

**Project Manual
Specifications and Contract Documents for the Construction of:**

**LOVE STREET AND WASHINGTON AVENUE
STREET IMPROVEMENTS**



November 2017

Bid No.: LOVEST-2017
Funding Source: 216-48080-2240

BID OPENING: 10:00 A.M., NOVEMBER 30TH, 2017

**City of Lovington
214 S. Love Street
Lovington New Mexico 88260
Telephone: (575) 396-2884**

NOTICE TO BIDDERS

BID NO.: LOVEST-2017

FUNDING SOURCE: 216-48080-2240

**LOVE STREET AND WASHINGTON AVENUE
STREET IMPROVEMENTS**

Sealed bids will be received by the City of Lovington, New Mexico, at the office of the City Manager or his designee, at the City of Lovington Commission Chambers, 214 South Love Street, P.O. Box 1268, Lovington, New Mexico 88260, (575) 396-2884, until **10:00 A.M., November 30th, 2017**, for the **Love Street and Washington Avenue Street Improvements** as specified.

Complete sets of Proposal Documents will be available on **10:00 A.M., November 14th, 2017** from the Project Engineer, Pettigrew & Associates, P.A., 100 East Navajo Drive, Suite 100, Hobbs, New Mexico 88240, (575) 393-9827.

In case of ambiguity or lack of clearness in stating bid prices the City of Lovington, New Mexico, reserves the right to adopt the most advantageous thereof, or to reject any or all bids and waive irregularities.

CITY OF LOVINGTON, LOVINGTON, NEW MEXICO

James Williams

Publication Date: NOVEMBER 14TH, 2017

COMMODITY CODES:

Effective July 1, 2016, each state agency and local public body shall use the standardized classification codes developed by the state purchasing agent. (NMSA 1978 13-1-30.1)

Applicable classification codes for this proposal are:

5-DIGIT CODE	ITEM DESCRIPTION
74502	Asphalt, AC (Asphalt/Cement)

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BIDDING INFORMATION

I. SUBMITTING BIDS

- a. Sealed bids will be received by the City of Lovington, New Mexico, at the office of the City Manager or his designee, in accordance with the Bid Advertisement. Bidders shall use the bid form included with the specifications, and the specifications shall be returned with the bid. Bid form must bear the signature of the bidder to be considered.
- b. Bids must be submitted in a sealed envelope with the outside clearly marked with the **Bid No.:** **LOVEST-2017** and the **Love Street and Washington Avenue Street Improvements**.
- c. All bids are subject to all applicable taxes. Any contracts that include labor or services require that the full amount be subject to the City of Lovington Gross Receipts Tax. Do not include the taxes in the total bid price. Taxes will be added and paid at time of billing.
- d. All prices that the Bidder sets forth in its Bid shall be based on the presumption that the Contractor will furnish the materials and equipment specified or described in the Bidding Documents as supplemented or clarified by Addenda. Any assumptions regarding the possibility of post-Bid approvals of "or-equal" or substitution requests are made at the Bidder's sole risk.

II. SERVICES

- a. It is the bidder's responsibility to deliver his bid to the proper place and at the time designated. The fact that a bid was dispatched will not be considered.
- b. The successful bidder must honor any guarantee or warranty normally offered with any product bid.
- c. The successful bidder shall replace any defective equipment or material at no cost to the Owner, for as long as warranty is in effect.
- d. Any proposed material or equipment to be furnished shall carry the usual new warranty and service that is provided by the manufacturer and dealer. The unit offered under this bid shall be new, standard production model of the latest design in current production. The successful bidder shall supply the City any books or manuals from the manufacturer that regularly accompany the item furnished.

III. AWARD OF CONTRACT

- a. The City Commission of the City of Lovington, New Mexico, reserves the right to waive irregularities in bids, and to reject any or all bids or portions thereof. They may accept any bid that in its opinion is in the best interest of the City of Lovington. Contract will be awarded on their decision as to the best bid offered.
- b. Contract may be awarded based on a Total Bid Price. The Bid Form contains a base bid, as described in Section 3 – Bid Form:

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- c. The Total Bid Price may be awarded based on the Bid Lots as defined in the Bid Tabulation.
- d. Note: The City Commission may extend quantities for any one or all bid items at the listed unit prices. This additional work will be issued by change order.

IV. DELIVERY

- a. All bids shall be F.O.B., Job Site, Lovington, New Mexico.

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ENGINEERING CERTIFICATION

All Municipal Public Works Projects estimated \$100,000 or more shall be stamped by a Registered Professional Engineer

This is to certify that I am a Registered Professional Engineer in the State of New Mexico, that these documents were prepared by me, or directly under my supervision, and that the same are true and correct to the best of my knowledge and belief.



David Roybal
Number **23576**
State of New Mexico

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SECTION 2 - INSTRUCTIONS TO BIDDERS

Bids are requested for construction of the project named and described below for the City of Lovington in accordance with these specifications and all Special Conditions, Plans, and Documents thereto.

2.1 PROJECT DESCRIPTION

- a. This project consists of furnishing all labor, materials, tools, machinery, and equipment, etc., necessary to construct.
The proposed improvements include full depth reconstruction of Washington Street from Love Street to Eddy Street with new curb and gutter, repaving of Love Street from Washington Street to Central Avenue with a raised pedestrian crosswalk, light poles, and lighted bollards. Improvements also include repairs to the existing irrigation system for the Courthouse along Love Street.

2.2 TIME AND PLACE OF RECEIVING BIDS:

- a. Sealed bids will be received by the City Manager of the City of Lovington at the office until **10:00 A.M., Thursday, November 30th, 2017**. At that time, the bids will be publicly opened and read aloud and will be considered at the next regularly scheduled meeting of the City Commission or at a later meeting as the Commission may determine.
- b. The deposit, if any, for each set of bidding forms and documents as required in the "Advertisement for Bids" will be refunded to each prime Contractor submitting a bona fide bid to the contracting agency, provided that such documents are returned in good condition to the above address within five (5) days after the bid opening date.
- c. Refunds will not be made to non-bidders. These documents need not be returned; and if not used in the construction work under this contract, they shall be destroyed, or, in any case, shall not be used for construction of projects at other locations. An additional three (3) sets of documents will be furnished to the successful bidder at no additional charge. Any additional sets requested will be issued to the successful bidder by the Engineer at the cost of reproduction.
- d. Terms used in these Instructions to Bidders have the meanings assigned to them in the General Provisions of the Specifications.

2.3 QUALIFICATIONS OF BIDDERS

- a. To demonstrate his qualifications for the Project, each bidder must be prepared to submit within five (5) days of Owner's written request a written statement of Bidder's Qualifications on the form contained herein or as prescribed by the Owner, including the Contractor Pre-Qualification Survey.

2.4 EXAMINATION OF CONTRACT DOCUMENTS AND SITE

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- a. Before submitting his bid, each bidder must (a) examine the Contract Documents thoroughly; (b) visit the site to familiarize himself with local conditions that may in any manner affect performance of the work; (c) familiarize himself with federal, state, and local laws, ordinances, rules and regulations affecting performance of the work; and (d) carefully correlate his observations with the requirements of the Contract Documents. Failure to examine any of the above will not relieve the bidder of his obligation with respect to his bid.

2.5 INTERPRETATIONS

- a. All questions about the meaning or intent of the Contract Documents shall be submitted to Engineer in writing. Replies will be issued by Addenda mailed or delivered to all parties recorded by Engineer as having received the bidding documents. 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.

2.6 BID SECURITY

- a. Bid security in the amount of 5% of the amount of the bid shall accompany the bid and must be in the form of a certified or bank cashier's check made payable to Owner or a bid bond issued by a surety licensed to conduct business in the State of New Mexico and named in the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Department. The Bid Security of the successful bidder will be retained until he has executed the Agreement and furnished the required Contract Security, whereupon it will be returned; if he fails to execute and deliver the Agreement and furnish the required Contract Security within fifteen (15) days of the Notice of Award, 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 Owner until the earlier of the seventh day after the executed agreement is delivered by Owner to Contractor and the required Contract Security is furnished or the sixty-first day after the bid opening. Bid Security of other bidders will be returned within seven (7) days of the bid opening.

2.7 CONTRACT TIME

- a. The number of days for the completion of work (the Contract Time) is set forth in the Bid Form and will be included in the executed agreement. Any provisions for liquidated damages are set forth in the Contract Documents.

2.8 SUBCONTRACTORS, ETC.

- a. Each Contractor shall submit a list of proposed SubContractors with bid to be used on the project. This information will be reviewed for the apparent low bidder. If the Contractor desires, the list of SubContractor may be submitted in a sealed envelope. If the Contractor is not the apparent low bidder, the Contractor may request the list to be turned, and will be returned unopened.
- b. In addition, if a SubContractor's work to be constructed in the project is greater than \$5,000.00

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or one-half of one percent the total project cost whichever is greater, each bidder shall furnish:

- c. The name and location of the place of business of each SubContractor under subcontract to the contract who will perform work or labor or render service to the Contractor in or about the construction of the public works construction in an amount in excess of the listing threshold.
- d. Such list shall be accompanied by an experience statement with pertinent information as to similar projects and other evidence of qualification for each such SubContractor, person, and organization **if requested by Owner**. If Owner or Engineer, after due investigation, has reasonable objection to any proposed SubContractor, other person, or organization, he may before giving Notice of Award request the apparent low bidder to submit an acceptable substitute without an increase in his bid price. If the apparent low bidder declines to make any such substitution, he will not thereby sacrifice his bid security. Any SubContractor, other person, or organization so listed and to whom the Owner or Engineer does not make written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner and Engineer.
- e. In contracts where the Contract Price is on the basis of cost of the work plus a fee, Contractor, prior to the Notice of Award, must identify in writing to 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 Owner's written consent.
- f. Contractor shall not be required to employ any SubContractor, other person, or organization against who he has reasonable objection.
- g. A Contractor or Sub-Contractor that submits a bid valued at more than sixty thousand dollars (\$60,000) for a public works project that is subject to the Public Works Minimum Wage Act [13-4-10 NMSA 1978] shall be registered with the New Mexico Department of Workforce Solutions at the time of bid opening. All tiers of Sub-Contractors shall be subject to the requirements of this subsection.

2.9 BID FORM

- a. The Bid Form is included in the Contract Documents; additional copies may be obtained from Engineer.
- b. Bid Forms must be completed in ink or by typewriter. The Bid price of each item on the form must be stated in numerals.
- c. Bids by corporations must be executed in the corporate name by the president or 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 partnership 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

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shown below the signature.

- e. All names must be typed or printed below the signature.
- f. The bid shall contain an acknowledgment of receipt of all Addenda (the numbers of which shall be filled in on the Bid Form).

2.10 SUBMISSION OF BIDS

- a. Bids shall be submitted at the time and place indicated in the Invitation to Bid and shall be included in an opaque sealed envelope, marked with the **Project Title and name and address of the Bidder and other required documents**. The bid shall not be detached from the bound set of Documents.

2.11 MODIFICATION AND WITHDRAWAL OF BIDS

- a. Bids may be modified or withdrawn by an appropriate document duly executed (in the manner that Bid must be executed) and delivered to the place where bids are to be submitted at any time prior to the opening of bids.

2.12 OPENING OF BIDS

- a. Bids will be opened as indicated in the Invitation to Bid.

2.13 BIDS TO REMAIN OPEN

- a. All bids shall remain open for Sixty (60) days after the day of the Bid Opening; but Owner may, in his sole discretion, release any bid and return the Bid Security prior to that date.

2.14 AWARD OF CONTRACT

- a. Owner reserves the right to reject any and all bids and waive any and all informalities and the right to disregard all nonconforming or conditional bids or counter bids.
- b. In evaluating bids, Owner shall consider the qualifications of the Bidders, whether or not the Bids comply with the prescribed requirements, and alternates and unit prices if requested in the bid forms. He may consider the qualifications and experience of SubContractors and other persons and organizations (including those who are to furnish the principal items of material or equipment) proposed for those portions of the work whose identity may be submitted as specified in the Special Provisions or Special Conditions. He may conduct such investigations as he deems necessary to establish the responsibility, qualifications, and financial ability of the Bidders, proposed SubContractors, and other persons and organizations to do the work in accordance with the contract documents to Owner's satisfaction within the prescribed time. Owner reserves the right to reject the Bid of any Bidder who does not pass any such evaluation to Owner's satisfaction.
- c. If a contract is to be awarded, it will be awarded to the lowest responsible Bidder whose

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evaluation by Owner indicates to Owner that the award will be in the best interest of the project.

- d. If the contract is to be awarded, Owner will give the apparent successful bidder a Notice of Award within forty-five (45) days after the day of the bid opening.
- e. Simultaneously with delivery of the executed counterparts of the agreement to Owner, Contractor shall deliver to Owner the required Contract Security.

2.15 WAGE RATES

- a. 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 Office of Labor Commission or Federal Wage Rate for New Mexico (if federal funds are part of this project). Wage rates for this project are included in these documents. It shall be the successful Bidder's responsibility to inform them self 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.

2.16 PUBLIC WORKS APPRENTICE AND TRAINING ACT

- a. Any bidder on a City of Lovington, Public Works Construction Project shall comply with Section 13-40-1 of the New Mexico State Statutes, known as the "Public Works Apprentice and Training Act."
- b. The City of Lovington shall verify that the bidder is not out of compliance with this Act by contacting the New Mexico Construction Industries Division prior to awarding of the contract.

2.17 BID OPENING PROCEDURE

- a. Bidders are invited to be present at the opening of the bids. The person or persons opening the bids will adhere to the following procedure:
 - 1. Name the bidder and the number of the bidder's New Mexico Contractor's License.
 - 2. Check for Bid Bond.
 - 3. Check for acknowledgment of Addendums.
 - 4. Check for proper signature on Bid Form.
 - 5. Check for type of Affirmative Action Program (if required).
 - 6. Check other requirements on Bid Form.
 - 7. Check for list of SubContractors.
 - 8. Check Resident or Resident Veterans Bidders Preference Number.
 - 9. Check for Workforce Solutions proof of registration
- b. If any of the above requirements have not been met, the bid shall be read after the deficiency or deficiencies have been accounted and noted. All bids shall be compared on the bases of

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the quantities set forth in the bid.

2.18 TIME OF CONTRACT

- a. Time of contract shall be listed in Section 7 - Contract along with any Liquidated damages amount. The amount Liquidated damages listed in the contract plus additional engineering and inspection costs will be charged to the Contractor and withheld from final payment for every calendar day beyond the scheduled date of completion. The Contractor shall begin on-site construction within ten (10) days of Notice to Proceed. Time extensions for non-compliance with work start-up period will not be allowed.

2.19 COLLUSION

- a. No bidder shall be interested in more than one bid. Collusion among bidders or submission of more than one bid under different names by any firm or individual shall be cause for rejection of all bids without consideration. Sub-Contractor work to be performed or suppliers providing for multiple bidders will not constitute a violation of this section.

2.20 PREPARATION OF BID

- a. Each bid must be submitted on the forms contained herein and attached to the specifications documents. All blank spaces for bid prices must be filled in, in ink or typewritten. Any final modifications on bid prices must be in ink and the initials of the person signing the bid must be placed at each modification made. In the event a discrepancy occurs between Unit Price shown multiplied by Quantity, and the resulting amount shown of that multiplication, the unit price shall govern and the bid totals and line items shall be adjusted accordingly.

2.21 POWER OF ATTORNEY

- a. Attorneys-in-fact who sign Bid Bonds or Contract Bonds must file with each bond the certified and effectively dated copy of their power of attorney contained herein.

2.22 CONDITIONAL BIDS

- a. Conditional bids will not be accepted.

2.23 INSURANCE

- a. See the General Conditions for insurance requirements and minimum limits.

2.24 NOTICE OF EXTENDED PAYMENT PROVISION

- a. This construction contract specifically provides for a payment later than twenty-one days after submission of an undisputed request for payment. This contract allows the Owner to pay payment within 45 (not to exceed 45 days) days after submission of an undisputed request for payment (Section 57-28-5 B (2) NMSA 1978).

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SECTION 3 - BID FORM (Unit Price Contract)

Bid No. **LOVEST-2017**

PLACE: City of Lovington
214 S. Love St.
Lovington, New Mexico 88220

DATE: _____

Bid of _____ (hereinafter called "BIDDER"), organized and existing under the laws of the State of _____ to the City of Lovington (hereinafter called "OWNER").

LOVE AND WASHINGTON PROJECT

Gentlemen:

The Bidder, in compliance with your invitation for bids for construction of the **LOVE AND WASHINGTON PROJECT**, having examined the site of the proposed work, and being familiar with all of the conditions surrounding the construction of the proposed project including the availability of labor, hereby proposes to furnish all materials, labor, and equipment, within the time set therein, at the prices stated below in accordance with the following:

1. Advertisement for bids dated November 14, 2017.
2. New Mexico Standard Specifications for Public Works Construction, 2006 Edition. New Mexico State Highway and Transportation Departments' Standard Specifications for Highway and Bridge Construction, 2014 Edition.
3. The contract documents, including General Conditions, Project Description, Special Conditions, Construction Procedures and Sequencing, and Technical and Supplemental Specifications as prepared by the City of Lovington.
4. Construction Plans and Specifications as prepared by Pettigrew & Associates, P.A..

All of which are incorporated herein and made a part hereof. The following prices are to cover all expenses incurred in performing the work required under the contract documents, of which this bid is a part.

Bidder hereby agrees to commence work under this contract on or before a date to be specified in a written Notice to proceed by the Owner and to fully complete the project within time frame specified in Section 7 – Contract. Bidder further agrees to pay as liquidated damages, as stated in Section 7 – Contract.

Bidder agrees to perform all of the work described in the Specifications and shown on the plans for the following unit prices. Each item must be bid. The cost of any work added or deducted from the following estimated quantities shall be computed at the unit prices bid.

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BASE BID - LOVE AND WASHINGTON PROJECT

Bid Lot 1

ITEM NO.	ITEM DESCRIPTION	UNIT	ESTIMATED QUANTITY	UNIT COST (\$/UNIT)	ITEM COST (\$)
1	LIGHT POLE	EA	2		
2	CONCRETE BOLLARDS	EA	4		
3	LIGHTED CONCRETE BOLLARDS	EA	6		
4	6" X 24" CURB AND GUTTER	LF	1,000		
5	6" BASE COURSE	SY	3,600		
6	SUBGRADE PREP	SY	3,600		
7	3" ASPHALT PAVING	SY	3,600		
8	SAWCUT EXISTING ASPHALT PAVEMENT	LF	200		
9	DECORATIVE BRICK PAVING - LOVE STREET	SY	700		
10	REPAIR DAMAGED IRRIGATION LINE	EA	2		
11	FURNISH AND INSTALL SITE ELECTRICAL PACKAGE PER ELECTRICAL SITE PLAN	LS	1		

SUBTOTAL BASE BID 1:

- *BASE BID (Items 1-11)*

\$ _____

SUBTOTAL BASE BID, IN WRITING:

New Mexico Gross Receipts Tax will be added to total bid price at the time of billing. Do not add New Mexico Gross Receipts Tax to the total bid price shown above.

Bid Guarantee shall be 5% of the Total Bid Price.

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Receipt of Addenda to be acknowledged

Addendum No. _____ Date _____.

Addendum No. _____ Date _____.

Addendum No. _____ Date _____.

Addendum No. _____ Date _____.

Addendum No. _____ Date _____.

Bids will be opened on **November 30th, 2017 at 10:00 A.M.**, Lovington City Hall, New Mexico.

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The Bid is hereby respectfully submitted by:

Name of Bidder

By (Signature) Date

(SEAL) if Bid is by Corp.

Printed Name & Title

New Mexico Contractor's
License Number

Address

New Mexico Contractor's
Resident Bidder's Preference
Number

City & State

Zip

Telephone Number

New Mexico Contractor's
Resident Veterans Preference
Number

Workforce Solutions Registration
Number

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CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to NMSA 1978, § 13-1-191.1 (2006), any person seeking to enter into a contract with any state agency or local public body **for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources** must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body shall void an executed contract or cancel a solicitation or proposed award for a proposed contract if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

"Applicable public official" means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

"Campaign Contribution" means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to either statewide or local office. "Campaign Contribution" includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

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"Family member" means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

"Pendency of the procurement process" means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

"Person" means any corporation, partnership, individual, joint venture, association or any other private legal entity.

"Prospective contractor" means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract.

"Representative of a prospective contractor" means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

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DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(Attach extra pages if necessary)

Signature

Date

Title (position)

--OR--

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE to an applicable public official by me, a family member or representative.

Signature

Date

Title (Position)

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FUNDING SOURCE: 216-48080-2240 BID NUMBER: LOVEST-2017

SECTION 4 - BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned, _____, as surety are held and firmly bound unto the City of Lovington, a New Mexico municipal corporation, Lea County, New Mexico, hereinafter called the OWNER, in the penal sum of _____ Dollars (\$_____) Lawful money of the United States, for the payment of which sum will and truly be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that Whereas the Principal has submitted the Accompanying Bid, dated _____, 20__, to the City of Lovington, New Mexico, for:

LOVE AND WASHINGTON PROJECT

NOW, THEREFORE, if the Principal shall not withdraw said Bid within the period therein after the opening of the same or, if no period be specified, within forty-five (45) days after the said opening, and shall within the period specified therefore, or if no period be specified within fifteen (15) days after the prescribed forms are presented to him for signature, enter into a Written Contract with the Owner in accordance with the Bid as accepted, and give bond with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such Contract; or in the event of the withdrawal of said bid within the period specified, if the Principal shall pay the Owner the difference between the amount specified in said Bid and the amount for which the Owner may procure the required work or supplies or both, if the latter be in excess of the former, then the above obligation shall be void and of no effect, otherwise to remain in full force and effect.

CITY OF LOVINGTON
LOVE STREET AND WASHINGTON AVENUE STREET IMPROVEMENTS
FUNDING SOURCE: 216-48080-2240 BID NUMBER: LOVEST-2017

SECTION 5 - PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: That we (1) _____ a (2) _____ hereinafter called "PRINCIPAL" and (3) _____ of _____, State of _____ hereinafter called the "SURETY", are held and firmly bound unto (4) City of Lovington, New Mexico, a New Mexico municipal corporation, Lea County, New Mexico, hereinafter called "OWNER", in the penal sum of _____ Dollars (\$ _____) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, personal representatives, and successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that Whereas, the Principal entered into a certain contract with the Owner, dated the _____ day of _____, 20____, a copy of which is hereto attached and made a part hereof for the construction of:

LOVE AND WASHINGTON PROJECT

NOW, THEREFORE, if the principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the Owner, with or without notice to the Surety, and if he shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the Owner from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alterations, or addition to these terms of the contract or to the work or to the specifications.

PROVIDED, FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

CITY OF LOVINGTON
LOVE STREET AND WASHINGTON AVENUE STREET IMPROVEMENTS
FUNDING SOURCE: 216-48080-2240 BID NUMBER: LOVEST-2017

IN WITNESS WHEREOF, this instrument is executed in four (4) counterparts, each one of which shall be deemed as an original, this the _____ day of _____, 20__.

ATTEST:

Principal

Principal-Secretary

(SEAL)

By: _____

Witness as to Principal

Title

Principal Address

Surety

ATTEST:

By: _____
Attorney-in-Fact

(Surety) Secretary

Surety Address

(SEAL)

Witness as to Surety

Note: Date of Bond must not be prior to date of contract.

- (1) Correct name of Contractor.
- (2) A corporation, a partnership, or an individual as case may be.
- (3) Correct name of Surety.
- (4) Correct name of Owner.
- (5) If Contractor is partnership, all partners should execute Bond.

CITY OF LOVINGTON
LOVE STREET AND WASHINGTON AVENUE STREET IMPROVEMENTS
FUNDING SOURCE: 216-48080-2240 BID NUMBER: LOVEST-2017

SECTION 6 - PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: That we (1) _____, a _____ (2) _____, hereinafter called "Principal", and _____ (3) _____ of _____, State of _____, hereinafter called the "Surety", are held and firmly bound unto (4) City of Lovington, a New Mexico municipal corporation, Lea County, New Mexico, hereinafter called "Owner", in the penal sum of _____ Dollars (\$_____) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, personal representatives, and successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that Whereas, the Principal entered into a certain contract with the Owner, dated the ____ day of _____, 20__, a copy of which is hereto attached and made a part hereof for the construction of:

LOVE AND WASHINGTON PROJECT

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, SubContractors, and corporations furnishing materials for or performing labor in the prosecution of the work provided for in such contract, and any authorized extension or modification thereof, including, but not limited to, all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment, and tools, consumed or used in connection with the construction of such work, and all insurance premiums on said SubContractor or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the contract or to the work or to the specifications.

PROVIDED, FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

CITY OF LOVINGTON
LOVE STREET AND WASHINGTON AVENUE STREET IMPROVEMENTS
FUNDING SOURCE: 216-48080-2240 BID NUMBER: LOVEST-2017

IN WITNESS WHEREOF, this instrument is executed in four (4) counterparts, each one of which shall be deemed an original, this the ____ day of _____, 20__.

ATTEST:

Principal

Principal-Secretary

(SEAL)

By: _____

Witness as to Principal

Title

Principal Address

Surety

ATTEST:

Attorney-in-Fact

(Surety) Secretary

Surety Address

(SEAL)

Witness as to Surety

Note: Date of Bond must not be prior to date of contract.

- (1) Correct name of Contractor.
- (2) A corporation, partnership, or individual, as case may be.
- (3) Correct name of Surety.
- (4) Correct name of Owner.
- (5) If Contractor is partnership, all partners should execute Bond.

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

CITY OF LOVINGTON
LOVE STREET AND WASHINGTON AVENUE STREET IMPROVEMENTS
FUNDING SOURCE: 216-48080-2240 BID NUMBER: LOVEST-2017

SECTION 7 - CONTRACT
LOVE AND WASHINGTON PROJECT

This Contract, the "Contract," is made and entered into the ___ day of _____ 20___, between the CITY OF LOVINGTON, a municipal corporation, hereinafter referred to as "OWNER," and _____, hereinafter referred to as "CONTRACTOR."

NOW, THEREFORE, for and in consideration of the mutual covenants, agreements and undertakings contained herein, and upon the terms, conditions and provisions set forth below, OWNER and CONTRACTOR agree as follows:

I. SCOPE OF CONTRACTOR'S WORK

A. CONTRACTOR will complete the **LOVE AND WASHINGTON PROJECT**, hereinafter referred to as the "Project," by furnishing all materials, labor, machinery, equipment and tools necessary to construct: The proposed improvements include full depth reconstruction of Washington Street from Love Street to Eddy Street with new curb and gutter, repaving of Love Street from Washington Street to Central Avenue with a raised pedestrian crosswalk, light poles, and lighted bollards. Improvements also include repairs to the existing irrigation system for the Courthouse along Love Street.

All quantities are approximate. All work to be performed and materials to be installed hereunder shall be in accordance with subsequent sections of this contract and specifications.

B. All construction shall further be in accordance with, and this Contract shall include, and CONTRACTOR shall be bound by all provisions of the NMSSPWC, 2006 edition and the NMDOT Standard Specifications for Highway and Bridge Construction, 2014 edition as modified by the Technical and Supplemental Specifications, which are incorporated herein by reference.

C. All construction shall further be in accordance with, and this Contract shall include all provisions of the following documents, which documents are hereby incorporated herein by reference, and which documents the parties hereby acknowledge that they possess and have knowledge of their contents: (1) Bid; (2) addenda (3) Performance Bond; (4) Payment Bond; (5) Certificate of Insurance; (6) Wage Rate Determination(s); (7) General Conditions; (8) Special Conditions; (9) Construction Procedures and Sequencing; (10) Technical and Supplemental Specifications; (11) Project Plans & Details (Drawings); (12) Project Specifications, (13) Project Description.

II. COMPENSATION

A. CONTRACTOR shall perform the construction of the Project on a per unit basis in accordance with the bid quantities. The parties understand and agree that the total price of this Contract is based upon price quotes for certain items of goods multiplied by the estimated number of units which will be

CITY OF LOVINGTON
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required for the Project. The parties understand and agree that all parties have made a serious good faith effort to arrive to the closest and most accurate estimates possible and that certain adjustments in quantity may have to be made as performance under this project proceeds. However, the parties agree that the unit prices quoted, as well as the figure quoted for services, will remain the same, unless otherwise provided herein. The "Bid," previously incorporated herein by reference, sets forth the unit prices, estimated number of units, and the figures for service, which figures have been used to arrive at the Bid item prices shown on the Bid. The Bid sets forth the **TOTAL BID PRICE: \$ _____**. New Mexico Gross Receipts Tax will be added to this amount at the time of billing.

B. OWNER agrees to pay CONTRACTOR as provided for in the "General Conditions," incorporated herein by reference.

III. TIME FOR COMPLETION AND LIQUIDATED DAMAGES

A. Both owner and contractor agree that time is of the essence in the completion of this public project. Both parties agree that significant financial loss will be incurred should the project not be completed on time and the calculation of said damages will be difficult to determine. Both parties acknowledge the difficulty of damage calculating and expense of litigating or otherwise proving the actual costs of such delay and agree that such is not in either parties' best interest. In lieu of such determination, both parties agree to sum of \$1,000 (ONE THOUSAND DOLLARS) per calendar day as liquidated damages for each calendar day the project is not substantially complete and \$150 (ONE HUNDRED FIFTY DOLLARS) per calendar day as liquidated damages for each calendar day the project is not finally complete, as the sole and exclusive remedy for the damage costs of project delay. The parties agree that any dispute over damages from either party shall be limited by the daily liquidated damages amount. This amount shall be withheld from the appropriate pay request and retained by the owner as reimbursement; or in the case of damage costs due to the contractor, be billed to the owner on the final pay request once all the punch-list items are corrected upon final project completion.

B. For purposes of this section, the contract time shall be calculated as the time allowed from the date stated in the Notice-to-Proceed to no later than 75 (SEVENTY-FIVE) calendar days for Substantial Completion and 100 (ONE-HUNDRED) calendar days for Final Completion for this specific contract, with days added for agreed-upon weather days, days added for owner-caused delays, and days added or subtracted for change orders, per each specific change order. The number of days added for inclement weather or owner-caused delays shall be reduced by the number of days where no or minimal work was observed being done on the project, based on a 7-day week. Further, an owner-caused delay can only be counted, if no other work could be performed each day of the claimed delay. If the resulting net owner-caused delays exceed contractor-caused and weather delays to the point of delaying the contractor beyond the date of substantial completion, contractor shall be entitled to the agreed-upon liquidated damages as his sole and exclusive remedy for the costs of such delay.

C. For purposes of this specific project, Substantial Completion shall be defined as the date the owner's representative certifies the project construction, or a specified part of, is sufficiently finished to allow the owner to use the project, or specified part thereof, in the manner for which it was intended. More specifically to this project, substantial completion shall include at a minimum, completion of all the following:

- No traffic control on the project and the project open for public use
- Water Line construction completed, tested and in use

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- All residential and commercial driveways complete and open to traffic

IV. INDEMNIFICATION

CONTRACTOR shall indemnify, hold harmless and defend OWNER and its employees, officers and agents, against liability, claims, damages, losses or expenses, including attorney's fees, arising out of bodily injury to persons or damage to property caused by or arising out of the acts or omissions of CONTRACTOR, its officers, employees or agents.

V. MISCELLANEOUS

A. CONTRACTOR shall not transfer or assign his interest in this Contract without prior written approval from OWNER.

B. Insofar as authorized by law, this Contract shall be binding upon the parties hereto, their successors, executors, administrators, and assigns.

C. It is mutually understood and agreed that this Contract shall be governed by the laws of the State of New Mexico, both as to interpretation and performance, and jurisdiction and venue relating to any litigation or dispute arising out of this Contract shall be in Lea County, New Mexico, only.

D. If any part of this Agreement shall be in violation of the laws or Constitution of New Mexico, only such part thereof shall be invalidated, and all other parts hereof shall remain valid and enforceable.

E. The foregoing Contract, inclusive of all documents identified herein and incorporated herein by reference, constitutes the entire agreement between the parties and may be modified only in writing signed by both parties.

F. Any change order shall be in writing and signed by both parties prior to any work begins pursuant to the change order.

IN WITNESS WHEREOF, the parties hereto have executed five (5) copies of this Contract, each of which shall be deemed an original, on the day and the year first above written.

Owner:

ATTEST:

THE CITY OF LOVINGTON, NEW MEXICO

CAROL ANN HOGUE, City Clerk

By _____
PAUL CAMPOS, Mayor

APPROVED AS TO FORM:

City Attorney

Contractor:

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By: _____

Title: _____

Secretary

CITY OF LOVINGTON
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SECTION 8 - INSURANCE CERTIFICATE

<<<This sheet shall be replaced with the awarded Contractor's Certificate of Insurance>>>

Insurance Coverage:

The Contractor shall obtain, and provide proof thereof, to the Owner the following insurance coverage:

General Liability as follows:

Premises, operations, explosions and collapse hazard, underground hazard, contractual insurance, products with completed operations, broad form property damage, independent Contractors and personal injury. The limits of liability shall be no less than \$1,000,000 combined single limit for bodily injury and property damage.

Automobile Liability as follows:

Owned, hired and non-owned vehicles. The limits of liability shall be no less than \$1,000,000 combined single limit bodily injury and property damage.

The City of Lovington shall be named as an additional insured on all coverages.

Contractor shall further obtain and provide proof to the Owner of any other insurance coverage required by the statutes of the State of New Mexico or regulations of any agency of the State of New Mexico governing this type of Project.

Workers' Compensation is required along with State statutory employers' liability limits regardless of number of employees.

Contractor covenants, warrants, and agrees that it shall indemnify, defend, save and hold the City of Lovington, the City Commission of the City of Lovington, its individual commissioners, its officers, employees and agents (collectively and individually as "Owner") harmless from any and all liability, damage, expense, cause of action, suits, claims, judgments, losses, costs, expenses, and liens, of every kind and nature, including, but not limited to, those arising from injury to person(s) or damage to property, arising out of, resulting from, or occurring during this project. This indemnification and hold harmless by Contractor to the City of Lovington (Owner) shall include, but not be limited to, the City of Lovington' (Owner's) attorney's fees and costs incurred in defending against the same, and in prosecuting any cross claims or counterclaims required or arising therefrom.

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SECTION 9 – PREVAILING WAGE RATES

<



BILL RICHARDSON
GOVERNOR

**New Mexico Department of
Workforce Solutions**

BETTY SPARROW DORIS
SECRETARY

TERESA C. GOMEZ
DEPUTY SECRETARY

Labor Relations Division
625 Silver Avenue SW, Suite 410
Albuquerque, New Mexico 87102
Telephone Number: (505) 841-4400
FAX Number: (505) 841-4422

FRANCIE CORDOVA
DIRECTOR

TO: ALL PROCUREMENT OFFICERS INVOLVED IN ANY PREVAILING WAGE PROJECTS (any contract over \$60,000 utilizing public money). The contracting agency must ensure that all the following statutory requirements are followed on any RFP/bid on a prevailing wage project. **Failure to follow these requirements may result in bid challenges, suspension of contractors or other penalties as allowed by law.**

After completing each task that you are responsible for, simply place a checkmark next to it. After all tasks have been check marked, you have successfully completed the public works process.

Description	Responsible Party	Purpose	NMDWS Contact Name & Phone Number	√
Labor Enforcement Fund (LEF)	Owner/Contracting Agent	Any general contractor bidding more than \$50,000 must be registered with the LEF PRIOR to the bidding process or the bid shall be deemed invalid	Kim Kew (505) 841-4405 (505) 841-4420 (fax)	
Notification of Award (NOA)	Owner/Contracting Agent	Immediately after project is assigned, complete NOA & forward to the Public Works Bureau	Mary Sanchez (505) 841-4409 (505) 841-4423 (fax)	
Subcontractor List	Owner/Contracting Agent	Immediately after project is assigned, complete form & forward to the Public Works Bureau	Mary Sanchez (505) 841-4409 (505) 841-4423 (fax)	
Labor Enforcement Fund (LEF)	General Contractor	All subcontractors or tier subcontractors bidding more than \$50,000 must be registered with the LEF prior to the bidding process or the bid shall be deemed invalid	Kim Kew (505) 841-4405 (505) 841-4420 (fax)	
Statement of Intent to Pay Prevailing Wages	General Contractor	Completed by Contractors (general, sub, tier) & forwarded immediately to the Public Works Bureau	Mary Sanchez (505) 841-4409 (505) 841-4423 (fax)	
Certified Payrolls	Contractor (general, sub, tier)	Submitted to the General Contractor AND the Owner/Contracting Agent on a weekly basis from beginning of project to end	Lori Griego (505) 841-4408 (505) 841-4423 (fax)	
NM Apprenticeship and Training Fund	Contractor (general, sub, tier)	Payments to either an approved apprenticeship program or to the Public Works Bureau on all project types except "A"	Nicolina Rushalko (505) 841-4403 (505) 841-4420 (fax)	
Affidavit of Wages Paid	General Contractor	Completed by contractors (general, sub, tier) & forwarded to the Public Works Bureau after completion of work on project	Mary Sanchez (505) 841-4409 (505) 841-4423 (fax)	

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<<INSERT STATE WAGE DECISION>>

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<<<INSERT FEDERAL WAGE DECISION>>>

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SECTION 10 - STATEMENT OF BIDDER'S QUALIFICATIONS

(To be submitted by the Bidder only upon the specific request of the Owner in writing.)

All questions must be answered and the data given must be clear and comprehensive. This statement must be notarized. If necessary, questions may be answered on separate attached sheets. The Bidder may submit any additional information he desires.

1. Name of Bidder and New Mexico Contractor's License Number.
2. Permanent main office address.
3. When organized:
4. If a corporation, where incorporated?
5. How many years have you been engaged in the contracting business under your present firm or trade name?
6. Contracts on hand. (Schedule these, showing amount of each contract and the approximate anticipated dates of completion.)
7. General character of work performed by your company.
8. Have you ever failed to complete any work awarded to you? If so, where and why?
9. Have you ever defaulted on a contract? If so, where and why?
10. List the more important projects recently completed by your company, stating the approximate cost for each and the month and year completed.
11. List your major equipment available for this contract.
12. Experience in construction work similar in importance to this project.
13. Background and experience of the principal members of your organization, including the officers.
14. Credit available: \$
15. Give bank reference:
16. Will you, upon request, fill out a detailed financial statement and furnish any other information that may be required by the Owner?

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The undersigned hereby authorizes any person, firm or corporation to furnish any information requested by the Owner in verification of the recitals comprising this statement of Bidder's Qualifications.

Dated at _____ this _____ day of _____, 20__.

Name of Bidder

By: _____

Title

State of _____)

) ss.

County of _____)

_____ (name), being duly sworn, deposes and says that he is (title) of _____ (company) and all foregoing questions and all statements therein contained are true and correct.

Subscribed and sworn to before me this _____ day of _____, 20__.

Notary Public

My commission expires:

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SECTION 11 - PROJECT DESCRIPTION

LOVE AND WASHINGTON PROJECT

Project Description

The proposed improvements include full depth reconstruction of Washington Street from Love Street to Eddy Street with new curb and gutter, repaving of Love Street from Washington Street to Central Avenue with a raised pedestrian crosswalk, light poles, and lighted bollards. Improvements also include repairs to the existing irrigation system for the Courthouse along Love Street.

All pedestrian access routes constructed with this project shall comply with the Americans with Disabilities Act (ADA).

All items necessary for the complete construction shall be included in the Contractors Unit Prices in the Bid Form. Items not specifically listed on the Bid Form and part of the project as listed in the plans, details and specifications shall be incidental to the construction item in the Bid Form or incidental to the project.

The Contractor is responsible for acquiring any and all permits necessary for the construction of this project (unless otherwise noted), and for contacting all utilities or the New Mexico One Call system to determine all lines located in the project area.

END OF SECTION

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SECTION 12 - SPECIAL CONDITIONS

SPECIAL CONDITIONS: These special conditions take precedence over specifications and the GENERAL CONDITIONS.

- SC-1** RIGHT-OF-ENTRY-AND-INSPECTION-OF-WORK: All authorized personnel of the City of Lovington or their representative shall have the right to visit the site and inspect the work and materials. The ONEOK and Northern Natural Gas Pipeline Company's or their representatives shall have the right to visit the site and inspect the work and materials along Millen Dr.. The Contractor shall furnish reasonable facilities for obtaining such information as necessary to determine the progress and manner of the work and character of materials being used. Authorized representatives shall bring to the attention of the Contractor any work which does not meet the specifications of this contract, and the Contractor shall correct such work as brought to his attention.
- SC-2** EXISTING PUBLIC AND PRIVATE UNDERGROUND UTILITIES, PIPELINES, CABLES, AND UNDERGROUND STRUCTURES (LINES): Lines may exist in a different location than shown on the construction plans which may affect the construction of new items with this project. Additional lines, active and/or abandoned, may exist that are not shown on the constructions plans. The Contractor shall be responsible for making and maintaining records of a New Mexico One Call by dialing 811 or 1 800-321-2537. The exact location of all lines shall be determined by safe and acceptable means, in accordance with OSHA regulations and NM ONE-CALL. The Contractor shall expose and document the exact location, outside diameter, and material type of all lines (as identified through a NM-ONE-CALL BID LOCATE and as shown on the construction plans) within the limits of this project **prior to commencing construction activities**. Each line shall be located at each crossing (utility and roadway), alley, and at 500 foot intervals within the limits of the project. Lines not found within 18 inches of the marks per the NM ONE-CALL shall be reported to the company responsible for the marks, additional exposing may be required to locate these lines per revised markings. The Contractor shall deliver to the Project Manager the findings of all the lines, **prior to commencing construction activities and prior to ordering materials for connections to existing utilities with this project**. When construction operations approach the location of underground lines, the exact location shall be determined again in accordance with OSHA regulations and NM ONE-CALL. Once lines are exposed, the Contractor will be required to protect & support, or remove and dispose and re-install existing active lines meanwhile maintaining operation of such active lines, in accordance with the contract. The Contractor shall be responsible for the destruction of or damage to all lines; and he shall use all reasonable measures and precautions to protect such lines and maintain or replace them in as good condition or better as they were prior to the construction operations. The costs associated with replacing all lines which are damaged during construction activities shall be borne by the Contractor. The costs associated with properly locating, measuring, identifying, protecting, supporting and maintaining **all lines shown on the construction plans and as identified through the NM ONE-CALL BID LOCATE**, shall be considered incidental to the installation of the item or items being installed and **no additional payment will be made**. The costs associated with removing and disposing, and re-installing existing lines (if applicable) as shown on the Construction drawings shall be paid for under items set forth on the bid proposal and as described in subsequent sections.

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- SC-3** LINES FOUND WHICH ARE NOT SHOWN ON THE CONSTRUCTION PLANS OR MARKED THROUGH NM-ONE CALL BID LOCATE (UN-MARKED LINE(S)): This project exists within an oil field which has been active since 1928. Un-marked line(s), active and/or abandoned, may exist within this project. When found, un-marked line(s), shall be investigated by the Contractor and are to be assumed active. All un-marked lines are to be protected, supported and maintained by the Contractor. The Contractor shall coordinate with NM-ONE CALL and all potential owners of the un-marked line to determine its' ownership. All costs and delays associated with investigating, coordinating, determining ownership, protecting, supporting and maintaining un-marked line(s) found in the Contractor's critical path, in accordance with this section, shall be paid for under the item set forth on the bid proposal. There shall be no additional measurement or payment for un-marked lines found in the Contractor's critical path. There shall be no measurement or payment for Un-marked lines found outside of the Contractor's critical path but the Contractor may seek remedy through the Pipeline Safety Bureau.
- SC-4** PROGRESS SCHEDULE: The Contractor shall submit Progress Schedule in Critical Path Method (CPM) format in its entirety at or before the preconstruction conference. The Engineer will notify the Contractor within 10 working days if the schedule is accepted or not. If the progress schedule is not accepted, the Contractor shall submit a revised progress schedule or additional information to support the original progress schedule. The Engineer may hold or discontinue payment until the Contractor's progress schedule is accepted, or nullify payment to the Contractor for items which require information contained in the progress schedule such as the project's critical path. The Contractor shall provide, update, revise, and format the progress schedule in CPM format with strict adherence to the following sections of the NMDOT Specifications, 2014 Edition: 108.3.1.2, 108.3.2, 108.3.2.1, 108.3.2.2.
- SC-5** FENCES, BUILDINGS: Where it becomes necessary to work in easements or alleys that have been improved with fences, buildings, walks or drives, or where construction, although on public right-of-way, is close enough to cause damage to such structures, on completion of the construction, the Contractor shall replace the fence, buildings, walks, curb and drives at no additional cost to the Owner, leaving all in the original condition as found. The Contractor shall be responsible for means and methods in order to protect existing facilities and construct project, which shall include appropriate equipment for the work.
- SC-6** MATERIALS:
- A. Specifications:** All materials used on this project shall comply with the requirements of the manufacturer's recommendation, Standard Specifications and those set forth in the section titled "Technical and Supplemental Specifications" as part of this contract. It shall be the responsibility of the Contractor to ensure that all materials installed on this project are in accordance with these specifications. All materials installed that do not comply with these specifications will be deemed un-satisfactory and shall be removed, in their entirety, at no additional expense to the owner regardless of whether they were installed in conjunction or underneath acceptable materials and/or regardless of the time, after installation but before final acceptance of the project, they are installed. In such case, the costs associated with the removal and replacement of acceptable materials required for the removal of un-acceptable materials shall be borne by the Contractor.

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- B. Handling:** Materials shall be handled in such a manner as to insure their delivery to the job in sound and original condition and per manufacturer's recommendations.
- C. Inspection:** The Contractor shall be responsible for the proper inspection of each shipment of material upon arrival to the job site. It is the responsibility of the Contractor to insure that there has been no loss or damage with any errors reported to the carrier immediately and proper notation made on delivery receipts. The Contractor shall follow the procedures for acceptance of delivery and unloading of materials in accordance with manufacturer's recommendation.
- D. Storage:** The Contractor shall be responsible for the proper storage of materials in accordance with manufacturer's recommendation. The Contractor shall not be permitted to store materials used for construction in the right-of-way or on private property adjacent to the construction site. Prior to using any private property, Contractor must obtain a written consent form from the property owner and deliver a copy to the City for record purposes.
- E. Costs:** All costs associated with handing, inspection, unloading, and storage of materials as described in this section shall be considered incidental to the project and no additional payment will be made. The installation of damaged materials will not be permitted.
- F. Materials on Hand:** Should the Contractor request payment for materials on hand, he shall provide written proof to the Project Manager that the materials; (1) meet the specifications, (2) were inspected upon arrival; and (3) stored in accordance with manufacturer's recommendation and as described above. (4) copies of all invoices annotated with related bid item will be submitted with the request for payment for materials on hand. A plan for storage location and methods of protecting the materials shall be submitted to the Project Manager for all materials to be stored for periods exceeding 6 months in time. The Contractor will be required submit an inventory of materials on hand to the Project Manager on a monthly basis.
- G. Protection of Materials on Hand:** It shall be the responsibility of the Contractor to protect the materials from theft, loss, damage, vandalism, or any other act which causes the quantity or quality of the materials to decrease. All costs associated with replacing damaged or lost materials after payment for materials on hand has been made shall be borne by the Contractor.
- H. Excess Materials:** Excess materials shall be sold back to the Contractor at the purchase cost or kept by the Owner at the discretion of the Owner. If kept, the materials shall be delivered to the City Warehouse by the Contractor at no expense to the Owner.
- I. Shipping Materials:** Materials used by the manufacturer or carrier for shipping purposes shall be disposed of by the Contractor at the discretion of the Owner at no additional expense to the Owner.
- J. Installation:** All materials shall be installed in accordance with the requirements of this contract and the manufacturer's recommendations. If any discrepancy occurs, the City specifications shall govern.

 - a. Sewer Line: The allowable tolerances will be at a maximum of 0.01' per joint installed from

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invert elevations shown on the plans or from slope calculations, as long as the overall slope is within 5% of the specified slope measured at 100' intervals along the centerline of the pipe. All pipe installation that exceeds this tolerance will need to be re-installed at the Contractors expense.

- b. Curb & Gutter: The allowable flow line tolerances will be a maximum of ¼" sag, which will be tested by flowing curb with water provided by the Contractor and measuring ponding areas.
- c. Concrete Surface Finish: Damaged, chipped, cracked, honey combed (visible voids) concrete shall be replaced by the Contractor at no additional costs to the Owner as directed by the Project Manager.

K. Backfill materials: Material excavated during trenching operations, outside of the existing pipe embedment zone, shall be processed and moisture conditioned and used as backfill material. The largest diameter of backfill allowed on this project is 4 inches. Additional material required, if any, shall be the responsibility of the Contractor. Backfill material shall be considered incidental to the project. No additional payment will be made.

SC-7 GUARANTEE: All work, materials, and performance shall be guaranteed for a period of **one year** from date of final acceptance against defective workmanship. Upon receipt of notice from the Owner of failure of any part of the guaranteed workmanship, the Contractor shall promptly replace the defective parts at his own expense.

SC-8 DRAWINGS: The data given herein and on the drawings is as exact as could be secured, but extreme accuracy is not guaranteed. Discrepancies occurring between the works covered by this section shall be immediately reported to the Engineer, and he will issue written instructions for any changes or any clarifications.

SC-9 SAFETY: The Contractor shall at all times exercise reasonable precautions for the safety of employees on the work site, bystanders or observers of the project, engineering personnel, Resident Project Representatives and inspectors, and shall comply with all applicable provisions of the Occupational Safety & Health Administration (OSHA), State and Municipal Safety Laws, and Building Construction Codes. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of the Associated General Contractors of America unless such instructions are incompatible with Federal, State or Municipal laws or regulations. The Contractor shall, at his own expense and without further other order provide, erect and maintain at all times during the progress or temporary suspension of work, suitable barricades, fences, signs or other adequate protection and shall provide, keep and maintain such flashing lights, danger signals and watchmen as may be necessary or as may be requested by the Engineer to insure the safety of the public as well as those engaged in connection with the work. All barricades and obstructions shall be kept burning from sunset to sunrise. Barricades shall be of substantial construction and be reflectively sheeted to increase their visibility at night per MUTCD standards.

SC-10 OSHA COMPLIANCE: The Contractor will be required to comply with all applicable OSHA standards as part of this project. The Contractor shall assign a Competent Person to the project as defined in OSHA Standard 29 CFR 1926.32(f) and 29 CFR 1926.650(b) Subpart P. The competent person must have had specific training in and be knowledgeable about soil analysis, the use of protective

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systems, and the requirements of the standards. Documentation of Competent Person Training must be submitted to the Project Manager by the awarded Contractor at the Pre-Construction meeting. The general responsibility of the Competent Person is to ensure that **ALL** aspects of the excavation process are conducted in a manner consistent with the requirements of the OSHA excavation standard (Subpart P) as well as the general duty clause of the OSHA Act (5A.1), which requires the employer to provide a safe, healthful workplace, free of known or recognizable hazards. The competent person shall perform daily inspections of the excavations, as described in full detail in 29 CFR 1926.651(k)(1), and 1926.21(b)(1). The City may request copies of the daily inspection logs for trenches that are equal to or greater than 5 feet in depth. Each employee at the job site must also be instructed in the recognition and avoidance of unsafe conditions and the regulations applicable to his work environment to control or eliminate any hazards or other exposure to illness or injury per CFR 1926.21(b)(2) Subpart C. **Documentation of the training of all employees present at the job site must be submitted to the project manager prior to the start of construction.**

SC-11 OSHA ENFORCEMENT: The City will enforce OSHA regulations in the following manner.

1st Violation - Verbal Warning and Documentation by the City

2nd Violation – Written Warning to be signed by Competent Person and Contractor

3rd Violation – Written notice and contact OSHA

4th Violation – Termination of Contract

In assessing violations each applies to a non-complying aspect of the jobsite. In no cases shall the workers be permitted to continue construction operations if unsafe conditions are determined by the City as is relates to OSHA requirements.

SC-12 EXAMINATION OF PLANS, SPECIFICATIONS AND SITE: The offering of a bid shall serve as prima facie evidence that the bidder has visited the sites of the proposed project, and has satisfied himself that the character, quality and quantities of work to be performed, materials to be furnished, and requirements of the proposed contract are reasonably accounted for in his bid.

SC-13 EXCESS MATERIAL: All removed asphalt may be milled and taken to the City Street Department yard located at 4th Street and Texas. Other excess material taken from the project site shall be disposed of by the Contractor according to his preference, subject to the approval of the Engineer. All costs associated with disposal of excess material shall be considered incidental to the project or associated items.

SC-14 WASTE MATERIAL: All waste material encountered on this project shall be disposed by the Contractor of in accordance with applicable codes and ordinances. The costs for removing and disposing waste material shall be considered incidental to the project and no additional payment will be made.

SC-15 ORDER OF WORK: The Contractor shall complete the work under this contract in accordance with Section 13 Construction Procedures and Sequencing. The Contractor shall be required to coordinate his activities with other Contractor's and Owner's staff that may be working in this or adjacent areas.

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- SC-16** FEES AND CODES: The Contractor shall pay all costs for any and all fees and/or work permits required in connection with the work, unless noted otherwise. All materials supplied and work performed by the Contractor shall be in accordance with all State and local codes and/or ordinances governing such material and work.
- SC-17** NOTICE OF COMPLETION: When the Contractor is satisfied that work and cleanup is completed, he shall issue the notice of completion to the Owner's authorized representative. The notice of completion shall include the request for final inspection with date and time given.
- SC-18** FINAL INSPECTION WITH OWNER'S REPRESENTATIVE: The Owner's representative will respond to the notice of completion by the Contractor and shall appear at the given time for a tour of the project with the purpose of making it the final inspection. Any inconsistencies to the specifications shall be noted by the Owner's representative, and a written copy of corrections shall be given to the Contractor.
- SC-19** ACCEPTANCE OF THE PROJECT: The Owner may accept the project even though the corrections on the final inspection have not been made by the Contractor. In such a case, there will be deductions for the uncompleted or corrected work based on previous provisions of these specifications. Such deductions shall be made from the final payment.
- SC-20** AS-BUILT PLAN ACCEPTANCE: It will be the responsibility of the CONTRACTOR to complete an as-built plan for this project, which includes confirmation of existing plan elevations, inverts, utility crossing depths, finished elevations, etc. The CONTRACTOR shall keep a record drawing set to be verified monthly by the Project Manager with each Progress Payment and be delivered to the Owner prior to project acceptance.
- SC-21** CONTRACT TIME AND PROJECT COMPLETION: All work must be complete within specified number of calendar days from the effective date of the "Notice to Proceed".
- SC-22** SUBMITTALS: Contractor shall submit to Engineer for the limited purpose of checking for conformance with the information given in the Contract Documents. Contractor shall submit each submittal separately per specification section, each with its own transmittal letter that includes all of the Contractor's information. Indicate Project Name, Contractor, SubContractor or Supplier, any related details, and specification Section number. Contractor shall sign and stamp certifying review of required dimensions, coordination with any adjoining work, and verifying product is correct. Contractor shall indicate if there is any variation from the Contract Documents which may affect the work. Contractor shall distribute all reviewed submittals to interested parties with notice to take prompt response to any comments from Engineer. The submittal process as described in this special conditions shall apply to any and all types of submittals made by Contractor to Engineer including, Construction Schedules, Shop Drawings, Certificates, Product Lists, Product Data, or any other necessary submittal. For each individual submittal review allow **15 business days** excluding delivery time to and from the Contractor.

Format: Submittals will only be accepted by Engineer in .PDF Electronic file format via e-mail. Hard Copies shall be rejected, any other Electronic file format shall be rejected, and if submittal is not legible it shall be rejected.

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If a Resubmittal is required Contractor shall make all necessary changes, corrections, and address comments and resubmit the entire submittal. The resubmittal shall be clearly marked as a RESUBMITTAL.

SC-23 TESTING:

- A. A professional engineering testing firm will be retained by the Owner to perform all compaction testing, asphalt testing, and concrete testing. The City of Lovington shall pay for the first test on each material as required. Any retesting due to the initial test failing shall be paid for by the Contractor, whether the retest is passing or failing. Costs to the Contractor for any re-test will be withheld from partial pay estimates and/or final pay estimate prior to final acceptance. A copy of the cost schedule may be obtained from the City of Lovington Engineering Department. The Contractor shall provide the Owner 24 hours' notice (Monday through Friday) of any testing required. Any item installed without being tested or certified shall be removed and replaced at Contractor's expense. Contractor shall notify the Owner before any tests are made, and Owner shall contact the testing firm as necessary.
- B. Proctor determinations and gradation results take a minimum of 72 hours and up to 5 working days to complete. A proctor determination and gradation test will be performed for each type of soil, or mixture thereof, which will be used for backfill. It shall be the responsibility of the Contractor to request for samples of material to be obtained as to avoid delays. Furthermore, it shall be the responsibility of the Contractor to label each stockpile with a permanent sign or marker which identifies the material.
- C. Compaction testing will be performed at a minimum of one test for every 200 feet of compaction and 2 feet in height. Compaction testing may be performed for each lift of material which exceeds 12 inches in loose depth as well as lengths of backfill which are less than 200 feet, or as determined by the Owner's authorized representative. These tests are made using a nuclear densometer and preliminary results are available when the test is made. Official results are sent within 72 hours and can take up to 5 working days.
- D. Concrete testing will be performed at a minimum of one test per day. Concrete will be tested for slump, unit weight, air content, temperature, and compressive strength. Results for compressive strength are given at day 3, 7, 14, and 28.
- E. Asphalt Tests will be taken from the roadway before compaction and on cut pavement samples (cores). Asphalt will be test for: air voids, asphalt content, final thickness, and density of compacted roadway (cores).
- F. Pressure testing of water line shall be performed while all fittings being tested are exposed.

- SC-24** SURVEYING: If requested, The City will provide the awarded Contractor with an electronic copy of the plan documents in .dwg format. It shall be the responsibility of the Contractor to verify the accuracy of all benchmarks, inverts at connection points, and tie in elevations prior to construction and have construction staking performed thereafter. This work will require trenching, excavation,

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backfill. All discrepancies shall be reported to the engineer in writing prior to construction. The Engineer will investigate the report and relay any new information to the Contractor. Once the benchmarks have been verified by the Contractor, the Contractor assumes full responsibility of the benchmarks for the duration of this project and he shall protect and reset the benchmarks as necessary. The Contractor shall provide all blue tops, cut & fill stakes, rebar, etc. as required to construct each item to the lines and grades as shown on the plans, and as modified in this section, within allowable tolerances as set forth in this section and the Technical and Supplemental Specifications.

- a. The Contractor shall stake the flow lines of all curb & gutter, valley gutter and fillets with 1/2" steel Rebar at 10 foot intervals for all work with a grade of 0.50% or less. The Contractor shall verify all existing tie in elevations for new concrete and asphalt, as shown on the plans, and report any discrepancies to the Engineer prior to establishing finished subgrade elevations. The Engineer will then determine new grades or slopes and relay the information to the Contractor. All forms, rebar and blue tops shall be inspected by the City prior to the Contractor pouring concrete. All new concrete will be flow tested and any concrete that contains depressions or puddles greater than 0.03 feet in depth shall be removed and replaced, at the discretion of the Engineer, at no expense to the owner. In no case will new curb or valley gutter which holds water extending onto the roadway surface be accepted.
- b. The Contractor shall ensure all manholes and pipe inverts are to grade established +/- 0.01' when the slope is less than 0.2%. The established slope for the for Trunk Line F sewer line is relatively flat and contractor shall take necessary care in order to achieve plan grades. The owner's authorized representative shall inspect and verify grade prior to backfill and any corrections shall be at the expense of the contractor. The Project Manager may allow for variance and adjust slope in field in order to meet existing conditions. Reasonable changes to grade and approved by the Project Manager are not justification for additional time or increased charges by the Contractor.
- c. All water fittings and piping installed with this project shall be surveyed by the Owner's authorized representative prior to backfilling. The Contractor shall be responsible to coordinate his activities to avoid delays or excavation of fittings due to failure of coordination.

SC-25 TRAFFIC CONTROL: The Contractor shall use the Traffic Control Plan provided with the Construction Plans and shall comply with Construction Procedures and Sequencing. Traffic Control not shown on the plans is required for all boring. The Contractor shall provide and maintain all barrels, cones, flashers, barricades and flagmen, as specified in this contract and as required to conform to the M.U.T.C.D. requirements. All cones, barrels, flashers and barricades shall be kept clean and in working order at all times. Any of the above that are, in the opinion of the Engineer, damaged and/or non-functioning shall be removed and replaced. It is also the Contractor's responsibility to maintain or provide, at all times, access to all individual properties during the life of the project and coordinate for temporary pick up, drop off, and parking locations with individual residents including those with special access needs. Additional work may be required to provide residential access to any person with special needs including providing access which complies with the Americans with Disabilities Act. It shall be up to the discretion of the Engineer as to whether or not adequate access has been provided. Traffic Control shall be paid for under item set forth on the bid proposal and as described in subsequent sections.

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SC-26 PUBLIC SAFETY: The Contractor shall provide and erect temporary construction fencing along the perimeter of the trenches at all times in accordance of OSHA regulations. Safety control devices for the separation of work areas from the general public such as barricades, barrels, cones, tape, fencing, and pedestrian signs shall be the responsibility of the Contractor and considered incidental to project. No additional payment will be made.

SC-27 MAINTENANCE OF EXISTING ROADWAY DURING CONSTRUCTION: The Contractor shall be responsible for maintaining the existing roadway as necessary to maintain a satisfactory driving surface, so safe driving conditions are maintained and vehicle damage is avoided. This will consist of pothole patching and edge and driveway grading during the construction contract time, and as required by NMDOT drop off Policy. Cost for this maintenance shall not be paid for separately, but shall be considered incidental to the roadway construction.

SC-28 WASTE CONTROL: The Contractor shall notify New Mexico Waste Management, business owners, and home owners one week prior to beginning construction to schedule an alternate route for Waste Control during the scheduled days of trash pickup in these areas.

SC-29 RFI: Contractor shall only submit an RFI in .PDF electronic file format to Engineer via e-mail. RFI will only be accepted by Engineer from Contractor, any RFI requests from any SubContractor or Supplier shall be rejected. RFI requests shall contain only one item, unless a specific issue exists relating to multiple items.

Engineer shall respond to Contractors RFI in writing in .PDF electronic file format via email. RFI Responses from Engineer will not change any of the requirements as set forth in the Contract Documents. If Contractor should believe that a RFI response constitutes a change to the Contract, Contractor shall provide Engineer written notice. The Contractors written notice shall include specific reasons and detailed breakdowns of change in cost or time based on Engineers response. Contractors written notice shall not be considered a Change Order but rather provide a basis for further discussion.

SC-30 PROJECT DOCUMENTS: Standard Project Documents are provided in Section 21 of the Supplemental Specifications. Contractor shall be required to use these forms on this project. This includes the Notice of Award, Notice to Proceed, Change Order Form, and specifically the Pay Application Format. Contractors Pay Application format is required to be in the exact form as provided in Section 21, any variation from the provided format will result in an immediate denial of the Pay Application. Engineer will provide written notice to Contractor so Contractor can make corrections to the format accordingly. When Contractor has corrected formatting issues and resubmits the Pay Application, Engineer will then begin the review of quantities requested for payment. Contractors' failure to follow the specified format will increase review time and delay payment.

SC-31 COORDINATION OF CONTRACT DOCUMENTS: The following documents are essential parts of the Contract and are intended to be complementary. In case of a discrepancy, the documents will govern in the following order of importance

1. Addenda
2. Required Documents for bid Submittal
3. Notice to Contractors

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4. Invitation for bids
5. Project Description
6. Project Plans
7. Special Conditions
8. Construction Procedures and Sequencing
9. Technical and Supplemental Specifications
10. General Conditions
11. Standard Specifications
12. Standard Drawings

SC-32 CITY OF LOVINGTON GIS/GPS PROCEDURES FOR DATA COLLECTION COMPLIANCE FOR CITY PROJECTS: In addition to paragraph **c.** of Special Condition 24 (SC-24) the Contractor is required to comply with the *City of Lovington GIS/GPS Procedures for Data Collection Compliance for City Projects*.

END OF SECTION

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SECTION 13 - CONSTRUCTION PROCEDURES AND SEQUENCING:

1. Prior to start of construction the Contractor shall notify adjacent property owners as to when construction will start, the estimate completion date and anticipated access blockages. A verbal and written notification is required in both English and Spanish.
2. Call State One-Call Number (1-800-321-Alert) and the City of Lovington Utilities Division (397-9315) for line spotting a minimum of 72 hours prior to digging at each location. City of Lovington storm sewer is **NOT** A member of the one call system; Project Manager shall be consulted on spotting storm sewer lines.
3. Requests for road closure and detours shall be submitted in writing to the Project Manager a minimum of one week prior to scheduled closure or detour.
4. Call Waste Management (392-6571) a minimum of one week prior to blocking any street or alley and make arrangements for alternate waste pick up schedules.
5. Call B & G Transportation (392-8514) a minimum of one week prior to blocking any street and make arrangements for alternate school bus route.
6. The Contractor shall notify the affected property owners a minimum of one week prior to any change in access as well as the effects caused by the vibratory and other equipment. This should include all necessary precautions. The Contractor shall notify homeowners through door tags or other approved method. The door tags shall be written in both English and Spanish and shall contain directions for the resident to contact the Contractor in case a need for special access (ADA) exists. The Contractor shall maintain or provide access to all individual properties during the life of the project and shall coordinate for temporary pick up, drop off, and parking locations with individual residents including those with special needs. Additional work may be required to provide residential access to any person with special needs including providing access which complies with the Americans with Disabilities Act. These costs shall be considered incidental to traffic control.
7. The Contractor shall notify the affected property owners a minimum of 48 hours prior to any water or sewer service disruption. No water or sewer service will be allowed to remain disrupted overnight. The Contractor shall notify homeowners through door tags or other approved method.
8. All door tags are to be written in both English and Spanish.
9. If any work is to be performed on any day beyond the normal 40-hour work week, the contractor shall first notify the Project Manager or his representative 48 hours prior to commencing this work to be sure inspection will be available. Any material or work installed or constructed without notification for inspection shall be subject to removal.
10. All lawns, shrubs, trees, landscaping, irrigation lines, fences, and walls which have been disturbed during construction shall be replaced in a workman like manner and nearly as possible to their original condition. Repairs shall be made within 48 hours.

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11. Contractor shall coordinate with utility companies to allow for various repairs and updates while the roadbed is exposed.
12. This project shall be completed in the separate phases as identified through the traffic and erosion control plans as part of this project. Each phase can begin only if the previous phase is substantially complete in accordance with the contract. The project shall be bid based on this contingency.
13. Any trees along the project which will be removed under this contract shall be removed prior to the installation of the sewer line regardless of which phase they exist in.
14. No more than 200 feet of open trench will be allowed on this project at any given time. Trenches backfilled to subgrade level are not considered open. The slope of the backfill along the length of the pipe will not be included as open trench for this purpose. In addition, intermittent trenches for water fittings and sewer manholes will not be included as open trench for this purpose.
15. All concrete which will be adjacent to asphalt pavement shall be constructed prior to asphalt pavement.
16. All new asphalt paving shall be installed with a laydown machine and shall be installed continuously with no interruptions within each phase. Contractor shall submit a paving plan to the Project Manager for review a minimum of one week prior to asphalt paving. The Paving plan shall include the proposed schedule, hot mix plant output rate, number of trucks and length of haul, expected truck roundtrip time and anticipated traffic conditions, paving and compaction equipment, special equipment or personnel requirements, paving procedures, width of screed, location of longitudinal joints, and other pertinent data.
17. Drivepad curb and gutter shall be constructed separately from drivepad.

END OF SECTION

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SECTION 14 - GENERAL CONDITIONS

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SECTION 1- DEFINITIONS AND TERMS

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

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

AASHTO	American Association of State Highway and Transportation Officials
AB	Aggregate Base
AC	Asphalt Concrete
ACB	Asphalt Concrete Base
ACI	American Concrete Institute
ACNM	Associated Contractors of New Mexico
ACP	Asbestos Cement Pipe
ACPA	American Concrete Pipe Association
AD	Assessment District
AGC	Associated General Contractors of America, Inc.
AIEE	American Institute of Electrical Engineers
AISC	American Institute of Steel Construction
ANSI	American National Standards Institute
APWA	American Public Works Association
AREA	American Railway Engineering Association
ASCE	American Society of Civil Engineers
ASME	American Society of Mechanical Engineers
Asph	Asphalt
ASTM	American Society for Testing and Materials
AWG	American Wire Gage (Nonferrous Wire)
AWPA	American Wood Preservers Association
AWPI	American Wood Preservers Institute
AWS	American Welding Society
AWWA	American Water Works Association
BC	Beginning of Curve or Back of Curb
BCR	Beginning of Curb Return or Back of Curb Radius
BM	Bench Mark
BWG	Birmingham Wire Gage (Iron and Steel Wire)
CB	Catch Basin
C.C. or C/C	Center to Center
Cem.	Cement
CF	Curb Face
CI	Cast Iron
CIP	Cast-iron Pipe
CIPP	Cast-in-Place Pipe
C.L. or CL	Center Line
CMP	Corrugated Metal Pipe
CMPA	Corrugated Metal Pipe Arch
CO	Clean Out

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Col	Column
Conc	Concrete
Const	Construct
DF	Douglas Fir
DG	Decomposed Granite
DMH	Drop Manhole
D/W	Driveway
EC	End of Curve
El. or Elev.	Elevation
Ex. or Exist	Existing
F & C	Frame and Cover
FH	Fire Hydrant
FL	Flow Line
Fl. El.	Floor Elevation
FS	Federal Specifications of Finish Surface
FHWA	Federal Highway Administration, Department of Transportation
Galv.	Galvanized
GL	Ground Line
Gr.	Grade
H	Height or High
HC	House Connection Sewer
Hor.	Horizontal
ID	Inside Diameter
Inv.	Invert
IP	Iron Pipe
ITE	Institute of Traffic Engineers
Lin.	Linear
LL	Liquid Limit
Long.	Longitudinal
Max.	Maximum
MH	Manhole
M	Thousand
m	meter or middle
Min.	Minutes or Minimum
Mon.	Monolithic or Monument
MTD	Multiple Tile Duct
NEC	National Electrical Code
NEMA	National Electrical Manufacturers Association
NFPA	National Fire Protection Association
NGS	National Geodetic Survey
NMSA	New Mexico Statutes Annotated--1953 Compilation as Amended
NMSHD	New Mexico State Highway Department
OC	On Center
OD	Outside Diameter
PC	Point of Curvature
PCC	Point of Compound Curve or Portland Cement Concrete
PI	Point of Intersection or PlastiCity Index

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PL	Property Line or Plastic Limit
PP	Power Pole
ppm	Parts per Million
PRC	Point of Reverse Curve
Prop.	Proposed or Property
psf	Pounds per Square Foot
psi	Pounds per Square Inch
PT	Point of Tangency
Pvmt.	Pavement
PVCP	Polyvinylchloride Pipe
Q	Rate of Flow
R	Radius
RC	Reinforced Concrete
RCP	Reinforced Concrete Pipe
Rdwy.	Roadway
Ret. Wall	Retaining Wall
RGRCP	Rubber Gasket-Reinforced Concrete Pipe
R/W	Right-of-Way
s.	Slope
SAE	Society of Automotive Engineers
San.	Sanitary
SCCP	Steel Cylinder Concrete Pipe
SD	Storm Drain
Sdl.	Saddle
Sect.	Section
Spec.	Specifications
Sp. MH	Special Manhole
San. S	Sanitary Sewer
St.	Street
Sta.	Station
Std.	Standard
T	Tangent Distance
TH	Test Hole
TMH	Trap Manhole
UL	Underwriters' Laboratories, Inc.
USA	United States of America Standards Institute, Inc.
V	VeloCity
VC	Vertical Curve
VCP	Vitrified Clay Pipe
VCPI	Vertical Curve Point of Intersection
Vert.	Vertical
W.I.	Wrought Iron

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

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

Bid--The offer of the Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

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

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

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

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

Contract--The written agreement between OWNER and CONTRACTOR covering the Work to be performed; other Documents are attached to the Contract.

Contract Documents--The Agreement, Addenda (whether issued prior to the opening of Bids or the execution of the Agreement), Instructions to Bidders, Bid for Unit Price Contract, the Bonds, the Certificate of Insurance, the Notice of Award, Notice to Proceed, these General Conditions, the New Mexico Standards Specifications for Public Works Construction 2006 Edition, the Special Conditions, the Construction Procedures and Sequencing, the Special Provisions and Supplementary Specifications, the Construction Plans and Drawings, and all Modifications.

Contract Time--The number of days stated in the Agreement for the completion of the Work, computed as provided in paragraph 17.2.

Contracting Agency--(See OWNER.)

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

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

Drawings or Construction Plans--The drawings which show the character and scope of the Work to be performed and which have been prepared or approved by ENGINEER and are referred to in the Contract Documents.

ENGINEER--The OWNER'S employee or agent responsible for the engineering design and/or construction inspection and supervision, acting directly or through duly authorized representatives. The Design Engineer of Record is Smith Engineering and the Professional Engineer that stamped that Construction Drawings. The Construction Engineer of Record is the City of Lovington Engineering Department and the Professional

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Engineer that stamped the Contract and Specification Documents. During the course of construction the "Engineer" shall be the City of Lovington Engineering Department.

Field Order--A written order issued by ENGINEER which clarifies or interprets the Contract Documents in accordance with paragraph 9.3 or orders minor changes in the Work in accordance with paragraph 10.2.

General Conditions--Conditions which apply to all projects and which can be modified by Special Conditions.

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

High Point – A specific point along a utility line installed by the CONTRACTOR through this agreement that exhibits a relative peak in elevation when compared to points immediately adjacent to such point.

Modification--(a) A written amendment to the Contract Documents signed by both parties, (b) a Change Order, (c) a written clarification or interpretation issued by ENGINEER in accordance with paragraph 9.3, or (d) a written order for a minor change or alteration in the Work issued by ENGINEER pursuant to paragraph 10.2. A Modification may only be issued after execution of the Agreement.

Notice of Award--The written notice by OWNER to the apparent successful Bidder stating that, upon compliance with the conditions precedent to be fulfilled by him within the time specified, OWNER will execute and deliver the Agreement to him.

Notice to Proceed--A written notice given by OWNER to CONTRACTOR (with a copy to ENGINEER) fixing the date on which the Contract Time will commence to run and on which CONTRACTOR shall start to perform his obligations under the Contract Documents.

OWNER--A public body or authority or the Contracting Agency for whom the Work is to be performed.

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

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

Resident Project Representative (PROJECT MANAGER) --The authorized representative of ENGINEER who is assigned to the Project site or any part thereof.

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

Shop Drawings--All drawings, diagrams, illustrations, brochures, schedules, and other data which are prepared by CONTRACTOR, a Sub-Contractor, manufacturer, supplier, or distributor and which illustrate the equipment, material, or some portion of the Work.

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Special Conditions--Conditions which are written for a specific project and which modify any section or paragraph of the General Conditions.

Standard Specifications, also Supplemental Specifications--Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards, and workmanship as applied to the Work.

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

Substantial Completion--The date as certified by ENGINEER when the construction of the Project or a specified part thereof is sufficiently completed, in accordance with the Contract Documents, so that the Project or specified part can be utilized for the purposes for which it was intended; or if there be no such certification, the date when final payment is due in accordance with paragraph 14.13.

Supplementary Specifications--Specifications which are written to modify any section or paragraph of the New Mexico Standard Specifications for Public Works Construction, 2006 Edition.

Total Bid Price--The total monies payable to CONTRACTOR under the Contract Documents less New Mexico Gross Receipts Tax.

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

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

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

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

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SECTION 2--PRELIMINARY MATTERS

Execution of Agreement:

2.1 At least five counterparts of the Contract Documents shall be executed and delivered by CONTRACTOR to OWNER within fifteen days of the Notice of Award; and OWNER will execute and deliver one counterpart to CONTRACTOR within ten days of receipt of the executed Agreement from CONTRACTOR. ENGINEER will identify those portions of the Contract Documents not so signed and such identification will be binding on all parties. OWNER, CONTRACTOR, and ENGINEER shall receive an executed counterpart of the Contract Documents and additional conformed copies as required.

Delivery of Bonds:

2.2 When he delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds and proof of insurance as he may be required to furnish in accordance with Subsection 5.1, 5.1.1, 5.2, and 5.3.

Copies of Documents:

2.3 OWNER shall furnish to CONTRACTOR up to five copies of the Contract Documents. Additional copies will be furnished upon request at the cost of reproduction.

Contractor's Pre-Start Representations:

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

Commencement of Contract Time; Notice to Proceed:

2.5 The Contract Time will commence to run on the thirtieth day after the day on which the executed Agreement is delivered by OWNER to CONTRACTOR or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed; but in no event shall the Contract Time commence to run later than the ninetieth day after the day of Bid opening or the thirtieth day after the day on which OWNER delivers the executed Agreement to CONTRACTOR. A Notice to Proceed may be given at any time within thirty days after the day on which OWNER delivers the executed Contract Documents to CONTRACTOR.

Starting the Project:

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

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Contract Time commences to run.

Before Starting Construction:

2.7 Before starting the Work at the site, a preconstruction conference will be held to establish procedures for handling Shop Drawings and other submissions and for processing Applications for Payment, and to establish a working understanding between the parties as to the Project.

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SECTION 3--CORRELATION, INTERPRETATION AND INTENT OF CONTRACT DOCUMENTS

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

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

3.3 It is mutually understood and agreed that this contract shall be governed by the laws of the State of New Mexico, both as to interpretation and performance.

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SECTION 4--AVAILABILITY OF LANDS; PHYSICAL CONDITIONS; REFERENCE POINTS

Availability of Lands:

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

Physical Conditions--Surveys and Reports:

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

Unforeseen Physical Conditions:

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

Reference Points:

4.4 OWNER shall provide engineering surveys for construction to establish reference points which, in his judgment, are necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for surveying and laying out the Work (unless otherwise provided in the Special Conditions) and shall protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of OWNER. He shall report to ENGINEER whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations. CONTRACTOR shall replace and accurately relocate all reference points so lost, destroyed, or moved.

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SECTION 5--BONDS AND INSURANCE

5.1 Performance, Payment and Other Bonds:

CONTRACTOR shall furnish performance and payment Bonds as security for the faithful performance and payment of all his obligations under the Contract Documents. These Bonds shall be in amounts at least equal to the Contract Price and (except as otherwise provided in the Special Conditions) in such form and with such sureties as are licensed to conduct business in the state where the Project is located and are named in the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Department. The Performance Bond shall also include coverage for the Guarantee Period (see paragraph 13.10). The Surety on the performance bond shall furnish a waiver whereby he consents to the progress or partial payment to the CONTRACTOR of amounts for materials under the provisions of paragraph 14.2 herein, and acknowledges, in accordance with paragraphs 14.10 and 14.15 of said Standard Specifications, that such payment, whether or not in strict compliance with these provisions of said Standard Specifications, shall not preclude or stop the OWNER from showing the true character and quantity of the materials furnished or from recovering from the CONTRACTOR or his sureties such damages as the OWNER may sustain by reason of deficiency in quantity of the materials with respect to which a progress payment was made.

If the surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located is revoked, CONTRACTOR shall within five days thereafter substitute another Bond and surety, both of which shall be acceptable to OWNER.

Performance Bond Requirements:

The performance bond shall be in an amount equal to no less than the full contract amount. The performance bond must remain in effect throughout the construction and guarantee period and as otherwise required by Owner. A cashier's check, money order or certified funds as are approved by the City will be considered equivalent to a bond.

As an alternate to this performance bond, security may be provided, at the Bidder's option, by a bank irrevocable letter of credit or other personal surety instrument acceptable to Owner in an amount equal to not less than the full contract amount. This Performance Security Letter of Credit must remain in effect throughout the construction period and as otherwise required by Owner.

The performance bond or letter of credit must be included with the Contract Documents. Any contract which does not include an acceptable performance bond or other surety will not be executed by the City of Lovington.

Payment Bond Requirement:

The payment bond shall be in an amount equal to no less than the full contract amount. The payment bond must remain in effect throughout the construction period and up to the time that signed Lien Releases from all major (representing 10% or more of the contract price) suppliers and subContractors are delivered to the Owner. A cashier's check, money order or certified funds as are approved by the City will be considered equivalent to a bond.

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As an alternate to this payment bond, security may be provided, at the Bidder's option, by a bank irrevocable letter of credit or other personal surety instrument acceptable to Owner in an amount equal to not less than the full contract amount. This Payment Security Letter of Credit must remain in effect throughout the construction period and up to the time that signed Lien Releases from all major suppliers and subContractors are delivered to the Owner.

The payment bond or the letter of credit must be included with the contract documents. Any contract which does not include an acceptable payment bond or other surety will not be executed by the City of Lovington.

5.2 Insurance Coverage:

The Contractor shall obtain, and provide proof thereof, to the Owner the following insurance coverage:

General Liability as follows:

Premises, operations, explosions and collapse hazard, underground hazard, contractual insurance, products with completed operations, broad form property damage, independent Contractors and personal injury. The limits of liability shall be no less than \$1,000,000 combined single limit for bodily injury and property damage.

Automobile Liability as follows:

Owned, hired and non-owned vehicles. The limits of liability shall be no less than \$1,000,000 combined single limit bodily injury and property damage.

The City of Lovington shall be named as an additional insured on all policies provided.

Contractor shall further obtain and provide proof to the Owner of any other insurance coverage required by the statutes of the State of New Mexico or regulations of any agency of the State of New Mexico governing this type of Project.

Workers' Compensation is required along with State statutory employers' liability limits regardless of number of employees.

Contractor covenants, warrants, and agrees that it shall indemnify, defend, save and hold the City of Lovington, the City Commission of the City of Lovington, its individual commissioners, its officers, employees and agents (collectively and individually as "Owner") harmless from any and all liability, damage, expense, cause of action, suits, claims, judgments, losses, costs, expenses, and liens, of every kind and nature, including, but not limited to, those arising from injury to person(s) or damage to property, arising out of, resulting from, or occurring during this project. This indemnification and hold harmless by Contractor to the City of Lovington (Owner) shall include, but not be limited to, the City of Lovington' (Owner's) attorney's fees and costs incurred in defending against the same, and in prosecuting any crossclaims or counterclaims required or arising therefrom.

5.3 Additional Bonds and Insurance:

Prior to delivery of the executed Agreement by OWNER to CONTRACTOR, OWNER may require CONTRACTOR to furnish such other Bonds and such additional insurance, in such form and with such sureties or insurers, as

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OWNER may require. If such other Bonds or such other insurance are specified by written instructions given prior to opening of Bids, the premiums shall be paid by CONTRACTOR; if subsequent thereto, they shall be paid by OWNER (except as otherwise provided in paragraph 6.7).

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SECTION 6--CONTRACTOR'S RESPONSIBILITIES

Supervision and Superintendence:

6.1 CONTRACTOR shall supervise and direct the Work efficiently and with his best skill and attention. He shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction; but he shall not be solely responsible for the negligence of others in the design or selection of a specific means, method, technique, sequence, or procedure of construction which is indicated in and required by the Contract Documents. CONTRACTOR shall be responsible to see that the finished Work complies accurately with the Contract Documents.

6.2 CONTRACTOR shall keep on the Work at all times during its progress a competent resident superintendent, who shall not be replaced without written notice to OWNER and ENGINEER (Written Notice Only, NOT Consent) except under extraordinary circumstances. The superintendent will be CONTRACTOR'S representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications given to the superintendent shall be as binding as if given to CONTRACTOR.

Labor, Materials, and Equipment:

6.3 CONTRACTOR shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. He shall at all times maintain good discipline and order at the site.

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

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

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

Substitute Materials or Equipment:

6.7 If the Standard Specifications, the Supplemental Specifications, laws, ordinances, or applicable rules or regulations permit CONTRACTOR to furnish or use a substitute that is equal to any material or equipment specified, and if CONTRACTOR wishes to furnish or use a proposed substitute, he shall, prior to the conference called for by paragraph 2.7, make written application to ENGINEER for approval of such a substitute certifying in writing that the proposed substitute will perform adequately the functions called for by the general design, be similar and of equal substance to that specified, and be suited to the same use and capable of performing the same function as that specified; stating whether or not its incorporation in or use in connection with the Project is subject to the payment of any license fee or royalty; and identifying all variations of the proposed substitute from that specified and indicating available maintenance service. No substitute shall be ordered or installed without the written approval of ENGINEER, who will be the judge of equality and may require

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CONTRACTOR to furnish such other data about the proposed substitute as he considers pertinent. No substitute shall be ordered or installed without such performance guarantee and bonds as OWNER may require which shall be furnished at CONTRACTOR'S expense.

Concerning SubContractors:

6.8 CONTRACTOR shall not employ any SubContractor or other person or organization (including those who are to furnish the principal items of materials or equipment), whether initially or as a substitute, against whom OWNER or ENGINEER may have reasonable objection. A SubContractor or other person or organization identified in writing to OWNER and ENGINEER by CONTRACTOR prior to the Notice of Award and not objected to in writing by OWNER or ENGINEER prior to the Notice of Award will be deemed acceptable to OWNER and ENGINEER. Acceptance of any SubContractor, other person, or organization by OWNER or ENGINEER shall not constitute a waiver of any right of OWNER or ENGINEER to reject defective Work or Work not in conformance with the Contract Documents.

If OWNER or ENGINEER, after due investigation, has reasonable objection to any subContractor, other person, or organization proposed by CONTRACTOR after the Notice of Award, CONTRACTOR shall submit an acceptable substitute. No change in the contract price shall result from this change of subContractor due to reasonable objections, and no extra payment will be made to the CONTRACTOR to provide a suitable substitute subContractor. CONTRACTOR shall not be required to employ any subContractor, other person, or organization against whom he has a reasonable objection. CONTRACTOR shall not, without the consent of the OWNER and the ENGINEER, make any substitution for any subContractor, other person, or organization who has been accepted by the OWNER and ENGINEER unless the ENGINEER determines that there is a good cause for doing so.

In the event that the performance of this contract depends upon the Contractor hiring any SubContractors, Contractor shall not employ or continue to employ any Contractor who is listed on the United States Department of Labor list of Contractors who are barred from working due to violations of the labor law and regulations.

6.9 CONTRACTOR shall be fully responsible for all acts and omissions of his SubContractors and of persons and organizations directly or indirectly employed by them and of persons and organizations for whose acts any of them may be liable to the same extent that he is responsible for the acts and omissions of persons directly employed by him. Nothing in the Contract Documents shall create any contractual relationship between OWNER or ENGINEER and any SubContractor or other person or organization having a direct contract with CONTRACTOR, nor shall it create any obligation on the part of OWNER or ENGINEER to pay or to see to the payment of any monies due any SubContractor or other person or organization, except as may otherwise be required by law. OWNER or ENGINEER may furnish to any SubContractor or other person or organization, to the extent practicable, evidence of amounts paid to CONTRACTOR on account of specific Work done in accordance with the schedule of values.

Contractor agrees to bind specifically every subContractor to the applicable terms and conditions of the contract documents for the benefit of Owner.

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

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

6.12 (This paragraph not used)

Patent Fees and Royalties:

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

Permits:

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

Laws and Regulations:

6.15 CONTRACTOR shall give all notices and comply with all laws, ordinances, rules and regulations applicable to the Work. If CONTRACTOR observes that the Specifications or Drawings are at variance therewith, he shall give ENGINEER prompt written notice thereof; and any necessary changes shall be adjusted by an appropriate Modification. If CONTRACTOR performs any Work knowing it to be contrary to such laws, ordinances, rules, and regulations and without such notice to ENGINEER, he shall bear all costs arising therefrom; however, it shall not be his primary responsibility to make certain that the Specifications and Drawings are in accordance with such laws, ordinances, rules and regulations.

Taxes:

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

The total bid price as set forth herein shall not include taxes. Taxes shall be added to pay estimates or invoices for work performed for payment at time of billing.

Use of Premises:

6.17 CONTRACTOR shall confine his equipment, the storage of materials and equipment, and the operations

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

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

Record Drawings:

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

Safety and Protection:

6.20 CONTRACTOR shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. He shall take all necessary precautions for the safety of and shall provide the necessary protection to prevent damage, injury, or loss to:

6.20.1 all employees on the Work and other persons who may be affected thereby;

6.20.2 all the Work and materials or equipment to be incorporated therein, whether in storage on or off the site

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

The CONTRACTOR shall conduct his operations in a manner which will minimize interference with the normal use of property adjacent to the construction work and shall give owners of such property at least one week's notice of the commencement of Work in the area abutting their property. CONTRACTOR shall comply with all applicable laws, ordinances, rules, regulations, and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury, or loss. He shall erect and maintain, as required by the conditions and progress of the Work, all necessary safeguards for its safety and protection. He shall notify owners of adjacent utilities at least 72 hours in advance when prosecution of the Work may affect them. All damage, injury, or loss to any property referred to in subparagraph 6.20.2 or 6.20.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any SubContractor, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR, except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of OWNER or ENGINEER or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR. CONTRACTOR'S duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and ENGINEER has issued a notice to OWNER and CONTRACTOR in accordance with paragraph 14.13 that Work is acceptable.

6.21 CONTRACTOR shall designate a responsible member of his organization at the site whose duty shall be

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the prevention of accidents. This person shall be CONTRACTOR'S superintendent, unless otherwise designated in writing by CONTRACTOR to OWNER.

Emergencies:

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

Shop Drawings and Samples:

6.23 After checking and verifying all field measurements, CONTRACTOR shall submit to OWNER for approval, in accordance with the accepted schedule of Shop Drawings submissions, one reproducible copy of all Shop Drawings which shall have been checked by and stamped with the approval of CONTRACTOR and identified as OWNER may require. The data shown on the Shop Drawings will be complete with respect to dimensions, design criteria, materials of construction, and the like to enable OWNER to review the information as required.

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

6.25 At the time of each submission, CONTRACTOR shall in writing call OWNER'S attention to any deviations that the Shop Drawings may have from the requirements of the Contract Documents.

6.26 ENGINEER will review and approve with reasonable promptness Shop Drawings and samples, but his review and approval shall be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents. The approval of a separate item as such will not indicate approval of the assembly in which the item functions. CONTRACTOR shall make any corrections required by ENGINEER and shall return the required number of corrected copies of Shop Drawings and resubmit new samples until approved. CONTRACTOR shall direct specific attention in writing or on resubmitted Shop Drawings to revisions other than the corrections called for by ENGINEER on previous submissions. CONTRACTOR'S stamp of approval on any Shop Drawing or sample shall constitute a representation to OWNER and ENGINEER that CONTRACTOR has either determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers, and similar data or he assumes full responsibility for doing so and that he has reviewed or coordinated each Shop Drawing or sample with the requirements of the Work and the Contract Documents.

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

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6.28 OWNER'S approval of Shop Drawings shall not relieve CONTRACTOR from his responsibility for any deviations from the requirements of the Contract Documents unless CONTRACTOR has in writing called ENGINEER'S attention to such deviation at the time of submission and OWNER has given written approval to the specific deviation, nor shall any approval by OWNER relieve CONTRACTOR from responsibility for errors or omissions in the Shop Drawings.

Cleaning:

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

Indemnification:

6.30 CONTRACTOR shall indemnify and hold harmless OWNER and ENGINEER and their agents and employees from and against all claims, damages, losses, and expenses including attorneys' fees arising out of or resulting from the performance of the Work by the CONTRACTOR, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease, or death or injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom and (b) is caused in whole or in part by any negligent act or omission of CONTRACTOR, any SubContractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

6.31 In any and all claims against OWNER or ENGINEER or any of their agents or employees or by any employees of CONTRACTOR, any SubContractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.30 shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CONTRACTOR or any SubContractor under workmen's compensation acts, disability benefit acts, or other employee benefit acts.

6.32 The obligations of CONTRACTOR under paragraph 6.30 shall not extend to the liability of ENGINEER, his agents, or employees arising out of (a) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs, or specifications or (b) the giving of or the failure to give directions or instructions by ENGINEER, his agents, or employees provided such giving or failure to give is the primary cause of injury or damage.

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SECTION 7-WORK BY OTHERS

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

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

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

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

7.5 Work by the CONTRACTOR and work by others should be coordinated and expedited by the OWNER or his representative to prevent time delays and additional cost to the CONTRACTORS. Any extension of time and/or additional costs caused by other Contractors or utility service companies may be claimed as provided for in Sections 11 and 12.

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SECTION 8-OWNER'S RESPONSIBILITIES

8.1 OWNER shall issue all communications to CONTRACTOR through ENGINEER.

8.2 In case of termination of the employment of ENGINEER, OWNER shall appoint an engineer against whom CONTRACTOR makes no reasonable objection, whose status under the Contract Documents shall be that of the former ENGINEER. Any dispute in connection with such appointment shall be subject to arbitration.

8.3 OWNER shall furnish the data required of OWNER under the Contract Documents promptly and shall make payments to CONTRACTOR promptly after they are due as provided in paragraphs 14.4 and 14.13.

8.4 OWNER'S duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.1 and 4.4. Paragraph 4.2 refers to OWNER'S identifying and making available to CONTRACTOR copies of reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting performance of the Work which have been relied upon by ENGINEER in preparing the Drawings and Specifications.

8.5 (This paragraph not used)

8.6 In connection with OWNER'S rights to request changes in the Work in accordance with Section 10, OWNER (especially in certain instances as provided in paragraph 10.4) is obligated to execute Change Orders.

8.7 OWNER'S responsibility in respect of certain inspections, tests and approvals is set forth in paragraph 13.4.

8.8 In connection with the OWNER'S right to stop Work, see paragraph 13.8 and 15.1.

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SECTION 9-ENGINEER'S STATUS DURING CONSTRUCTION

Owner's Representative:

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

Visits to Site:

9.2 ENGINEER will make visits to the site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. ENGINEER will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. ENGINEER'S efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform to the Contract Documents. On the basis of such visits and on-site observations as an experienced and qualified design professional, ENGINEER will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defects and deficiencies in the Work.

Clarifications and Interpretations:

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

Rejecting Defective Work:

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

Shop Drawings, Change Orders and Payments:

9.5 In connection with ENGINEER'S responsibilities as to Shop Drawings and samples, see paragraph 6.23 through 6.28 inclusive.

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

9.7 In connection with ENGINEER'S responsibilities in respect of Applications for Payment, etc., see Section 14.

Project Representation:

9.8 If OWNER and ENGINEER agree, ENGINEER will furnish a Resident Project Representative to assist ENGINEER in observing the performance of the Work. The duties, responsibilities and limitations of authority of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions. If OWNER designates another agent to represent him at the site who is not ENGINEER'S agent or

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employee, the duties, responsibilities and limitations of authority of such other person will be as provided in the Supplementary Conditions. The Resident Project Representative shall be the City of Lovington Engineering Department.

Decisions on Disagreements:

9.9 ENGINEER will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work hereunder. Claims, disputes, and other matters relating to the acceptability of the Work of the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the Work shall be referred initially to ENGINEER in writing with a request for a formal decision in accordance with this paragraph, which ENGINEER will render in writing within a reasonable time to ascertain more accurate data. In his capacity as interpreter and judge, ENGINEER will not show partiality to OWNER or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.10 The rendering of a decision by ENGINEER pursuant to paragraph 9.9 with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.16) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or at law in respect of any such claim, dispute, or other matter.

Limitations on Engineer's Responsibilities:

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

9.12 Whenever in the Contract Documents the terms "as ordered", "as directed", "as required", "as allowed", or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper", or "satisfactory" or adjectives of like effect or import are used to describe requirement, direction, review or judgment of ENGINEER as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective never indicates that ENGINEER shall have authority to supervise or direct performance of the Work or authority to undertake responsibility contrary to the provisions of paragraphs 9.13 or 9.14.

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

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

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SECTION 10-CHANGES IN THE WORK

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

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

10.3 Additional Work performed without authorization of a Change Order will not entitle CONTRACTOR to an increase in the Contract Price or an extension of the Contract Time, except in the case of an emergency as provided in paragraph 6.22 and except as provided in paragraphs 10.2 and 13.7.

10.4 OWNER shall execute appropriate Change Orders prepared by ENGINEER covering changes in the Work which are required by OWNER, or required because of unforeseen physical conditions or emergencies, or because of uncovering Work found not to be defective, or as provided in paragraph 11.9, or because of any other claim of CONTRACTOR for a change in the Contract Time or the Contract Price which is recommended by the ENGINEER and accepted by the OWNER.

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

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SECTION 11-CHANGE OF CONTRACT PRICE

11.1 The Total Bid Price constitutes the total compensation payable to CONTRACTOR less New Mexico Gross Receipts Tax for performing the Work. All duties, responsibilities, and obligations assigned to or undertaken by CONTRACTOR shall be at his expense without change in the Contract Price.

11.2 The Total Bid Price may only be changed by a Change Order. Any claim for an increase in the Total Bid Price shall be based on written notice delivered to OWNER and ENGINEER within **fifteen days** of the occurrence of the event giving rise to the claim. Notice of the amount of the claim with supporting data shall be delivered within **forty-five days** of such occurrence unless ENGINEER allows an additional period of time to ascertain accurate cost data. All claims for adjustments in the Total Bid Price shall be determined by ENGINEER if OWNER and CONTRACTOR cannot otherwise agree on the amount involved. Any change in the Total Bid Price resulting from any such claim shall be incorporated in a Change Order.

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

11.3.1 Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved.

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

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

Cost of the Work:

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

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

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

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11.4.3 Payments made by CONTRACTOR to the SubContractors for Work performed by SubContractors. If required by OWNER, CONTRACTOR shall obtain competitive bids from SubContractors acceptable to him and shall deliver such bids to OWNER who will then determine, with the advice of ENGINEER, which bids will be accepted. If a subcontract provides that the SubContractor is to be paid on the basis of Cost of the Work Plus a Fee, the Cost of the Work shall be determined in accordance with paragraphs 11.4 and 11.5. All subcontracts shall be subject to the other conditions of the Contract Documents insofar as applicable.

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

11.4.5 Supplemental costs including the following:

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

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

11.4.5.3 Rentals of all construction equipment and machinery and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by OWNER with the advice of ENGINEER, and the costs of transportation, loading, unloading, installation, dismantling, and removal thereof--all in accordance with terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

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

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

11.4.5.6 Losses, damages, and expenses not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the execution of and to the Work, provided they have resulted from causes other than the negligence of CONTRACTOR, any SubContractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's Fee. If, however, any such loss or damage requires reconstruction and CONTRACTOR is placed in charge thereof, he shall be paid for his services a fee proportionate to that stated in paragraph 11.6.2.

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

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

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

11.5 The term Cost of the Work shall not include any of the following:

11.5.1 Payroll costs and other compensation of CONTRACTOR'S officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, timekeepers, clerks, and other personnel employed by CONTRACTOR whether at the site or in his principal of a branch office for general administration of the Work and not specifically included in the schedule referred to in paragraph 11.4.1--all of which are to be considered administrative costs covered by the CONTRACTOR'S Fee.

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

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

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

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

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

CONTRACTOR'S Fee:

11.6 The CONTRACTOR'S Fee which shall be allowed to CONTRACTOR for his overhead and profit shall be determined as follows:

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

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

11.6.2.1 For costs incurred under paragraphs 11.4.1 and 11.4.2, the CONTRACTOR'S Fee shall be **ten percent**,

11.6.2.2 for costs incurred under paragraph 11.4.3, the CONTRACTOR'S Fee shall be five percent; and if a subcontract is on the basis of Cost of the Work Plus a Fee, the maximum allowable to the SubContractor as a fee for overhead and profit shall be ten percent, and

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

11.7 The amount of credit to be allowed by CONTRACTOR to OWNER for any such change which results in a net decrease in cost will be the amount of the actual net decrease. When both additions and credits are involved in any one change, the combined overhead and profit shall be figured on the basis of the net increase, if any.

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

Cash Allowances:

11.9 It is understood that CONTRACTOR has included in the Total Bid Price all allowances so named in the Contract Documents and shall cause the Work so covered to be done by such material men, suppliers, or SubContractors and for such sums within the limits of the allowances as ENGINEER may approve.

Upon final payment, the Contract Price shall be adjusted as required and an appropriate Change Order issued. CONTRACTOR agrees that the original Contract Price includes such sums as he deems proper for costs and profit on account of cash allowances. No demand for additional cost or profit in connection therewith will be allowed.

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SECTION 12-CHANGE OF THE CONTRACT TIME

12.1 The Contract Time may only be changed by a Change Order. Any claim for an extension in the Contract Time shall be based on written notice delivered to OWNER and ENGINEER within fifteen days of the occurrence of the event giving rise to the claim. Notice of the extent of the claim with supporting data shall be delivered within forty-five days of such occurrence unless ENGINEER allows an additional period of time to ascertain more accurate data. All claims for adjustment in the Contract Time shall be determined by ENGINEER if OWNER and CONTRACTOR cannot otherwise agree. Any change in the Contract Time resulting from any such claim shall be incorporated in a Change Order.

12.2 The Contract Time will be extended in an amount equal to time lost due to delays beyond the control of CONTRACTOR if he makes a claim therefore as provided in paragraph 12.1. Such delays shall include, but not be restricted to, acts or neglect by any separate Contractor employed by OWNER, fires, floods, labor disputes, epidemics, abnormal weather conditions, or acts of God.

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

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**SECTION 13-WARRANTY AND GUARANTEE; TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR
ACCEPTANCE OF DEFECTIVE WORK**

Warranty and Guarantee:

13.1 CONTRACTOR warrants and guarantees to OWNER and ENGINEER that all materials and equipment will be new unless otherwise specified and that all Work will be of good quality and free from faults or defects and in accordance with the requirements of the Contract Documents and of any inspections, tests, or approvals referred to in paragraph 13.2. All unsatisfactory Work, all faulty or defective Work, and all work not conforming to the requirements of the Contract Documents at the time of acceptance thereof or of such inspections, tests, or approvals, shall be considered defective. Prompt notice of all defects shall be given to CONTRACTOR. All defective Work, whether or not in place, may be rejected, corrected or accepted as provided in this Section 13.

Tests and Inspections:

13.2 If the Contract Documents, laws, ordinances, rules and regulations, or orders of any public authority having jurisdiction require any Work to be specifically inspected, tested, or approved by some public body, CONTRACTOR shall assume full responsibility therefore, pay all costs in connection therewith and furnish ENGINEER the required certificates of inspection, testing, or approval. All other inspections, tests, and approvals required by the Contract Documents shall be performed by organizations acceptable to OWNER and CONTRACTOR and the costs thereof shall be borne by OWNER unless otherwise specified.

13.2.1 Laboratory Testing

A. Job Mix Formulae and Design Mixes-The preparation of job mix formulae and design mixes, together with necessary testing as required for this Contract, shall be at CONTRACTOR'S expense. Such testing shall be performed by an approved testing laboratory under the supervision of a New Mexico Registered Professional Engineer. Copies of said formulae and mixes shall be submitted to the Owner for approval prior to beginning work on items on which said mixes will be used.

B. Materials or Manufactured Items-Testing of materials or manufactured items shall be at CONTRACTOR'S expense. Tests for materials or items manufactured within the State of New Mexico shall be certified as meeting contract specifications by an approved testing laboratory under the supervision of a New Mexico Registered Professional Engineer or a testing laboratory under the supervision of a Professional Engineer registered in the state of manufacture or a testing laboratory approved by ENGINEER.

13.2.2 Field Testing

The field testing of all locally processed or produced material directly incorporate into the work, including the establishment of density curves representative of materials to be used in the embankment, subgrade and backfilling operations, and compliance tests will be paid by the OWNER.

13.2.3 General

The City of Lovington shall pay for the first test on each material as required. Any retesting due to the initial test failing shall be paid for by the Contractor, whether the retest is passing or failing the required specifications. If not previously deducted from a progress payment, costs for such tests shall be deducted from the final payment of the Contract.

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ENGINEER shall determine the number, type and location of tests.

CONTRACTOR shall furnish, incidental to this Contract, necessary equipment, tools and labor, except testing equipment, to assist the testing agency in the performance of field tests.

Copies of all laboratory and field tests shall be forwarded to ENGINEER and OWNER.

13.3 CONTRACTOR shall give ENGINEER timely notice of readiness of the Work for all inspections, tests, or approvals. If any such Work required so to be inspected, tested, or approved is covered without written approval of ENGINEER, it must, if requested by ENGINEER, be uncovered for observation; and such uncovering shall be at CONTRACTOR'S expense unless CONTRACTOR has given ENGINEER timely notice of his intention to cover such Work and ENGINEER has not acted with reasonable promptness in response to such notice.

13.4 Neither observations by ENGINEER nor inspections, tests, or approvals by persons other than CONTRACTOR shall relieve CONTRACTOR from his obligations to perform the Work in accordance with the requirements of the Contract Documents.

Access to Work:

13.5 ENGINEER and his representatives and other representatives of OWNER will, at reasonable times, have access to the Work. CONTRACTOR shall provide proper and safe facilities for such access and observation of the Work and also for any inspection or testing thereof by others.

Uncovering the Work:

13.6 If any Work is covered prior to inspection by the ENGINEER, it must, if requested by ENGINEER, be uncovered for his observation and replaced at CONTRACTOR'S expense.

13.7 If any Work has been covered which ENGINEER has not specifically requested to observe prior to its being covered or if ENGINEER considers it necessary or advisable that covered Work be inspected or tested by others, CONTRACTOR, at ENGINEER'S request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as ENGINEER may require that portion of the Work in question, furnishing all necessary labor, material, and equipment. If it is found that such Work is defective, CONTRACTOR shall bear all the expenses of such uncovering, exposure, observation, inspection, and testing and of satisfactory reconstruction, including compensation for additional professional services and an appropriate deductive Change Order shall be issued. If, however, such Work is not found to be defective, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time or both, directly attributable to such uncovering, exposure, observation, inspection, testing, and reconstruction if he makes a claim therefor as provided in Sections 11 and 12. **Note:** All utilities shall be inspected prior to covering and coordinated with Lovington GIS Mapping Department to Data Collect for entry into City's GIS Mapping Database.

Owner May Stop the Work:

13.8 If the Work is defective or CONTRACTOR fails to supply sufficient skilled workmen or suitable materials or equipment or if CONTRACTOR fails to make prompt payments to SubContractors or for labor, materials, or equipment, OWNER may order CONTRACTOR to stop the Work or any portion thereof until the cause for such

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order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of OWNER to exercise this right for the benefit of CONTRACTOR or any other party.

Correction or Removal of Defective Work:

13.9 If required by ENGINEER prior to approval of final payment, CONTRACTOR shall promptly, without cost to OWNER and as specified by ENGINEER, either correct any defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by ENGINEER, remove it from the site and replace it with non-defective Work. If CONTRACTOR does not correct such defective Work or remove and replace such rejected Work within a reasonable time, all as specified in a written notice from ENGINEER, OWNER may have the deficiency corrected or the rejected Work removed and replaced. All direct or indirect costs of such correction or removal and replacement, including compensation for additional professional services, shall be paid by CONTRACTOR and an appropriate deductive Change Order shall be issued. CONTRACTOR shall also bear the expenses of making good all Work of others destroyed or damaged by his correction, removal, or replacement of his defective Work.

One Year Correction Period:

13.10 If, after the approval of final payment and prior to the expiration 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 applicable special guarantee required by the Contract Documents, any Work is found to be defective, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER'S written instruction, either correct such defective Work, or, if it has been rejected by OWNER, remove it from the site and replace it with non-defective Work. If CONTRACTOR does not promptly comply with the terms of such instructions, OWNER may have the defective Work corrected or the rejected Work removed and replaced and all direct and indirect cost of such removal and replacement, including compensation for additional professional services, shall be paid by CONTRACTOR.

Acceptance of Defective Work:

13.11 If, instead of requiring correction or removal and replacement of defective Work, OWNER (and, prior to approval of final payment, also ENGINEER) prefers to accept it, he may do so. In such case, if acceptance occurs prior to approval of final payment, a Change Order shall be issued incorporating the necessary revisions in the Contract Documents, including appropriate reduction in the Contract Price; or, if the acceptance occurs after approval of final payment, an appropriate amount shall be paid by CONTRACTOR to OWNER.

Neglected Work by CONTRACTOR:

13.12 If CONTRACTOR shall fail to prosecute the Work in accordance with the Contract Documents, including any requirements of the progress schedule, OWNER, after seven days' written notice to CONTRACTOR may, without prejudice to any other remedy he may have, make good such deficiencies and the cost thereof (including compensation for additional professional services) shall be charged against CONTRACTOR if ENGINEER approves such action, in which case a Change Order shall be issued incorporating the necessary revisions in the Contract Documents, including an appropriate reduction in the Contract Price. If the payments then or thereafter due CONTRACTOR are not sufficient to cover such amount, CONTRACTOR shall pay the difference to OWNER.

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SECTION 14-PAYMENTS TO CONTRACTOR AND COMPLETION

Schedules:

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

Application for Progress Payment: On or before the 25th day of each month, Contractor shall meet with the Project manager for preparation of a pay estimate, which shall be submitted to the Engineer by the project manager on or before the 26th day of the month for review. After final approval by Engineer, the pay estimate will be submitted to the finance division, payment will be made 15 days after finance division receives pay estimate.

14.2 At least fifteen days before each progress payment falls due (but not more often than once a month), CONTRACTOR shall submit to ENGINEER for review an Application for Payment filled out and signed by CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents and also as ENGINEER may reasonably require. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Payment shall also be accompanied by such data, satisfactory to OWNER, as will establish OWNER'S title to the material and equipment and protect OWNER'S interest therein, including applicable insurance. Each subsequent Application for Payment shall include an affidavit of CONTRACTOR stating that all previous progress payments received on account of the Work have been applied to discharge in full all of CONTRACTOR'S obligations reflected in prior Applications for Payment. If OWNER fails to make CONTRACTOR a particular progress payment as herein specified, such failure shall not be held to violate or void this Contract.

Contractor's Warranty of Title:

14.3 CONTRACTOR warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to OWNER at the time of payment free and clear of all liens, claims, security interests and encumbrances.

Review of Applications for Progress Payment:

14.4 ENGINEER will, within ten days after receipt of each Application for Payment, either indicate in writing a recommendation of payment or present the Application to OWNER, or return the Application to CONTRACTOR indicating in writing ENGINEER'S reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application. OWNER shall, within ten days of presentation to him of the Application for Payment with ENGINEER'S recommendation, pay CONTRACTOR the amount recommended.

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14.5 ENGINEER'S recommendation of any payment requested in an Application for Payment will constitute a representation by ENGINEER to OWNER, based on ENGINEER'S on-site observations of the Work in progress as an experienced and qualified design professional and on ENGINEER'S review of the Application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated; that, to the best of ENGINEER'S knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning Project upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and any qualifications stated in the recommendation; and that CONTRACTOR is entitled to payment of the amount recommended. However, by recommending any such payment, ENGINEER will not thereby be deemed to have represented the exhaustive or continuous on-site inspections have been made to check the quality of the quantity of the Work, or that the means, methods, techniques, sequences, and procedures of construction have been reviewed or that any examination has been made to ascertain how or for what purpose CONTRACTOR has used the monies paid or to be paid to CONTRACTOR on account of the Contract Price, or that title to any Work, materials or equipment has passed to OWNER free and clear of any Liens.

14.6 ENGINEER'S recommendation of final payment will constitute an additional representation by ENGINEER to OWNER that the conditions precedent to CONTRACTOR'S being entitled to final payment as set forth in paragraph 14.13 have been fulfilled.

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

14.7.1 The Work is defective, or completed Work has been damaged requiring correction or replacement,

14.7.2 Written claims have been made against OWNER or Liens have been filed in connection with the Work,

14.7.3 The Contract Price has been reduced because of Modifications,

14.7.4 OWNER has been required to correct defective work or complete the Work in accordance with paragraph 13.12,

14.7.5 CONTRACTOR'S unsatisfactory prosecution of the Work in accordance with the Contract Documents, or

14.7.6 CONTRACTOR'S failure to make payment to SubContractors, or for labor, materials or equipment.

Substantial Completion:

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

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

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

Partial Utilization:

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

14.10.1 OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any part of the Work which OWNER believes to be substantially complete and which may be so used without significant interference with construction of the other parts of the Work. If CONTRACTOR agrees, CONTRACTOR will certify to OWNER and ENGINEER that said part of the Work is substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time thereafter, OWNER, CONTRACTOR and ENGINEER shall make an inspection of that part of the Work to determine its status of completion. If ENGINEER does not consider that part of the Work to be substantially complete, ENGINEER will notify OWNER and CONTRACTOR in writing giving his reasons therefor. If ENGINEER considers that part of the Work to be substantially complete, ENGINEER will execute and deliver to OWNER and CONTRACTOR a certificate to that effect, fixing the date of Substantial Completion as to that part of the Work, attaching thereto a tentative list of items to be completed or corrected before final payment. Prior to issuing a certificate of Substantial Completion as to part of the Work, ENGINEER will deliver to OWNER and CONTRACTOR a written recommendation as to the division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, maintenance, utilities and insurance for that part of the Work which shall become binding upon OWNER and CONTRACTOR at the time of issuing the definitive certificate of Substantial Completion as to that part of the Work unless OWNER and CONTRACTOR shall have otherwise agreed in writing and so informed ENGINEER. OWNER shall have the right to exclude CONTRACTOR from any part of the Work which ENGINEER has so certified to be substantially complete, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

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

14.10.3 No occupancy of part of the Work or taking over of operations of a facility will be accomplished prior to compliance with the requirements of Subsection 5.2 with respect to property insurance.

Final Inspection:

14.11 Upon written notice from CONTRACTOR that the Work is complete, ENGINEER will make a final inspection with OWNER and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to remedy such deficiencies.

Final Application for Payment:

14.12 After CONTRACTOR has completed all such corrections to the satisfaction of ENGINEER and delivered Certificate of Substantial Completion, Certification of Project Acceptance and Performance, Labor Standards Certification, Record Drawings and O&M Manual, Consent of Surety Company to Final Payment, Affidavit of Payment and Release of Liens, Letter from Owner Accepting Manuals and Record Drawings, and Final Adjusting Change Order, all schedules, guarantees, Bonds, and other documents--all as required by the Contract Documents, and after ENGINEER has indicated that the Work is acceptable (subject to the provisions of paragraph 14.16), CONTRACTOR may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all documentation called for in the Contract Documents and such other data and schedules as ENGINEER may reasonably require, together with complete and legally effective releases or waivers (satisfactory to OWNER) of all Liens arising out of or filed in connection with the Work. In lieu thereof and as approved by OWNER, CONTRACTOR may furnish receipts or releases in full; an affidavit of CONTRACTOR that the releases and receipts include all labor, services, material and equipment for which a Lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which OWNER or his property might in any way be responsible, have been paid or otherwise satisfied; and consent of the Surety, if any, to final payment. If any SubContractor, manufacturer, fabricator, supplier or distributor fails to furnish a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to OWNER to indemnify OWNER against any Lien.

Final Payment and Acceptance:

14.13 If, on the basis of ENGINEER'S observation of the Work during construction and final inspection, and ENGINEER'S review of the final Application for Payment and accompanying documentation--all as required by the Contract Documents, ENGINEER is satisfied that the Work has been completed and CONTRACTOR has fulfilled with all of his obligations under the Contract Documents, ENGINEER will, within ten days after receipt of the final Application for Payment, indicate in writing his recommendation of payment and present the

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Application to OWNER for payment. Thereupon, ENGINEER will give written notice to OWNER and CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.16. Otherwise, ENGINEER will return the Application to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application. If the Application and accompanying documentation are appropriate as to form and substance, OWNER shall, within thirty days after receipt thereof, pay CONTRACTOR the amount recommended by ENGINEER.

*Note: The following close-out documents are required submittals to receive final payment: Certificate of Substantial Completion, Certification of Project Acceptance and Performance, Labor Standards Certification, Record Drawings and O&M Manual, Consent of Surety Company to Final Payment, Affidavit of Payment and Release of Liens, Letter from Owner Accepting Manuals and Record Drawings, Final Pay Request and Final Adjusting Change Order.

*Project Close-out Forms are located at the end of this section.

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

CONTRACTOR'S Continuing Obligation:

14.15 CONTRACTOR'S obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by ENGINEER, nor the issuance of a certificate of Substantial Completion, nor any payment by OWNER to CONTRACTOR under the Contract Documents, nor any use or occupancy of the Work or any part thereof by OWNER, nor any act of acceptance by OWNER nor any failure to do so, nor the issuance of a notice of acceptability by ENGINEER pursuant to paragraph 14.13, nor any correction of defective Work by OWNER shall constitute an acceptance of Work not in accordance with the Contract Documents or a release of CONTRACTOR'S obligation to perform the Work in accordance with the Contract Documents.

Waiver of Claims:

14.16 The making and acceptance of final payment shall constitute:

14.16.1 a waiver of all claims by OWNER against CONTRACTOR, except claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to paragraph 14.11 or from failure to comply with the Contract Documents or the terms of any special guarantees specified therein; however, it shall not constitute a waiver by OWNER of any rights in respect of CONTRACTOR'S continuing obligations under the Contract Documents; and

14.16.2 a waiver of all claims by Contractor against OWNER other than those previously made in

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writing and still unsettled.

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

14.18 MILEAGE will be reimbursed at the current federally approved IRS rate for contractors, sub-contractors, and others where mileage is claimed.

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CERTIFICATE OF SUBSTANTIAL COMPLETION

Name of Project: _____ Contractor: _____
 CPB Project #: _____ Phase _____ Address: _____
 Project: _____
 Location: _____ Contract No.: _____

SUBSTANTIAL COMPLETION DATE:

Contract Work:

Complete Partial - _____

Substantial Completion and warranty time periods affected are defined in the General Conditions of the Contract. All parties listed below have reviewed the work under this Contract and recommend issuance of the substantial completion. The _____ (Owner) concurs with NMED's acceptance of the A/E's certification, will assume full possession and responsibility for the project or designated area, less punch list items, on the above listed Date. All warranties will start the day of substantial completion, with the exception of those items on the punch list, which will start on the date of Final Acceptance. The responsibility of the Contractor for heat, light, other utilities and Builders' Risk Insurance required by the Contract ceases at Substantial Completion. Other required insurance remains the Contractor's responsibility until the Certificate of Final Acceptance is issued.

PUNCH LIST: N/A

A list of items to be completed or corrected, prepared by the Architect/Engineer, checked and augmented as required by the Prime Contractor or Construction Manager is appended hereto. The failure to include any item on such list does not relieve the Contractor of the responsibility to complete all work in accordance with the Contract documents.

The Contractor shall complete or correct the work on the punch list appended hereto by ____/____/____.
 The punch list consists of ____ items. Mo. Day Year

Contractor	Representative	Date
Coordinating Contractor	Representative	Date
Architect/Engineer	Representative	Date
Community Name	Representative	Date

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CPB Project Manager

Date

Attachments:
Punch List

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Certification of Project Acceptance and Performance

Local Authority (Grantee): _____

Address: _____

Project Number: _____

I, _____, of the firm of _____ a Registered Professional Engineer in the State of New Mexico, and project engineer for the above referenced local authority, for certain improvements consisting of _____ improvements do hereby certify that I have inspected the project and to the best of my knowledge it was substantially completed according to plans and specifications and/ or duly authorized change orders.

The Contractor on this job is _____

I DO HEREBY CERTIFY SUBSTANTIAL COMPLETION OF THE ABOVE REFERRED TO IMPROVEMENTS AND RECOMMEND ACCEPTANCE.

Dated this ____ day of _____, 20__.

(Signature and stamp) P.E.

ACCEPTANCE AND CERTIFICATION OF PERFORMANCE BY LOCAL AUTHORITY:

I DO HEREBY CERTIFY THAT THE PROJECT HAS BEEN COMPLETED AND IS OPERATIONAL AND HAS BEEN ACCEPTED BY THE GRANTEE.

Dated this ____ day of _____, 20__.

(Signature and Title, Grantee Authorized Representative)

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LABOR STANDARDS CERTIFICATION

Local Authority: **Insert Name of Grantee/Loanee**

Address: **Insert Owner Address**

Project Name: **Insert Project Name**

Project Number: **Insert grant/loan number**

Contractor Name:

Contractor Address:

Total Contract Amount:

By this letter, we certify that the New Mexico Public Works Minimum Wage Act, §13-4-11 NMSA 1978, has been complied with for all construction contracts in excess of \$60,000 for the referenced project. Weekly payroll records are available to the New Mexico Department of Labor – Labor and Industry Division, demonstrating compliance with the minimum wage rate determinations and wage scales were posted in a prominent location at the job site. The Contractor filed the required Notification of Award (NOA) and a Statement of Intent to Pay Prevailing Wages form as well as the Affidavit of Wages Paid form and supplied a copy to the owner to demonstrate compliance with these requirements.

_____	_____
Name ¹	
_____	_____
Signature	Date
_____	_____
Name ²	
_____	_____
Signature	Date

1 Signed by the Grantee Representative or Signatory Authority

2 Signed by Contractor's Representative

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CONSENT OF SURETY COMPANY TO FINAL PAYMENT

Project Name: _____

Location: _____

A/E#: _____

1. TO (Owner): _____

Address: _____

City/ State/ Zip: _____

Contractor: _____ Contract Date: _____

In accordance with the provisions of the Contract between the Owner and the Contractor as indicated above,
the
(here insert name and address of Surety Company)

_____, Surety Company,

on bond of (here insert name and address of Contractor)
_____, Contractor,

hereby approves of the final payment to the Contractor, and agrees that final payment to the Contractor shall not relieve the Surety Company of any of its obligations to the _____, Owner, as set forth in the said Surety Company's bond.

IN WITNESS WHEREOF, _____
the Surety Company has hereunto set its hand this ____ day of _____, ____

Surety Company

Signature of Authorized Representative

Title

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Attest:

(Seal)

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AFFIDAVIT OF PAYMENT AND RELEASE OF LIENS

To All Whom It May Concern, To The Following I Do Solemnly Swear And Affirm:

WHEREAS, the undersigned has been employed by **Person or Firm**³ to furnish **labor and materials** for **nature and extent of work**⁴ work, under a contract **Identify contract(s)**⁵ for improvement of the premises described as **improvements and location**⁶ in the **Name of Community**⁷, County of **Name of County**, State of New Mexico of which, **Name of Owner** is the Owner.

NOW, THEREFORE, this **0 day of Month, 2004**, for and in consideration of the sum of **\$0.00**⁸ Dollars paid simultaneously herewith, the receipt whereof is hereby acknowledged by the undersigned, the undersigned does hereby waive and release any lien rights to, or claim of lien with respect to and on said above described premises, and the improvements thereon, and on the monies or other considerations due or to become due from the Owner, on account of labor, services, materials, fixtures, apparatus or machinery heretofore or which may hereafter be furnished by the undersigned to or for the above described premises by virtue of said contract.

The undersigned, as Contractor for the above named Contract pursuant to the Conditions of the Contract hereby certifies that, except as listed below, he/she has paid in full or has otherwise satisfied all obligations for all materials and equipment furnished, for all work, labor, and services performed, and for all known indebtedness and claims against the Contractor for damages arising in any manner in connection with the performance of the Contract referenced above for which the Owner or his/her property might in any way be held responsible.

The undersigned hereby certifies that all work required to be done under terms of the above-described Contract has been fully performed and completed in conformance with the Contract and that applicable provisions of the New Mexico Public Works Minimum Wage Act (§ 13-4-11 NMSA 1978) have been met.

EXCEPTIONS: *Insert Exceptions*⁹

Name of sole ownership, corporation or partnership¹⁰

Name of Authorized Representative

Title

INSTRUCTIONS:

- 3 Person or firm with whom you agreed to furnish either labor, or services, or materials, or both.
- 4 Fill in the nature and extent of work; strike the word labor or the materials if not in the contract.
- 5 Identify contract(s) by number, description, and extent of work.
- 6 Describe improvements and location of the premises to exclude all others.
- 7 Name community, such as City of _____, Village of _____, or Unincorporated Area known as _____.
- 8 Amount shown should be the amount actually received and equal to the total adjusted contract.
- 9 If none, write "None". If required by Owner, Contractor shall furnish bond satisfactory to Owner for each exception.
- 10 If waiver is for a corporation, corporate name should be used, corporate seal affixed and title of officer signing affidavit should be set forth; if waiver is for a partnership, the partnership name should be used, partner should sign and designate as partner.

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Signature of Authorized Representative

Date

CITY OF LOVINGTON
LOVE STREET AND WASHINGTON AVENUE STREET IMPROVEMENTS
FUNDING SOURCE: 216-48080-2240 BID NUMBER: LOVEST-2017

CONTRACT CHANGE ORDER	
CONTRACTOR:	CHANGE ORDER No. PROJECT: PROJECT No.
OWNER:	ENGINEER:
DATE OF ISSUE:	EFFECTIVE DATE:
<p>The Contractor is hereby directed to make the following changes in the Contract Documents.</p> <p>Description:</p> <p>Reason for Change Order:</p> <p>Attachments: <i>(List documents supporting change and justifying cost and time)</i></p>	
CHANGE IN CONTRACT PRICE:	CHANGE IN CONTRACT TIMES:
Original Contract Price: \$	Original Contract Times: <i>(calendar days or dates)</i>
Net changes from previous C. O.'s No. _____ to _____ \$	Net changes from previous C. O.'s No. _____ to _____ <i>(calendar days)</i>
Contract Price Prior to this Change Order: \$	Contract Times prior to this Change Order: <i>(calendar days or dates)</i>
Net Increase (decrease) of this Change Order: \$	Net Increase (decrease) of this Change Order: <i>(calendar days)</i>
Contract Price with all Approved Change Orders: \$	Contract Times with all Approved Change Orders: <i>(calendar days or dates)</i>
RECOMMENDED: (Engineer) By: Date:	APPROVED: (Owner) By: Date:
ACCEPTED: (Contractor) By: Date:	REVIEWED: (Funding Agency) By: Date:

CITY OF LOVINGTON
LOVE STREET AND WASHINGTON AVENUE STREET IMPROVEMENTS
FUNDING SOURCE: 216-48080-2240 BID NUMBER: LOVEST-2017

RECORD DRAWINGS & O&M MANUALS

Local Authority:

Address:

Project Name:

Project Number:

This letter confirms that _____ has received a full set of reproducible record drawings for the referenced project as required by the grant/loan agreement. The Drawings of Record do not differ substantially from the plans approved for construction and have been accepted by the _____. The Drawings of Record are on file at _____ and available for review by NMED. **We also confirm that we have received an acceptable, complete set of Operation & Maintenance Manuals for equipment installed with this project.**

-OR-

This letter will confirm that we have received a full set of reproducible record drawings for the referenced project as required by the grant/loan agreement. The Drawings of Record differ substantially from the plans approved for construction as noted on the attached sheets¹¹. The Drawings of Record have been accepted by the _____, are on file at _____ and available for review by NMED. **We also confirm that we have received an acceptable, complete set of Operation & Maintenance Manuals for equipment installed with this project.**

Name¹²

¹¹ Attach Changes Only

¹² Signed by the Grantee Representative or Signatory Authority

Signature

Date

SECTION 15--SUSPENSION OF WORK AND TERMINATION

OWNER May Suspend Work:

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

OWNER May Terminate:

15.2 If CONTRACTOR is adjudged bankrupt or insolvent, or if he makes a general assignment for the benefit of his creditors, or if a trustee or receiver is appointed for CONTRACTOR or for any of his property, or if he files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws, or if he repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or if he repeatedly fails to make prompt payments to SubContractors or for labor, materials, or equipment, or if he disregards laws, ordinances, rules, regulations, or orders of any public body having jurisdiction, or if he disregards the authority of ENGINEER, or if he otherwise violates any provision of the Contract Documents, then OWNER may, without prejudice to any other right or remedy and after giving CONTRACTOR and his Surety seven days' written notice, terminate the services of CONTRACTOR and take possession of the Project and of all materials, equipment, tools, construction equipment and machinery thereon owned by CONTRACTOR and finish the Work by whatever method he may deem expedient. In such case CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct and indirect costs of completing the Project, including compensation for additional professional services, such excess shall be paid to CONTRACTOR. If such costs exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. Such costs incurred by OWNER shall be determined by ENGINEER and incorporated in a Change Order.

15.3 Where CONTRACTOR'S services have been so terminated by Owner, said terminations shall not affect any rights of OWNER against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of monies by OWNER due CONTRACTOR will not release CONTRACTOR from liability.

15.4 Upon seven days' written notice to CONTRACTOR and ENGINEER, OWNER may, without cause and without prejudice to any other right or remedy, elect to abandon the Project and terminate the Agreement. In such case, CONTRACTOR shall be paid for all Work executed and expense sustained plus a reasonable profit.

Contractor May Stop Work or Terminate:

15.5 If, through no act or fault of CONTRACTOR, the Work is suspended for a period of more than ninety days by OWNER or under an order of court or other public authority, or ENGINEER fails to act on any Application for Payment within thirty days after it is submitted, or OWNER fails to pay CONTRACTOR any sum approved by ENGINEER or awarded by arbitrators within thirty days of its approval and presentation, then CONTRACTOR may, upon seven days' written notice to OWNER and ENGINEER, terminate the Agreement and recover from OWNER payment for all Work executed and any expense sustained plus a reasonable profit. In addition and in lieu of terminating the Agreement, if ENGINEER has failed to act on an Application for Payment or OWNER has failed to make any payment as aforesaid, CONTRACTOR may, upon seven days' notice to OWNER and ENGINEER, stop the Work until he has been paid all amounts then due.

TERMINATION OF CONTRACT CLAUSE: The terms of this Agreement are contingent upon sufficient appropriations and authorization by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, OWNER may immediately terminate this Agreement by giving CONTRACTOR written notice of such termination. The OWNER's decision as to whether sufficient appropriations are available shall be accepted by CONTRACTOR and shall be final. CONTRACTOR hereby waives any rights to assert an impairment of contract claim against the OWNER or the New Mexico Environment Department (NMED), or the State of New Mexico in the event of immediate or early termination of this Agreement by the OWNER or NMED.

This contract is funded in whole or in part by funds made available under a NMED Grant Agreement. Should the NMED early terminate the grant agreement, OWNER may early terminate this contract by providing CONTRACTOR written notice of such termination. In the event of termination pursuant to this paragraph, OWNER's only liability shall be to pay CONTRACTOR or vendor for acceptable goods delivered and services rendered before the termination date.

SECTION 16--BREACH

16.1 BREACH

In the event that the Contractor breaches this contract, then the Contractor shall be liable to the Owner for any and all damages, costs and reasonable attorney's fees the Owner may incur to remedy that breach.

SECTION 17--MISCELLANEOUS

Giving Notice:

17.1 Whenever any provision of the Contract Documents requires the giving of written notice, it shall be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended or sent by mail, postage prepaid, to the last business address known to him who give the notice.

Computation of Time:

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

General:

17.3 CONTRACTOR shall not be entitled to interest on any periodic payment or final payment because of a delay in payment by OWNER.

17.4 All Specifications, Drawings, and copies thereof furnished by ENGINEER shall remain his property. They shall not be used on another Project, and with the exception of those sets which have been signed in connection with the execution of the Agreement, shall be returned to him on request upon completion of the Project.

17.5 The duties and obligations imposed by these Special Conditions and the rights and remedies available hereunder and, in particular but without limitation, the warranties, guarantees, and obligations imposed upon CONTRACTOR by paragraphs 6.30, 13.1, 13.10, and 14.3 and the rights and remedies available to OWNER and ENGINEER hereunder shall be in addition to and shall not be construed in any way as a limitation of any rights and remedies available to them which are otherwise imposed or available by law, by special guarantee or by other provisions of the Contract Documents.

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

17.7 The Contract Documents shall be governed by the laws of the State of New Mexico.

Minimum Wages:

17.8 CONTRACTOR and any SubContractor performing work under this Contract shall comply fully with the "Public Works Minimum Wage Act," Sections 13-4-11 through 13-4-17 NMSA 1978 and all amendments thereto, which provides in part that "the Contractor shall pay all mechanics and laborers employed on the site of the project unconditionally and not less often than once a week, and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications."

The minimum hourly rate of wage which may be paid to workmen in each trade or occupation required for the work under the contract employed in the performance of the contract either by the CONTRACTOR or SubContractor or by other persons doing or contracting to do the whole or part of the work contemplated by the contract shall be as set forth in the schedule of Minimum Wage Rates appearing in Section 9 of this Contract, and the workmen employed in the performance of the contract shall be paid not less than the applicable specified minimum hourly rate of wage as such is set forth in said schedule.

The scale of wages to be paid shall be posted by the CONTRACTOR in a prominent and easily accessible place at the site of the work; and it is further provided that there may be withheld from the CONTRACTOR so much of accrued payments as may be considered necessary by the OWNER to pay to laborers and mechanics employed by the CONTRACTOR or SubContractor on the Work, the difference between the rates of wages required by the contract to be paid laborers and mechanics on the Work and the rates of wages received by such laborers and mechanics and not refunded to the CONTRACTOR, SubContractors, or their agents.

The attention of CONTRACTOR and any SubContractor performing Work under this Contract is directed to Section 13-4-12 NMSA 1978, which reads in part as follows:

A. As used in Section 13-4-11 NMSA 1978, "wages", "scale of wages", "wage rates", "minimum wages", and "prevailing wages" include:

- (1) The basic hourly rate of pay, and
- (2) The amount of:

(a) The rate of contribution irrevocably made by a CONTRACTOR or SubContractor to a trustee or a third person pursuant to a fund, plan, or program; and

(b) The rate of costs to a CONTRACTOR or SubContractor which reasonably may be anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected for: 1) medical or hospital care, 2) pensions on retirement or death, 3) compensation for injuries or illness resulting from occupational activity, or 4) insurance to provide for any of the foregoing, and for 5) employment benefits, 6) life insurance, 7) disability and sickness insurance, 8) accident insurance, 9) vacation and holiday pay, 10) costs of apprenticeship or other similar programs, or for 11) other bona fide fringe benefits, but only where the CONTRACTOR or SubContractor is not required by other federal, state, or local law to provide any of the foregoing or similar benefits.

B. However, the obligation of a CONTRACTOR or SubContractor to make payment in accordance with the prevailing wage determinations of a State Labor Commissioner, insofar as Section 13-4-11 NMSA 1978 or other sections or legislative acts incorporating Section 13-4-11 NMSA 1978 are concerned, may be discharged by:

- (1) The making of payments in cash;
- (2) The making of contributions of a type referred to in Subsection A(2a); or
- (3) The assumption of an enforceable commitment to bear the costs of a plan or program of a type referred to in Subsection A (2b), or any combination thereof, where the aggregate of any payments or contributions and costs therefore is not less than the rate of pay described in Section 13-4-11 NMSA 1978,

plus the amount referred to in this section.

In the event it is found by the State Labor Commissioner that any laborer or mechanic employed by the CONTRACTOR or SubContractor on the site of the Project covered by the contract has been or is being paid as a result of a willful violation of a rate of wages less than the rate of wages required by the contract, the OWNER may, by written notice to the CONTRACTOR and his SubContractor, if the violation involves the SubContractor, terminate their right to proceed with the work or such part of the work as to which there has been a willful failure to pay the required wages; and the OWNER may prosecute the work to completion by contract or otherwise, and the CONTRACTOR and his sureties shall be liable to the State of New Mexico for any excess costs occasioned thereby. Any party receiving notice of termination of his contract or subcontract under the provisions of this section may appeal the finding of the State Labor Commissioner as provided in the Public Works Minimum Wage Act.

There is no representation on the part of the OWNER that labor can be obtained at the hourly rates shown in the General Conditions. It is the responsibility of bidders to inform themselves as to local labor conditions and prospective changes or adjustments of wage rates. No increase in the contract price shall be allowed or authorized on account of the payment of wage rates in excess of those listed.

The CONTRACTOR and any SubContractor performing work under this contract shall submit certified copies of weekly payrolls to the State Labor and Industrial Commission not later than five (5) working days after close of the payroll period. Certified copies of payrolls shall also be submitted to the ENGINEER and the OWNER. The scale of wages must be posted by the CONTRACTOR at the project site. The weekly payrolls shall conform to the following:

(1) Form and Content: Any particular form may be used for CONTRACTOR or SubContractor payrolls, provided all payrolls contain the following information:

(a) The employee's full name, address, and social security number.

(i) The employee's full name and social security number need only appear on the first payroll on which his name appears.

(ii) The employee's address need be shown only on the first submitted payroll on which his name appears, unless a change of address necessitates an additional submittal to reflect the new address.

(b) The employee's classification (or classifications).

(c) The employee's hourly wage rate (or rates); and, where applicable, his overtime hourly wage rate (or rates).

(d) The daily and weekly hours worked in each classification, including actual overtime hours worked (not adjusted).

(e) The itemized deductions made.

(f) The net wages paid.

(2) Numbering Payrolls: All payrolls shall be numbered starting with number one (1) for the first payroll at the

beginning of the job and continuing in numerical order until the job is completed.

(3) Certification of Payrolls: The CONTRACTOR and each of his SubContractors shall submit a weekly statement of compliance in the following form:

Date

I, _____ do hereby state:

1. That I pay or supervise the payment of the persons employed by _____ on the that during the payroll period commencing on the _____ day of _____, 20____, and ending the day of _____, 20____, all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said from the full weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person other than deductions permitted by law.
2. That any payrolls under this contract required to be submitted for the above period are correct and complete, that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.
3. That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a state apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor.

17.8.1 Minimum Wages (Federal)

In the event that any work under this contract involved Federal Funds, then the prevailing area Wage Rate Decision listed by the U.S. Department of Labor shall be made a part of this contract. Whenever a conflict exists between the State and Federal Minimum Hourly Wage Rates, the higher of the conflicting wage rates shall govern.

Archeological Salvage and Reports:

17.9 Where objects of historical, archeological, and paleontological value, including ruins, sites, buildings, artifacts, fossils, and other objects of antiquity are encountered within the area on which CONTRACTOR'S operations are performed, CONTRACTOR shall postpone operations in the area, preserve such objects from disturbance or damage, and immediately notify OWNER and ENGINEER of their existence and location.

Upon receipt of such notification, OWNER will arrange for the disposition of the objects or for the recording of data relative thereto and will notify CONTRACTOR when it is proper for him to proceed with the Work in the affected area. In this regard, OWNER may consult the Museum of New Mexico or other appropriate agency as to the nature and disposition of such objects. If CONTRACTOR is directed to perform any work in salvaging said objects, CONTRACTOR shall do so in accordance with the "Changes in the Work" provision of Section 10.

Measurement:

17.10 Measurement of Quantities for Unit Price Work.

Unless otherwise specified, linear or area quantities of work such as grading, landscaping, paving, curb, gutter, walk, or other work of a similar nature shall be determined from measurements or dimensions of such work and computed in horizontal planes. However, linear quantities of underground cable, fencing, piling, and timber shall be considered as being the true length measured along the longitudinal axis thereof. For pipe work, see related sections; but if the method of measurement for pipe work is not stated therein, it shall be measured along the longitudinal axis of the pipe in place from center of manhole to center of manhole. A station when used as a definition or term of measurement will be 100 linear feet.

Volumetric quantities shall be determined by the average end area method, digital terrain model or other means deemed suitable by the ENGINEER including but not limited to cross sections, and GPS construction survey data collection.

Work, material and construction items not specifically defined in the Unit Price Bid form and listed in the plans, details and specification shall be incidental to other items and cost should be included in the related construction work.

Method of Measurement:

17.11 Materials and items of work which are to be paid for on the basis of measurement shall be measured in accordance with the methods stipulated in the particular sections herein covering materials or types of work.

Unless otherwise provided, when mineral aggregate or roadway material is being paid for by weight, deductions from pay quantities will be made for the weight of water in excess of 3% if the material is to be treated with bitumen and 6% if the material is to be waterbound.

Units of Measurement:

17.12 Measurements shall be in accordance with U.S. Standard Measures. A pound shall be avoirdupois. A ton shall be 2,000 pounds. The unit of liquid measure shall be the U.S. gallon.

Certified Weights:

17.13 All materials to be paid for at a contract unit price per ton shall be weighed on platform scales furnished by the CONTRACTOR or his supplier of materials at the CONTRACTOR'S expense or such materials may be weighed on certified public scales at the CONTRACTOR'S expense. All scales shall be of adequate size to permit the entire vehicle to rest on the scale platform while being weighed. Scales furnished by the CONTRACTOR shall be installed on beams, piers, or foundations of sufficient strength and bearing to prevent the weighing mechanism supporting the scale platform from settling. The weighing facilities shall include a weatherproof scale house with a minimum floor area of thirty-two (32) square feet and equipped with adequate heat and light.

SECTION 18--UTILITIES

Policy on the proximity of water and sewer lines:

18.1 Whenever possible, it is desirable to lay parallel water and sewer lines at least ten (10) feet apart horizontally, and the water line should be a higher elevation than the sewer. In cases where it is not practical to maintain a ten (10) foot separation, ENGINEER may allow deviation on a case-by-case basis. Such deviation may allow installation of the sewer line closer to the water line, provided the water line is in a separate trench or on an undisturbed earth shelf located on one side of the sewer at an elevation such that the bottom of the water line is at least eighteen (18) inches above the top of the sewer.

When water and sewer lines cross each other, the water line shall be at least eighteen (18) inches above the sewer. The crossing shall be arranged so that the sewer joints will be equidistant and as far as possible from the water line joints.

When it is impossible to obtain the horizontal and vertical separations stipulated above, one of the following options may be allowed upon approval of ENGINEER.

18.1.1 Where sewer lines parallel water lines and room permits, the water line shall be removed and relocated under direction and approval of ENGINEER and in accordance with Section 801 of the Supplemental Technical Specifications. Where it is not possible to relocate the water line, the sewer line shall be designed and constructed in a manner and of material comparable to that used for water mains, either ductile iron, polyvinyl chloride or polyethylene, and shall be pressure tested in accordance with Section 801.16 of the Technical Specifications. Lines constructed as such shall extend from manhole to manhole. Payment for such water line equivalent sewer lines shall be by the linear foot for additional costs incurred over that of a typical sewer line as shown in the Bid.

18.1.2 Where sewer lines and water lines cross, the sewer line shall be encased in concrete ten (10) feet either side of the water line or be designed and constructed in a manner of material comparable to that used for water mains as specified in 18.1.1 above. No separate or additional payment for sewer line/water line crossings shall be made for sections of concrete encasement as required or when the sewer line is constructed equivalent to water line.

18.2 Existing House Sewer Lateral or Water Service Connections, and Replacement of Mains

18.2.1 Where house service line connections to existing sewer mains and water mains are encountered, the CONTRACTOR shall insure that the service line will not be disturbed or damaged. Should any service line connection be broken during the construction of the new line, it shall be replaced by the CONTRACTOR with SCH 80 PVC. There shall be no extra compensation for replacement of disturbed or damaged service lines.

18.2.2 When a new sanitary sewer main is required as a replacement for an existing line, the alignment of the new line coincides with the existing line and the grade of the new line is approximately at the same grade as the existing line or lower, then the existing line shall be removed or dealt with as ordered by the ENGINEER. The cost of this work when applicable shall be paid for under the appropriate item in the Bid. The ENGINEER / PROJECT MANAGER shall determine if it is necessary to pump sewage around the replacement work, or if it is possible to temporarily plug the sewer line during the replacement operation. In the case of by-pass pumping, it will be paid for as indicated in the Bid.

18.3 Operation of the Existing Water System

18.3.1 All shutoffs shall be done by the OWNER. The CONTRACTOR shall notify the OWNER 48 hours prior to the date of required shutoff. The OWNER shall make a "trial shutoff" of the system within the project limits prior to issuance of Notice to Proceed, in order to preclude delay of emergency and required shutoffs. If valves cannot be located or are not in operating condition, the OWNER shall notify the CONTRACTOR as soon as possible. The OWNER'S personnel will locate the valves, make the necessary repairs, or determine an alternate method of making the shutoff.

18.3.2 The CONTRACTOR shall notify each household, office, or other water user affected, that a shutoff will be made, giving full details. Notification shall be by personal contact. If the consumer is not available when contact is attempted, the CONTRACTOR shall leave a door knob hanger notification. Notifications shall be given at least twenty - four hours in advance of a shutoff.

18.3.3 The OWNER shall notify the Fire Department of when fire hydrants are taken out of service and returned to service.

18.3.4 The OWNER shall be responsible for the actual operation of the valves.

18.3.5 EMERGENCY BREAKS. The Water Division shall be notified immediately so that it may perform the shutoff.

18.4 Protection and Restoration of Property

18.4.1 The CONTRACTOR shall never unnecessarily interfere with or interrupt the services of any public utility having property within or adjacent to the streets, alleys and easements involved in the work and shall take all necessary precaution and effort to locate and protect all underground conduit, cables, pipes, water mains, sewers, structures, gas lines, trees, monuments, power lines, telephone and telegraph lines, traffic control devices and other structures, both below and above ground. He shall give all Public Utility Companies a reasonable notice in writing, in no event less than forty-eight (48) hours, for any work that he contemplates which would interfere in any way whatsoever with the service of any existing public utility and City-owned facilities. If such public utility does not cooperate for the protection of its services, the CONTRACTOR shall notify the ENGINEER / PROJECT MANAGER. Utility lines shall be located by the CONTRACTOR far enough in advance of construction work in order that the owner of such lines may raise, lower, realign or remove lines and structures, if necessary, and in order that the ENGINEER may make any line and grade changes necessary should the existing utility lines conflict with the work under construction providing such adjustment do not materially affect the work. The CONTRACTOR shall immediately report any damages to property or plant of public utility companies and City property to the company or owner involved, and to the ENGINEER.

18.4.2 CONTRACTOR shall restore at his own expense any public, City-owned, or private property damage, for which he is directly responsible, to a condition equal to that existing before damage. CONTRACTOR shall promptly notify his insurance carrier of the alleged damage, and if he refuses to do so, upon notice, OWNER may cause such restoration and deduct cost from monies due, or which may become due, to the CONTRACTOR.

18.4.3 The CONTRACTOR shall not remove, realign, or adjust any official City traffic control device. He

shall give the Traffic Engineering Division forty-eight (48) hours notice of any official City traffic control devices that need to be moved. The Traffic Engineering Division shall move all traffic control devices as soon as practical thereafter.

18.5 Abandoned Utilities

18.5.1 Unless otherwise specified, the CONTRACTOR shall remove all interfering portions of utilities which are shown on the drawings as "abandoned" or "to be abandoned in place" and which interfere with the construction of the project. All abandoned lines shown on the drawings as "abandoned" or "abandoned in place" or found during construction shall be removed, if they interfere with the PROJECT, unless otherwise specified. ENGINEER may allow lines to be abandoned in place or capped as a minimum. All costs involved in said removals shall be included in the prices bid for the various items of work. All such abandoned utilities removed by the CONTRACTOR shall be stored on the site where directed and shall remain the property of the owner utility company or Contracting agency as determined by the ENGINEER.

18.5.2 Where utilities are shown on the drawings as "abandoned" or "to be abandoned in place", it shall be the CONTRACTOR'S responsibility to contact the utility company involved within 48 hours prior to excavating around such utilities to ascertain that the abandonment of the utility has been completed.

18.6 Location of Existing Utilities

18.6.1 The public utilities shall be responsible to locate their utilities and provide information as required by the NM One-Call. If field verification excavations are required, the contractor shall excavate and determine exact location and identify any conflicts.

18.6.2 Utilities which upon exploration are found to interfere with the permanent project work, or within the trenching prism as defined by OSHA, will be relocated, altered, or reconstructed by others or the ENGINEER may order changes in location, line or grade of structures being built in order to avoid the utilities. The cost of such changes will be paid for under applicable bid items.

18.7 By the CONTRACTOR or by Others--Unknown Utilities Disclosed During the Contract Work

18.7.1 This project requires the CONTRACTOR to call the State One-Call number and the City of Lovington to locate all lines in the work area a minimum of 48 hours prior to digging in any location. Owners of underground pipelines or utilities are required to properly spot their lines within the 48 hour time period.

18.7.1.1 If the CONTRACTOR begins trench excavation and an unexpected line is then found, the cost of repair for any damages to the line will be the responsibility of the owner of the line. The location of proposed improvements may be adjusted to a new location at no additional cost, unless otherwise specified, to the OWNER.

18.7.1.2 When any portion of the utility is in close proximity and more or less parallel to a structure or conduit, CONTRACTOR shall advise OWNER thereof, and in cooperation with OWNER, provide and place the necessary support for proper protection to insure continuous and safe operation of the utility structure. All costs for such work shall be borne by CONTRACTOR.

18.8 Responsibility of the CONTRACTOR

18.8.1 The CONTRACTOR shall be held responsible for all costs for the repair of any and all damage to the contract work or to any utility (which is previously known and disclosed to him by the utility) as may be caused by his operations. Utilities which are relocated by others in order to avoid interference with structures and which cross the project work shall be maintained in their relocated positions by the CONTRACTOR. All costs for such work shall be absorbed or included in the prices bid for the various items of work.

18.9 Delays Caused by Failure to Relocate Utilities

18.9.1 Where parties other than CONTRACTOR are responsible for the relocation of utilities and a delay in CONTRACTOR'S work is caused by the failure on the part of said parties to remove or relocate such utilities in time to prevent such delay, or by any action or lack of action on the part of OWNER, it shall be understood that CONTRACTOR shall not be entitled, as a result of such delay to his work, to damages or additional payments over and above the Contract Price. If delays in CONTRACTOR'S work are caused by the reasons mentioned herein, CONTRACTOR shall be entitled to an extension of time. The length of such extension of time will be determined by ENGINEER with consideration as to the effect of the delay on the Project as a whole.

18.9.2 In order to minimize delays to CONTRACTOR caused by the failure of other parties to relocate utilities which interfere with structures, CONTRACTOR, upon request to ENGINEER, may be permitted to temporarily omit the portion of the Work affected by the utility. The portion thus omitted shall be constructed by CONTRACTOR immediately following the relocation of the utility involved.

SECTION 19--TRAFFIC

19.1 All signing, barricading and channelization should be required to conform to the Manual on Uniform Traffic Control Devices (MUTCD, 2009). All signs, barricades, and channelizing devices used at night shall be reflectorized with enclosed lens sheeting (both orange and white). All advance warning signs used at night shall be equipped with flashing warning lights; all barricades and channelizing devices used at night shall be equipped with steady burning warning lights.

END OF SECTION