City of Santa Fe, New Mexico

memo

DATE: **March 2, 2015**

TO: **Finance Committee**

FROM: **Robert Rodarte, Officer**
Purchasing Office

VIA: **Oscar S. Rodriguez**
Finance Department

ISSUE: **Award of Bid # '15/07/B**
On Call Miscellaneous HVAC Services Multiple City of Santa Fe Facilities

SUMMARY:
On February 2, 2015, six bids were received for the procurement of the above referenced service as follows:

	Bid Amount	Resident Veterans Preference
Yearout Service, LLC, Albuquerque Total Bid Amount Items 1-16	**$ 807.25**	
Welch's Boiler Services, Albuquerque Total Bid Amount Items 1-16	**$ 849.00**	
Mechanical Control Solutions, Albuquerque Total Bid Amount Items 1-16	**$ 933.00**	$867.69
Four Winds Mechanical, Albuquerque Total Bid Amount Items 1-16	$1,025.00	$934.19
Comfort System, Albuquerque Total Bid Amount Items 1-16	$1,017.00	
TLC Plumbing & Utility, Albuquerque Total Bid Amount Items 1-16	$1,428.69	

The using department has reviewed the bid and recommends award of bid to Yearout Service, LLC, Albuquerque, Welch's Boiler Services, Albuquerque and Mechanical Control Solutions, Albuquerque in the amount of $250,000.00 per contract for a two year period with the option to renew for two additional years.

The funding for these services will be budgeted as needed for each project.

ACTION:
It is requested that this recommendation of award to Yearout Services, LLC, Albuquerque Welch's Boiler Services, Albuquerque and Mechanical Control Solutions, Albuquerque in the total amount of $250,000.00 per contract be reviewed, approved and submitted to the City Council for its consideration.

Attachments:
1. Memo of recommendation from the using division.
2. Bid tabulation sheet.
3. Copy of the agreement between the owner and contractor.

CITY OF SANTA FE
PURCHASING OFFICE
BID TABULATION SHEET

On Call Miscellaneous HVAC Services Multiple City of Santa Fe Facilities

DATE: 02/05/15 BID: #'15/07/B PREPARED BY: SHIRLEY R.	Yearout Service, LLC Albuquerque	Welch's Boiler Services, Albuquerque	Mechanical Control Solutions, Albuquerque	Four Winds Mechanical, Albuquerque
ITEM & DESCRIPTION	BID AMOUNT	BID AMOUNT	BID AMOUNT	BID AMOUNT
Journeyman Regular Hourly	$70.00	$55.00	$52.00	$65.00
Journeyman after 5pm-8am Hourly	$98.00	$82.50	$52.00	$80.00
Journeyman Weekend Hourly	$98.00	$82.50	$78.00	$80.00
Journeyman Holiday Hourly	$100.00	$82.50	$78.00	$110.00
Experience Apprentice Regular Hourly	$30.00	$40.00	$48.00	$40.00
Experience Apprentice after 5pm-8am Hourly	$45.00	$40.00	$48.00	$55.00
Experience Apprentice Weekend Hourly	$45.00	$40.00	$72.00	$55.00
Experience Apprentice Holiday Hourly	$45.00	$40.00	$72.00	$65.00
Laborer Regular Hourly	$19.75	$21.00	$45.00	$35.00
Laborer after 5pm- 8am Hourly	$25.50	$21.00	$45.00	$40.00
Laborer Weekend Hourly	$25.50	$21.00	$67.50	$40.00
Laborer Holiday Hourly	$25.50	$21.00	$67.50	$50.00
Diagnosis Regular Hourly	$0.00 N/C	$55.00	$52.00	$60.00
Diagnosis after 5pm-8am Hourly	$60.00	$82.50	$52.00	$70.00
Diagnosis Weekend Hourly	$60.00	$82.50	$52.00	$70.00
Diagnosis Holiday Hourly	$60.00	$82.50	$52.00	$110.00
Total Bid Amount	$807.25	$849.00	$933.00	$1,025.00
Discount for parts and materials	$18%	$10%	$15%	$15%
One Way per mile to job site	$.45/mile	$1.50	$.56	$.50
SUBMITTAL REQUIREMENTS				
EQUAL EMPLOYMENT	x	x	x	x
NON-SEGREGATED FACILITIES	x	x	x	x
NON-COLLUSION AFFIDAVIT	x	x	x	x
SUBCONTRACTORS LISTING	x	x	x	x
VETERANS RESIDENT PREFERENCE			$867.69	$934.19
RECEIPT ADDENDUM #1	x	x	x	x
RECEIPT ADDENDUM #2	x	x	x	x

CITY OF SANTA FE
PURCHASING OFFICE
BID TABULATION SHEET

On Call Miscellaneous HVAC Services Multiple City of Santa Fe Facilities

DATE: 02/05/15 BID: #'15/07/B PREPARED BY: SHIRLEY R.	Comfort System, Albuquerque	TLC Plumbing & Utility, Albuquerque		
ITEM & DESCRIPTION	BID AMOUNT	BID AMOUNT	BID AMOUNT	BID AMOUNT
Journeyman Regular Hourly	$60.00	$61.03		
Journeyman after 5pm-8am Hourly	$90.00	$76.74		
Journeyman Weekend Hourly	$90.00	$90.05		
Journeyman Holiday Hourly	$90.00	$173.10		
Experience Apprentice Regular Hourly	$35.00	$58.03		
Experience Apprentice after 5pm-8am Hourly	$55.00	$70.54		
Experience Apprentice Weekend Hourly	$55.00	$83.05		
Experience Apprentice Holiday Hourly	$55.00	$158.10		
Laborer Regular Hourly	$28.00	$41.35		
Laborer after 5pm- 8am Hourly	$43.00	$49.69		
Laborer Weekend Hourly	$43.00	$58.03		
Laborer Holiday Hourly	$43.00	$108.06		
Diagnosis Regular Hourly	$60.00	$61.03		
Diagnosis after 5pm-8am Hourly	$90.00	$76.74		
Diagnosis Weekend Hourly	$90.00	90.05		
Diagnosis Holiday Hourly	$90.00	$173.10		
Total Bid Amount	$1,017.00	$1,428.69		
Discount for parts and materials	$0.00%	$10%		
One Way per mile to job site	$.55	$1.25		
SUBMITTAL REQUIREMENTS				
EQUAL EMPLOYMENT	x	x		
NON-SEGREGATED FACILITIES	x	x		
NON-COLLUSION AFFIDAVIT	x	x		
SUBCONTRACTORS LISTING	x	x		
NM RESIDENT PREFERENCE NUMBER				
RECEIPT ADDENDUM #1	x	x		
RECEIPT ADDENDUM #2	x	x		

ACTION SHEET
ITEM FROM THE
PUBLIC WORKS/CIP AND LAND USE COMMITTEE MEETING
OF
MONDAY, MARCH 9, 2015

ITEM 7

REQUEST FOR APPROVAL OF BID NO. 15/07/B – RECOMMENDATION OF AWARD AND APPROVAL OF A CONSTRUCTION AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR AN ON CALL MISCELLANEOUS HVAC SERVICES ON MULTIPLE CIT OF SANTA FE FACILITIES IN AN AMOUNT NOT TO EXCEED $250,000 EXCLUSIVE OF NEW MEXICO GROSS RECEIPTS TAX WITH:

- YEAROUT SERVICE, LLC
- WELCH'S BOILER SERVICES
- MECHANICAL CONTROL SOLUTIONS **(LEANN VALDEZ)**

PUBLIC WORKS COMMITTEE ACTION: Approved on Consent

FUNDING SOURCE: Varies per task order

SPECIAL CONDITIONS / AMENDMENTS / STAFF FOLLOW UP:

VOTE	FOR	AGAINST	ABSTAIN
CHAIRPERSON TRUJILLO			
COUNCILOR BUSHEE	Not Present at this time		
COUNCILOR DIMAS	X		
COUNCILOR DOMINGUEZ	X		
COUNCILOR RIVERA	X		

City of Santa Fe, New Mexico

memo

DATE: February 25, 2015

TO: Public Works, CIP, Land Use Committee and Finance Committee

VIA: Isaac J. Pino, P.E., Public Works Department Director
David Pfeifer, Facilities Division Director

FROM: LeAnn Valdez, Project Administrator, Facilities Division

ITEM & ISSUE:

BID NUMBER 15/07/B- RECOMMENDATION OF AWARD AND APPROVAL OF A CONSTRUCTION AGREEEMENT BETWEEN OWNER AND CONTRACTOR FOR ON CALL MISCELLANEOUS HVAC SERVICES ON MULTIPLE CITY OF SANTA FE FACILITIES IN AN AMOUNT NOT TO EXCEED $250,000.00 EXCLUSIVE OF NEW MEXICO GROSS RECIEPTS TAX WITH:

- YEAROUT SERVICE, LLC
- WELCH'S BOILER SERVICES
- MECHANICAL CONTROL SOLUTIONS

BACKGROUND & SUMMARY:

A request for bids was advertised on December 12, 2014 for an On Call for Miscellaneous HVAC Services at Multiple City of Santa Fe Facilities. Six bids were received on February 5, 2015 with no bidders qualifying for local preference and two bids qualifying for veteran's preference. The bids were reviewed for completeness and accuracy, and upon review, are reasonable.

For this On Call for Miscellaneous HVAC Services the award will be given to the lowest bidders using the breakdown provided with a total of items 1-16. All vendors provided an hourly wage for each category Journeyman, Experienced Apprentice, Laborer and Diagnosis on regular hours, after 5pm-8am, weekend hours and holiday hours. The lowest qualified bidder is Yearout Service, LLC of Albuquerque. The second lowest qualified bidder is Welch's Boiler Service of Albuquerque and the third lowest qualified bidder is Mechanical Control Solutions of Albuquerque with a qualified Veterans Preference of 8%. A tabulation of the accepted bids is attached.

These On Call services contracts would be utilized for various facilities maintenance projects that involve Miscellaneous HVAC Services that our staff could not perform. These contracts would be utilized as needed, over a two (2) year period, with an option to renew for an additional year not to exceed four (4) years beyond the original agreement date.

PROJECT BUDGET:
Availability of funds for these services will be identified and budgeted, as needed, for each individual project. Execution of these Construction Agreements does not constitute a promise to purchase any amount of said work.

RECOMMENDED ACTION:
The Public Works Department recommends the following:

- Approval of the Construction Agreements Between Owner and Contractor to provide the On Call for Miscellaneous HVAC Services with the three vendors:
  - Yearout Service, LLC
  - Welch's Boiler Services
  - Mechanical Control Solutions

Exhibits: Project Breakdown for Services
Bid Tabulation Sheets
Yearout Service, LLC - Construction Agreement
Yearout Service, LLC - Summary of Contracts
General Conditions of the Contract
Welch's Boiler Services - Construction Agreement
Welch's Boiler Services - Summary of Contracts
General Conditions of the Contract
Mechanical Control Solutions - Construction Agreements
Mechanical Control Solutions - Summary of Contracts
General Conditions of the Contract

xc: Isaac J. Pino, Public Works Department Director
David J. Pfeifer, Facilities Division
Shirley Rodriguez, Purchasing Division
Project/book file

RFB# '15/07/B'
ON CALL MISCELLANEOUS HVAC SERVICES

Project Breakdown

Item	Approximate Qty	Unit	Article and Description	Unit Price
1		Hr.	**Journeyman**, Regular Hours Worked	$
2		Hr.	**Journeyman**, Hours Worked after 5pm-8am	$
3		Hr.	**Journeyman**, Weekend Hours Worked	$
4		Hr.	**Journeyman**, Holiday Hours Worked	$
5		Hr.	**Experienced Apprentice**, Regular Hours Worked	$
6		Hr.	**Experienced Apprentice**, Hours Worked after 5pm-8am	$
7		Hr.	**Experienced Apprentice**, Weekend Hours Worked	$
8		Hr.	**Experienced Apprentice**, Holiday Hours Worked	$
9		Hr.	**Laborer**, Regular Hours Worked	$
10		Hr.	**Laborer**, Hours Worked after 5pm-8am	$
11		Hr.	**Laborer**, Weekend Hours Worked	$
12		Hr.	**Laborer**, Holiday Hours Worked	$
13		Hr.	**Diagnosis**, project estimates, troubleshooting, Regular Hours Worked	$
14		Hr.	**Diagnosis**, project estimates, troubleshooting, Hours Worked after 5pm-8am	$
15		Hr.	**Diagnosis**, project estimates, troubleshooting, Weekend Hours Worked	$
16		Hr.	**Diagnosis**, project estimates, troubleshooting, Holiday Hours Worked	$
17		%	Discount given off all retail parts and materials. Invoice will include copies of all purchases for parts and materials, including vendor and date purchased	$
18		Mile	One way per mile cost, per service vehicle required, measured from awarded contractors office/shop to the requested job site, for travel in excess of 50 miles one way	$

CITY OF SANTA FE

PURCHASING OFFICE

BID TABULATION SHEET

On Call Miscellaneous HVAC Services Multiple City of Santa Fe Facilities

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Diagnosis Holiday Hourly	$60.00	$82.50	$52.00	$110.00
Total Bid Amount	$807.25	$849.00	$933.00	$1,025.00
Discount for parts and materials	$18%	$10%	$15%	$15%
One Way per mile to job site	$.45/mile	$1.50	$.56	$.50
SUBMITTAL REQUIREMENTS				
EQUAL EMPLOYMENT	x	x	x	x
NON-SEGREGATED FACILITIES	x	x	x	x
NON-COLLUSION AFFIDAVIT	x	x	x	x
SUBCONTRACTORS LISTING	x	x	x	x
VETERANS RESIDENT PREFERENCE			$867.69	$934.19
RECEIPT ADDENDUM #1	x	x	x	x
RECEIPT ADDENDUM #2	x	x	x	x

CITY OF SANTA FE

PURCHASING OFFICE

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SUBMITTAL REQUIREMENTS				
EQUAL EMPLOYMENT	x	x		
NON-SEGREGATED FACILITIES	x	x		
NON-COLLUSION AFFIDAVIT	x	x		
SUBCONTRACTORS LISTING	x	x		
NM RESIDENT PREFERENCE NUMBER				
RECEIPT ADDENDUM #1	x	x		
RECEIPT ADDENDUM #2	x	x		

CITY OF SANTA FE
CAPITAL IMPROVEMENTS PROGRAM

AGREEMENT BETWEEN
OWNER AND CONTRACTOR

CIP PROJECT # *646*
CONSTRUCTION OF ***ON CALL- MISCELLANEOUS HVAC SERVICES***

This Agreement is entered into this [redacted] day of [redacted], 2015, by and between the CITY OF SANTA FE, herein known as the Owner, and Yearout Service, LLC. herein known as the Contractor.

For the following:

PROJECT:	Construction of On-Call Miscellaneous HVAC Services
PROJECT NO.:	CIP #646
ARCHITECT OF RECORD:	City of Santa Fe Capital Improvements Program P.O. Box 909 Santa Fe, NM 87504

DISTRIBUTION:

OWNER	_____
CONTRACTOR	_____
USER AGENCY	_____
OTHER	_____

Revised July 2000

RECITALS

WHEREAS, the Owner, through its Governing Body, is authorized to enter into a construction Contract for the project; and

WHEREAS, the Owner has let this Contract according to the established State and Local Purchasing procedures for contracts of the type and amount let; and

WHEREAS, construction of this Project was approved by the Governing Body of the City of Santa Fe at its meeting of _____.

The OWNER and the CONTRACTOR agree:

ARTICLE 1
THE CONTRACT DOCUMENTS

The Contract Documents consist of: this Agreement, the Conditions of the Contract (General, Supplementary, and other Conditions), the Drawings, the Specifications, all Addenda issued prior to and all Modifications issued after execution of this Agreement. These documents form the Contract, and all are as fully a part of the Contract as if attached to this Agreement or repeated herein.

ARTICLE 2
THE WORK

The Contractor shall perform all the work required by the Contract Documents for CIP Project # ***646*** – Construction of ***On Call for Miscellaneous HVAC Services*** at ***Multiple City of Santa Fe Facilities*** (Bid # 15/07/B).

The work designated as On-Call for Miscellaneous HVAC Services, consists of, but is not limited to: heating, ventilating and air conditioning work; for boilers and water heating equipment; for controls; and work related to these systems, for City of Santa Facilities in Santa Fe, New Mexico. The City of Santa Fe Facilities Division will utilize this On-Call Contract with prior, written approval of the scope of work, from the Facilities Division Director, before commencing any work applicable to this On-Call Contract.

Contractor shall be responsible for verifications of all conditions, measurements and dimensions for bidding.

Contractor shall be responsible for all permits, fees and State inspections associated with the On Call for Miscellaneous HVAC Services.

ARTICLE 3
TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

The Contract Completion Time for this contract is two (2) years. The Contract duration shall terminate two (2) years from the date of award, with the option to extend an additional year, by mutual agreement of all parties and approval of the City of Santa Fe at the same price, terms and conditions. This Agreement shall not exceed four (4) years beyond the original agreement date.

The Task Completion Time will be set by the Project Administrator on a task by task basis. Task completion shall be as specified in the written Notice to Proceed. Task completion, whether Substantial and/or Physical completion as set forth in each written Notice to Proceed, shall be achieved no later than the date specified in the written Notice to Proceed, except as hereafter extended by valid written Change Order by the owner.

ARTICLE 4
CONTRACT SUM

The Owner shall pay the Contractor in current funds for the performance of the work, subject to assigned tasks or work orders, and additions and deductions by Change Order as provided in the contract Documents, the Contract Sum not to exceed Two Hundred Fifty Thousand Dollars ($250,000.00), excluding New Mexico Gross Receipt Taxes.

The Base Bid is summarized as follows:

Base Bid	$250,000.00
Gross Receipts Tax (8.1875%)	$ 20,468.75
TOTAL BASE BID AMOUNT (tax included)	$270,468.75

ARTICLE 5
PROGRESS PAYMENTS

Based upon Application for Payment submitted to the Owner by the Contractor and Certificates for Payment issued by the Owner, the Owner shall make progress payments on account of the Contract sum to the Contractor as provided in the Contract documents for the period ending the last day of the month as follows:

Not later than twenty-one (21) days following the end of the period covered by the Application for Payment, one hundred percent (100%) of the portion of the Contract Sum properly allocable to labor, materials, and equipment incorporated in the work and one hundred percent (100%) of the portion of the Contract sum properly allocable to materials and equipment suitably stored at the site or some other location agreed upon in writing for the period covered by the Application for Payment, less the aggregate of previous payments made by the Owner; and upon physical completion of the entire work, a sum sufficient to increase the total payments to one hundred percent (100%) of the Contract sum, less such amounts as the Owner shall determine for all incomplete work and unsettled claims as provided in the Contract documents.

ARTICLE 6
LIQUIDATED DAMAGES

Should the Contractor neglect, refuse, or otherwise fail to achieve Substantial and/or Physical completion by the contract date set forth in each written Notice to Proceed pursuant to Article 3 herein or any extension in the Contract thereof,, the Contractor agrees to pay to the Owner the amount of Four Hundred Dollars ($ 400) per consecutive work day of delay until the work is completed and accepted or until voided pursuant to the provisions of the General Conditions of the Contract, not as a penalty, but as liquidated damages for such breach of the Contract.

ARTICLE 7
FINAL PAYMENT

Final payment, constituting the entire unpaid balance of the Contract sum, shall be paid by the Owner to the Contractor within twenty-one (21) calendar days after all deficiencies to the Contract document that were noted during the Substantial Completion Inspection and listed on the attachment to the Certificate of Substantial Completion have been corrected, and provided the Contract has been fully performed and a final Certificate for Payment has been issued by the Owner. In addition, the Contractor shall provide to the Owner a certified statement of Release of Lien (AIA Document G706A or approved form), Consent of Surety, Warranty from Prime Contractor, Warranties from Suppliers and Manufacturers, training sessions, equipment/operating manuals, and as-built drawings.

ARTICLE 8
SCHEDULE

The Contractor shall, within five (5) days after the effective date of Notice to Proceed, prepare and submit two (2) copies of a progress schedule covering project operations for the task period. This progress schedule shall be of the type generally referred to as a Critical Path Method (CPM), Critical Path Schedule (CPS), and Critical Path Analysis (CPA), and other similar designations. The CPM shall be used to control the timing and sequences of the project. All work shall be done in accordance with the CPM Planning and Scheduling. A written statement of explanation shall be submitted with the progress schedule. All costs incurred by the contractor to implement the CPM shall be borne by the Contractor, and are part of their Contract

ARTICLE 9
GENERAL AND SPECIAL PROVISIONS

9.1 This Agreement shall be governed exclusively by the provisions hereof and by the laws of the State of New Mexico as the same from time to time exist.

9.2 Terms used in this Agreement which are defined in the Conditions of the Contract shall have the meanings designated in those Conditions.

9.3 The Contractor shall defend, indemnify, and hold harmless the Owner against any and all injury, loss, or damage, including, without limitation, costs of defense, court costs and attorney's fees, arising out of the acts, errors, or omissions of the Contractor.

9.4 An enumeration of the Contractor's Liability Insurance requirements appears in the General Conditions of the Contract for construction. Insurance requirements are also described in the Instructions to the Bidder section of the Project Manual. Contractor shall maintain adequate insurance in at least the maximum amounts which the Owner could be liable under the New Mexico Tort Claims Act and shall provide proof of such insurance coverage to the City. It is the sole responsibility of the Contractor to be in compliance with the law.

9.5 This Agreement shall not become effective until: (1) approved by the Governing Body; and (2) signed by all parties required to sign this Agreement.

9.6 The Contractor and the Contractor's agents and employees are independent contractors performing professional and technical services for the Owner and are not employees of the Owner. The Contractor and the Contractor's agents and employees shall not accrue leave, retirement, insurance, bonding, use of Owner's vehicles, or any other benefits afforded to employees of the Owner as a result of this Agreement.

9.7 The Contractor shall not subcontract any portion of the services to be performed under this Agreement without prior written approval of the Owner.

9.8 The Contractor shall maintain detailed time records which indicate the date, time and nature of services rendered. These records shall be subject to inspection by the Owner, the Department of Finance and Administration and the State Auditor. The Owner shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Owner to recover excessive illegal payments.

9.9 The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Owner for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Owner, this Agreement shall terminate upon written notice being given by the Owner to the Contractor. The Owner's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

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

9.11 The Contractor hereby warrants that the Contractor is in compliance with the Americans with Disabilities Act, 29 CFR 1630.

9.12 The Contractor, upon final payment of the amounts due under this Agreement, releases the Owner, the Owner's officers and employees, and the City of Santa Fe from all liabilities and obligations arising from or under this Agreement, including, without limitation, all damages, losses, costs, liability, and expenses, including, without limitation, attorney's fees and costs of litigation that the Contractor may have.

9.13 The Contractor agrees not to purport to bind the Owner to any obligation not assumed herein by the Owner, unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

9.14 Notices. Any and all notices provided for hereunder shall be in writing and shall be deemed delivered, given and received when (i) personally delivered, or (ii) 5 days after the same are deposited in the United States mail, postage prepaid, registered or certified mail return receipt requested, addressed to the applicable party at the address indicated below for such party or at such other address as may be designated by either party in a written note to the other party.

OWNER	City of Santa Fe Capital Improvements Program P.O. Box 909 Santa Fe, New Mexico 87504-0909
CONTRACTOR	YEAROUT SERVICE 8501 WASHINGTON ST, NE ALBUQUERQUE, NM 87113 New Mexico License # 365365

9.15 Gender, Singular/Plural. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

9.16 Captions and Section Headings. The captions and section headings contained in this Agreement are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope and conditions of this Agreement.

9.17 This document shall be executed in no less than five (5) counterparts, each of which shall be deemed an original.

9.18 Certificates and Documents Incorporated. All certificates and documentation required by the provisions of the Agreement shall be attached to this Agreement at the time of execution, and are hereby incorporated by reference as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

9.19 Separability. If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby.

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

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

9.22 Interchangeable Terms. For purposes of all provisions within this Agreement and all attachments hereto, the terms "Agreement" and "Contract" shall have the same meaning and shall be interchangeable.

9.23 Words and Phrases. Words, phrases, and abbreviations which have well-known technical or trade meanings used in the Contract documents shall be used according to such recognized meaning. In the event of a conflict, the more stringent meaning shall govern.

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

9.25 Pursuant to Section 13-1-191, NMSA 1978, reference is hereby made to the Criminal Laws of New Mexico (including Sections 30-14-1, 30-24-2, and 30-41-1 through 30-41-3, NMSA 1978) which prohibit bribes, kickbacks, and gratuities, violation of which constitutes a felony. Further, the Procurement Code (Sections 13-1-28 through 13-1-199, NMSA 1978) imposes civil and criminal penalties for its violation.

9.26 By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the Owner and the Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

9.27 Pursuant to Section 13-4-11. NMSA 1978, Reference is hereby made to the Minimum Wage on Public Works; weekly payments; posting wage scale; withholding funds.

ARTICLE 10
NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

This Agreement is entered into as of the day and year first written above.

OWNER:
CITY OF SANTA FE:

_____
JAVIER M. GONZALES, MAYOR

DATE:_____

CONTRACTOR:
YEAROUT SERVICE, LLC

BY: _____
TITLE: _____

DATE: _____

NM TAXATION AND REVENUE CRS#L0595994576
CITY OF SANTA FE BUSINESS REG #15-00110963

ATTEST:

_____
YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:

MDM 2/27/15
KELLEY A. BRENNAN, CITY ATTORNEY

APPROVED:

_____
OSCAR RODRIGUEZ, FINANCE DIRECTOR

Business Unit Line Item VARIES PER TASK ORDER

Address:_____

Each joint venture must sign. The manner of signing for each individual, partnership, and corporation that is a party to the joint venture should be in the manner indicated in the appropriate category.

Bidder must fill in the following: (If none, write none)

NM License No.: 365365 Classification: MM98, GB98 & GF09

NM Taxation and Revenue CRS No.: 03-140758-00-7

City of Santa Fe Business Registration No.: Control Number: 0057717 License Number: 15-00110963

NM Resident Preference Number (if applicable): L0595994576

One Original and one copy of the Bid Submittal is required

City of Santa Fe, New Mexico

BUSINESS LICENSE

THIS BUSINESS IS IN COMPLIANCE WITH THE CITY OF SANTA FE LIVING WAGE ORDINACE, §28-1 SFCC 1987

City Of Santa Fe
PO BOX 909
Santa Fe NM, 87504

Official Document
Please Post

Business Name: YEAROUT SERVICE

Location: SF COUNTY

Class: OUT OF CITY CONTRACTOR - SPECIALTY

Comment:

Control Number: 0057717

License Number: 15-00110963

Issue Date December 17, 2014

Expiration Date December 31, 2015

YEAROUT SERVICE
8501 WASHINGTON ST NE

ALBUQUERQUE NM 87113

THIS IS NOT A CONSTRUCTION PERMIT OR SIGN PERMIT. APPROPRIATE PERMITS MUST BE OBTAINED FROM THE CITY OF SANTA FE BUILDING PERMIT DIVISION PRIOR TO COMMENCEMENT OF ANY CONSTRUCTION OR THE INSTALLATION OF ANY EXTERIOR SIGN.

THIS REGISTRATION/LICENSE IS NOT TRANSFERABLE TO OTHER BUSINESSES OR PREMISES.

City of Santa Fe
Summary of Contracts, Agreements, & Amendments

Section to be completed by department for each contract or contract amendment

1 **FOR:** ORIGINAL CONTRACT ☑ CONTRACT AGREEMENT ☐
MAINTENANCE AGREEMENT ☐ LICENSE AGREEMENT ☐
LEGAL SERVICES AGREEMENT ☐ MEMORANDUM OF UNDERSTANDING ☐
MEMORANDUM OF AGREEMENT ☐ JOINT POWERS AGREEMENTS ☐
GRANT AGREEMENTS ☐ CHANGE ORDERS ☐

2 Name of Contractor Yearout Service, LLC

3 Complete information requested ☐ Plus GRT ☑ Inclusive of GRT

Original Contract Amount: Not to exceed $250,000.

Termination Date: Two years after original agreement signed

☑ Approved by Council Date: To Be Determined

☐ or by City Manager Date: _____

Contract is for: On Call for Miscellaneous HVAC Services on Multiple City of Santa Fe Facilities

Amendment # _____ to the Original Contract# _____

Increase Amount $ _____

Extend Termination Date to: _____

☐ Approved by Council Date: _____

☐ or by City Manager Date: _____

Amendment is for:

4 **History of Contract & Amendments:** (option: attach spreadsheet if multiple amendments) ☐ Plus GRT ☑ Inclusive of GRT

Amount $ not to exceed $250k of original Contract# _____ Termination Date: TBD
Reason: On Call for Miscellaneous HVAC Services on Multiple City of Santa Fe Facilities

Amount $ _____ amendment # _____ Termination Date: _____
Reason: _____

Amount $ _____ amendment # _____ Termination Date: _____
Reason: _____

Amount $ _____ amendment # _____ Termination Date: _____
Reason: _____

Amount $ _____ amendment # _____ Termination Date: _____
Reason: _____

Total of Original Contract plus all amendments: $ not to exceed $250k

5 **Procurement Method of Original Contract:** (complete one of the lines)

RFP ☐ RFQ ☐ Sole Source ☐ Other ☑ RFB # 15/07/B

City of Santa Fe
Summary of Contracts, Agreements, & Amendments

6 **Procurement History:** First year of open agreement
example: (First year of 4 year contract)

7 **Funding Source:** TBD on project basis **BU/Line Item:** TBD on project basis

8 **Any out-of-the ordinary or unusual issues or concerns:**
No
(Memo may be attached to explain detail.)

9 **Staff Contact who completed this form:** LeAnn Valdez LV Phone # 955-5938

Division Contract Administrator: David Pfeifer

Division Director: David Pfeifer

Department Director: Isaac J. Pino

10 **Certificate of Insurance attached.** (if original Contract)

11 **Description of your efforts to reduce the cost of the contract including information on efforts to obtain other quotes for the contracted activity:** Worked on getting a On-Call contractor with Multiple vendors

12 **Prior year's contract amount?:** none

13 **Describe service impact from an ongoing commitment to the contractor:** required licenses

14 **Why staff cannot perform the work?:** required licenses

15 **If extending contract, why?:** N/A

16 **Was a Santa Fe company awarded contract? If not, why?:** NO. No Local Bids Received

17 **Has the contract has been approved as to form by City Attorney's Office?:** Yes

18 **Is this for City Manager or Council approval?:** City Council

GENERAL CONDITIONS OF THE CONTRACT
(00 7200)

In the case of conflicting requirements between the AIA General Conditions and these General Conditions, the most stringent requirement will apply.

(00 7213) GENERAL CONDITIONS

NOTICE

This document has been prepared by the Capital Improvements Program (CIP) and Contract Compliance staff of the City of Santa Fe for use in construction projects.

DOCUMENT - DIVISION 00 7213

GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

(THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION.)

TABLE OF ARTICLES

1. CONTRACT DOCUMENTS
2. ARCHITECT - FACILITIES DIVISION
3. OWNER
4. CONTRACTOR
5. SUBCONTRACTORS
6. WORK BY OWNER OR BY SEPARATE CONTRACTORS
7. MISCELLANEOUS PROVISIONS
8. TIME
9. PAYMENTS AND COMPLETION
10. PROTECTION OF PERSONS AND PROPERTY
11. INSURANCE
12. CHANGES IN THE WORK
13. UNCOVERING AND CORRECTION OF WORK
14. TERMINIATION OF THE CONTRACT
15. EQUAL OPPORTUNITY
16. MINIMUM WAGE RATES

ARTICLE 1

CONTRACT DOCUMENTS

1.1 DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Owner-Contractor Agreement, the Conditions of the Contract (General, Supplementary, and Other Conditions), the Drawings, the Specifications, and all Addenda issued prior to and all Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a written interpretation issued by the Architect pursuant to Subparagraph 2.2.6, or (4) a written order for a minor change in the work issued by the Architect pursuant to Paragraph 12.4. The Contract Document do not include Bidding Documents such as the Advertisement or Invitation to Bid, the Instructions to Bidders, sample forms, the Contractor's Bid, or portions of Addenda relating to any of these, or any other documents, unless specifically enumerated in the Owner-Contractor Agreement.

1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. This Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification as defined in Subparagraph 1.1.1. The Contract Documents shall not be construed to create any contractual relationship of any kind between the Architect and the Contractor, but the Architect shall be entitled to performance of obligations intended for his benefit, and to enforcement thereof. Nothing contained in the Contract Documents shall create any contractual relationship between the Owner or the Architect and any Subcontractor or Sub-subcontractor.

1.1.3 THE WORK

The work comprises the design and completed construction required by the Contract Documents, and includes design specifications, and all labor necessary to produce such construction, and all materials and equipment incorporated or to be incorporated in such construction.

1.1.4 THE PROJECT

The Project is the total design and construction of which the work performed under the Contract Documents may be the whole or a part.

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 No fewer than two (2) copies of the Contract Documents shall be signed by the Owner and the Contractor. If either the Owner or the Contractor or both do not sign the Conditions of the Contract, Drawings, Specifications, or any of the other Contract Documents, the Architect shall identify such Documents.

1.2.2 By executing the Contract, the Contractor represents that he has visited the site, familiarized himself with the local conditions under which the work is to be performed, and correlated his observations with the requirements of the Contract Documents.

1.2.3 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all work not covered in the Contract Documents will not be required unless it is consistent therewith and is reasonably inferable therefrom as being necessary to produce the intended results. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings. In the event of a conflict between the Contract Documents, the more stringent requirements shall govern.

1.2.4 The organization of the Specifications into divisions, sections and articles, and the arrangement of Drawings shall not control the Contractor in dividing the work among Subcontractors or in establishing the extent of work to be performed by any trade.

1.3 OWNERSHIP AND USE OF DOCUMENTS

1.3.1 All designs, drawings, specifications, notes, and other work developed in the performance of this Contract shall be and remain the sole property of the Owner and may be used on any other work without additional compensation to the Architect. With respect thereto, the Architect agrees not to assert any rights and not to establish any claims under the design patent of copyright laws.

ARTICLE 2

ARCHITECT

2.1 DEFINITION

2.1.1 The Architect is the person lawfully license to practice Architecture, or an entity lawfully practicing Architecture identified as such in the Owner-Contractor Agreement, and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term "Architect" means the Architect or his authorized representative.

2.2 ADMINISTRATION OF THE CONTRACT – FACILITIES DIVISION

2.2.1 The Architect will provide administration of the Contract as hereinafter described.

2.2.2 The Architect will be the Owner's Agent during construction and until final payment is due. The Architect will advise and consult with the Owner. The Owner's instructions to the Contractor shall be forwarded through the Architect. The Architect shall have the authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with Subparagraph 2.2.17.

2.2.3 The Architect shall submit to the Owner, for approval, a list of critical inspection points based upon the construction schedule furnished by the Contract (Paragraph 4.11.1). The Architect and his staff (including the on-site representative, if agreed upon) shall make at least three (3) weekly visits to the site at those critical points and at other times as the Architect deems appropriate during the progress of the work. Additionally, the Architect shall familiarize himself with the progress and quality of the work and determine if the work is proceeding in accordance with the Contract Documents. On the basis of on-site observations, as the Architect, he shall guard the Owner against defects and deficiencies in the construction. Should the Architect determine that any portion of the work varies from the intent of the Contract Documents he shall immediately notify the Contractor and the Owner of the non-compliance and the nature of the work required to correct such non-compliance. The Architect shall recommend to the Owner, in writing, to issue a "stop work order" for any portion of the work that does not substantially comply with the intent of the Contract Documents, except as follows.

2.2.4 The Architect shall not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the work. Additionally, the Architect shall not be responsible for the Contractor's failure to carry out the work in accordance with the Contract Documents. The Architect shall reject work, which does not meet or exceed the standards established by the Contract Documents. Whenever, in his reasonable opinion, he considers it necessary or advisable to ensure the proper implementation of the intent of the Contract Documents, he will have authority to require special inspection or testing of any work in accordance with the provisions of the Contract Documents whether or not such work is then fabricated, installed or completed.

2.2.5 The Architect shall at all times have access to the work wherever it is in preparation and progress. The Contractor shall provide facilities for such access so the Architect may perform his functions under the Contract Documents.

2.2.6 Based on the Architect's observations and an evaluation of the Contractor's Application for Payment, the Architect will determine the amounts owing to the Contractor and will issue Certificates for Payment in such amounts, as provided in Paragraph 9.4.

2.2.7 The Architect will be the interpreter of the requirements of the Contract Documents and the judge of the performance thereunder by both the Owner and the Contractor.

2.2.8 The Architect will render interpretations necessary for the proper execution or progress of the work, with

reasonable promptness and in accordance with any time limit agreed upon. Either party to the Contract may make written request to the Architect for such interpretations.

2.2.9 Claims, disputes, and other matters in question between the Contractor and the Owner relating to the execution or progress of the work or the interpretation of the Contract Documents shall be referred to the Architect for decision which he will render in writing within a reasonable time.

2.2.10 All interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. In his capacity as interpreter and judge, he will endeavor to secure faithful performance by both the Owner and the Contractor, will not show partiality to either, and will not be liable for the result of any interpretation or decision rendered in good faith in such capacity.

2.2.11 The Architect's decisions in matters relating to artistic effect will be final if consistent with the intent of the Contract Documents.

2.2.12 The Architect will have authority to reject work which does not conform to the Contract Documents. Whenever, in his opinion, he considers it necessary or advisable for the implementation of the intent of the Contract Documents, he will have authority to require special inspection or testing of the work in accordance with Subparagraph 7.7.2 whether or not such work is then fabricated, installed or completed. However, neither the Architect's authority to act under this Subparagraph 2.2.12, nor any decision made by him in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Architect to the Contractor, any Subcontractor, any of their agents or employees, or any other person performing any of the work.

2.2.13 The Architect will review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and samples, but only for conformance with the design concept of the work and with the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay. The Architect's approval of a specific item shall not indicate approval of an assembly of which the time is a component.

2.2.14 The Architect will prepare Change Orders in accordance will Article 12 and will have authority to order minor changes in the work as provided in Subparagraph 12.4.1.

2.2.15 The Architect will conduct inspections to determine the dates of Substantial Completion and Final Completion, will receive and forward to the Owner for the Owner's review of written warranties and related documents required by the Contract and assembled by the Contractor and will issue a final Certificate of payment upon compliance with the requirements of Paragraph 9.9

2.2.16 If the Owner and Architect agree, the Architect will provide one or more Project Representatives to assist the Architect in carrying out his responsibilities at the site. The duties, responsibilities and limitations of authority of any such Project Representative shall be as set forth in an exhibit to be incorporated in the Contract Documents.

2.2.17 The duties, responsibilities and limitations of authority of the Architect as the Owner's representative during construction as set for in the Contract Documents will not be modified or extended without written consent of the Owner, the Contractor and the Architect.

2.2.18 In case of the termination of the employment of the Architect, the Owner shall appoint an Architect whose status under the Contract Documents shall be that of the former Architect.

ARTICLE 3

OWNER

3.1 DEFINITION

3.1.1 The Owner is the person or entity identified as such in the Owner-Contractor Agreement and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term "Owner" means the Owner or his authorized representative.

3.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

3.2.1 The Owner shall, at the request of the Contractor, at the time of execution of the Owner-Contractor Agreement, furnish to the Contractor reasonable evidence that he had made financial arrangements to fulfill his obligations under the Contract. Unless such reasonable evidence is furnished, the Contractor is not required to execute the Owner-Contractor Agreement or to commence the work.

3.2.2 (Not used)

3.2.3 Except as provided in Subparagraph 4.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments, and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

3.2.4 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the work.

3.2.5 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, all copies of Drawings and Specifications reasonable necessary for the execution of the work.

3.2.6 The Owner shall forward all instructions to the Contractor through the Architect.

3.2.7 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to work by Owner or by Separate Contractors, Payments and Completion, and Insurance in Articles 6, 9 and 11 respectively.

3.3 OWNER'S RIGHT TO STOP THE WORK

3.3.1 If the Contractor fails to correct defective work as required by Paragraph 13.2 or persistently fails to carry out the work in accordance with the Contract Documents, the Owner, by a written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Contractor to stop the work, or any portion thereof, until the cause of such order has been eliminated; however, this right of the Owner to stop the work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Subparagraph 6.1.3.

3.4 OWNER'S RIGHT TO CARRY OUT THE WORK

3.4.1 If the Contractor defaults or neglects to carry out the work in accordance with the Contract Documents and fails within seven days after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, after seven days following receipt by the Contractor of an additional written notice and without prejudice to any other remedy he may have, make good such deficiencies. In such case, an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and the amount charged to the Contractor are both subject to the prior approval of the Architect. If the payments then or thereafter due to the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

ARTICLE 4

CONTRACTOR

4.1 DEFINITION

4.1.1 The Contractor is the person or entity identified as such in the Owner-Contractor Agreement and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term "Contractor" means the Contractor or his authorized representative.

1.2 REVIEW OF CONTRACT DOCUMENTS

4.1.2 The Contractor shall carefully study and compare the Contract Documents and shall at once report to the Architect and the Owner any error, inconsistency or omission he may discover. The Contractor shall not be liable to the Owner or the Architect for any damage resulting from any such errors, inconsistencies or

omissions in the Contract Documents. The Contractor shall perform no portion of the work at any time without Contract Documents or, where required, approved Shop Drawings, Product Data or Samples for such portion of the work.

4.3 SUPERVISION AND CONSTRUCTION PROCEDURES

4.3.1 The Contractor shall supervise and direct the work, using his best skill and attention. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the work under the contract.

4.3.2 The Contractor shall be responsible to the Owner for the acts and omissions of his employees, Subcontractors and their agents and employees, and other persons performing any of the work under a contract with the Contractor.

4.3.3 The Contractor shall not be relieved from his obligations to perform the work in accordance with the Contract Documents either by the activities or duties of the Architect in his administration of the Contract, or by inspections, tests or approvals required or performed under Paragraph 7.8 by persons other than the Contractor.

4.4 LABOR AND MATERIALS

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

4.4.2 The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on the work any unfit person or anyone not skilled in the task assigned to him.

4.5 WARRANTY

4.5.1 The Contractor warrants to the Owner and Architect that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all work will be of good quality, free from faults and conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions in Paragraph 13.2.

4.5.2 The Contractor shall and hereby does warrant and guarantee all workmanship, labor, and materials performed and supplied by him or his Subcontractors for a period of one (1) year from the date of completion as evidenced by the date of the Owner's Certificate of Final Completion of this Contract. This also includes <u>all labor</u> required for replacing materials or equipment found to be defective with the one (1) year period. All guarantees for a longer period of time required by the work sections of these Specifications shall be secured by the Contractor from Subcontractors and delivered to the Architect and are hereby warranted by the Contractor as much as if countersigned by him.

4.6 TAXES

4.6.1 The Contractor shall pay all sales, consumer gross receipts tax, use and other similar taxes for the work or portions thereof provided by the Contractor which are legally enacted at the time Bids are received, whether or not yet effective.

4.7 PERMITS, FEES AND NOTICES

4.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the construction permit and for all other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the work which are customarily secured after execution of the Contract and which are legally required at the time the Bids are received.

4.7.2 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the work.

4.7.3 It is not the responsibility of the Contractor to make certain that the Contract Documents are in accordance with applicable laws, statutes, building codes and regulations. If the Contractor observes that any of the Contract Documents are at variance therewith in any respect, he shall promptly notify the Architect in writing, and any necessary changes shall be accomplished by appropriate Modification.

4.7.4 If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Architect, he shall assume full responsibility therefore and shall in turn notify the Owner's Representative of such action.

4.8 ALLOWANCES

4.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by these allowances shall be supplied for such amounts and by these allowances shall be supplied for such amounts and by such persons as the Owner may direct, but the Contractor will not be required to employ persons against whom he makes a reasonable objection.

4.8.2 Unless otherwise provided in the Contract Documents:

A. These allowances shall cover the cost to the Contractor, less any applicable trade, discount of the materials and equipment required by the allowance delivered at the site, and all applicable taxes.

B. The Contractor's costs for unloading and handling on the site, labor, installations costs, overhead, profit and other expenses contemplated for the original allowance shall be included in the Contract Sum and not in this allowance;

C. Whenever the cost is more than or less than the allowance, the Contract Sum shall be adjusted accordingly by Change Order, the amount of which will recognize changes, if any, in handling costs on the site, labor, installation costs, overhead, profit and other expenses.

4.9 SUPERINTENDENT

4.9.1 The Contractor shall employ a competent Superintendent and necessary assistants who shall be in attendance at the project site during the progress of the work. The Superintendent shall represent the Contractor, and all communications given to the Superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be so confirmed on written request in each case.

4.10 PROGRESS SCHEDULES

4.10.1 The Contractor shall, within ten (10) days after the effective date of Notice to Proceed, furnish five copies of a preliminary progress schedule covering his operations for the first thirty (30) days. The preliminary progress schedule shall be a bar graph or an arrow diagram showing the items the Contractor intends to commence and complete the various work stages, operations, and contract means planned to be started during the first thirty (30) days.

4.10.2 Unless otherwise specified in the Special Provisions, the Contractor shall submit for approval by the Architect, within thirty 30) days after the effective date of Notice to Proceed, five copies of a critical-path-type analysis. The critical-path-type analysis shall include as a minimum; a graphic network diagram; a computer printout or list of activities; and a brief written explanation of the proposed schedule.

4.10.3 The graphic network diagram shall consist of an arrow diagram or a geometric figure and connector diagram which clearly depicts the major subdivisions of the work, the order and interdependencies of activities planned by the Contractor, as well as, activities by others which affect the Contractor's planning. The intended time for starting and completing each activity, the associated float time and the quantity and kinds of major equipment to be used shall be shown for each construction operation. For those activities lasting more than 30 days, either the estimated time for 25-50 and 75 percent completion or other significant milestones in the course of the activity, shall be shown. In addition to the actual construction operations, the network diagram shall show such items as submittal of samples and Shop Drawings, delivery of materials and equipment, construction in the area by other forces, traffic detour controls, and other significant items related to the progress of construction. The graphic network diagram shall be printed or neatly and legibly drawn to a linear scale.

4.10.4 Activities shown shall be coordinated insofar as possible with the Contract Bid items, types of work and maximum number of activities of each type.

4.10.5 The computer printout or list of activities shall show for each activity the estimated duration, the earliest starting and finishing dates, the latest starting and finishing dates, and float or slack time. Activities which constitute the critical sequence shall be identified, showing a total job duration equal to the Contract Time.

4.10.6 The written explanation shall contain sufficient information to describe the construction methods to be used and to enable the Architect to evaluate the schedule and supporting analysis for validity and practicability. If the schedule or written explanation is not accepted by the Architect, the Contractor shall resubmit the rejected items within ten (10) days after rejection.

4.10.7 The analysis may employ the use of an electric computer or may consist of a non-computer analysis if the latter is suitable to analyze the number of activities required. The adequacy of the system selected shall be acceptable to the Architect.

4.10.8 The Contractor shall submit to the Architect monthly progress status reports on dates directed by the Architect. Such reports shall list those uncompleted activities which have less than 30 days float and which are either in progress or scheduled to be started within the next reporting period. For each of the listed activities, the following shall be shown:

A. Starting date scheduled in last critical-path-analysis.
B. Actual or intended starting date.
C. Revised activity duration, if any.

If the noted starting dates or duration delay the scheduled project completion date, the delay shall be named. Reasons for the delay shall be given with an explanation of the Contractor's proposed corrective action. The Contract shall also note each activity completed during the report period.

4.10.9 A revised critical-path-type analysis shall be submitted when one or more of the following conditions occur:

A. When an approved change Order significantly affects the contract completion date, or the sequence of activities.
B. When progress of any critical activity falls significantly behind the scheduled progress.
C. When delay on a non-critical activity is of such magnitude as to change the course of the critical path.
D. At any time the Contractor elects to change any sequence of activities affecting the critical path.

The revised analysis shall be made in the same form and detail as the original submittal and shall be accompanied by an explanation of the reasons for the revisions.

4.10.10 The Contractor shall prosecute the work in accordance with the latest critical path type analysis. Deviations therefrom shall be submitted to the Architect for review. In the event that the progress of items along the critical path is delayed, the Contractor shall revise his planning to include additional forces, equipment, shifts or hours necessary to meet the contract completion date. All additional cost resulting therefrom will not be borne by the Owner.

4.11 DOCUMENTS AND SAMPLES AT THE SITE

4.11.1 The Contractor shall maintain at the site, for the Owner, one record copy of all Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record all changes made during construction, and approved Shop Drawings, Product Data and Samples. These shall be available to the Architect and shall be delivered to him for the Owner upon completion of the work.

4.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

4.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the work by the Contractor or any Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the work.

4.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate a material, product or system for some portion of the work.

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

4.12.4 The Contractor shall review, approve and submit, with reasonable promptness and in such sequence as to cause no delay in the work or in the work of the Owner of any separate Contractor, all Shop Drawings, Product Data and Sample required by the Contract Documents.

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

4.12.6 The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data or Samples under Subparagraph 2.2.13 unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submission and the Architect has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples by the Architect's approval thereof.

4.12.7 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data or Samples, to revisions other than those requested by the Architect on previous submittals.

4.12.8 No portion of the work requiring submission of a Shop Drawing, Product Data or Sample shall be commenced until the submittal has been approved by the Architect as provided in Subparagraph 2.2.13. All such portions of the work shall be in accordance with approved submittals.

4.13 USE OF SITE

4.13.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not reasonably encumber the site with any materials or equipment.

4.13.2 The Contractor shall hold and save the Owner free and harmless from liability of any nature or kind arising from use, trespass or damage occasioned by third persons.

4.14 CUTTING AND PATCHING OF WORK

4.14.1 The Contractor shall be responsible for all cutting, fitting or patching that may be required to complete the work or to make its several parts fit together properly.

4.14.2 The Contractor shall not damage or endanger any portion of the work or the work of the Owner or any separate contracts by cutting, patching or otherwise altering any work, or by excavation. The Contractor shall not cut or otherwise alter the work of the Owner or any separate Contractor except with the written consent of the Owner and of such separate Contractor. The Contractor shall not unreasonably withhold from the Owner any separate Contractor his consent to cutting or otherwise altering the work.

4.15 CLEANING UP

4.15.1 The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. At the completion of the work, he shall remove all his waste materials and rubbish from and about the Project as well as all his tools, construction equipment, machinery and surplus materials.

4.15.2 If the Contractor fails to clean up a the completion of the work, the Owner may do so as provide in Paragraph 3.4, and the cost thereof shall be charged to the Contractor.

4.15.3 The Contractor shall be solely responsible for performance of the following clean up:

1. Debris: Regardless of the nature of the debris, <u>it shall be immediately cleared form the work area.</u> Each trade shall cooperate with other trades in the removal of debris and in keeping a clean job throughout.

2. Cleaning of All Glazes: The Contractor shall remove sealant and caulking stains and paint from all glass and shall wash and polish same. Care shall be taken not to scratch glass.

3. Cleaning of All Painted, Decorated, and Stained Work: The Contractor shall remove all marks, stains, finger prints, and other soil or dirt from all painted, decorated, and stained work.

4. Removal of all Temporary Protections: The Contractor shall remove all temporary protections and shall clean all floors at completion.

5. Cleaning and Polishing of all Hardware: The Contractor shall clean and polish all hardware for all trades,. This shall include removal of all stains, dust dirt, paint, etc., upon completion, without scratching or otherwise marring the hardware.

6. Removal of all Spot, Soil, and Paint from all Tile Work: The Contractor shall remove all spots, soil and paint from all tile work and shall wash the same upon completion.

7. Cleaning of all Fixtures and Equipment: The Contractor shall clean all fixtures and equipment, removing all stains, paint, dirt, and dust.

4.16 COMMUNICATIONS

4.16.1 The Contractor shall communicate directly with the Architect for design clarifications. Any fabrication or installation issues that may result in a change order or may result in a delay to the project schedule shall be communicated to both the Owner and the Architect at the same time, and documented in writing within two business days. All oral directions from the Architect to the Contractor shall be documented in writing to the Contractor and the Owner within one business day.

4.17 ROYALTIES AND PATENTS

4.17.1 The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified; but if the Contractor has reason to believe that the design, process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the Architect.

4.18 INDEMNIFICATION

4.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner and the Architect and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (1) 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, and (2) is caused in whole or in part by any negligent act or omission on the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts an of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such negligent shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnify which would otherwise exist as to any party or person described in this Paragraph 4.18.

4.18.2 In any and all claims against the Owner or the Architect or any of their agents or employees by an employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph 4.18 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

4.18.3 The obligation of the Contractor under this Paragraph 4.18 shall not extend to the liability of the Architect, his agents or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs, or specifications, or (2) the giving of or the failure to give directions by the Architect, his agents or employees, provided such giving or failure to give is the primary cause of the injury or damage.

ARTICLE 5

SUBCONTRACTOR

5.1 DEFINITION

5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform any of the work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Subcontractor or his authorized representative. The term "Subcontractor" docs not include any separate Contractor or his Subcontractors.

5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform any of the work at the Site.

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

5.2.1 Unless otherwise required by the Contract Documents of the Bidding Documents, the Contractor, as soon as practicable after the award of the Contract, shall furnish to the Owner and the Architect in writing the names of the persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each of the principal portions of the work. The Architect will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or the Architect to reply promptly shall constitute notice of no reasonable objection.

5.2.2 The Contractor shall not contract with any such proposed person or entity to whom the Owner or the Architect has made reasonable objection under the provisions of Subparagraph 5.2.1. The Contractor shall not be required to contract with anyone to whom he has a reasonable objection.

5.3 SUBCONTRACTUAL RELATION

5.3.1 By an appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the Owner and the Architect. Said agreement shall preserve and protect the rights of the Owner and the Architect under the Contract Documents with respect to the work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the Contractor-Subcontractor agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with his Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Paragraph 5.3, and identify the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Documents available to his Subcontractors.

ARTICLE 6

WORK BY OWNER OR BY SEPARATE CONTRACTORS

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

6.1.1 The Owner reserves the right to perform work related to the Project with his own forces, and to award separate contracts in connection with other portions of the Project or other work on the site under these or similar Conditions of the Contract. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, he shall make such claim as provided elsewhere in the Contract Documents.

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

6.1.3 The Owner will provide for the coordination of the work of his own forces and of each separate Contractor with the work of the Contractor, who shall cooperate therewith as provided in paragraph 6.2.

6.2 MUTUAL RESPONSIBILITY

6.2.1 The Contractor shall afford the Owner and the Separate Contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall connect and coordinate his work with theirs as required by the Contract Documents.

6.2.2 If any part of the Contractor's work depends for proper execution or results upon the work of the Owner or any separate Contractor, the Contractor shall, prior to proceeding with the work, promptly report to the Architect any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acceptance of the Owner's or the separate Contractor's work as fit and proper to receive his work, except as to defects which may subsequently become apparent in such work by others.

6.2.3 Any costs caused by defective or ill-timed work shall be borne by the party responsible thereof.

6.2.4 Should the Contractor wrongfully cause damage to the work or property of the Owner, or to other work on the promptly remedy such damage as provided in Subparagraph 10.2.5.

6.2.5 Should the Contractor wrongfully cause damage to the work or property of any separate Contractor, the Contractor shall upon due notice promptly attempt to settle with such other Contractor by agreement, or otherwise to resolve the dispute. If such separate Contractor sues or initiates an arbitration proceeding against the Owner on account of any damage alleged to have been cause by the Contractor, the Owner shall notify the Contractor, who shall defend such proceedings at the Owner's expense, and if any judgment or award against the Owner arises therefrom, the Contractor shall pay or satisfy it and shall reimburse the Owner for all attorneys' fees and court or arbitration costs which the Owner has incurred.

6.3 OWNER'S RIGHT TO CLEAN UP

6.3.1 If a dispute arises between the Contractor and separate Contractors as to their responsibility for cleaning up as required by Paragraph 4.15, the Owner may clean up and charge the cost thereof to the Contractors responsible therefor as the Architect shall determine to be just.

ARTICLE 7

MISCELLANEOUS PROVISIONS

7.1 GOVERNING LAW

7.1.1 The Contract shall be governed by the law of the State of New Mexico.

7.1.2 The Owner and the Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements, and obligations contained in the Contract Documents. Neither part to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any moneys due or to become due to him thereunder, without the previous written consent of the Owner.

7.2 WRITTEN NOTICE

7.2.1 Written notice shall be deemed to have dully served if delivered in person to the individual or member of the firm or entity or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified mail to the last business address known to him who gives the notice.

7.3 CLAIMS FOR DAMAGES

7.3.1 Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the other party or of any of his employees, agents or others for whose acts he is legally liable, claim shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

7.4 **PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND**

7.4.1 The Contractor to whom the Contract is awarded shall furnish and pay for reputable and approved Performance and Labor and Material Payment Bonds, each for the full amount of the Contract Sum. Bonds shall be executed on standard AIA forms.

7.5 **RIGHTS AND REMEDIES**

7.5.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

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

7.6 **TESTS**

7.6.1 If the Contract Document, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the work to be inspected, tested or approved, the Contractor shall give the Architect timely notice of its readiness so the Architect may observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests or approvals. Tests specifically called for by specifications shall be made by an independent, certified, professional testing laboratory acceptable to the Architect, and the Contractor shall employ same and pay all charges in connection therewith. Records of tests shall be delivered to the Architect in duplicate on acceptable forms.

7.6.2 If the Architect determines that any work requires special inspection, testing, or approval which Subparagraph 7.6.1 does not include, he will, upon written authorization from the Owner, instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as provided in Subparagraph 7.6.1. If such special inspection or testing reveals a failure of the work to comply with the requirements of the Contract Documents, the Contractor shall bear all costs thereof, including compensation for the Architect's additional services made necessary by such failure; otherwise the Owner shall bear such costs, and an appropriate Change Order shall be issued.

7.7 **INTEREST**

7.7.1 The Owner will not pay interest on payments due and unpaid under the Contract Document.

ARTICLE 8

TIME

8.1 **DEFINITIONS**

8.1.1 Unless otherwise provided, the Contract Time is the period of time allotted in the Contract Documents for Substantial Completion of the work as defined in Subparagraph 8.1.3, including authorized adjustments thereto.

8.1.2 The date of commencement of the work is the date established in a Notice to Proceed. If there is no Notice to Proceed, it shall be the date of the Owner-Contractor Agreement or such other date as may be established therein.

8.1.3 The Date of Substantial Completion of the work or designated portion thereof is the Date certified by the Architect and approved by the Owner when construction is deficiently complete, in accordance with the Contract Documents, so the Owner can occupy or utilize the work or designated portion thereof for the use for which it is intended.

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

8.2 PROGRESS AND COMPLETION

8.2.1 All time limits stated in the Contract Documents are the essence of the Contract.

8.2.2 The Contractor shall begin the work on the date of commencement as defined in Subparagraph 8.1.2. He shall carry the work forward expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

8.3 DELAYS AND EXTENSIONS OF TIME

8.3.1 If the Contractor is delayed at any time in the progress of the work by any act or neglect of the Owner or the Architect or by any employees of either, or by any separate Contractor employed by the Owner or by changes ordered in the work, or by labor disputes, fire, unusual delay in unavoidable casualties, or any causes beyond the Contractor's control or by delay authorized by the Owner pending arbitration, or by any other cause which the Architect determines may justify the delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

8.3.2 Any claim for extension of time shall be made in writing to the Architect not more than twenty days after the commencement of the delay; otherwise it shall be waived. In the case of a continuing delay, only one claim is necessary. The Contractor shall provide an estimate of the probable effect of such delay on the progress of the work.

8.3.3 If written agreement is made stating the dates upon which interpretations as provided in Subparagraph 2.28 shall be furnished, then no claim for delay shall be allowed on account of failure to furnish such interpretations until fifteen days after written request is made for them, and not then unless such claim is reasonable.

8.3.4 This Paragraph 8.3 does not exclude the recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9

PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

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

9.2 SCHEDULE OF VALUES

9.2.1 Before the first Application for Payment, the Contractor shall submit to the Owner and Architect a schedule of values allocated to the various portion of the work, prepared in such form and supported by such data to substantiate its accuracy as the Owner or Architect may require. This schedule, unless objected to by the Owner or Architect, shall be used only as a basis for the Contractor's Applications for payment.

9.3 APPLICATIONS FOR PAYMENT

9.3.1 At least ten days before the date for each progress payment established in the Owner-Contractor Agreement, the Contractor shall submit to the Architect an itemized Application for Payment, notarized if required, supported by such data substantiating the Contractor's right to payment as the Owner or the Architect may require, as provided elsewhere in the Contract Documents.

9.3.2 Unless otherwise provided in the Contract Documents, payments will be made on account of materials or the Owner payments may similarly be made for materials or equipment suitably stored at some other location agreed upon in writing. Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials or equipment or otherwise protect the Owner's interest, including applicable insurance and transportation to the site for those materials and equipment stored off the site.

9.3.3 The Contractor warrants that title to all work, materials and equipment covered by an Application for

Payment will pass to the Owner either by incorporation in the construction or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interest or encumbrances hereinafter referred to in this Article 9 as "liens"; and that no work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing work at the site or furnishing materials or equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

9.4 CERTIFICATES FOR PAYMENT

9.4.1 The Architect will within three days after the receipt of the Contract's Application for Payment, approve the Application for Payment to the Owner with a copy to the Contractor for such amount as the Architect determines is properly due, or notify the Contractor in writing of his reasons for withholding his approval as provided in Subparagraph 9.6.1.

9.4.2 The issuance of an approval of the Application for Payment will constitute a representation by the Architect to the Owner, based on his observations at the site as provided in Subparagraph 2.2.3 and the data comprising the Application for Payment, that the work has progressed to the point indicated; that, to the best of his knowledge, information and belief, the quality of the work is in accordance with the Contract Documents (subject to an evaluation of the work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents correctable prior to completion, and that the Contractor is entitled to payment in the amount certified. However, by issuing an approval of the Application for Payment, the Architect shall not thereby be deemed to represent that he has made exhaustive or continuous on-site inspections to check the quality or quantity of the work or that he has reviewed the construction means, methods, techniques, sequences procedures, or that he has made any examination to ascertain how or for what purpose the Contractor has used the moneys previously paid on account of the Contract Sum.

9.5 PROGRESS PAYMENTS

9.5.1 After the Architect has issued an approval of the Application for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents.

9.5.2 The Contractor shall promptly pay each Subcontractor upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's work, the amount to which said Subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of such Subcontractor's work. The Contractor shall, by an appropriate agreement with each Subcontractor, require each Subcontractor to make payment to his Subcontractors in similar manner.

9.5.3 The Architect may, on request and at his discretion, furnish to any Subcontractor, if practicable, information regarding the percentages of completion or the amounts applied for by the Contractor and the action taken thereon by the Architect on account of work done by such Subcontractor.

9.5.4 Neither the Owner nor the Architect shall have any obligation to pay or to see to the payment of any moneys to any Subcontractor except as may otherwise be required by law.

9.5.5 No Certificate for progress payment, no progress payment, nor any partial or entire use of occupancy of the Project by the Owner shall constitute an acceptance of any work not in accordance with the Contract Documents.

9.6 PAYMENT WITHHELD

9.6.1 The Architect may decline to certify payment and may withhold his Certificate in whole or in part, to the extent necessary to reasonably protect the Owner, if in his opinion he is unable to make representations to the Owner as provided in Subparagraph 9.4.2.

9.6.2. If the Architect is unable to make representations to the Owner, as provided in Subparagraph 9.4.2 and to certify payment in the amount of the Application, he will notify the Contractor as provided in Subparagraph 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which he is able to make such representations to the Owner. The Architect may also decline to certify payment, or because of subsequently discovered evidence or subsequent observations, he may nullify the whole or any part of any Certificate for Payment previously issued, to such

extent as may be necessary in his opinion to protect the Owner from loss because of:

A) Defective work not remedied;

B) Third party claims filed or reasonable evidence indicating probable filing of such claims;

C) Failure of the Contractor or make payments properly to Subcontractors or for labor, materials or equipment;

D) Reasonable evidence that the work cannot be completed for the unpaid balance of the Contract Sum.

E) Damage to the work of another Contractor;

F) Reasonable evidence that the work will not be completed within the Contract Time; or,

G) Failure to carry out the work in accordance with the Contract Documents.

9.6.2 When the above grounds in Subparagraph 9.6.1 are removed, payment shall be made for amounts withheld because of them.

9.7 FAILURE OF PAYMENT

9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within three days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents any amount certified by the Architect, then the Contractor may, upon seven additional days' written notice to the Owner and the Architect, stop the work until payment of the amount owing has been received. The Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, which shall be effected by appropriate Change Order in accordance with Paragraph 12.3.

9.8 SUBSTANTIAL COMPLETION

9.8.1 When the Contractor considers that the work, or a designated portion thereof which is acceptable to the Owner, is substantially complete as defined in Subparagraph 8.1.3, the Contractor shall prepare for submission to the Architect a list of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all work in accordance with the Contract Documents. When the Architect, with the Owner, on the basis of an inspection determines that the work or designated portion thereof is substantially complete, he will then prepare a Certificate of Substantial Completion Form, AIA Document G704-1978, which shall establish the Date of Substantial Completion, shall state the responsibilities of the Owner and the Contractor for security, maintenance within which the Contractor shall complete the items listed therein. Warranties required by the Contract Document shall commence on the date of Final Completion of the work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Contractor and the Owner for their written acceptance of the responsibilities assigned to them in such Certificate.

9.8.2 Upon Substantial Completion of the work or designated portion thereof and upon application by the Contractor and certification by the Architect, the Owner shall make payment, reflecting adjustment in retainage, if any, for such work or portion thereof, as provided in the Contract Documents.

9.9 FINAL COMPLETION AND FINAL PAYMENT

9.9.1 Upon receipt of written notice that the work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, if he finds the work acceptable under the Contract Documents and the Contract fully performed, he will promptly issue final Certificate for Payment stating that, to the best of his observations and inspections, the work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in said Final Certificate, is due and payable. The Architect's Final Certificate of payment will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment as set forth in Subparagraph 9.9.2 have been fulfilled.

9.9.2 Neither the final payment nor the remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the work for which the Owner or his property might in any way be responsible have been paid or otherwise satisfied, (2) consent of surety, if any, to final payment, and (3) if required by the Owner, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the Contract, to the extent and in such form as may be designed by the Owner. If any Subcontractor refuses to furnish a release or waiver required by the Owner the Contractor may furnish a bond satisfactory to the Owner to indemnify him against any such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all moneys that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

9.9.3 If, after Substantial Completion of the work, final completion thereof is materially delayed through no fault of the Contractor or by the issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect and without terminating the Contract, make payment of the balance for that portion of the work fully completed and accepted. If the remaining balance for work not fully completed or corrected is less than the retainage stipulated in the Contract Document, and if bonds have been furnished as provided in Paragraph 7.5, 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 the Contractor to the Architect prior to certification of 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.

9.9.4 The making of final payment shall constitute a waiver of all claims by the Owner except those arising from:

A) Unsettled liens;

B) Faulty or defective work appearing after Substantial Completion;

C) Failure of the work to comply with the requirements of the Contract Documents; and

D) Terms of any special warranties required by the Contract Documents.

9.9.5 The acceptance of final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the final Application for Payment.

ARTICLE 10

PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

10.2. SAFETY OF PERSONS AND PROPERTY

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

A) All employees on the work and all other persons who may be affected thereby;

B) All the work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any of his Subcontractors or Sub-subcontractors; and

C) Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities no designated for removal, relocation or replacement in the course of construction.

10.2.2 The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the safety of persons or property or their protection from

damage, injury or loss.

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

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

10.2.5 The Contractor shall promptly remedy all damage or loss (other than damage of loss insured under paragraph 11.3) to any property referred to in Clauses 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, any Subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the Contractor is responsible under clauses 10.2.1.2 and 10.2.1.3, except damage or loss attributable to the acts or omissions of the Owner or the Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and no attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to his obligations under Paragraph 4.18.

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

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

10.3 EMERGENCIES

10.3.1 In any emergency affecting the safety of persons or property, the Contractor shall act, at his reasonable discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall; be determined as provided in Article 12 for Changes in the work.

ARTICLE 11

INSURANCE

11.1 CONTRACTOR'S LIABILITY INSURANCE

11.1.1 The Contractor shall maintain in effect, and shall require all Subcontractors and others performing any portion of this Contract to maintain in effect, insurance of the types and respective minimum limits required. Such insurance shall cover all operations under this Contract. Maintenance of such insurance in at least the specified minimum amounts shall not relieve the Contractor or liability for loss in excess of the limits of liability specified herein or otherwise not covered by the coverage's required herein. The Contractor shall bear the cost of such insurance and include its costs in the Bid. The limits of insurance to be maintained are specified in the Agreement Between Owner and Contractor.

11.1.2 Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the work. These Certificates shall contain a provision that coverage afforded under the policies will not be canceled until at least thirty days; prior written notice has been given to the Owner.

11.2 OWNER'S LIABILITY INSURANCE

11.2.1 The Owner shall be responsible for purchasing and maintaining his own liability insurance and, at his option, may purchase and maintain such insurance as will protect him against all claims which may arise from operations under the Contract.

11.3 PROPERTY INSURANCE

11.3.1 The Contractor shall maintain builder's risk property insurance or self-insurance, or a combination of insurance and self-insurance, upon the work at the site for at least the actual cash value thereof. The builder's risk insurance shall cover the interests of the Owner, the Contractor, Subcontractors, and Sub-subcontractors in the work. The insurance shall insure against at least the following perils: fire extended coverage,

vandalism, and malicious mischief. The Contractor shall bear the cost of such insurance and include its cost in the Bid.

11.3.2 Any loss insured or self-insured under Subparagraph 11.3.1 is to be adjusted with the Owner and made payable to the Owner as trustee for the insured, as their interests may appear subject to the requirements of any applicable mortgage clause. The Owner shall deposit the proceeds in a separate account and shall distribute them in accordance with such agreement as the parties in interest, including the Owner, may reach. The Contractor shall pay each Subcontractor a just share of any insurance proceeds which the Contractor receives and shall require by written agreement signed by the Subcontractor that the Subcontractor will

make payments to his Sub-subcontractors in a similar manner. If after such loss no other special agreement is made, replacement of damaged work shall be covered by an appropriate order.

11.3.3 To the extent permitted under their respective property insurance policies, the Owner and the Contractor hereby waive all rights, each against the other, for damages caused by fire or other perils to the extent covered by Insurance obtained pursuant to this Article 11 or any other property insurance applicable to the work, except such rights as they may have to the proceeds of such Insurance held by the Owner as trustee. The Owner or the Contractor, as appropriate, shall require the Architect, other Contractors, Subcontractors, and Sub-subcontractors to similarly waive rights of subrogation or property insurers.

11.3.4 If the Owner finds it necessary to occupy use of any portion of the work prior to Substantial Completion, such occupancy or use shall not commence prior to the time mutually agreed to by the Owner and the Contractor and, if required by the applicable insurance or self-insurance coverage not prior to the time the builder's risk property insurer has consented to such occupancy or use. The Contractor's consent to such occupancy or use shall not be unreasonably withheld.

11.4 LOSS OF USE INSURANCE

11.4.1 The Owner, at his option, may purchase and maintain such insurance as will insure him against loss of use of his property due to fire or other hazards, however caused.

ARTICLE 12

CHANGES IN THE WORK

12.1 CHANGE ORDERS

12.1.1 A Change Order is a written order to the Contractor signed by the Architect and the Contractor and approved in writing by the Owner. A Change Order may be issued only after the execution of the Contract and shall be the only means used to order changes in the work for which the Contractor requires additional compensation, changes to the Contract Time, or changes to the Contract Sum. Minor changes in the work for which the Contractor requires no additional compensation or time shall be executed in accordance with the provision of Subparagraph 12.4.1.

12.1.2 The Owner, without invalidating the Contract, may order changes in the work within the general scope of the Contractor consisting of additions, deletions or other revisions, the Contract Sum and the Contract Time being adjusted accordingly. All such changes in the work shall be authorized by Change Order and shall be performed under the applicable conditions of the Contract Documents.

12.1.3 The cost or credit to the Owner resulting from a change in the work shall be determined in one or more of the following ways:

A) By mutual acceptance of a lump sum properly itemized an supported by sufficient substantiating data to permit evaluation;

B) By unit prices stated in the Contract Documents or subsequently agreed upon;

C) By cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

D) By the method provided in Subparagraph 12.1.4.

12.1.4 If none of the methods set forth in Clauses 12.1.2., 12.1.3. or 12.1.3. is agreed upon, the Contractor, provided he receives a written order signed by the Owner, shall promptly proceed with the work involved. The cost of such work shall the be determined by the Architect on the basis of the reasonable expenditures and savings of those performing the work attributable to the change, including, in the case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data for inclusion in a Change Order. Unless otherwise provided in the Contract Documents, cost shall be limited to the following: cost of materials, including sales tax and cost of delivery; cost of labor, including social security, old age and unemployment insurance, and fringe benefits, required by agreement or custom, workers' or workmen's compensation insurance; bond premiums; rental value of equipment and machinery; and the additional costs of supervision and field office personnel directly attributable to the change. Pending final determination of cost to the Owner payments on account shall be made on the Architect's Certificate for payment. The amount of credit to be allowed by the Contractor to the Owner for any deletion or change which results in a net decrease in the Contract Sum will be the amount of the actual net cost as confirmed by the Architect. When both additions and credits covering related work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any, with respect to that change.

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

12.1.6 By submission of a Bid, the Contractor agrees and binds himself to the following method of calculating Change Order costs. The Owner also agrees to the following method of calculating the cost of any changes to the Contract. With each proposal for a change in the amount of the Contract, the Contractor shall submit an itemized breakdown of all increases or decreases in the cost of the Contractor's and all Subcontractor's and Sub-subcontractor's work to include at least the following detail in the general order listed:

A) Material quantities and unit costs;

B) Labor amounts and hourly rates (identified with specific items of material to be placed or operation to be performed);

C) Costs inherent in use of Contractor/Sub-subcontractor owned equipment;

D) Equipment rental, if any;

E) Workmen's compensation and public liability insurance;

F) General administration, overhead, supervision, project insurance and profit, based on the following schedule:

Subtotal before Applying the Percentage Shown	$500 & Less	Over $500
Contractor for work performed by his own forces	22%	19%
Contractor for work performed by Subcontractor	10%	8%
Subcontractor for work performed by his own forces	18%	15%
Subcontractor for work performed by Sub-subcontractor	10%	8%
Sub-subcontractor for work performed by his own forces	18%	15%

G) Employment taxes under FICA and FUTA; and

H) State gross receipts tax (Contractor only).

12.1.7 The quotation for work under a Change Order shall be binding for sixty (60) days from the date submitted by the Contractor.

12.2 CONCEALED CONDITIONS

12.2.1 Should concealed conditions encountered in the performance of the work below the surface of the ground or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Contract Documents, or should unknown physical conditions below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in work of the Character provided for in this Contract, be encountered, the Contract Sum shall be equitably adjusted by change Order upon verified claim by either party made within twenty days after the first observance of the conditions.

12.2.2 If the Contractor wishes to make a claim for an increase in the Contract Sum, he shall give the Architect and Owner written notice thereof within twenty days after the occurrence of the event giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute the work, except in an emergency endangering life or property, in which case the Contractor shall proceed in accordance with Paragraph 10.3. No such claim shall be valid unless so made. If such claims are justified and the Owner authorizes an increase in the Contract Sum, the Owner and the Contractor shall proceed to negotiate the amount of the adjustment in the Contract Sum. If the Owner and the Contractor cannot agree on the amount of the adjustment in the Contract Sum, it shall be determined by the Architect. Any change in the Contract Sum resulting from such claim shall be authorized by Change Order.

12.2.3 If the Contractor claims that additional cost is involved because of, but not limited to, (1) any written interpretation pursuant to Subparagraph 2.2.8, (2) any order by the Owner to stop the work pursuant to Paragraph 3.3 where the Contractor was not at fault, (3) any written order for a minor change in the work issued pursuant to Paragraph 12.4, or (4) failure of payment by the Owner pursuant to Paragraph 9.7, the Contractor shall make such claims provided in Subparagraph 12.3.1.

12.3 MINOR CHANGES IN THE WORK

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

ARTICLE 13

UNCOVERING AND CORRECTION OF WORK

13.1 UNCOVERING OF WORK

13.1.1 If any portion of the work should be covered contrary to the request of the Architect or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Architect, be uncovered for his observation and shall be replaced at the Contractor's expense.

13.1.2 If any portion of the work has been covered which the Architect has not specifically requested to observe prior to begin covered, the Architect may request to see such work and it shall be uncovered by the Contractor. If such work be found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such work be found not in accordance with the Contract Documents, the Contractor shall pay such costs unless it be found that this condition was caused by the Owner or a separate Contractor as provided in Article 6, in which even the Owner shall be responsible for the payment of such costs.

13.2 CORRECTION OF WORK

13.2.1 The Contractor shall promptly correct all work rejected by the Architect as defective or as failing to conform to the Contract Documents whether observed before or after Substantial completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected work, including compensation for the Architect's additional services made necessary thereby.

13.2.2 If, within one year after the Date of Substantial Completion of the work or designated portion thereof or within one year after acceptance by the Owner of designated equipment or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the work is found to be defective or not in accordance with the Contract Documents, the

Contractor shall correct it promptly after receipt of a written notice from the Owner to do so unless the Owner has previously given the Contractor a specific written acceptance of such condition. This obligation shall survive termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.

13.2.3 The Contractor shall remove from the site all portions of the work which are defective or non-conforming and which have not been corrected under Subparagraphs 4.5, 13.2.1 and 13.2.2, unless removal is specifically waived in writing by the Owner.

13.2.4 If the Contractor fails to correct defective or non-conforming work as provided in Subparagraph 4.5.1, 13.2.1 and 13.2.2, the Owner may correct it in accordance with Paragraph 3.4.

13.2.5 If the Contractor does not proceed with the correction of such defective or non-conforming work within a reasonable time fixed by written notice from the Architect, the Owner may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten days thereafter, the Owner may upon ten additional days' written notice sell such work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor including compensation for the Architect's additional services made necessary thereby. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

13.2.6 The Contractor shall bear the cost of making good all work of the Owner or separate Contractors destroyed or damaged by such correction or removal.

13.2.7 Nothing contained in this Paragraph 13.2 shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including Paragraph 4.5 hereof. The establishment of the time period of one year after the Date of Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the Contractor to correct the work and has no relationship to the time within which his obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to his obligations other than specifically to correct the work.

13.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK

13.3.1 If the Owner prefers to accept defective or non-conforming work, he may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect a reduction in the Contract Sum where appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 14

TERMINATION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR

14.1.1 If the work is stopped for a period of thirty days under an order of court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Contractor or a Sub-contractor or their agents or employees or any other persons performing any of the work under a contract with the Contractor because the Architect has not issued a Certificate for payment as provided in Paragraph 9.7 or because the Owner has not made payment thereon as provided in paragraph 9.7, then the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner payment for all work executed and for any proven loss sustained upon any materials, equipment, tools, construction equipment and machinery, including reasonable profit and damages.

14.2 TERMINATION BY THE OWNER

14.2.1 If the Contractor is adjudged bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if he persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper

materials, or if he fails to make prompt payment to Subcontractors for material of labor, or persistently disregards laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of the Contract Documents, then the Owner, upon certification by the Architect that sufficient cause exists to justify such action, may without prejudice to any right or remedy and after giving the Contractor and his surety, if any, seven days written notice, terminate the employment of the Contractor and take possession of the site and of all material, tools, construction equipment and machinery thereon owned by the Contractor and may finish the work by whatever method he may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the work is finished.

14.2.2 If the unpaid balance of the Contract Sum exceeds the costs of finishing the work, including compensation for the Architect's additional services made necessary thereby, and any damages sustained by the Owner as a result of the Contractor's breach, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or to the Owner, as the case may be, shall be certified by the Architect upon application, in the manner provided in paragraph 9.4 and this obligation or to the Owner, as the case may be, shall be certified by the Architect upon application, in the manner provided in Paragraph 9.4 and this obligation for payment shall survive the termination of the Contract.

14.2.3 In the event that the Project is abandoned by the Owner, the Owner may terminate this contract at any time by giving at least seven (7) day notice to the Contractor. In the event of termination, all work completed shall become the property of the Owner. The Contractor shall be entitled to receive compensation for actual work satisfactorily completed hereunder, including reimbursable expenses authorized by the Owner which are then due.

14.2.4 In the event the Contractor fails to perform the work in accordance with the Contract Documents, the Owner may terminate the Contract after giving the Contractor five (5) working days notice.

ARTICLE 15

EQUAL OPPORTUNITY

15.1 The Contractor shall maintain policies of employment as follows:

15.1.1 The Contractor, all Subcontractors, and all Sub-subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. The Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous place, available to employees and applicants for employment, notices setting forth the policies of non-discrimination.

15.1.2 The Contract, all Subcontractors, and all Sub-subcontractors shall, in all solicitation or advertisements for employees placed by them or on their behalf, state that all qualified applicant will receive consideration for employment without regard to race, religion, color, sex, or national origin.

ARTICLE 16

MINIMUM WAGE RATES

16.1 The Contractor warrants and agrees that he and all Subcontractors and Sub-subcontractors shall comply with all applicable provisions of the New Mexico Public Works Minimum Wage Act as outlined in the Contract Documents. Wage rates are not applicable to projects costing less than $60,000.00. Both the State of New Mexico Wage Rate Decision and the applicable Federal wage rates are included in this document.

SUPPLEMENTARY CONDITIONS
(00 7300)

(00 7301) CITY OF SANTA FE REQUIREMENTS

Document is intended to be used in conjunction with the General Conditions of the Contract.

ADDITIONAL CONDITIONS

1.0 DEFINITIONS - The following definitions shall apply through the Bidding Documents or Contract Documents unless otherwise specified.

1.1 ADDENDUM: Written or graphic instrument issued prior to the execution of the Contract which modifies or interpret the Bidding Documents, including Drawings and Specifications, by additions, deletions, clarifications, or corrections. Addenda will become part of the Contract Documents when the Construction Contract is executed. Plural: ADDENDA

1.2 ADDITIVE OR DEDUCTIVE ALTERNATE BID: Amount stated in the Bid to be added or deducted from the amount of the Base Bid if the corresponding change in project scope or alternate materials and/or methods of construction is accepted.

1.3 BASE BID: Amount of money stated in the Bid as the sum for which the Bidder offers to perform the work, not including that work for which Alternate Bids are also submitted.

1.4 BID: A complete and properly signed proposal to do the work or designated portion thereof for the sums stipulated therein, supported by data called for by the Bidding Documents.

1.5 BID LOT: A major item of work for which a separate quotation or proposal is requested.

1.6 BIDDER: One who submits a Bid for a Prime contract with the Owner, as distinct from a Subcontractor, who submits a Bid to a Bidder. Technically, a Bidder is not a Contractor on a specific project until a contract exists between him and the Owner.

1.7 BIDDING DOCUMENT: Documents that include the Invitation for Bid, Instructions to Bidders, the Bid Form, other sample bidding and contract forms, and the proposed Contract Documents, including any Addenda issued prior to receipt of Bids. The Contract Documents proposed for the work consist of the Owner-Contractor Agreement, the Conditions of the Construction Contract (General, Supplementary, and Other Conditions), the Drawings, the Specifications, and all Addenda issued prior to and all Modifications issued after execution of the Contract.

1.8 DAY: Calendar day, which is every day shown on the calendar, beginning and ending at midnight.

1.9 CENTRAL PURCHASING OFFICE: The Central Purchasing Office is the City of Santa Fe Purchasing Department.

1.10 GOVERNING AUTHORITY: The Governing Board of the City of Santa Fe for the execution of construction contracts is the Mayor and City Manager.

1.11 INVITATION FOR BID: The Bidding Documents utilized for soliciting sealed Bids. "Invitation to Bid" shall have the same meaning as "Invitation for Bid".

1.12 OWNER: The City of Santa Fe, New Mexico.

1.13 PROCUREMENT OFFICER: The Director of the Purchasing Division, or a designee authorized to enter into or administer contracts and make written determination with respect thereto.

1.14 RESPONSIBLE BIDDER: A Bidder who submits a responsive Bid and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation, and experience are adequate to make satisfactory delivery of the services, construction, or items of tangible personal property described in the Bidding Documents (13-1-82, NMSA 1978).

1.15 SUCCESSFUL BIDDER: The lowest qualified and responsible Bidder to whom the Owner, on the basis of the Owner's evaluation, makes an award.

1.16 UNIT PRICES: Amounts stated in the Contract as prices per unit of measurement for materials or services as described in the Contract Documents.

1.17 USER: The City of Santa Fe or agencies or designated entity for whose use the Project is being constructed.

2.0 CONTRACT AUDIT

The Owner shall be entitled to audit the books and records of a Contractor or any Subcontractor under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the Contractor for a period of three years from the date of final payment under the prime contract and by the Subcontractor for a period of three years from the date of final payment under the subcontract unless a shorter period is otherwise authorized in writing (13-1-161, NMSA 1978).

3.0 DEBARRED OR SUSPENDED CONTRACTORS

A business (Contractor, Subcontractor, or Supplier) that has either been debarred or suspended pursuant to the requirements of Sections 13-1-177 through 13-1-180, and 13-4-11 through 13-4-17, NMSA 1978, shall not be permitted to do business with the State and shall not be considered for award of contract during the period for which it is debarred or suspended.

4.0 BRIBES, GRATUITIES, AND KICK-BACKS

4.1 It is illegal in the State of New Mexico for any public employee to solicit or accept anything of value in connection with award of this Bid and for any person to offer or pay anything of value to any such public employee (30-24-1 through 30-24-2, NMSA 1978).

4.2 Pursuant to Section 13-1-191, NMSA 1978, reference is hereby made to the Criminal Laws of New Mexico (including 30-24-1, 30-23-2, and 30-41-1 through 3-41-3, NMSA 1978), which prohibit bribes, kick-backs, and gratuities and violation of which constitutes a felon. Further, the Procurement Code (13-1-28 through 13-1-199, NMSA 1978), imposes civil and criminal penalties for its violation

5.0 PROTESTS

5.1 Any Contractor who is aggrieved in connection with a procurement may protest to the City Purchasing Agent and the Owner. The protest should be made in writing within twenty-four (24) hours after the facts or occurrences; giving rise thereto, but in no case, less that within fifteen (15) calendar days after the facts or occurrences giving rise thereto (13-1-173, NMSA 1978).

5.2 In the event of a timely protest under Section 5.1 (13-1-172 of the Procurement Code, NMSA 1978), the City Purchasing Agent and the Owner shall not proceed further with the procurement unless the State Purchasing Agent or the Owner makes a determination that the award of contract is necessary to protect substantial interests of the Owner (13-1-173, NMSA 1978).

5.3 The City Purchasing Agent or his designee shall have the authority to take any action reasonably necessary to resolve a protest of an aggrieved Contractor concerning a procurement.

5.4 This authority shall be exercised in accordance with adopted regulations, but shall not include the authority to award money damages or attorneys' fees (13-1-174, NMSA 1978).

5.5 The City Purchasing Agent or his designee shall promptly issue a determination relating to the protest. The determination shall:

A) State the reasons for the action taken; and,

B) Inform the protestant of the right to judicial review of the determination pursuant to Section 13-1-183, NMSA 1978 (13-1-175, NMSA 1978).

5.6 A copy of the determination issued under Section 13-1-175, NMSA 1978, shall be mailed immediately to the protestant (13-1-176, NMSA 1978).

6.0 CONTRACT BOND REQUIREMENTS

6.1 The Successful Bidder, where the Contract Price exceeds twenty five thousand dollars ($25,000), shall post a one hundred percent (100%) Performance Bond and a one hundred percent (100%) Labor and Material Payment Bond. Bonds shall be executed on Performance Bond and Labor and Material Payment Bond forms attached hereto, with amount payable conforming to the terms of the contract. Surety shall be a company licensed to do business in the State of New Mexico and acceptable to the Owner.

6.2 Personal sureties may be accepted if the Owner so determines in advance, but in such case the amount of the Bond shall be the full Contract Price, and the sureties shall justify under oath in amounts above liabilities and exemptions aggregating double the amount of the Bond.

6.3 Special attention of Bidders is called to the requirements of Section 13-4-18 through 13-4-20, NMSA 1978 regarding a Contractor who does not have his principal place of business in the State of New Mexico for all taxes due arising out of construction services rendered under the Contract.

6.3.1 The right to sue on this Bond accrues only to the Owner and the parties to whom Sections 13-4-18 through 13-4-20, NMSA 1978 grant such right; and any such right shall be exercised only in accordance with the provisions and limitations of said statues.

7.0 NON-RESIDENT CONTRACTOR'S REQUIREMENTS REGARDING GROSS RECEIPTS TAX SURETY BOND

7.1 Section 7-1-55A, NMSA 1978 provides that any person (as defined in Section 7-1-3, NMSA 1978) engaged in the construction business who does not have his principal place of business in New Mexico and enters into a prime construction contract to be performed in this State shall, at the time such contract is entered into, furnish the Director of the Revenue Division, Taxation and Revenue Department, or his delegate with a surety bond or other acceptable security in a sum equivalent to the gross receipts to be paid under the contract multiplied by the applicable rate of the gross receipts tax imposed by Section 7-9-4, NMSA 1978 to secure payment of the tax imposed on the gross receipts from the contract, and shall obtain a certificate form the Director of the Revenue Division, Taxation and Revenue Department, or his delegate that the requirements of this paragraph have been met.

7.2 If the total sum to be paid under the contract is changed by ten percent or more after the date the surety bond or other acceptable security is furnished, to the Director or his delegate, such person shall increase or decrease, as the case may be, the amount of the bond or security within fourteen days after the change (7-1-55B, NMSA 1978).

7.3 In addition to the above requirements, the Contractor will be subject to all the requirements of the City Procurement Code.

8.0 CONTRACTOR'S GROSS RECEIPTS TAX REGISTRATION

8.1 Section 7-10-4, NMSA 1978 provides that any person (as defined in Section 7-10-3, NMSA 1978) performing services for the City of Santa Fe, as those terms are used in the Gross Receipts and Compensating Tax Act (Section 7-10-1 to 7-10-5, NMSA 1978), must be registered and be issued an identification number with the Revenue Division of the Taxation and Revenue Department to pay the gross receipts tax.

8.2 The identification number is needed to properly complete the approval process of the contract; therefor, so as to cause no delay in the processing, the Contractor must register with the State of New Mexico, Taxation and Revenue Department. For information contact:

Revenue Division
Taxation and Revenue Department
1100 South St. Francis Drive
Santa Fe, New Mexico 87504
(505)827-0700

8.3 If any person who performs services for the City of Santa Fe is not registered to pay the gross receipts tax, the City shall withhold payment of the amount due until the person has presented evidence of registration with the Revenue Department to pay the gross receipts tax.

9.0 CONTRACT WITH NONRESIDENT PERSON OR PARTNERSHIPS OR UNADMITTED FOREIGN CORPORATIONS; AGENT FOR SERVICE OF PROCESS

9.1 Special attention of Bidders is called to requirements of Sections 13-4-21 through 13-4-24, NMSA 1978, whereby a public works contract with a nonresident person or partnership or foreign corporation not authorized to do business in the State shall contain a specific provision designating an agent resident within the State, and his address, upon whom process and writs in any action or proceeding against such business may be served in any action arising out of such contract.

11.0 STATE ALLOWANCES

11.1 The Contractor shall purchase the "Allowed Materials" as directed by the Owner through the Landscape Architect on the basis of the lowest and the best Bid of at least three competitive Bids. If the actual price for purchasing the "Allowed materials" is more or less than the "Cash Allowance", the Contract Price shall be adjusted accordingly. The adjustment in Contract Price made on the basis of the purchase price without additional charges for overhead, profit, insurance, or any other incidental expenses. The cost of installation of the "Allowed Materials" shall be included in the applicable section of the Specifications covering the work.

12.0 MINIMUM WAGE RATES

12.1 The Minimum Wage Rate Determinations for this Project are shown in this section. This project is subject to New Mexico State Wage Rate Decision No. SF-13-0607-B, if the amount of the base bid is equal to or greater than $60,000.

13.0 FORM OF CHANGE ORDER AND CHANGE ORDER NOTICE TO PROCEED

13.1 The forms issued by the Owner are to be utilized by the Contractor, Landscape Architect, and the Owner pursuant to the requirements of the General Conditions.

14.0 STATE OF NEW MEXICO STATE INDUSTRIES DIVISION

14.1 The Contractor, at his own expense, shall secure the required building permits from the State CID as required for this Project. Contractor shall adhere to the requirements established for inspections.

15.0 CITY OF SANTA FE REQUIREMENTS

15.1 The General Contractor shall include in the Bid the cost of all landfill dumping fees; additionally, the General Contractor shall be responsible that all rubble, excess materials, etc., are disposed of at an approved, legal dumping site.

CITY OF SANTA FE
CAPITAL IMPROVEMENTS PROGRAM

AGREEMENT BETWEEN
OWNER AND CONTRACTOR

CIP PROJECT # *646*
CONSTRUCTION OF ***ON CALL- MISCELLANEOUS HVAC SERVICES***

This Agreement is entered into this _____ day of _____, 2015, by and between the CITY OF SANTA FE, herein known as the Owner, and Welch's Boiler Service, Inc., herein known as the Contractor.

For the following:

PROJECT:	Construction of On-Call Miscellaneous HVAC Services
PROJECT NO.:	CIP #646
ARCHITECT OF RECORD:	City of Santa Fe Capital Improvements Program P.O. Box 909 Santa Fe, NM 87504

DISTRIBUTION:

OWNER	_____
CONTRACTOR	_____
USER AGENCY	_____
OTHER	_____

Revised July 2000

RECITALS

WHEREAS, the Owner, through its Governing Body, is authorized to enter into a construction Contract for the project; and

WHEREAS, the Owner has let this Contract according to the established State and Local Purchasing procedures for contracts of the type and amount let; and

WHEREAS, construction of this Project was approved by the Governing Body of the City of Santa Fe at its meeting of _____.

The OWNER and the CONTRACTOR agree:

ARTICLE 1
THE CONTRACT DOCUMENTS

The Contract Documents consist of: this Agreement, the Conditions of the Contract (General, Supplementary, and other Conditions), the Drawings, the Specifications, all Addenda issued prior to and all Modifications issued after execution of this Agreement. These documents form the Contract, and all are as fully a part of the Contract as if attached to this Agreement or repeated herein.

ARTICLE 2
THE WORK

The Contractor shall perform all the work required by the Contract Documents for CIP Project # ***646*** – Construction of ***On Call for Miscellaneous HVAC Services*** at ***Multiple City of Santa Fe Facilities*** (Bid # 15/07/B).

The work designated as On-Call for Miscellaneous HVAC Services, consists of, but is not limited to: heating, ventilating and air conditioning work; for boilers and water heating equipment; for controls; and work related to these systems, for City of Santa Facilities in Santa Fe, New Mexico. The City of Santa Fe Facilities Division will utilize this On-Call Contract with prior, written approval of the scope of work, from the Facilities Division Director, before commencing any work applicable to this On-Call Contract.

Contractor shall be responsible for verifications of all conditions, measurements and dimensions for bidding.

Contractor shall be responsible for all permits, fees and State inspections associated with the On Call for Miscellaneous HVAC Services.

ARTICLE 3
TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

The Contract Completion Time for this contract is two (2) years. The Contract duration shall terminate two (2) years from the date of award, with the option to extend an additional year, by mutual agreement of all parties and approval of the City of Santa Fe at the same price, terms and conditions. This Agreement shall not exceed four (4) years beyond the original agreement date.

The Task Completion Time will be set by the Project Administrator on a task by task basis. Task completion shall be as specified in the written Notice to Proceed. Task completion, whether Substantial and/or Physical completion as set forth in each written Notice to Proceed, shall be achieved no later than the date specified in the written Notice to Proceed, except as hereafter extended by valid written Change Order by the owner.

ARTICLE 4
CONTRACT SUM

The Owner shall pay the Contractor in current funds for the performance of the work, subject to assigned tasks or work orders, and additions and deductions by Change Order as provided in the contract Documents, the Contract Sum not to exceed Two Hundred Fifty Thousand Dollars ($250,000.00), excluding New Mexico Gross Receipt Taxes.

The Base Bid is summarized as follows:

Base Bid	$250,000.00
Gross Receipts Tax (8.1875%)	$ 20,468.75
TOTAL BASE BID AMOUNT (tax included)	$270,468.75

ARTICLE 5
PROGRESS PAYMENTS

Based upon Application for Payment submitted to the Owner by the Contractor and Certificates for Payment issued by the Owner, the Owner shall make progress payments on account of the Contract sum to the Contractor as provided in the Contract documents for the period ending the last day of the month as follows:

Not later than twenty-one (21) days following the end of the period covered by the Application for Payment, one hundred percent (100%) of the portion of the Contract Sum properly allocable to labor, materials, and equipment incorporated in the work and one hundred percent (100%) of the portion of the Contract sum properly allocable to materials and equipment suitably stored at the site or some other location agreed upon in writing for the period covered by the Application for Payment, less the aggregate of previous payments made by the Owner; and upon physical completion of the entire work, a sum sufficient to increase the total payments to one hundred percent (100%) of the Contract sum, less such amounts as the Owner shall determine for all incomplete work and unsettled claims as provided in the Contract documents.

ARTICLE 6
LIQUIDATED DAMAGES

Should the Contractor neglect, refuse, or otherwise fail to achieve Substantial and/or Physical completion by the contract date set forth in each written Notice to Proceed pursuant to Article 3 herein or any extension in the Contract thereof,, the Contractor agrees to pay to the Owner the amount of Four Hundred Dollars ($ 400) per consecutive work day of delay until the work is completed and accepted or until voided pursuant to the provisions of the General Conditions of the Contract, not as a penalty, but as liquidated damages for such breach of the Contract.

ARTICLE 7
FINAL PAYMENT

Final payment, constituting the entire unpaid balance of the Contract sum, shall be paid by the Owner to the Contractor within twenty-one (21) calendar days after all deficiencies to the Contract document that were noted during the Substantial Completion Inspection and listed on the attachment to the Certificate of Substantial Completion have been corrected, and provided the Contract has been fully performed and a final Certificate for Payment has been issued by the Owner. In addition, the Contractor shall provide to the Owner a certified statement of Release of Lien (AIA Document G706A or approved form), Consent of Surety, Warranty from Prime Contractor, Warranties from Suppliers and Manufacturers, training sessions, equipment/operating manuals, and as-built drawings.

ARTICLE 8
SCHEDULE

The Contractor shall, within five (5) days after the effective date of Notice to Proceed, prepare and submit two (2) copies of a progress schedule covering project operations for the task period. This progress schedule shall be of the type generally referred to as a Critical Path Method (CPM), Critical Path Schedule (CPS), and Critical Path Analysis (CPA), and other similar designations. The CPM shall be used to control the timing and sequences of the project. All work shall be done in accordance with the CPM Planning and Scheduling. A written statement of explanation shall be submitted with the progress schedule. All costs incurred by the contractor to implement the CPM shall be borne by the Contractor, and are part of their Contract

ARTICLE 9
GENERAL AND SPECIAL PROVISIONS

9.1 This Agreement shall be governed exclusively by the provisions hereof and by the laws of the State of New Mexico as the same from time to time exist.

9.2 Terms used in this Agreement which are defined in the Conditions of the Contract shall have the meanings designated in those Conditions.

9.3 The Contractor shall defend, indemnify, and hold harmless the Owner against any and all injury, loss, or damage, including, without limitation, costs of defense, court costs and attorney's fees, arising out of the acts, errors, or omissions of the Contractor.

9.4 An enumeration of the Contractor's Liability Insurance requirements appears in the General Conditions of the Contract for construction. Insurance requirements are also described in the Instructions to the Bidder section of the Project Manual. Contractor shall maintain adequate insurance in at least the maximum amounts which the Owner could be liable under the New Mexico Tort Claims Act and shall provide proof of such insurance coverage to the City. It is the sole responsibility of the Contractor to be in compliance with the law.

9.5 This Agreement shall not become effective until: (1) approved by the Governing Body; and (2) signed by all parties required to sign this Agreement.

9.6 The Contractor and the Contractor's agents and employees are independent contractors performing professional and technical services for the Owner and are not employees of the Owner. The Contractor and the Contractor's agents and employees shall not accrue leave, retirement, insurance, bonding, use of Owner's vehicles, or any other benefits afforded to employees of the Owner as a result of this Agreement.

9.7 The Contractor shall not subcontract any portion of the services to be performed under this Agreement without prior written approval of the Owner.

9.8 The Contractor shall maintain detailed time records which indicate the date, time and nature of services rendered. These records shall be subject to inspection by the Owner, the Department of Finance and Administration and the State Auditor. The Owner shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Owner to recover excessive illegal payments.

9.9 The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Owner for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Owner, this Agreement shall terminate upon written notice being given by the Owner to the Contractor. The Owner's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

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

9.11 The Contractor hereby warrants that the Contractor is in compliance with the Americans with Disabilities Act, 29 CFR 1630.

9.12 The Contractor, upon final payment of the amounts due under this Agreement, releases the Owner, the Owner's officers and employees, and the City of Santa Fe from all liabilities and obligations arising from or under this Agreement, including, without limitation, all damages, losses, costs, liability, and expenses, including, without limitation, attorney's fees and costs of litigation that the Contractor may have.

9.13 The Contractor agrees not to purport to bind the Owner to any obligation not assumed herein by the Owner, unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

9.14 Notices. Any and all notices provided for hereunder shall be in writing and shall be deemed delivered, given and received when (i) personally delivered, or (ii) 5 days after the same are deposited in the United States mail, postage prepaid, registered or certified mail return receipt requested, addressed to the applicable party at the address indicated below for such party or at such other address as may be designated by either party in a written note to the other party.

OWNER	City of Santa Fe Capital Improvements Program P.O. Box 909 Santa Fe, New Mexico 87504-0909
CONTRACTOR	WELCH'S BOILER SERVICE INC. 6060 ISLETA BLVD SW ALBUQUERQUE, NM 87105 New Mexico License # 88333

9.15 Gender, Singular/Plural. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

9.16 Captions and Section Headings. The captions and section headings contained in this Agreement are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope and conditions of this Agreement.

9.17 This document shall be executed in no less than five (5) counterparts, each of which shall be deemed an original.

9.18 Certificates and Documents Incorporated. All certificates and documentation required by the provisions of the Agreement shall be attached to this Agreement at the time of execution, and are hereby incorporated by reference as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

9.19 Separability. If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby.

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

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

9.22 Interchangeable Terms. For purposes of all provisions within this Agreement and all attachments hereto, the terms "Agreement" and "Contract" shall have the same meaning and shall be interchangeable.

9.23 Words and Phrases. Words, phrases, and abbreviations which have well-known technical or trade meanings used in the Contract documents shall be used according to such recognized meaning. In the event of a conflict, the more stringent meaning shall govern.

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

9.25 Pursuant to Section 13-1-191, NMSA 1978, reference is hereby made to the Criminal Laws of New Mexico (including Sections 30-14-1, 30-24-2, and 30-41-1 through 30-41-3, NMSA 1978) which prohibit bribes, kickbacks, and gratuities, violation of which constitutes a felony. Further, the Procurement Code (Sections 13-1-28 through 13-1-199, NMSA 1978) imposes civil and criminal penalties for its violation.

9.26 By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the Owner and the Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

9.27 Pursuant to Section 13-4-11. NMSA 1978, Reference is hereby made to the Minimum Wage on Public Works; weekly payments; posting wage scale; withholding funds.

ARTICLE 10
NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

This Agreement is entered into as of the day and year first written above.

OWNER:
CITY OF SANTA FE

_____
JAVIER M. GONZALES, MAYOR

DATE:_____

CONTRACTOR:
WELCH'S BOILER SERVICE, INC.

BY: _____
TITLE: _____

DATE: _____

NM TAXATION AND REVENUE CRS# 02-024188-00-7
CITY OF SANTA FE BUSINESS REG #15-00110160

ATTEST:

_____
YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:

2/27/15
KELLEY A. BRENNAN, CITY ATTORNEY

APPROVED:

_____
OSCAR RODRIGUEZ, FINANCE DIRECTOR

Business Unit Line Item VARIES PER TASK ORDER

Address:_____

Each joint venture must sign. The manner of signing for each individual, partnership, and corporation that is a party to the joint venture should be in the manner indicated in the appropriate category.

Bidder must fill in the following: (If none, write none)

NM License No.: 88333 Classification: MM98

NM Taxation and Revenue CRS No.: 02-024188-00-7

City of Santa Fe Business Registration No.: 15-00110160

NM Resident Preference Number (if applicable): N/A

One Original and one copy of the Bid Submittal is required

City of Santa Fe, New Mexico

BUSINESS LICENSE

THIS BUSINESS IS IN COMPLIANCE WITH THE CITY OF SANTA FE LIVING WAGE ORDINACE, §28-1 SFCC 1987

City Of Santa Fe
PO BOX 909
Santa Fe NM, 87504

Official Document
Please Post

Business Name: **WELCH'S BOILER SERVICE INC**

Location: **SF COUNTY**

Class: **OUT OF CITY CONTRACTOR - SPECIALTY**

Comment:

Control Number: 0057164

License Number: 15-00110160

Issue Date December 19, 2014

Expiration Date December 31, 2015

WELCH'S BOILER SERVICE INC
6060 ISLETA BLVD SW

ALBUQUERQUE NM 87105

THIS IS NOT A CONSTRUCTION PERMIT OR SIGN PERMIT. APPROPRIATE PERMITS MUST BE OBTAINED FROM THE CITY OF SANTA FE BUILDING PERMIT DIVISION PRIOR TO COMMENCEMENT OF ANY CONSTRUCTION OR THE INSTALLATION OF ANY EXTERIOR SIGN.

THIS REGISTRATION/LICENSE IS NOT TRANSFERABLE TO OTHER BUSINESSES OR PREMISES.

City of Santa Fe
Summary of Contracts, Agreements, & Amendments

Section to be completed by department for each contract or contract amendment

1 **FOR:**

ORIGINAL CONTRACT	☑	CONTRACT AGREEMENT	☐
MAINTENANCE AGREEMENT	☐	LICENSE AGREEMENT	☐
LEGAL SERVICES AGREEMENT	☐	MEMORANDUM OF UNDERSTANDING	☐
MEMORANDUM OF AGREEMENT	☐	JOINT POWERS AGREEMENTS	☐
GRANT AGREEMENTS	☐	CHANGE ORDERS	☐

2 Name of Contractor Welch's Boiler Services

3 Complete information requested

☐ Plus GRT

☑ Inclusive of GRT

Original Contract Amount: Not to exceed $250,000.

Termination Date: Two years after original agreement signed

☑ Approved by Council Date: To Be Determined

☐ or by City Manager Date: _____

Contract is for: On Call for Miscellaneous HVAC Services on Multiple City of Santa Fe Facilities

Amendment # _____ to the Original Contract# _____

Increase Amount $ _____

Extend Termination Date to: _____

☐ Approved by Council Date: _____

☐ or by City Manager Date: _____

Amendment is for:

4 **History of Contract & Amendments:** (option: attach spreadsheet if multiple amendments)

☐ Plus GRT

☑ Inclusive of GRT

Amount $ not to exceed $250k of original Contract# _____ Termination Date: TBD

Reason: On Call for Miscellaneous HVAC Services on Multiple City of Santa Fe Facilities

Amount $ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount $ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount $ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount $ _____ amendment # _____ Termination Date: _____

Reason: _____

Total of Original Contract plus all amendments: $ not to exceed $250k

5 **Procurement Method of Original Contract:** (complete one of the lines)

RFP ☐ RFQ ☐ Sole Source ☐ Other ☑ RFB # 15/07/B

City of Santa Fe
Summary of Contracts, Agreements, & Amendments

6 **Procurement History:** First year of open agreement
example: (First year of 4 year contract)

7 **Funding Source:** TBD on project basis **BU/Line Item:** TBD on project basis

8 **Any out-of-the ordinary or unusual issues or concerns:**
No
(Memo may be attached to explain detail.)

9 **Staff Contact who completed this form:** LeAnn Valdez LV Phone # 955-5938

Division Contract Administrator: David Pfeifer

Division Director: David Pfeifer

Department Director: Isaac J. Pino

10 **Certificate of Insurance attached.** (if original Contract) ☐

11 **Description of your efforts to reduce the cost of the contract including information on efforts to obtain other quotes for the contracted activity:** Worked on getting a On-Call contractor with Multiple vendors

12 **Prior year's contract amount?:** none

13 **Describe service impact from an ongoing commitment to the contractor:** required licenses

14 **Why staff cannot perform the work?:** required licenses

15 **If extending contract, why?:** N/A

16 **Was a Santa Fe company awarded contract? If not, why?:** NO. No Local Bids Received

17 **Has the contract has been approved as to form by City Attorney's Office?:** Yes

18 **Is this for City Manager or Council approval?:** City Council

GENERAL CONDITIONS OF THE CONTRACT
(00 7200)

In the case of conflicting requirements between the AIA General Conditions and these General Conditions, the most stringent requirement will apply.

(00 7213) GENERAL CONDITIONS

NOTICE

This document has been prepared by the Capital Improvements Program (CIP) and Contract Compliance staff of the City of Santa Fe for use in construction projects.

DOCUMENT - DIVISION 00 7213

GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

(THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION.)

TABLE OF ARTICLES

1. CONTRACT DOCUMENTS
2. ARCHITECT - FACILITIES DIVISION
3. OWNER
4. CONTRACTOR
5. SUBCONTRACTORS
6. WORK BY OWNER OR BY SEPARATE CONTRACTORS
7. MISCELLANEOUS PROVISIONS
8. TIME
9. PAYMENTS AND COMPLETION
10. PROTECTION OF PERSONS AND PROPERTY
11. INSURANCE
12. CHANGES IN THE WORK
13. UNCOVERING AND CORRECTION OF WORK
14. TERMINIATION OF THE CONTRACT
15. EQUAL OPPORTUNITY
16. MINIMUM WAGE RATES

ARTICLE 1

CONTRACT DOCUMENTS

1.1 DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Owner-Contractor Agreement, the Conditions of the Contract (General, Supplementary, and Other Conditions), the Drawings, the Specifications, and all Addenda issued prior to and all Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a written interpretation issued by the Architect pursuant to Subparagraph 2.2.6, or (4) a written order for a minor change in the work issued by the Architect pursuant to Paragraph 12.4. The Contract Document do not include Bidding Documents such as the Advertisement or Invitation to Bid, the Instructions to Bidders, sample forms, the Contractor's Bid, or portions of Addenda relating to any of these, or any other documents, unless specifically enumerated in the Owner-Contractor Agreement.

1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. This Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification as defined in Subparagraph 1.1.1. The Contract Documents shall not be construed to create any contractual relationship of any kind between the Architect and the Contractor, but the Architect shall be entitled to performance of obligations intended for his benefit, and to enforcement thereof. Nothing contained in the Contract Documents shall create any contractual relationship between the Owner or the Architect and any Subcontractor or Sub-subcontractor.

1.1.3 THE WORK

The work comprises the design and completed construction required by the Contract Documents, and includes design specifications, and all labor necessary to produce such construction, and all materials and equipment incorporated or to be incorporated in such construction.

1.1.4 THE PROJECT

The Project is the total design and construction of which the work performed under the Contract Documents may be the whole or a part.

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 No fewer than two (2) copies of the Contract Documents shall be signed by the Owner and the Contractor. If either the Owner or the Contractor or both do not sign the Conditions of the Contract, Drawings, Specifications, or any of the other Contract Documents, the Architect shall identify such Documents.

1.2.2 By executing the Contract, the Contractor represents that he has visited the site, familiarized himself with the local conditions under which the work is to be performed, and correlated his observations with the requirements of the Contract Documents.

1.2.3 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all work not covered in the Contract Documents will not be required unless it is consistent therewith and is reasonably inferable therefrom as being necessary to produce the intended results. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings. In the event of a conflict between the Contract Documents, the more stringent requirements shall govern.

1.2.4 The organization of the Specifications into divisions, sections and articles, and the arrangement of Drawings shall not control the Contractor in dividing the work among Subcontractors or in establishing the extent of work to be performed by any trade.

1.3 OWNERSHIP AND USE OF DOCUMENTS

1.3.1 All designs, drawings, specifications, notes, and other work developed in the performance of this Contract shall be and remain the sole property of the Owner and may be used on any other work without additional compensation to the Architect. With respect thereto, the Architect agrees not to asset any rights and not to establish any claims under the design patent of copyright laws.

ARTICLE 2

ARCHITECT

2.1 DEFINITION

2.1.1 The Architect is the person lawfully license to practice Architecture, or an entity lawfully practicing Architecture identified as such in the Owner-Contractor Agreement, and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term "Architect" means the Architect or his authorized representative.

2.2 ADMINISTRATION OF THE CONTRACT – FACILITIES DIVISION

2.2.1 The Architect will provide administration of the Contract as hereinafter described.

2.2.2 The Architect will be the Owner's Agent during construction and until final payment is due. The Architect will advise and consult with the Owner. The Owner's instructions to the Contractor shall be forwarded through the Architect. The Architect shall have the authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with Subparagraph 2.2.17.

2.2.3 The Architect shall submit to the Owner, for approval, a list of critical inspection points based upon the construction schedule furnished by the Contract (Paragraph 4.11.1). The Architect and his staff (including the on-site representative, if agreed upon) shall make at least three (3) weekly visits to the site at those critical points and at other times as the Architect deems appropriate during the progress of the work. Additionally, the Architect shall familiarize himself with the progress and quality of the work and determine if the work is proceeding in accordance with the Contract Documents. On the basis of on-site observations, as the Architect, he shall guard the Owner against defects and deficiencies in the construction. Should the Architect determine that any portion of the work varies from the intent of the Contract Documents he shall immediately notify the Contractor and the Owner of the non-compliance and the nature of the work required to correct such non-compliance. The Architect shall recommend to the Owner, in writing, to issue a "stop work order" for any portion of the work that does not substantially comply with the intent of the Contract Documents, except as follows.

2.2.4 The Architect shall not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the work. Additionally, the Architect shall not be responsible for the Contractor's failure to carry out the work in accordance with the Contract Documents. The Architect shall reject work, which does not meet or exceed the standards established by the Contract Documents. Whenever, in his reasonable opinion, he considers it necessary or advisable to ensure the proper implementation of the intent of the Contract Documents, he will have authority to require special inspection or testing of any work in accordance with the provisions of the Contract Documents whether or not such work is then fabricated, installed or completed.

2.2.5 The Architect shall at all times have access to the work wherever it is in preparation and progress. The Contractor shall provide facilities for such access so the Architect may perform his functions under the Contract Documents.

2.2.6 Based on the Architect's observations and an evaluation of the Contractor's Application for Payment, the Architect will determine the amounts owing to the Contractor and will issue Certificates for Payment in such amounts, as provided in Paragraph 9.4.

2.2.7 The Architect will be the interpreter of the requirements of the Contract Documents and the judge of the performance thereunder by both the Owner and the Contractor.

2.2.8 The Architect will render interpretations necessary for the proper execution or progress of the work, with

reasonable promptness and in accordance with any time limit agreed upon. Either party to the Contract may make written request to the Architect for such interpretations.

2.2.9 Claims, disputes, and other matters in question between the Contractor and the Owner relating to the execution or progress of the work or the interpretation of the Contract Documents shall be referred to the Architect for decision which he will render in writing within a reasonable time.

2.2.10 All interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. In his capacity as interpreter and judge, he will endeavor to secure faithful performance by both the Owner and the Contractor, will not show partiality to either, and will not be liable for the result of any interpretation or decision rendered in good faith in such capacity.

2.2.11 The Architect's decisions in matters relating to artistic effect will be final if consistent with the intent of the Contract Documents.

2.2.12 The Architect will have authority to reject work which does not conform to the Contract Documents. Whenever, in his opinion, he considers it necessary or advisable for the implementation of the intent of the Contract Documents, he will have authority to require special inspection or testing of the work in accordance with Subparagraph 7.7.2 whether or not such work is then fabricated, installed or completed. However, neither the Architect's authority to act under this Subparagraph 2.2.12, nor any decision made by him in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Architect to the Contractor, any Subcontractor, any of their agents or employees, or any other person performing any of the work.

2.2.13 The Architect will review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and samples, but only for conformance with the design concept of the work and with the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay. The Architect's approval of a specific item shall not indicate approval of an assembly of which the time is a component.

2.2.14 The Architect will prepare Change Orders in accordance will Article 12 and will have authority to order minor changes in the work as provided in Subparagraph 12.4.1.

2.2.15 The Architect will conduct inspections to determine the dates of Substantial Completion and Final Completion, will receive and forward to the Owner for the Owner's review of written warranties and related documents required by the Contract and assembled by the Contractor and will issue a final Certificate of payment upon compliance with the requirements of Paragraph 9.9

2.2.16 If the Owner and Architect agree, the Architect will provide one or more Project Representatives to assist the Architect in carrying out his responsibilities at the site. The duties, responsibilities and limitations of authority of any such Project Representative shall be as set forth in an exhibit to be incorporated in the Contract Documents.

2.2.17 The duties, responsibilities and limitations of authority of the Architect as the Owner's representative during construction as set for in the Contract Documents will not be modified or extended without written consent of the Owner, the Contractor and the Architect.

2.2.18 In case of the termination of the employment of the Architect, the Owner shall appoint an Architect whose status under the Contract Documents shall be that of the former Architect.

ARTICLE 3

OWNER

3.1 DEFINITION

3.1.1 The Owner is the person or entity identified as such in the Owner-Contractor Agreement and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term "Owner" means the Owner or his authorized representative.

3.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

3.2.1 The Owner shall, at the request of the Contractor, at the time of execution of the Owner-Contractor Agreement, furnish to the Contractor reasonable evidence that he had made financial arrangements to fulfill his obligations under the Contract. Unless such reasonable evidence is furnished, the Contractor is not required to execute the Owner-Contractor Agreement or to commence the work.

3.2.2 (Not used)

3.2.3 Except as provided in Subparagraph 4.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments, and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

3.2.4 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the work.

3.2.5 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, all copies of Drawings and Specifications reasonable necessary for the execution of the work.

3.2.6 The Owner shall forward all instructions to the Contractor through the Architect.

3.2.7 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to work by Owner or by Separate Contractors, Payments and Completion, and Insurance in Articles 6, 9 and 11 respectively.

3.3 OWNER'S RIGHT TO STOP THE WORK

3.3.1 If the Contractor fails to correct defective work as required by Paragraph 13.2 or persistently fails to carry out the work in accordance with the Contract Documents, the Owner, by a written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Contractor to stop the work, or any portion thereof, until the cause of such order has been eliminated; however, this right of the Owner to stop the work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Subparagraph 6.1.3.

3.4 OWNER'S RIGHT TO CARRY OUT THE WORK

3.4.1 If the Contractor defaults or neglects to carry out the work in accordance with the Contract Documents and fails within seven days after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, after seven days following receipt by the Contractor of an additional written notice and without prejudice to any other remedy he may have, make good such deficiencies. In such case, an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and the amount charged to the Contractor are both subject to the prior approval of the Architect. If the payments then or thereafter due to the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

ARTICLE 4

CONTRACTOR

4.1 DEFINITION

4.1.1 The Contractor is the person or entity identified as such in the Owner-Contractor Agreement and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term "Contractor" means the Contractor or his authorized representative.

1.2 REVIEW OF CONTRACT DOCUMENTS

4.1.2 The Contractor shall carefully study and compare the Contract Documents and shall at once report to the Architect and the Owner any error, inconsistency or omission he may discover. The Contractor shall not be liable to the Owner or the Architect for any damage resulting from any such errors, inconsistencies or

omissions in the Contract Documents. The Contractor shall perform no portion of the work at any time without Contract Documents or, where required, approved Shop Drawings, Product Data or Samples for such portion of the work.

4.3 SUPERVISION AND CONSTRUCTION PROCEDURES

4.3.1 The Contractor shall supervise and direct the work, using his best skill and attention. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the work under the contract.

4.3.2 The Contractor shall be responsible to the Owner for the acts and omissions of his employees, Subcontractors and their agents and employees, and other persons performing any of the work under a contract with the Contractor.

4.3.3 The Contractor shall not be relieved from his obligations to perform the work in accordance with the Contract Documents either by the activities or duties of the Architect in his administration of the Contract, or by inspections, tests or approvals required or performed under Paragraph 7.8 by persons other than the Contractor.

4.4 LABOR AND MATERIALS

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

4.4.2 The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on the work any unfit person or anyone not skilled in the task assigned to him.

4.5 WARRANTY

4.5.1 The Contractor warrants to the Owner and Architect that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all work will be of good quality, free from faults and conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions in Paragraph 13.2.

4.5.2 The Contractor shall and hereby does warrant and guarantee all workmanship, labor, and materials performed and supplied by him or his Subcontractors for a period of one (1) year from the date of completion as evidenced by the date of the Owner's Certificate of Final Completion of this Contract. This also includes <u>all labor</u> required for replacing materials or equipment found to be defective with the one (1) year period. All guarantees for a longer period of time required by the work sections of these Specifications shall be secured by the Contractor from Subcontractors and delivered to the Architect and are hereby warranted by the Contractor as much as if countersigned by him.

4.6 TAXES

4.6.1 The Contractor shall pay all sales, consumer gross receipts tax, use and other similar taxes for the work or portions thereof provided by the Contractor which are legally enacted at the time Bids are received, whether or not yet effective.

4.7 PERMITS, FEES AND NOTICES

4.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the construction permit and for all other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the work which are customarily secured after execution of the Contract and which are legally required at the time the Bids are received.

4.7.2 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the work.

4.7.3 It is not the responsibility of the Contractor to make certain that the Contract Documents are in accordance with applicable laws, statutes, building codes and regulations. If the Contractor observes that any of the Contract Documents are at variance therewith in any respect, he shall promptly notify the Architect in writing, and any necessary changes shall be accomplished by appropriate Modification.

4.7.4 If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Architect, he shall assume full responsibility therefore and shall in turn notify the Owner's Representative of such action.

4.8 ALLOWANCES

4.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by these allowances shall be supplied for such amounts and by these allowances shall be supplied for such amounts and by such persons as the Owner may direct, but the Contractor will not be required to employ persons against whom he makes a reasonable objection.

4.8.2 Unless otherwise provided in the Contract Documents:

A. These allowances shall cover the cost to the Contractor, less any applicable trade, discount of the materials and equipment required by the allowance delivered at the site, and all applicable taxes.

B. The Contractor's costs for unloading and handling on the site, labor, installations costs, overhead, profit and other expenses contemplated for the original allowance shall be included in the Contract Sum and not in this allowance;

C. Whenever the cost is more than or less than the allowance, the Contract Sum shall be adjusted accordingly by Change Order, the amount of which will recognize changes, if any, in handling costs on the site, labor, installation costs, overhead, profit and other expenses.

4.9 SUPERINTENDENT

4.9.1 The Contractor shall employ a competent Superintendent and necessary assistants who shall be in attendance at the project site during the progress of the work. The Superintendent shall represent the Contractor, and all communications given to the Superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be so confirmed on written request in each case.

4.10 PROGRESS SCHEDULES

4.10.1 The Contractor shall, within ten (10) days after the effective date of Notice to Proceed, furnish five copies of a preliminary progress schedule covering his operations for the first thirty (30) days. The preliminary progress schedule shall be a bar graph or an arrow diagram showing the items the Contractor intends to commence and complete the various work stages, operations, and contract means planned to be started during the first thirty (30) days.

4.10.2 Unless otherwise specified in the Special Provisions, the Contractor shall submit for approval by the Architect, within thirty 30) days after the effective date of Notice to Proceed, five copies of a critical-path-type analysis. The critical-path-type analysis shall include as a minimum; a graphic network diagram; a computer printout or list of activities; and a brief written explanation of the proposed schedule.

4.10.3 The graphic network diagram shall consist of an arrow diagram or a geometric figure and connector diagram which clearly depicts the major subdivisions of the work, the order and interdependencies of activities planned by the Contractor, as well as, activities by others which affect the Contractor's planning. The intended time for starting and completing each activity, the associated float time and the quantity and kinds of major equipment to be used shall be shown for each construction operation. For those activities lasting more than 30 days, either the estimated time for 25-50 and 75 percent completion or other significant milestones in the course of the activity, shall be shown. In addition to the actual construction operations, the network diagram shall show such items as submittal of samples and Shop Drawings, delivery of materials and equipment, construction in the area by other forces, traffic detour controls, and other significant items related to the progress of construction. The graphic network diagram shall be printed or neatly and legibly drawn to a linear scale.

4.10.4 Activities shown shall be coordinated insofar as possible with the Contract Bid items, types of work and maximum number of activities of each type.

4.10.5 The computer printout or list of activities shall show for each activity the estimated duration, the earliest starting and finishing dates, the latest starting and finishing dates, and float or slack time. Activities which constitute the critical sequence shall be identified, showing a total job duration equal to the Contract Time.

4.10.6 The written explanation shall contain sufficient information to describe the construction methods to be used and to enable the Architect to evaluate the schedule and supporting analysis for validity and practicability. If the schedule or written explanation is not accepted by the Architect, the Contractor shall resubmit the rejected items within ten (10) days after rejection.

4.10.7 The analysis may employ the use of an electric computer or may consist of a non-computer analysis if the latter is suitable to analyze the number of activities required. The adequacy of the system selected shall be acceptable to the Architect.

4.10.8 The Contractor shall submit to the Architect monthly progress status reports on dates directed by the Architect. Such reports shall list those uncompleted activities which have less than 30 days float and which are either in progress or scheduled to be started within the next reporting period. For each of the listed activities, the following shall be shown:

A. Starting date scheduled in last critical-path-analysis.
B. Actual or intended starting date.
C. Revised activity duration, if any.

If the noted starting dates or duration delay the scheduled project completion date, the delay shall be named. Reasons for the delay shall be given with an explanation of the Contractor's proposed corrective action. The Contract shall also note each activity completed during the report period.

4.10.9 A revised critical-path-type analysis shall be submitted when one or more of the following conditions occur:

A. When an approved change Order significantly affects the contract completion date, or the sequence of activities.
B. When progress of any critical activity falls significantly behind the scheduled progress.
C. When delay on a non-critical activity is of such magnitude as to change the course of the critical path.
D. At any time the Contractor elects to change any sequence of activities affecting the critical path.

The revised analysis shall be made in the same form and detail as the original submittal and shall be accompanied by an explanation of the reasons for the revisions.

4.10.10 The Contractor shall prosecute the work in accordance with the latest critical path type analysis. Deviations therefrom shall be submitted to the Architect for review. In the event that the progress of items along the critical path is delayed, the Contractor shall revise his planning to include additional forces, equipment, shifts or hours necessary to meet the contract completion date. All additional cost resulting therefrom will not be borne by the Owner.

4.11 DOCUMENTS AND SAMPLES AT THE SITE

4.11.1 The Contractor shall maintain at the site, for the Owner, one record copy of all Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record all changes made during construction, and approved Shop Drawings, Product Data and Samples. These shall be available to the Architect and shall be delivered to him for the Owner upon completion of the work.

4.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

4.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the work by the Contractor or any Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the work.

4.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate a material, product or system for some portion of the work.

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

4.12.4 The Contractor shall review, approve and submit, with reasonable promptness and in such sequence as to cause no delay in the work or in the work of the Owner of any separate Contractor, all Shop Drawings, Product Data and Sample required by the Contract Documents.

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

4.12.6 The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data or Samples under Subparagraph 2.2.13 unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submission and the Architect has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples by the Architect's approval thereof.

4.12.7 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data or Samples, to revisions other than those requested by the Architect on previous submittals.

4.12.8 No portion of the work requiring submission of a Shop Drawing, Product Data or Sample shall be commenced until the submittal has been approved by the Architect as provided in Subparagraph 2.2.13. All such portions of the work shall be in accordance with approved submittals.

4.13 USE OF SITE

4.13.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not reasonably encumber the site with any materials or equipment.

4.13.2 The Contractor shall hold and save the Owner free and harmless from liability of any nature or kind arising from use, trespass or damage occasioned by third persons.

4.14 CUTTING AND PATCHING OF WORK

4.14.1 The Contractor shall be responsible for all cutting, fitting or patching that may be required to complete the work or to make its several parts fit together properly.

4.14.2 The Contractor shall not damage or endanger any portion of the work or the work of the Owner or any separate contracts by cutting, patching or otherwise altering any work, or by excavation. The Contractor shall not cut or otherwise alter the work of the Owner or any separate Contractor except with the written consent of the Owner and of such separate Contractor. The Contractor shall not unreasonably withhold from the Owner any separate Contractor his consent to cutting or otherwise altering the work.

4.15 CLEANING UP

4.15.1 The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. At the completion of the work, he shall remove all his waste materials and rubbish from and about the Project as well as all his tools, construction equipment, machinery and surplus materials.

4.15.2 If the Contractor fails to clean up a the completion of the work, the Owner may do so as provide in Paragraph 3.4, and the cost thereof shall be charged to the Contractor.

4.15.3 The Contractor shall be solely responsible for performance of the following clean up:

1. Debris: Regardless of the nature of the debris, it shall be immediately cleared form the work area. Each trade shall cooperate with other trades in the removal of debris and in keeping a clean job throughout.

2. Cleaning of All Glazes: The Contractor shall remove sealant and caulking stains and paint from all glass and shall wash and polish same. Care shall be taken not to scratch glass.

3. Cleaning of All Painted, Decorated, and Stained Work: The Contractor shall remove all marks, stains, finger prints, and other soil or dirt from all painted, decorated, and stained work.

4. Removal of all Temporary Protections: The Contractor shall remove all temporary protections and shall clean all floors at completion.

5. Cleaning and Polishing of all Hardware: The Contractor shall clean and polish all hardware for all trades,. This shall include removal of all stains, dust dirt, paint, etc., upon completion, without scratching or otherwise marring the hardware.

6. Removal of all Spot, Soil, and Paint from all Tile Work: The Contractor shall remove all spots, soil and paint from all tile work and shall wash the same upon completion.

7. Cleaning of all Fixtures and Equipment: The Contractor shall clean all fixtures and equipment, removing all stains, paint, dirt, and dust.

4.16 COMMUNICATIONS

4.16.1 The Contractor shall communicate directly with the Architect for design clarifications. Any fabrication or installation issues that may result in a change order or may result in a delay to the project schedule shall be communicated to both the Owner and the Architect at the same time, and documented in writing within two business days. All oral directions from the Architect to the Contractor shall be documented in writing to the Contractor and the Owner within one business day.

4.17 ROYALTIES AND PATENTS

4.17.1 The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified; but if the Contractor has reason to believe that the design, process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the Architect.

4.18 INDEMNIFICATION

4.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner and the Architect and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (1) 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, and (2) is caused in whole or in part by any negligent act or omission on the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts an of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such negligent shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnify which would otherwise exist as to any party or person described in this Paragraph 4.18.

4.18.2 In any and all claims against the Owner or the Architect or any of their agents or employees by an employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph 4.18 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

4.18.3 The obligation of the Contractor under this Paragraph 4.18 shall not extend to the liability of the Architect, his agents or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs, or specifications, or (2) the giving of or the failure to give directions by the Architect, his agents or employees, provided such giving or failure to give is the primary cause of the injury or damage.

ARTICLE 5

SUBCONTRACTOR

5.1 DEFINITION

5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform any of the work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Subcontractor or his authorized representative. The term "Subcontractor" does not include any separate Contractor or his Subcontractors.

5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform any of the work at the Site.

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

5.2.1 Unless otherwise required by the Contract Documents of the Bidding Documents, the Contractor, as soon as practicable after the award of the Contract, shall furnish to the Owner and the Architect in writing the names of the persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each of the principal portions of the work. The Architect will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or the Architect to reply promptly shall constitute notice of no reasonable objection.

5.2.2 The Contractor shall not contract with any such proposed person or entity to whom the Owner or the Architect has made reasonable objection under the provisions of Subparagraph 5.2.1. The Contractor shall not be required to contract with anyone to whom he has a reasonable objection.

5.3 SUBCONTRACTUAL RELATION

5.3.1 By an appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the Owner and the Architect. Said agreement shall preserve and protect the rights of the Owner and the Architect under the Contract Documents with respect to the work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the Contractor-Subcontractor agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with his Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Paragraph 5.3, and identify the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Documents available to his Subcontractors.

ARTICLE 6

WORK BY OWNER OR BY SEPARATE CONTRACTORS

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

6.1.1 The Owner reserves the right to perform work related to the Project with his own forces, and to award separate contracts in connection with other portions of the Project or other work on the site under these or similar Conditions of the Contract. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, he shall make such claim as provided elsewhere in the Contract Documents.

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

6.1.3 The Owner will provide for the coordination of the work of his own forces and of each separate Contractor with the work of the Contractor, who shall cooperate therewith as provided in paragraph 6.2.

6.2 MUTUAL RESPONSIBILITY

6.2.1 The Contractor shall afford the Owner and the Separate Contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall connect and coordinate his work with theirs as required by the Contract Documents.

6.2.2 If any part of the Contractor's work depends for proper execution or results upon the work of the Owner or any separate Contractor, the Contractor shall, prior to proceeding with the work, promptly report to the Architect any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acceptance of the Owner's or the separate Contractor's work as fit and proper to receive his work, except as to defects which may subsequently become apparent in such work by others.

6.2.3 Any costs caused by defective or ill-timed work shall be borne by the party responsible thereof.

6.2.4 Should the Contractor wrongfully cause damage to the work or property of the Owner, or to other work on the promptly remedy such damage as provided in Subparagraph 10.2.5.

6.2.5 Should the Contractor wrongfully cause damage to the work or property of any separate Contractor, the Contractor shall upon due notice promptly attempt to settle with such other Contractor by agreement, or otherwise to resolve the dispute. If such separate Contractor sues or initiates an arbitration proceeding against the Owner on account of any damage alleged to have been cause by the Contractor, the Owner shall notify the Contractor, who shall defend such proceedings at the Owner's expense, and if any judgment or award against the Owner arises therefrom, the Contractor shall pay or satisfy it and shall reimburse the Owner for all attorneys' fees and court or arbitration costs which the Owner has incurred.

6.3 OWNER'S RIGHT TO CLEAN UP

6.3.1 If a dispute arises between the Contractor and separate Contractors as to their responsibility for cleaning up as required by Paragraph 4.15, the Owner may clean up and charge the cost thereof to the Contractors responsible therefor as the Architect shall determine to be just.

ARTICLE 7

MISCELLANEOUS PROVISIONS

7.1 GOVERNING LAW

7.1.1 The Contract shall be governed by the law of the State of New Mexico.

7.1.2 The Owner and the Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements, and obligations contained in the Contract Documents. Neither part to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any moneys due or to become due to him thereunder, without the previous written consent of the Owner.

7.2 WRITTEN NOTICE

7.2.1 Written notice shall be deemed to have dully served if delivered in person to the individual or member of the firm or entity or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified mail to the last business address known to him who gives the notice.

7.3 CLAIMS FOR DAMAGES

7.3.1 Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the other party or of any of his employees, agents or others for whose acts he is legally liable, claim shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

7.4 PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND

7.4.1 The Contractor to whom the Contract is awarded shall furnish and pay for reputable and approved Performance and Labor and Material Payment Bonds, each for the full amount of the Contract Sum. Bonds shall be executed on standard AIA forms.

7.5 RIGHTS AND REMEDIES

7.5.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

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

7.6 TESTS

7.6.1 If the Contract Document, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the work to be inspected, tested or approved, the Contractor shall give the Architect timely notice of its readiness so the Architect may observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests or approvals. Tests specifically called for by specifications shall be made by an independent, certified, professional testing laboratory acceptable to the Architect, and the Contractor shall employ same and pay all charges in connection therewith. Records of tests shall be delivered to the Architect in duplicate on acceptable forms.

7.6.2 If the Architect determines that any work requires special inspection, testing, or approval which Subparagraph 7.6.1 does not include, he will, upon written authorization from the Owner, instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as provided in Subparagraph 7.6.1. If such special inspection or testing reveals a failure of the work to comply with the requirements of the Contract Documents, the Contractor shall bear all costs thereof, including compensation for the Architect's additional services made necessary by such failure; otherwise the Owner shall bear such costs, and an appropriate Change Order shall be issued.

7.7 INTEREST

7.7.1 The Owner will not pay interest on payments due and unpaid under the Contract Document.

ARTICLE 8

TIME

8.1 DEFINITIONS

8.1.1 Unless otherwise provided, the Contract Time is the period of time allotted in the Contract Documents for Substantial Completion of the work as defined in Subparagraph 8.1.3, including authorized adjustments thereto.

8.1.2 The date of commencement of the work is the date established in a Notice to Proceed. If there is no Notice to Proceed, it shall be the date of the Owner-Contractor Agreement or such other date as may be established therein.

8.1.3 The Date of Substantial Completion of the work or designated portion thereof is the Date certified by the Architect and approved by the Owner when construction is deficiently complete, in accordance with the Contract Documents, so the Owner can occupy or utilize the work or designated portion thereof for the use for which it is intended.

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

8.2 PROGRESS AND COMPLETION

8.2.1 All time limits stated in the Contract Documents are the essence of the Contract.

8.2.2 The Contractor shall begin the work on the date of commencement as defined in Subparagraph 8.1.2. He shall carry the work forward expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

8.3 DELAYS AND EXTENSIONS OF TIME

8.3.1 If the Contractor is delayed at any time in the progress of the work by any act or neglect of the Owner or the Architect or by any employees of either, or by any separate Contractor employed by the Owner or by changes ordered in the work, or by labor disputes, fire, unusual delay in unavoidable casualties, or any causes beyond the Contractor's control or by delay authorized by the Owner pending arbitration, or by any other cause which the Architect determines may justify the delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

8.3.2 Any claim for extension of time shall be made in writing to the Architect not more than twenty days after the commencement of the delay; otherwise it shall be waived. In the case of a continuing delay, only one claim is necessary. The Contractor shall provide an estimate of the probable effect of such delay on the progress of the work.

8.3.3 If written agreement is made stating the dates upon which interpretations as provided in Subparagraph 2.28 shall be furnished, then no claim for delay shall be allowed on account of failure to furnish such interpretations until fifteen days after written request is made for them, and not then unless such claim is reasonable.

8.3.4 This Paragraph 8.3 does not exclude the recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9

PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

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

9.2 SCHEDULE OF VALUES

9.2.1 Before the first Application for Payment, the Contractor shall submit to the Owner and Architect a schedule of values allocated to the various portion of the work, prepared in such form and supported by such data to substantiate its accuracy as the Owner or Architect may require. This schedule, unless objected to by the Owner or Architect, shall be used only as a basis for the Contractor's Applications for payment.

9.3 APPLICATIONS FOR PAYMENT

9.3.1 At least ten days before the date for each progress payment established in the Owner-Contractor Agreement, the Contractor shall submit to the Architect an itemized Application for Payment, notarized if required, supported by such data substantiating the Contractor's right to payment as the Owner or the Architect may require, as provided elsewhere in the Contract Documents.

9.3.2 Unless otherwise provided in the Contract Documents, payments will be made on account of materials or the Owner payments may similarly be made for materials or equipment suitably stored at some other location agreed upon in writing. Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials or equipment or otherwise protect the Owner's interest, including applicable insurance and transportation to the site for those materials and equipment stored off the site.

9.3.3 The Contractor warrants that title to all work, materials and equipment covered by an Application for

Payment will pass to the Owner either by incorporation in the construction or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interest or encumbrances hereinafter referred to in this Article 9 as "liens"; and that no work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing work at the site or furnishing materials or equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

9.4 CERTIFICATES FOR PAYMENT

9.4.1 The Architect will within three days after the receipt of the Contract's Application for Payment, approve the Application for Payment to the Owner with a copy to the Contractor for such amount as the Architect determines is properly due, or notify the Contractor in writing of his reasons for withholding his approval as provided in Subparagraph 9.6.1.

9.4.2 The issuance of an approval of the Application for Payment will constitute a representation by the Architect to the Owner, based on his observations at the site as provided in Subparagraph 2.2.3 and the data comprising the Application for Payment, that the work has progressed to the point indicated; that, to the best of his knowledge, information and belief, the quality of the work is in accordance with the Contract Documents (subject to an evaluation of the work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents correctable prior to completion, and that the Contractor is entitled to payment in the amount certified. However, by issuing an approval of the Application for Payment, the Architect shall not thereby be deemed to represent that he has made exhaustive or continuous on-site inspections to check the quality or quantity of the work or that he has reviewed the construction means, methods, techniques, sequences procedures, or that he has made any examination to ascertain how or for what purpose the Contractor has used the moneys previously paid on account of the Contract Sum.

9.5 PROGRESS PAYMENTS

9.5.1 After the Architect has issued an approval of the Application for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents.

9.5.2 The Contractor shall promptly pay each Subcontractor upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's work, the amount to which said Subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of such Subcontractor's work. The Contractor shall, by an appropriate agreement with each Subcontractor, require each Subcontractor to make payment to his Subcontractors in similar manner.

9.5.3 The Architect may, on request and at his discretion, furnish to any Subcontractor, if practicable, information regarding the percentages of completion or the amounts applied for by the Contractor and the action taken thereon by the Architect on account of work done by such Subcontractor.

9.5.4 Neither the Owner nor the Architect shall have any obligation to pay or to see to the payment of any moneys to any Subcontractor except as may otherwise be required by law.

9.5.5 No Certificate for progress payment, no progress payment, nor any partial or entire use of occupancy of the Project by the Owner shall constitute an acceptance of any work not in accordance with the Contract Documents.

9.6 PAYMENT WITHHELD

9.6.1 The Architect may decline to certify payment and may withhold his Certificate in whole or in part, to the extent necessary to reasonably protect the Owner, if in his opinion he is unable to make representations to the Owner as provided in Subparagraph 9.4.2.

9.6.2. If the Architect is unable to make representations to the Owner, as provided in Subparagraph 9.4.2 and to certify payment in the amount of the Application, he will notify the Contractor as provided in Subparagraph 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which he is able to make such representations to the Owner. The Architect may also decline to certify payment, or because of subsequently discovered evidence or subsequent observations, he may nullify the whole or any part of any Certificate for Payment previously issued, to such

extent as may be necessary in his opinion to protect the Owner from loss because of:

A) Defective work not remedied;

B) Third party claims filed or reasonable evidence indicating probable filing of such claims;

C) Failure of the Contractor or make payments properly to Subcontractors or for labor, materials or equipment;

D) Reasonable evidence that the work cannot be completed for the unpaid balance of the Contract Sum.

E) Damage to the work of another Contractor;

F) Reasonable evidence that the work will not be completed within the Contract Time; or,

G) Failure to carry out the work in accordance with the Contract Documents.

9.6.2 When the above grounds in Subparagraph 9.6.1 are removed, payment shall be made for amounts withheld because of them.

9.7 FAILURE OF PAYMENT

9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within three days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents any amount certified by the Architect, then the Contractor may, upon seven additional days' written notice to the Owner and the Architect, stop the work until payment of the amount owing has been received. The Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, which shall be effected by appropriate Change Order in accordance with Paragraph 12.3.

9.8 SUBSTANTIAL COMPLETION

9.8.1 When the Contractor considers that the work, or a designated portion thereof which is acceptable to the Owner, is substantially complete as defined in Subparagraph 8.1.3, the Contractor shall prepare for submission to the Architect a list of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all work in accordance with the Contract Documents. When the Architect, with the Owner, on the basis of an inspection determines that the work or designated portion thereof is substantially complete, he will then prepare a Certificate of Substantial Completion Form, AIA Document G704-1978, which shall establish the Date of Substantial Completion, shall state the responsibilities of the Owner and the Contractor for security, maintenance within which the Contractor shall complete the items listed therein. Warranties required by the Contract Document shall commence on the date of Final Completion of the work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Contractor and the Owner for their written acceptance of the responsibilities assigned to them in such Certificate.

9.8.2 Upon Substantial Completion of the work or designated portion thereof and upon application by the Contractor and certification by the Architect, the Owner shall make payment, reflecting adjustment in retainage, if any, for such work or portion thereof, as provided in the Contract Documents.

9.9 FINAL COMPLETION AND FINAL PAYMENT

9.9.1 Upon receipt of written notice that the work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, if he finds the work acceptable under the Contract Documents and the Contract fully performed, he will promptly issue final Certificate for Payment stating that, to the best of his observations and inspections, the work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in said Final Certificate, is due and payable. The Architect's Final Certificate of payment will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment as set forth in Subparagraph 9.9.2 have been fulfilled.

9.9.2 Neither the final payment nor the remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the work for which the Owner or his property might in any way be responsible have been paid or otherwise satisfied, (2) consent of surety, if any, to final payment, and (3) if required by the Owner, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the Contract, to the extent and in such form as may be designed by the Owner. If any Subcontractor refuses to furnish a release or waiver required by the Owner the Contractor may furnish a bond satisfactory to the Owner to indemnify him against any such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all moneys that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

9.9.3 If, after Substantial Completion of the work, final completion thereof is materially delayed through no fault of the Contractor or by the issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect and without terminating the Contract, make payment of the balance for that portion of the work fully completed and accepted. If the remaining balance for work not fully completed or corrected is less than the retainage stipulated in the Contract Document, and if bonds have been furnished as provided in Paragraph 7.5, 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 the Contractor to the Architect prior to certification of 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.

9.9.4 The making of final payment shall constitute a waiver of all claims by the Owner except those arising from:

A) Unsettled liens;

B) Faulty or defective work appearing after Substantial Completion;

C) Failure of the work to comply with the requirements of the Contract Documents; and

D) Terms of any special warranties required by the Contract Documents.

9.9.5 The acceptance of final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the final Application for Payment.

ARTICLE 10

PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

10.2. SAFETY OF PERSONS AND PROPERTY

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

A) All employees on the work and all other persons who may be affected thereby;

B) All the work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any of his Subcontractors or Sub-subcontractors; and

C) Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities no designated for removal, relocation or replacement in the course of construction.

10.2.2 The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the safety of persons or property or their protection from

damage, injury or loss.

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

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

10.2.5 The Contractor shall promptly remedy all damage or loss (other than damage of loss insured under paragraph 11.3) to any property referred to in Clauses 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, any Subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the Contractor is responsible under clauses 10.2.1.2 and 10.2.1.3, except damage or loss attributable to the acts or omissions of the Owner or the Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and no attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to his obligations under Paragraph 4.18.

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

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

10.3 EMERGENCIES

10.3.1 In any emergency affecting the safety of persons or property, the Contractor shall act, at his reasonable discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall; be determined as provided in Article 12 for Changes in the work.

ARTICLE 11

INSURANCE

11.1 CONTRACTOR'S LIABILITY INSURANCE

11.1.1 The Contractor shall maintain in effect, and shall require all Subcontractors and others performing any portion of this Contract to maintain in effect, insurance of the types and respective minimum limits required. Such insurance shall cover all operations under this Contract. Maintenance of such insurance in at least the specified minimum amounts shall not relieve the Contractor or liability for loss in excess of the limits of liability specified herein or otherwise not covered by the coverage's required herein. The Contractor shall bear the cost of such insurance and include its costs in the Bid. The limits of insurance to be maintained are specified in the Agreement Between Owner and Contractor.

11.1.2 Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the work. These Certificates shall contain a provision that coverage afforded under the policies will not be canceled until at least thirty days; prior written notice has been given to the Owner.

11.2 OWNER'S LIABILITY INSURANCE

11.2.1 The Owner shall be responsible for purchasing and maintaining his own liability insurance and, at his option, may purchase and maintain such insurance as will protect him against all claims which may arise from operations under the Contract.

11.3 PROPERTY INSURANCE

11.3.1 The Contractor shall maintain builder's risk property insurance or self-insurance, or a combination of insurance and self-insurance, upon the work at the site for at least the actual cash value thereof. The builder's risk insurance shall cover the interests of the Owner, the Contractor, Subcontractors, and Sub-subcontractors in the work. The insurance shall insure against at least the following perils: fire extended coverage,

vandalism, and malicious mischief. The Contractor shall bear the cost of such insurance and include its cost in the Bid.

11.3.2 Any loss insured or self-insured under Subparagraph 11.3.1 is to be adjusted with the Owner and made payable to the Owner as trustee for the insured, as their interests may appear subject to the requirements of any applicable mortgage clause. The Owner shall deposit the proceeds in a separate account and shall distribute them in accordance with such agreement as the parties in interest, including the Owner, may reach. The Contractor shall pay each Subcontractor a just share of any insurance proceeds which the Contractor receives and shall require by written agreement signed by the Subcontractor that the Subcontractor will

make payments to his Sub-subcontractors in a similar manner. If after such loss no other special agreement is made, replacement of damaged work shall be covered by an appropriate order.

11.3.3 To the extent permitted under their respective property insurance policies, the Owner and the Contractor hereby waive all rights, each against the other, for damages caused by fire or other perils to the extent covered by Insurance obtained pursuant to this Article 11 or any other property insurance applicable to the work, except such rights as they may have to the proceeds of such Insurance held by the Owner as trustee. The Owner or the Contractor, as appropriate, shall require the Architect, other Contractors, Subcontractors, and Sub-subcontractors to similarly waive rights of subrogation or property insurers.

11.3.4 If the Owner finds it necessary to occupy use of any portion of the work prior to Substantial Completion, such occupancy or use shall not commence prior to the time mutually agreed to by the Owner and the Contractor and, if required by the applicable insurance or self-insurance coverage not prior to the time the builder's risk property insurer has consented to such occupancy or use. The Contractor's consent to such occupancy or use shall not be unreasonably withheld.

11.4 LOSS OF USE INSURANCE

11.4.1 The Owner, at his option, may purchase and maintain such insurance as will insure him against loss of use of his property due to fire or other hazards, however caused.

ARTICLE 12

CHANGES IN THE WORK

12.1 CHANGE ORDERS

12.1.1 A Change Order is a written order to the Contractor signed by the Architect and the Contractor and approved in writing by the Owner. A Change Order may be issued only after the execution of the Contract and shall be the only means used to order changes in the work for which the Contractor requires additional compensation, changes to the Contract Time, or changes to the Contract Sum. Minor changes in the work for which the Contractor requires no additional compensation or time shall be executed in accordance with the provision of Subparagraph 12.4.1.

12.1.2 The Owner, without invalidating the Contract, may order changes in the work within the general scope of the Contractor consisting of additions, deletions or other revisions, the Contract Sum and the Contract Time being adjusted accordingly. All such changes in the work shall be authorized by Change Order and shall be performed under the applicable conditions of the Contract Documents.

12.1.3 The cost or credit to the Owner resulting from a change in the work shall be determined in one or more of the following ways:

A) By mutual acceptance of a lump sum properly itemized an supported by sufficient substantiating data to permit evaluation;

B) By unit prices stated in the Contract Documents or subsequently agreed upon;

C) By cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

D) By the method provided in Subparagraph 12.1.4.

12.1.4 If none of the methods set forth in Clauses 12.1.2., 12.1.3. or 12.1.3. is agreed upon, the Contractor, provided he receives a written order signed by the Owner, shall promptly proceed with the work involved. The cost of such work shall the be determined by the Architect on the basis of the reasonable expenditures and savings of those performing the work attributable to the change, including, in the case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data for inclusion in a Change Order. Unless otherwise provided in the Contract Documents, cost shall be limited to the following: cost of materials, including sales tax and cost of delivery; cost of labor, including social security, old age and unemployment insurance, and fringe benefits, required by agreement or custom, workers' or workmen's compensation insurance; bond premiums; rental value of equipment and machinery; and the additional costs of supervision and field office personnel directly attributable to the change. Pending final determination of cost to the Owner payments on account shall be made on the Architect's Certificate for payment. The amount of credit to be allowed by the Contractor to the Owner for any deletion or change which results in a net decrease in the Contract Sum will be the amount of the actual net cost as confirmed by the Architect. When both additions and credits covering related work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any, with respect to that change.

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

12.1.6 By submission of a Bid, the Contractor agrees and binds himself to the following method of calculating Change Order costs. The Owner also agrees to the following method of calculating the cost of any changes to the Contract. With each proposal for a change in the amount of the Contract, the Contractor shall submit an itemized breakdown of all increases or decreases in the cost of the Contractor's and all Subcontractor's and Sub-subcontractor's work to include at least the following detail in the general order listed:

A) Material quantities and unit costs;

B) Labor amounts and hourly rates (identified with specific items of material to be placed or operation to be performed);

C) Costs inherent in use of Contractor/Sub-subcontractor owned equipment;

D) Equipment rental, if any;

E) Workmen's compensation and public liability insurance;

F) General administration, overhead, supervision, project insurance and profit, based on the following schedule:

Subtotal before Applying the Percentage Shown	$500 & Less	Over $500
Contractor for work performed by his own forces	22%	19%
Contractor for work performed by Subcontractor	10%	8%
Subcontractor for work performed by his own forces	18%	15%
Subcontractor for work performed by Sub-subcontractor	10%	8%
Sub-subcontractor for work performed by his own forces	18%	15%

G) Employment taxes under FICA and FUTA; and

H) State gross receipts tax (Contractor only).

12.1.7 The quotation for work under a Change Order shall be binding for sixty (60) days from the date submitted by the Contractor.

12.2 CONCEALED CONDITIONS

12.2.1 Should concealed conditions encountered in the performance of the work below the surface of the ground or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Contract Documents, or should unknown physical conditions below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in work of the Character provided for in this Contract, be encountered, the Contract Sum shall be equitably adjusted by change Order upon verified claim by either party made within twenty days after the first observance of the conditions.

12.2.2 If the Contractor wishes to make a claim for an increase in the Contract Sum, he shall give the Architect and Owner written notice thereof within twenty days after the occurrence of the event giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute the work, except in an emergency endangering life or property, in which case the Contractor shall proceed in accordance with Paragraph 10.3. No such claim shall be valid unless so made. If such claims are justified and the Owner authorizes an increase in the Contract Sum, the Owner and the Contractor shall proceed to negotiate the amount of the adjustment in the Contract Sum. If the Owner and the Contractor cannot agree on the amount of the adjustment in the Contract Sum, it shall be determined by the Architect. Any change in the Contract Sum resulting from such claim shall be authorized by Change Order.

12.2.3 If the Contractor claims that additional cost is involved because of, but not limited to, (1) any written interpretation pursuant to Subparagraph 2.2.8, (2) any order by the Owner to stop the work pursuant to Paragraph 3.3 where the Contractor was not at fault, (3) any written order for a minor change in the work issued pursuant to Paragraph 12.4, or (4) failure of payment by the Owner pursuant to Paragraph 9.7, the Contractor shall make such claims provided in Subparagraph 12.3.1.

12.3 MINOR CHANGES IN THE WORK

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

ARTICLE 13

UNCOVERING AND CORRECTION OF WORK

13.1 UNCOVERING OF WORK

13.1.1 If any portion of the work should be covered contrary to the request of the Architect or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Architect, be uncovered for his observation and shall be replaced at the Contractor's expense.

13.1.2 If any portion of the work has been covered which the Architect has not specifically requested to observe prior to begin covered, the Architect may request to see such work and it shall be uncovered by the Contractor. If such work be found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such work be found not in accordance with the Contract Documents, the Contractor shall pay such costs unless it be found that this condition was caused by the Owner or a separate Contractor as provided in Article 6, in which even the Owner shall be responsible for the payment of such costs.

13.2 CORRECTION OF WORK

13.2.1 The Contractor shall promptly correct all work rejected by the Architect as defective or as failing to conform to the Contract Documents whether observed before or after Substantial completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected work, including compensation for the Architect's additional services made necessary thereby.

13.2.2 If, within one year after the Date of Substantial Completion of the work or designated portion thereof or within one year after acceptance by the Owner of designated equipment or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the work is found to be defective or not in accordance with the Contract Documents, the

Contractor shall correct it promptly after receipt of a written notice from the Owner to do so unless the Owner has previously given the Contractor a specific written acceptance of such condition. This obligation shall survive termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.

13.2.3 The Contractor shall remove from the site all portions of the work which are defective or non-conforming and which have not been corrected under Subparagraphs 4.5, 13.2.1 and 13.2.2, unless removal is specifically waived in writing by the Owner.

13.2.4 If the Contractor fails to correct defective or non-conforming work as provided in Subparagraph 4.5.1, 13.2.1 and 13.2.2, the Owner may correct it in accordance with Paragraph 3.4.

13.2.5 If the Contractor does not proceed with the correction of such defective or non-conforming work within a reasonable time fixed by written notice from the Architect, the Owner may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten days thereafter, the Owner may upon ten additional days' written notice sell such work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor including compensation for the Architect's additional services made necessary thereby. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

13.2.6 The Contractor shall bear the cost of making good all work of the Owner or separate Contractors destroyed or damaged by such correction or removal.

13.2.7 Nothing contained in this Paragraph 13.2 shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including Paragraph 4.5 hereof. The establishment of the time period of one year after the Date of Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the Contractor to correct the work and has no relationship to the time within which his obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to his obligations other than specifically to correct the work.

13.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK

13.3.1 If the Owner prefers to accept defective or non-conforming work, he may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect a reduction in the Contract Sum where appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 14

TERMINATION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR

14.1.1 If the work is stopped for a period of thirty days under an order of court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Contractor or a Sub-contractor or their agents or employees or any other persons performing any of the work under a contract with the Contractor because the Architect has not issued a Certificate for payment as provided in Paragraph 9.7 or because the Owner has not made payment thereon as provided in paragraph 9.7, then the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner payment for all work executed and for any proven loss sustained upon any materials, equipment, tools, construction equipment and machinery, including reasonable profit and damages.

14.2 TERMINATION BY THE OWNER

14.2.1 If the Contractor is adjudged bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if he persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper

materials, or if he fails to make prompt payment to Subcontractors for material of labor, or persistently disregards laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of the Contract Documents, then the Owner, upon certification by the Architect that sufficient cause exists to justify such action, may without prejudice to any right or remedy and after giving the Contractor and his surety, if any, seven days written notice, terminate the employment of the Contractor and take possession of the site and of all material, tools, construction equipment and machinery thereon owned by the Contractor and may finish the work by whatever method he may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the work is finished.

14.2.2 If the unpaid balance of the Contract Sum exceeds the costs of finishing the work, including compensation for the Architect's additional services made necessary thereby, and any damages sustained by the Owner as a result of the Contractor's breach, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or to the Owner, as the case may be, shall be certified by the Architect upon application, in the manner provided in paragraph 9.4 and this obligation or to the Owner, as the case may be, shall be certified by the Architect upon application, in the manner provided in Paragraph 9.4 and this obligation for payment shall survive the termination of the Contract.

14.2.3 In the event that the Project is abandoned by the Owner, the Owner may terminate this contract at any time by giving at least seven (7) day notice to the Contractor. In the event of termination, all work completed shall become the property of the Owner. The Contractor shall be entitled to receive compensation for actual work satisfactorily completed hereunder, including reimbursable expenses authorized by the Owner which are then due.

14.2.4 In the event the Contractor fails to perform the work in accordance with the Contract Documents, the Owner may terminate the Contract after giving the Contractor five (5) working days notice.

ARTICLE 15

EQUAL OPPORTUNITY

15.1 The Contractor shall maintain policies of employment as follows:

15.1.1 The Contractor, all Subcontractors, and all Sub-subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. The Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous place, available to employees and applicants for employment, notices setting forth the policies of non-discrimination.

15.1.2 The Contract, all Subcontractors, and all Sub-subcontractors shall, in all solicitation or advertisements for employees placed by them or on their behalf, state that all qualified applicant will receive consideration for employment without regard to race, religion, color, sex, or national origin.

ARTICLE 16

MINIMUM WAGE RATES

16.1 The Contractor warrants and agrees that he and all Subcontractors and Sub-subcontractors shall comply with all applicable provisions of the New Mexico Public Works Minimum Wage Act as outlined in the Contract Documents. Wage rates are not applicable to projects costing less than $60,000.00. Both the State of New Mexico Wage Rate Decision and the applicable Federal wage rates are included in this document.

SUPPLEMENTARY CONDITIONS
(00 7300)

(00 7301) CITY OF SANTA FE REQUIREMENTS

Document is intended to be used in conjunction with the General Conditions of the Contract.

ADDITIONAL CONDITIONS

1.0 DEFINITIONS - The following definitions shall apply through the Bidding Documents or Contract Documents unless otherwise specified.

1.1 ADDENDUM: Written or graphic instrument issued prior to the execution of the Contract which modifies or interpret the Bidding Documents, including Drawings and Specifications, by additions, deletions, clarifications, or corrections. Addenda will become part of the Contract Documents when the Construction Contract is executed. Plural: ADDENDA

1.2 ADDITIVE OR DEDUCTIVE ALTERNATE BID: Amount stated in the Bid to be added or deducted from the amount of the Base Bid if the corresponding change in project scope or alternate materials and/or methods of construction is accepted.

1.3 BASE BID: Amount of money stated in the Bid as the sum for which the Bidder offers to perform the work, not including that work for which Alternate Bids are also submitted.

1.4 BID: A complete and properly signed proposal to do the work or designated portion thereof for the sums stipulated therein, supported by data called for by the Bidding Documents.

1.5 BID LOT: A major item of work for which a separate quotation or proposal is requested.

1.6 BIDDER: One who submits a Bid for a Prime contract with the Owner, as distinct from a Subcontractor, who submits a Bid to a Bidder. Technically, a Bidder is not a Contractor on a specific project until a contract exists between him and the Owner.

1.7 BIDDING DOCUMENT: Documents that include the Invitation for Bid, Instructions to Bidders, the Bid Form, other sample bidding and contract forms, and the proposed Contract Documents, including any Addenda issued prior to receipt of Bids. The Contract Documents proposed for the work consist of the Owner-Contractor Agreement, the Conditions of the Construction Contract (General, Supplementary, and Other Conditions), the Drawings, the Specifications, and all Addenda issued prior to and all Modifications issued after execution of the Contract.

1.8 DAY: Calendar day, which is every day shown on the calendar, beginning and ending at midnight.

1.9 CENTRAL PURCHASING OFFICE: The Central Purchasing Office is the City of Santa Fe Purchasing Department.

1.10 GOVERNING AUTHORITY: The Governing Board of the City of Santa Fe for the execution of construction contracts is the Mayor and City Manager.

1.11 INVITATION FOR BID: The Bidding Documents utilized for soliciting sealed Bids. "Invitation to Bid" shall have the same meaning as "Invitation for Bid".

1.12 OWNER: The City of Santa Fe, New Mexico.

1.13 PROCUREMENT OFFICER: The Director of the Purchasing Division, or a designee authorized to enter into or administer contracts and make written determination with respect thereto.

1.14 RESPONSIBLE BIDDER: A Bidder who submits a responsive Bid and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation, and experience are adequate to make satisfactory delivery of the services, construction, or items of tangible personal property described in the Bidding Documents (13-1-82, NMSA 1978).

1.15 SUCCESSFUL BIDDER: The lowest qualified and responsible Bidder to whom the Owner, on the basis of the Owner's evaluation, makes an award.

1.16 UNIT PRICES: Amounts stated in the Contract as prices per unit of measurement for materials or services as described in the Contract Documents.

1.17 USER: The City of Santa Fe or agencies or designated entity for whose use the Project is being constructed.

2.0 CONTRACT AUDIT

The Owner shall be entitled to audit the books and records of a Contractor or any Subcontractor under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the Contractor for a period of three years from the date of final payment under the prime contract and by the Subcontractor for a period of three years from the date of final payment under the subcontract unless a shorter period is otherwise authorized in writing (13-1-161, NMSA 1978).

3.0 DEBARRED OR SUSPENDED CONTRACTORS

A business (Contractor, Subcontractor, or Supplier) that has either been debarred or suspended pursuant to the requirements of Sections 13-1-177 through 13-1-180, and 13-4-11 through 13-4-17, NMSA 1978, shall not be permitted to do business with the State and shall not be considered for award of contract during the period for which it is debarred or suspended.

4.0 BRIBES, GRATUITIES, AND KICK-BACKS

4.1 It is illegal in the State of New Mexico for any public employee to solicit or accept anything of value in connection with award of this Bid and for any person to offer or pay anything of value to any such public employee (30-24-1 through 30-24-2, NMSA 1978).

4.2 Pursuant to Section 13-1-191, NMSA 1978, reference is hereby made to the Criminal Laws of New Mexico (including 30-24-1, 30-23-2, and 30-41-1 through 3-41-3, NMSA 1978), which prohibit bribes, kick-backs, and gratuities and violation of which constitutes a felon. Further, the Procurement Code (13-1-28 through 13-1-199, NMSA 1978), imposes civil and criminal penalties for its violation

5.0 PROTESTS

5.1 Any Contractor who is aggrieved in connection with a procurement may protest to the City Purchasing Agent and the Owner. The protest should be made in writing within twenty-four (24) hours after the facts or occurrences; giving rise thereto, but in no case, less that within fifteen (15) calendar days after the facts or occurrences giving rise thereto (13-1-173, NMSA 1978).

5.2 In the event of a timely protest under Section 5.1 (13-1-172 of the Procurement Code, NMSA 1978), the City Purchasing Agent and the Owner shall not proceed further with the procurement unless the State Purchasing Agent or the Owner makes a determination that the award of contract is necessary to protect substantial interests of the Owner (13-1-173, NMSA 1978).

5.3 The City Purchasing Agent or his designee shall have the authority to take any action reasonably necessary to resolve a protest of an aggrieved Contractor concerning a procurement.

5.4 This authority shall be exercised in accordance with adopted regulations, but shall not include the authority to award money damages or attorneys' fees (13-1-174, NMSA 1978).

5.5 The City Purchasing Agent or his designee shall promptly issue a determination relating to the protest. The determination shall:

A) State the reasons for the action taken; and,

B) Inform the protestant of the right to judicial review of the determination pursuant to Section 13-1-183, NMSA 1978 (13-1-175, NMSA 1978).

5.6 A copy of the determination issued under Section 13-1-175, NMSA 1978, shall be mailed immediately to the protestant (13-1-176, NMSA 1978).

6.0 CONTRACT BOND REQUIREMENTS

6.1 The Successful Bidder, where the Contract Price exceeds twenty five thousand dollars ($25,000), shall post a one hundred percent (100%) Performance Bond and a one hundred percent (100%) Labor and Material Payment Bond. Bonds shall be executed on Performance Bond and Labor and Material Payment Bond forms attached hereto, with amount payable conforming to the terms of the contract. Surety shall be a company licensed to do business in the State of New Mexico and acceptable to the Owner.

6.2 Personal sureties may be accepted if the Owner so determines in advance, but in such case the amount of the Bond shall be the full Contract Price, and the sureties shall justify under oath in amounts above liabilities and exemptions aggregating double the amount of the Bond.

6.3 Special attention of Bidders is called to the requirements of Section 13-4-18 through 13-4-20, NMSA 1978 regarding a Contractor who does not have his principal place of business in the State of New Mexico for all taxes due arising out of construction services rendered under the Contract.

6.3.1 The right to sue on this Bond accrues only to the Owner and the parties to whom Sections 13-4-18 through 13-4-20, NMSA 1978 grant such right; and any such right shall be exercised only in accordance with the provisions and limitations of said statues.

7.0 NON-RESIDENT CONTRACTOR'S REQUIREMENTS REGARDING GROSS RECEIPTS TAX SURETY BOND

7.1 Section 7-1-55A, NMSA 1978 provides that any person (as defined in Section 7-1-3, NMSA 1978) engaged in the construction business who does not have his principal place of business in New Mexico and enters into a prime construction contract to be performed in this State shall, at the time such contract is entered into, furnish the Director of the Revenue Division, Taxation and Revenue Department, or his delegate with a surety bond or other acceptable security in a sum equivalent to the gross receipts to be paid under the contract multiplied by the applicable rate of the gross receipts tax imposed by Section 7-9-4, NMSA 1978 to secure payment of the tax imposed on the gross receipts from the contract, and shall obtain a certificate form the Director of the Revenue Division, Taxation and Revenue Department, or his delegate that the requirements of this paragraph have been met.

7.2 If the total sum to be paid under the contract is changed by ten percent or more after the date the surety bond or other acceptable security is furnished, to the Director or his delegate, such person shall increase or decrease, as the case may be, the amount of the bond or security within fourteen days after the change (7-1-55B, NMSA 1978).

7.3 In addition to the above requirements, the Contractor will be subject to all the requirements of the City Procurement Code.

8.0 CONTRACTOR'S GROSS RECEIPTS TAX REGISTRATION

8.1 Section 7-10-4, NMSA 1978 provides that any person (as defined in Section 7-10-3, NMSA 1978) performing services for the City of Santa Fe, as those terms are used in the Gross Receipts and Compensating Tax Act (Section 7-10-1 to 7-10-5, NMSA 1978), must be registered and be issued an identification number with the Revenue Division of the Taxation and Revenue Department to pay the gross receipts tax.

8.2 The identification number is needed to properly complete the approval process of the contract; therefor, so as to cause no delay in the processing, the Contractor must register with the State of New Mexico, Taxation and Revenue Department. For information contact:

Revenue Division
Taxation and Revenue Department
1100 South St. Francis Drive
Santa Fe, New Mexico 87504
(505)827-0700

8.3 If any person who performs services for the City of Santa Fe is not registered to pay the gross receipts tax, the City shall withhold payment of the amount due until the person has presented evidence of registration with the Revenue Department to pay the gross receipts tax.

9.0 CONTRACT WITH NONRESIDENT PERSON OR PARTNERSHIPS OR UNADMITTED FOREIGN CORPORATIONS; AGENT FOR SERVICE OF PROCESS

9.1 Special attention of Bidders is called to requirements of Sections 13-4-21 through 13-4-24, NMSA 1978, whereby a public works contract with a nonresident person or partnership or foreign corporation not authorized to do business in the State shall contain a specific provision designating an agent resident within the State, and his address, upon whom process and writs in any action or proceeding against such business may be served in any action arising out of such contract.

11.0 STATE ALLOWANCES

11.1 The Contractor shall purchase the "Allowed Materials" as directed by the Owner through the Landscape Architect on the basis of the lowest and the best Bid of at least three competitive Bids. If the actual price for purchasing the "Allowed materials" is more or less than the "Cash Allowance", the Contract Price shall be adjusted accordingly. The adjustment in Contract Price made on the basis of the purchase price without additional charges for overhead, profit, insurance, or any other incidental expenses. The cost of installation of the "Allowed Materials" shall be included in the applicable section of the Specifications covering the work.

12.0 MINIMUM WAGE RATES

12.1 The Minimum Wage Rate Determinations for this Project are shown in this section. This project is subject to New Mexico State Wage Rate Decision No. SF-13-0607-B, if the amount of the base bid is equal to or greater than $60,000.

13.0 FORM OF CHANGE ORDER AND CHANGE ORDER NOTICE TO PROCEED

13.1 The forms issued by the Owner are to be utilized by the Contractor, Landscape Architect, and the Owner pursuant to the requirements of the General Conditions.

14.0 STATE OF NEW MEXICO STATE INDUSTRIES DIVISION

14.1 The Contractor, at his own expense, shall secure the required building permits from the State CID as required for this Project. Contractor shall adhere to the requirements established for inspections.

15.0 CITY OF SANTA FE REQUIREMENTS

15.1 The General Contractor shall include in the Bid the cost of all landfill dumping fees; additionally, the General Contractor shall be responsible that all rubble, excess materials, etc., are disposed of at an approved, legal dumping site.

CITY OF SANTA FE
CAPITAL IMPROVEMENTS PROGRAM

AGREEMENT BETWEEN
OWNER AND CONTRACTOR

CIP PROJECT # *646*
CONSTRUCTION OF ***ON CALL- MISCELLANEOUS HVAC SERVICES***

This Agreement is entered into this _____ day of _____ 2015, by and between the CITY OF SANTA FE, herein known as the Owner, and Mechanical Control Solutions, LLC., herein known as the Contractor.

For the following:

PROJECT:	Construction of On-Call Miscellaneous HVAC Services
PROJECT NO.:	CIP #646
ARCHITECT OF RECORD:	City of Santa Fe Capital Improvements Program P.O. Box 909 Santa Fe, NM 87504

DISTRIBUTION:

OWNER	_____
CONTRACTOR	_____
USER AGENCY	_____
OTHER	_____

Revised July 2000

RECITALS

WHEREAS, the Owner, through its Governing Body, is authorized to enter into a construction Contract for the project; and

WHEREAS, the Owner has let this Contract according to the established State and Local Purchasing procedures for contracts of the type and amount let; and

WHEREAS, construction of this Project was approved by the Governing Body of the City of Santa Fe at its meeting of _____.

The OWNER and the CONTRACTOR agree:

ARTICLE 1
THE CONTRACT DOCUMENTS

The Contract Documents consist of: this Agreement, the Conditions of the Contract (General, Supplementary, and other Conditions), the Drawings, the Specifications, all Addenda issued prior to and all Modifications issued after execution of this Agreement. These documents form the Contract, and all are as fully a part of the Contract as if attached to this Agreement or repeated herein.

ARTICLE 2
THE WORK

The Contractor shall perform all the work required by the Contract Documents for CIP Project #***646*** – Construction of ***On Call for Miscellaneous HVAC Services*** at ***Multiple City of Santa Fe Facilities*** (Bid # 15/07/B).

The work designated as On-Call for Miscellaneous HVAC Services, consists of, but is not limited to: heating, ventilating and air conditioning work; for boilers and water heating equipment; for controls; and work related to these systems, for City of Santa Facilities in Santa Fe, New Mexico. The City of Santa Fe Facilities Division will utilize this On-Call Contract with prior, written approval of the scope of work, from the Facilities Division Director, before commencing any work applicable to this On-Call Contract.

Contractor shall be responsible for verifications of all conditions, measurements and dimensions for bidding.

Contractor shall be responsible for all permits, fees and State inspections associated with the On Call for Miscellaneous HVAC Services.

ARTICLE 3
TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

The Contract Completion Time for this contract is two (2) years. The Contract duration shall terminate two (2) years from the date of award, with the option to extend an additional year, by mutual agreement of all parties and approval of the City of Santa Fe at the same price, terms and conditions. This Agreement shall not exceed four (4) years beyond the original agreement date.

The Task Completion Time will be set by the Project Administrator on a task by task basis. Task completion shall be as specified in the written Notice to Proceed. Task completion, whether Substantial and/or Physical completion as set forth in each written Notice to Proceed, shall be achieved no later than the date specified in the written Notice to Proceed, except as hereafter extended by valid written Change Order by the owner.

ARTICLE 4
CONTRACT SUM

The Owner shall pay the Contractor in current funds for the performance of the work, subject to assigned tasks or work orders, and additions and deductions by Change Order as provided in the contract Documents, the Contract Sum not to exceed Two Hundred Fifty Thousand Dollars ($250,000.00), excluding New Mexico Gross Receipt Taxes.

The Base Bid is summarized as follows:

Base Bid	$250,000.00
Gross Receipts Tax (8.1875%)	$ 20,468.75
TOTAL BASE BID AMOUNT (tax included)	$270,468.75

ARTICLE 5
PROGRESS PAYMENTS

Based upon Application for Payment submitted to the Owner by the Contractor and Certificates for Payment issued by the Owner, the Owner shall make progress payments on account of the Contract sum to the Contractor as provided in the Contract documents for the period ending the last day of the month as follows:

Not later than twenty-one (21) days following the end of the period covered by the Application for Payment, one hundred percent (100%) of the portion of the Contract Sum properly allocable to labor, materials, and equipment incorporated in the work and one hundred percent (100%) of the portion of the Contract sum properly allocable to materials and equipment suitably stored at the site or some other location agreed upon in writing for the period covered by the Application for Payment, less the aggregate of previous payments made by the Owner; and upon physical completion of the entire work, a sum sufficient to increase the total payments to one hundred percent (100%) of the Contract sum, less such amounts as the Owner shall determine for all incomplete work and unsettled claims as provided in the Contract documents.

ARTICLE 6
LIQUIDATED DAMAGES

Should the Contractor neglect, refuse, or otherwise fail to achieve Substantial and/or Physical completion by the contract date set forth in each written Notice to Proceed pursuant to Article 3 herein or any extension in the Contract thereof,, the Contractor agrees to pay to the Owner the amount of Four Hundred Dollars ($ 400) per consecutive work day of delay until the work is completed and accepted or until voided pursuant to the provisions of the General Conditions of the Contract, not as a penalty, but as liquidated damages for such breach of the Contract.

ARTICLE 7
FINAL PAYMENT

Final payment, constituting the entire unpaid balance of the Contract sum, shall be paid by the Owner to the Contractor within twenty-one (21) calendar days after all deficiencies to the Contract document that were noted during the Substantial Completion Inspection and listed on the attachment to the Certificate of Substantial Completion have been corrected, and provided the Contract has been fully performed and a final Certificate for Payment has been issued by the Owner. In addition, the Contractor shall provide to the Owner a certified statement of Release of Lien (AIA Document G706A or approved form), Consent of Surety, Warranty from Prime Contractor, Warranties from Suppliers and Manufacturers, training sessions, equipment/operating manuals, and as-built drawings.

ARTICLE 8
SCHEDULE

The Contractor shall, within five (5) days after the effective date of Notice to Proceed, prepare and submit two (2) copies of a progress schedule covering project operations for the task period. This progress schedule shall be of the type generally referred to as a Critical Path Method (CPM), Critical Path Schedule (CPS), and Critical Path Analysis (CPA), and other similar designations. The CPM shall be used to control the timing and sequences of the project. All work shall be done in accordance with the CPM Planning and Scheduling. A written statement of explanation shall be submitted with the progress schedule. All costs incurred by the contractor to implement the CPM shall be borne by the Contractor, and are part of their Contract

ARTICLE 9
GENERAL AND SPECIAL PROVISIONS

9.1 This Agreement shall be governed exclusively by the provisions hereof and by the laws of the State of New Mexico as the same from time to time exist.

9.2 Terms used in this Agreement which are defined in the Conditions of the Contract shall have the meanings designated in those Conditions.

9.3 The Contractor shall defend, indemnify, and hold harmless the Owner against any and all injury, loss, or damage, including, without limitation, costs of defense, court costs and attorney's fees, arising out of the acts, errors, or omissions of the Contractor.

9.4 An enumeration of the Contractor's Liability Insurance requirements appears in the General Conditions of the Contract for construction. Insurance requirements are also described in the Instructions to the Bidder section of the Project Manual. Contractor shall maintain adequate insurance in at least the maximum amounts which the Owner could be liable under the New Mexico Tort Claims Act and shall provide proof of such insurance coverage to the City. It is the sole responsibility of the Contractor to be in compliance with the law.

9.5 This Agreement shall not become effective until: (1) approved by the Governing Body; and (2) signed by all parties required to sign this Agreement.

9.6 The Contractor and the Contractor's agents and employees are independent contractors performing professional and technical services for the Owner and are not employees of the Owner. The Contractor and the Contractor's agents and employees shall not accrue leave, retirement, insurance, bonding, use of Owner's vehicles, or any other benefits afforded to employees of the Owner as a result of this Agreement.

9.7 The Contractor shall not subcontract any portion of the services to be performed under this Agreement without prior written approval of the Owner.

9.8 The Contractor shall maintain detailed time records which indicate the date, time and nature of services rendered. These records shall be subject to inspection by the Owner, the Department of Finance and Administration and the State Auditor. The Owner shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Owner to recover excessive illegal payments.

9.9 The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Owner for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Owner, this Agreement shall terminate upon written notice being given by the Owner to the Contractor. The Owner's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

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

9.11 The Contractor hereby warrants that the Contractor is in compliance with the Americans with Disabilities Act, 29 CFR 1630.

9.12 The Contractor, upon final payment of the amounts due under this Agreement, releases the Owner, the Owner's officers and employees, and the City of Santa Fe from all liabilities and obligations arising from or under this Agreement, including, without limitation, all damages, losses, costs, liability, and expenses, including, without limitation, attorney's fees and costs of litigation that the Contractor may have.

9.13 The Contractor agrees not to purport to bind the Owner to any obligation not assumed herein by the Owner, unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

9.14 Notices. Any and all notices provided for hereunder shall be in writing and shall be deemed delivered, given and received when (i) personally delivered, or (ii) 5 days after the same are deposited in the United States mail, postage prepaid, registered or certified mail return receipt requested, addressed to the applicable party at the address indicated below for such party or at such other address as may be designated by either party in a written note to the other party.

OWNER	City of Santa Fe Capital Improvements Program P.O. Box 909 Santa Fe, New Mexico 87504-0909
CONTRACTOR	MECHANICAL CONTROL SOLUTIONS PO BOX 91223 ALBUQUERQUE, NM 87199 New Mexico License # 87875

9.15 Gender, Singular/Plural. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

9.16 Captions and Section Headings. The captions and section headings contained in this Agreement are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope and conditions of this Agreement.

9.17 This document shall be executed in no less than five (5) counterparts, each of which shall be deemed an original.

9.18 Certificates and Documents Incorporated. All certificates and documentation required by the provisions of the Agreement shall be attached to this Agreement at the time of execution, and are hereby incorporated by reference as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

9.19 Separability. If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby.

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

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

9.22 Interchangeable Terms. For purposes of all provisions within this Agreement and all attachments hereto, the terms "Agreement" and "Contract" shall have the same meaning and shall be interchangeable.

9.23 Words and Phrases. Words, phrases, and abbreviations which have well-known technical or trade meanings used in the Contract documents shall be used according to such recognized meaning. In the event of a conflict, the more stringent meaning shall govern.

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

9.25 Pursuant to Section 13-1-191, NMSA 1978, reference is hereby made to the Criminal Laws of New Mexico (including Sections 30-14-1, 30-24-2, and 30-41-1 through 30-41-3, NMSA 1978) which prohibit bribes, kickbacks, and gratuities, violation of which constitutes a felony. Further, the Procurement Code (Sections 13-1-28 through 13-1-199, NMSA 1978) imposes civil and criminal penalties for its violation.

9.26 By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the Owner and the Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

9.27 Pursuant to Section 13-4-11. NMSA 1978, Reference is hereby made to the Minimum Wage on Public Works; weekly payments; posting wage scale; withholding funds.

ARTICLE 10
NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

This Agreement is entered into as of the day and year first written above.

OWNER:
CITY OF SANTA FE

_____
JAVIER M. GONZALES, MAYOR

DATE:_____

CONTRACTOR:
MECHANICAL CONTROL SOLUTIONS, LLC

BY: _____
TITLE: _____

DATE: _____

NM TAXATION AND REVENUE CRS#02-487-481-00-7
CITY OF SANTA FE BUSINESS REG #15-00125346

ATTEST:

_____
YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:

MDM 2/27/15
KELLEY A. BRENNAN, CITY ATTORNEY

APPROVED:

_____
OSCAR RODRIGUEZ, FINANCE DIRECTOR

Business Unit Line Item VARIES PER TASK ORDER

Address:_____

Each joint venture must sign. The manner of signing for each individual, partnership, and corporation that is a party to the joint venture should be in the manner indicated in the appropriate category.

Bidder must fill in the following: (If none, write none)

NM License No.: 87875 Classification: MM98

NM Taxation and Revenue CRS No.: 02-487-481-00-7

City of Santa Fe Business Registration No.: 15-00125346

NM Resident Preference Number (if applicable): L16382991600

One Original and one copy of the Bid Submittal is required

City of Santa Fe, New Mexico

BUSINESS LICENSE

THIS BUSINESS IS IN COMPLIANCE WITH THE CITY OF SANTA FE LIVING WAGE ORDINACE, §28-1 SFCC 1987

City Of Santa Fe
PO BOX 909
Santa Fe NM, 87504

Official Document
Please Post

Business Name: MECHANICAL CONTROL SOLUTIONS

Location: SF COUNTY

Class: OUT OF CITY CONTRACTOR - GAS/HEAT

Comment:

Control Number: 0062390

License Number: 15-00125346

Issue Date December 30, 2014

Expiration Date December 31, 2015

MECHANICAL CONTROL SOLUTIONS
PO BOX 91223

ALBUQUERQUE NM 87199

THIS IS NOT A CONSTRUCTION PERMIT OR SIGN PERMIT. APPROPRIATE PERMITS MUST BE OBTAINED FROM THE CITY OF SANTA FE BUILDING PERMIT DIVISION PRIOR TO COMMENCEMENT OF ANY CONSTRUCTION OR THE INSTALLATION OF ANY EXTERIOR SIGN.

THIS REGISTRATION/LICENSE IS NOT TRANSFERABLE TO OTHER BUSINESSES OR PREMISES.

City of Santa Fe
Summary of Contracts, Agreements, & Amendments

Section to be completed by department for each contract or contract amendment

1 **FOR:** ORIGINAL CONTRACT ☑ CONTRACT AGREEMENT ☐
MAINTENANCE AGREEMENT ☐ LICENSE AGREEMENT ☐
LEGAL SERVICES AGREEMENT ☐ MEMORANDUM OF UNDERSTANDING ☐
MEMORANDUM OF AGREEMENT ☐ JOINT POWERS AGREEMENTS ☐
GRANT AGREEMENTS ☐ CHANGE ORDERS ☐

2 Name of Contractor Mechanical Control Solutions

3 Complete information requested ☐ Plus GRT ☑ Inclusive of GRT

Original Contract Amount: Not to exceed $250,000.

Termination Date: Two years after original agreement signed

☑ Approved by Council Date: To Be Determined

☐ or by City Manager Date: _____

Contract is for: On Call for Miscellaneous HVAC Services on Multiple City of Santa Fe Facilities

Amendment # _____ to the Original Contract# _____

Increase Amount $ _____

Extend Termination Date to: _____

☐ Approved by Council Date: _____

☐ or by City Manager Date: _____

Amendment is for:

4 **History of Contract & Amendments:** (option: attach spreadsheet if multiple amendments) ☐ Plus GRT ☑ Inclusive of GRT

Amount $ not to exceed $250k of original Contract# _____ Termination Date: TBD
Reason: On Call for Miscellaneous HVAC Services on Multiple City of Santa Fe Facilities

Amount $ _____ amendment # _____ Termination Date: _____
Reason: _____

Amount $ _____ amendment # _____ Termination Date: _____
Reason: _____

Amount $ _____ amendment # _____ Termination Date: _____
Reason: _____

Amount $ _____ amendment # _____ Termination Date: _____
Reason: _____

Total of Original Contract plus all amendments: $ not to exceed $250k

5 **Procurement Method of Original Contract:** (complete one of the lines)

RFP ☐ RFQ ☐ Sole Source ☐ Other ☑ RFB # 15/07/B

City of Santa Fe
Summary of Contracts, Agreements, & Amendments

6 **Procurement History:** First year of open agreement
example: (First year of 4 year contract)

7 **Funding Source:** TBD on project basis **BU/Line Item:** TBD on project basis

8 **Any out-of-the ordinary or unusual issues or concerns:**
No
(Memo may be attached to explain detail.)

9 **Staff Contact who completed this form:** LeAnn Valdez Phone # 955-5938

Division Contract Administrator: David Pfeifer

Division Director: David Pfeifer

Department Director: Isaac J. Pino

10 **Certificate of Insurance attached.** (if original Contract) ☐

11 **Description of your efforts to reduce the cost of the contract including information on efforts to obtain other quotes for the contracted activity:** Worked on getting a On-Call contractor with Multiple vendors

12 **Prior year's contract amount?:** none

13 **Describe service impact from an ongoing commitment to the contractor:** required licenses

14 **Why staff cannot perform the work?:** required licenses

15 **If extending contract, why?:** N/A

16 **Was a Santa Fe company awarded contract? If not, why?:** NO. No Local Bids Received

17 **Has the contract has been approved as to form by City Attorney's Office?:** Yes

18 **Is this for City Manager or Council approval?:** City Council

GENERAL CONDITIONS OF THE CONTRACT
(00 7200)

In the case of conflicting requirements between the AIA General Conditions and these General Conditions, the most stringent requirement will apply.

(00 7213) GENERAL CONDITIONS

NOTICE

This document has been prepared by the Capital Improvements Program (CIP) and Contract Compliance staff of the City of Santa Fe for use in construction projects.

DOCUMENT - DIVISION 00 7213

GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

(THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION.)

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ARTICLE 1

CONTRACT DOCUMENTS

1.1 DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Owner-Contractor Agreement, the Conditions of the Contract (General, Supplementary, and Other Conditions), the Drawings, the Specifications, and all Addenda issued prior to and all Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a written interpretation issued by the Architect pursuant to Subparagraph 2.2.6, or (4) a written order for a minor change in the work issued by the Architect pursuant to Paragraph 12.4. The Contract Document do not include Bidding Documents such as the Advertisement or Invitation to Bid, the Instructions to Bidders, sample forms, the Contractor's Bid, or portions of Addenda relating to any of these, or any other documents, unless specifically enumerated in the Owner-Contractor Agreement.

1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. This Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification as defined in Subparagraph 1.1.1. The Contract Documents shall not be construed to create any contractual relationship of any kind between the Architect and the Contractor, but the Architect shall be entitled to performance of obligations intended for his benefit, and to enforcement thereof. Nothing contained in the Contract Documents shall create any contractual relationship between the Owner or the Architect and any Subcontractor or Sub-subcontractor.

1.1.3 THE WORK

The work comprises the design and completed construction required by the Contract Documents, and includes design specifications, and all labor necessary to produce such construction, and all materials and equipment incorporated or to be incorporated in such construction.

1.1.4 THE PROJECT

The Project is the total design and construction of which the work performed under the Contract Documents may be the whole or a part.

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 No fewer than two (2) copies of the Contract Documents shall be signed by the Owner and the Contractor. If either the Owner or the Contractor or both do not sign the Conditions of the Contract, Drawings, Specifications, or any of the other Contract Documents, the Architect shall identify such Documents.

1.2.2 By executing the Contract, the Contractor represents that he has visited the site, familiarized himself with the local conditions under which the work is to be performed, and correlated his observations with the requirements of the Contract Documents.

1.2.3 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all work not covered in the Contract Documents will not be required unless it is consistent therewith and is reasonably inferable therefrom as being necessary to produce the intended results. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings. In the event of a conflict between the Contract Documents, the more stringent requirements shall govern.

1.2.4 The organization of the Specifications into divisions, sections and articles, and the arrangement of Drawings shall not control the Contractor in dividing the work among Subcontractors or in establishing the extent of work to be performed by any trade.

1.3 OWNERSHIP AND USE OF DOCUMENTS

1.3.1 All designs, drawings, specifications, notes, and other work developed in the performance of this Contract shall be and remain the sole property of the Owner and may be used on any other work without additional compensation to the Architect. With respect thereto, the Architect agrees not to asset any rights and not to establish any claims under the design patent of copyright laws.

ARTICLE 2

ARCHITECT

2.1 DEFINITION

2.1.1 The Architect is the person lawfully license to practice Architecture, or an entity lawfully practicing Architecture identified as such in the Owner-Contractor Agreement, and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term "Architect" means the Architect or his authorized representative.

2.2 ADMINISTRATION OF THE CONTRACT – FACILITIES DIVISION

2.2.1 The Architect will provide administration of the Contract as hereinafter described.

2.2.2 The Architect will be the Owner's Agent during construction and until final payment is due. The Architect will advise and consult with the Owner. The Owner's instructions to the Contractor shall be forwarded through the Architect. The Architect shall have the authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with Subparagraph 2.2.17.

2.2.3 The Architect shall submit to the Owner, for approval, a list of critical inspection points based upon the construction schedule furnished by the Contract (Paragraph 4.11.1). The Architect and his staff (including the on-site representative, if agreed upon) shall make at least three (3) weekly visits to the site at those critical points and at other times as the Architect deems appropriate during the progress of the work. Additionally, the Architect shall familiarize himself with the progress and quality of the work and determine if the work is proceeding in accordance with the Contract Documents. On the basis of on-site observations, as the Architect, he shall guard the Owner against defects and deficiencies in the construction. Should the Architect determine that any portion of the work varies from the intent of the Contract Documents he shall immediately notify the Contractor and the Owner of the non-compliance and the nature of the work required to correct such non-compliance. The Architect shall recommend to the Owner, in writing, to issue a "stop work order" for any portion of the work that does not substantially comply with the intent of the Contract Documents, except as follows.

2.2.4 The Architect shall not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the work. Additionally, the Architect shall not be responsible for the Contractor's failure to carry out the work in accordance with the Contract Documents. The Architect shall reject work, which does not meet or exceed the standards established by the Contract Documents. Whenever, in his reasonable opinion, he considers it necessary or advisable to ensure the proper implementation of the intent of the Contract Documents, he will have authority to require special inspection or testing of any work in accordance with the provisions of the Contract Documents whether or not such work is then fabricated, installed or completed.

2.2.5 The Architect shall at all times have access to the work wherever it is in preparation and progress. The Contractor shall provide facilities for such access so the Architect may perform his functions under the Contract Documents.

2.2.6 Based on the Architect's observations and an evaluation of the Contractor's Application for Payment, the Architect will determine the amounts owing to the Contractor and will issue Certificates for Payment in such amounts, as provided in Paragraph 9.4.

2.2.7 The Architect will be the interpreter of the requirements of the Contract Documents and the judge of the performance thereunder by both the Owner and the Contractor.

2.2.8 The Architect will render interpretations necessary for the proper execution or progress of the work, with

reasonable promptness and in accordance with any time limit agreed upon. Either party to the Contract may make written request to the Architect for such interpretations.

2.2.9 Claims, disputes, and other matters in question between the Contractor and the Owner relating to the execution or progress of the work or the interpretation of the Contract Documents shall be referred to the Architect for decision which he will render in writing within a reasonable time.

2.2.10 All interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. In his capacity as interpreter and judge, he will endeavor to secure faithful performance by both the Owner and the Contractor, will not show partiality to either, and will not be liable for the result of any interpretation or decision rendered in good faith in such capacity.

2.2.11 The Architect's decisions in matters relating to artistic effect will be final if consistent with the intent of the Contract Documents.

2.2.12 The Architect will have authority to reject work which does not conform to the Contract Documents. Whenever, in his opinion, he considers it necessary or advisable for the implementation of the intent of the Contract Documents, he will have authority to require special inspection or testing of the work in accordance with Subparagraph 7.7.2 whether or not such work is then fabricated, installed or completed. However, neither the Architect's authority to act under this Subparagraph 2.2.12, nor any decision made by him in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Architect to the Contractor, any Subcontractor, any of their agents or employees, or any other person performing any of the work.

2.2.13 The Architect will review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and samples, but only for conformance with the design concept of the work and with the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay. The Architect's approval of a specific item shall not indicate approval of an assembly of which the time is a component.

2.2.14 The Architect will prepare Change Orders in accordance will Article 12 and will have authority to order minor changes in the work as provided in Subparagraph 12.4.1.

2.2.15 The Architect will conduct inspections to determine the dates of Substantial Completion and Final Completion, will receive and forward to the Owner for the Owner's review of written warranties and related documents required by the Contract and assembled by the Contractor and will issue a final Certificate of payment upon compliance with the requirements of Paragraph 9.9

2.2.16 If the Owner and Architect agree, the Architect will provide one or more Project Representatives to assist the Architect in carrying out his responsibilities at the site. The duties, responsibilities and limitations of authority of any such Project Representative shall be as set forth in an exhibit to be incorporated in the Contract Documents.

2.2.17 The duties, responsibilities and limitations of authority of the Architect as the Owner's representative during construction as set for in the Contract Documents will not be modified or extended without written consent of the Owner, the Contractor and the Architect.

2.2.18 In case of the termination of the employment of the Architect, the Owner shall appoint an Architect whose status under the Contract Documents shall be that of the former Architect.

ARTICLE 3

OWNER

3.1 DEFINITION

3.1.1 The Owner is the person or entity identified as such in the Owner-Contractor Agreement and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term "Owner" means the Owner or his authorized representative.

3.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

3.2.1 The Owner shall, at the request of the Contractor, at the time of execution of the Owner-Contractor Agreement, furnish to the Contractor reasonable evidence that he had made financial arrangements to fulfill his obligations under the Contract. Unless such reasonable evidence is furnished, the Contractor is not required to execute the Owner-Contractor Agreement or to commence the work.

3.2.2 (Not used)

3.2.3 Except as provided in Subparagraph 4.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments, and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

3.2.4 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the work.

3.2.5 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, all copies of Drawings and Specifications reasonable necessary for the execution of the work.

3.2.6 The Owner shall forward all instructions to the Contractor through the Architect.

3.2.7 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to work by Owner or by Separate Contractors, Payments and Completion, and Insurance in Articles 6, 9 and 11 respectively.

3.3 OWNER'S RIGHT TO STOP THE WORK

3.3.1 If the Contractor fails to correct defective work as required by Paragraph 13.2 or persistently fails to carry out the work in accordance with the Contract Documents, the Owner, by a written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Contractor to stop the work, or any portion thereof, until the cause of such order has been eliminated; however, this right of the Owner to stop the work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Subparagraph 6.1.3.

3.4 OWNER'S RIGHT TO CARRY OUT THE WORK

3.4.1 If the Contractor defaults or neglects to carry out the work in accordance with the Contract Documents and fails within seven days after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, after seven days following receipt by the Contractor of an additional written notice and without prejudice to any other remedy he may have, make good such deficiencies. In such case, an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and the amount charged to the Contractor are both subject to the prior approval of the Architect. If the payments then or thereafter due to the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

ARTICLE 4

CONTRACTOR

4.1 DEFINITION

4.1.1 The Contractor is the person or entity identified as such in the Owner-Contractor Agreement and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term "Contractor" means the Contractor or his authorized representative.

1.2 REVIEW OF CONTRACT DOCUMENTS

4.1.2 The Contractor shall carefully study and compare the Contract Documents and shall at once report to the Architect and the Owner any error, inconsistency or omission he may discover. The Contractor shall not be liable to the Owner or the Architect for any damage resulting from any such errors, inconsistencies or

omissions in the Contract Documents. The Contractor shall perform no portion of the work at any time without Contract Documents or, where required, approved Shop Drawings, Product Data or Samples for such portion of the work.

4.3 SUPERVISION AND CONSTRUCTION PROCEDURES

4.3.1 The Contractor shall supervise and direct the work, using his best skill and attention. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the work under the contract.

4.3.2 The Contractor shall be responsible to the Owner for the acts and omissions of his employees, Subcontractors and their agents and employees, and other persons performing any of the work under a contract with the Contractor.

4.3.3 The Contractor shall not be relieved from his obligations to perform the work in accordance with the Contract Documents either by the activities or duties of the Architect in his administration of the Contract, or by inspections, tests or approvals required or performed under Paragraph 7.8 by persons other than the Contractor.

4.4 LABOR AND MATERIALS

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

4.4.2 The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on the work any unfit person or anyone not skilled in the task assigned to him.

4.5 WARRANTY

4.5.1 The Contractor warrants to the Owner and Architect that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all work will be of good quality, free from faults and conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions in Paragraph 13.2.

4.5.2 The Contractor shall and hereby does warrant and guarantee all workmanship, labor, and materials performed and supplied by him or his Subcontractors for a period of one (1) year from the date of completion as evidenced by the date of the Owner's Certificate of Final Completion of this Contract. This also includes <u>all labor</u> required for replacing materials or equipment found to be defective with the one (1) year period. All guarantees for a longer period of time required by the work sections of these Specifications shall be secured by the Contractor from Subcontractors and delivered to the Architect and are hereby warranted by the Contractor as much as if countersigned by him.

4.6 TAXES

4.6.1 The Contractor shall pay all sales, consumer gross receipts tax, use and other similar taxes for the work or portions thereof provided by the Contractor which are legally enacted at the time Bids are received, whether or not yet effective.

4.7 PERMITS, FEES AND NOTICES

4.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the construction permit and for all other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the work which are customarily secured after execution of the Contract and which are legally required at the time the Bids are received.

4.7.2 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the work.

4.7.3 It is not the responsibility of the Contractor to make certain that the Contract Documents are in accordance with applicable laws, statutes, building codes and regulations. If the Contractor observes that any of the Contract Documents are at variance therewith in any respect, he shall promptly notify the Architect in writing, and any necessary changes shall be accomplished by appropriate Modification.

4.7.4 If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Architect, he shall assume full responsibility therefore and shall in turn notify the Owner's Representative of such action.

4.8 ALLOWANCES

4.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by these allowances shall be supplied for such amounts and by these allowances shall be supplied for such amounts and by such persons as the Owner may direct, but the Contractor will not be required to employ persons against whom he makes a reasonable objection.

4.8.2 Unless otherwise provided in the Contract Documents:

A. These allowances shall cover the cost to the Contractor, less any applicable trade, discount of the materials and equipment required by the allowance delivered at the site, and all applicable taxes.

B. The Contractor's costs for unloading and handling on the site, labor, installations costs, overhead, profit and other expenses contemplated for the original allowance shall be included in the Contract Sum and not in this allowance;

C. Whenever the cost is more than or less than the allowance, the Contract Sum shall be adjusted accordingly by Change Order, the amount of which will recognize changes, if any, in handling costs on the site, labor, installation costs, overhead, profit and other expenses.

4.9 SUPERINTENDENT

4.9.1 The Contractor shall employ a competent Superintendent and necessary assistants who shall be in attendance at the project site during the progress of the work. The Superintendent shall represent the Contractor, and all communications given to the Superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be so confirmed on written request in each case.

4.10 PROGRESS SCHEDULES

4.10.1 The Contractor shall, within ten (10) days after the effective date of Notice to Proceed, furnish five copies of a preliminary progress schedule covering his operations for the first thirty (30) days. The preliminary progress schedule shall be a bar graph or an arrow diagram showing the items the Contractor intends to commence and complete the various work stages, operations, and contract means planned to be started during the first thirty (30) days.

4.10.2 Unless otherwise specified in the Special Provisions, the Contractor shall submit for approval by the Architect, within thirty 30) days after the effective date of Notice to Proceed, five copies of a critical-path-type analysis. The critical-path-type analysis shall include as a minimum; a graphic network diagram; a computer printout or list of activities; and a brief written explanation of the proposed schedule.

4.10.3 The graphic network diagram shall consist of an arrow diagram or a geometric figure and connector diagram which clearly depicts the major subdivisions of the work, the order and interdependencies of activities planned by the Contractor, as well as, activities by others which affect the Contractor's planning. The intended time for starting and completing each activity, the associated float time and the quantity and kinds of major equipment to be used shall be shown for each construction operation. For those activities lasting more than 30 days, either the estimated time for 25-50 and 75 percent completion or other significant milestones in the course of the activity, shall be shown. In addition to the actual construction operations, the network diagram shall show such items as submittal of samples and Shop Drawings, delivery of materials and equipment, construction in the area by other forces, traffic detour controls, and other significant items related to the progress of construction. The graphic network diagram shall be printed or neatly and legibly drawn to a linear scale.

4.10.4 Activities shown shall be coordinated insofar as possible with the Contract Bid items, types of work and maximum number of activities of each type.

4.10.5 The computer printout or list of activities shall show for each activity the estimated duration, the earliest starting and finishing dates, the latest starting and finishing dates, and float or slack time. Activities which constitute the critical sequence shall be identified, showing a total job duration equal to the Contract Time.

4.10.6 The written explanation shall contain sufficient information to describe the construction methods to be used and to enable the Architect to evaluate the schedule and supporting analysis for validity and practicability. If the schedule or written explanation is not accepted by the Architect, the Contractor shall resubmit the rejected items within ten (10) days after rejection.

4.10.7 The analysis may employ the use of an electric computer or may consist of a non-computer analysis if the latter is suitable to analyze the number of activities required. The adequacy of the system selected shall be acceptable to the Architect.

4.10.8 The Contractor shall submit to the Architect monthly progress status reports on dates directed by the Architect. Such reports shall list those uncompleted activities which have less than 30 days float and which are either in progress or scheduled to be started within the next reporting period. For each of the listed activities, the following shall be shown:

A. Starting date scheduled in last critical-path-analysis.
B. Actual or intended starting date.
C. Revised activity duration, if any.

If the noted starting dates or duration delay the scheduled project completion date, the delay shall be named. Reasons for the delay shall be given with an explanation of the Contractor's proposed corrective action. The Contract shall also note each activity completed during the report period.

4.10.9 A revised critical-path-type analysis shall be submitted when one or more of the following conditions occur:

A. When an approved change Order significantly affects the contract completion date, or the sequence of activities.
B. When progress of any critical activity falls significantly behind the scheduled progress.
C. When delay on a non-critical activity is of such magnitude as to change the course of the critical path.
D. At any time the Contractor elects to change any sequence of activities affecting the critical path.

The revised analysis shall be made in the same form and detail as the original submittal and shall be accompanied by an explanation of the reasons for the revisions.

4.10.10 The Contractor shall prosecute the work in accordance with the latest critical path type analysis. Deviations therefrom shall be submitted to the Architect for review. In the event that the progress of items along the critical path is delayed, the Contractor shall revise his planning to include additional forces, equipment, shifts or hours necessary to meet the contract completion date. All additional cost resulting therefrom will not be borne by the Owner.

4.11 DOCUMENTS AND SAMPLES AT THE SITE

4.11.1 The Contractor shall maintain at the site, for the Owner, one record copy of all Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record all changes made during construction, and approved Shop Drawings, Product Data and Samples. These shall be available to the Architect and shall be delivered to him for the Owner upon completion of the work.

4.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

4.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the work by the Contractor or any Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the work.

4.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate a material, product or system for some portion of the work.

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

4.12.4 The Contractor shall review, approve and submit, with reasonable promptness and in such sequence as to cause no delay in the work or in the work of the Owner of any separate Contractor, all Shop Drawings, Product Data and Sample required by the Contract Documents.

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

4.12.6 The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data or Samples under Subparagraph 2.2.13 unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submission and the Architect has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples by the Architect's approval thereof.

4.12.7 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data or Samples, to revisions other than those requested by the Architect on previous submittals.

4.12.8 No portion of the work requiring submission of a Shop Drawing, Product Data or Sample shall be commenced until the submittal has been approved by the Architect as provided in Subparagraph 2.2.13. All such portions of the work shall be in accordance with approved submittals.

4.13 USE OF SITE

4.13.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not reasonably encumber the site with any materials or equipment.

4.13.2 The Contractor shall hold and save the Owner free and harmless from liability of any nature or kind arising from use, trespass or damage occasioned by third persons.

4.14 CUTTING AND PATCHING OF WORK

4.14.1 The Contractor shall be responsible for all cutting, fitting or patching that may be required to complete the work or to make its several parts fit together properly.

4.14.2 The Contractor shall not damage or endanger any portion of the work or the work of the Owner or any separate contracts by cutting, patching or otherwise altering any work, or by excavation. The Contractor shall not cut or otherwise alter the work of the Owner or any separate Contractor except with the written consent of the Owner and of such separate Contractor. The Contractor shall not unreasonably withhold from the Owner any separate Contractor his consent to cutting or otherwise altering the work.

4.15 CLEANING UP

4.15.1 The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. At the completion of the work, he shall remove all his waste materials and rubbish from and about the Project as well as all his tools, construction equipment, machinery and surplus materials.

4.15.2 If the Contractor fails to clean up a the completion of the work, the Owner may do so as provide in Paragraph 3.4, and the cost thereof shall be charged to the Contractor.

4.15.3 The Contractor shall be solely responsible for performance of the following clean up:

1. Debris: Regardless of the nature of the debris, it shall be immediately cleared form the work area. Each trade shall cooperate with other trades in the removal of debris and in keeping a clean job throughout.

2. Cleaning of All Glazes: The Contractor shall remove sealant and caulking stains and paint from all glass and shall wash and polish same. Care shall be taken not to scratch glass.

3. Cleaning of All Painted, Decorated, and Stained Work: The Contractor shall remove all marks, stains, finger prints, and other soil or dirt from all painted, decorated, and stained work.

4. Removal of all Temporary Protections: The Contractor shall remove all temporary protections and shall clean all floors at completion.

5. Cleaning and Polishing of all Hardware: The Contractor shall clean and polish all hardware for all trades,. This shall include removal of all stains, dust dirt, paint, etc., upon completion, without scratching or otherwise marring the hardware.

6. Removal of all Spot, Soil, and Paint from all Tile Work: The Contractor shall remove all spots, soil and paint from all tile work and shall wash the same upon completion.

7. Cleaning of all Fixtures and Equipment: The Contractor shall clean all fixtures and equipment, removing all stains, paint, dirt, and dust.

4.16 COMMUNICATIONS

4.16.1 The Contractor shall communicate directly with the Architect for design clarifications. Any fabrication or installation issues that may result in a change order or may result in a delay to the project schedule shall be communicated to both the Owner and the Architect at the same time, and documented in writing within two business days. All oral directions from the Architect to the Contractor shall be documented in writing to the Contractor and the Owner within one business day.

4.17 ROYALTIES AND PATENTS

4.17.1 The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified; but if the Contractor has reason to believe that the design, process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the Architect.

4.18 INDEMNIFICATION

4.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner and the Architect and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (1) 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, and (2) is caused in whole or in part by any negligent act or omission on the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts an of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such negligent shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnify which would otherwise exist as to any party or person described in this Paragraph 4.18.

4.18.2 In any and all claims against the Owner or the Architect or any of their agents or employees by an employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph 4.18 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

4.18.3 The obligation of the Contractor under this Paragraph 4.18 shall not extend to the liability of the Architect, his agents or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs, or specifications, or (2) the giving of or the failure to give directions by the Architect, his agents or employees, provided such giving or failure to give is the primary cause of the injury or damage.

ARTICLE 5

SUBCONTRACTOR

5.1 DEFINITION

5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform any of the work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Subcontractor or his authorized representative. The term "Subcontractor" does not include any separate Contractor or his Subcontractors.

5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform any of the work at the Site.

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

5.2.1 Unless otherwise required by the Contract Documents of the Bidding Documents, the Contractor, as soon as practicable after the award of the Contract, shall furnish to the Owner and the Architect in writing the names of the persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each of the principal portions of the work. The Architect will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or the Architect to reply promptly shall constitute notice of no reasonable objection.

5.2.2 The Contractor shall not contract with any such proposed person or entity to whom the Owner or the Architect has made reasonable objection under the provisions of Subparagraph 5.2.1. The Contractor shall not be required to contract with anyone to whom he has a reasonable objection.

5.3 SUBCONTRACTUAL RELATION

5.3.1 By an appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the Owner and the Architect. Said agreement shall preserve and protect the rights of the Owner and the Architect under the Contract Documents with respect to the work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the Contractor-Subcontractor agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with his Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Paragraph 5.3, and identify the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Documents available to his Subcontractors.

ARTICLE 6

WORK BY OWNER OR BY SEPARATE CONTRACTORS

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

6.1.1 The Owner reserves the right to perform work related to the Project with his own forces, and to award separate contracts in connection with other portions of the Project or other work on the site under these or similar Conditions of the Contract. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, he shall make such claim as provided elsewhere in the Contract Documents.

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

6.1.3 The Owner will provide for the coordination of the work of his own forces and of each separate Contractor with the work of the Contractor, who shall cooperate therewith as provided in paragraph 6.2.

6.2 MUTUAL RESPONSIBILITY

6.2.1 The Contractor shall afford the Owner and the Separate Contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall connect and coordinate his work with theirs as required by the Contract Documents.

6.2.2 If any part of the Contractor's work depends for proper execution or results upon the work of the Owner or any separate Contractor, the Contractor shall, prior to proceeding with the work, promptly report to the Architect any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acceptance of the Owner's or the separate Contractor's work as fit and proper to receive his work, except as to defects which may subsequently become apparent in such work by others.

6.2.3 Any costs caused by defective or ill-timed work shall be borne by the party responsible thereof.

6.2.4 Should the Contractor wrongfully cause damage to the work or property of the Owner, or to other work on the promptly remedy such damage as provided in Subparagraph 10.2.5.

6.2.5 Should the Contractor wrongfully cause damage to the work or property of any separate Contractor, the Contractor shall upon due notice promptly attempt to settle with such other Contractor by agreement, or otherwise to resolve the dispute. If such separate Contractor sues or initiates an arbitration proceeding against the Owner on account of any damage alleged to have been cause by the Contractor, the Owner shall notify the Contractor, who shall defend such proceedings at the Owner's expense, and if any judgment or award against the Owner arises therefrom, the Contractor shall pay or satisfy it and shall reimburse the Owner for all attorneys' fees and court or arbitration costs which the Owner has incurred.

6.3 OWNER'S RIGHT TO CLEAN UP

6.3.1 If a dispute arises between the Contractor and separate Contractors as to their responsibility for cleaning up as required by Paragraph 4.15, the Owner may clean up and charge the cost thereof to the Contractors responsible therefor as the Architect shall determine to be just.

ARTICLE 7

MISCELLANEOUS PROVISIONS

7.1 GOVERNING LAW

7.1.1 The Contract shall be governed by the law of the State of New Mexico.

7.1.2 The Owner and the Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements, and obligations contained in the Contract Documents. Neither part to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any moneys due or to become due to him thereunder, without the previous written consent of the Owner.

7.2 WRITTEN NOTICE

7.2.1 Written notice shall be deemed to have duly served if delivered in person to the individual or member of the firm or entity or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified mail to the last business address known to him who gives the notice.

7.3 CLAIMS FOR DAMAGES

7.3.1 Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the other party or of any of his employees, agents or others for whose acts he is legally liable, claim shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

7.4 PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND

7.4.1 The Contractor to whom the Contract is awarded shall furnish and pay for reputable and approved Performance and Labor and Material Payment Bonds, each for the full amount of the Contract Sum. Bonds shall be executed on standard AIA forms.

7.5 RIGHTS AND REMEDIES

7.5.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

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

7.6 TESTS

7.6.1 If the Contract Document, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the work to be inspected, tested or approved, the Contractor shall give the Architect timely notice of its readiness so the Architect may observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests or approvals. Tests specifically called for by specifications shall be made by an independent, certified, professional testing laboratory acceptable to the Architect, and the Contractor shall employ same and pay all charges in connection therewith. Records of tests shall be delivered to the Architect in duplicate on acceptable forms.

7.6.2 If the Architect determines that any work requires special inspection, testing, or approval which Subparagraph 7.6.1 does not include, he will, upon written authorization from the Owner, instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as provided in Subparagraph 7.6.1. If such special inspection or testing reveals a failure of the work to comply with the requirements of the Contract Documents, the Contractor shall bear all costs thereof, including compensation for the Architect's additional services made necessary by such failure; otherwise the Owner shall bear such costs, and an appropriate Change Order shall be issued.

7.7 INTEREST

7.7.1 The Owner will not pay interest on payments due and unpaid under the Contract Document.

ARTICLE 8

TIME

8.1 DEFINITIONS

8.1.1 Unless otherwise provided, the Contract Time is the period of time allotted in the Contract Documents for Substantial Completion of the work as defined in Subparagraph 8.1.3, including authorized adjustments thereto.

8.1.2 The date of commencement of the work is the date established in a Notice to Proceed. If there is no Notice to Proceed, it shall be the date of the Owner-Contractor Agreement or such other date as may be established therein.

8.1.3 The Date of Substantial Completion of the work or designated portion thereof is the Date certified by the Architect and approved by the Owner when construction is deficiently complete, in accordance with the Contract Documents, so the Owner can occupy or utilize the work or designated portion thereof for the use for which it is intended.

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

8.2 PROGRESS AND COMPLETION

8.2.1 All time limits stated in the Contract Documents are the essence of the Contract.

8.2.2 The Contractor shall begin the work on the date of commencement as defined in Subparagraph 8.1.2. He shall carry the work forward expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

8.3 DELAYS AND EXTENSIONS OF TIME

8.3.1 If the Contractor is delayed at any time in the progress of the work by any act or neglect of the Owner or the Architect or by any employees of either, or by any separate Contractor employed by the Owner or by changes ordered in the work, or by labor disputes, fire, unusual delay in unavoidable casualties, or any causes beyond the Contractor's control or by delay authorized by the Owner pending arbitration, or by any other cause which the Architect determines may justify the delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

8.3.2 Any claim for extension of time shall be made in writing to the Architect not more than twenty days after the commencement of the delay; otherwise it shall be waived. In the case of a continuing delay, only one claim is necessary. The Contractor shall provide an estimate of the probable effect of such delay on the progress of the work.

8.3.3 If written agreement is made stating the dates upon which interpretations as provided in Subparagraph 2.28 shall be furnished, then no claim for delay shall be allowed on account of failure to furnish such interpretations until fifteen days after written request is made for them, and not then unless such claim is reasonable.

8.3.4 This Paragraph 8.3 does not exclude the recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9

PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

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

9.2 SCHEDULE OF VALUES

9.2.1 Before the first Application for Payment, the Contractor shall submit to the Owner and Architect a schedule of values allocated to the various portion of the work, prepared in such form and supported by such data to substantiate its accuracy as the Owner or Architect may require. This schedule, unless objected to by the Owner or Architect, shall be used only as a basis for the Contractor's Applications for payment.

9.3 APPLICATIONS FOR PAYMENT

9.3.1 At least ten days before the date for each progress payment established in the Owner-Contractor Agreement, the Contractor shall submit to the Architect an itemized Application for Payment, notarized if required, supported by such data substantiating the Contractor's right to payment as the Owner or the Architect may require, as provided elsewhere in the Contract Documents.

9.3.2 Unless otherwise provided in the Contract Documents, payments will be made on account of materials or the Owner payments may similarly be made for materials or equipment suitably stored at some other location agreed upon in writing. Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials or equipment or otherwise protect the Owner's interest, including applicable insurance and transportation to the site for those materials and equipment stored off the site.

9.3.3 The Contractor warrants that title to all work, materials and equipment covered by an Application for

Payment will pass to the Owner either by incorporation in the construction or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interest or encumbrances hereinafter referred to in this Article 9 as "liens"; and that no work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing work at the site or furnishing materials or equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

9.4 CERTIFICATES FOR PAYMENT

9.4.1 The Architect will within three days after the receipt of the Contract's Application for Payment, approve the Application for Payment to the Owner with a copy to the Contractor for such amount as the Architect determines is properly due, or notify the Contractor in writing of his reasons for withholding his approval as provided in Subparagraph 9.6.1.

9.4.2 The issuance of an approval of the Application for Payment will constitute a representation by the Architect to the Owner, based on his observations at the site as provided in Subparagraph 2.2.3 and the data comprising the Application for Payment, that the work has progressed to the point indicated; that, to the best of his knowledge, information and belief, the quality of the work is in accordance with the Contract Documents (subject to an evaluation of the work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents correctable prior to completion, and that the Contractor is entitled to payment in the amount certified. However, by issuing an approval of the Application for Payment, the Architect shall not thereby be deemed to represent that he has made exhaustive or continuous on-site inspections to check the quality or quantity of the work or that he has reviewed the construction means, methods, techniques, sequences procedures, or that he has made any examination to ascertain how or for what purpose the Contractor has used the moneys previously paid on account of the Contract Sum.

9.5 PROGRESS PAYMENTS

9.5.1 After the Architect has issued an approval of the Application for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents.

9.5.2 The Contractor shall promptly pay each Subcontractor upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's work, the amount to which said Subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of such Subcontractor's work. The Contractor shall, by an appropriate agreement with each Subcontractor, require each Subcontractor to make payment to his Subcontractors in similar manner.

9.5.3 The Architect may, on request and at his discretion, furnish to any Subcontractor, if practicable, information regarding the percentages of completion or the amounts applied for by the Contractor and the action taken thereon by the Architect on account of work done by such Subcontractor.

9.5.4 Neither the Owner nor the Architect shall have any obligation to pay or to see to the payment of any moneys to any Subcontractor except as may otherwise be required by law.

9.5.5 No Certificate for progress payment, no progress payment, nor any partial or entire use of occupancy of the Project by the Owner shall constitute an acceptance of any work not in accordance with the Contract Documents.

9.6 PAYMENT WITHHELD

9.6.1 The Architect may decline to certify payment and may withhold his Certificate in whole or in part, to the extent necessary to reasonably protect the Owner, if in his opinion he is unable to make representations to the Owner as provided in Subparagraph 9.4.2.

9.6.2. If the Architect is unable to make representations to the Owner, as provided in Subparagraph 9.4.2 and to certify payment in the amount of the Application, he will notify the Contractor as provided in Subparagraph 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which he is able to make such representations to the Owner. The Architect may also decline to certify payment, or because of subsequently discovered evidence or subsequent observations, he may nullify the whole or any part of any Certificate for Payment previously issued, to such

extent as may be necessary in his opinion to protect the Owner from loss because of:

A) Defective work not remedied;

B) Third party claims filed or reasonable evidence indicating probable filing of such claims;

C) Failure of the Contractor or make payments properly to Subcontractors or for labor, materials or equipment;

D) Reasonable evidence that the work cannot be completed for the unpaid balance of the Contract Sum.

E) Damage to the work of another Contractor;

F) Reasonable evidence that the work will not be completed within the Contract Time; or,

G) Failure to carry out the work in accordance with the Contract Documents.

9.6.2 When the above grounds in Subparagraph 9.6.1 are removed, payment shall be made for amounts withheld because of them.

9.7 FAILURE OF PAYMENT

9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within three days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents any amount certified by the Architect, then the Contractor may, upon seven additional days' written notice to the Owner and the Architect, stop the work until payment of the amount owing has been received. The Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, which shall be effected by appropriate Change Order in accordance with Paragraph 12.3.

9.8 SUBSTANTIAL COMPLETION

9.8.1 When the Contractor considers that the work, or a designated portion thereof which is acceptable to the Owner, is substantially complete as defined in Subparagraph 8.1.3, the Contractor shall prepare for submission to the Architect a list of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all work in accordance with the Contract Documents. When the Architect, with the Owner, on the basis of an inspection determines that the work or designated portion thereof is substantially complete, he will then prepare a Certificate of Substantial Completion Form, AIA Document G704-1978, which shall establish the Date of Substantial Completion, shall state the responsibilities of the Owner and the Contractor for security, maintenance within which the Contractor shall complete the items listed therein. Warranties required by the Contract Document shall commence on the date of Final Completion of the work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Contractor and the Owner for their written acceptance of the responsibilities assigned to them in such Certificate.

9.8.2 Upon Substantial Completion of the work or designated portion thereof and upon application by the Contractor and certification by the Architect, the Owner shall make payment, reflecting adjustment in retainage, if any, for such work or portion thereof, as provided in the Contract Documents.

9.9 FINAL COMPLETION AND FINAL PAYMENT

9.9.1 Upon receipt of written notice that the work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, if he finds the work acceptable under the Contract Documents and the Contract fully performed, he will promptly issue final Certificate for Payment stating that, to the best of his observations and inspections, the work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in said Final Certificate, is due and payable. The Architect's Final Certificate of payment will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment as set forth in Subparagraph 9.9.2 have been fulfilled.

9.9.2 Neither the final payment nor the remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the work for which the Owner or his property might in any way be responsible have been paid or otherwise satisfied, (2) consent of surety, if any, to final payment, and (3) if required by the Owner, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the Contract, to the extent and in such form as may be designed by the Owner. If any Subcontractor refuses to furnish a release or waiver required by the Owner the Contractor may furnish a bond satisfactory to the Owner to indemnify him against any such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all moneys that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

9.9.3 If, after Substantial Completion of the work, final completion thereof is materially delayed through no fault of the Contractor or by the issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect and without terminating the Contract, make payment of the balance for that portion of the work fully completed and accepted. If the remaining balance for work not fully completed or corrected is less than the retainage stipulated in the Contract Document, and if bonds have been furnished as provided in Paragraph 7.5, 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 the Contractor to the Architect prior to certification of 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.

9.9.4 The making of final payment shall constitute a waiver of all claims by the Owner except those arising from:

A) Unsettled liens;

B) Faulty or defective work appearing after Substantial Completion;

C) Failure of the work to comply with the requirements of the Contract Documents; and

D) Terms of any special warranties required by the Contract Documents.

9.9.5 The acceptance of final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the final Application for Payment.

ARTICLE 10

PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

10.2. SAFETY OF PERSONS AND PROPERTY

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

A) All employees on the work and all other persons who may be affected thereby;

B) All the work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any of his Subcontractors or Sub-subcontractors; and

C) Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities no designated for removal, relocation or replacement in the course of construction.

10.2.2 The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the safety of persons or property or their protection from

damage, injury or loss.

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

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

10.2.5 The Contractor shall promptly remedy all damage or loss (other than damage of loss insured under paragraph 11.3) to any property referred to in Clauses 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, any Subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the Contractor is responsible under clauses 10.2.1.2 and 10.2.1.3, except damage or loss attributable to the acts or omissions of the Owner or the Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and no attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to his obligations under Paragraph 4.18.

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

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

10.3 EMERGENCIES

10.3.1 In any emergency affecting the safety of persons or property, the Contractor shall act, at his reasonable discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall; be determined as provided in Article 12 for Changes in the work.

ARTICLE 11

INSURANCE

11.1 CONTRACTOR'S LIABILITY INSURANCE

11.1.1 The Contractor shall maintain in effect, and shall require all Subcontractors and others performing any portion of this Contract to maintain in effect, insurance of the types and respective minimum limits required. Such insurance shall cover all operations under this Contract. Maintenance of such insurance in at least the specified minimum amounts shall not relieve the Contractor or liability for loss in excess of the limits of liability specified herein or otherwise not covered by the coverage's required herein. The Contractor shall bear the cost of such insurance and include its costs in the Bid. The limits of insurance to be maintained are specified in the Agreement Between Owner and Contractor.

11.1.2 Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the work. These Certificates shall contain a provision that coverage afforded under the policies will not be canceled until at least thirty days; prior written notice has been given to the Owner.

11.2 OWNER'S LIABILITY INSURANCE

11.2.1 The Owner shall be responsible for purchasing and maintaining his own liability insurance and, at his option, may purchase and maintain such insurance as will protect him against all claims which may arise from operations under the Contract.

11.3 PROPERTY INSURANCE

11.3.1 The Contractor shall maintain builder's risk property insurance or self-insurance, or a combination of insurance and self-insurance, upon the work at the site for at least the actual cash value thereof. The builder's risk insurance shall cover the interests of the Owner, the Contractor, Subcontractors, and Sub-subcontractors in the work. The insurance shall insure against at least the following perils: fire extended coverage,

vandalism, and malicious mischief. The Contractor shall bear the cost of such insurance and include its cost in the Bid.

11.3.2 Any loss insured or self-insured under Subparagraph 11.3.1 is to be adjusted with the Owner and made payable to the Owner as trustee for the insured, as their interests may appear subject to the requirements of any applicable mortgage clause. The Owner shall deposit the proceeds in a separate account and shall distribute them in accordance with such agreement as the parties in interest, including the Owner, may reach. The Contractor shall pay each Subcontractor a just share of any insurance proceeds which the Contractor receives and shall require by written agreement signed by the Subcontractor that the Subcontractor will

make payments to his Sub-subcontractors in a similar manner. If after such loss no other special agreement is made, replacement of damaged work shall be covered by an appropriate order.

11.3.3 To the extent permitted under their respective property insurance policies, the Owner and the Contractor hereby waive all rights, each against the other, for damages caused by fire or other perils to the extent covered by Insurance obtained pursuant to this Article 11 or any other property insurance applicable to the work, except such rights as they may have to the proceeds of such Insurance held by the Owner as trustee. The Owner or the Contractor, as appropriate, shall require the Architect, other Contractors, Subcontractors, and Sub-subcontractors to similarly waive rights of subrogation or property insurers.

11.3.4 If the Owner finds it necessary to occupy use of any portion of the work prior to Substantial Completion, such occupancy or use shall not commence prior to the time mutually agreed to by the Owner and the Contractor and, if required by the applicable insurance or self-insurance coverage not prior to the time the builder's risk property insurer has consented to such occupancy or use. The Contractor's consent to such occupancy or use shall not be unreasonably withheld.

11.4 LOSS OF USE INSURANCE

11.4.1 The Owner, at his option, may purchase and maintain such insurance as will insure him against loss of use of his property due to fire or other hazards, however caused.

ARTICLE 12

CHANGES IN THE WORK

12.1 CHANGE ORDERS

12.1.1 A Change Order is a written order to the Contractor signed by the Architect and the Contractor and approved in writing by the Owner. A Change Order may be issued only after the execution of the Contract and shall be the only means used to order changes in the work for which the Contractor requires additional compensation, changes to the Contract Time, or changes to the Contract Sum. Minor changes in the work for which the Contractor requires no additional compensation or time shall be executed in accordance with the provision of Subparagraph 12.4.1.

12.1.2 The Owner, without invalidating the Contract, may order changes in the work within the general scope of the Contractor consisting of additions, deletions or other revisions, the Contract Sum and the Contract Time being adjusted accordingly. All such changes in the work shall be authorized by Change Order and shall be performed under the applicable conditions of the Contract Documents.

12.1.3 The cost or credit to the Owner resulting from a change in the work shall be determined in one or more of the following ways:

A) By mutual acceptance of a lump sum properly itemized an supported by sufficient substantiating data to permit evaluation;

B) By unit prices stated in the Contract Documents or subsequently agreed upon;

C) By cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

D) By the method provided in Subparagraph 12.1.4.

12.1.4 If none of the methods set forth in Clauses 12.1.2., 12.1.3. or 12.1.3. is agreed upon, the Contractor, provided he receives a written order signed by the Owner, shall promptly proceed with the work involved. The cost of such work shall the be determined by the Architect on the basis of the reasonable expenditures and savings of those performing the work attributable to the change, including, in the case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data for inclusion in a Change Order. Unless otherwise provided in the Contract Documents, cost shall be limited to the following: cost of materials, including sales tax and cost of delivery; cost of labor, including social security, old age and unemployment insurance, and fringe benefits, required by agreement or custom, workers' or workmen's compensation insurance; bond premiums; rental value of equipment and machinery; and the additional costs of supervision and field office personnel directly attributable to the change. Pending final determination of cost to the Owner payments on account shall be made on the Architect's Certificate for payment. The amount of credit to be allowed by the Contractor to the Owner for any deletion or change which results in a net decrease in the Contract Sum will be the amount of the actual net cost as confirmed by the Architect. When both additions and credits covering related work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any, with respect to that change.

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

12.1.6 By submission of a Bid, the Contractor agrees and binds himself to the following method of calculating Change Order costs. The Owner also agrees to the following method of calculating the cost of any changes to the Contract. With each proposal for a change in the amount of the Contract, the Contractor shall submit an itemized breakdown of all increases or decreases in the cost of the Contractor's and all Subcontractor's and Sub-subcontractor's work to include at least the following detail in the general order listed:

A) Material quantities and unit costs;

B) Labor amounts and hourly rates (identified with specific items of material to be placed or operation to be performed);

C) Costs inherent in use of Contractor/Sub-subcontractor owned equipment;

D) Equipment rental, if any;

E) Workmen's compensation and public liability insurance;

F) General administration, overhead, supervision, project insurance and profit, based on the following schedule:

Subtotal before Applying the Percentage Shown	$500 & Less	Over $500
Contractor for work performed by his own forces	22%	19%
Contractor for work performed by Subcontractor	10%	8%
Subcontractor for work performed by his own forces	18%	15%
Subcontractor for work performed by Sub-subcontractor	10%	8%
Sub-subcontractor for work performed by his own forces	18%	15%

G) Employment taxes under FICA and FUTA; and

H) State gross receipts tax (Contractor only).

12.1.7 The quotation for work under a Change Order shall be binding for sixty (60) days from the date submitted by the Contractor.

12.2 CONCEALED CONDITIONS

12.2.1 Should concealed conditions encountered in the performance of the work below the surface of the ground or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Contract Documents, or should unknown physical conditions below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in work of the Character provided for in this Contract, be encountered, the Contract Sum shall be equitably adjusted by change Order upon verified claim by either party made within twenty days after the first observance of the conditions.

12.2.2 If the Contractor wishes to make a claim for an increase in the Contract Sum, he shall give the Architect and Owner written notice thereof within twenty days after the occurrence of the event giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute the work, except in an emergency endangering life or property, in which case the Contractor shall proceed in accordance with Paragraph 10.3. No such claim shall be valid unless so made. If such claims are justified and the Owner authorizes an increase in the Contract Sum, the Owner and the Contractor shall proceed to negotiate the amount of the adjustment in the Contract Sum. If the Owner and the Contractor cannot agree on the amount of the adjustment in the Contract Sum, it shall be determined by the Architect. Any change in the Contract Sum resulting from such claim shall be authorized by Change Order.

12.2.3 If the Contractor claims that additional cost is involved because of, but not limited to, (1) any written interpretation pursuant to Subparagraph 2.2.8, (2) any order by the Owner to stop the work pursuant to Paragraph 3.3 where the Contractor was not at fault, (3) any written order for a minor change in the work issued pursuant to Paragraph 12.4, or (4) failure of payment by the Owner pursuant to Paragraph 9.7, the Contractor shall make such claims provided in Subparagraph 12.3.1.

12.3 MINOR CHANGES IN THE WORK

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

ARTICLE 13

UNCOVERING AND CORRECTION OF WORK

13.1 UNCOVERING OF WORK

13.1.1 If any portion of the work should be covered contrary to the request of the Architect or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Architect, be uncovered for his observation and shall be replaced at the Contractor's expense.

13.1.2 If any portion of the work has been covered which the Architect has not specifically requested to observe prior to begin covered, the Architect may request to see such work and it shall be uncovered by the Contractor. If such work be found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such work be found not in accordance with the Contract Documents, the Contractor shall pay such costs unless it be found that this condition was caused by the Owner or a separate Contractor as provided in Article 6, in which even the Owner shall be responsible for the payment of such costs.

13.2 CORRECTION OF WORK

13.2.1 The Contractor shall promptly correct all work rejected by the Architect as defective or as failing to conform to the Contract Documents whether observed before or after Substantial completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected work, including compensation for the Architect's additional services made necessary thereby.

13.2.2 If, within one year after the Date of Substantial Completion of the work or designated portion thereof or within one year after acceptance by the Owner of designated equipment or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the work is found to be defective or not in accordance with the Contract Documents, the

Contractor shall correct it promptly after receipt of a written notice from the Owner to do so unless the Owner has previously given the Contractor a specific written acceptance of such condition. This obligation shall survive termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.

13.2.3 The Contractor shall remove from the site all portions of the work which are defective or non-conforming and which have not been corrected under Subparagraphs 4.5, 13.2.1 and 13.2.2, unless removal is specifically waived in writing by the Owner.

13.2.4 If the Contractor fails to correct defective or non-conforming work as provided in Subparagraph 4.5.1, 13.2.1 and 13.2.2, the Owner may correct it in accordance with Paragraph 3.4.

13.2.5 If the Contractor does not proceed with the correction of such defective or non-conforming work within a reasonable time fixed by written notice from the Architect, the Owner may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten days thereafter, the Owner may upon ten additional days' written notice sell such work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor including compensation for the Architect's additional services made necessary thereby. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

13.2.6 The Contractor shall bear the cost of making good all work of the Owner or separate Contractors destroyed or damaged by such correction or removal.

13.2.7 Nothing contained in this Paragraph 13.2 shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including Paragraph 4.5 hereof. The establishment of the time period of one year after the Date of Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the Contractor to correct the work and has no relationship to the time within which his obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to his obligations other than specifically to correct the work.

13.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK

13.3.1 If the Owner prefers to accept defective or non-conforming work, he may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect a reduction in the Contract Sum where appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 14

TERMINATION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR

14.1.1 If the work is stopped for a period of thirty days under an order of court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Contractor or a Sub-contractor or their agents or employees or any other persons performing any of the work under a contract with the Contractor because the Architect has not issued a Certificate for payment as provided in Paragraph 9.7 or because the Owner has not made payment thereon as provided in paragraph 9.7, then the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner payment for all work executed and for any proven loss sustained upon any materials, equipment, tools, construction equipment and machinery, including reasonable profit and damages.

14.2 TERMINATION BY THE OWNER

14.2.1 If the Contractor is adjudged bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if he persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper

materials, or if he fails to make prompt payment to Subcontractors for material of labor, or persistently disregards laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of the Contract Documents, then the Owner, upon certification by the Architect that sufficient cause exists to justify such action, may without prejudice to any right or remedy and after giving the Contractor and his surety, if any, seven days written notice, terminate the employment of the Contractor and take possession of the site and of all material, tools, construction equipment and machinery thereon owned by the Contractor and may finish the work by whatever method he may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the work is finished.

14.2.2 If the unpaid balance of the Contract Sum exceeds the costs of finishing the work, including compensation for the Architect's additional services made necessary thereby, and any damages sustained by the Owner as a result of the Contractor's breach, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or to the Owner, as the case may be, shall be certified by the Architect upon application, in the manner provided in paragraph 9.4 and this obligation or to the Owner, as the case may be, shall be certified by the Architect upon application, in the manner provided in Paragraph 9.4 and this obligation for payment shall survive the termination of the Contract.

14.2.3 In the event that the Project is abandoned by the Owner, the Owner may terminate this contract at any time by giving at least seven (7) day notice to the Contractor. In the event of termination, all work completed shall become the property of the Owner. The Contractor shall be entitled to receive compensation for actual work satisfactorily completed hereunder, including reimbursable expenses authorized by the Owner which are then due.

14.2.4 In the event the Contractor fails to perform the work in accordance with the Contract Documents, the Owner may terminate the Contract after giving the Contractor five (5) working days notice.

ARTICLE 15

EQUAL OPPORTUNITY

15.1 The Contractor shall maintain policies of employment as follows:

15.1.1 The Contractor, all Subcontractors, and all Sub-subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. The Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous place, available to employees and applicants for employment, notices setting forth the policies of non-discrimination.

15.1.2 The Contract, all Subcontractors, and all Sub-subcontractors shall, in all solicitation or advertisements for employees placed by them or on their behalf, state that all qualified applicant will receive consideration for employment without regard to race, religion, color, sex, or national origin.

ARTICLE 16

MINIMUM WAGE RATES

16.1 The Contractor warrants and agrees that he and all Subcontractors and Sub-subcontractors shall comply with all applicable provisions of the New Mexico Public Works Minimum Wage Act as outlined in the Contract Documents. Wage rates are not applicable to projects costing less than $60,000.00. Both the State of New Mexico Wage Rate Decision and the applicable Federal wage rates are included in this document.

SUPPLEMENTARY CONDITIONS
(00 7300)

(00 7301) CITY OF SANTA FE REQUIREMENTS

Document is intended to be used in conjunction with the General Conditions of the Contract.

ADDITIONAL CONDITIONS

1.0 DEFINITIONS - The following definitions shall apply through the Bidding Documents or Contract Documents unless otherwise specified.

1.1 ADDENDUM: Written or graphic instrument issued prior to the execution of the Contract which modifies or interpret the Bidding Documents, including Drawings and Specifications, by additions, deletions, clarifications, or corrections. Addenda will become part of the Contract Documents when the Construction Contract is executed. Plural: ADDENDA

1.2 ADDITIVE OR DEDUCTIVE ALTERNATE BID: Amount stated in the Bid to be added or deducted from the amount of the Base Bid if the corresponding change in project scope or alternate materials and/or methods of construction is accepted.

1.3 BASE BID: Amount of money stated in the Bid as the sum for which the Bidder offers to perform the work, not including that work for which Alternate Bids are also submitted.

1.4 BID: A complete and properly signed proposal to do the work or designated portion thereof for the sums stipulated therein, supported by data called for by the Bidding Documents.

1.5 BID LOT: A major item of work for which a separate quotation or proposal is requested.

1.6 BIDDER: One who submits a Bid for a Prime contract with the Owner, as distinct from a Subcontractor, who submits a Bid to a Bidder. Technically, a Bidder is not a Contractor on a specific project until a contract exists between him and the Owner.

1.7 BIDDING DOCUMENT: Documents that include the Invitation for Bid, Instructions to Bidders, the Bid Form, other sample bidding and contract forms, and the proposed Contract Documents, including any Addenda issued prior to receipt of Bids. The Contract Documents proposed for the work consist of the Owner-Contractor Agreement, the Conditions of the Construction Contract (General, Supplementary, and Other Conditions), the Drawings, the Specifications, and all Addenda issued prior to and all Modifications issued after execution of the Contract.

1.8 DAY: Calendar day, which is every day shown on the calendar, beginning and ending at midnight.

1.9 CENTRAL PURCHASING OFFICE: The Central Purchasing Office is the City of Santa Fe Purchasing Department.

1.10 GOVERNING AUTHORITY: The Governing Board of the City of Santa Fe for the execution of construction contracts is the Mayor and City Manager.

1.11 INVITATION FOR BID: The Bidding Documents utilized for soliciting sealed Bids. "Invitation to Bid" shall have the same meaning as "Invitation for Bid".

1.12 OWNER: The City of Santa Fe, New Mexico.

1.13 PROCUREMENT OFFICER: The Director of the Purchasing Division, or a designee authorized to enter into or administer contracts and make written determination with respect thereto.

1.14 RESPONSIBLE BIDDER: A Bidder who submits a responsive Bid and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation, and experience are adequate to make satisfactory delivery of the services, construction, or items of tangible personal property described in the Bidding Documents (13-1-82, NMSA 1978).

1.15 SUCCESSFUL BIDDER: The lowest qualified and responsible Bidder to whom the Owner, on the basis of the Owner's evaluation, makes an award.

1.16 UNIT PRICES: Amounts stated in the Contract as prices per unit of measurement for materials or services as described in the Contract Documents.

1.17 USER: The City of Santa Fe or agencies or designated entity for whose use the Project is being constructed.

2.0 CONTRACT AUDIT

The Owner shall be entitled to audit the books and records of a Contractor or any Subcontractor under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the Contractor for a period of three years from the date of final payment under the prime contract and by the Subcontractor for a period of three years from the date of final payment under the subcontract unless a shorter period is otherwise authorized in writing (13-1-161, NMSA 1978).

3.0 DEBARRED OR SUSPENDED CONTRACTORS

A business (Contractor, Subcontractor, or Supplier) that has either been debarred or suspended pursuant to the requirements of Sections 13-1-177 through 13-1-180, and 13-4-11 through 13-4-17, NMSA 1978, shall not be permitted to do business with the State and shall not be considered for award of contract during the period for which it is debarred or suspended.

4.0 BRIBES, GRATUITIES, AND KICK-BACKS

4.1 It is illegal in the State of New Mexico for any public employee to solicit or accept anything of value in connection with award of this Bid and for any person to offer or pay anything of value to any such public employee (30-24-1 through 30-24-2, NMSA 1978).

4.2 Pursuant to Section 13-1-191, NMSA 1978, reference is hereby made to the Criminal Laws of New Mexico (including 30-24-1, 30-23-2, and 30-41-1 through 3-41-3, NMSA 1978), which prohibit bribes, kick-backs, and gratuities and violation of which constitutes a felon. Further, the Procurement Code (13-1-28 through 13-1-199, NMSA 1978), imposes civil and criminal penalties for its violation

5.0 PROTESTS

5.1 Any Contractor who is aggrieved in connection with a procurement may protest to the City Purchasing Agent and the Owner. The protest should be made in writing within twenty-four (24) hours after the facts or occurrences; giving rise thereto, but in no case, less that within fifteen (15) calendar days after the facts or occurrences giving rise thereto (13-1-173, NMSA 1978).

5.2 In the event of a timely protest under Section 5.1 (13-1-172 of the Procurement Code, NMSA 1978), the City Purchasing Agent and the Owner shall not proceed further with the procurement unless the State Purchasing Agent or the Owner makes a determination that the award of contract is necessary to protect substantial interests of the Owner (13-1-173, NMSA 1978).

5.3 The City Purchasing Agent or his designee shall have the authority to take any action reasonably necessary to resolve a protest of an aggrieved Contractor concerning a procurement.

5.4 This authority shall be exercised in accordance with adopted regulations, but shall not include the authority to award money damages or attorneys' fees (13-1-174, NMSA 1978).

5.5 The City Purchasing Agent or his designee shall promptly issue a determination relating to the protest. The determination shall:

A) State the reasons for the action taken; and,

B) Inform the protestant of the right to judicial review of the determination pursuant to Section 13-1-183, NMSA 1978 (13-1-175, NMSA 1978).

5.6 A copy of the determination issued under Section 13-1-175, NMSA 1978, shall be mailed immediately to the protestant (13-1-176, NMSA 1978).

6.0 CONTRACT BOND REQUIREMENTS

6.1 The Successful Bidder, where the Contract Price exceeds twenty five thousand dollars ($25,000), shall post a one hundred percent (100%) Performance Bond and a one hundred percent (100%) Labor and Material Payment Bond. Bonds shall be executed on Performance Bond and Labor and Material Payment Bond forms attached hereto, with amount payable conforming to the terms of the contract. Surety shall be a company licensed to do business in the State of New Mexico and acceptable to the Owner.

6.2 Personal sureties may be accepted if the Owner so determines in advance, but in such case the amount of the Bond shall be the full Contract Price, and the sureties shall justify under oath in amounts above liabilities and exemptions aggregating double the amount of the Bond.

6.3 Special attention of Bidders is called to the requirements of Section 13-4-18 through 13-4-20, NMSA 1978 regarding a Contractor who does not have his principal place of business in the State of New Mexico for all taxes due arising out of construction services rendered under the Contract.

6.3.1 The right to sue on this Bond accrues only to the Owner and the parties to whom Sections 13-4-18 through 13-4-20, NMSA 1978 grant such right; and any such right shall be exercised only in accordance with the provisions and limitations of said statues.

7.0 NON-RESIDENT CONTRACTOR'S REQUIREMENTS REGARDING GROSS RECEIPTS TAX SURETY BOND

7.1 Section 7-1-55A, NMSA 1978 provides that any person (as defined in Section 7-1-3, NMSA 1978) engaged in the construction business who does not have his principal place of business in New Mexico and enters into a prime construction contract to be performed in this State shall, at the time such contract is entered into, furnish the Director of the Revenue Division, Taxation and Revenue Department, or his delegate with a surety bond or other acceptable security in a sum equivalent to the gross receipts to be paid under the contract multiplied by the applicable rate of the gross receipts tax imposed by Section 7-9-4, NMSA 1978 to secure payment of the tax imposed on the gross receipts from the contract, and shall obtain a certificate form the Director of the Revenue Division, Taxation and Revenue Department, or his delegate that the requirements of this paragraph have been met.

7.2 If the total sum to be paid under the contract is changed by ten percent or more after the date the surety bond or other acceptable security is furnished, to the Director or his delegate, such person shall increase or decrease, as the case may be, the amount of the bond or security within fourteen days after the change (7-1-55B, NMSA 1978).

7.3 In addition to the above requirements, the Contractor will be subject to all the requirements of the City Procurement Code.

8.0 CONTRACTOR'S GROSS RECEIPTS TAX REGISTRATION

8.1 Section 7-10-4, NMSA 1978 provides that any person (as defined in Section 7-10-3, NMSA 1978) performing services for the City of Santa Fe, as those terms are used in the Gross Receipts and Compensating Tax Act (Section 7-10-1 to 7-10-5, NMSA 1978), must be registered and be issued an identification number with the Revenue Division of the Taxation and Revenue Department to pay the gross receipts tax.

8.2 The identification number is needed to properly complete the approval process of the contract; therefor, so as to cause no delay in the processing, the Contractor must register with the State of New Mexico, Taxation and Revenue Department. For information contact:

Revenue Division
Taxation and Revenue Department
1100 South St. Francis Drive
Santa Fe, New Mexico 87504
(505)827-0700

8.3 If any person who performs services for the City of Santa Fe is not registered to pay the gross receipts tax, the City shall withhold payment of the amount due until the person has presented evidence of registration with the Revenue Department to pay the gross receipts tax.

9.0 CONTRACT WITH NONRESIDENT PERSON OR PARTNERSHIPS OR UNADMITTED FOREIGN CORPORATIONS; AGENT FOR SERVICE OF PROCESS

9.1 Special attention of Bidders is called to requirements of Sections 13-4-21 through 13-4-24, NMSA 1978, whereby a public works contract with a nonresident person or partnership or foreign corporation not authorized to do business in the State shall contain a specific provision designating an agent resident within the State, and his address, upon whom process and writs in any action or proceeding against such business may be served in any action arising out of such contract.

11.0 STATE ALLOWANCES

11.1 The Contractor shall purchase the "Allowed Materials" as directed by the Owner through the Landscape Architect on the basis of the lowest and the best Bid of at least three competitive Bids. If the actual price for purchasing the "Allowed materials" is more or less than the "Cash Allowance", the Contract Price shall be adjusted accordingly. The adjustment in Contract Price made on the basis of the purchase price without additional charges for overhead, profit, insurance, or any other incidental expenses. The cost of installation of the "Allowed Materials" shall be included in the applicable section of the Specifications covering the work.

12.0 MINIMUM WAGE RATES

12.1 The Minimum Wage Rate Determinations for this Project are shown in this section. This project is subject to New Mexico State Wage Rate Decision No. SF-13-0607-B, if the amount of the base bid is equal to or greater than $60,000.

13.0 FORM OF CHANGE ORDER AND CHANGE ORDER NOTICE TO PROCEED

13.1 The forms issued by the Owner are to be utilized by the Contractor, Landscape Architect, and the Owner pursuant to the requirements of the General Conditions.

14.0 STATE OF NEW MEXICO STATE INDUSTRIES DIVISION

14.1 The Contractor, at his own expense, shall secure the required building permits from the State CID as required for this Project. Contractor shall adhere to the requirements established for inspections.

15.0 CITY OF SANTA FE REQUIREMENTS

15.1 The General Contractor shall include in the Bid the cost of all landfill dumping fees; additionally, the General Contractor shall be responsible that all rubble, excess materials, etc., are disposed of at an approved, legal dumping site.