immunity, nor do they waive any limitation(s) of liability pursuant to law. No provision in this AGREEMENT modifies or waives any provision of the New Mexico Tort Claims Act.

#### SECTION V: SCOPE OF AGREEMENT:

This AGREEMENT incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements, and understandings have been merged into this written AGREEMENT. No prior AGREEMENT or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this AGREEMENT.

#### SECTION VI: TERMS OF THIS AGREEMENT:

The terms of this AGREEMENT are lawful; performance of all duties and obligations herein shall conform with and do not contravene any state, local, or federal statutes, regulations, rules, or ordinances.

#### SECTION VII: EQUAL OPPORTUNITY COMPLIANCE:

The parties agree 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 and rules and regulations, and executive orders of the Governor of the State of New Mexico, the parties agree to assure that no person in the United States shall, on the grounds of race, color, national origin, ancestry, sex, sexual preference, age or handicap, be excluded from employment with, or participation in, any program or activity performed under this AGREEMENT. If the parties are found to not be in compliance with these requirements during the term of this AGREEMENT, the parties agree to take appropriate steps to correct these deficiencies.

#### SECTION VIII: APPROPRIATIONS AND AUTHORIZATIONS:

The terms of this AGREEMENT are contingent upon sufficient appropriations and authorizations being made by the Legislature of New Mexico, or the Congress of the United States if federal funds are involved, for performance of the AGREEMENT. If sufficient appropriations and authorizations are not made by the Legislature or the Congress of the United

States if federal funds are involved, this AGREEMENT shall terminate upon written notice being given by the DEPARTMENT to the PUBLIC ENTITY. The DEPARTMENT is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered, and approved for expenditure by the DEPARTMENT. The DEPARTMENT's decision as to whether its funds are sufficient for fulfillment of this AGREEMENT shall be final.

**SECTION IX: SEVERABILITY:**

In the event that any portion of this AGREEMENT is determined to be void, unconstitutional or otherwise unenforceable, the remainder of this AGREEMENT shall remain in full force and effect.

**SECTION X: PUBLIC ENTITY SOLE JURISDICTION:**

By mere reason of the DEPARTMENT's participation in this Project, the DEPARTMENT is not incorporating this Project into the State Highway System, nor is the DEPARTMENT assuming maintenance responsibility for the Project.

**SECTION XI: PROJECT RESPONSIBILITY:**

Design, construction and installation for this Project are the PUBLIC ENTITY'S's sole responsibility and nothing is intended to give the DEPARTMENT any responsibility for future maintenance of the Project or related road improvement within the DEPARTMENT's road system.

**SECTION XII: CONTINGENT ON PROJECT BEING LET:**

In the event that the Project is not let for any reason, this AGREEMENT shall become null and void and shall create no obligation on any of the parties.

**SECTION XIII: AMENDMENT:**

This AGREEMENT shall not be altered, modified, or amended except by an instrument in writing and executed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT the day and year hereinafter first written.

PUBLIC ENTITY

NEW MEXICO DEPARTMENT OF  
TRANSPORTATION

By: \_\_\_\_\_  
*Virginia Vigil*, Chair  
Santa Fe Board of County Commissioners

By: \_\_\_\_\_  
Secretary Date

RECOMMENDED BY:

\_\_\_\_\_  
DOT State Traffic Engineer Date

\_\_\_\_\_  
DOT Traffic Services Engineer Date

\_\_\_\_\_  
DOT District Engineer Date

Approved as to form and legal sufficiency  
by the Department's Office of General  
Counsel.

By *Cynthia A. Chert* Date *3-18-11*  
Assistant General Counsel

Approved as to form  
Santa Fe County Attorney

By: *Anna Marie Webster* *Stephen Ross, County Attorney*

Date: *3-22-11*

*Smk 3/29/11*

**Daniel "Danny" Mayfield**  
Commissioner, District 1

**Virginia Vigil**  
Commissioner, District 2

**Robert A. Anaya**  
Commissioner, District 3




**Kathy Hollan**  
Commissioner, District 4

**Elizabeth Stefanics**  
Commissioner, District 5

**Katherine Miller**  
County Manager

## Memorandum

**To:** Santa Fe Board of County Commissioners

**From:** Patricio Guerrerortiz, Utilities Director 

**Date:** April 15, 2011

**Re:** Request Approval of Award of Agreement #2011-0229-UT/MS-Valle Vista Wastewater Lift Station- Stage I

---

### ISSUE:

The Utilities Department requests authorization to award the Agreement to RMCI, Inc., for Stage I of the construction of the Valle Vista lifts station and force main. The bidder responded to IFB #2011-0229-UT/MS, with a bid in the amount of \$803,694.00, exclusive of GRT.

### BACKGROUND:

The intent of the solicitation was to procure construction of the Valle Vista Wastewater Lift Station -- Stage I, which will allow the County to decommission the existing wastewater system located immediately south of the Valle Vista Subdivision. The County solicited the Invitation for Bids (IFB) pursuant to 13-1-102 NMSA 1978.

Advertisements were run in the Santa Fe New Mexican and the Albuquerque Journal. The five (5) construction companies listed below submitted bids.

Star Paving Company  
Advantage Asphalt & Paving  
Paul Parker Construction

Sparling Construction  
RMCI, Inc.

### RECOMMENDATION:

The Santa Fe County Utilities Department recommends that the construction contract #2011-0229-UT/MS be awarded to RMCI, Inc., the lowest responsible bidder, for an amount of \$803,694.00, exclusive of NMGR.T.

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

**AGREEMENT  
BETWEEN OWNER AND CONTRACTOR FOR  
CONSTRUCTION CONTRACT (STIPULATED PRICE)**

Prepared by

**ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE**

and

Issued and Published Jointly by



AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AMERICAN SOCIETY OF CIVIL ENGINEERS

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE  
*A Practice Division of the*  
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

Endorsed by



CONSTRUCTION SPECIFICATIONS INSTITUTE

This Suggested Form of Agreement has been prepared for use with the Standard General Conditions of the Construction Contract (EJCDC C-700, 2007 Edition). Their provisions are interrelated, and a change in one may necessitate a change in the other. The language contained in the Suggested Instructions to Bidders (EJCDC C-200, 2007 Edition) is also carefully interrelated with the language of this Agreement. Their usage is discussed in the Narrative Guide to the 2007 EJCDC Construction Documents (EJCDC C-001, 2007 Edition).

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(703) 684-2882  
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(800) 548-2723  
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(703) 548-3118  
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## INTRODUCTION

This Suggested Form of Agreement between Owner and Contractor for Construction Contract (Stipulated Price) ("Agreement") has been prepared for use with the Suggested Instructions to Bidders for Construction Contracts ("Instructions to Bidders") (EJCDC C-200, 2007 Edition); the Suggested Bid Form for Construction Contracts ("Bid Form") (EJCDC C-410, 2007 Edition); and the Standard General Conditions of the Construction Contract ("General Conditions") (EJCDC C-700, 2007 Edition). Their provisions are interrelated, and a change in one may necessitate a change in the others. See also the Guide to the Preparation of Supplementary Conditions (EJCDC C-800, 2007 Edition), and the Narrative Guide to the 2007 EJCDC Construction Documents (EJCDC C-001, 2007 Edition).

This Agreement form assumes use of a Project Manual that contains the following documentary information for a construction project:

- Bidding Requirements, which include the advertisement or invitation to bid, the Instructions to Bidders, and the Bid Form that is suggested or prescribed, all of which provide information and guidance for all Bidders; and
- Contract Documents, which include the Agreement, performance and payment bonds, the General Conditions, the Supplementary Conditions, the Drawings, and the Specifications.

The Bidding Requirements are not Contract Documents because much of their substance pertains to the relationships prior to the award of the Contract and has little effect or impact thereafter, and because many contracts are awarded without going through the bidding process. In some cases, however, the actual Bid may be attached as an exhibit to the Agreement to avoid extensive rekeying. (The definitions of terms used in this Agreement, including "Bidding Documents," "Bidding Requirements," and "Contract Documents," are set forth Article 1 of the General Conditions.)

Suggested provisions are accompanied by "Notes to User" to assist in preparing the Agreement. The provisions have been coordinated with the other forms produced by EJCDC. Much of the language should be usable on most projects, but modifications and additional provisions will often be necessary. When modifying the suggested language or writing additional provisions, the user must check the other documents thoroughly for conflicts and coordination of terms and make appropriate revisions in all affected documents.

All parties involved in construction projects benefit significantly from a standardized approach in the location of subject matter throughout the documents. Experience confirms the danger of addressing the same subject matter in more than one location: doing so frequently leads to confusion and unanticipated legal consequences. When preparing documents for a construction project, careful attention should be given to the guidance provided in the Uniform Location of Subject Matter (EJCDC N-122).

EJCDC has designated Section 00520 for this Agreement. If this convention is used, the first page of the Agreement would be numbered 00520-1. If CSI's MasterFormat 04™ is being used for the Project Manual, consult MasterFormat 04 for the appropriate section number and number the pages accordingly.

For brevity, paragraphs of the Instructions to Bidders are referenced with the prefix "I," those of the Bid Form are referenced with the prefix "BF," and those of this Agreement are referenced with the prefix "A."

**NOTE:** EJCDC publications may be purchased from any of the organizations listed on the page immediately following the cover page of this document.

**AGREEMENT  
BETWEEN OWNER AND CONTRACTOR  
FOR CONSTRUCTION CONTRACT**

THIS AGREEMENT is by and between Santa Fe County (“Owner”) and  
RMCI Inc., 6211 Chappell Road, NE, Albuquerque, NM 87113-1044 (“Contractor”).

Owner and Contractor hereby agree as follows:

**ARTICLE 1 – WORK**

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: Project location is Valle Vista Subdivision on NM Highway 14 south of Santa Fe, NM. Project is to construct a submersible Lift Station, gravity line and force main line for the Valle Vista Subdivision located on Highway 14. Construction work is to furnish all equipment, labor and materials needed to direct wastewater from the Valle Vista Wastewater Treatment Plant to the New Mexico Penitentiary Wastewater Treatment Plant. Work includes construction of access road with subgrade preparation and basecourse (0.95 mile), gravity sanitary sewer (1,375 LF), 3-Phase electric connection and trench (1,000 LF), lift station installation, force main installation (8,650 LF), connection to existing gravity sanitary sewer, and the installation of two minor drainage structures. Contractor shall be responsible for all items including coordination with all utility companies, designs, fees, and construction costs of bringing in natural gas and 3-Phase electric to the site.

**ARTICLE 2 – THE PROJECT**

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows: construction and installation of a submersible lift station for the Valle Vista Subdivision.

**ARTICLE 3 – ENGINEER**

3.01 The Project has been designed by Santa Fe Engineering Consultants, LLC, 1599 St. Francis Drive, Suite B, Santa Fe, NM, 876505 (Engineer). Engineer assumes all duties and responsibilities, and has the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

**ARTICLE 4 – CONTRACT TIMES**

4.01 *Time 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 *Dates for Substantial Completion and Final Payment*

- A. The Work will be substantially complete within sixty (60) weather working calendar days from the date Owner issues a Notice to Proceed. The Work shall be ready for final payment in accordance with Paragraph 14.07 of the Standard General Conditions on or before June 17, 2011.

#### 4.02 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner 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 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$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 Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner \$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.

### **ARTICLE 5 – CONTRACT PRICE**

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 5.01.A below:

- A. For all Work other than Owner approved Unit Price Work, a lump sum of: \$803,694.00, exclusive of New Mexico gross receipts tax.

All specific cash allowances are included in the above price in accordance with Paragraph 11.02 of the General Conditions.

All Work shall be at the prices and total cost stated in Contractor's Bid, attached hereto as Exhibit A-9.

- B. The terms of this Contract are contingent upon sufficient appropriations and authorization being made by the governing bodies of the State and County for the performance of this Contract. If sufficient appropriations and authorizations are not made, this Contract shall terminate upon written notice being given by Owner to Contractor. The Owner's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

## **ARTICLE 6 – PAYMENT PROCEDURES**

### **6.01 *Submittal and Processing of Payments***

- A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by the Owner as provided in the General Conditions.
- B. *Progress Payments*
- C. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 10th day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions.
- D. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor for 100 percent of the Work completed, less such amounts as Owner shall determine in accordance with Paragraph 14.02 of the General Conditions and less the Owner's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

### **6.02 *Final Payment***

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as provided in said Paragraph 14.07.

## **ARTICLE 7 – INTEREST**

- 7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the rate of 1.5 percent per annum.

## **ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS**

- 8.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:
  - A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
  - B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  - C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in Paragraph SC-4.02 of the Supplementary Conditions as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Paragraph SC-4.06 of the Supplementary Conditions as containing reliable "technical data."
- E. Contractor has considered the information known to Contractor; 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 Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor's safety precautions and programs.
- F. Based on the information and observations referred to in Paragraph 8.01.E above, Contractor does not consider that 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 Documents.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Owner acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

## ARTICLE 9 – CONTRACT DOCUMENTS

### 9.01 *Contents*

- A. The Contract Documents consist of the following:
  - 1. This Agreement.
  - 2. Contractor's Performance and Payment Bonds. Contract shall provide Performance and Payment Bond acceptable to Owner, each for 100% of the Contract Sum. Contractor shall provide certificates of such bonds no later than three (3) days after the Effective Date of this Contract.
  - 3. Other bonds (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive).

4. EJCDC Standard General Conditions of the Construction Contract.
5. Santa Fe County's Supplementary Conditions to EJCDC General Conditions.
6. New Mexico Standard Specifications for Public Work Construction, 2006 Edition, pertaining to Section 701 (Trenching, Excavation and Backfill); Section 801 (Installation of Water Transmission, Collector and Distribution Lines), Section 802 (Installation of Water Service Lines), Section 901 (Sanitary Sewer Collector and Interceptor Facilities); Section 920 (Sanitary and Storm Sewer Manholes); Section 925 (Vacuum Sewer Collector, Interceptor and Force Main Facilities); and Section 1012 (Native Grass Seeding).
7. County of Santa Fe Specifications for products supplied by County for installation by Contractor.
8. Manufacturer's Supplemental Specifications (Appendix E.1 - Submersible Sewage Pumps, Appendix E.2 - Generator Set, and Appendix E.3 - Automatic Transfer Switch).
9. The Engineer's Drawings and Specifications described below according to sheet number:

PLAN DESCRIPTION	SHEET
Cover Sheet, Vicinity Map and Index of Sheets	1-1 ( <i>revised per Addendum #2 dated 4/8/11</i> )
Topographic Maps	2-1 to 2-3, 2-11 to 2-13 ( <i>omit 2-4 to 2-10, 2-14</i> )
General Layout	3-1
Typical Sections, Notes, and Details	4-1 ( <i>revised per Addendum #2 dated 4/8/11</i> )
Roadway Plan and Profile	5-1 ( <i>omit 5-2 to 5-5 and revised per Addendum #2 dated 4/8/11</i> )
Sanitary Sewer Plan and Profile	6-1 to 6-5 ( <i>revised per Addendum #2 dated 4/8/11</i> )
Lift Station Details	7-1 to 7-4 ( <i>7-1 through 7-3 revised per Addendum #2 dated 4/8/11</i> )
Storm Water Pollution Prevention Plan	8-1
TESCM Plan	8-2 to 8-4
Storm Water Control Details	8-5
Sanitary Sewer Standard Construction Details	9-1 to 9-4
Gabion Basket Details	9-5
NMDOT Standard Drawings	9-6 to 9-16
Traffic Control Plan	10-1
Structure Sections	11-1 ( <i>revised per Addendum #2 dated 4/8/11</i> )

10. Addenda (Addendum No. 1 dated 4/6/2011 (1 pg); Addendum No. 2 dated 4/8/2011 (8 pgs with attached revised Bid Sheet)).
  11. Exhibits to this Agreement (enumerated as follows):
    - a. Contractor's Bid (See attached EXHIBIT A-9 consisting of 8 pages, inclusive).
    - b. Documentation submitted by Contractor prior to Notice of Award (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive).
  12. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
    - a. Notice to Proceed.
    - b. Work Change Directives.
    - c. Change Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

## ARTICLE 10 – MISCELLANEOUS

### 10.01 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

### 10.02 *Assignment of Contract*

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are 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 Documents.

### 10.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal

representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

#### 10.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

#### 10.05 *Contractor's Certifications*

- A. 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 10.05:
  - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing 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 Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
  - 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
  - 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

#### 10.06 *Other Provisions*

- 1. *Insert other provisions here if applicable.*



IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

This Agreement will be effective on \_\_\_\_\_, 2011 (which is the Effective Date of the Agreement).

OWNER: Santa Fe County

CONTRACTOR: RMCI Inc.

By: Virginia Vigil  
Chair, Santa Fe Board of County  
Title: Commissioners

By: Rex L. Davis

Title: President  
(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: \_\_\_\_\_

Attest: Jeffrey R. Mohns

Title: Valerie Espinoza, Clerk, Santa Fe County

Title: Jeffrey R. Mohns, Vice President of Estimating

Address for giving notices:  
102 Grant Avenue  
P.O. Box 276  
Santa Fe, NM 87504-0276

Address for giving notices:  
6211 Chappell Rd NE  
Albuquerque, NM 87113

License No.: 31964

(Where applicable)

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

Agent for service of process:  
\_\_\_\_\_

Approved as to form  
Santa Fe County Attorney  
By: [Signature]  
Date: April 24, 2011

**REVISED BID SHEET**

Item No.	Item Description	Units	Quantity
<b>SITEWORK</b>			
201	<b>CLEARING AND GRUBBING</b>  Unit Bid Price Written In WORDS: <u>Five thousand Six hundred <sup>dollars</sup> + NO <sub>Cents</sub></u> Dollars and Cents	<b>L.S.</b>  Unit Bid Price Written In NUMBERS: <u>5,600<sup>-</sup></u> Dollars and Cents	<b>LS</b>  Total Item Bid Amount Written In NUMBERS: <u>5,600<sup>-</sup></u> Dollars and Cents
201.01	<b>EROSION CONTROL SILT FENCE</b>  Unit Bid Price Written In WORDS: <u>Three Dollars + NO Cents</u> Dollars and Cents	<b>LIN.FT.</b>  Unit Bid Price Written In NUMBERS: <u>3<sup>-</sup></u> Dollars and Cents	<b>6000</b>  Total Item Bid Amount Written In NUMBERS: <u>18,000<sup>-</sup></u> Dollars and Cents
202	<b>ROAD &amp; SITE EXCAVATION</b>  Unit Bid Price Written In WORDS: <u>Six dollars + NO Cents</u> Dollars and Cents	<b>CU.YD.</b>  Unit Bid Price Written In NUMBERS: <u>6<sup>-</sup></u> Dollars and Cents	<b>1940</b>  Total Item Bid Amount Written In NUMBERS: <u>11,640<sup>-</sup></u> Dollars and Cents
204	<b>FILL CONSTRUCTION</b>  Unit Bid Price Written In WORDS: <u>Twenty two dollars + NO Cents</u> Dollars and Cents	<b>CU.YD.</b>  Unit Bid Price Written In NUMBERS: <u>22<sup>-</sup></u> Dollars and Cents	<b>1470</b>  Total Item Bid Amount Written In NUMBERS: <u>32,340<sup>-</sup></u> Dollars and Cents
1012	<b>NATIVE GRASS RESEEDING</b>  Unit Bid Price Written In WORDS: <u>Four thousand Two hundred <sup>dollars</sup> + NO <sub>Cents</sub></u> Dollars and Cents	<b>ACRE</b>  Unit Bid Price Written In NUMBERS: <u>4,200<sup>-</sup></u> Dollars and Cents	<b>2.50</b>  Total Item Bid Amount Written In NUMBERS: <u>10,500<sup>-</sup></u> Dollars and Cents
<b>ROADWAY</b>			
301	<b>SUBGRADE PREPARATION - 6" @ 95% COMPACTION</b>  Unit Bid Price Written In WORDS: <u>One dollar + twenty Cents</u> Dollars and Cents	<b>SQ.YD.</b>  Unit Bid Price Written In NUMBERS: <u>1.20</u> Dollars and Cents	<b>2800</b>  Total Item Bid Amount Written In NUMBERS: <u>3,360<sup>-</sup></u> Dollars and Cents
302	<b>AGGREGATE BASE COURSE - 4"</b>  Unit Bid Price Written In WORDS: <u>Seven Dollars + NO Cents</u> Dollars and Cents	<b>SQ.YD.</b>  Unit Bid Price Written In NUMBERS: <u>7<sup>-</sup></u> Dollars and Cents	<b>2700</b>  Total Item Bid Amount Written In NUMBERS: <u>18,900<sup>-</sup></u> Dollars and Cents

Item No.	Item Description	Units	Quantity
336	<b>3" PMBP-TYPE I-B</b> Unit Bid Price Written In WORDS: <u>Twenty three dollars</u> Dollars and Cents	<b>SQ.YD.</b> Unit Bid Price Written In NUMBERS: <u>23-</u> Dollars and Cents	<b>1000</b> Total Item Bid Amount Written In NUMBERS: <u>23,000-</u> Dollars and Cents
336.3	<b>PRIME COAT</b> Unit Bid Price Written In WORDS: <u>One thousand dollars</u> Dollars and Cents	<b>TON</b> Unit Bid Price Written In NUMBERS: <u>1,000-</u> Dollars and Cents	<b>1.77</b> Total Item Bid Amount Written In NUMBERS: <u>1,770-</u> Dollars and Cents
340	<b>HEADER CURB</b> Unit Bid Price Written In WORDS: JEM <del>Forty</del> <u>Forty Five dollars</u> Dollars and Cents	<b>LIN.FT.</b> Unit Bid Price Written In NUMBERS: <u>45-</u> Dollars and Cents	<b>23</b> Total Item Bid Amount Written In NUMBERS: JEM <del>1,035</del> <u>1,035-</u> Dollars and Cents
<b>FENCE AND WALL</b>			
410	<b>CHAIN LINK FENCE - 6' HIGH</b> Unit Bid Price Written In WORDS: <del>Thirty-two dollars</del> <del>Twenty eight dollars</del> JEM Dollars and Cents	<b>LIN.FT.</b> Unit Bid Price Written In NUMBERS: <u>32-</u> Dollars and Cents	<b>375</b> Total Item Bid Amount Written In NUMBERS: <u>12,000-</u> Dollars and Cents
410.1	<b>COILED SECURITY WIRE (FENCE / GATE/ OUTER WALL)</b> Unit Bid Price Written In WORDS: <u>Twelve dollars</u> Dollars and Cents	<b>LIN.FT.</b> Unit Bid Price Written In NUMBERS: <u>12-</u> Dollars and Cents	<b>465</b> Total Item Bid Amount Written In NUMBERS: <u>5,580-</u> Dollars and Cents
410.2	<b>CHAIN LINK GATE - 10'W x 6'H</b> Unit Bid Price Written In WORDS: <u>Seven hundred fifty dollars</u> Dollars and Cents	<b>EACH</b> Unit Bid Price Written In NUMBERS: <u>750-</u> Dollars and Cents	<b>4</b> Total Item Bid Amount Written In NUMBERS: <u>3,000-</u> Dollars and Cents
410.3	<b>CMU RETAINING WALL</b> Unit Bid Price Written In WORDS: <u>Thirty dollars</u> Dollars and Cents	<b>SQ.FT.</b> Unit Bid Price Written In NUMBERS: <u>30-</u> Dollars and Cents	<b>1400</b> Total Item Bid Amount Written In NUMBERS: <u>42,000-</u> Dollars and Cents

UTILITY WORK

603.1 15	<b>CLASS A RIPRAP AT CULVERT OUTLETS</b> Unit Bid Price Written In WORDS: <i>Three hundred dollars + NO cents</i> Dollars and Cents	<b>CU.YD.</b> Unit Bid Price Written In NUMBERS: <u>300-</u> Dollars and Cents	<b>5</b> Total Item Bid Amount Written In NUMBERS: <u>1,500-</u> Dollars and Cents
603.2 16	<b>CLASS A RIPRAP &amp; GABIONS AT ARROYO CROSSING</b> Unit Bid Price Written In WORDS: <i>Two hundred Seventy dollars + NO cents</i> Dollars and Cents	<b>CU.YD.</b> Unit Bid Price Written In NUMBERS: <u>270-</u> Dollars and Cents	<b>130</b> Total Item Bid Amount Written In NUMBERS: <u>35,100-</u> Dollars and Cents
701 17	<b>3-PHASE ELECTRIC (TRENCHING ONLY)</b> Unit Bid Price Written In WORDS: <i>Ten dollars + NO cents</i> Dollars and Cents	<b>LIN.FT.</b> Unit Bid Price Written In NUMBERS: <u>10-</u> Dollars and Cents	<b>1175</b> Total Item Bid Amount Written In NUMBERS: <u>11,750-</u> Dollars and Cents
701.7 18	<b>TRENCH DEWATERING PER LF</b> Unit Bid Price Written In WORDS: <b>NINETY SEVEN THOUSAND NINE HUNDRED DOLLARS AND NO CENTS</b> Dollars and Cents	<b>ALLOW</b> Unit Bid Price Written In NUMBERS: <b>\$97,900.00</b> Dollars and Cents	<b>ALLOW</b> Total Item Bid Amount Written In NUMBERS: <b>\$97,900.00</b> Dollars and Cents
801.1 19	<b>6" FIRE HYDRANT ASSEMBLY</b> Unit Bid Price Written In WORDS: <i>Three thousand two hundred + NO cents</i> Dollars and Cents	<b>EACH</b> Unit Bid Price Written In NUMBERS: <u>3,200-</u> Dollars and Cents	<b>1</b> Total Item Bid Amount Written In NUMBERS: <u>3,200-</u> Dollars and Cents
801.06 20	<b>6" PVC C-900 RESTRAINED W/MJ FITTINGS</b> Unit Bid Price Written In WORDS: <i>Twenty-Six dollars + NO cents</i> Dollars and Cents	<b>LIN.FT.</b> Unit Bid Price Written In NUMBERS: <u>26-</u> Dollars and Cents	<b>25</b> Total Item Bid Amount Written In NUMBERS: SRM <del>60</del> 650 Dollars and Cents
801.061 21	<b>6" GATE VALVE AND BOX</b> Unit Bid Price Written In WORDS: <i>One thousand four hundred + NO cents</i> Dollars and Cents	<b>EACH</b> Unit Bid Price Written In NUMBERS: <u>1,400-</u> Dollars and Cents	<b>1</b> Total Item Bid Amount Written In NUMBERS: <u>1,400-</u> Dollars and Cents

801.08	8" PVC C-900 W/MJ FITTINGS - SADDLE Unit Bid Price Written In WORDS: 22 <u>Nineteen dollars</u> Dollars and Cents	LIN.FT. Unit Bid Price Written In NUMBERS: <u>19-</u> Dollars and Cents	3020 Total Item Bid Amount Written In NUMBERS: <u>57,380-</u> Dollars and Cents
801.081	8" GATE VALVE AND BOX Unit Bid Price Written In WORDS: 23 <u>Two thousand eight hundred dollars</u> Dollars and Cents	EACH Unit Bid Price Written In NUMBERS: <u>2,800-</u> Dollars and Cents	2 Total Item Bid Amount Written In NUMBERS: <u>5,600-</u> Dollars and Cents
802.01	1" COPPER WATER SERVICE LINE Unit Bid Price Written In WORDS: 24 <u>Twenty four dollars</u> Dollars and Cents	LIN.FT. Unit Bid Price Written In NUMBERS: <u>24-</u> Dollars and Cents	75 Total Item Bid Amount Written In NUMBERS: <u>1,800-</u> Dollars and Cents
802.1	1" WATER SPIGOT W/METER & DOUBLE CHECK VALVE Unit Bid Price Written In WORDS: 25 <u>Two thousand one hundred dollars</u> Dollars and Cents	EACH Unit Bid Price Written In NUMBERS: <u>2,100-</u> Dollars and Cents	1 Total Item Bid Amount Written In NUMBERS: <u>2,100-</u> Dollars and Cents
901.08	8" SAS PIPE PVC SDR-35 Unit Bid Price Written In WORDS: 26 <u>Twenty Six dollars</u> Dollars and Cents	LIN.FT. Unit Bid Price Written In NUMBERS: <u>26-</u> Dollars and Cents	1390 Total Item Bid Amount Written In NUMBERS: <u>36,140-</u> Dollars and Cents
901.8	TV INSPECTION OF SANITARY SEWER Unit Bid Price Written In WORDS: 27 <u>One dollar and thirty cents</u> Dollars and Cents	LIN.FT. Unit Bid Price Written In NUMBERS: <u>1.30</u> Dollars and Cents	1390 Total Item Bid Amount Written In NUMBERS: <u>1,807-</u> Dollars and Cents
910.24	24" CULVERT PIPE - CMP Unit Bid Price Written In WORDS: 28 <u>Forty Four Dollars</u> Dollars and Cents	LIN.FT. Unit Bid Price Written In NUMBERS: <u>44-</u> Dollars and Cents	33 Total Item Bid Amount Written In NUMBERS: <u>1,452-</u> Dollars and Cents
910.25	24" CULVERT PIPE END SECTION Unit Bid Price Written In WORDS: 29 <u>Four hundred twenty dollars</u> Dollars and Cents	EACH Unit Bid Price Written In NUMBERS: <u>420-</u> Dollars and Cents	2 Total Item Bid Amount Written In NUMBERS: <u>840-</u> Dollars and Cents

<p>920.01</p> <p>30</p>	<p><b>TYPE E SANITARY SEWER MANHOLE - 0' TO 7'</b></p> <p>Unit Bid Price Written In WORDS:</p> <p><u>Three thousand Six hundred +</u> Dollars and Cents <u>NO CENTS</u></p>	<p><b>EACH</b></p> <p>Unit Bid Price Written In NUMBERS:</p> <p><u>3,600-</u> Dollars and Cents</p>	<p><b>3</b></p> <p>Total Item Bid Amount Written In NUMBERS:</p> <p><u>10,800-</u> Dollars and Cents</p>
<p>902.02</p> <p>31</p>	<p><b>TYPE E SANITARY SEWER MANHOLE - 7' TO 14'</b></p> <p>Unit Bid Price Written In WORDS:</p> <p><u>Four thousand Two hundred +</u> Dollars and Cents <u>NO CENTS</u></p>	<p><b>EACH</b></p> <p>Unit Bid Price Written In NUMBERS:</p> <p><u>4,200-</u> Dollars and Cents</p>	<p><b>5</b></p> <p>Total Item Bid Amount Written In NUMBERS:</p> <p><u>21,000-</u> Dollars and Cents</p>
<p>920.03</p> <p>32</p>	<p><b>TIE TO EXISTING MANHOLE</b></p> <p>Unit Bid Price Written In WORDS:</p> <p><u>Six-thousand dollars</u> Dollars and Cents</p>	<p><b>EACH</b></p> <p>Unit Bid Price Written In NUMBERS:</p> <p><u>6000-</u> Dollars and Cents</p>	<p><b>2</b></p> <p>Total Item Bid Amount Written In NUMBERS:</p> <p><u>12,000-</u> Dollars and Cents</p>
<p>925</p> <p>33</p>	<p><b>LIFT STATION INSTALLATION (GOVERNMENT FURNISHED EQUIPMENT)</b></p> <p>Unit Bid Price Written In WORDS:</p> <p><u>Forty five thousand dollars</u> Dollars and Cents</p>	<p><b>L.S.</b></p> <p>Unit Bid Price Written In NUMBERS:</p> <p><u>45,000-</u> Dollars and Cents</p>	<p><b>L.S.</b></p> <p>Total Item Bid Amount Written In NUMBERS:</p> <p><u>45,000-</u> Dollars and Cents</p>
<p>925.01</p> <p>34</p>	<p><b>FORCE MAIN 6" C-900 W/FITTINGS - VALVES (SINGLE LINE)</b></p> <p>Unit Bid Price Written In WORDS:</p> <p><u>Seventeen dollars + No Cents</u> Dollars and Cents</p>	<p><b>LIN.FT.</b></p> <p>Unit Bid Price Written In NUMBERS:</p> <p><u>17-</u> Dollars and Cents</p>	<p><b>3050</b></p> <p>Total Item Bid Amount Written In NUMBERS:</p> <p><u>51,850-</u> Dollars and Cents</p>
<p>925.02</p> <p>35</p>	<p><b>FORCE MAIN 6" C-900 W/FITTINGS - VALVES (DOUBLE LINE)</b></p> <p>Unit Bid Price Written In WORDS:</p> <p><u>Thirty dollars + No cents</u> Dollars and Cents</p>	<p><b>LIN.FT.</b></p> <p>Unit Bid Price Written In NUMBERS:</p> <p><u>30-</u> Dollars and Cents</p>	<p><b>2800</b></p> <p>Total Item Bid Amount Written In NUMBERS:</p> <p><u>84,000-</u> Dollars and Cents</p>

CONSTRUCTION ITEMS			
1101	<b>SWPPP INSTALLATION/MANAGEMENT</b> Unit Bid Price Written In WORDS: 36 <u>Seven hundred dollars + No</u> Dollars and Cents <u>Cents</u>	L.S. Unit Bid Price Written In NUMBERS: <u>700-</u> Dollars and Cents	L.S. Total Item Bid Amount Written In NUMBERS: <u>700-</u> Dollars and Cents
1102	<b>CONSTRUCTION MOBILIZATION/DEMobilIZATION</b> Unit Bid Price Written In WORDS: 37 <u>Fifty thousand dollars</u> Dollars and Cents	L.S. Unit Bid Price Written In NUMBERS: <u>50,000-</u> Dollars and Cents	LS Total Item Bid Amount Written In NUMBERS: <u>50,000-</u> Dollars and Cents
1103	<b>STAKING, SURVEYING, &amp; TESTING</b> Unit Bid Price Written In WORDS: 38 <b>THIRTY THOUSAND DOLLARS AND NO CENTS</b> Dollars and Cents	ALLOW Unit Bid Price Written In NUMBERS: <b>\$30,000.00</b> Dollars and Cents	ALLOW Total Item Bid Amount Written In NUMBERS: <b>\$30,000.00</b> Dollars and Cents
<b>BID TOTAL AMOUNT (excluding NM Gross Receipts Tax)</b> Written in NUMBERS			<u>752,694-</u> Dollars and Cents

TOTAL BASE BID AMOUNT WRITTEN IN WORDS: Seven hundred fifty-two thousand six hundred ninety-four dollars

**ADDITIVE ALTERNATIVE #1**

702	<b>3-PHASE ELECTRIC INSTALLATION (EXCLUDING TRENCHING, HOOKUP, PERMITS, APPLICATIONS)</b> Unit Bid Price Written In WORDS: <u>Fifty-one thousand dollars</u> Dollars and Cents	L.S. Unit Bid Price Written In NUMBERS: <u>51,000-</u> Dollars and Cents	L.S. Total Item Bid Amount Written In NUMBERS: <u>51,000-</u> Dollars and Cents
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BID AMOUNT FOR ADDITIVE ALTERNATIVE #1 WRITTEN IN WORDS: \_\_\_\_\_

Fifty-one thousand dollars

*Note: All lump sum base bids are excluding New Mexico Gross Receipts Tax*

**SUBCONTRACTOR LISTING**

1. To be fully executed and included with Bid as a condition of the Bid (13-4-31 through 13-4-42 NMSA 1978).
2. For the purposes of this Project the threshold shall be \$5,000.00.
3. The Bidder shall list the Subcontractor's Name, the City or County of the Place of Business and the Category of Work that will be done by each Subcontractor

Trade: <u>excavation</u>		Name of Subcontractor: <u>Custom Grading</u>	
Address: <u>ABQ, NM</u>			
Telephone No: <u>505-345-0960</u>	License No: <u>27988</u>	NM Dept of Workplace Solutions Registration No. <u>N/A</u>	
Signature of Subcontractor (To be obtained after award of contract):			
Trade: <u>Seeding</u>		Name of Subcontractor: <u>814 Solutions</u>	
Address: <u>ABQ, NM</u>			
Telephone No: <u>505-872-0846</u>	License No: <u>N/A</u>	NM Dept of Workplace Solutions Registration No. <u>N/A</u>	
Signature of Subcontractor (To be obtained after award of contract):			
Trade: <u>Paving</u>		Name of Subcontractor: <u>Custom Grading</u>	
Address: <u>ABQ, NM</u>			
Telephone No: <u>505-345-0960</u>	License No: <u>27988</u>	NM Dept of Workplace Solutions Registration No. <u>N/A</u>	
Signature of Subcontractor (To be obtained after award of contract):			
Trade: <u>Fencing</u>		Name of Subcontractor: <u>Scott's Fencing</u>	
Address: <u>ABQ, NM</u>			
Telephone No: <u>505-821-1114</u>	License No: <u>50526</u>	NM Dept of Workplace Solutions Registration No. <u>N/A</u>	
Signature of Subcontractor (To be obtained after award of contract):			



Trade: <i>CMU wall</i>		Name of Subcontractor: <i>Peerless Construction, Inc</i>	
Address: <i>ABQ, NM</i>			
Telephone No: <i>505-922-1136</i>	License No: <i>24205</i>	NM Dept of Workplace Solutions Registration No. <i>N/A</i>	
Signature of Subcontractor (To be obtained after award of contract):			
Trade: <i>Rip Rap</i>		Name of Subcontractor: <i>Kimo Construction</i>	
Address: <i>Bosque Farms, NM</i>			
Telephone No: <i>505-869-9311</i>	License No: <i>60316</i>	NM Dept of Workplace Solutions Registration No. <i>N/A</i>	
Signature of Subcontractor (To be obtained after award of contract):			
Trade: <i>Electrical</i>		Name of Subcontractor: <i>US Electrical</i>	
Address: <i>ABQ, NM</i>			
Telephone No: <i>505-260-1000</i>	License No: <i>57043</i>	NM Dept of Workplace Solutions Registration No. <i>N/A</i>	
Signature of Subcontractor (To be obtained after award of contract):			
Trade:		Name of Subcontractor:	
Address:			
Telephone No:	License No:	NM Dept of Workplace Solutions Registration No.	
Signature of Subcontractor (To be obtained after award of contract):			
Trade:		Name of Subcontractor:	
Address:			
Telephone No:	License No:	NM Dept of Workplace Solutions Registration No.	
Signature of Subcontractor (To be obtained after award of contract):			

# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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## ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

### 1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. 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 which is evidence of the agreement between Owner and Contractor covering the Work.
  3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
  4. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
  5. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
  6. *Bidder*—The individual or entity who submits a Bid directly to Owner.
  7. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).
  8. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.
  9. *Change Order*—A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
  10. *Claim*—A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
  11. *Contract*—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*—Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
13. *Contract Price*—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).
14. *Contract Times*—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.
15. *Contractor*—The individual or entity with whom Owner has entered into the Agreement.
16. *Cost of the Work*—See Paragraph 11.01 for definition.
17. *Drawings*—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
18. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
19. *Engineer*—The individual or entity named as such in the Agreement.
20. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
21. *General Requirements*—Sections of Division 1 of the Specifications.
22. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.
23. *Hazardous Waste*—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
24. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
25. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
26. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

27. *Notice of Award*—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.
28. *Notice to Proceed*—A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
29. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
30. *PCBs*—Polychlorinated biphenyls.
31. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
32. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
33. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
34. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
35. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
36. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.
37. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
38. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
39. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.



40. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
41. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
42. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
43. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
44. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of 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 thereof.
45. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.
46. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.
47. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
48. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
49. *Unit Price Work*—Work to be paid for on the basis of unit prices.
50. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
51. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an

addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

## 1.02 Terminology

A. The words and terms discussed in Paragraph 1.02.B through F are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

### B. *Intent of Certain Terms or Adjectives:*

1. 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 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 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 design concept of 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 Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.

### C. *Day:*

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

### D. *Defective:*

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
  - a. does not conform to the Contract Documents; or
  - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
  - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

E. *Furnish, Install, Perform, Provide:*

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean 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, shall mean 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, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
  4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.
- 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.

## ARTICLE 2 – PRELIMINARY MATTERS

### 2.01 *Delivery of Bonds and Evidence of Insurance*

- A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. *Evidence of Insurance:* Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

### 2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor up to ten printed or hard copies of the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.

### 2.03 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

## 2.04 *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

## 2.05 *Before Starting Construction*

- A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to 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 Documents;
  - 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. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

## 2.06 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, 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 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.
- B. At this conference Owner and 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 instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

## 2.07 *Initial Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.
  - 1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on

Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

### **ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE**

#### **3.01 *Intent***

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.
- C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

#### **3.02 *Reference Standards***

- A. Standards, Specifications, Codes, Laws, and Regulations
  1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
  2. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, 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 Contract Documents.

### 3.03 *Reporting and Resolving Discrepancies*

#### A. *Reporting Discrepancies:*

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.
2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, 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) any standard, specification, manual, or code, or (c) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

#### B. *Resolving Discrepancies:*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
  - a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); 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).

### 3.04 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:

1. A Field Order;
2. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or
3. Engineer's written interpretation or clarification.

### 3.05 *Reuse of Documents*

- A. Contractor and any Subcontractor or Supplier 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 Engineer or its consultants, including electronic media editions; or
  2. reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

### 3.06 *Electronic Data*

- A. Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner or Engineer to Contractor, or by Contractor to Owner or Engineer, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.
- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

**ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS;  
HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS**

4.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
  - 1. those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and
  - 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
  - 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
  - 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.



#### 4.03 *Differing Subsurface or Physical Conditions*

A. *Notice:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed either:

1. is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or
2. is of such a nature as to require a change in the Contract Documents; or
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 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 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. *Engineer's Review:* After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner's obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer's findings and conclusions.

C. *Possible Price and Times Adjustments:*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
  - a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and
  - b. 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 Paragraphs 9.07 and 11.03.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
  - a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or
  - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and

contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or

- c. Contractor failed to give the written notice as required by Paragraph 4.03.A.
3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or 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) sustained by Contractor on or in connection with any other project or anticipated project.

#### 4.04 *Underground Facilities*

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and
2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
  - a. reviewing and checking all such information and data;
  - b. locating all Underground Facilities shown or indicated in the Contract Documents;
  - c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and
  - d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated:*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, 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 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the

consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

#### 4.05 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. 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 Owner. Contractor shall report to 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.

#### 4.06 *Hazardous Environmental Condition at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
  1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
  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. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.
- D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 4.06.E.
- E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.
- F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.
- G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

- H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

## ARTICLE 5 – BONDS AND INSURANCE

### 5.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.
- B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds 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 shall show that it is effective on the date the agent or attorney-in-fact signed each bond.
- C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

### 5.02 *Licensed Sureties and Insurers*

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also

meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

### 5.03 *Certificates of Insurance*

- A. Contractor shall deliver to Owner, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.
- B. Owner shall deliver to Contractor, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.
- C. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.
- E. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

### 5.04 *Contractor's Insurance*

- A. Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:
  - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
  - 2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
  - 3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
  - 4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:

- a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
  - b. by any other person for any other reason;
5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
  6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
- B. The policies of insurance required by this Paragraph 5.04 shall:
1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
  2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;
  3. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;
  4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);
  5. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and
  6. include completed operations coverage:
    - a. Such insurance shall remain in effect for two years after final payment.
    - b. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

## 5.05 *Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

## 5.06 *Property Insurance*

- A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee;
  2. be written on a Builder's Risk "all-risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by the Supplementary Conditions.
  3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
  4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;
  5. allow for partial utilization of the Work by Owner;
  6. include testing and startup; and
  7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued.
- B. Owner shall purchase and maintain such equipment breakdown insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors,



members, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee.

- C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.
- D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.
- E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under this Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

#### 5.07 *Waiver of Rights*

- A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.
- B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for:

1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
  2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.
- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them.

#### 5.08 *Receipt and Application of Insurance Proceeds*

- A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.
- B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

#### 5.09 *Acceptance of Bonds and Insurance; Option to Replace*

- A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's

interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

- A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

**ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES**

6.01 *Supervision and Superintendence*

- A. 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. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

6.02 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- 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 shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner’s written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

6.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall 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.

#### 6.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.
  - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.
  - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

#### 6.05 *Substitutes and "Or-Equals"*

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.
  - 1. *"Or-Equal" Items:* If in Engineer's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:
    - a. in the exercise of reasonable judgment Engineer determines that:
      - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

- 2) it 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; and
  - 3) it has a proven record of performance and availability of responsive service.
- b. Contractor certifies that, if approved and incorporated into the Work:
- 1) there will be no increase in cost to the Owner or increase in Contract Times; and
  - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. *Substitute Items:*

- a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.
- b. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.
- c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Engineer may decide is appropriate under the circumstances.
- d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
  - 1) shall certify that the proposed substitute item will:
    - a) perform adequately the functions and achieve the results called for by the general design,
    - b) be similar in substance to that specified, and
    - c) be suited to the same use as that specified;
  - 2) will state:
    - a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time,
    - b) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and

- c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;
  - 3) will identify:
    - a) all variations of the proposed substitute item from that specified, and
    - b) available engineering, sales, maintenance, repair, and replacement services; and
  - 4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.
- B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.
- C. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.
- D. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- E. *Engineer's Cost Reimbursement:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- F. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

#### 6.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be

required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.

- B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.
- C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:
1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity; nor
  2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.
- F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner,

Contractor, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

#### 6.07 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, 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 any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

#### 6.08 *Permits*

- A. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.



## 6.09 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear 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 such Work. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

## 6.10 *Taxes*

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

## 6.11 *Use of Site and Other Areas*

### A. *Limitation on Use of Site and Other Areas:*

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought

by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

- B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site 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.
- D. *Loading Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

#### 6.12 *Record Documents*

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

#### 6.13 *Safety and Protection*

- A. 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 their work, nor for compliance with applicable safety Laws and Regulations. 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, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. 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. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by 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 Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by 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 Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- F. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

#### 6.14 *Safety Representative*

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

#### 6.15 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of 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.

#### 6.16 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is

required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

#### 6.17 *Shop Drawings and Samples*

A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.

##### 1. *Shop Drawings:*

- a. Submit number of copies specified in the General Requirements.
- b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.

##### 2. *Samples:*

- a. Submit number of Samples specified in the Specifications.
- b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.

B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

##### C. *Submittal Procedures:*

1. Before submitting each Shop Drawing or Sample, Contractor shall have:

- a. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
- b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
- c. determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
- d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.

2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.
3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

*D. Engineer's Review:*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

*E. Resubmittal Procedures:*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

**6.18** *Continuing the Work*

- A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

## 6.19 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on representation of Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
  2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
1. observations by Engineer;
  2. recommendation by Engineer or payment by Owner of any progress or final payment;
  3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
  4. use or occupancy of the Work or any part thereof by Owner;
  5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;
  6. any inspection, test, or approval by others; or
  7. any correction of defective Work by Owner.

## 6.20 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of 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 .

- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of 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 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
  - 1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
  - 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

#### 6.21 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.
- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.

- E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

## ARTICLE 7 – OTHER WORK AT THE SITE

### 7.01 *Related Work at Site*

- A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:
1. written notice thereof will be given to Contractor prior to starting any such other work; and
  2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.
- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. 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. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.
- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to 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 Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

### 7.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:
1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
  2. the specific matters to be covered by such authority and responsibility will be itemized; and
  3. the extent of such authority and responsibilities will be provided.



- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

### 7.03 *Legal Relationships*

- A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.
- B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's wrongful actions or inactions.
- C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's wrongful action or inactions.

## ARTICLE 8 – OWNER'S RESPONSIBILITIES

### 8.01 *Communications to Contractor*

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

### 8.02 *Replacement of Engineer*

- A. In case of termination of the employment of Engineer, Owner shall appoint an engineer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer.

### 8.03 *Furnish Data*

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

### 8.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

### 8.05 *Lands and Easements; Reports and Tests*

- A. Owner's duties with respect to providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

### 8.06 *Insurance*

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

8.07 *Change Orders*

A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

8.08 *Inspections, Tests, and Approvals*

A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

8.09 *Limitations on Owner's Responsibilities*

A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

8.10 *Undisclosed Hazardous Environmental Condition*

A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

8.11 *Evidence of Financial Arrangements*

A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents.

8.12 *Compliance with Safety Program*

A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed pursuant to Paragraph 6.13.D.

**ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION**

9.01 *Owner's Representative*

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

9.02 *Visits to Site*

A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as 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 Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or

continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

### 9.03 *Project Representative*

- A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

### 9.04 *Authorized Variations in Work*

- A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which 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. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

### 9.05 *Rejecting Defective Work*

- A. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

9.06 *Shop Drawings, Change Orders and Payments*

- A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.
- B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.
- C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.
- D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.07 *Determinations for Unit Price Work*

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of Paragraph 10.05.

9.08 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question.
- B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.
- C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.
- D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by 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 Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. 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 Paragraph 14.07.A will only be to determine generally that their 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 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

#### 9.10 *Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Engineer has been informed pursuant to Paragraph 6.13.D.

### **ARTICLE 10 – CHANGES IN THE WORK; CLAIMS**

#### 10.01 *Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

## 10.02 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.D.

## 10.03 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:
  - 1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;
  - 2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and
  - 3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

## 10.04 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety 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 Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

## 10.05 *Claims*

- A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.
- B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data

shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

- C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:
1. deny the Claim in whole or in part;
  2. approve the Claim; or
  3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.
- D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.
- E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.
- F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

## **ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK**

### **11.01 *Cost of the Work***

- A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 11.01.B, and shall include only the following items:

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.
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 shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of 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 shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
  - a. The proportion of necessary transportation, travel, and subsistence expenses of 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, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
  - c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of



said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
- e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, 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 Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as telegrams, long distance telephone calls, telephone 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 Contractor is required by the Contract Documents to purchase and maintain.

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

1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in 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 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.
2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not

limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A.
- C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.
- D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

## 11.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
- B. *Cash Allowances:*
  1. Contractor agrees that:
    - a. the cash allowances include the cost to 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
    - b. 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 on account of any of the foregoing will be valid.
- C. *Contingency Allowance:*
  1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

## 11.03 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. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:
  - 1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
  - 2. there is no corresponding adjustment with respect to any other item of Work; and
  - 3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

## **ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES**

### **12.01 *Change of Contract Price***

- A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. The value of any Work covered by a Change Order or of any Claim for 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, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or
  - 2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or
  - 3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).

C. *Contractor's Fee*: The Contractor's fee for overhead and profit shall 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 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;
  - b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five 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 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
  - d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
  - e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
  - f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

#### 12.02 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

#### 12.03 *Delays*

- A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or

neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

- B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.
- D. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or 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) sustained by Contractor on or in connection with any other project or anticipated project.
- E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

## **ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

### *13.01 Notice of Defects*

- A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor. Defective Work may be rejected, corrected, or accepted as provided in this Article 13.

### *13.02 Access to Work*

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

### 13.03 *Tests and Inspections*

- A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
  - 1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
  - 2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and
  - 3. as otherwise specifically provided in the Contract Documents.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.
- E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation.
- F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

### 13.04 *Uncovering Work*

- A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.
- B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.

- C. If it is found that the uncovered Work is defective, Contractor shall pay 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 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 Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.
- D. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, 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, Contractor may make a Claim therefor as provided in Paragraph 10.05.

#### 13.05 *Owner May Stop the Work*

- A. If the Work is defective, or 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, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

#### 13.06 *Correction or Removal of Defective Work*

- A. Promptly after receipt of written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay 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 such correction or removal (including but not limited to all costs of repair or replacement of work of others).
- B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

#### 13.07 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. repair such defective land or areas; or
  2. correct such defective Work; or
  3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
  4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. 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 such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.
- C. 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.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, 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.
- E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

#### 13.08 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay 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) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and for the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.



### 13.09 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct, or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.
- C. 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) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. 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 Owner of Owner's rights and remedies under this Paragraph 13.09.

## **ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION**

### 14.01 *Schedule of Values*

- A. The Schedule of Values established as provided in Paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

### 14.02 *Progress Payments*

#### A. *Applications for Payments:*

- 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an

Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

*B. Review of Applications:*

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
  - a. the Work has progressed to the point indicated;
  - b. the quality of the Work is generally 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 9.07, and any other qualifications stated in the recommendation); and
  - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment 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 beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or
- b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
    - a. to supervise, direct, or control the Work, or
    - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
    - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
    - d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or
    - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
  5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:
    - a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
    - b. the Contract Price has been reduced by Change Orders;
    - c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
    - d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

*C. Payment Becomes Due:*

1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

D. *Reduction in Payment:*

1. Owner may refuse to make payment of the full amount recommended by Engineer because:
  - a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
  - b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
  - c. there are other items entitling Owner to a set-off against the amount recommended; or
  - d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.
2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor remedies the reasons for such action.
3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1 and subject to interest as provided in the Agreement.

14.03 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

14.04 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before

final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the tentative certificate to Owner, notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will, within said 14 days, execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.

- D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.
- E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the tentative list.

#### 14.05 *Partial Utilization*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
  - 1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 14.04.A through D for that part of the Work.
  - 2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
  - 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 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 5.10 regarding property insurance.

#### 14.06 *Final Inspection*

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

#### 14.07 *Final Payment*

##### A. *Application for Payment:*

1. After Contractor has, in the opinion of 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, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
  - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;
  - b. consent of the surety, if any, to final payment;
  - c. a list of all Claims against Owner that Contractor believes are unsettled; and
  - d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

##### B. *Engineer's Review of Application and Acceptance:*

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying

documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. *Payment Becomes Due:*

1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and will be paid by Owner to Contractor.

14.08 *Final Completion Delayed*

- A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 *Waiver of Claims*

- A. The making and acceptance of final payment will constitute:
  1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and
  2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

## ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

### 15.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

### 15.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will justify termination for cause:
  1. 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 established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);
  2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
  3. Contractor's repeated disregard of the authority of Engineer; or
  4. Contractor's violation in any substantial way of any provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:
  1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);
  2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere; and
  3. complete the Work as Owner may deem expedient.
- C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds 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) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when



so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
- E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.
- F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.

#### 15.03 *Owner May Terminate For Convenience*

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, 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;
  - 3. 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) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and
  - 4. reasonable expenses directly attributable to termination.
- B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

#### 15.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days

to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.

- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

## **ARTICLE 16 – DISPUTE RESOLUTION**

### *16.01 Methods and Procedures*

- A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.
- B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.
- C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:
1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions; or
  2. agrees with the other party to submit the Claim to another dispute resolution process; or
  3. gives written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.

## **ARTICLE 17 – MISCELLANEOUS**

### *17.01 Giving Notice*

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:

1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or
2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

#### 17.02 *Computation of Times*

- A. When any period of time is referred to in the Contract Documents 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.

#### 17.03 *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 special warranty or guarantee, or by other provisions of the Contract Documents. 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.

#### 17.04 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

#### 17.05 *Controlling Law*

- A. This Contract is to be governed by the law of the state in which the Project is located.

#### 17.06 *Headings*

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

**CONSTRUCTION AND INSTALLATION OF  
WASTEWATER LIFT STATION  
AT VALLE VISTA SUBDIVISION**

**SANTA FE COUNTY'S  
SUPPLEMENTAL CONDITIONS  
TO THE  
STANDARD GENERAL CONDITIONS OF  
CONSTRUCTION CONTRACT 2011-0229-UT/MS**

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (EJCDC C-700) as indicated below. All provisions and sections of the Standard General Conditions which are not expressly deleted, amended, or supplemented remain in full force and effect.

**ARTICLE 1, Section 1.01 *Defined Terms***

- Paragraph A.3 The reference to "Engineer" is deleted and replaced with "Owner."
- Paragraph A. 9 The words "the Owner or" is inserted between "by" and "Engineer."
- Paragraph A.14 The reference to "Engineer" is deleted and replaced with "Owner."
- Paragraph A.20 The reference to "Engineer" is deleted and replaced with "Owner."
- Paragraph A.36 Delete *Resident Project Representative*.

**Section 1.02 *Terminology***

- Paragraph D.c. The reference to "Engineer" is deleted and replaced with "Owner."

**Section 2.03 *Commencement of Contract Times; Notice to Proceed***

- The first sentence of Paragraph A is deleted and replaced with the following:  
The Contract Time will commence to run on the date indicated in the Notice to Proceed issued by Owner.

**Section 2.07 *Initial Acceptance of Schedules***

- The reference to "Engineer" in this entire section is deleted and replaced with "Owner."
- Section 2.07.A.2 Add the following to the end of 2.07.A.2:

Contractor's schedule of submittals must provide a workable arrangement acceptable to Owner for reviewing and processing the required submittals. The form of Contractor's written Schedule of Values must be acceptable to Owner and it must clearly describe allocation of portions of the Contract Price to component parts of the Work.

**ARTICLE 3, Section 3.01 *Intent***

- Section 3.01.C. The words "the Owner or" are inserted between "by" and "Engineer."

Section 3.03.A The reference to “Engineer” in this entire section is deleted and replaced with “Owner.”

Section 3.03.B *Resolving Discrepancies* is deleted in its entirety and replaced with the following:

B. *Resolving Discrepancies*

1. With respect to contract administration and implementation, the provisions of the Construction Contract, Standard General Terms and Conditions, and the County’s Supplemental Conditions, shall take precedence in resolving any conflict, error or ambiguity, or discrepancy between these documents and the provisions of any technical specifications that do not pertain to administration or implementation of the Construction Contract.
2. With respect to technical specifications, standards, and quality control of the Work, the Engineer’s Plans and Specifications, Manufacturer’s Supplemental Specifications, County of Santa Fe Specifications for Products Supplied by County for Installation by Contractor, and the New Mexico Standard Specifications for Public Works Construction, 2006 Ed. , shall take precedence in resolving any conflict, error of ambiguity, or discrepancy between these documents and the provisions of the NMDOT Standard Specifications for Road and Bridges, 2007 Ed., (except those NMDOT Standards expressly cited and incorporated by reference in the Engineer’s Plans and Specifications).

Section 3.04.A the following sentence is added: Any change in the Contract Times or Contract Sum shall be completed through a Change Order. No Change Order is effective or valid until approved by the Santa Fe County Manager or Santa Fe Board of County Commissioners.

Section 3.04B, the first sentence is deleted and replaced with the following:

The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work that do not change the Contract Time or Contract Sum may be authorized, by one or more of the following ways:

**ARTICLE 4**, Section 4.03.B is deleted and replaced with the following:

B. *Owner’s Review*: After receipt of written notice as required by Paragraph 4.03, Owner will promptly review the pertinent conditions to determine the necessity of Owner’s obtaining additional exploration or tests with respect thereto.

Section 4.04.B.1 The references to “Engineer” is deleted in this entire section 4.04.B and replaced with “Owner.”

Section 4.06 *Hazardous Environmental Conditions at Site* Delete Paragraphs 4.06.D and E and replace them with the following:

D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition: (ii) stop all Work in connection with such condition and in any area affected thereby (except an emergency as

required by Paragraph 6.16.A); and (iii) notify Owner. Owner shall promptly evaluate such condition and take corrective action to make such condition non-hazardous.

E. Contractor shall not be required to resume Work in connection with such conditions or in any affected area until after Owner has resolved the condition so as to make it non-hazardous.

## ARTICLE 5 – BONDS AND INSURANCE

Insert the following as Section 5.01.A *Insurance* and redesignate all subsequent paragraphs.

### Section 5.01 *Contractor's Insurance*

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

1. claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
2. claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
4. claims for damages insured by usual personal injury liability coverage;
5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
6. claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
7. claims for bodily injury or property damage arising out of completed operations; and
8. claims involving contractual liability insurance applicable to the Contractor's obligations under Paragraph 6.20.

The insurance required by this section shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

The limits for Workers' Compensation and Employer's Liability insurance shall be as follows:

1. Workers' Compensation:
  - a. State: Statutory
  - b. Applicable Federal (e.g. Longshoremen's): Statutory
2. Employer's Liability: \$500,000 per Accident  
\$500,000 Disease, Policy Limit  
\$500,000 Disease, Each Employee

The limits for Commercial General Liability Policy, including coverage for Premises-Operations, Independent Contractors' Protective, Products-Completed Operations, Contractual Liability, Personal Injury and Broad Form Property Damage (including coverage for Explosion, Collapse and Underground hazards) shall be as follows:

\$1,050,000 each occurrence  
\$2,100,000 General Aggregate  
\$2,100,000 Personal and Advertising Injury  
\$2,100,000 Products-Completed Operations Aggregate

1. The policy shall be endorsed to have the General Aggregate apply to this Project only.
2. The Contractual Liability insurance shall include coverage sufficient to meet the obligations in Paragraph 6.20.
3. Products Completed Operations insurance shall be maintained for a minimum period of at least one year after final payment.

Automobile Liability insurance (owned, non-owned and hired vehicles) for bodily injury and property damage shall be as follows:

\$2,000,000 Each Accident

Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this section shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

Section 5.01.C, delete the words "and Engineer" from the first sentence.

Section 5.04 *Contractor's Insurance* Delete 5.04.A.1. through 5.04.A.6. in their entirety.

Section 5.04.B. References to "Paragraphs 5.04.A through 5.04.A.6. are replaced with "Paragraph 5.01."

Section 5.07.B Delete 5.07.B.1 through 5.07.C in their entirety.

**ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES**

Section 6.04.1 The reference to “Engineer” is deleted and replaced with “Owner.”

Section 6.05 *Substitutes and “Or-Equals”* All references to “Engineer” are deleted and replaced with “Owner.”

Section 6.05.E *Engineer’s Cost Reimbursement* Delete in its entirety.

Section 6.06 G Delete the words “and Engineer” from the end of the first sentence. Delete the word “Engineer” from the second sentence.

Section 6.07.B Delete 6.07.B. in its entirety.

Section 6.13.F Delete and replace with:

F. Contractor’s duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is complete and Owner has issued a notice that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion.)

Sections 6.16.A and 6.17 All references to “Engineer” are deleted and replaced with “Owner.”

Section 6.19 References to “Engineer” are deleted and replaced with “Owner.”

Section 6.19 The following is added to 6.19 as paragraph D.

D. Contractor shall furnish a written warranty of workmanship to the Owner that warrants Contractor’s work for minimum period of one (1) year following final completion of the Work.

Section 16.20.A The words “and Engineer” are deleted from the first sentence. “Engineer” is deleted from the first sentence in 16.20.B.

Section 16.20.C Delete this section in its entirety.

**ARTICLE 7 - OTHER WORK AT THE SITE**

Section 7.01 All references to “Engineer” are deleted and replaced with “Owner.”

**ARTICLE 8 – OWNER’S RESPONSIBILITIES**

Section 8.01.A Delete and replace with:

A. Except as otherwise provided in these General Conditions, Owner shall issue all communications directly to Contractor.

**ARTICLE 9 – ENGINEER’S STATUS DURING CONSTRUCTION**

Sections 9.01 through 9.06 are deleted in their entirety and replaced with the following:

9.01 Engineer will not be responsible for overseeing construction. Engineer will be responsible for consultation with Owner if a Change Order changes or causes Engineer to change its Specifications or Plans. Owner will consult with Engineer if such changes or Change Orders are necessary.

Section 9.07 Delete 9.07 and replace it with the following:



*9.07 Determinations for Unit Price Work*

A. Owner will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Owner will review with Engineer Engineer's preliminary estimated determinations on such matters. Owner's decision thereon will be final and binding.

Section 9.08 Delete 9.08.A through 9.08.D and replace them with the following:

*9.08 Decisions on Requirements of Contract Documents and Acceptability of Work*

A. Owner will be the interpreter of the requirements of the Contract Documents and determine the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising under the Contract will be referred to the Owner.

Section 9.09.D Delete the words "the final applications for Payment and accompanying documentation and" from the first sentence.

Section 9.09.E Delete 9.09.E in its entirety.

**ARTICLE 10 – CHANGES IN THE WORK; CLAIMS**

Section 10.1.A Add the following sentence to the end of 10.1.A:

No Change Order or Work Change Order that changes the Contract Times or Contract Sum are valid and effective until signed by the Santa Fe County Manager or Santa Fe Board of County Commissioners.

Section 10.03.A Delete the words "recommended by Engineer" from the first sentence of 10.03.A.

Section 10.05.A Delete 10.05.A in its entirety.

Section 10.05.B *Notice* Delete 10.05.B in its entirety and replace it with the following:

Written notice stating the general nature of each Claim shall be delivered by the claimant to the other party to this Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim.

Section 10.05.C through E Delete 10.5.C through 10.05.E in their entirety.

**ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK**

Section 11.01 *Cost of the Work* Section 11.01.A is deleted in its entirety and replaced with the following:

A. *Cost of the Work* The term Cost of Work means the sum of all costs, except those excluded in Paragraph 11.01.B, represented by the Contractor in its bid for the proper performance of the Work, and as negotiated between and agreed upon by Owner and Contractor.

Sections 11.01.A.1 through 11.01.A.5 are deleted in their entirety.

Section 11.01.C *Contractor's Fee* is deleted in its entirety.

Section 11.02.D. is deleted in its entirety.

Section 11.03.B The reference to "Engineer" is deleted and replace with "Owner."

## **ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES**

Section 12.01.A is deleted and replaced with the following;

- A. The Contract Price may only be changed by Change Order approved by the Santa Fe County Manager or Santa Fe County Board of Commissioners.

Section 12.01.C.1 through 12.01.C.2.f. is deleted in its entirety and replaced with the following:

C. If Owner concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order may be issued to reflect and document such consequences. An equitable adjustment may be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the unanticipated or unforeseen occurrences that were not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. The allowance for the combined overhead (general administration overhead, supervision, project insurance, submittal preparation and processing) and profit included in the total cost of Change Orders and Change Directives to the Owner shall be based on the following schedule:

<u>Entity Performing Work</u>	<u>\$0 - \$5,000.00</u>	<u>\$5,000.00 or more</u>
Contractor for work performed by own forces	15%	12%
Contractor for work performed by Subcontractor	5%	3%
Subcontractor for work performed by own forces	10%	7%
Subcontractor for work performed by Sub-subcontractor	5%	3%

Section 12.02.A The words "the Engineer and" are deleted from 12.02.A.

Section 12.03.A The first sentence is deleted and replaced with the following:

- A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times may be extended.

## **ARTICLE 13 – TESTS AND INSPECTIONS**

Sections 13.03 and 13.04 All references to "Engineer" are deleted and replaced with "Owner."

Section 13.08 is deleted in its entirety and replaced with the following:

13.08 *Non-acceptance of Defective Work*

- A. Owner shall not accept defective Work.

Section 13.09.A through 13.09.D are deleted in their entirety.

**ARTICLE 14 – PAYMENT TO CONTRACTOR AND COMPLETION**

Section 14.02.A.1 Reference to “Engineer” is deleted and replaced with “Owner.”

Section 14.02.B.1 Reference to “Engineer: is deleted and replaced with “Owner” and the words “ and present the Application to Owner” from the first sentence.

Section 10.02.B.2 Delete 10.02.B.2 and replace it with:

2. Owner’s recommendation of any payment requested in an Application for Payment will constitute a representation by Owner that based on its observation of the Work and accompanying data and schedules that to the best of Owner’s knowledge, information and belief:

Section 14.02.A.3 is deleted in its entirety and replaced with the following:

3. The Owner may withhold from progress payments any liquidated damages which the Owner determines to be owed by the Contractor for its failure to timely meet work objectives according to the progress schedule.

Section 14.02.B.2.a through 14.02.B.3.b All references to “Engineer” are deleted and replaced with “Owner.”

Section 14.02.B.4. through 14.02.B.5 are deleted in their entirety.

Section 14.02.C.1 The words “with Engineer’s recommendation” are deleted from the first sentence.

Section 14.02.D.1 and Section 14.02.D.2 The words “recommended by Engineer” are deleted. The words “(with a copy to Engineer)” are deleted from Section 14.02.D.2.

Section 14.04 *Substantial Completion* All references to “Engineer” are deleted and replaced with “Owner.”

Section 14.02.C End this Section 14.02.C after the sentence “There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. “

Section 14.02.D Delete this section in its entirety.

Section 14.05 *Partial Utilization* All references to “Engineer” are deleted and replaced with “Owner.”

Section 14.05.A.3 Delete and replace with the following:

3. Within a reasonable time after either such request, Owner and Contractor shall make an inspection of that part of the Work to determine its status of completion.

Sections 14.06, 14.07.A and 14.07.B References to “Engineer” are deleted and replaced with “Owner.”

Section 14.07.C.1 is deleted in its entirety and replaced with the following:

1. No later than twenty one (21) days after the Owner approves or certifies an Application for Payment and accompanying documentation, the Owner-approved amount will be paid by Owner to Contractor.

Section 14.08.A Delete the words “and if Engineer so confirms,” “and recommendation of Engineer” and “to Engineer.”

Section 14.09.A.1 Insert “including any warranties applicable to the Lift Station” between the words “guarantees” and “specified.”

**ARTICLE 15 –SUSPENSION OF WORK AND TERMINATION**

Section 15.02.C. Delete 15.02.C in its entirety and replace with the following:

C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals or other dispute resolution costs) sustained by Owner arising out of or related to completing the Work, such excess will be paid to Contractor. If such claims, losses, and damage exceed the unpaid balance, Contractor shall pay the difference to Owner.

Section 15.03.A *Owner May Terminate for Convenience* Delete 15.03.A in its entirety and replace it with the following:

15.03.A Upon seven days written notice to Contractor, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case the Contractor shall be paid for completed and accepted Work executed in accordance with the Contract Documents prior to the effective date of termination taking into consideration expenses sustained by Contractor prior to the effective date of termination.

Section 15.04.A and 15.04.B Delete 15.04.A and 15.04.B in their entirety and replace them with the following:

- A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court, or (ii) Owner fails for more than 21 days to pay Contractor any sum due, then Contractor may, upon seven days written notice to Owner, and provided Owner does not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the terms provided in Section 15.03.
- B. In lieu of terminating and without prejudice to any other right or remedy, if Owner has failed for more than 21 days to pay Contractor any sum Owner determines is due Contractor, Contractor may, with seven days written notice, stop the Work until Owner makes payment.

**ARTICLE 16 – DISPUTE RESOLUTION**

Section 16.01.A through C Section 16.01.A through C are deleted in their entirety and replaced with the following:

A. Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived, shall be subject to mediation to the extent required by the Public Works Mediation Act, § 13-4C-1 et seq. NMSA. All other claims and disputes

shall be litigated in the State of New Mexico, District Court for the First Judicial District, Santa Fe, New Mexico. Contractor irrevocably consents to the jurisdiction of such Court and agrees to accept service of a summons and complaint by mail to commercial courier service in accordance with Rule 1-004(E)(3) NMRA.

**ARTICLE 17 – MISCELLANEOUS**

Section 17.02 *Computation of Times* In the second sentence delete the words “law of the applicable jurisdiction” and replace with “law, regulation, or ordinance of Santa Fe County,”

Section 17.05 *Controlling Law* Delete 17.05 in its entirety and replace it with the following:

17.05 *Controlling Law* This Contract shall be governed by the laws of the State of New Mexico.