

**SANTA FE SOLID WASTE  
MANAGEMENT AGENCY**

**REQUEST FOR BIDS**

**BID NO. '16/07/B**



**CONTRACT DOCUMENTS  
AND SPECIFICATIONS**

**FOR**

**CAJA DEL RIO LANDFILL  
PHASE 2 – LANDFILL GAS COLLECTION SYSTEM**

**AUGUST 2015**

**BIDS DUE:**

**SEPTEMBER 25, 2015 at 2:00 P.M.**

**PURCHASING OFFICE**

**CITY OF SANTA FE**

**2651 SIRINGO ROAD – BUILDING “H”**

**SANTA FE, NEW MEXICO 87505**

**CAJA DEL RIO LANDFILL  
PHASE 2 – LANDFILL GAS COLLECTION SYSTEM  
BID NO. ‘16/07/B**

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# **Section 1 Advertisement for Bid**

**SANTA FE SOLID WASTE MANAGEMENT AGENCY**

**ADVERTISEMENT FOR BIDS**

REQUEST FOR BIDS NO.:     **‘16/07/B**

SEALED BID FOR:            Santa Fe Solid Waste Management Agency  
                                      Caja del Rio Landfill  
                                      Phase 2 – Landfill Gas Collection System

BID SCHEDULE                Advertisement: August 28, 2015  
                                      Issuance of Bid Packages: August 28, 2015  
                                      Pre-Bid Conference: September 11, 2015 at 11:00 a.m.  
                                      Deadline for Questions: September 20, 2015  
                                      Response to Questions: September 23, 2015  
                                      Bid Opening: September 25, 2015 at 2:00 p.m.  
                                      Bid Award (Joint Powers Board): October 15, 2015  
                                      Notice to Proceed: November 2, 2015 (Estimated)

TO BE OPENED AT:         City Purchasing Office  
                                      City of Santa Fe  
                                      2651 Siringo Road, Building H  
                                      Santa Fe, NM 87505

TIME:                         2:00 p.m. Local Prevailing Time

DATE:                        September 25, 2015

ADDRESSED TO:            Mr. Robert Rodarte  
                                      Purchasing Director  
                                      City of Santa Fe  
                                      2651 Siringo Road, Building H  
                                      Santa Fe, NM 87505

PRE-BID CONFERENCE: A non-mandatory pre-bid conference will be held at 11:00 a.m. on September 11, 2015 at the Nancy Rodriguez Community Center in the Traditional Village of Agua Fria, 1 Prairie Dog Loop, Santa Fe, NM 87507. The pre-bid conference will provide significant aspects of the project and address any potential bidder questions. Immediately after the pre-bid conference, bidders may participate in an optional site visit of the project at the Caja del Rio Landfill with representatives from SCS Engineers (Engineer) and Santa Fe Solid Waste Management Agency (Owner).

Bids will be received until the above time, then opened publicly at the City of Santa Fe Purchasing Office, 2651 Siringo Road, Building H, Santa Fe, New Mexico and read aloud. Bids received after the above time will be returned unopened.

Contract Documents may be reviewed at the following address:

Santa Fe Solid Waste Management Agency  
Attn: Rosalie Cardenas  
Caja del Rio Landfill  
149 Wildlife Way  
Santa Fe, NM 87506  
Phone: (505) 424-1850, ext. 150  
Email: rcardenas@sfswma.org

OBTAINING CONTRACT DOCUMENTS: Construction Plans, Specifications and other Contract Documents may be obtained at the following address:

SCS Engineers  
1901 Central Drive, Suite 550  
Bedford, Texas 76021  
Phone: (817) 571-2288  
Email: mmince@scsengineers.com

Complete sets of Contract Documents, including plans and specifications may be purchased directly from SCS Engineers. Contract Documents on a compact disc (CD) are available for \$25.00 or hard copies are available for \$100.00 per set. Shipping options are also available by calling SCS Engineers at (817) 571-2288. Bidders are advised that the cost of the CD and/or hard copies of Contract Documents or portions thereof are non-refundable. Bidders may also view the Contract Documents at <http://www.santafenm.gov/bids.aspx>.

Bids for the project will be presented in the form of a unit price or lump sum bid as indicated on the **Bid Form**. The bidder shall bid all items listed. Each bidder must conform to the conditions specified in the section entitled **Instructions for Bidders**.

**BID GUARANTEE:** Each bid shall be accompanied by an acceptable form of bid Guarantee (Bid Security) in an amount equal to at least five percent (5%) of the amount of the bid payable to the Santa Fe Solid Waste Management Agency as a guarantee that if the bid is accepted, the Bidder will execute the Contract and file acceptable **Performance and Labor and Material Payment Bonds** within fifteen (15) days after the award of the Contract.

The bid shall also include a signed **Non-Collusion Affidavit of Prime Bidder**, a signed **Certificate of Bidder Regarding Equal Employment Opportunity**, **Certificate of Non-segregated Facilities**, and **Acknowledgement for Receipt of Addenda**. The successful Bidder shall, upon notice of award of Contract, secure from each of his subcontractors a signed **Non-Collusion Affidavit of Subcontractor**. Bidders must possess an applicable license to perform the Work under this Contract, provided for in the New Mexico Construction Industries Rules and Regulations.

**The Work specified in the Contract Documents shall be complete within thirty (30) calendar days following issuance of a notice-to-proceed to the successful Bidder. Following the thirty (30) calendar day contract time, Santa Fe Solid Waste Management Agency will impose liquidated damages for failure to comply with this time limit, as specified in the**

**Contract Documents.**

**Performance Bond and Labor & Material Payment Bond**, each 100% of the Contract sum, will be required of the successful Bidder entering into the construction Contract.

Bids will be held for sixty (60) days subject to action by the Owner.

**OWNERS RIGHTS RESERVED:** The Santa Fe Solid Waste Management Agency, herein referred to as the Owner, reserves the right to reject any or all bids and to waive any formality or technicality in any bid in the best interest of the Owner.

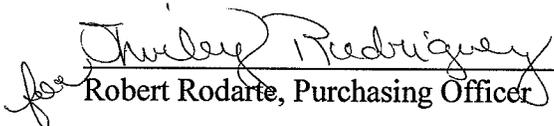
The Work to be performed in this project consists of furnishing all equipment, labor and materials for the construction of the Caja del Rio Landfill, Phase 2 – Landfill Gas Collection System in accordance with the Construction Plans, Specifications, and other Contract Documents.

Wages paid on this project shall not be less than the minimum prevailing wage rates listed in the Contract Documents.

To receive a resident or resident veteran contractor preference pursuant to Section 13-4-2 NMSA 1978, a resident or resident veteran contractor shall submit with its bid a copy of a valid resident or resident veteran contractor certificate issued by the New Mexico Taxation and Revenue Department pursuant to Section 13-1-22 NMSA 1978.

**EQUAL OPPORTUNITY IN EMPLOYMENT:** All qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, or national origin. Bidders on this work will be required to comply with the Presidents Executive Order No. 11246 as amended.

**ATTEST:**

  
Robert Rodarte, Purchasing Officer

Received by the Santa Fe New Mexican on: August 21, 2015

To be published on: August 28, 2015

Received by the Albuquerque Journal on: August 21, 2015

To be published on: August 28, 2015

## **Section 2**

# **Instructions to Bidders**

## **INSTRUCTIONS FOR BIDDERS**

Bids are requested by the Santa Fe Solid Waste Management Agency for Construction of the Caja del Rio Landfill Phase 2 – Landfill Gas Collection System in accordance with the Construction Plans, Specifications and Contract Documents.

1. **LOCATION AND DESCRIPTION OF WORK:** The Work under this Contract is located on-site at the Caja del Rio Landfill, 149 Wildlife Way, Santa Fe, New Mexico 87506. The Work consists of expansion of an existing landfill gas (LFG) collection system, including drilling vertical LFG extraction wells; installation of below-grade lateral and header pipe, fittings, and valves; and installation of below-grade and above-grade condensate management system components, such as air supply line, condensate forcemain, condensate sump and pump, and associated pipe, fittings, and valves, as shown and specified in the Construction Plans, Specifications and Contract Documents.
2. **TIME AND PLACE OF RECEIVING AND OPENING BIDS:** The deadline for submission of a bid is September 25, at 2:00 P.M. A bid received after the specified time will not be considered and will be returned to the Bidder unopened.
3. **SPECIFICATIONS:** The construction of this project will be in accordance with the General and Supplemental Conditions, Technical Specifications, and Construction Plans contained in the Contract Documents.
4. **CONTRACT DOCUMENT DEPOSIT:** Complete sets of Contract Documents, including plans and specifications may be purchased directly from SCS Engineers by calling 817-571-2288. Bidders are advised that the cost of the CD and/or hard copies of Contract Documents or portions thereof are non-refundable.
5. **DEFINED TERMS:** Terms used in these Instructions to Bidders have the meanings assigned to them in the General and Supplemental Conditions.
6. **EXAMINATION OF CONTRACT DOCUMENTS AND SITE:** Before submitting the bid, each Bidder should (a) examine the Contract Documents thoroughly, (b) visit the site to become familiar with local conditions that may in any manner affect performance of the Work, (c) become familiar with Federal, State and local laws, ordinances, rules and regulations affecting performance of the Work; and (d) carefully correlate the Bidder's observations with the requirements of the Contract Documents. The submission of a Bid constitutes representation by Bidder that Bidder has complied with every requirement of this section and that the Contract Documents are sufficient in scope to indicate and convey understanding of all terms and conditions for performance of the Work.
7. **THE COMPLETE CONTRACT DOCUMENTS CONTAIN THE FOLLOWING:** Everything that is bound herein, as well as project Construction Plans, General and Supplemental Conditions, and Technical Specifications referenced herein.
8. **INTERPRETATIONS, ADDENDA, AND AMENDMENTS:** Any prospective bidder who desires to receive notice of interpretations, addenda, or amendments to this Request for Bids shall provide contact information to the Owner. All questions about the meaning or intent of the Contract Documents shall be submitted to the Owner in writing or e-mailed to Ryan Kuntz, P.E., RKuntz@SCSEngineers.com. Replies will be issued by Addenda mailed, emailed, or faxed to all parties recorded by the Owner as having received the Documents at least two (2) days before the scheduled bid opening date. Questions received less than five

(5) days prior to the date for opening of bids will not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

The Owner reserves the right to amend these time frames if a critical addendum is required or if the proposal deadline needs to be extended due to critical reason in the best interest of the Owner.

9. **BID SECURITY:** Bid security (bid guarantee) in the amount of 5% of the amount of the bid shall accompany the Bid Form and must be in the form of a certified or bank cashier's check made payable to the Owner or a bid bond issued by a surety licensed to conduct business in the State of New Mexico, or other supplies in a form satisfactory to the Owner. The Bid Security of the successful Bidder will be retained until the Bidder has executed the Construction Agreement and furnished the required Contract Security (Performance and Labor and Material Payment Bonds), whereupon it will be returned. If the Bidder fails to execute and deliver the Construction Agreement and furnish the required Contract Security within ten (10) days of the Notice of Award, the Owner may annul the Notice of Award and the Bid Security of that Bidder will be forfeited. The Bid Security of any Bidder whom the Owner believes to have a reasonable chance of receiving the award may be retained by the Owner until either the seventh day after the executed Construction Agreement is delivered by the Owner to Contractor and the required Contract Security is furnished; or the sixty-first day after the bid opening, whichever is earlier. Bid security of other Bidders will be returned within fifteen (15) days of the bid opening.

10. **RESIDENT AND VETERAN PREFERENCES:**

**INTENT AND POLICY:** The Owner recognizes that the intent of the state resident preference statute is to give New Mexico businesses and contractors an advantage over those businesses, manufacturers and contractors from outside the State of New Mexico. The underlying policy is to give a preference to those persons and companies who contribute to the economy of the State of New Mexico by maintaining plants and other facilities within the State and giving employment to residents of the State (1969 OP. Attorney. Gen. No. 6942).

**APPLICATION:** With acknowledgement of this intent and policy, the resident preference will only be applied when bids are received from in state businesses, manufacturers and contractors that are within five (5) percent of low bids received from out-of state businesses, manufacturers and contractors (NMSA 1978, §§ 13-1-21 and 13-4-2).

To be considered a resident for application of the preference, the in-state Bidder must include a valid resident business certificate or resident contractor certificate with the submitted bid.

**NON-APPLICATION OF RESIDENT PREFERENCES:**

If the lowest responsive bid and the next responsive bids within five (5) percent of the lowest bid are all from bidders who have submitted a resident business certificate or a resident contractor certificate, then the resident preference will not be applied

Preferences shall not be applied when expenditures of Federal funds designated for a specific contract is involved.

**NEW MEXICO RESIDENT VETERAN PREFERENCE:** New Mexico law, NMSA 1978, § 13-1-22, provides a preference in the award of a public works contract for a “resident veteran business.” Certification by the NM Department of Taxation and Revenue for the resident

veteran business requires the Offeror to provide evidence of annual revenue and other evidence of veteran status.

An Offeror who wants the veteran business preference to be applied to its proposal is required to submit with its proposal the certification from the NM Department of Taxation and Revenue and the sworn affidavit attached hereto in Section 3, Bid Proposal.

If an Offeror submits with its proposal a copy of a valid and current veteran resident business certificate, 7%, 8%, or 10% of the total weight of all the evaluation factors used in the evaluation of proposal may be awarded as set forth in NMSA 1978, § 13-1-21 and 13-1-22.

The resident business or contractor preference is not cumulative with the resident veteran business preference.

11. **CONTRACT TIME:** The number of days for the completion of Work (the Contract Time) is thirty (30) calendar days as set forth in the Bid Proposal and will be included in the executed Construction Agreement.

12. **SUBCONTRACTORS, SUPPLIERS AND OTHERS:**

- A. The Contractor, in the bid documents, must identify in writing to the Owner those portions of the Work that he proposes to subcontract and after the Notice of Award, may only subcontract other portions of the work with the Owner's written consent.
- B. The Contractor will not be required to employ any other subcontractor, other person or organization against whom he has reasonable objection.
- C. The Contractor shall list all Subcontractor names, addresses and type of work to be performed.
- D. The Subcontractor threshold amount for this project is \$5,000. The General Contractor must list all subcontractors who will perform work in excess of this threshold. Only one Subcontractor may be listed for each category as defined by the Contractor. The Subcontractor Fair Practice Act (13-4-31 thru 14-3-43 NMSA 1988) shall apply.
- E. **EXEMPTION:** In accordance with the "SUBCONTRACTOR'S FAIR PRACTICES ACT", Section 13-4-35, the Contractor shall not be required to submit a Subcontractor's Listing form with the bid for contracts for construction, improvement or repair of streets or highways, including bridges, underground utilities within easements, including but not limited to waterlines, sewer lines and storm sewer lines. The SUBCONTRACTOR'S FAIR PRACTICES ACT shall apply, however, to that portion of contracts for construction, improvement or repair of streets or highways which covers street lighting and traffic signals.

The Bidder shall list the Subcontractor(s) or material supplier(s) he proposes to use for all trades or items on the Subcontractor Listing Form attached to the Bid Form. The listing must include Subcontractors specifically identified in Paragraph D above. If awarded the contract, the Bidder shall use the firm listed, or himself if "General Contractor" has been listed, unless a request for a change or substitution is approved by the Owner of any reason as outlined herein.

- F. For subcontract work involving the provision of "SUBCONTRACTOR'S FAIR PRACTICES ACT 13-4-31...43 NMSA 1978" summarized as follows, shall apply:

1. The Contractor may not substitute any Subcontractor listed, unless the Owner approves, in writing, the substitution based on the following situations:
  - a. The Subcontractor fails or refuses to execute a contract due to bankruptcy or insolvency;
  - b. The Subcontractor fails or refuses to perform;
  - c. The Contractor demonstrates to the Owner that the listed Subcontractor was due to an inadvertent clerical error;
  - d. Acceptance of an alternate by the Owner causes the original Subcontractor's bid not to be low;
  - e. The Contractor can substantiate to the Owner that a Subcontractor's bid is incomplete, or;
  - f. The Subcontractor fails or refuses to meet bond requirements of the Contractor.
2. Prior to approval of the Contractor's request for substitution, the Owner shall give notice to the listed Subcontractor by certified mail. The Subcontractor shall have five (5) working days to submit written objections to the Owner. Failure to respond shall constitute Subcontractor's consent to the substitution. If written objections are received, the Owner shall give five (5) working days notice of a hearing.
3. No other substitution of Subcontractors may be permitted by the Contractor, other than for requested change orders in the scope of the work or unless the Contractor can show that no bids were received.
4. It shall be the responsibility of the Subcontractor to be prepared to submit performance or payment bonds if requested by the Contractor. If the Subcontractor does not furnish such requested bonding, the Contractor may substitute another Subcontractor, as per the provisions of item 1 above. (The requirement of such bonding must be included in the Contractor's written or published request for Subcontract bids.)
5. If the Contractor does not specify a Subcontractor, he represents that he shall perform the work.
6. If the Contractor is claiming an inadvertent clerical error, notice shall be given to the Owner and to the involved Subcontractor within two (2) working days of the bid opening. The Subcontractor shall have six (6) working days from the bid opening to submit written objections. Failure to respond shall constitute Subcontractor's agreement that an error was made.
7. If determined to be an emergency, upon written finding, subcontracting may be permitted although not originally designated in the bid.
8. By State statute, violation of this act may allow the Owner to cancel the Contract or assess the Contractor a penalty up to ten (10) percent of the subcontract involved, but in no case less than the difference between the amount of the listed Subcontractor and the Subcontractor used. The Contractor shall be entitled a hearing after notice of intent of assess a penalty.
9. If a hearing is held, the dispute shall be stated in writing and the Owner shall evaluate the issues of both sides and render a determination within ten (10) days of the hearing

and provide the parties with a written copy of the decision by certified mail. The Owner may also refer the matter to arbitration.

**13. BID FORM:**

- A. The Bid Form is included in the Contract Documents; additional copies may be obtained from SCS Engineers via an e-mail request to Ryan Kuntz, P.E., RKuntz@SCSEngineers.com, or in writing to SCS Engineers, 1901 Central Drive, Suite 550, Bedford, Texas 76021.
- B. The Bid Form must be completed in either ink or typewritten. The bid price of each item on the form must be stated in numerals and written words; in case of an error in extensions in the unit price schedule the unit price shown in written words shall govern.
- C. Bids by corporations must be executed in the corporate name by the president or a vice president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal shall be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown below the signature.
- D. Bids by partnerships must be executed in the partnership name and signed by a partner, his title must appear under his signature and the official address of the partnership must be shown below the signature.
- E. All names must be typed or printed below the signature.
- F. The bid shall contain an acknowledgement of receipt of all Addenda (the numbers of which shall be filled in on the Bid Form).

**14. QUALIFICATION OF BIDS:** All Bidders must have a valid New Mexico Contractor's License appropriate to the Work herein specified.

**15. SUBMISSION OF BIDS:** Bids shall be submitted at the time and place indicated in the Advertisement for Bids and shall be enclosed in an opaque sealed envelope, marked with the project title, name and address of the Bidder, New Mexico Contractor's License Number, and accompanied by the Bid Security, list of subcontractors and other required documents. The Bid Form shall not be detached from the bound set of Contract Documents. All blanks must be filled in. Conditional bids will not be considered. The envelope shall be addressed to:

Mr. Robert Rodarte  
Purchasing Director  
2651 Siringo Road Bldg. H  
Santa Fe, NM 87505

**16. MODIFICATION AND WITHDRAWAL OF BIDS:** Bids may be modified or withdrawn by an appropriate document duly executed and delivered to the place where bids are to be submitted at any time prior to the opening of bids.

**17. BID OPENING PROCEDURE:** The person or persons opening the bids will verify that each bid contains the following:

- A. Bid Proposal;
- B. Bid Form and Completed Bid Schedule - Name of Bidder and Bidder's New Mexico Contractor's License with a check for proper signatures, subcontractor/material listing, and acknowledgement of Addenda, if any;

- C. Bid Bond or Check for Bid Security;
  - D. Non-Collusion Affidavit of Prime Bidder;
  - E. Non-Collusion Affidavit of Subcontractor(s);
  - F. Certification of Nonsegregated Facilities;
  - G. Certification of Bidder regarding Equal Employment Opportunity;
  - H. Certification of Subcontractor regarding Equal Employment Opportunity; and
  - I. Resident Veteran Contractor / Resident Contractor, if any.
18. BIDS TO REMAIN OPEN: If a Contract is to be awarded, it will be awarded to the lowest responsible base bid whose evaluation indicates to the Owner that the award will be in the best interests of the project and the Owner. All bids shall remain open for sixty (60) days after the day of the bid opening, but the Owner may, in its sole discretion, release any bid and return the Bid Security prior to that date.
19. AWARD OF CONTRACT:
- A. The Owner reserves the right to reject any and all bids and waive any and all informalities or technicalities and the right to disregard all nonconforming or conditional bids or counter bids.
  - B. If a Contract is to be awarded, it will be awarded to the lowest responsible base bid whose evaluation indicates to the Owner that the award will be in the best interests of the project and the Owner. Additive Alternatives may be added all or in part, based on available funding or timing to be exercised by the Owner at its discretion. If Alternatives are to be awarded, the Owner will award the Contract to the responsible Bidder submitting the low Base Bid, excluding NMGRT, including any combination of any Additive Alternates or Deductive Alternates.
  - C. Simultaneously with delivery of the executed counterparts of the Agreement to the Owner, Contractor shall deliver to the Owner the required Contract Bonds.
  - D. If a Contract is to be awarded, the Owner will give the apparent successful Bidder a Notice of Award within thirty (30) days after the day of the bid opening.
  - E. If the lowest responsible Bidder has otherwise qualified, the lowest Bidder may negotiate with the Owner for a lower bid if the lowest bid is within ten percent over budgeted project funds. No change in the original scope of the terms or terms and conditions will be allowed. Terms and conditions refer to the Contract requirements, warranties, and bonds. Negotiation may be permitted with product, materials, and equipment alternatives as determined to be in the best interest of the Owner.
20. WAGE RATES: The Bidder's attention is directed to the fact that wages to be paid on this project shall not be less than the prevailing wage rates as listed by the New Mexico State Labor and Industrial Commission. It shall be the successful Bidder's responsibility to inform himself thoroughly of all state, federal and local laws and statutes pertaining to the employment of labor, the freedom of organization and the conditions of employment and shall strictly adhere to such laws and regulations as are applicable. There shall be no discrimination because of race, creed, color, national origin or legal political affiliation in the employment of persons qualified by training and experience for work under this contract.

21. REQUIRED SUBMITTALS:

- A. Bid Proposal;
- B. Bid Form and Completed Bid Schedule- Name of Bidder and Bidder's New Mexico Contractor's License with a check for proper signatures, subcontractor/material listing, and acknowledgement of Addenda, if any;
- C. Bid Bond or Check for Bid Security;
- D. Non-Collusion Affidavit of Prime Bidder;
- E. Non-Collusion Affidavit of Subcontractor(s);
- F. Certification of Non-Segregated Facilities;
- G. Certification of Bidder regarding Equal Employment Opportunity;
- H. Certification of Subcontractor regarding Equal Employment Opportunity; and
- I. Resident Veteran Contractor / Resident Contractor, if any.

If any of the above requirements have not been met, the bid shall not be read.

- 22. **SUBSTITUTIONS:** The bid shall not be qualified by the bid of substitutions for specified materials or equipment.
- 23. **OWNER PREFERENCES:** In the construction of this project, the Owner has no preference for any process, type of equipment, or kind of material, but will consider all processes, types of equipment or kinds of material offered on a usual competitive basis if they are in fact the equal to that specified and will accomplish the purpose intended. The Owner reserves the right to be the sole judge as to whether or not a different process, type of equipment or kind of material offered is in fact equal to that specified.
- 24. **LICENSE OR ROYALTY FEES:** Licenses and/or royalty fees for products or for processes must be paid for directly by the Contractor.
- 25. **PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND:** The Contractor will be required to furnish surety bonds in an amount at least equal to one hundred percent (100%) each of the total Contract price as security for faithful performance of the Contract and payment for all labor and materials. The surety company must be authorized to do business in the State of New Mexico and must be acceptable to the Owner.
- 26. **ADDENDUM:** Each Addendum shall be made a part of the Contract Documents to the same extent as though contained in the original Documents and itemized listing thereof. Each Bidder shall acknowledge receipt of each Addendum in the space provided on the Bid Form.
- 27. **COLLUSION:** No Bidder shall be interested in more than one bid. Collusion among Bidders or the submission of more than one bid under different names by any firms or individual shall be cause for rejection of all bids in question without consideration.
- 28. **QUANTITIES:** The quantities set forth in the Bid Form are estimated quantities on which bids will be compared and which will be the basis for Award of Contract. Payment will be made for the Work actually performed.
- 29. **UTILITY INSPECTION:** All work done on the existing Owner owned utilities shall be inspected by a representative of the Owner before backfilling.

30. **POWER OF ATTORNEY:** Attorneys in fact who sign bonds must attach certified effective copies of their Power of Attorney to all bonds.
31. **PRE-BID CONFERENCE:** A non-mandatory pre-bid conference will be held at 11:00 a.m. on September 11, 2015, at the Nancy Rodriguez Community Center in the Traditional Village of Agua Fria, 1 Prairie Dog Loop, Santa Fe, NM 87507, as specified in the Advertisement for Bids.
32. **PROTEST PROCEDURE:** Any Bidder or Contractor who is aggrieved in connection with the procurement may protest to the City Purchasing Director. The protest must be in writing and be submitted within fifteen (15) days after the facts or occurrences.

The complete procedures and requirements regarding protests and resolution of protests are available from the Purchasing Office upon request.

### 33. CONSIDERATION OF BIDS

#### 33.1 RECEIPT, OPENING AND RECORDING

Bids received on time will be opened publicly and will be read aloud, and an abstract of the amounts of the Base Bids and Alternates or Bid Items, if any, will be made available to the Bidders. Each Bid shall be open to public inspection.

#### 33.2 BID EVALUATION AND AWARD

33.2.1 It is the intent of the Owner to award a contract to the lowest responsible base bid, provided the Bid has been submitted in accordance with the requirements of the Contract Documents. The unreasonable failure of a Bidder to promptly supply information in connection with an inquiry with respect to responsibility is grounds for a determination that the Bidder is not responsible Bidder. Post-Bid information that may be required of a Contractor as to qualifications can include, but not be limited to those items listed in paragraph 33.

33.2.2 If the Base Bid is within the amount of funds available to finance the construction Contract, Contract award will be made to the responsible Bidder submitting the low Base Bid, excluding New Mexico gross receipts tax (NMGRT). If alternatives are to be awarded the Owner will award the Contract to the responsible Bidder submitting the low Base Bid, excluding NMGRT, including any combination of any Additive Alternates or Deductive Alternates.

33.2.3 Discrepancies in the Bid Form between words and figures will be resolved in favor of words. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

#### 33.3 COMPETITIVE SEALED BIDS

Contracts solicited by competitive sealed bids shall require that the bid amount exclude applicable New Mexico Gross Receipts Taxes or applicable local option taxes, but that the Owner shall be required to pay the applicable taxes, including any increase in the applicable tax which becomes effective after the date the Contract is entered into. The applicable Gross Receipts Tax shall be computed

and shown as a separate amount on the Bid Form and on each request for payment made under the Contract.

33.4 NOTICE OF AWARD

A written Notice of Award shall be issued by the Owner after review and approval of the Bid and related documents by the SFSWMA Joint Powers Board, with reasonable promptness.

33.5 IDENTICAL BIDS

When two or more of the Bids submitted are identical in price and are the low Bid, the Owner may:

- A. Award pursuant to the multiple source award provisions of the Procurement Code;
- B. Award to a resident business if the identical low Bids are submitted by a resident business and a nonresident business;
- C. Award to a resident manufacturer if the identical low Bids are submitted by a resident manufacturer and a non-resident manufacturer;
- D. Award by letter to one of the identical low Bidders;
- E. Reject all Bids and re-solicit Bids for the required services, construction, or items of tangible personal property.

33.6 CANCELLATION OF AWARD

When in the best interest of the public, the Owner may cancel the award of any contract at any time before the execution of said contract by all parties without any liability against the Owner.

34. POST-BID INFORMATION

34.1 RETURN OF BID SECURITY

All Bid Security in the form of checks, except those retained by the owner per paragraph 8.0 of this Instruction to Bidders will be returned within fifteen (15) days following the bid opening. The retained Bid Security of the Successful Bidder(s), if in the form of a check, will be returned after satisfactory Contract Bonds have been furnished and the Contract has been executed as stated in the above referenced paragraph 8.0. Bid Securities in the form of Bid Bonds will be returned only upon the request of the unsuccessful Bidder, but will be released by the Owner after the Notice of Award is sent by the Owner.

34.2 NOTICE TO PROCEED

The Owner will issue a written Notice to Proceed to the Contractor stipulating the date from which Contract Time will be charged and the date Contract Time is to expire, subject to valid modifications of the Contract authorized by Change Order.

34.3 FAILURE TO EXECUTE CONTRACT

Failure to return the signed Contract with acceptable Contract Bonds and Certificate of Insurance within ten (10) calendar days after the date of the Notice of Award shall be just cause for the cancellation of the Award and the forfeiture

of the Bid Security, which shall become damages sustained. Award may then be made to the next lowest responsible Bidder, or the work may be readvertised and constructed under contract or otherwise, as the Owner may decide.

34.4 CONTRACTOR'S QUALIFICATION STATEMENT

Bidder to whom award of a Contract is under consideration shall submit, upon request, information and data to prove that their financial resources, production or service facilities, personnel, and service reputation and experience are adequate to make satisfactory delivery of the services, construction, or items of personal property described in the Contract Documents and the form of submittal shall be a Statement of Bidder's Qualifications.

34.5 CONTRACT BONDS REQUIREMENTS

The Successful Bidder, where the Contract Price exceeds twenty five thousand dollars (\$25,000), shall post a one hundred (100) percent Performance Bond and one hundred (100) percent 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.

34.6 INSURANCE REQUIREMENTS

34.6.1 The Contractor shall carry insurance to protect the Owner from and against all claims, demands, actions, judgments, costs, expenses and liabilities which may arise or result directly or indirectly from or by reasons of loss, injury or damage related to the Project. The Contractor shall file with the Owner current certificates evidencing public liability insurance with limits as provided in the New Mexico Tort Claims Act, Section 41-4-19 NMSA 1978, and as that section or successor sections may be amended from time to time. The Contractor shall also carry such insurance as it deems necessary to protect it from all claims under any workmen's compensation law in effect that may be applicable to the Contractor. All insurance required by this Agreement shall be kept and remain in full force and effect for the entire life of this Agreement.

34.6.2 The insurance coverage shall include worker's compensation, employer's liability, comprehensive general liability (Premises-Operations, independent contractors, products and completed operations, broad form property damage, contractual liability, explosion and collapse hazard, underground hazard, personal injury) comprehensive automobile liability (owned and hired), excess liability (umbrella form), and all-risk builder's risk.

34.6.3 All insurance coverage must be maintained for the entire life of the Project. Products and completed operations coverage shall be maintained for a minimum period of one (1) year after final payment.

34.6.4 A valid certificate of insurance must be submitted to the Owner prior to issuance of a Notice-to-Proceed.

### 35. MINIMUM WAGE RATES

Any Contract entered into in excess of sixty thousand dollars (\$60,000) for construction, alteration, demolition, or repair, or any combination of these, including painting and decorating of public buildings or public works, is subject to the minimum wage rate determination issued by the New Mexico State Labor and Industrial Commission for this Project. Federal Funded Contracts in excess of \$2,000.00 are subject to Federal Labor Standards Requirements of Davis Bacon Act. The Bidder shall ensure that, in submitting his Bid, the minimum wage rate determination, included herein, has been utilized in preparing his Bid.

## **Section 3 Bid Proposal**

**BID PROPOSAL  
BID NO. '16/07/B  
CAJA DEL RIO LANDFILL  
PHASE 2 – LANDFILL GAS COLLECTION SYSTEM**

CONTRACTOR NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

To Santa Fe Solid Waste Management Agency, State of New Mexico (Owner):

The undersigned proposes to furnish and deliver all the material and to do all the work and labor required in the construction of "Phase 2 – Landfill Gas Collection System" at the Caja del Rio Landfill in City of Santa Fe, State of New Mexico, according to the Construction Plans and Specifications at the prices named and shown on the Bid Form.

The undersigned declares that the only person or parties interested in the bid as principals are those named herein; that the bid is made without collusion with any person, firm or corporation; that he has carefully examined the specifications, including General and Supplemental Conditions, if any, and that he has made a personal examination of the site of the work, that he is to furnish all the necessary machinery, tools, apparatus and other means of construction and do all the work and finish all the materials specified in the manner and the time prescribed; that he understands that the quantities are approximate only and subject to increase or decrease, and that he is willing to perform any increased or decreased quantities of work at the unit price bid.

The undersigned hereby agrees to execute and deliver the Construction Agreement and required bonds within ten (10) days, or such further time as may be allowed in writing by the Owner after receiving notification of the acceptance of this bid, and it is hereby mutually understood and agreed that in case we do not, we forfeit the accompanying check or bid bond to the Owner as liquidated damages, and the said Owner may proceed to award the contract to others.

The undersigned hereby agrees to commence the work within ten (10) days, or such further time as may be allowed in writing by the after notification to proceed, and to complete the Work within thirty (30) calendar days, as outlined in these Contract Documents.

The undersigned proposes to furnish Labor and Material Payment Bond and Performance Bond in the amount of one hundred (100%) percent of the Contract Amount each as surety conditioned for the full complete and faithful performance of this contract, and to indemnify and save harmless the Owner from any damage or loss of which the Owner may become liable by the default of said Contractor, or by reason of any neglect or carelessness on the part of said Contractor, his agents or employees, or by or on account of any act or omission of said Contractor, his servants, agents or employees, in performance of this contract.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

# **Section 4 Bid Form**

**BID FORM  
SANTA FE SOLID WASTE MANAGEMENT AGENCY  
CAJA DEL RIO LANDFILL  
PHASE 2 – LANDFILL GAS COLLECTION SYSTEM  
CONTRACTING AGENCY AND OWNER**

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

Hereinafter called Bidder.

TO: Mr. Robert Rodarte  
Purchasing Director  
City of Santa Fe  
2651 Siringo Road, Building H  
Santa Fe, NM 87505

Hereinafter called Owner,

**BID FOR: CAJA DEL RIO LANDFILL  
PHASE 2 – LANDFILL GAS COLLECTION SYSTEM**

Santa Fe Solid Waste Management Agency: Bid No. '16/07/B

1. The Bidder has familiarized itself with the existing conditions on the Project area affecting the cost of the Work and with the Contract Documents which includes:
  - a. Advertisement for Bid
  - b. Instructions for Bidders
  - c. Bid Proposal
  - d. Bid Form
  - e. Supplemental Bid Forms
  - f. Agreement Between Owner and Contractor
  - g. Performance Bond
  - h. Labor and Material Payment Bond
  - i. General and Supplemental Conditions
  - j. Technical Specifications
  - k. Construction Plans

The Bidder hereby proposes to furnish all supervision, technical personnel, labor, materials, tools, appurtenances, equipment, and services (including all utility and transportation services) required to construct and complete the improvements, all in accordance with the above listed Documents.

2. Bidder agrees to perform all Work to construct the Phase 2 – Landfill Gas Collection System described in the Specifications and shown on the Construction Plans for the following unit prices provided in the Bid Schedule (Unit Prices) below.

Amounts are to be shown in both words and figures. In case of discrepancy, the amount shown in words will govern.

**BID SCHEDULE (UNIT PRICES)  
BID NO. '16/07/B**

<b>Item No.</b>	<b>Estimated Quantity</b>	<b>Brief Description of Item With Unit Bid Price in Words</b>	<b>Unit Bid Price In Figures</b>	<b>Amount In Figures</b>
1.	L.S.	Mobilization and Demobilization.  _____ Dollars and Cents per lump sum.	\$	\$
2.	L.S.	Layout of Work and Surveys  _____ Dollars and Cents per lump sum.	\$	\$
3.	290 V.F.	Vertical LFG Extraction Wells  _____ Dollars and Cents per vertical foot.	\$	\$
4.	60 V.F.	Abandoned Borings  _____ Dollars and Cents per vertical foot.	\$	\$
5.	5 EA	2-inch Diameter Vertical Wellheads  _____ Dollars and Cents each.	\$	\$
6.	520 L.F.	2-inch Diameter SDR 9 HDPE Air Supply Line (Common Trench)  _____ Dollars and Cents per linear foot.	\$	\$

Item No.	Estimated Quantity	Brief Description of Item With Unit Bid Price in Words	Unit Bid Price In Figures	Amount In Figures
7.	520 L.F.	2-inch Diameter SDR 11 HDPE Condensate Forcemain (Common Trench)  Dollars and Cents per linear foot.	\$	\$
8.	680 L.F.	6-inch Diameter SDR 17 HDPE Lateral Piping  Dollars and Cents per linear foot.	\$	\$
9.	2,070 L.F.	8-inch Diameter SDR 17 HDPE Header Piping  Dollars and Cents per linear foot.	\$	\$
10.	1 EA	2-inch Diameter Condensate Forcemain Isolation Valve  Dollars and Cents each.	\$	\$
11.	1 EA	2-inch Diameter Air Supply Line Isolation and Blow-off Valve  Dollars and Cents each.	\$	\$
12.	2 EA	8-inch Diameter Gear Operated Isolation Valve  Dollars and Cents each.	\$	\$
13.	1 EA	12-inch Diameter Condensate Sump and Pump  Dollars and Cents each.	\$	\$

SUBTOTAL - BASE BID AMOUNT FOR ITEMS 1-13: \$ \_\_\_\_\_

NEW MEXICO GROSS RECEIPTS TAX @ 7.0000% \$ \_\_\_\_\_

TOTAL – BASE BID PLUS NM GROSS RECEIPTS TAX \$ \_\_\_\_\_



7. This Bid Form contains the following:
- a. Bid Proposal;
  - b. Bid Form, subcontractor/material list, and acknowledgement of Addenda, if any;
  - c. Bid Bond or Check for Bid Security;
  - d. Non-Collusion Affidavit of Prime Bidder;
  - e. Non-Collusion Affidavit of Subcontractor(s);
  - f. Certification of Nonsegregated Facilities;
  - g. Certification of Bidder regarding Equal Employment Opportunity;
  - h. Certification of Subcontractor regarding Equal Employment Opportunity; and
  - i. Resident Veteran Contractor / Resident Contractor.

**TWO COMPLETE COPIES OF THE BID SUBMITTAL IS REQUIRED**

Respectfully Submitted:

Name of Bidder \_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Official Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone No.: \_\_\_\_\_

New Mexico Contractor's License Number and Types: \_\_\_\_\_

United States Treasury Number: \_\_\_\_\_

New Mexico State Residence Preference Certification Number

if any: \_\_\_\_\_



**RESIDENT VETERAN CONTRACTOR / RESIDENT CONTRACTOR /  
LOCAL CONTRACTOR CERTIFICATION**

Check Here If Bidder Has Submitted:

\_\_\_ A copy of a valid resident veteran contractor certificate with its bid to receive a resident veteran contractor preference pursuant to Section 13-4-2 NMSA 1978. If checked, please select appropriate preference based upon annual revenues:

\_\_\_ A bid submitted by a resident veteran contractor with annual revenues of one million dollars (\$1,000,000) or less shall be deemed to be ten percent (10%) less than the bid actually submitted.

\_\_\_ A bid submitted by a resident veteran contractor with annual revenues of more than one million dollars (\$1,000,000) but less than five million dollars (\$5,000,000) shall be deemed to be eight percent (8%) less than the bid actually submitted, subject to the limitation that the preference shall be limited, in any calendar year, to an aggregate of ten million dollars (\$10,000,000) in public works contracts from all resident veteran contractors receiving the preference.

\_\_\_ A bid submitted by a resident veteran contractor with annual revenues of five million dollars (\$5,000,000) or more shall be deemed to be seven percent (7%) less than the bid actually submitted, subject to the limitation that the preference shall be limited, in any calendar year, to an aggregate of ten million dollars (\$10,000,000) in public works contracts from all resident veteran contractors receiving the preference.

\_\_\_ A copy of a valid resident contractor certificate with its bid to receive a resident contractor preference pursuant to Section 13-4-2 NMSA 1978. (Five percent (5%) less than the bid actually submitted.)

\_\_\_ A copy of a valid Local Preference Certification Form, pursuant to the City of Santa Fe Purchasing Manual, or a Santa Fe County Preference Certificate, issued by Santa Fe County to receive a local contractor preference pursuant to Santa Fe County Ordinance No. 2012-4. (Five percent (5%) less than the bid actually submitted).

\_\_\_ A joint bid by a combination of a resident veteran, resident or nonresident contractor. If checked, state the dollar amount of goods and services that will be provided by each of the joint parties under the contract:

\$ \_\_\_\_\_                      \$ \_\_\_\_\_                      \$ \_\_\_\_\_  
(Non-Resident)                      (Resident)                      (Resident Veteran)

NM Resident Veteran Contractor Number \_\_\_\_\_

NM Department of Workforce Solutions Registration Number \_\_\_\_\_

Local Preference Certificate Number \_\_\_\_\_

Bidder declares under penalty of perjury that this statement is true to the best of its knowledge and understands that giving false or misleading statements about material fact regarding this matter constitutes a crime.

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## **Section 5 Bid Bond**

**BID BOND**

A. KNOW ALL MEN BY THESE PRESENTS, THAT WE \_\_\_\_\_, hereinafter called the PRINCIPAL, and the \_\_\_\_\_, of \_\_\_\_\_ a Corporation duly organized under the laws of the State of \_\_\_\_\_, and, authorized to do business in the State of New Mexico, hereinafter called the SURETY, as SURETY are held and firmly bound unto the Santa Fe Solid Waste Management Agency, hereinafter called the OBLIGEE, in the sum of \_\_\_\_\_dollars (\$\_\_\_\_\_) for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted the accompanying bid, dated \_\_\_\_\_, 2015, (Bid No.'16/07/B) for the construction of the Santa Fe Solid Waste Management Agency, Phase 2 – Landfill Gas Collection System, 149 Wildlife Way, Santa Fe, NM 87056.

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

C. SIGNED AND SEALED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2015.

\_\_\_\_\_  
BIDDER

\_\_\_\_\_  
WITNESS

By: \_\_\_\_\_ (SEAL)  
PRINCIPAL

\_\_\_\_\_  
WITNESS

By: \_\_\_\_\_  
SURETY

\_\_\_\_\_  
TITLE

## **Section 6 Supplemental Bid Forms**

## **SUPPLEMENTAL BID FORMS**

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Certification of Bidder Regarding Equal Employment Opportunity .....	6-7
Certification of Subcontractor Regarding Equal Employment Opportunity .....	6-8

**NON-COLLUSION AFFIDAVIT OF PRIME BIDDER**

STATE OF NEW MEXICO

COUNTY OF \_\_\_\_\_

\_\_\_\_\_ being first duly sworn, deposes and says that:

- (1) He is the \_\_\_\_\_ of the Bidder that has submitted the attached Bid Proposal;
- (2) He is fully informed respecting the preparation and contents of the attached Bid Proposal and of all pertinent circumstances respecting such bid;
- (3) Such bid is genuine and is not a collusive or sham bid;
- (4) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affidavit, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other Bidder, firm or person to submit a collusive or sham bid in connection with the Contract for which the attached bid has been submitted or to refrain from bidding in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communications or conference with any other Bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the Contracting Agency or any person interested in the proposed Contract; and
- (5) The price or prices quoted in the attached bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affidavit.

(SIGNED) \_\_\_\_\_

TITLE \_\_\_\_\_

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_ 2015.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires \_\_\_\_\_

## SUBCONTRACTS

- A. The Contractor shall not execute an agreement with any subcontractor or permit any Subcontractor to perform any work included in this contract until he has submitted a Non-Collusion Affidavit from the Subcontractor, which is substantially the form that follows: (page 5 of 7), and has received written approval of such Subcontractor from the Owner.
- B. No proposed Subcontractor shall be disapproved by the Owner except for cause.
- C. The Contractor shall be as fully responsible to the Owner for the acts and omissions of his Subcontractors and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.
- D. The Contractor shall cause appropriate provision to be inserted in all subcontracts relative to the work to require compliance by each Subcontractor with the applicable provisions of the Contract for the improvements embraced.
- E. Nothing contained in the Contract shall create any contractual relation between any Subcontractor and the Owner.

**NON-COLLUSION AFFIDAVIT OF SUBCONTRACTOR**

STATE OF NEW MEXICO

COUNTY OF \_\_\_\_\_

\_\_\_\_\_ being first duly sworn, deposes and says that:

- (1) He is the \_\_\_\_\_ of \_\_\_\_\_, hereinafter referred to as the "Subcontractor".
- (2) He is fully informed respecting the preparation and contents of the Subcontractor's proposal submitted by the Subcontractor to \_\_\_\_\_, the Contractor, for certain work in connection with the \_\_\_\_\_ contract pertaining to the \_\_\_\_\_ project in \_\_\_\_\_.
- (3) Such Subcontractors proposal is genuine and is not a collusive or sham proposal.
- (4) Neither the Subcontractor nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affidavit, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other Bidder, firm or person to submit a collusive or sham bid in connection with the Contract for which the attached bid has been submitted or to refrain from bidding in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communications or conference with any other Bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the Contracting Agency or any person interested in the proposed Contract; and
- (5) The price or prices quoted in the Subcontractor's proposal are fair and proper and are, not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affidavit.

(SIGNED) \_\_\_\_\_

(PRINT NAME) \_\_\_\_\_

TITLE \_\_\_\_\_

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_ 2015.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires \_\_\_\_\_

**CERTIFICATION OF NON-SEGREGATED FACILITIES**

(Applicable to construction contracts and related subcontracts exceeding \$10,000 which are not exempt from the Equal Opportunity Clause).

The construction Contractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The construction Contractor certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The construction Contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this contract. As used in this certification, the term "segregated facilities" means any waiting room, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clock, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreating or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. The construction Contractor agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed SUBCONTRACTORS prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause and that he will retain such certifications in his files.

(SIGNED) \_\_\_\_\_

PRINT NAME \_\_\_\_\_

TITLE \_\_\_\_\_

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_ 2015.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires \_\_\_\_\_

**CERTIFICATION OF BIDDER REGARDING  
EQUAL EMPLOYMENT OPPORTUNITY  
INSTRUCTIONS**

This certification is required pursuant to Executive Order 11246 (30 F. R. 12319-25). The implementing rules and regulations provide that any bidder or prospective contractor, or any of their proposed subcontractors, shall state as an initial part of the bid or negotiations of the contract or subcontract whether it has participated in any previous contract or subcontract subject to the equal opportunity clause; and, if so, whether it has filed all compliance reports due under applicable instructions.

Where the certification indicates that the bidder has not filed a compliance report due under applicable instructions, such bidder shall be required to submit a compliance report within seven calendar days after bid opening. No contract shall be awarded unless such report is submitted.

---

**CERTIFICATION OF BIDDER**

Bidder's Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

1. Bidder has participated in a previous contract or subcontract subject to the Equal Opportunity Clause.  
Yes \_\_\_\_\_ No \_\_\_\_\_
  2. Compliance reports were required to be filed in connection with such contract or subcontract.  
Yes \_\_\_\_\_ No \_\_\_\_\_
- 

Certification: The information above is true and complete to the best of my knowledge and belief.

\_\_\_\_\_  
NAME AND TITLE OF SIGNER (PLEASE TYPE)

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

**CERTIFICATION OF SUBCONTRACTOR REGARDING  
EQUAL EMPLOYMENT OPPORTUNITY**

**INSTRUCTIONS**

This certification is required pursuant to Executive Order 11246 (30 F. R. 12319-25). The implementing rules and regulations provide that any bidder or perspective contractor, or any of their proposed subcontractors, shall state as an initial part of the bid or negotiations of the contract or subcontract whether it has participated in any previous contract or subcontract subject to the equal opportunity clause; and, if so, whether it has filed all compliance reports due under applicable instructions.

Where the certification indicates that the bidder has not filed a compliance report due under applicable instructions, such bidder shall be required to submit a compliance report within seven calendar days after bid opening. No contract shall be awarded unless such report is submitted.

---

**CERTIFICATION OF SUBCONTRACTOR**

Subcontractor's Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

1. Subcontractor has participated in a previous contract or subcontract subject to the Equal Opportunity Clause.  
Yes \_\_\_\_\_ No \_\_\_\_\_
2. Compliance reports were required to be filed in connection with such contract or subcontract.  
Yes \_\_\_\_\_ No \_\_\_\_\_

---

Certification: The information above is true and complete to the best of my knowledge and belief.

---

NAME AND TITLE OF SIGNER (PLEASE TYPE)

---

SIGNATURE

---

DATE

## **Section 7**

# **Agreement between Owner and Contractor**

**SANTA FE SOLID WASTE MANAGEMENT AGENCY**

**AGREEMENT BETWEEN  
OWNER AND CONTRACTOR**

**CAJA DEL RIO LANDFILL**

**PHASE 2 – LANDFILL GAS COLLECTION SYSTEM**

This Agreement, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between the **SANTA FE SOLID WASTE MANAGEMENT AGENCY**, herein known as the Owner, and \_\_\_\_\_, herein known as the Contractor for the following:

PROJECT: Caja del Rio Landfill  
Phase 2 – Landfill Gas Collection System

PROJECT No.: '16/07/B

ENGINEER OF RECORD: SCS Engineers  
1901 Central Drive, Suite 550  
Bedford, Texas 76021

DISTRIBUTION:

OWNER: SANTA FE SOLID WASTE MANAGEMENT AGENCY

CONTRACTOR: \_\_\_\_\_

ENGINEER: SCS ENGINEERS

OTHER: \_\_\_\_\_

OTHER: \_\_\_\_\_

**RECITALS**

WHEREAS, the Owner, through its Joint Powers Board, 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 Joint Powers Board of SFSWMA at its meeting of \_\_\_\_\_, 2015.

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 Construction Plans, 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 SFSWMA, Caja del Rio Landfill, Phase 2 – Landfill Gas Collection System, 149 Wildlife Way, Santa Fe, NM 87506.

**ARTICLE 3**  
**TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

The work to be performed under this Contract shall be commenced not later than ten (10) consecutive calendar days after the date of written Notice to Proceed. Substantial Completion for the Bid Work shall be achieved within thirty (30) calendar days after the date of written Notice to Proceed [the Contract Time] 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 additions and deductions by Change Order as provided in the Contract Documents, the Contract Sum of \_\_\_\_\_dollars (\$\_\_\_\_\_).

The Contract Sum is determined as follows:

Base Bid Work	\$_____
NM Gross Receipts Tax	\$_____
TOTAL	\$_____

**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 thirty (30) days following the end of the period covered by the Application for Payment, ninety five percent (95%) of the portion of the Contract sum properly allocable to labor, materials, and equipment incorporated in the work and ninety five percent (95%) 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 substantial completion of the entire work, a sum sufficient to increase the total payments to ninety-eight percent (98%) 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 complete the work within the Contract Period of thirty (30) calendar days or any extension in the Contract thereof, the Contractor agrees to pay to the Owner the amount of One Thousand dollars (\$1,000) per consecutive calendar days 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 thirty (30) 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 five (5) copies of a progress schedule covering project operations for the thirty (30) calendar day Contract Period for the Work. 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, cost 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 aggregate 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 Owner. 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 Owner and 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 the 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 the billing 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.



- 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, agreements, or understandings, 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, the 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 of interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

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

SANTA FE SOLID WASTE MANAGEMENT  
AGENCY

\_\_\_\_\_  
JOSEPH M. MAESTAS  
CHAIRPERSON

ATTEST:

\_\_\_\_\_  
YOLANDA Y. VIGIL, SANTA FE CITY CLERK

CONTRACTOR

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

NM TAXATION AND REVENUE CRS

NO. \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
JUSTIN W. MILLER  
SFSWMA ATTORNEY

DATE: \_\_\_\_\_

## **Section 8 Performance Bond**

## **PERFORMANCE BOND**

A. KNOW ALL MEN BY THESE PRESENTS, that \_\_\_\_\_ (here insert the name and address or legal title of the Contractor) as Principal, hereinafter called Contractor, and \_\_\_\_\_ (here insert the legal title of Surety) as Surety, hereinafter called Surety, are held firmly bound unto the Santa Fe Solid Waste Management Agency as Oblige, hereinafter called Owner, in the amount of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_) for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

B. WHEREAS, the Contractor has by written agreement dated, \_\_\_\_\_, 2015, entered into a Contract with the Santa Fe Solid Waste Management for the \_\_\_\_\_ in accordance with Construction Plans and Specifications prepared by the Owner which Contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

C. NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

1. The Surety hereby waives notice of any alteration or extension of time made by the Owner.
2. Whenever Contractor shall be, and declared by the Owner to be in default under the Contract, the Owner having performed Owner's obligations thereunder, the Surety may promptly remedy the default or shall promptly:
  - a. Complete the Contract in accordance with its terms and conditions or
  - b. Obtain a bid or bids for submission to Owner for completing the Contract in accordance with its terms and conditions, and upon determination by Owner and Surety of the lowest responsible bidder, arrange for a contract between such bidder and Owner, and make available as work progresses (even though there should be a default or a secession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price, but not exceeding, including other costs and damages for which the surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the Contract price" as used in this paragraph, shall mean the total amount payable by Owner to Contractor under the Contract and any amendments thereto, less the amount properly paid by Owner to Contractor.
3. Any suit under this bond must be instituted before the expiration of two (2) years

from the date on which final payment under the contract falls due.

4. No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrators or successors of the Owner.

(SIGNED) \_\_\_\_\_

TITLE \_\_\_\_\_

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

NOTARY PUBLIC

My Commission Expires \_\_\_\_\_

\_\_\_\_\_  
Contractor- Principal

By: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form:

Surety

Title: \_\_\_\_\_

Countersigned: \_\_\_\_\_

Surety's Authorized New Mexico Agent

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## **Section 9 Labor and Material Payment Bond**

**LABOR AND MATERIAL PAYMENT BOND**

A. KNOW ALL MEN BY THESE PRESENTS THAT

\_\_\_\_\_  
(HERE INSERT THE NAME AND ADDRESS OR LEGAL TITLE OF THE CONTRACTOR)  
as Principal, hereinafter called Principal, and \_\_\_\_\_

\_\_\_\_\_  
(HERE INSERT THE LEGAL TITLE OF SURETY)

As Surety, hereinafter called Surety, are held and firmly bound unto the Santa Fe Solid Waste Management Agency as Obligee, hereinafter called Owner, for the use and benefits of claimants as herein below defined, in the amount of \_\_\_\_\_  
DOLLARS, (\$\_\_\_\_\_) for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

B. WHEREAS, Principal has by written agreement dated \_\_\_\_\_,  
2015 entered into a contract with the Santa Fe Solid Waste Management Agency for the

\_\_\_\_\_  
in accordance with Construction Plans and Specifications prepared by the Santa Fe Solid Waste Management Agency, which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

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

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

- Surety above named, within ninety (90) days after such said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed.
- b. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, Owner or Surety, at any place where an office is regularly maintained for the transaction of business, or revised in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such services need not be made by a public officer.
  - c. After the expiration of one (1) year following the date on which Principal ceased work on said Contract, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof, such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.
  - d. Other than in a state court of competent jurisdiction in and for the Owner or other political subdivision of the state in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part thereof, is situated, and not elsewhere.
4. The amount of this bond shall not be reduced by and to the extent of any payments made in good faith hereunder, inclusive of the payment by Surety of mechanics liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

SIGNED AND SEALED on \_\_\_\_\_, 2015

In the presence of:

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
NAME OF COMPANY

By: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Surety

By: \_\_\_\_\_

Title: \_\_\_\_\_

Countersigned:

\_\_\_\_\_  
Surety's Authorized New Mexico Agent

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

# **Section 10 General Conditions**

GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

TABLE OF ARTICLES

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

**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 Construction Plans, 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 Engineer pursuant to Subparagraph 2.2.6, or (4) a written order for a minor change in the work issued by the Engineer pursuant to Paragraph 12.4. The Contract Documents 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 negotiations, 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 Engineer and the Contractor, but the Engineer 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 Engineer 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 five (5) 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, Construction Plans, Specifications, or any of the other Contract Documents, the Engineer 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 Construction Plans 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, Construction Plans, 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 Engineer. With respect thereto, the Engineer agrees not to assert any rights and not to establish any claims under the design patent of copyright laws.

## **ARTICLE 2**

### **ENGINEER/ OWNER**

#### **2.1 DEFINITION**

- 2.1.1 The Engineer is the person lawfully licensed to practice Engineering, or an entity lawfully practicing Engineering 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 “Engineer” mean the Owner or authorized representative.

#### **2.2 ADMINISTRATION OF THE CONTRACT – COMMUNITY FACILITIES SECTION**

- 2.2.1 The Engineer will provide administration of the Contract as hereinafter described.
- 2.2.2 The Engineer will be the Owner’s representative during construction and until final payment is due. The Engineer will advise and consult with the Owner. The Owner’s instructions to the Contractor shall be forwarded through the Engineer. The Engineer 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 Engineer 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 Engineer and his staff (including the on-site representative, if agreed upon) shall make visits to the site at those critical points and at other times as the Engineer deems appropriate during the progress of the work. Additionally, the Engineer 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 an Engineer, he shall guard the Owner against defects and deficiencies in the construction. Should the Engineer 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 Engineer 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 Engineer 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

Engineer shall not be responsible for the Contractor's failure to carry out the work in accordance with the Contract Documents. The Engineer 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 be then fabricated, installed or completed.

- 2.2.5 The Engineer 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 Engineer may perform his functions under the Contract Documents.
- 2.2.6 Based on the Engineer's observations and an evaluation of the Contractor's Application for Payment, the Engineer 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 Engineer will be the interpreter of the requirements of the Contract Documents and the judge of the performance there under by both the Owner and the Contractor.
- 2.2.8 The Engineer 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 Engineer 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 Engineer for decision which he will render in writing within a reasonable time.
- 2.2.10 All interpretations and decisions of the Engineer shall be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of Construction Plans. 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 Engineer's decisions in matters relating to artistic effect may be final if consistent with the intent of the Contract Documents.
- 2.2.12 The Engineer 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 be then fabricated, installed or completed. However, neither the Engineer'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 Engineer to the Contractor, any Subcontractor, any of their agents or employees, or any other person performing any of the work.
- 2.2.13 The Engineer 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 Engineer's approval of a specific item shall not indicate approval of an assembly of which the time is a component.
- 2.2.14 The Engineer 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 Engineer 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 Engineer agree, the Engineer will provide one or more Project Representatives to assist the Engineer 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 Engineer 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 Engineer.
- 2.2.18 In case of the termination of the employment of the Engineer, the Owner shall appoint an Engineer whose status under the Contract Documents shall be that of the former Engineer.

### **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 The Owner shall furnish all surveys describing the physical characteristics, legal limitation and utility locations for the site for the Project, and a legal description of the site.
- 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 Construction Plans and Specifications reasonable necessary for the execution of the work.
- 3.2.6 The Owner shall forward all instructions to the Contractor through the Engineer.
- 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 Engineer 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 Engineer. 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.

**4.2 REVIEW OF CONTRACT DOCUMENTS**

4.2.1 The Contractor shall carefully study and compare the Contract Documents and shall at once report to the Engineer any error, inconsistency or omission he may discover. The Contractor shall not be liable to the Owner or the Engineer 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 Engineer 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 Engineer 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 Engineer, 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 Engineer's Final Certificate of Payment of this Contract. This also included all labor 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 Engineer 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 building 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 Engineer 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 Engineer, 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 Engineer, within ten (10) 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 Engineer to evaluate the schedule and supporting analysis for validity and practicability. If the schedule or written explanation is not accepted by the Owner, 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 Engineer.
- 4.10.8 The Contractor shall submit to the Engineer monthly progress status reports on dates directed by the Engineer. 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 Engineer 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 Construction Plans, 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 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 Engineer's approval of Shop Drawings, Product Data or Samples under Subparagraph 2.2.13 unless the Contractor has specifically informed the Engineer in writing of such deviation at the time of submission and the Engineer 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 Engineer 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 Engineer 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 Engineer 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 (e.g., liner materials and pipe), trash or debris caused by his operations. At the completion of the work, he shall remove all his waste materials , trash and debris 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 as they apply:
- A. 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.

#### **4.6 COMMUNICATIONS**

- 4.16.1 The Contractor shall forward all communications to the Owner through the Engineer.

#### **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 Engineer.

#### **4.18 INDEMNIFICATION**

- 4.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner and the Engineer 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 Engineer 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 Engineer, 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 Engineer, 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 Engineer 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 Engineer will promptly reply to the Contractor in writing stating whether or not the Owner or the Engineer, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or the Engineer 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 Engineer 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 Engineer. Said agreement shall preserve and protect the rights of the Owner and the Engineer 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 Engineer 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 site, the Contractor shall 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 Engineer 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 been 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 Engineer, 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 Engineer timely notice of its readiness so the Engineer 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 a professional testing laboratory acceptable to the Engineer, and the Contractor shall employ same and pay all charges in connection therewith. Records of tests shall be delivered to the Engineer in duplicate on acceptable forms.
- 7.6.2 If the Engineer 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 Engineer’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 Engineer 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
- 8.2.3 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 Engineer 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 Engineer determines may justify the delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Engineer may determine.
- 8.3.2 Any claim for extension of time shall be made in writing to the Engineer 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 Engineer 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 Engineer may require. This schedule, unless objected to by the Engineer, 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 Engineer an itemized Application for Payment, notarized if required, supported by such data substantiating the Contractor's right to payment.
- 9.3.2 Unless otherwise provided in the Contract Documents, payments will be made on account of materials or equipment not incorporated in the work but delivered and suitably stored at the site; and, if approved in advance by 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 Engineer will within seven days after the receipt of the Contract’s Application for Payment, either issue a Certificate for Payment to the Owner with a copy to the Contractor for such amount as the Engineer determines is properly due, or notify the Contractor in writing of his reasons for withholding a Certificate as provided in Subparagraph 9.6.1.
- 9.4.2 The issuance of Certificate for Payment will constitute a representation by the Engineer 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 to any specific qualifications stated in his Certificate); and that the Contractor is entitled to payment in the amount certified. However, by issuing a Certificate for Payment, the Engineer 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 or 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 Engineer has issued a Certificate 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 Engineer 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 on the action taken thereon by the Engineer on account of work done by such Subcontractor.
- 9.5.4 Neither the Owner nor the Engineer 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 Engineer 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 Engineer 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 Engineer cannot agree on a revised amount, the Engineer will promptly issue a Certificate for Payment for the amount for which he is able to make such representations to the Owner. The Engineer 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 removed, payment shall be made for amounts withheld because of them.

**9.7 FAILURE OF PAYMENT**

- 9.7.1 If the Engineer does not issue a Certificate for Payment, through no fault of the Contractor, within seven 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 Engineer, then the Contractor may, upon seven additional days' written notice to the Owner and the Engineer, 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 Engineer 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 Engineer, 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 Engineer, 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 Engineer 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 Engineer'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 Engineer (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 Engineer so confirms, the Owner shall, upon application by the Contractor and certification by the Engineer 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 Engineer 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 Engineer 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 Engineer.

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 set forth in Article 11. 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 following limits of insurance shall be maintained, unless otherwise listed in the Certificate of Insurance.

**Type of Required Coverage**

Workman's compensation (including accident and occupational disease coverage) Statutory  
Employer's Liability

**Minimum Limits of Liability**

Carry such insurance as it deems necessary to protect it from all claims under any workman's compensation law in effect that may be applicable to the Contractor.

Comprehensive General Liability (including endorsements providing broad form property damage coverage, personal injury coverage, and contractual assumption of liability coverage for all liability the Contractor has assumed under his Contract)

With limits of coverage in the maximum amount which the Owner could be held liable under the New Mexico Tort Claims Act for each person injured and for each accident resulting in damage to property.

Auto Liability (including non-owned auto coverage)

Same limits as General Liability

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. The Contractor shall furnish one (1) copy of each of the Certificates of insurance herein required for each copy of the contract.

#### **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 Engineer, 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 Engineer 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 and 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 be determined by the Engineer 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 Engineer 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 Engineer'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 Engineer. 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:

<b><u>Subtotal before Applying the Percentage Shown</u></b>	<b><u>\$500 &amp; Less</u></b>	<b><u>Over \$500</u></b>
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 Engineer 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 Engineer. 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 Engineer 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 Engineer or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Engineer, 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 Engineer has not specifically requested to observe prior to begin covered, the Engineer 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 Engineer 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 Engineer'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 Engineer, 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 Engineer'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 Subcontractor or their agents or employees or any other persons performing any of the work under a contract with the Contractor because the Engineer 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 Engineer, 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 Engineer 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 Engineer'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 Engineer 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 Engineer 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) days 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 expense 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 / REGISTRATION**

- 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.
- 16.2 A General Contractor or subcontractor that submits a bid valued at more than fifty thousand dollars (\$50,000) is subject to the Public Works Minimum Wage Act (13-4-10 NMSA 1978) and shall be required to be registered with the Labor and Industrial Division of the NM Labor Department. The Registration Number shall be provided in the spaces provided in the Bid Form and on the Subcontractor's Listing for subcontracts valued at \$50,000 or more. After the Bid Opening, the registration numbers will be verified and the bid will be considered unresponsive and disqualified if the registration numbers are not valid and if the contractor or subcontractor cannot provide proof of the required registration. It is the responsibility of the contractor and subcontractors to ensure that the registration is completed prior to the Bid Opening.

# **Section 11**

## **Supplementary Conditions**

## **SUPPLEMENTARY CONDITIONS (Section 00800)**

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 Construction Plans 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 Construction Plans, 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. However, due to the Work being performed at an active landfill, the Contractor will be limited to a workday starting no earlier than 6:30 a.m. and ending no later than 7:00 p.m. (i.e., daylight hours only).
- 1.9 CENTRAL PURCHASING OFFICE: The Central Purchasing Office is the City of Santa Fe Purchasing Department.
- 1.10 ADVERTISEMENT FOR BID: The Bidding Documents utilized for soliciting sealed Bids. “Advertisement to Bid” shall have the same meaning as “Advertisement for Bid”.
- 1.11 OWNER: Santa Fe Solid Waste Management Agency, Santa Fe, New Mexico.
- 1.12 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.
- 1.13 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).
- 1.14 SFSWMA: Santa Fe Solid Waste Management Agency, Santa Fe, New Mexico.
- 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 Santa Fe Solid Waste Management Agency, 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.

### **3.0 DEBARRED OR SUSPENDED CONTRACTORS**

A business (Contractor, Subcontractor, or Supplier) that has either been debarred or suspended pursuant to the requirements of the City of Santa Fe Purchasing Manual shall not be permitted to do business with the Owner 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 (CITY OF SANTA FE PURCHASING MANUAL)**

- 5.1 Any Contractor who is aggrieved in connection with a procurement may protest to the City of Santa Fe 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 than fifteen (15) calendar days after the facts or occurrences giving rise thereto.
- 5.2 In the event of a timely protest under Section 5.1 the City of Santa Fe Purchasing Agent and the Owner shall not proceed further with the procurement unless the Owner makes a determination that the award of contract is necessary to protect substantial interests of the Owner.
- 5.3 The City of Santa Fe 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.
- 5.5 The City of Santa Fe 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.

5.6 A copy of the determination issued shall be mailed immediately to the protestant.

## **6.0 CONTRACT BOND REQUIREMENTS**

6.1 The Successful Bidder, where the Contract Price exceeds five hundred dollars (\$500), 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 statutes.

## **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 from 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 Owner, 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  
Manual Lujan Building  
1200 St. Francis Drive  
Santa Fe, New Mexico 87503  
(505)988-2290

8.3 If any person who performs services for the Owner is not registered to pay the gross receipts tax, the Owner 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.

## **10.0 STATE ALLOWANCES**

10.1 The Contractor shall purchase the “Allowed Materials” as directed by the Owner through the Engineer 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.

## **11.0 MINIMUM WAGE RATES**

11.1 This project is subject to the Minimum Wage Rates as determined by the New Mexico State Labor & Industrial Commission pursuant to Chapter 13, Section 13-14-11, NMSA 1978. The Minimum Wage Rates to be paid by the Contractor and any Subcontractors to their employees on this project are as listed in the New Mexico State Labor and Industrial Commission Minimum Wage Rate Decision. A copy of this decision is bound in these documents immediately following this page.

11.2 All Contractors and Subcontractors shall submit one (1) certified copy of the project weekly payroll to the Santa Fe Solid Waste Management Agency, 149 Wildlife Way, Santa Fe, NM 87506, c/o Mr. Randall Kippenbrock, Executive Director and one (1) copy also certified directly to the New Mexico State Labor Commission – Public Works Division, Aspen Building, 1596 Pacheco Street, Santa Fe, New Mexico 87501, not later than five (5) working days after the close of each payroll period. The prime Contractor shall be responsible for the submission of copies of payrolls of all subcontractors.

11.3 Before using apprentices on this project, the Contractor shall present to the Contracting Officer written evidence of registration of such employees with the U.S. Department of Labor, Bureau of Apprenticeship and Training, Western Bank Building (Room 1414), 505 Marquette Avenue, N.W., Albuquerque, New Mexico 87102, Telephone 766-2398. If the apprenticeship is not registered in a bona fide apprenticeship program as mentioned above, the journeyman’s wage rate for that particular classification in which he or she is working is applicable.

## **12.0 FORM OF CHANGE ORDER AND CHANGE ORDER NOTICE TO PROCEED**

12.1 The following forms issued by the Owner are to be utilized by the Contractor, Engineer, and the Owner pursuant to the requirements of the General Conditions.

## **13.0 STATE OF NEW MEXICO STATE CONSTRUCTION INDUSTRIES DIVISION**

13.1 The Contractor, at his own expense, shall secure any required construction permits from the State CID for this Project. The Contractor shall adhere to the

requirements established for inspections.

**14.0 SANTA FE SOLID WASTE MANAGEMENT AGENCY REQUIREMENTS**

- 14.1 The General Contractor shall be responsible that all rubble, excess materials, etc., are disposed of at an approved disposal facility.

## **Section 12**

# **State of New Mexico Wage Rates Determination**

General Decision Number: NM150017 01/30/2015 NM17  
 Superseded General Decision Number: NM20140017  
 State: New Mexico  
 Construction Type: Heavy  
 County: Santa Fe County in New Mexico.

**HEAVY CONSTRUCTION PROJECTS**

Note: Executive Order (EO) 13658 establishes an hourly minimum wage of \$10.10 for 2015 that applies to all contracts subject to the Davis-Bacon Act for which the solicitation is issued on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.10 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number	Publication Date
0	01/02/2015
1	01/30/2015

\* CARP1353-001 06/01/2014

	Rates	Fringes
CARPENTER.....	\$ 23.40	8.42

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 ELEC0611-014 04/28/2014

	Rates	Fringes
ELECTRICIAN		
Zone 1.....	\$ 29.90	10.05

ZONE 1: Mileage calculated from the main post office in the following towns: Albuquerque-40 miles, Belen-12 miles, Carrizozo-12 miles, Clovis-12 miles, Espanola-14 miles, Farmington-6 miles, Gallup-10 miles, Las Vegas-8 miles, Los Lunas-12 miles, Portales-12 miles, Ratan-6 miles, Roswell-12 miles, Ruidoso-12 miles, Santa Fe-10 miles, Tatum-6 miles, Tucumcari-6 miles.

ZONE 2: Extending up to 20 miles beyond Zone 1, EXCEPT ALBUQUERQUE, shall receive 9% above Zone 1 rate.

ZONE 3: Extending up to 30 miles beyond Zone 1, EXCEPT ALBUQUERQUE, shall receive 15% above Zone 1 rate.

ZONE 4: Extending more than 30 miles beyond Zone 1, EXCEPT ALBUQUERQUE, shall receive 26% above Zone 1 rate.

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ENGI0953-005 04/01/2013

	Rates	Fringes
Power Equipment Operator		
(2) Forklift.....	\$ 19.23	5.64
(4) Bulldozer.....	\$ 19.54	5.64

SHAFT AND TUNNEL WORK - \$.15 per hour above regular rate.

HAZARDOUS PAY - The following pay shall be applicable for every hour an operating engineer is required by governmental regulations and does wear special equipment for hazardous work at the designated levels. This is applicable in all three zones

LEVEL C - 10% above regular hourly wage

LEVEL B - 10% above regular hourly wage

LEVEL A - 15% above regular hourly wage

ZONE PAY The reference point for determining zone pay shall be from the intersection of Interstate Highway 25 and I-40.

Zone 1 - Albuquerque - 0 to 50 mile radius from I-40 shall be a Free Zone - Farmington - 0 to 50 mile radius of Farmington City Hall shall be a Free Zone.

Zone 2 - Shall be \$2.50 per hour above base pay. Will apply outside of above parameters up to 35 miles.

Zone 3 - Shall be \$1.50 cents per hour above Zone 2 for a total of \$4.00 per hour and will apply after 35 miles of Zone one's parameters.

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SUNM2009-011 09/14/2010

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER...	\$ 16.53	1.95
IRONWORKER, REINFORCING.....	\$ 20.79	7.56
LABORER: Common or General.....	\$ 9.95	0.35
LABORER: Flagger.....	\$ 10.65	1.91
LABORER: Landscape.....	\$ 11.00	0.35
LABORER: Mason Tender - Cement/Concrete....	\$ 12.46	0.00
LABORER: Pipelayer.....	\$ 13.60	0.00
OPERATOR: Backhoe.....	\$ 14.03	0.26

OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 13.77	0.00
OPERATOR: Grader/Blade.....	\$ 18.56	0.00
OPERATOR: Loader (Front End)....	\$ 13.43	0.26
OPERATOR: Tractor.....	\$ 14.74	0.26
PAINTER: Brush, Roller and Spray....	\$ 17.30	1.80
TRUCK DRIVER: Dump Truck.....	\$ 12.45	0.26
TRUCK DRIVER: Pickup Truck.....	\$ 12.10	1.73
TRUCK DRIVER: Water Truck.....	\$ 14.74	0.00

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average

rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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#### WAGE DETERMINATION APPEALS PROCESS

- 1.) Has there been an initial decision in the matter? This can be:
  - \* an existing published wage determination
  - \* a survey underlying a wage determination
  - \* a Wage and Hour Division letter setting forth a position on a wage determination matter
  - \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

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# **Section 13**

## **Technical Specifications**

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# **Construction Plans**

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