



VILLAGE OF MAGDALENA

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WWW.VILLAGEOFMAGDALENA.COM

AGENDA

NOTICE OF REGULAR MEETING OF THE VILLAGE OF MAGDALENA BOARD OF TRUSTEES

MONDAY, JUNE 8, 2020

VILLAGE HALL 108 N. MAIN STREET 6:00 PM

DUE TO THE NATIONAL, STATE AND COUNTY COVID-19 DECLARED EMERGENCY AND PUBLIC HEALTH ORDER DATED MARCH 23, 2020 LIMITING GATHERINGS TO LESS THAN 5 PERSONS THE MEETING WILL NOT BE PHYSICALLY OPEN TO THE PUBLIC. ALL MEMBERS OF THE PUBLIC WILL BE ABLE TO ATTEND AND LISTEN TO THE MEETING VIA FACEBOOK LIVE AT THE FOLLOWING LINK: facebook.com/villageofmagdalenaofficial

1. CALL TO ORDER
2. ROLL CALL
3. PLEDGE OF ALLEGIANCE
4. APPROVAL OF AGENDA
5. APPROVAL OF MINUTES
 - a. REGULAR MEETING – MAY 26, 2020
6. APPROVAL OF CASH BALANCE REPORT
7. APPROVAL OF BILLS
8. MAYOR'S REPORT
9. CLERK'S REPORT
10. DEPARTMENT REPORTS
 - a. EMS
 - b. FIRE
 - c. MARSHAL
 - d. JUDGE
 - e. PUBLIC WORKS
 - f. LIBRARY
11. BOHANNAN HUSTON, INC. AND JOHN SHOEMAKER & ASSOCIATES - VILLAGE OF MAGDALENA WATER WELL & SYSTEM IMPROVEMENTS PROJECT STATUS REPORT AND HYDROGEOLOGIC INVESTIGATION REPORT
12. DISCUSSION & POSSIBLE DECISION REGARDING APPROVAL OF RESOLUTION NO. 2020-08, PARTICIPATION IN LOCAL GOVERNMENT ROAD FUND PROGRAM ADMINISTERED BY NEW MEXICO DEPARTMENT OF TRANSPORTATION
13. PUBLIC INPUT – 1 TOPIC PER PERSON - 3 MINUTE LIMIT

PUBLIC COMMENT MAY BE MADE VIA EMAIL AND WILL BE ENTERED AND/OR READ INTO THE MEETING MINUTES (IF LESS THAN 3 MINUTES) BY EMAILING COMMENTS TO: mayor@villageofmagdalena.com THE DEADLINE FOR WRITTEN PUBLIC COMMENTS TO BE RECEIVED IS MONDAY, JUNE 8, 2020 AT 12:00 PM. EMAILED PUBLIC COMMENT MUST CONTAIN THE AUTHOR'S NAME AND PHYSICAL ADDRESS
14. ADJOURNMENT

**MINUTES OF THE REGULAR MEETING OF THE VILLAGE OF MAGDALENA
BOARD OF TRUSTEES
HELD MONDAY, MAY 26, 2020 AT 6:00 PM**

DRAFT

DUE TO THE NATIONAL, STATE AND COUNTY COVID-19 DECLARED EMERGENCY AND PUBLIC HEALTH ORDER DATED MARCH 23, 2020 LIMITING GATHERINGS TO LESS THAN 5 PERSONS THE MEETING WILL NOT BE PHYSICALLY OPEN TO THE PUBLIC. ALL MEMBERS OF THE PUBLIC WILL BE ABLE TO ATTEND AND LISTEN TO THE MEETING VIA FACEBOOK LIVE AT THE FOLLOWING LINK:

[facebook.com/villageofmagdalenaofficial](https://www.facebook.com/villageofmagdalenaofficial)

Mayor Richard Rumpf called the meeting to order at 6:00 p.m.

PRESENT: Mayor Richard Rumpf, Clark Brown, Deborah Abingdon – Clerk/Treasurer, Kathy Stout – Attorney

Participating via Video Conference: Trustees: Harvan Conrad, Donna Dawson, James Nelson (Mr. Nelson logged on at 6:10p.m.).

GUESTS: Carleen Gomez - Deputy Clerk

Mayor Richard Rumpf requested that all in attendance, recite the Pledge of Allegiance.

APPROVAL OF AGENDA: Mr. Brown made a motion to approve the agenda as presented, seconded by Ms. Dawson. The motion carried unanimously.

APPROVAL OF MINUTES: Ms. Dawson made a motion to approve the minutes of the Regular Meeting held on May 11, 2020, as presented, seconded by Mr. Brown. The motion carried unanimously.

Mr. Brown made a motion to approve the minutes of the Special Work Session held on May 18th. Ms. Conrad seconded the motion. The motion carried unanimously.

APPROVAL OF CASH BALANCE REPORT: Ms. Dawson made a motion to approve the cash balance report, as presented, seconded by Mr. Brown. The motion carried unanimously.

APPROVAL OF BILLS: Deputy Clerk Gomez stated that she would like to add three bills to the list which had to be paid before the next meeting. They were to Socorro Electric Co-op in the amount of \$3,530.78, Carrott-Top Industries in the amount of \$141.94 and Purchase Power in the amount of \$208.99.

Mr. Brown made a motion to approve the bill list to include the three additional bills. The motion was seconded by Ms. Dawson. The motion carried unanimously.

A-1 Quality Redi-Mix	\$2,167.22	Provelocity LLC	\$640.00
Acosta Equipment	\$73.97	Quick Med Claims, LLC	\$220.52
Consultant Pharmacist	\$431.50	Quill	\$313.28
JV Prof Automotive	\$2,129.05	Rak's Building Supplies	\$44.51
Konica Minolta	\$496.42	Romero's Tires	\$3,008.72
L & M Glass	\$257.85	Vexus Fiber	\$48.93
Magdalena Muni Schools	\$81.71	W.S. Darley	\$1,400.55
Mesa-Arizona Depository	\$1,121.88	W.W. Plumbing	\$59.03
Motorola Solutions	\$299.00		
Pavement Sealants	\$1,481.53		

MAYOR'S REPORT

- The Mayor said that he would like to revisit the idea of getting a van to transport community members. The initial purchase price will be \$500.00.
- The waterline/well project is still a work-in progress.
- He reported that we are continuing to work on the airport improvement project.

CLERK'S REPORT

2019 Audit

Rice & Associates Auditors are returning to the Village to resume work on the 2019 Audit. Once approved, the new audit firm will be working under the proposed timeline for the 2020 audit:

- | | |
|---------------------------|--------------------|
| • Planning | June 2020 |
| • Fieldwork Week (1week) | September 21, 2020 |
| • Preliminary Draft | November 23, 2020 |
| • Submit to State Auditor | December 4, 2020 |

Interim Budget

- ❖ Once Council approves the interim budget, it will be submitted to the state.
- ❖ The final budget along with the June 30th Quarterly Report as well as any additional Budget Adjustment Resolutions will be due by July 31st.
- ❖ We may need to schedule a special meeting of the Council at the end of July.

Airport

Current FAA Project

- The FAA will be providing approximately \$166,000.00 in funding for the excavation of the runway safety area at the airport.
- The state will be assisting with funding for the project. They will pay approximately \$16,000.00. These funds are already encumbered.
- The village is not being required to provide matching funds.
- Bids will be opened on June 2, 2020.

- Engineers from Bohannon Huston will take a few days to evaluate the bids and then make a recommendation.
- We will then be asking Trustees to give permission to submit the FAA grant application.
- At the same meeting, we ask trustees permission for the Mayor to sign the grant offer when it comes in.
- Work at the airport should start sometime in July and take about 45 days. The airport will be closed during this time.

Cares Grant

We are eligible for a \$1,000.00 Cares Grant. This can be used for maintenance. Our airport engineer suggests that we put that money towards repairing the roof of the pilot's lounge. We have a quote of \$4,200.00. The State Aviation Division of DOT has indicated that they should be able to reimburse the remaining cost of the repairs.

DISCUSSION & POSSIBLE DECISION CONCERNING APPROVAL OF FISCAL YEAR 2020-2021 BUDGET

Trustee Dawson asked Michael Steininger if the fact that the interim budget included a 2% raise held the board to applying it? Mr. Steininger replied that including the raise in the budget did not mean that they had to give the raise. He went on to explain that if the governing body decided to give the raise, it could be given at any time in the new year and not necessarily July first.

Trustee Dawson moved to accept the interim budget as presented. Trustee Brown seconded the motion.

Mayor Rumpf asked for a Roll Call Vote:

Harvan Conrad AYE

Donna Dawson AYE

Clark Brown AYE

The motion carried unanimously.

DISCUSSION & POSSIBLE DECISION CONCERNING APPROVAL OF AUDIT CONTRACT WITH BEASLEY, MITCHELL & CO., LLP

Trustee Dawson asked legal counsel if it was legal for the contract to be brought to the council after it had already been signed. Clerk Abingdon shared that the State-imposed deadline was May 15th. Attorney Kathy Stout replied that there were times that deadlines require that contracts be signed and submitted before the next meeting, but that Trustees are entitled to review matters involving expenditure of funds--particularly a large expenditure such as an auditor contract, and if for some reason it was not subsequently approved, that I would research and take up the issue of getting the Village out of the contract. Clerk Abingdon added that it was her understanding that the fee listed in the contract was appropriate and in-line for the services to be rendered.

Trustee Conrad moved to ratify the auditor's contract. Trustee Brown seconded the motion.
Mayor Rumpf asked for a Roll Call Vote:

Clark Brown AYE

Donna Dawson AYE

Harvan Conrad AYE

James Nelson AYE

The motion carried unanimously.

PUBLIC INPUT –1 TOPIC PER PERSON – 3 MINUTE LIMIT

PUBLIC COMMENT MAY BE MADE VIA EMAIL AND WILL BE ENTERED AND/OR READ INTO THE MEETING MINUTES (IF LESS THAN 3 MINUTES) BY EMAILING COMMENTS TO: mayor@villageofmagdalena.com THE DEADLINE FOR WRITTEN PUBLIC COMMENTS TO BE RECEIVED IS MONDAY, MAY 26, 2020 AT 12:00 PM. EMAILED PUBLIC COMMENT MUST CONTAIN THE AUTHOR'S NAME AND PHYSICAL ADDRESS.

Mayor Rumpf reported that he had not received any inquiries from the public.

Deputy Clerk Gomez asked if the Mayor would like to respond to a question that came in through Facebook? The Mayor said yes.

The Question came from Carol Courtney. She wanted to know if the Village planned to update and keep the website current? The Mayor responded, yes he was working with Jeff Joseph to update the website.

Ms. Dawson moved to adjourn the meeting at 6:15 p.m., the motion was seconded by Mr. Brown. The motion carried unanimously.

Respectfully Submitted,

Deborah Abingdon
Clerk/Treasurer

Richard Rumpf
Mayor

June 8, 2020 Meeting

Clerk's Report

2019 Audit

Rice & Associates Auditors are now finalizing their work on the 2019 audit. The Auditor's Exit Interview is scheduled for Tuesday at 10:30. The Mayor, Clerk/Treasurer, Deputy Clerk, and Trustee Conrad will be participating in the Exit Interview.

Interim Budget

- ❖ The Interim Budget has been submitted to the state and approved.
 - See enclosed State of NM Department of Finance and Administration Letter.
- ❖ Approval and certification of the final budget is contingent upon submission of several items, including the June 30th Quarterly Report as well as any additional Budget Adjustment Resolutions.
- ❖ We may need to schedule a special meeting of the Council at the end of July.

Airport Project

Current FAA Project

- Engineers from Bohannon Huston are seeking additional funding for the project.

Fraudulent Activities

On June 1st, the Deputy Clerk discovered a fraudulent charge was made on a second Village credit card. She has disputed the charge and the card has now been cancelled. As a precaution, we also cancelled the Mayor's Village-issued credit card.

We are currently reviewing policies and procedures concerning the handling of sensitive documents.

If this occurs again, we will file a report with the State Auditor's office and the State Police.

On June 1st, I discovered that I have been the victim of identity theft and that one or more credit cards had been opened in my name. At this time, we do not have evidence that this incident is related to the Village issues, but further investigations will take place.

MICHELLE LUJAN GRISHAM
GOVERNOR



OLIVIA PADILLA-JACKSON
CABINET SECRETARY

DONNIE J. QUINTANA
DIRECTOR

STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
LOCAL GOVERNMENT DIVISION
Bataan Memorial Building ♦ 407 Galisteo St. ♦ Suite 202 ♦ Santa Fe, NM 87501
PHONE (505) 827-4950 ♦ FAX (505) 827-4948

May 27, 2020

The Honorable Richard Rumpf
Village of Magdalena
PO Box 145
Magdalena, NM 87825

Dear Mayor Rumpf:

In accordance with Section 6-6-2B NMSA 1978, the Department of Finance and Administration, Local Government Division (LGD) has examined the proposed budget of your local government entity for Fiscal Year 2020-21 and hereby grants approval and certification for use. Sufficient resources appear to be available to cover proposed budgeted expenditures. However, we must point out that the final approval will be certified no later than the first Monday of September 2020.

Approval and certification of your final budget is contingent upon submission of the following by no later than **July 31, 2020**:

- A resolution adopting the 2020-21 operating budget
- The June 30, 2020 (4th) quarter financial report
- A resolution approving the June 30, 2020 (4th quarter) financial report
- Debt service schedule which reconciles with budgeted amounts
- Revenue checklist by fund which reconciles with budgeted amounts
- Investment schedule which reconciles with budgeted amounts on recap
- Budget Work Plan questionnaire
- Revised unaudited beginning cash balances as of July 1, 2020 that agree with ending cash balances as of June 30, 2020 per the 4th quarter financial report
- To avoid reporting negative unaudited beginning cash balances for any Fund (if negative balances exist at June 30th) it is highly recommended that a final budget adjustment resolution (BAR) must be prepared, approved and submitted by the July 31st deadline with temporary transfers from General Fund to any Fund showing a negative beginning cash balance
- Adjustments/revisions discussed with staff (attached)

Please note final budget certification will be “conditional” if one or both of the following situations apply:

- Pursuant to the *Budget Certification of Local Public Bodies* rule 2.2.3 NMAC if your entity’s Fiscal Year 2019 audit has not been filed with the Office of the State Auditor; and/or
- Pursuant to Section 6-6-2K NMSA 1978 if your entity’s Fiscal Year 2020-21 budget was not

submitted on the Local Government Budget Management System (LGBMS)

If you have questions regarding this matter, please call Sherri Green of my staff at 505-827-4933, or via email at shirleyt.green@state.nm.us.

Sincerely,



On behalf of:

Donnie J. Quintana, Director
Local Government Division

xc: file

Village of Magdalena

**DEPARTMENT OF FINANCE AND ADMINISTRATION, LOCAL GOVERNMENT DIVISION'S
ADJUSTMENTS TO THE FISCAL YEAR 2020-21 BUDGET:**

FUND	EXPLANATION
LEPF	<p>Please note: these grant revenues must be fully expended in the fiscal year. State law prohibits accumulation of grant revenue in this fund. Furthermore, if there will be a carryover amount, approval must be requested in the LGD carryover request form.</p> <p>Note: Entity has an intercept of \$13,101 that must be budgeted as an expenditure within LEPF on the final budget and is already included in the \$21,200 revenue which matches LGD's distribution spreadsheet.</p>
Debt	Verify and adjust detailed budget document to agree with amounts listed on the Debt Schedule.
GRT	Verify, and adjust if necessary, Gross Receipts Tax Revenue to accommodate budgeted expenditures.
Property Tax	Verify, and adjust if necessary, Property Tax Revenue to accommodate budgeted expenditures.

NOTE:

Please note that the General Fund cash balance is being depleted. If not addressed in the interim prior to final budget submission, the governing body will be warned of this occurrence in the final budget approval letter.

Carleen Gomez

From: Jim Nelson <jcnelson@villageofmagdalena.com>
Sent: Thursday, June 4, 2020 3:27 PM
To: Carleen Gomez
Subject: EMS report for May

6 calls in May

--

Jim Nelson

Trustee
EMS coordinator
Village of Magdalena

Magdalena Marshal's Office

<i>Monthly Report</i>	<i>Month: May</i>	<i>Year: 2020</i>
Marshal Zamora	ID#:Mag-1	
Total Miles Driven:	677	
<u>GENERAL CALLS:</u>	<u>AMOUNT</u>	<u>REVENUE</u>
TRAFFIC CITATIONS: Village Ordinances	9	280
TRAFFIC CITATIONS: State Statutes		
CRIMINAL CITATIONS		
ANIMAL CONTROL CITATIONS		
TRAFFIC ACCIDENTS		
D.W.I. ARRESTS		
FELONY ARRESTS		
MISDEMEANOR ARRESTS	3	
12 HOUR HOLD ARREST	1	
CRIMINAL INVESTIGATIONS	6	
JUVENILE CASES		
DOMESTIC CASES		
CRIMINAL DAMAGE / PROPERTY		
<u>ASSISTANCE CALLS:</u>		
AMBULANCE/FIRE		
PUBLIC SERVICE	15	
NM STATE POLICE		
SHERIFF'S OFFICE		
NM FISH & GAME		
US BORDER PATROL		
US FOREST SERVICE		
<u>OTHER:</u>		
ALARM CALLS	10	
FINGERPRINTING		
Driving Tests		
Misc. Cases	10	
<u>TOTALS:</u>	54	280

MAGDALENA MARSHAL DEPARTMENT**MONTHLY VEHICLE EXPENDITURE REPORT**For the month of : **MAY** Year: **2020**License Number: **G93062**Make and Model: **FORD EXPID.2015**

Report due in NO LATER THAN THE 10th OF THE MONTH

Date	Beginning Mileage	Ending Mileage	Miles Traveled	Fuel Gallons	Amount	Motor Oil Quarts	Amount	Maintenance Section
1								01 Chassis Maintenance
2								02 Electrical Maintenance
3								03 Engine Maintenance
4								04 General Supplies
5								05 Interior Maintenance
6								06 Lubrication
7	59814	60029	215	21.3	36.2			07 Miscellaneous
8								09 Tire Purchase
9								10 Tire Repair
10								11 Wash and Wax
11								(Attach Copy of Invoices)
12								Invoice No.: _____ Amt.\$ _____
13								10
14								Invoice No.: _____ Amt.\$ _____
15								Date
16								Invoice No.: _____ Amt.\$ _____
17								Code: _____ Date: _____
18								Invoice No.: _____ Amt.\$ _____
19	60029	60273	244	21.5	39.6			Code: _____ Date: _____
20								Invoice No.: _____ Amt.\$ _____
21								Code: _____ Date: _____
22								Invoice No.: _____ Amt.\$ _____
23								Code: _____ Date: _____
24								Invoice No.: _____ Amt.\$ _____
25								Code: _____ Date: _____
26								Invoice No.: _____ Amt.\$ _____
27								Code: _____ Date: _____
28								Invoice No.: _____ Amt.\$ _____
29	60273	60491	218	20.2	40			Code: _____ Date: _____
30								Invoice No.: _____ Amt.\$ _____
31								
Totals			677	63	115.8			

I certify that the above is correct to the best of my knowledge.

Signature: Title: **MARSHAL**

Magdalena Marshal's Office

<i>Monthly Report</i>	<u>Month: MAY</u>	<u>Year: 2020</u>
Deputy Valenzuela	ID#:Mag-2	
Total Miles Driven:	1480	
<u>GENERAL CALLS:</u>	<u>AMOUNT</u>	<u>REVENUE</u>
TRAFFIC CITATIONS: Village Ordinances	13	702
TRAFFIC CITATIONS: State Statutes	1	0
CRIMINAL CITATIONS	1	
ANIMAL CONTROL CITATIONS	0	
TRAFFIC ACCIDENTS	0	
D.W.I. ARRESTS	1	
FELONY ARRESTS	0	
MISDEMEANOR ARRESTS	0	
12 HOUR HOLD ARREST		
CRIMINAL INVESTIGATIONS	5	
JUVENILE CASES/CYFD	0	
DOMESTIC CASES	0	
CRIMINAL DAMAGE / PROPERTY	0	
Larceny	0	
<u>ASSISTANCE CALLS:</u>		
AMBULANCE/FIRE	0	
PUBLIC SERVICE		
NM STATE POLICE		
SHERIFF'S OFFICE		
NM FISH & GAME	0	
US BORDER PATROL		
US FOREST SERVICE		
<u>OTHER:</u>		
ALARM CALLS	0	
FINGERPRINTING		
Driving Tests	0	
Misc. Cases	9	
<u>TOTALS:</u>	30	424

MAGDALENA MARSHAL DEPARTMENT**MONTHLY VEHICLE EXPENDITURE REPORT**For the month of : **MAY** Year: **2020**License Number: **_ G**Make and Model: **_ Chevy Sil**

Report due in NO LATER THAN THE 10th OF THE MONTH

Date	Beginning Mileage	Ending Mileage	Miles Traveled	Fuel Gallons	Amount	Motor Oil Quarts	Amount	Mainte
1								01 Chass
2								02 Electri
3								03 Engine
4		76068		21.7	\$37			04 Gener
5								05 Interio
6								06 Lubric
7								07 Miscel
8								09 Tire P
9	76068	76340		20.7	\$35.25			10 Tire R
10								11 Wash
11								(Attach C
12								Invoice N
13								3 7
14								Invoice No.
15	76340	76550		15.3	26			
16								Invoice No.
17	76550	76709		12.7	\$23.50			Code:_____
18								Invoice No.
19	76709	76873		12.2	22.5			Code:_____
20								Invoice No.
21								Code:_____
22	76873	76980		8.4	15.5			Invoice No.
23								Code:_____
24	76980	77163		14.4	28.5			Invoice No.
25								Code:_____
26								Invoice No.
27								Code:_____
28								Invoice No.
29	77163	77407		20.7	41			Code:_____
30								Invoice No.
31	77407	77564		11.7	23.5			
Totals		1496		137.8	314.25			

I certify that the above is correct to the best of my knowledge.

Signature:**Title:** Deputy Valenzuela

Magdalena Marshal's Office

Monthly Report	<u>Month: May</u>	<u>Year: 2020</u>
FRAERE, Mariano <i>#03</i>	ID# Mag 03	
Total Miles Driven:		
GENERAL CALLS:	<u>AMOUNT</u>	<u>REVENUE</u>
TRAFFIC CITATIONS: Village Ordinances	9	\$661.00
TRAFFIC CITATIONS: State Statutes		
CRIMINAL CITATIONS		
ANIMAL CONTROL CITATIONS		
TRAFFIC ACCIDENTS		
D.W.I. ARRESTS		
FELONY ARRESTS	1	
MISDEMEANOR ARRESTS	1	
12 HOUR HOLD ARREST		
CRIMINAL INVESTIGATIONS	2	
JUVENILE CASES		
DOMESTIC CASES	1	
CRIMINAL DAMAGE / PROPERTY	1	
WELFARE	1	
<u>ASSISTANCE CALLS:</u>		
AMBULANCE/FIRE		
PUBLIC SERVICE		
NM STATE POLICE		
SHERIFF'S OFFICE	1	
NM FISH & GAME		
US BORDER PATROL		
US FOREST SERVICE		
<u>OTHER:</u>		
ALARM CALLS	2	
FINGERPRINTING	1	
Driving Tests		
Misc. Cases	2	
<u>TOTALS:</u>	22	\$661.00

MAGDALENA MARSHAL DEPARTMENT**MONTHLY VEHICLE EXPENDITURE REPORT**

For the month of : May Year: 2020

License Number: _ G97490

Make and Model: _ 2016, Chev, Silverado

Report due in NO LATER THAN THE 10th OF THE MONTH								
Date	Beginning Mileage	Ending Mileage	Miles Traveled	Fuel Gallons	Amount	Motor Oil Quarts	Amount	Maintenance Section
1	68835	68933	98	12.38	\$37.26			04 General Supplies 05 Interior Maintenance 06 Lubrication 07 Miscellaneous 09 Tire Purchase 10 Tire Repair 11 Wash and Wax
2	68933	69027	94	12	\$36.00			
3								
4								
5								
6								
7								
8								
9	69027	69138	111	13.82	\$41.47			
10								
11								
12								(Attach Copy of Invoices)
13								Invoice# _____ Amt\$ _____
14								Invoice No# _____ Amt\$ _____
15	69138	69219	81	13.45	\$40.36			Date _____
16								Invoice No# _____ Amt\$ _____
17								Code: _____ Date: _____
18								Invoice# _____ Amt\$ _____
19								Code: _____ Date: _____
20								Invoice# _____ Amt\$ _____
21								Code: _____ Date: _____
22								Invoice# _____ Amt\$ _____
23	69219	69340	121	11.04	\$27.59	No Receipt Avail		Code: _____ Date: _____
24								Invoice# _____ Amt\$ _____
25								Code: _____ Date: _____
26								Invoice# _____ Amt\$ _____
27								Code: _____ Date: _____
28								Invoice# _____ Amt\$ _____
29								Code: _____ Date: _____
30	69340							Invoice# _____ Amt\$ _____
31								
Totals	69340		505	62.69	\$182.68			

I certify that the above is correct to the best of my knowledge.

Signature: 

Title: Deputy FRAERE 03



JUDGE'S REPORT MAY 2020

As per the New Mexico Supreme Courts request regarding Municipal Court Scaled Back measures due to COVID-19 the Magdalena Municipal Court is implementing the following:

- Issue no Warrants during the COVID-19 pandemic
- Release any jail inmates if they are apprehended on a Magdalena Municipal Warrant
- We will not be seeing anyone in the courtroom or office but keep in mind the five person rule as per the Governor and postpone all trials until further notice
- We are recommending that any payments to the Court be made over the phone, via the drop box or by mail
- Clean/disinfect the courtroom and office that is handling defendants and citation payments. Use gloves and or hand sanitizer for employees and the public.

The Magdalena Municipal Court is a small Court, normally only conducting hearings/trials twice per month, usually seeing one to approximately five cases per Court date. At this time there are no cases. We are also extending payments for 30 days.

The Court is working on a plan to re-open and will be hearing cases at the end of June.

Respectfully Submitted,

Simon Armijo
Magdalena Municipal Judge

Librarian's Report MAY 2020

	MAY 2020	MAY 2019
Days Open	0 (COVID-19)	22
Days Closed (other than norm)	22 (days we should have been open)	1

Circulation

	MAY 2020	MAY 2019
# of Books	51 (all adult)	72
# of DVDs	24	109
# of Books on CD	10	0
Total Books/DVDs/Audio	85	181
# of eBooks	99	80
# of Online Audio	29	39
Total eBooks/Online Audio	128	119
Total Circulation	213	300
ILL Processed	0	0

Computers/Wi-Fi

	MAY 2019	MAY 2019
Total Unique Wi-Fi Users*	116	--
Avg. # Wi-Fi Users per day	17	--

Other:

Due to COVID-19 concerns, the library was closed for the entire month of May. I was at the library Tuesday-Friday from 10-5:15pm, to make 29 hours each week.

For 5 weeks (April 12 – May 15), I made daily online Storytime videos on the library's Facebook page. Over the 25 days, I read 30 books and posted 29 videos (3 were only crafts). There was a good turn out for a rural community, and I received positive feedback for it.

Starting May 19th, I began offering curbside pickup services. Patrons can call or email to check out items, and then pick them up in the afternoon between 1-5pm.

The library will stay closed from June 1-6, so that I may wrap up ongoing projects, deep clean, and ready the library for reopening. I am planning to open the library again on June 9th. I do not know at the time of writing this report if I will require the use of masks or if entry numbers will be limited.

**Respectfully Submitted,
Ivy Stover,
Library Director**



COUNCIL MEETING - UPDATE

Meeting Date: June 8, 2020
Location/Time: Facebook Live/Village Hall – 6:00pm

I. Magdalena Well Investigations

- A. Evaluation of well sites and recommendations
 - 1. Presented by John Shomaker and Associates Powerpoint Attached
- B. Trujillo Supplemental Well discussion
 - 1. Location
 - 2. OSE Well Permit
 - 3. Design to be completed by June 30, 2020

II. Magdalena Waterline Replacement along US60

- A. Phase 1: 20-inch casing to be installed under US60
 - 1. NMDOT Environmental Clearance Complete
 - 2. Permit to be approved by June 12, 2020
 - 3. Recommendation of Award to Kelly Cable to Complete this work
 - i. Attached
 - ii. Kelly Cable needs to be under contract by June 12th per funding guidelines
 - iii. Work to be completed by June 30 per funding guidelines
- B. Phase 2: Waterline
 - 1. Design to be completed by June 30
 - i. Draft Plans Attached
 - 2. Environmental Information Document (EID) Ongoing

**EVALUATION OF POTENTIAL WELL SITES
VILLAGE OF MAGDALENA
NEW MEXICO**

PREPARED FOR
BOHANNAN HUSTON, INC. AND VILLAGE OF MAGDALENA
ALBUQUERQUE, NEW MEXICO NEW MEXICO

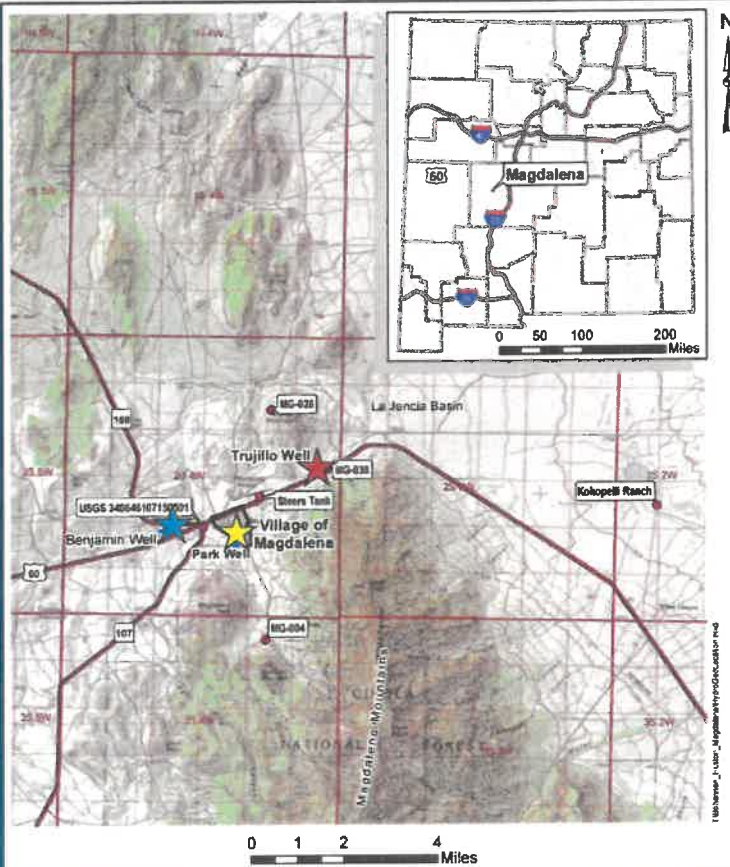
Presented by

Andrew P. Feltman CPG, PG
Senior Hydrogeologist
John Shomaker & Associates, Inc.

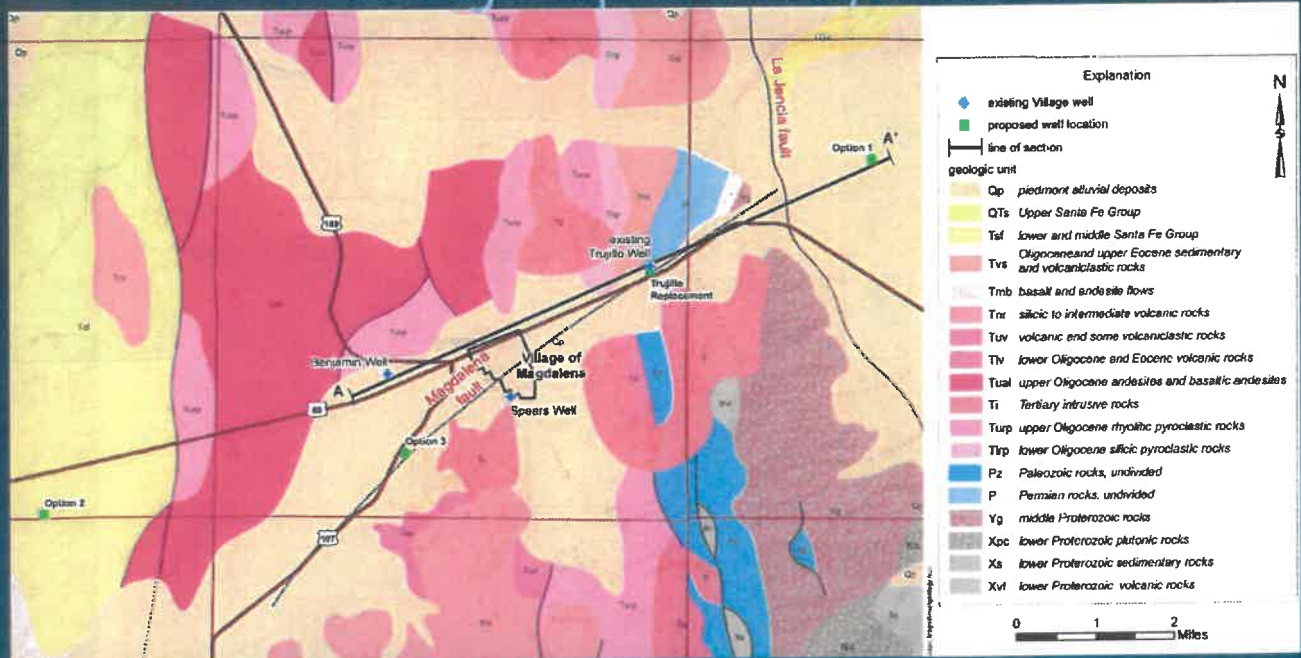


Topographic Map of the Study Area and Existing Village Wells

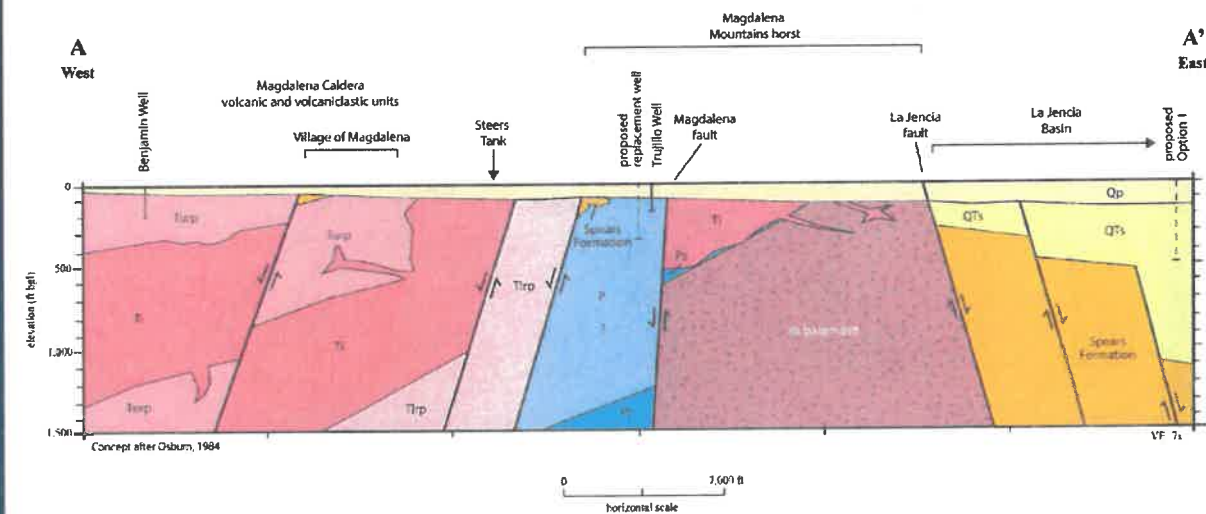
- ★ Trujillo Well
- ★ Benjamin Well
- ★ Spears Well



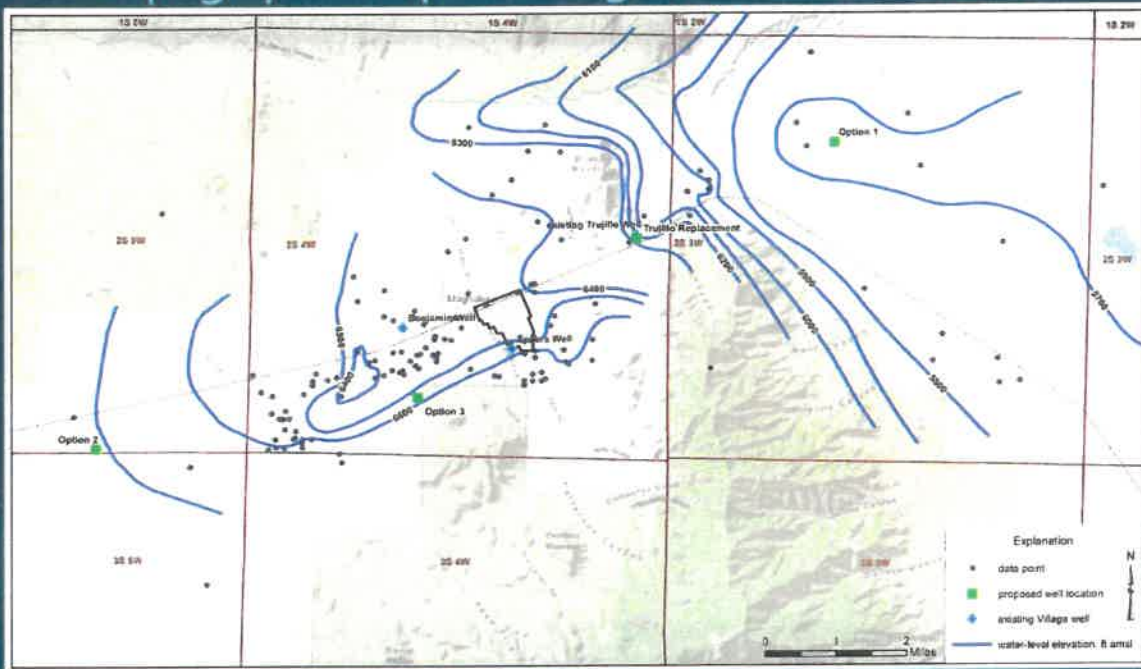
Geologic Map of the Study Area



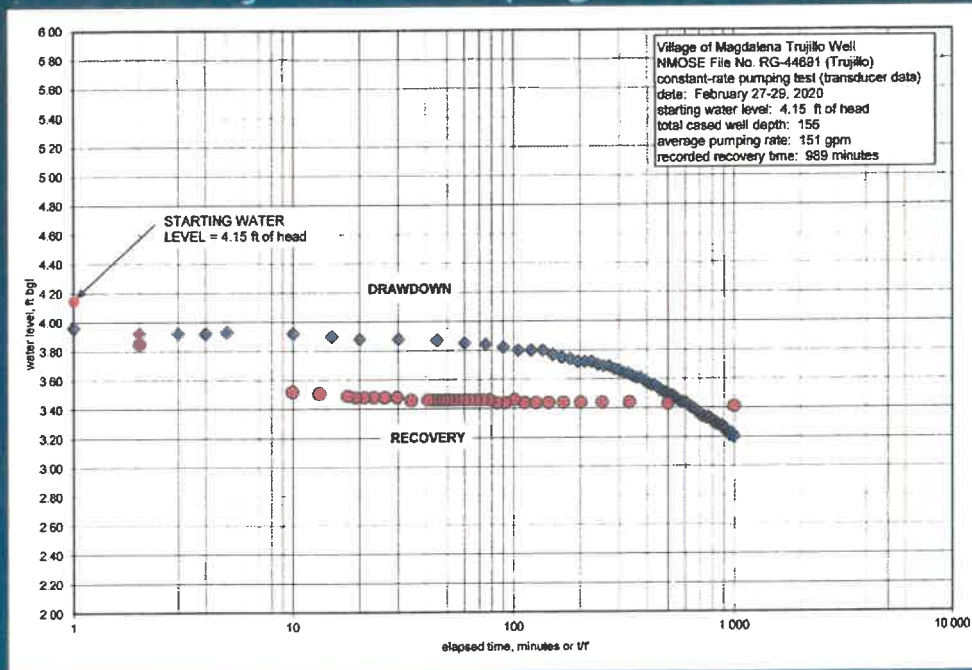
West-East Geologic Cross Section of the Study Area



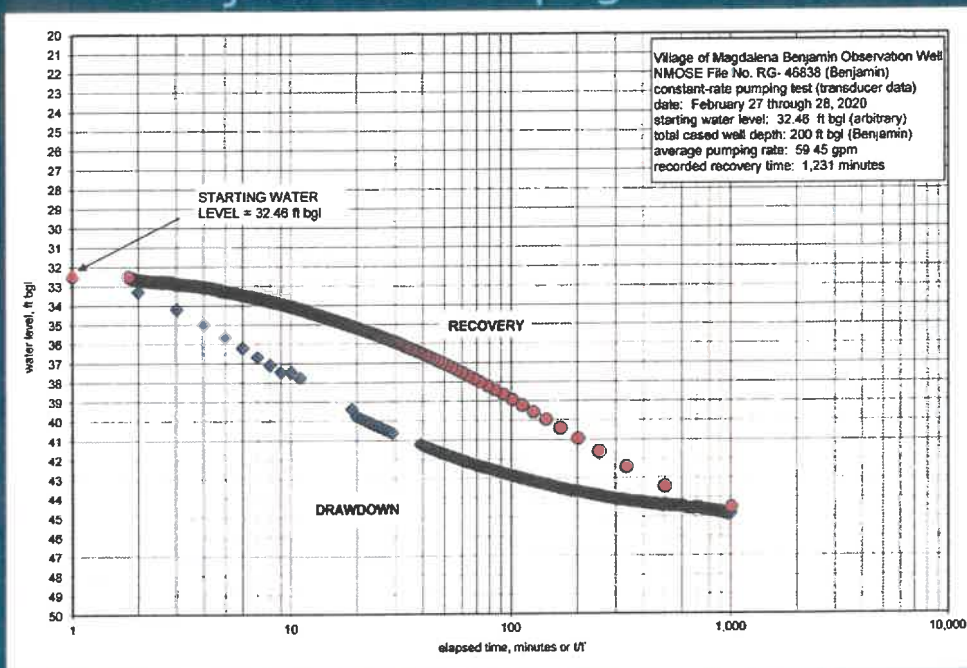
Topographic Map Showing Water-Level Contours



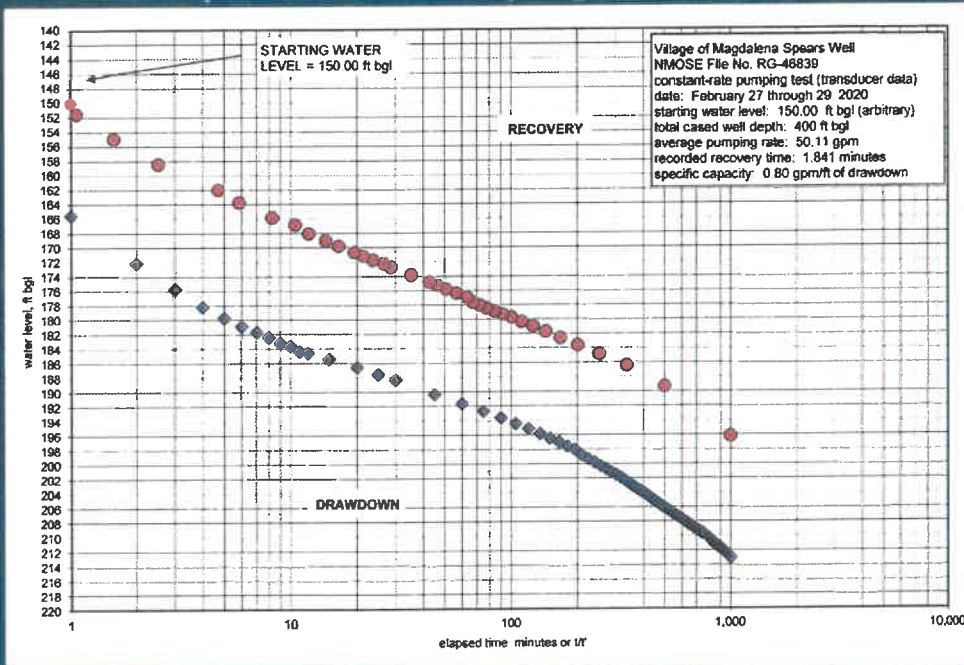
Trujillo Well Pumping Test (2020)



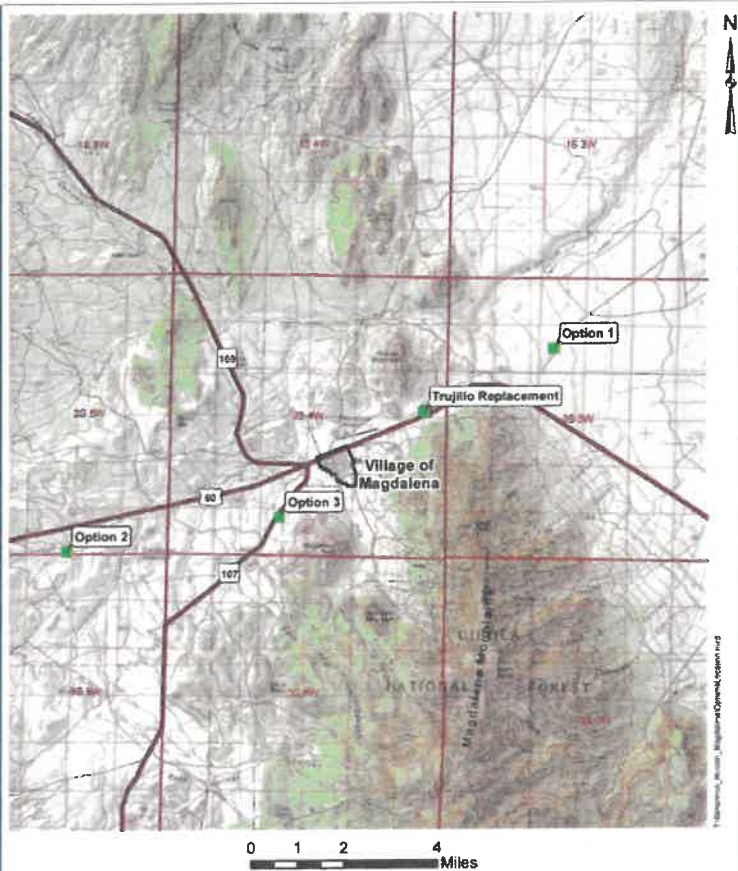
Benjamin Well Pumping Test (2020)



Spears Well Pumping Test (2020)



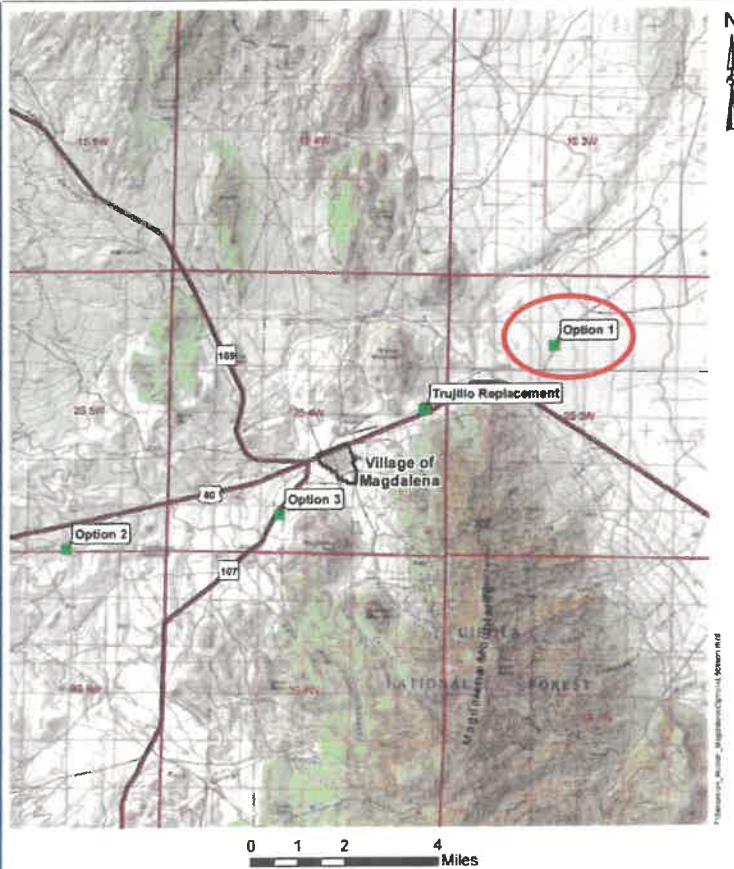
Topographic Map
Showing
Proposed Sites
For New Village Wells



Option 1

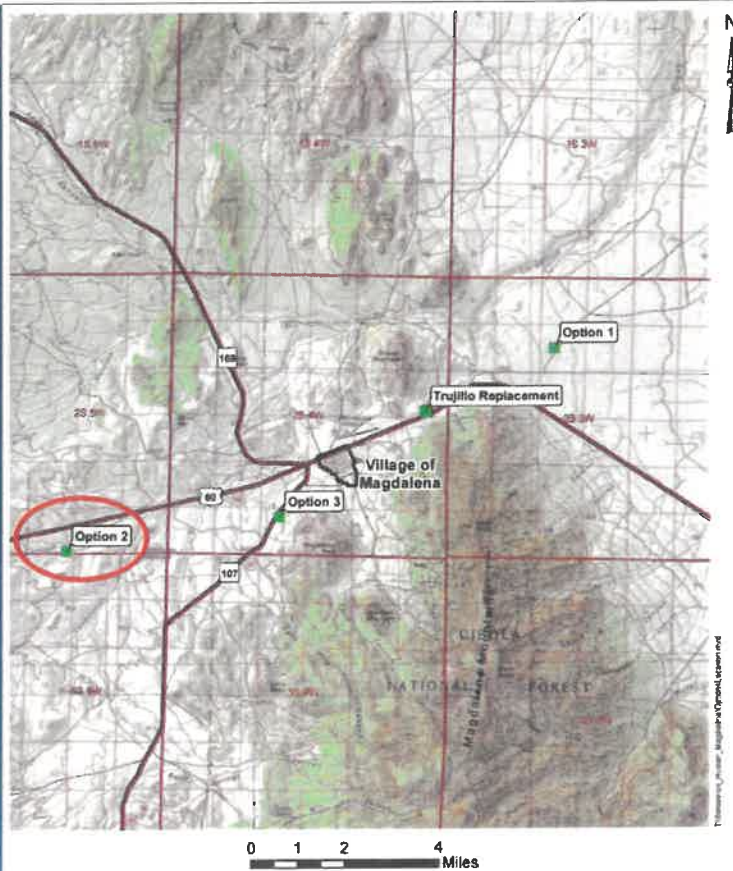
La Jencia Basin Alluvial Well

- 800-ft depth
- 4 miles east of Village
- 300 – 500 gpm possible
- Potential water rights issues
- Long, uphill pipeline



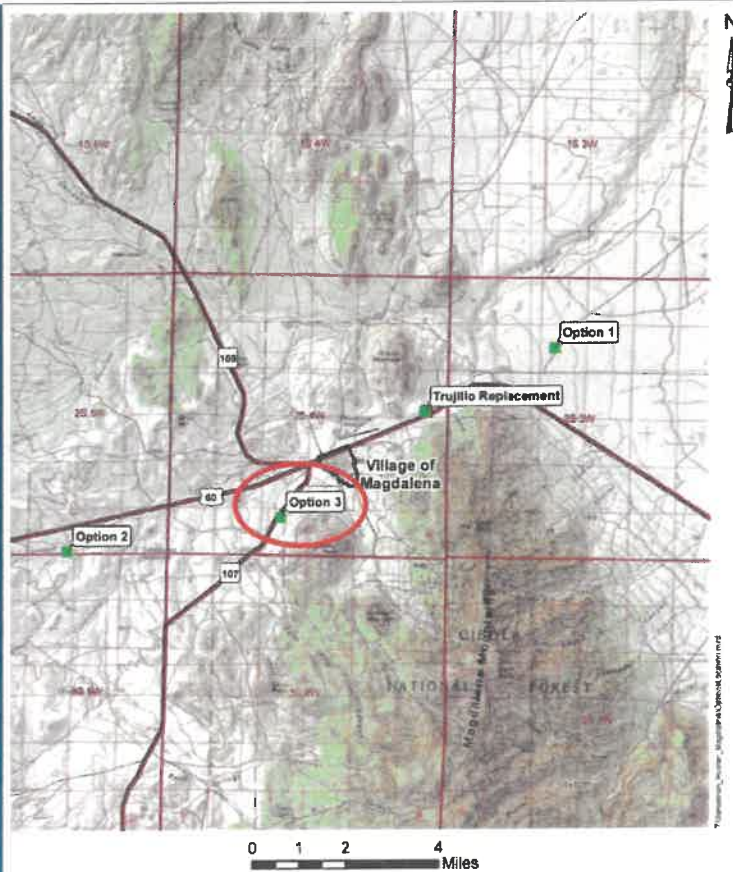
Option 2 San Augustin Basin Alluvial Well

- 1,000-ft depth
- 4 miles west of Village
- 50 – 100 gpm possible
- Potential water rights issues
- Long, uphill pipeline



Option 3 Magdalena Bedrock Well

- 300-ft depth
- In town
- 20-50 gpm possible
- Close to infrastructure
- Competing with numerous domestic wells



Trujillo Well Replacement

- Could potentially be permitted as a supplemental well on the original water right
- 350-ft south of original location to be nearer Trujillo Fault zone

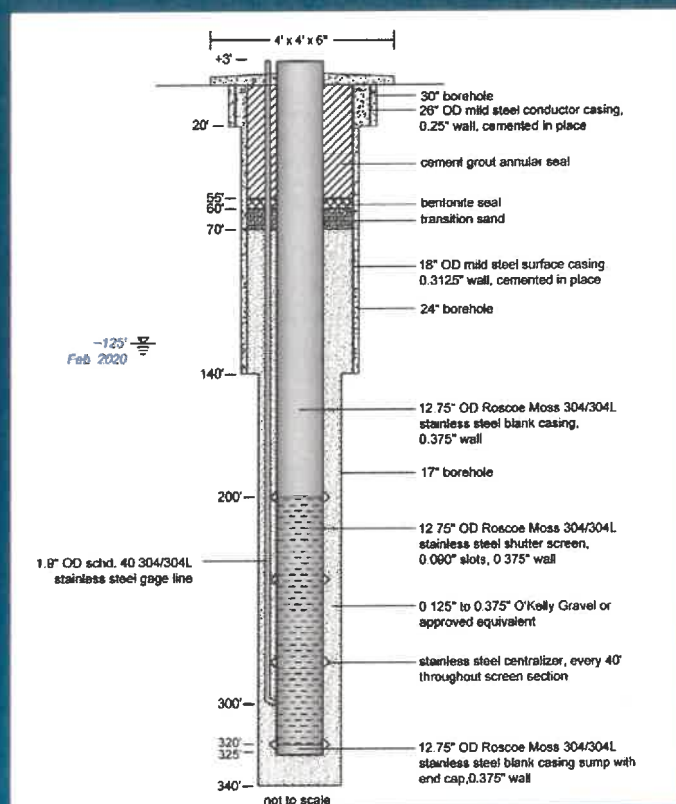


Trujillo Replacement Well Proposed Completion

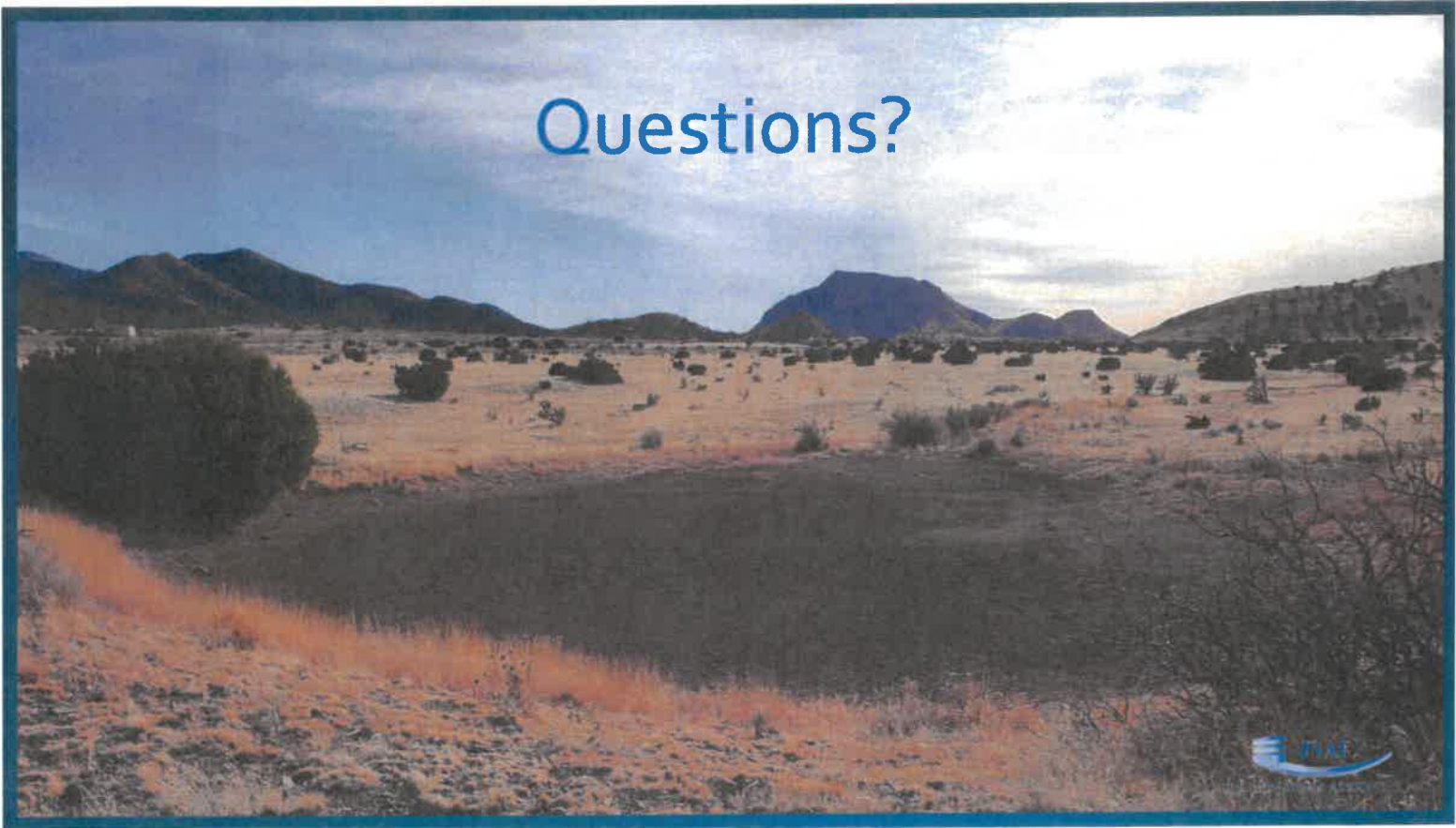
- Known producing aquifer
- Little drawdown
- Existing infrastructure

Advantages:

- Greater depth than original well
- Stainless steel casing
- Could produce as much as 300 to 500 gpm



Questions?







NEW MEXICO OFFICE OF THE STATE ENGINEER

APPLICATION FOR PERMIT TO CHANGE AN EXISTING WATER RIGHT (Non 72-12-1)

(check applicable boxes):

For fees, see State Engineer website: <http://www.ose.state.nm.us/>

<input type="checkbox"/> Change Purpose of Use <input type="checkbox"/> Ground water <input type="checkbox"/> Surface Water <input type="checkbox"/> Change Place of Use <input type="checkbox"/> Groundwater <input type="checkbox"/> Surface Water	<input type="checkbox"/> Change Point of Diversion (POD): From: <input type="checkbox"/> Groundwater <input type="checkbox"/> Surface Water To: <input type="checkbox"/> Groundwater <input type="checkbox"/> Surface Water	<input checked="" type="checkbox"/> Additional Groundwater Point of Diversion (POD) <input type="checkbox"/> Additional Surface Water Point of Diversion (POD)
<input type="checkbox"/> Temporary Change, NMSA 1978, § 72-12-7(B) Requested Start Date: (Not to Exceed 3 ac-ft in One Year)		Requested End Date:
<input type="checkbox"/> Water Use Lease, NMSA 1978, §§ 72-6-1 to-7 Requested Start Date:		Requested End Date:
<input type="checkbox"/> Temporary Change (other) Requested Start Date:		Requested End Date:
<input type="checkbox"/> Accounting Period Start Date:		

1. APPLICANT(S) (Required) Note: water-right owner must be listed as an applicant.

Name: Richard Rumpf	Name: Andrew Feltman
Contact or Agent: check here if Agent <input type="checkbox"/>	Contact or Agent: check here if Agent <input checked="" type="checkbox"/>
Andrew Feltman	
Mailing Address: 108 N Main Rd.	Mailing Address:
City: Magdalena	City:
State: Zip Code: New Mexico 87825	State: Zip Code:
Phone: <input type="checkbox"/> Home <input type="checkbox"/> Cell	Phone: <input type="checkbox"/> Home <input type="checkbox"/> Cell
Phone (Work):	Phone (Work):
E-mail (optional):	E-mail (optional):

2. CURRENT OSE FILE INFORMATION (Required)

OSE File No(s): RG 46840	Priority Date (if known):	Subfile/Cause No. (if applicable):
-----------------------------	---------------------------	------------------------------------

3. CURRENT PURPOSE OF USE AND AMOUNT OF WATER (Required)

<input checked="" type="checkbox"/> Domestic <input checked="" type="checkbox"/> Livestock <input checked="" type="checkbox"/> Irrigation <input checked="" type="checkbox"/> Municipal <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Other Use (specify): _____ Describe a specific use if applicable (i.e. sand & gravel washing, dairy etc): _____	Amount of Water (acre-feet per annum): If more details are needed, type "See Comments" in "Other" field below, and explain in Additional Statements Section. Diversion: Groundwater Well Consumptive Use: 290 Other (include units): _____
---	---

FOR OSE INTERNAL USE

Application for Permit, Form wr-06, Rev 10/21/19

File No.:	Trn. No.:	Receipt No.:
Trans Description (optional):		Sub-Basin:
Well Tag ID No. (if applicable):	PCW/LOG Due Date:	PBU Due Date:

4. COUNTY WHERE WATER RIGHT IS CURRENTLY USED (Required)

Socorro County

5. ADDITIONAL STATEMENTS CONCERNING THE CURRENT WATER RIGHT**6. CURRENT or MOVE-FROM POINT(S) OF DIVERSION (POD) (Required)**☐ Surface POD OR ☒ Ground Water POD (Well)

Name of ditch, acequia, or spring: Trujillo Well

Stream or water course:

Tributary of:

If application proposes a new point of diversion involving a diversion dam, storage dam, main canal, and/or pipeline, complete Attachment 2. ☐ Check here if Attachment 2 is included in this application packet.

POD Location Required: Coordinate location must be reported in NM State Plane (NAD 83), UTM (NAD 83), or Latitude/Longitude (Lat/Long - WGS84).

District II (Roswell) & District VII (Cimarron) customers, provide a PLSS location in addition to above.

☐ NM State Plane (NAD83) (Feet)☐ UTM (NAD83) (Meters)☒ Lat/Long (WGS84) (to the nearest 1/10th of second)☐ NM West Zone☐ Zone 12N☐ NM East Zone☐ Zone 13N☐ NM Central Zone

POD Number (if known):

X or Easting or Longitude:

Y or Northing or Latitude:

Provide if known:

-Public Land Survey System (PLSS)
(Quarters or Halves, Section, Township, Range) OR
- Hydrographic Survey Map & Tract; OR
- Lot, Block & Subdivision; OR
- Land Grant Name

RG 46840

107°12'32.46"W

34° 7'53.14"N

SWSE of S13, T2S, R4W

NOTE: If more PODS need to be described, complete form WR-08 (Attachment 1 – POD Descriptions)

Additional point of diversion descriptions are attached: ☐ Yes ☒ No **If yes, how many** _____

Point of Diversion is on Land Owned by: Private Resident

Other description relating point of diversion to common landmarks, streets, or other:

Point of diversion is located north of U.S. Highway 60 approximately 1.6 miles northeast of Magdalena, NM.

FOR OSE INTERNAL USE

Application for Permit, Form wr-06

File Number:

Trn Number:

7. CURRENT or MOVE-FROM PLACE(S) OF USE (Required)

The land is legally described by (check all that apply):

☒ Public Land Survey System (PLSS) (quarters, section, township, range)

☐ Irrigation or Conservation District Map

☐ Hydrographic Survey Report or Map

☐ Subdivision

☐ Grant

Complete the blocks below for all tracts of land (more than one description can be provided for a tract if available):

PLSS Quarters or Halves, <u>and/or</u> Name of Hydrographic Survey, <u>and/or</u> Name of Irrigation or Conservation District, <u>and/or</u> Name and County of Subdivision <u>and/or</u> Grant	PLSS Section <u>and/or</u> Map No. <u>and/or</u> Lot No.	PLSS Township <u>and/or</u> Tract No. (Please list each tract individually) <u>and/or</u> Block No.	PLSS Range	Acres	Priority
SESW, SWSE, SESE	13	2S	4W	11	
NENW, NWNE, NENE, SENE, SWNE	27	2S	4W	170	
NWSW, SWNW, NWNW	26	2S	4W	32	
SWSW, SESW, SWSE, SESE, NESW, NWSE, NESE	22	2S	4W	168	
SWSW, NWSW, SWNE	23	2S	4	32	
L6, L7	24	2S	4W	2	
Total Acres:				415	
Other description relating place of use to common landmarks, streets, or other:					
Place of use is on land owned by (required): Village of Magdalena and individual land owners					
Are there other sources of water for these lands? No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> describe by OSE file number:					

Note: If on Federal or State Land, please provide copy of lease.

FOR OSE INTERNAL USE

Application for Permit, Form wr-06

File Number:

Trn Number:

8. MOVE-TO PURPOSE OF USE AND AMOUNT OF WATER

<p>Check all that apply:</p> <table border="0"><tr><td><input checked="" type="checkbox"/> Domestic</td><td><input type="checkbox"/> Livestock</td><td><input type="checkbox"/> Irrigation</td></tr><tr><td><input checked="" type="checkbox"/> Municipal</td><td><input type="checkbox"/> Industrial</td><td><input type="checkbox"/> Commercial</td></tr><tr><td colspan="3"><input type="checkbox"/> Other Use (specify): _____</td></tr></table> <p>Describe a specific use if applicable (i.e. sand & gravel washing, dairy etc): _____</p>	<input checked="" type="checkbox"/> Domestic	<input type="checkbox"/> Livestock	<input type="checkbox"/> Irrigation	<input checked="" type="checkbox"/> Municipal	<input type="checkbox"/> Industrial	<input type="checkbox"/> Commercial	<input type="checkbox"/> Other Use (specify): _____			<p>Amount of Water (acre-feet per annum): If more details are needed, type "See Comments" in "Other" field below, and explain in Additional Statements Section.</p> <p>Diversion: _____</p> <p>Consumptive Use: _____</p> <p>Other (include units): _____</p>
<input checked="" type="checkbox"/> Domestic	<input type="checkbox"/> Livestock	<input type="checkbox"/> Irrigation								
<input checked="" type="checkbox"/> Municipal	<input type="checkbox"/> Industrial	<input type="checkbox"/> Commercial								
<input type="checkbox"/> Other Use (specify): _____										

9. MOVE-TO POINT(S) OF DIVERSION (POD) (Complete this section ONLY if adding or replacing a POD)

<input type="checkbox"/> Surface POD OR <input checked="" type="checkbox"/> Ground Water POD (Well)																			
Name of ditch, acequia, or spring: Trujillo Supplemental Well																			
Stream or water course:		Tributary of:																	
If application proposes a new point of diversion involving a diversion dam, storage dam, main canal, and/or pipeline, complete Attachment 2. <input type="checkbox"/> Check here if Attachment 2 is included in this application packet.																			
POD Location Required: Coordinate location must be reported in NM State Plane (NAD 83), UTM (NAD 83), or Latitude/Longitude (Lat/Long - WGS84). District II (Roswell) & District VII (Cimarron) customers, provide a PLSS location in addition to above.																			
<table border="0"><tr><td><input type="checkbox"/> NM State Plane (NAD83) (Feet)</td><td><input type="checkbox"/> UTM (NAD83) (Meters)</td><td colspan="2"><input checked="" type="checkbox"/> Lat/Long (WGS84) (to the nearest 1/10th of second)</td></tr><tr><td><input type="checkbox"/> NM West Zone</td><td><input type="checkbox"/> Zone 12N</td><td colspan="2"></td></tr><tr><td><input type="checkbox"/> NM East Zone</td><td><input type="checkbox"/> Zone 13N</td><td colspan="2"></td></tr><tr><td><input type="checkbox"/> NM Central Zone</td><td></td><td colspan="2"></td></tr></table>				<input type="checkbox"/> NM State Plane (NAD83) (Feet)	<input type="checkbox"/> UTM (NAD83) (Meters)	<input checked="" type="checkbox"/> Lat/Long (WGS84) (to the nearest 1/10 th of second)		<input type="checkbox"/> NM West Zone	<input type="checkbox"/> Zone 12N			<input type="checkbox"/> NM East Zone	<input type="checkbox"/> Zone 13N			<input type="checkbox"/> NM Central Zone			
<input type="checkbox"/> NM State Plane (NAD83) (Feet)	<input type="checkbox"/> UTM (NAD83) (Meters)	<input checked="" type="checkbox"/> Lat/Long (WGS84) (to the nearest 1/10 th of second)																	
<input type="checkbox"/> NM West Zone	<input type="checkbox"/> Zone 12N																		
<input type="checkbox"/> NM East Zone	<input type="checkbox"/> Zone 13N																		
<input type="checkbox"/> NM Central Zone																			
POD Number (if known):	X or Easting or Longitude:	Y or Northing or Latitude:	Provide if known: -Public Land Survey System (PLSS) (Quarters or Halves, Section, Township, Range) OR - Hydrographic Survey Map & Tract; OR - Lot, Block & Subdivision; OR - Land Grant Name																
	107°12'32.36"W	34° 7'49.96"N	SWSE of S13, T2S, R4W																
NOTE: If more PODS need to be described, complete form WR-08 (Attachment 1 – POD Descriptions)																			
Additional POD descriptions are attached: <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, how many _____																			
Other description relating point(s) of diversion to common landmarks, streets, or other: _____																			
Point of Diversion is on Land Owned by: Private Resident																			
Note: The following information is for wells only. If more than one (1) well needs to be described, provide attachment.																			
Approximate depth of well (feet): 340		Outside diameter of well casing (inches): 12.75																	
Driller Name: TBD		Driller License Number: TBD																	
If replacing the current well, is the current well to be plugged? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Not Applicable If No, state for what use it is retained: _____																			

FOR OSE INTERNAL USE

Application for Permit, Form wr-06

File Number:

Trn Number:

10. MOVE-TO PLACE(S) OF USE (Complete this section ONLY if adding or changing a place of use)

List each individually

The land is legally described by (check all that apply):

- ☐ Public Land Survey System (PLSS) (quarters, section, township, range)
☐ Irrigation or Conservation District Map

- ☐ Hydrographic Survey Report or Map
☐ Subdivision
☐ Grant

Complete the blocks below for all tracts of land (more than one description can be provided for a tract if available):

PLSS Quarters or Halves, <u>and/or</u> Name of Hydrographic Survey, <u>and/or</u> Name of Irrigation or Conservation District, <u>and/or</u> Name and County of Subdivision <u>and/or</u> Grant	PLSS Section <u>and/or</u> Map No. <u>and/or</u> Lot No.	PLSS Township <u>and/or</u> Tract No. (Please list each tract individually) <u>and/or</u> Block No.	PLSS Range	Acres	Priority
Total Acres:					
Other description relating place of use to common landmarks, streets, or other:					
Place of use is on land owned by (required):					
Are there other sources of water for these lands? No <input type="checkbox"/> Yes <input type="checkbox"/> describe by OSE file number:					

Note: If on Federal or State Land, please provide copy of lease.

FOR OSE INTERNAL USE

Application for Permit, Form wr-06

File Number:

Trn Number:

11. ACEQUIA OR COMMUNITY DITCH REQUIREMENTS

☒ A. The water right is not within a Community Ditch or Acequia

☐ B. The water right is within a Community Ditch or Acequia. **If you checked box B you must:**

- 1) Attach documentary evidence provided by commissioners of the Community Ditch or Acequia confirming applicant's compliance with any applicable requirement for the change adopted by the Community Ditch or Acequia or
- 2) Attach an affidavit from the commissioners of the Community Ditch or Acequia stating that no such requirement has been adopted by the relevant association bylaws.

This documentation is required pursuant to NMSA 1978 § 72-5-24.1.

12. ADDITIONAL STATEMENTS OR EXPLANATIONS

Permit application is for establishing supplemental well to Trujillo Well. Trujillo well has collapsed multiple times and is unable to operate at its allocated water right. The proposed supplemental well within 350-feet of Trujillo Well is intended to increase increase redundancy for Trujillo Well, providing resiliency for the community's water source. Well production will not be increased beyond its allocated water right of 290 acre-feet per annum.

FOR OSE INTERNAL USE

Application for Permit, Form wr-06

File Number:

Trn Number:

ACKNOWLEDGEMENT

I, We (name of applicant(s)), Jared Lam

Print Name(s)

affirm that the foregoing statements are true to the best of (my, our) knowledge and belief.

Applicant Signature

Applicant Signature

ACTION OF THE STATE ENGINEER

This application is:

☐ approved

☐ partially approved

☐ denied

provided it is not exercised to the detriment of any others having existing rights, and is not contrary to the conservation of water in New Mexico nor detrimental to the public welfare and further subject to the attached conditions of approval.

Witness my hand and seal this _____ day of _____ 20 _____, for

_____, New Mexico State Engineer

By: _____

Signature

Print

Title: _____

Print

☐ Check here if a new well is to be drilled under this permit.

FOR OSE INTERNAL USE

Well Tag ID Issued? ☐ Yes ☐ No

Application for Permit, Form wr-06

File No.:

Trn No.:

Well ID Tag No.:



Courtyard I
7500 Jefferson St. NE
Albuquerque, NM
87109-4335

www.bhinc.com

voice: 505.823.1000
facsimile: 505.798.7988
toll free: 800.877.5332

June 5, 2020

Mr. Richard Rumpf, Village Mayor
Village of Magdalena
108 N Main St.
Magdalena, NM 87825

Re: Recommendation of Award: Waterline Replacement – Jack-and-Bore (Bid Package)

Dear Mayor Rumpf:

A request for quotes for construction of the referenced project were received by 4:00pm June 4, 2020. Quotes were received from the following firms and amounts are listed in ascending order and are also attached to this letter (Attachment A). The information emailed to the Contractors is also attached for reference (Attachment B).

<u>Company</u>	<u>Total (Base Bid Excluding NMGRT)</u>
1. Kelly Cable of New Mexico	\$57,521.45
2. TLC Company, Inc.	\$108,450.00
Engineer's Estimate	\$55,100.00

Based on the information reviewed and the evaluation of bid price presented above, the bid of Kelly Cable of New Mexico is considered complete and responsive.

BHI is aware the project is contingent upon receiving an approved NMDOT Utility Permit for the project. NMDOT has received the permit from BHI and stated they have no comments on the permit. Approval of the permit is expected prior to June 12th.

Therefore, Bohannon Huston, Inc. recommends the award of the Village of Magdalena Waterline Replacement – Jack-and-Bore / HDD (Quote Package) to Kelly Cable of New Mexico, at a lump sum contract amount of \$57,521.45 plus NMGRT. BHI also recommends the Village delay executing the contract until the NMDOT Utility Permit is received for this crossing.

Sincerely,

Nathan Roberts, PE
Vice President
Water Systems

NR/le
Enclosure

cc: Todd Burt, Bohannon Huston (w/encls.)
Jared Lam, Bohannon Huston (w/encls.)

Attachment A



June 5, 2020

Bohannon Huston
7500 Jefferson St NE
Albuquerque, NM 87109
Attn: Nathan Roberts

Nathan,

Thank you for your interest in Kelly Utility Field Services of New Mexico. We certainly appreciate the opportunity to bid this work for you. I am confident that should you utilize Kelly on this project, you will be pleased with the level of professionalism, quality and safety we provide.

Based on my review of the scope of work requested I am pleased to offer the following quote:

Magdalena Waterline Project - 20" Steel CSG 80 ft: \$57,521.45

Labor Enforcement Fund #002312720110831
NM License #397177
Federal Tax ID 742481268

Kelly Cable of NM will provide labor, materials and equipment to:

- ❖ **Obtain Traffic Control Plan and NMDOT Traffic Control Roadway Work Permit.**
- ❖ **Set up traffic control as necessary.**
- ❖ **Dig bore pits and set up drilling equipment.**
- ❖ **Bore 80 ft. and place one (1) 20" steel casing per specifications.**
- ❖ **Place end caps on steel casing.**
- ❖ **Place locate markers at each end of pipe.**
- ❖ **Backfill and compact pit and all areas of excavation.**
- ❖ **Re-seed bore pit areas per NMDOT specifications.**
- ❖ **Provide a post construction survey to identify pipe location.**

EXCEPTIONS:

- **Bid is based upon quantities listed. If quantities change price per/ft will be adjusted.**
- **Bid is based upon ground that can be drilled with standard dirt tooling. If cobble, solid rock or any other obstruction is encountered that impedes bore progress adders will apply.**
- **Bid is based upon directional drilling.**
- **Delays not under Kelly Cable control will be invoiced at \$750.00 per hour.**
- **Bond, if required is cost + 15%.**
- **This estimate does not include compaction testing.**

Bohannon Huston to provide:

- ❖ **Engineering and easements.**
- ❖ **Staking of ROW and easements.**
- ❖ **NMDOT permits and associated fees.**

We will notify all underground utilities to mark lines prior to excavation via the State One Call System. While we make every attempt to secure and confirm all utility locates prior to excavation, Kelly will not be responsible for damage to any unmarked or mis-marked facilities either public or private.

This is an estimate based on the work we discussed. Any additional work or materials outside of the initial scope of work would be quoted and authorized prior to commencement of work.

Please note that prices quoted DO NOT INCLUDE tax, which will be added to all invoices unless an applicable non-taxable transaction certificate is provided PRIOR to invoicing. All invoices are due 30 days after the date of invoice.

Once again, thank you for the opportunity to bid this work. We look forward to the opportunity of providing services for you. If you have any questions, please do not hesitate to contact me at 505-321-2157.

Sincerely,
Bill Kaspar

*Kelly Cable of NM, LLC
6901 Reading SE ♦ Albuquerque, NM 87105
Phone 505-343-1144 Fax 505-343-1155*



CONSTRUCTION SERVICES

5000 Edith Blvd. NE

Albuquerque, NM 87107

761-9696 • www.tlcplumbing.com

Lic. # 51429 • DOL # 0191742011629

TLC Proposal Page One

ATTN: Nathan Roberts

Date: 04-Jun-20

To: Village of Magdalena c/o Bohannon Huston

Phone: 505-453-6161

Job Name: Magdalena Jack & Bore

Job Location: Magdalena, NM

Earthwork • Utilities: Sewer, Water, Storm, Gas, Pipe Bursting • Concrete • Paving • Treatment Plants • Plumbing & HVAC

SCOPE OF WORK: PER PROPOSAL BELOW

Per plan sheets C-01 dated 5/22/20 and C-08 dated 5/21/20. Work to include installing approximately 80 LF of 0.375 thick steel casing underneath US 60. Work is only to provide casing without carrier pipe. See exclusions below.

ITEM #	ITEM DESCRIPTION	QUANTITY	UNIT
1	Install 20-inch jack & bore steel casing with wall thickness 0.375" including end caps, location markers, traffic control, and re-seeding.	1	LS

Subcontractor Listing: DH Underground for Jack and Bore

ACKNOWLEDGED ADDENDA: 1 dated 6/3/2020

EXCLUSIONS:

Asphalt Remove/Replace
Concrete Remove/Replace
Concrete Thrust Block
Construction Water
Demolition of man-made items
Design fees
Dewatering
Electrical Work
Engineering
Finish grading for items not constructed by us
Impact Fees
Import / Export of dirt
Irrigation System
Waterline, carrier pipe, and services

NMGR Tax
NPDES Fees
Permit Fees
Pro Rata
Restoration fees
Rock Excavation
Subgrade stabilization
SWPPP measures or permit
Utility Expansion Charges
Removal or Relocation of Existing Utilities
Landscape Remove / Replace
Location / Repair of Private Utilities
Any concrete or jersey barriers if required by NMDOT

Please contact this office if some parts of this bid are not accepted as it may affect pricing.

This proposal was prepared without benefit of soils report.

Owner to be responsible for obtaining approved drainage plan if required.

TLC Plumbing and Utility will not be responsible for:

- a): proper drainage on areas where planned or as-built site slope is less than 1%.
- b): damage to utilities which are not placed at proper depths below subgrade elevations.
- c): reconditioning of subgrade or removal of mud caused by inclement weather or other sources of moisture beyond our control.
- d): compaction of utility trenches or other excavations not backfilled by us.

TOTAL CONSTRUCTION COST: \$ 108,450.00

WAGE DECISION: NO WAGE DECISION PROVIDED

BID DATE: 6/4/2020

NOTICE: Neither the Contractor's License Bond nor the license issued under 60-13-19 of the Construction Industries Licensing Act protects the consumer if the contractor defaults on this contract.

Payment will be made as follows:

Upon completion of the work or on a monthly schedule, whichever is sooner.

Acceptance proposal—the above prices, specifications and conditions are satisfactory and are hereby accepted to do the work as specified. Payment to be made as outlined above.

If accepted, this proposal will become a part of the contract documents.

Authorized by

Eddie C Padilla

E-mail: epadilla@tlcplumbing.com

PLEASE CALL WITH QUESTIONS: **(505) 761-9696**

Accepted by

Date of Acceptance

NOTE: This proposal may be withdrawn by TLC Plumbing & Utility if not accepted within 10 days of original date quoted.

FINANCE CHARGES

1.5% per month (18% per annum) service charge on past due accounts

Attachment B

Jared Lam

From: Nathan Roberts
Sent: Monday, June 1, 2020 5:17 PM
Cc: Richard Rumpf; Todd Burt; Rhoton, Sara, NMENV
Subject: Re-Solicitation of Work for Magdalena Waterline Replacement - Jack and Bore / HDD
Attachments: 2020-06-01 Plan Set.pdf; 2020-06-01 Contract Documents.pdf; 2020-06-01 Payment Bond.pdf

To Whom it May Concern,

BHI is resoliciting quotes for the Village of Magdalena is requesting services to install approximately 80 LF of 20-inch, 0.375 thick steel casing underneath US60 just east of the village. This solicitation is being re-issued with the clarification that jack and bore or horizontal direction drilling is an acceptable method for installing the 20-inch steel casing.

This solicitation is solely for the installation of the 20-inch steel casing without carrier pipe and may be install using jack and bore or horizontal direction drilling methods. The quote for the project shall be a single Lump Sum Cost for all work associated with completing this work. No services will be provided for this project by the Village or any other entities to complete the work. In addition to the casing, the selected contractor will need to place end or night caps on the casing and location markers to identify the casing location for the future installation of a new waterline.

Construction water will be available to the selected contractor from the Village of Magdalena as well as a designated site to discard spoils. There is no geotechnical report for this project, dewatering is not anticipated.

The NMDOT utility permit has been requested but not obtained yet. This will be coordinated by the Engineering Firm, BHI, but the selected contractor will need to provide a certificate of insurance prior to construction. The selected contractor will be required to obtain the NMDOT traffic control permit as well as re-seed according to NMDOT requirements.

A subcontractor must be listed in the proposal letter if their effort exceeds \$5,000.

Due to the criticality of this project an expedited schedule is required to complete this work by June 30, 2020. The Village is holding a board meeting June 8 and the recommendation of award for this project is intended be on this agenda.

Proposals are to be submitted electronically to nroberts@bhinc.com by 4:00pm Thursday June 4, 2020. Any questions or clarifications may be submitted to the same email by 9:00am Wednesday June 3, 2020.

If awarded, the Village will be under contract with the selected Contractor no later than June 12th, 2020 and the work shall be complete by June 30th, 2020.

Attached to this email are the following documents:

- Plan Sheets (Plan and Profile, Traffic Control)
- Contract Documents & Specifications
- Payment Bond

The selected Contractor will need to complete the work in accordance with these documents as well as local, state, and federal laws and requirements.

Thank you for your attention to this re-solicitation,

Nathan Roberts, PE

Vice President Water Systems

Bohannon Huston

505.453.6161

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Looking forward to a New Year of GIVING BACK!

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CONTRACT DOCUMENTS AND SPECIFICATIONS

FOR THE

**VILLAGE OF MAGDALENA WATERLINE REPLACEMENT – PHASE 1
OWNER PROJECT NUMBER: 2019-01**

May 2020

Prepared for:

**VILLAGE OF MAGDALENA
108 N MAIN ST.
MAGDALENA, NM 87825**

Prepared by:

**BOHANNAN HUSTON, INC.
COURTYARD I
7500 JEFFERSON ST NE
ALBUQUERQUE, NM 87109**

The technical material and data contained in the specifications were prepared under the supervision and direction of the undersigned, whose seal as a Professional Engineer, licensed to practice in the State of New Mexico, is affixed below.

_____	License No.
Engineer of Record	

Approved by Owner:

Village of Magdalena

All questions about the meaning or intent of these documents shall be submitted only to the Engineer of Record, stated above, in writing.

CONTRACT DOCUMENTS
VILLAGE OF MAGDALENA WATERLINE REPLACEMENT – PHASE 1

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CONTRACT FOR CONSTRUCTION OF A SMALL PROJECT

This Contract is by and between Village of Magdalena (Owner) and

(Contractor).

Owner and Contractor hereby agree as follows:

ARTICLE 1 - THE WORK

1.01 Work

- A. Work includes all labor, materials, equipment, services, and documentation necessary to construct the Project defined herein. The Work may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
- B. The Contractor shall complete all Work as specified or indicated in the Contract Documents. The Project is generally described as follows:
 - 1. **Village of Magdalena Waterline Replacement – Phase 1** which includes 20-inch casing beneath U.S. Highway 60 for the installation of future 6-inch PVC waterline.
 - 2. The Site of the Work includes property, easements, and designated work areas described in greater detail in the Contract Documents but generally located within NMDOT right-of-way northeast of the Village of Magdalena.

ARTICLE 2 - CONTRACT DOCUMENTS

2.01 Intent of Contract Documents

- A. It is the intent of the Contract Documents to describe a functionally complete project. The Contract Documents do not indicate or describe all of the Work required to complete the Project. Additional details required for the correct installation of selected products are to be provided by the Contractor and coordinated with the Owner and Engineer. This Contract supersedes prior negotiations, representations, and agreements, whether written or oral. The Contract Documents are complementary; what is required by one part of the Contract Documents is as binding as if required by other parts of the Contract Documents.
- B. During the performance of the Work and until final payment, Contractor and Owner shall submit all matters in question concerning the requirements of the Contract Documents, or relating to the acceptability of the Work under the Contract Documents to the Engineer. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work thereunder.
- C. Engineer will render a written clarification, interpretation, or decision on the issue submitted, or initiate a modification to the Contract Documents.
- D. Contractor, and its subcontractors and suppliers, shall not have or acquire any title to or ownership rights to any of the Drawings, Specifications, or other documents (including copies or electronic media editions) prepared by Engineer or its consultants.

2.02 Contract Documents Defined

- A. The Contract Documents consist of the following documents:
 - 1. This Contract.
 - 2. Performance bond.
 - 3. Standard General Conditions of the Construction Contract.
 - 4. Specifications listed in the Table of Contents.
 - 5. Drawings as listed on the Drawing Sheet Index.
 - 6. Addenda.
 - 7. The following which may be delivered or issued on or after the Effective Date of the Contract:
 - a. Work Change Directives (EJCDC C-940).
 - b. Change Orders (EJCDC C-941).
 - c. Field Orders.

ARTICLE 3 - ENGINEER

3.01 Engineer

- A. The Engineer for this Project is **Bohannon Huston, Inc.**

ARTICLE 4 - CONTRACT TIMES

4.01 Contract Times

- A. The Work will be substantially completed within **by June 23** after the Effective Date of the Contract and completed and ready for final payment **by June 30** after the Effective Date of the Contract.

4.02 Liquidated Damages

- A. Contractor and Owner recognize that time is of the essence in the performance of the Contract, and that Owner will incur damages if Contractor does not complete the Work according to the requirements of Paragraph 4.01. Because such damages for delay would be difficult and costly to determine, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner **\$100** for each day that expires after the Contract Time for substantial completion.

4.03 Delays in Contractor's Progress

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times and Contract Price. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.

- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor or their subcontractors or suppliers.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times.
- D. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor or Contractor's subcontractors or suppliers.

4.04 Progress Schedules

- A. Contractor shall develop a progress schedule and submit to the Engineer for review and comment before starting Work on the Site. The Contractor shall modify the schedule in accordance with the comments provided by the Engineer.
- B. The Contractor shall update and submit the progress schedule to the Engineer each month. The Owner may withhold payment if the Contractor fails to submit the schedule.

ARTICLE 5 - CONTRACT PRICE

5.01 Payment

- A. Owner shall pay Contractor in accordance with the Contract Documents at the following unit prices for each unit of Work completed:

Item No.	Description	Unit	Estimated Quantity	Unit Price	Extended Price
1	Install 20-inch steel casing with wall thickness 0.375" including night caps, location markers, traffic control, and any other items required by state and federal to complete the work, cip	LS	1		
Total of all extended prices for Estimated Quantities of Work					\$

Payment will be made in an amount equal to the total of all extended prices for actual Work completed. The extended price is determined by multiplying the unit price times the actual quantity of that Work item completed. Actual quantities installed will be determined by the Engineer.

ARTICLE 6 - BONDS AND INSURANCE

6.01 Bonds

- A. Before starting Work, Contractor shall furnish a performance bond and a payment bond from surety companies that are duly licensed or authorized to issue bonds in the required amounts in the jurisdiction in which the Project is located. Each bond shall be in an amount equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. These bonds shall remain in effect until the completion of the correction period specified in Paragraph 7.12 but, in any case, not less than one year after the date when final payment becomes due.

6.02 Insurance

- A. Before starting Work, Contractor shall furnish evidence of insurance from companies that are duly licensed or authorized in the jurisdiction in which the Project is located with a minimum AM Best rating of A-VII or better. Contractor shall provide insurance in accordance with the following:

1. Contractor shall provide coverage for not less than the following amounts, or greater where required by Laws and Regulations:

a. Workers' Compensation:

State:	<u>Statutory</u>
Employer's Liability:	
Bodily Injury, each Accident	\$ <u>100,000</u>
Bodily Injury By Disease, each Employee	\$ <u>100,000</u>
Bodily Injury/Disease Aggregate	\$ <u>500,000</u>

b. Commercial General Liability:

General Aggregate	\$ <u>2,000,000</u>
Products - Completed Operations Aggregate	\$ <u>1,000,000</u>
Personal and Advertising Injury	\$ <u>1,000,000</u>
Each Occurrence (Bodily Injury and Property Damage)	\$ <u>1,000,000</u>

c. Automobile Liability herein:

Bodily Injury:	
Each Person	\$ <u>500,000</u>
Each Accident	\$ <u>1,000,000</u>
Property Damage:	
Each Accident	\$ <u>500,000</u>
Combined Single Limit of:	\$ <u>5000,000</u>

d. Excess or Umbrella Liability:

Per Occurrence	\$	_____
General Aggregate	\$	1,000,000

e. Contractor's Pollution Liability:

Each Occurrence	\$	N/A
General Aggregate	\$	N/A

- B. All insurance policies required to be purchased and maintained will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days prior written notice has been given to the insured and additional insured.
- C. Automobile liability insurance provided by Contractor shall provide coverage against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.
- D. Contractor's commercial general liability policy shall be written on a 1996 or later ISO commercial general liability occurrence form and include the following coverages and endorsements:
1. Products and completed operations coverage maintained for three years after final payment;
 2. Blanket contractual liability coverage to the extent permitted by law;
 3. Broad form property damage coverage; and
 4. Severability of interest; underground, explosion, and collapse coverage; personal injury coverage.
- E. The Contractor's commercial general liability and automobile liability, umbrella or excess, and pollution liability policies shall include and list Owner and Engineer and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each as additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis.
1. Additional insured endorsements will include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Contractor demonstrates to Owner that the specified ISO endorsements are not commercially available, then Contractor may satisfy this requirement by providing equivalent endorsements.
 2. Contractor shall provide ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent for design professional additional insureds.
- F. Umbrella or excess liability insurance shall be written over the underlying employer's liability, commercial general liability, and automobile liability insurance. Subject to industry-standard exclusions, the coverage afforded shall be procured on a "follow the form" basis

as to each of the underlying policies. Contractor may demonstrate to Owner that Contractor has met the combined limits of insurance (underlying policy plus applicable umbrella) specified for employer's liability, commercial general liability, and automobile liability through the primary policies alone, or through combinations of the primary insurance policies and an umbrella or excess liability policy.

- G. The Contractor shall provide property insurance covering physical loss or damage during construction to structures, materials, fixtures, and equipment, including those materials, fixtures, or equipment in storage or transit.
- H. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 15.

ARTICLE 7 - CONTRACTOR'S RESPONSIBILITIES

7.01 Supervision and Superintendence

- A. Contractor shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, safety, and procedures of construction.
- B. Contractor shall assign a competent resident superintendent who is to be present at all times during the execution of the Work. This resident superintendent shall not be replaced without written notice to and approval by the Owner and Engineer except under extraordinary circumstances.
- C. Contractor shall at all times maintain good discipline and order at the Site.
- D. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, Monday through Friday.

7.02 Other Work at the Site

- A. In addition to and apart from the Work of the Contractor, other work may occur at or adjacent to the Site. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.

7.03 Services, Materials, and Equipment

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work shall be new, of good quality and shall be stored, applied, installed, connected, erected, protected, used, cleaned, and

conditioned in accordance with instructions of the applicable supplier, except as otherwise may be provided in the Contract Documents.

7.04 Subcontractors and Suppliers

- A. Contractor may retain subcontractors and suppliers for the performance of parts of the Work. Such subcontractors and suppliers must be acceptable to Owner.

7.05 Quality Management

- A. Contractor is fully responsible for the managing quality to ensure Work is completed in accordance with the Contract Documents.

7.06 Licenses, Fees and Permits

- A. Contractor shall pay all license fees and royalties and assume all costs incident to performing the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others.
- B. Contractor shall obtain and pay for all construction permits and licenses unless otherwise provided in the Contract Documents.

7.07 Laws and Regulations; Taxes

- A. Contractor shall give all notices required by and shall comply with all local, state, and federal Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages if Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations.
- C. Contractor shall pay all applicable sales, consumer, use, and other similar taxes Contractor is required to pay in accordance with Laws and Regulations.

7.08 Record Documents

- A. Contractor shall maintain one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved shop drawings in a safe place at the Site. Contractor shall annotate them to show changes made during construction. Contractor shall deliver these record documents to Engineer upon completion of the Work.

7.09 Safety and Protection

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work.
- B. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 1. All persons on the Site or who may be affected by the Work;

2. All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 3. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and underground facilities not designated for removal, relocation, or replacement in the course of construction.
- C. All damage, injury, or loss to any property caused, directly or indirectly, in whole or in part, by Contractor, or anyone for whose acts the Contractor may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Contract Documents or to the acts or omissions of Owner or Engineer and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor).
 - D. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.
 - E. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor shall act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

7.10 Shop Drawings, Samples, and Other Submittals

- A. Contractor shall review and coordinate the shop drawing and samples with the requirements of the Work and the Contract Documents and shall verify all related field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information.
- B. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that submittal, and that Contractor approves the submittal.
- C. With each submittal, Contractor shall give Engineer specific written notice, in a communication separate from the submittal, of any variations that the shop drawing or sample may have from the requirements of the Contract Documents.
- D. Engineer will provide timely review of shop drawings and samples.
- E. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs.
- F. Engineer's review and approval of a separate item does not indicate approval of the assembly in which the item functions.
- G. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of shop drawings and submit, as required, new samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

H. Shop drawings are not Contract Documents.

7.11 Warranties and Guarantees

A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.

7.12 Correction Period

A. If within one year after the date of substantial completion, any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly and without cost to Owner, correct such defective Work.

7.13 Indemnification

A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts they may be liable.

ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.01 Owner's Responsibilities

- A. Except as otherwise provided in the Contract Documents, Owner shall issue all communications to Contractor through Engineer.
- B. Owner shall make payments to Contractor as provided in this Contract.
- C. Owner shall provide Site and easements required to construct the Project.
- D. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, unless stated elsewhere in the Contract Documents, Owner shall have sole authority and responsibility for such coordination.
- E. The Owner shall be responsible for performing inspections and tests required by applicable codes.
- F. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be

responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

- G. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- H. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

9.01 Engineer's Status

- A. Engineer will be Owner's representative during construction. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in this Contract.
- B. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any subcontractor, any supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- C. Engineer will make visits to the Site at intervals appropriate to the various stages of construction. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work.
- D. Engineer has the authority to reject Work if Contractor fails to perform Work in accordance with the Contract Documents.
- E. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work.
- F. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

ARTICLE 10 - CHANGES IN THE WORK

10.01 Authority to Change the Work

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work.

10.02 Change Orders

- A. Owner and Contractor shall execute appropriate Change Orders covering:
 - 1. Changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;

2. Changes in the Work which are: (a) ordered by Owner or (b) agreed to by the parties or (c) resulting from the Engineer's decision, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters; and
 3. Changes in the Contract Price or Contract Times or other changes which embody the substance of any final binding results under Article 12.
- B. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

ARTICLE 11 - DIFFERING SUBSURFACE OR PHYSICAL CONDITIONS

11.01 Differing Conditions Process

- A. If Contractor believes that any subsurface or physical condition including but not limited to utilities or other underground facilities that are uncovered or revealed at the Site either differs materially from that shown or indicated in the Contract Documents or is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract Documents then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.
- B. After receipt of written notice, Engineer will promptly:
1. Review the subsurface or physical condition in question;
 2. Determine necessity for Owner obtaining additional exploration or tests with respect to the condition;
 3. Determine whether the condition falls within the differing site condition as stated herein;
 4. Obtain any pertinent cost or schedule information from Contractor;
 5. Prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and
 6. Advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.

ARTICLE 12 - CLAIMS AND DISPUTE RESOLUTION

12.01 Claims Process

- A. The party submitting a claim shall deliver it directly to the other party to the Contract and the Engineer promptly (but in no event later than 10 days) after the start of the event giving rise thereto.
- B. The party receiving a claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the claim through the exchange of information and direct negotiations. All actions taken on a claim shall be stated in writing and submitted to the other party.
- C. If efforts to resolve a claim are not successful, the party receiving the claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the claim within 45 days, the claim is deemed denied.
- D. If the dispute is not resolved to the satisfaction of the parties, Owner or Contractor shall give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction unless the Owner and Contractor both agree to an alternative dispute resolution process.

ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION OF DEFECTIVE WORK

13.01 Tests and Inspections

- A. Owner and Engineer will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access.
- B. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- C. If any Work that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering shall be at Contractor's expense.

13.02 Defective Work

- A. Contractor shall ensure that the Work is not defective.
- B. Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. The Contractor shall promptly correct all such defective Work.
- E. When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. If the Work is defective or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed

Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated.

ARTICLE 14 - PAYMENTS TO CONTRACTOR

14.01 Progress Payments

- A. The Contractor shall prepare a schedule of values that will serve as the basis for progress payments. The schedule of values will be in a form of application for payment acceptable to Engineer. The unit price breakdown submitted with the bid will be used for unit price work. Break lump sum items into units that will allow for measurement of Work in progress.

14.02 Applications for Payments:

- A. Contractor shall submit an application for payment in a form acceptable to the Engineer, no more frequently than monthly, to Engineer. Applications for payment will be prepared and signed by Contractor. Contractor shall provide supporting documentation required by the Contract Documents. Payment will be paid for Work completed as of the date of the application for payment.
- B. Beginning with the second application for payment, each application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior applications for payment.

14.03 Retainage

- A. The Owner shall retain 0% of each progress payment until the Work is substantially complete.

14.04 Review of Applications

- A. Within 10 days after receipt of each application for payment, the Engineer will either indicate in writing a recommendation for payment and present the application for payment to Owner or return the application for payment to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. The Contractor will make the necessary corrections and resubmit the application for payment.
- B. Engineer will recommend reductions in payment (set-offs) which, in the opinion of the Engineer, are necessary to protect Owner from loss because the Work is defective and requires correction or replacement.
- C. The Owner is entitled to impose set-offs against payment based on any claims that have been made against Owner on account of Contractor's conduct in the performance of the Work, incurred costs, losses, or damages on account of Contractor's conduct in the performance of the Work, or liquidated damages that have accrued as a result of Contractor's failure to complete the Work.

14.05 Contractor's Warranty of Title

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than seven days after the time of payment by Owner.

14.06 Substantial Completion

- A. The Contractor shall notify Owner and Engineer in writing that the Work is substantially complete and request the Engineer issue a certificate of substantial completion when Contractor considers the Work ready for its intended use. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- B. Engineer will make an inspection of the Work with the Owner and Contractor to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor and Owner in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete or upon resolution of all reasons for non-issuance of a certificate identified in 14.06.B, Engineer will deliver to Owner a certificate of substantial completion which shall fix the date of substantial completion and include a punch list of items to be completed or corrected before final payment.

14.07 Final Inspection

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

14.08 Final Payment

- A. Contractor may make application for final payment after Contractor has satisfactorily completed all Work defined in the Contract, including providing all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents and other documents.
- B. The final application for payment shall be accompanied (except as previously delivered) by:
 - 1. All documentation called for in the Contract Documents;
 - 2. Consent of the surety to final payment;
 - 3. Satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any liens or other title defects, or will so pass upon final payment;
 - 4. A list of all disputes that Contractor believes are unsettled; and
 - 5. Complete and legally effective releases or waivers (satisfactory to Owner) of all lien rights arising out of the Work, and of liens filed in connection with the Work.
- C. The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment.

14.09 Waiver of Claims

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor.

- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.01 Owner May Suspend Work

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 60 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension.

15.02 Owner May Terminate for Cause

- A. Contractor's failure to perform the Work in accordance with the Contract Documents or other failure to comply with a material term of the Contract Documents will constitute a default by Contractor and justify termination for cause.
- B. If Contractor defaults in its obligations, then after giving Contractor and any surety ten days written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:
 - 1. Declare Contractor to be in default, and give Contractor and any surety notice that the Contract is terminated; and
 - 2. Enforce the rights available to Owner under any applicable performance bond.
- C. Owner may not proceed with termination of the Contract under Paragraph 15.02.B if Contractor within seven days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- D. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- E. In the case of a termination for cause, if the cost to complete the Work, including related claims, costs, losses, and damages, exceeds the unpaid contract balance, Contractor shall pay the difference to Owner.

15.03 Owner May Terminate for Convenience

- A. Upon seven days written notice to Contractor, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for, without duplication of any items:
 - 1. Completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
 3. Other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid on account of loss of anticipated overhead, profits, or revenue, or other economic loss arising out of or resulting from such termination.

15.04 Contractor May Stop Work or Terminate

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner, and provided Owner does not remedy such suspension or failure within that time, either stop the Work until payment is received, or terminate the Contract and recover payment from the Owner.

ARTICLE 16 - CONTRACTOR'S REPRESENTATIONS

16.01 Contractor Representations

- A. Contractor makes the following representations when entering into this Contract:
1. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
 2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 3. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
 4. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on:
 - a. The cost, progress, and performance of the Work;
 - b. The means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and
 - c. Contractor's safety precautions and programs.
 5. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.

6. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
7. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
8. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
9. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that, without exception, all prices in the Contract are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 17 - MISCELLANEOUS

17.01 Cumulative Remedies

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

17.02 Limitation of Damages

- A. Neither Owner, Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

17.03 No Waiver

- A. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Contract.

17.04 Survival of Obligations

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

17.05 Contractor's Certifications

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract.

17.06 Controlling Law

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

IN WITNESS WHEREOF, Owner and Contractor have signed this Contract.

This Contract will be effective on _____ (which is the Effective Date of the Contract).

OWNER: Village of Magdalena

CONTRACTOR:

By: _____

By: _____

Title: _____

Title: _____

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

Attest: _____

Attest: _____

Title: _____

Title: _____

Address for giving notices:

Address for giving notices:

License No.: _____
(where applicable)

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

NOTE TO USER: Use in those states or other jurisdictions where applicable or required.

PERFORMANCE BOND

Contractor Name: _____ Address (principal place of business): _____	Surety Name: _____ Address (principal place of business): _____
Owner Name: Village of Magdalena Mailing address (principal place of business): 108 N Main St Magdalena, NM 87825	Contract Description: Village of Magdalena Waterline Replacement – Phase 1 Contract Price: _____ Effective Date of Contract: _____
Bond Bond Amount: _____ Date of Bond: _____ <i>(Date of Bond cannot be earlier than Effective Date of Contract)</i> Modifications to this Bond form: <input type="checkbox"/> None <input type="checkbox"/> See Paragraph 16	
Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth in this Performance Bond, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.	
Contractor as Principal	Surety
_____ <i>(Full formal name of Contractor)</i>	_____ <i>(Full formal name of Surety) (corporate seal)</i>
By: _____ <i>(Signature)</i>	By: _____ <i>(Signature)(Attach Power of Attorney)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
Attest: _____ <i>(Signature)</i>	Attest: _____ <i>(Signature)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
<i>Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party is considered plural where applicable.</i>	

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.
2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond will arise after:
 - 3.1. The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice may indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 will be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement does not waive the Owner's right, if any, subsequently to declare a Contractor Default;
 - 3.2. The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
 - 3.3. The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.
4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 does not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.
5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
 - 5.1. Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;
 - 5.2. Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;
 - 5.3. Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or
 - 5.4. Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:

- 5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
 - 5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.
- 6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment, or the Surety has denied liability, in whole or in part, without further notice, the Owner shall be entitled to enforce any remedy available to the Owner.
- 7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner will not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety will not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:
 - 7.1. the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
 - 7.2. additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and
 - 7.3. liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.
- 8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.
- 9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price will not be reduced or set off on account of any such unrelated obligations. No right of action will accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.
- 10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
- 11. Any proceeding, legal or equitable, under this Bond must be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and must be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit will be applicable.
- 12. Notice to the Surety, the Owner, or the Contractor must be mailed or delivered to the address shown on the page on which their signature appears.
- 13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement will be deemed deleted therefrom and provisions conforming to such

statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.

14. Definitions

- 14.1. *Balance of the Contract Price*—The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.
 - 14.2. *Construction Contract*—The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.
 - 14.3. *Contractor Default*—Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.
 - 14.4. *Owner Default*—Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
 - 14.5. *Contract Documents*—All the documents that comprise the agreement between the Owner and Contractor.
15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond will be deemed to be Subcontractor and the term Owner will be deemed to be Contractor.
16. Modifications to this Bond are as follows: None

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

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

requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract.

- b. A demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal, or seeking resolution of a contractual issue that Engineer has declined to address.
 - c. A demand or assertion by Owner or Contractor, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.4, concerning disputes arising after Engineer has issued a recommendation of final payment.
 - d. A demand for money or services by a third party is not a Claim.
- 11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
 - 12. *Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.
 - 13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
 - 14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.
 - 15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
 - 16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
 - 17. *Cost of the Work*—See Paragraph 13.01 for definition.
 - 18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
 - 19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
 - 20. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
 - 21. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the

recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

22. *Engineer*—The individual or entity named as such in the Agreement.
23. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
24. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto.
 - a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.
 - b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.
 - c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.
25. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
26. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
27. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.
28. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.
29. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
30. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
31. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising Contractor's plan to accomplish the Work within the Contract Times.
32. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.

33. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.
34. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
35. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer’s review of the submittals.
36. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.
37. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
38. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by Owner which are designated for the use of Contractor.
39. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
40. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
41. *Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers’ instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
42. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion of such Work.

43. *Successful Bidder*—The Bidder to which the Owner makes an award of contract.
44. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
45. *Supplier*—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
46. *Technical Data*
- a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.
 - b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.
 - c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.
47. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.
48. *Unit Price Work*—Work to be paid for on the basis of unit prices.
49. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
50. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

1.02 Terminology

- A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives:* The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. *Day:* The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective:* The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - 1. does not conform to the Contract Documents;
 - 2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - 3. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or Paragraph 15.04).
- E. *Furnish, Install, Perform, Provide*
 - 1. The word “furnish,” when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
 - 2. The word “install,” when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 - 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, means to furnish and install said services, materials, or equipment complete and ready for intended use.
 - 4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.

- F. *Contract Price or Contract Times*: References to a change in “Contract Price or Contract Times” or “Contract Times or Contract Price” or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term “or both” is not expressed.
- G. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2—PRELIMINARY MATTERS

2.01 *Delivery of Performance and Payment Bonds; Evidence of Insurance*

- A. *Performance and Payment Bonds*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner the performance bond and payment bond (if the Contract requires Contractor to furnish such bonds).
- B. *Evidence of Contractor’s Insurance*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6, except to the extent the Supplementary Conditions expressly establish other dates for delivery of specific insurance policies.
- C. *Evidence of Owner’s Insurance*: After receipt of the signed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each additional insured (as identified in the Contract), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

2.02 *Copies of Documents*

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

2.03 *Before Starting Construction*

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

into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

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

2.05 *Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review the schedules submitted in accordance with Paragraph 2.03.A. No progress payment will be made to Contractor until acceptable schedules are submitted to Engineer.
 - 1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
 - 2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
 - 3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.
 - 4. If a schedule is not acceptable, Contractor will have an additional 10 days to revise and resubmit the schedule.

2.06 *Electronic Transmittals*

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

ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed record version, the printed record version will govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.
- F. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Contractor, which agree that the Contract Documents will be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- G. Nothing in the Contract Documents creates:
 - 1. any contractual relationship between Owner or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or
 - 2. any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity, except as may otherwise be required by Laws and Regulations.

3.02 *Reference Standards*

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

inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*

1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies*

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

3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.

- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly notify Owner and Contractor in writing that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 *Reuse of Documents*

- A. Contractor and its Subcontractors and Suppliers shall not:
 - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or
 - 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein precludes Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the 30th day after the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the 60th day after the day of Bid opening or the 30th day after the Effective Date of the Contract, whichever date is earlier.

4.02 *Starting the Work*

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

4.03 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the

established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
 - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.
 - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times must be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work will be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
 - 1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 - 2. Abnormal weather conditions;
 - 3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and
 - 4. Acts of war or terrorism.

- D. Contractor's entitlement to an adjustment of Contract Times or Contract Price is limited as follows:
1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
 2. Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Times to which Contractor is otherwise entitled.
 3. Adjustments of Contract Times or Contract Price are subject to the provisions of Article 11.
- E. Each Contractor request or Change Proposal seeking an increase in Contract Times or Contract Price must be supplemented by supporting data that sets forth in detail the following:
1. The circumstances that form the basis for the requested adjustment;
 2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
 3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
 4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and
 5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.07.
- Contractor shall also furnish such additional supporting documentation as Owner or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.
- F. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.05.D and 4.05.E.
- G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

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

5.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.

- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 *Use of Site and Other Areas*

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

1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
 2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.13, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.
 - C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment

and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

- D. *Loading of Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:

1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;
2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data; and
3. Technical Data contained in such reports and drawings.

- B. *Underground Facilities:* Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.

- C. *Reliance by Contractor on Technical Data:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b.

- D. *Limitations of Other Data and Documents:* Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;
3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or
4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site:
1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate;
 2. is of such a nature as to require a change in the Drawings or Specifications;
 3. differs materially from that shown or indicated in the Contract Documents; or
 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine whether it is necessary for Owner to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- E. *Possible Price and Times Adjustments*
1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in

Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. Such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
 - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,
 - c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
- a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise;
 - b. The existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
 - c. Contractor failed to give the written notice required by Paragraph 5.04.A.
3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.
- F. *Underground Facilities; Hazardous Environmental Conditions:* Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:
1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
 2. complying with applicable state and local utility damage prevention Laws and Regulations;

3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
 4. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
 5. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings, or was not shown or indicated on the Drawings with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing regarding such Underground Facility.
- C. *Engineer's Review:* Engineer will:
1. promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;
 2. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner (and if necessary issue any preliminary instructions to Contractor) regarding the Contractor's resumption of Work in connection with the Underground Facility in question;
 3. obtain any pertinent cost or schedule information from Contractor; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and
 4. advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the Underground Facility may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- F. *Possible Price and Times Adjustments*
1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown

or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
 - b. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and
 - c. Contractor gave the notice required in Paragraph 5.05.B.
2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
 3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.
 4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE 38, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, Contractor's remedies are limited to those set forth in this Paragraph 5.05.F.

5.06 *Hazardous Environmental Conditions at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
 1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;
 2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
 3. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures

- of construction to be employed by Contractor, and safety precautions and programs incident thereto;
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition and impose a set-off against payments to account for the associated costs.
- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by Contractor, or any costs or expenses incurred in response to the Hazardous Environmental Condition, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.
- H. If, after receipt of such written notice, Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special

conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.

- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.I obligates Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J obligates Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 6—BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Contractor's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract.
- B. Contractor shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Contract.
- C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Contract, except as provided otherwise by Laws or

Regulations, and must be issued and signed by a surety named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.

- D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.
- E. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.
- F. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.
- G. Upon request to Owner from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Owner shall provide a copy of the payment bond to such person or entity.
- H. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized in the state or jurisdiction in which the Project is located to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Alternative forms of insurance coverage, including but not limited to self-insurance and "Occupational Accident and Excess Employer's Indemnity Policies," are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.
- D. Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by

Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.

- E. Owner shall deliver to Contractor, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.
- F. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner's option, may purchase and maintain Owner's own liability insurance. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.
- H. Contractor shall require:
 - 1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner and Engineer (and any other individuals or entities identified in the Supplementary Conditions as additional insureds on Contractor's liability policies) on each Subcontractor's commercial general liability insurance policy; and
 - 2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.
- I. If either party does not purchase or maintain the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- J. If Contractor has failed to obtain and maintain required insurance, Contractor's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination rights under Article 16.
- K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect (but is in no way obligated) to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price will be adjusted accordingly.

- L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.
- M. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.
- N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured and Engineer.

6.03 *Contractor's Insurance*

- A. *Required Insurance:* Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.
- B. *General Provisions:* The policies of insurance required by this Paragraph 6.03 as supplemented must:
 - 1. include at least the specific coverages required;
 - 2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;
 - 3. remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.D), and longer if expressly required elsewhere in this Contract, and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;
 - 4. apply with respect to the performance of the Work, whether such performance is by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable; and
 - 5. include all necessary endorsements to support the stated requirements.
- C. *Additional Insureds:* The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:
 - 1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;
 - 2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;
 - 3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);

4. not seek contribution from insurance maintained by the additional insured; and
5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

6.04 *Builder's Risk and Other Property Insurance*

- A. *Builder's Risk:* Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.
- B. *Property Insurance for Facilities of Owner Where Work Will Occur:* Owner is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.06.D.
- C. *Property Insurance for Substantially Complete Facilities:* Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Owner will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.06.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of Owner's procurement of such property insurance.
- D. *Partial Occupancy or Use by Owner:* If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide advance notice of such occupancy or use to the builder's risk insurer, and obtain an endorsement consenting to the continuation of coverage prior to commencing such partial occupancy or use.
- E. *Insurance of Other Property; Additional Insurance:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.04, it may do so at Contractor's expense.

6.05 *Property Losses; Subrogation*

- A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04 (or an installation floater policy if authorized by the Supplementary Conditions), will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against

Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.

1. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils, risks, or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused.
 2. None of the above waivers extends to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Any property insurance policy maintained by Owner covering any loss, damage, or consequential loss to Owner's existing structures, buildings, or facilities in which any part of the Work will occur, or to which any part of the Work will attach or adjoin; to adjacent structures, buildings, or facilities of Owner; or to part or all of the completed or substantially completed Work, during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them, and that the insured is allowed to waive the insurer's rights of subrogation in a written contract executed prior to the loss, damage, or consequential loss.
1. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from fire or any of the perils, risks, or causes of loss covered by such policies.
- C. The waivers in this Paragraph 6.05 include the waiver of rights due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other insured peril, risk, or cause of loss.
- D. Contractor shall be responsible for assuring that each Subcontract contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

6.06 *Receipt and Application of Property Insurance Proceeds*

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

ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES

7.01 *Contractor's Means and Methods of Construction*

- A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor's expense. Such services are not Owner-delegated professional design services under this Contract, and neither Owner nor Engineer has any responsibility with respect to (1) Contractor's determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

7.02 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who will not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.03 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall maintain good discipline and order at the Site.

- B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions.
- C. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site will be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

7.04 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications will expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment must be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

7.05 *"Or Equals"*

- A. *Contractor's Request; Governing Criteria:* Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.
 - 1. If Engineer in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer will deem it an "or equal" item. For the purposes of this paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Engineer determines that the proposed item:
 - 1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

- 2) will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - 3) has a proven record of performance and availability of responsive service; and
 - 4) is not objectionable to Owner.
- b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:
- 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense:* Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal," which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.
- D. *Effect of Engineer's Determination:* Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. The Engineer's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.
- E. *Treatment as a Substitution Request:* If Engineer determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the item a proposed substitute pursuant to Paragraph 7.06.

7.06 Substitutes

- A. *Contractor's Request; Governing Criteria:* Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related construction at the Site.
1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.
 2. The requirements for review by Engineer will be as set forth in Paragraph 7.06.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.

3. Contractor shall make written application to Engineer for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application:
 - a. will certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design;
 - 2) be similar in substance to the item specified; and
 - 3) be suited to the same use as the item specified.
 - b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times;
 - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
 - c. will identify:
 - 1) all variations of the proposed substitute item from the item specified; and
 - 2) available engineering, sales, maintenance, repair, and replacement services.
 - d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

- E. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination:* If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.

7.07 *Concerning Subcontractors and Suppliers*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.
- B. Contractor shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor or Supplier to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.
- E. Owner may require the replacement of any Subcontractor or Supplier. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.
- F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.

- H. On a monthly basis, Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.
- J. The divisions and sections of the Specifications and the identifications of any Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.
- K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Engineer.
- L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.
- M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

7.08 *Patent Fees and Royalties*

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

7.09 *Permits*

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits, licenses, and certificates of occupancy. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

7.10 *Taxes*

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

7.11 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It is not Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this does not relieve Contractor of its obligations under Paragraph 3.03.
- C. Owner or Contractor may give written notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such written notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

7.12 *Record Documents*

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

7.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations.
- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.
- C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- E. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection.
- F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- G. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.
- H. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.

- I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to Owner and Contractor in accordance with Paragraph 15.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).
- J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.14 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of safety data sheets (formerly known as material safety data sheets) or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.15 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused by an emergency, or are required as a result of Contractor's response to an emergency. If Engineer determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Work Change Directive or Change Order will be issued.

7.16 *Submittals*

A. *Shop Drawing and Sample Requirements*

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

3. With each Shop Drawing or Sample, Contractor shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.
- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.
1. *Shop Drawings*
 - a. Contractor shall submit the number of copies required in the Specifications.
 - b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide, and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.C.
 2. *Samples*
 - a. Contractor shall submit the number of Samples required in the Specifications.
 - b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the Submittal for the limited purposes required by Paragraph 7.16.C.
 3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Engineer's Review of Shop Drawings and Samples*
1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Engineer's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
 2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.
 3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
 4. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will

document any such approved variation from the requirements of the Contract Documents in a Field Order or other appropriate Contract modification.

5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 7.16.A and B.
6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such item becoming a Contract Document.
8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.C.4.

D. Resubmittal Procedures for Shop Drawings and Samples

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

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

1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:
 - a. Contractor shall submit all such Submittals to the Engineer in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.
 - b. Engineer will provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.
 - c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.

- d. If any such Submittal is not accepted, Contractor shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.
- 2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03, 2.04, and 2.05.
- F. Owner-delegated Designs: Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.

7.17 Contractor's General Warranty and Guarantee

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer is entitled to rely on Contractor's warranty and guarantee.
- B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:
 - 1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and
 - 2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.
- C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 - 1. abuse, or improper modification, maintenance, or operation, by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 - 2. normal wear and tear under normal usage.
- D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.17:
 - 1. Observations by Engineer;
 - 2. Recommendation by Engineer or payment by Owner of any progress or final payment;
 - 3. The issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 - 4. Use or occupancy of the Work or any part thereof by Owner;
 - 5. Any review and approval of a Shop Drawing or Sample submittal;
 - 6. The issuance of a notice of acceptability by Engineer;
 - 7. The end of the correction period established in Paragraph 15.08;
 - 8. Any inspection, test, or approval by others; or

9. Any correction of defective Work by Owner.

- E. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract will govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

7.18 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from losses, damages, costs, and judgments (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable.
- B. In any and all claims against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

7.19 *Delegation of Professional Design Services*

- A. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Engineer with respect to the Owner-delegated design.
- B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.
- C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Engineer, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Engineer.

- D. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.19, Engineer's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:
 - 1. Checking for conformance with the requirements of this Paragraph 7.19;
 - 2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
 - 3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.
- F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.
- G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

ARTICLE 8—OTHER WORK AT THE SITE

8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.
- D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.

- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.
- F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

8.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
 - 1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
 - 2. An itemization of the specific matters to be covered by such authority and responsibility; and
 - 3. The extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

8.03 *Legal Relationships*

- A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment will take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract, and any remedies available to Contractor under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Contract Price will be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times or Contract Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.
 - 1. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this Paragraph 8.03.B.
 - 2. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due Contractor.
- C. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9—OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

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

9.02 *Replacement of Engineer*

- A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents will be that of the former Engineer.

9.03 *Furnish Data*

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

9.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

- 9.05 *Lands and Easements; Reports, Tests, and Drawings*
- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
 - B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
 - C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.
- 9.06 *Insurance*
- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.
- 9.07 *Change Orders*
- A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.
- 9.08 *Inspections, Tests, and Approvals*
- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.
- 9.09 *Limitations on Owner's Responsibilities*
- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- 9.10 *Undisclosed Hazardous Environmental Condition*
- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.
- 9.11 *Evidence of Financial Arrangements*
- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract (including obligations under proposed changes in the Work).
- 9.12 *Safety Programs*
- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
 - B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *Owner's Representative*

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

10.02 *Visits to Site*

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

10.03 *Resident Project Representative*

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

10.04 *Engineer's Authority*

- A. Engineer has the authority to reject Work in accordance with Article 14.
- B. Engineer's authority as to Submittals is set forth in Paragraph 7.16.
- C. Engineer's authority as to design drawings, calculations, specifications, certifications and other Submittals from Contractor in response to Owner's delegation (if any) to Contractor of professional design services, is set forth in Paragraph 7.19.
- D. Engineer's authority as to changes in the Work is set forth in Article 11.

- E. Engineer's authority as to Applications for Payment is set forth in Article 15.
- 10.05 *Determinations for Unit Price Work*
- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.
- 10.06 *Decisions on Requirements of Contract Documents and Acceptability of Work*
- A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.
- 10.07 *Limitations on Engineer's Authority and Responsibilities*
- A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, will create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation, and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Contractor under Paragraph 15.06.A, will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 10.07 also apply to the Resident Project Representative, if any.
- 10.08 *Compliance with Safety Program*
- A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs of which Engineer has been informed.

ARTICLE 11—CHANGES TO THE CONTRACT

11.01 *Amending and Supplementing the Contract*

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

11.02 *Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
 - 1. Changes in Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
 - 2. Changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
 - 3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.05, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters; and
 - 4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Work Change Directive; Paragraph 11.09, concerning Change Proposals; Article 12, Claims; Paragraph 13.02.D, final adjustments resulting from allowances; Paragraph 13.03.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.
- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

11.03 *Work Change Directives*

- A. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.07 regarding change of Contract Price.

B. If Owner has issued a Work Change Directive and:

1. Contractor believes that an adjustment in Contract Times or Contract Price is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.
2. Owner believes that an adjustment in Contract Times or Contract Price is necessary, then Owner shall submit any Claim seeking such an adjustment no later than 60 days after issuance of the Work Change Directive.

11.04 *Field Orders*

- A. Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly.
- B. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

11.05 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Changes involving the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.
- B. Such changes in the Work may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work must be performed under the applicable conditions of the Contract Documents.
- C. Nothing in this Paragraph 11.05 obligates Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

11.06 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.C.2.

11.07 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:

1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03);
 2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.07.C.2); or
 3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.07.C).
- C. *Contractor's Fee*: When applicable, the Contractor's fee for overhead and profit will be determined as follows:
1. A mutually acceptable fixed fee; or
 2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. For costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee will be 15 percent;
 - b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 percent;
 - c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted Work the maximum total fee to be paid by Owner will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;
 - d. No fee will be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
 - e. The amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and
 - f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs, Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.

11.08 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.
- B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Paragraph 4.05.

11.09 *Change Proposals*

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

- B. *Change Proposal Procedures*

- 1. *Submittal:* Contractor shall submit each Change Proposal to Engineer within 30 days after the start of the event giving rise thereto, or after such initial decision.
- 2. *Supporting Data:* The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal.
 - a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.
 - b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

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

- 3. *Engineer's Initial Review:* Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Engineer concludes that additional supporting data is needed before conducting a full review and making a decision regarding the Change Proposal, then Engineer may request that Contractor submit such additional supporting data by a date specified by Engineer, prior to Engineer beginning its full review of the Change Proposal.
- 4. *Engineer's Full Review and Action on the Change Proposal:* Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either approve the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change

Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.

5. *Binding Decision*: Engineer's decision is final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- C. *Resolution of Certain Change Proposals*: If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.
- D. *Post-Completion*: Contractor shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 15.06.B.

11.10 *Notification to Surety*

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

ARTICLE 12—CLAIMS

12.01 *Claims*

- A. *Claims Process*: The following disputes between Owner and Contractor are subject to the Claims process set forth in this article:
 1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
 2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents;
 3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters; and
 4. Subject to the waiver provisions of Paragraph 15.07, any dispute arising after Engineer has issued a written recommendation of final payment pursuant to Paragraph 15.06.B.
- B. *Submittal of Claim*: The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim rests with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge

and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.

- C. *Review and Resolution:* The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim will be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Mediation*
 - 1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate will stay the Claim submittal and response process.
 - 2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process will resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process will resume as of the date of the conclusion of the mediation, as determined by the mediator.
 - 3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. *Partial Approval:* If the party receiving a Claim approves the Claim in part and denies it in part, such action will be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim:* If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim will be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. *Final and Binding Results:* If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim will be incorporated in a Change Order or other written document to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

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

13.01 *Cost of the Work*

- A. *Purposes for Determination of Cost of the Work:* The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
 - 1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or

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

consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

- 1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.

c. *Construction Equipment Rental*

- 1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.
- 2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.
- 3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price ("changed Work"), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.

- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
- e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder's risk or other property insurance established in accordance with Paragraph 6.04), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.

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

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

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

D. *Contractor's Fee*

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

Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.

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

13.02 Allowances

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

13.03 Unit Price Work

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

thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.

E. *Adjustments in Unit Price*

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

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

14.01 *Access to Work*

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

14.02 *Tests, Inspections, and Approvals*

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
 2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
 3. by manufacturers of equipment furnished under the Contract Documents;
 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

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

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

14.03 *Defective Work*

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Prompt written notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs,

losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 *Acceptance of Defective Work*

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

14.05 *Uncovering Work*

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

14.06 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work,

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

14.07 Owner May Correct Defective Work

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

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

15.01 Progress Payments

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments*
 - 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.
 - 2. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation

establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

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

C. Review of Applications

1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work;
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work;
 - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid by Owner; or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
 - a. the Work is defective, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
 - e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. Payment Becomes Due

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

E. Reductions in Payment by Owner

1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
 - a. Claims have been made against Owner based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;

- b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. Contractor has failed to provide and maintain required bonds or insurance;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
 - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - f. The Work is defective, requiring correction or replacement;
 - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - h. The Contract Price has been reduced by Change Orders;
 - i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;
 - j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
 - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or
 - l. Other items entitle Owner to a set-off against the amount recommended.
2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed will be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.
 3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld will be treated as an amount due as determined by Paragraph 15.01.D.1 and subject to interest as provided in the Agreement.

15.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than 7 days after the time of payment by Owner.

15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time

submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.

- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have 7 days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.
- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without

significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:

1. At any time, Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through 15.03.E for that part of the Work.
2. At any time, Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.04 regarding builder's risk or other property insurance.

15.05 *Final Inspection*

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

15.06 *Final Payment*

A. *Application for Payment*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.12), and other documents, Contractor may make application for final payment.
2. The final Application for Payment must be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents;
 - b. consent of the surety, if any, to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.

- d. a list of all duly pending Change Proposals and Claims; and
 - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.
- B. *Engineer's Review of Final Application and Recommendation of Payment:* If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.
- C. *Notice of Acceptability:* In support of its recommendation of payment of the final Application for Payment, Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.
- D. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment and issuance of notice of the acceptability of the Work.
- E. *Final Payment Becomes Due:* Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within 30 days of Owner's receipt of the final Application for Payment from Engineer.

15.07 *Waiver of Claims*

- A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding Claim,

appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.

- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted as a Claim, or appealed under the provisions of Article 17.

15.08 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. correct the defective repairs to the Site or such adjacent areas;
 - 2. correct such defective Work;
 - 3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, and
 - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.
- B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.
- C. If, after receipt of a notice of defect within 60 days and within the correction period, Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others). Contractor's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.
- D. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- E. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

- F. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16—SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

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

16.02 *Owner May Terminate for Cause*

- A. The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the 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 the Engineer and shall be final. Engineer hereby waives any rights to assert an impairment of contract claim against the Owner or the NMED or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the Owner or the Department.

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, the Owner Magdalena may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the Owner's only liability shall be to pay Engineer for acceptable goods delivered and services rendered before the termination date

- B. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Progress Schedule);
 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
 4. Contractor's repeated disregard of the authority of Owner or Engineer.

- C. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) 10 days' written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:
 - 1. declare Contractor to be in default, and give Contractor (and any surety) written notice that the Contract is terminated; and
 - 2. enforce the rights available to Owner under any applicable performance bond.
- D. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- E. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within 7 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- F. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.
- G. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- H. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 *Owner May Terminate for Convenience*

- A. Upon 7 days' written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in

connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and

3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

16.04 *Contractor May Stop Work or Terminate*

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

ARTICLE 17—FINAL RESOLUTION OF DISPUTES

17.01 *Methods and Procedures*

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this article:
1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full, pursuant to Article 12; and
 2. Disputes between Owner and Contractor concerning the Work, or obligations under the Contract Documents, that arise after final payment has been made.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this article, Owner or Contractor may:
1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions;
 2. agree with the other party to submit the dispute to another dispute resolution process; or
 3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

ARTICLE 18—MISCELLANEOUS

18.01 *Giving Notice*

- A. Whenever any provision of the Contract requires the giving of written notice to Owner, Engineer, or Contractor, it will be deemed to have been validly given only if delivered:
 - 1. in person, by a commercial courier service or otherwise, to the recipient's place of business;
 - 2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
 - 3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

18.02 *Computation of Times*

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

18.03 *Cumulative Remedies*

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

18.04 *Limitation of Damages*

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

18.05 *No Waiver*

- A. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Contract.

18.06 *Survival of Obligations*

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

18.07 *Controlling Law*

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

18.08 *Assignment of Contract*

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

18.09 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

18.10 *Headings*

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

Village of Magdalena Waterline Replacement Phase 1

STANDARD SPECIFICATIONS

May 2020

Incorporation of New Mexico Standard Specifications for Public Works Construction (2006 Edition)

The New Mexico Standard Specifications for Public Works Construction (2006 Edition), General Conditions and Technical Specifications, as updated and amended, are incorporated by reference, the same as if fully written herein and shall govern this Project except where revised, updated or supplemented by the Supplemental Special Provisions, Special Provisions and/or the Supplemental Technical Specifications.

The New Mexico Standard Specifications for Public Works Construction (2006 Edition) may be purchased in bound book format or in CD ROM format by contacting:

Albuquerque Reprographics
4716 McLeod Road NE
Albuquerque, NM 87109
(505) 884-0862
FAX (505) 883-6452
www.abqrepro.com

SUPPLEMENTAL TECHNICAL SPECIFICATIONS

The following revisions and/or additions to the Technical Specifications of the Standard Specifications are hereby made a part of the Contract Documents.

<u>Spec Section</u>	<u>Title/Description</u>
00603	NPDES Compliance
01010	Summary of Work
01300	Contractor Submittals
01700	Contract Closeout

SECTION 00630
NPDES COMPLIANCE

PART 1 – GENERAL

1.01 DESCRIPTION

The work under this section specifies compliance with the U.S. Environmental Protection Agency (EPA), National Pollutant Discharge Elimination System (NPDES) Regulations for Storm Water Discharges from construction sites. This work consists of developing a site specific Storm Water Pollution Prevention Plan (SWP3), and **implementing and maintaining** this plan to control erosion, pollution, sediment and runoff during the construction of the project.

1.02 SUBMITTALS

- A. SWP3 Plan
- B. Notice of intent
- C. Notice of termination

PART 2 – PRODUCTS

NOT USED

PART 3 – EXECUTION

3.01 GENERAL

- A. The U.S. Environmental Protection Agency (EPA), National Pollutant Discharge Elimination System (NPDES) regulations dictates the Storm Water Discharge for construction sites. The CONTRACTOR shall prepare and implement a site specific Storm Water Pollution Prevention Plan (SWP3) for all construction and dewatering (if required) activities. The plan will be implemented and maintained to control erosion, pollution, sediment and runoff during construction of the project.
- B. The CONTRACTOR shall prepare and implement the SWP3 in accordance with "NPDES General Permit for Storm Water from Construction Activities February 16, 2012."
- C. The CONTRACTOR shall prepare and submit a Notice of Intent (NOI) for storm water discharges in accordance with "NPDES General Permit for Storm Water from Construction Activities February 16, 2012" using the EPA's electronic NOI system which can be found on the EPA Web Site (www.epa.gov/npdes/stormwater/cgpenoi).
- D. As one specific component of the SWP3 the CONTRACTOR shall develop a spill prevention and response procedures that will be used during construction. The CONTRACTOR shall provide both the ENGINEER and OWNER a copy of the

spill prevention and response procedures for the proposed action prior to beginning construction.

- E. The spill prevention and response procedures identified in the plan may include, but are not limited to the following:
1. All materials with hazardous properties (such as pesticides, petroleum products, fertilizers, detergents, construction chemicals, acids, paints, paint solvents, cleaning solvents, additives for soil stabilization, concrete curing compounds and additives, etc.) will be stored in a secure location outside of any floodplain of a waterway, under cover, when not in use. Secondary containment shall be provided in order to contain the waste to a limited area, in case of a spill. The minimum practical quantity of all such materials will be kept on the job site.
 2. A spill control and containment kit (containing, for example, absorbent such as kitty litter or sawdust, acid neutralizing powder, brooms, dust pans, mops, rags, gloves, goggles, plastic and metal trash containers, etc.) will be provided at the storage site.
 3. All of the product in a container will be used before the container is disposed of. All such containers will be properly disposed of in a manner in compliance with state and federal regulations and will not be allowed to mix with storm water discharges.
 4. All products will be stored in and used from the original container with the original product label.
 5. All products will be used in strict compliance with instructions on the product label.
 6. The disposal of excess or used products will be in strict compliance with instructions on the product label.
 7. All refueling of equipment shall take place at least 100 feet from any surface water.
- F. The CONTRACTOR shall provide spill prevention and response procedures training to all personnel prior to their working on the site.
- G. The CONTRACTOR shall immediately notify the ENGINEER, and the OWNER of any spills or contamination associated with construction of Drinking Water Project facilities within one hour of the occurrence.
- H. After final acceptance of the construction of the project, the CONTRACTOR shall prepare and submit a Notice of Termination of coverage for storm water discharges in accordance with "NPDES General Permit for Storm Water from Construction Activities February 16, 2012" using the EPA's electronic NOI system which can be found on the EPA Web Site (www.epa.gov/npdes/stormwater/cgpenoi).

PART 4 – PAYMENT

Costs for the work in this Section shall not be paid for separately but shall be considered incidental to the Contract work to be accomplished.

END OF SECTION

SECTION 01010
SUMMARY OF WORK

PART 1 - GENERAL

1.01 GENERAL

The Work to be performed under this Contract shall consist of furnishing all tools, equipment, materials, supplies, and manufactured articles and furnishing all labor, transportation, and services, including: fuel, power, water, and essential communications, and performing all Work, or other operations required for the fulfillment of the Contract in strict accordance with the Contract Documents. Note: By submitting a bid for this project, the CONTRACTOR hereby acknowledges and assures the OWNER that it has sufficient experience in constructing this type of work and therefore is familiar with all combinations of materials, labor, and equipment that are required for the successful completion of this project. The Work shall be complete, and all Work, materials, and services not expressly indicated or called for in the Contract Documents which may be necessary for the complete, safe and proper construction of the Work in good faith shall be provided by the CONTRACTOR at no increase in cost to the OWNER.

1.02 CONTRACTOR'S REPRESENTATIVES

- A. At the Pre-Construction Conference, the CONTRACTOR shall provide the OWNER an Organizational Chart of the CONTRACTOR'S PROJECT TEAM for the project, including responsibilities of all related personnel. At a minimum, this organizational chart should include the following key personnel: Project Manager, Project Superintendent, Safety Representative, Scheduler and Owner or Partner of the CONTRACTOR under Contract. Phone numbers or instructions on how to contact key personnel must be provided. Resumes of all project related personnel should be included for review and approval by the OWNER.
- B. An Authorized Representative must be designated, with a clear definition of the scope of this individual's authority to represent or act on behalf of the CONTRACTOR. Any limitations in the authority of this designated representative must also be clearly delineated. At all times when work is underway at the jobsite, the CONTRACTOR'S Project Manager or Superintendent shall be present at the jobsite to supervise the work. The CONTRACTOR shall also supply an alternative Authorized Representative to act on his behalf in an emergency situation or if the prime Authorized Representative is unavailable for any reason. The limits and extent of this individual's authority to act on the CONTRACTOR'S behalf must also be clearly defined. All instructions, determinations, notices and other communications given to the Authorized Representative of the CONTRACTOR shall be binding upon the CONTRACTOR. An Authorized Representative must be available by cell phone and/or radio on a twenty-four (24) hours a day, seven (7) days a week basis throughout the course of the Contract. In the event that no Authorized Representative is available in an emergency situation requiring the CONTRACTOR'S action or should the CONTRACTOR fail to respond within two (2) hours, the OWNER may take the appropriate actions to remedy the situation at the CONTRACTOR'S expense.

The CONTRACTOR, by failing to respond to the call, shall waive any rights to claims caused by the OWNER'S actions.

- C. All key personnel as described in the CONTRACTOR'S organizational chart must be approved by the OWNER prior to the commencement of work on the project. Resumes of key personnel should include related experience on three previous projects of similar magnitude and complexity. In the event that a member of the project team proves to be unsatisfactory to the CONTRACTOR and ceases to be in his employ, all substitutions must be reviewed and approved by the OWNER. Key personnel shall not be replaced without prior approval by the OWNER.

1.03 WORK COVERED BY CONTRACT DOCUMENTS

- A. The Work of this Contract comprises construction of the following:
 - 1. Install 80-feet of 20-inch diameter, 0.375 thick casing to cross U.S. Highway 60 for the installation of a future 6-inch PVC waterline.

1.04 WORK BY OTHERS

- A. The CONTRACTOR'S attention is directed to the fact that work may be conducted at or adjacent to the Site by other contractors during the performance of the Work under this Contract. The CONTRACTOR is to conduct its operations in a manner that will minimize any interference with the Work of other contractors under separate contract with the OWNER or other entities, and shall coordinate its operations and cooperate fully, with such contractors to provide continued safe access to their respective portions of the Site, as required to perform Work under their respective contracts. The CONTRACTOR shall include in the bid price all costs associated with the successful coordination of its operations with other contractors. Copies of Contract Documents pertaining to Work conducted on or adjacent to the site are available for review upon request.

1.05 COORDINATION

- A. Existing Utilities and Structures: Known utilities and structures adjacent to or expected to be encountered in the work are shown on the drawings. The locations shown are taken from existing records; however, it is expected that there may be some discrepancies and omissions in the locations and quantities of utilities and structures shown. Those shown are for the convenience of the CONTRACTOR only, and no responsibility is assumed by either the OWNER or the ENGINEER for their accuracy or completeness.

CONTRACTOR shall protect all existing utilities within the boundaries of the work. Utilities damaged, as a result of the CONTRACTOR'S operations due to his negligence or oversight shall be repaired to the satisfaction of the owner of said utility at CONTRACTOR'S sole expense.

At least seven (7) days prior to start of said work, CONTRACTOR shall notify all utilities that may be affected.

For location of utilities, CONTRACTOR shall call New Mexico One Call, phone number (505) 260-1990 for coordinating and identifying utility locations. Contractor shall pothole existing utilities to verify the horizontal and vertical location of utilities a minimum of fourteen (14) days ahead of the construction activities near these utilities. If discrepancies are identified, the CONTRACTOR shall notify the OWNER and ENGINEER immediately and request a resolution. The CONTRACTOR shall allow a minimum of seven (7) days for a resolution to be provided by the OWNER.

CONTRACTOR shall protect all existing structures within the boundaries of the work and adjacent to the work. CONTRACTOR shall be responsible for visiting the site and becoming familiar with all existing structures. Existing structures damaged that were not part of this contract shall be repaired to their original condition at CONTRACTOR'S sole expense.

For convenience, the CONTRACTOR may remove and replace small structures such as mailboxes, signs, gates, walls, fences and valve boxes that indirectly interfere with the reservoir construction. CONTRACTOR shall notify the owner of each structure to be removed seven (7) calendar days prior to removal and provide temporary mailboxes, signs, fences, or other miscellaneous structures until the permanent structures are replaced. If a traffic control sign is removed, CONTRACTOR shall make arrangements to erect a temporary sign acceptable to the sign owner. All small surface structures removed shall be replaced in the same location in as good or better than the original condition. The cost for this work shall be considered incidental to the project construction and shall be included in the several unit costs as shown in the bid proposal

- B. Cultural and Archaeological Resources: In the event that cultural material or human remains are encountered during excavation, CONTRACTOR shall immediately stop all work in the vicinity of the discovery, notify ENGINEER of the discovery and protect the area from further disturbance. No work shall proceed in the vicinity of the discovery without written approval of ENGINEER.

1.06 WORK SEQUENCE AND SCHEDULING CONSTRAINTS

- A. The CONTRACTOR shall schedule and perform the Work in such a manner as to result in the least possible disruption to the public's use of roadways, driveways, and utilities. Utilities shall include but not be limited to water, sewerage, drainage structures, ditches and canals, gas, electric, cable television, and telephone. Refer to all available plan and profile sheets for approximate location of utilities. It is the CONTRACTOR'S responsibility to locate each utility and incorporate as-built locations on the reproducible record plans, in red ink, showing proper location on each sheet where these utilities are located including depths, widths, and lengths of each utility. There is no guarantee as to exact location of each utility and no additional compensation will be made for utilities that are within a reasonable proximity of the area shown on the record plans.

1.07 CONTRACTOR ACCESS AND USE OF PROJECT SITE

- A. The CONTRACTOR'S use of the Project Site shall be limited to its construction operations, including on-site storage of materials, on-site fabrication facilities, and field offices.
- B. Contractor shall make arrangements with the Village of Magdalena for construction water for the project.

1.08 TIME OF WORK AND OVERTIME NOTIFICATION

- A. Working hours shall be performed from 7:30 am to 4:00 pm, Monday through Friday, with a ½ hour lunch period during which the Contractors operations may continue. The work week shall not exceed 42-1/2 hours (including lunch periods). Work shall not be conducted on Saturdays, Sundays or legal holidays, without the written permission of the OWNER. CONTRACTOR'S can request longer working hours if needed.

1.09 STORAGE

Storage conditions shall be in accordance with the manufacturer's requirements and shall be acceptable to OWNER and ENGINEER for all materials and equipment not yet incorporated into the Work but included in Applications for Payment. Such storage arrangements and conditions shall be presented in writing for ENGINEER review and acceptance and shall afford adequate and satisfactory security and protection. Off-site storage facilities shall be accessible to ENGINEER. The stored materials shall be insured for full value.

1.10 NOTICES TO OWNERS OF ADJACENT PROPERTIES AND UTILITIES

- A. CONTRACTOR shall notify owners of adjacent property and utilities in advance of when prosecution of the Work may affect them.
- B. When it is necessary to temporarily interrupt any utility service connection, CONTRACTOR shall give notices sufficiently in advance to enable the affected persons to provide for their needs. Notices shall conform to any applicable local ordinance and, whether delivered orally or in writing, shall include appropriate information concerning the interruption and instructions on how to limit any resulting inconvenience.
- C. Utilities and other concerned agencies shall be contacted at least seven days prior to cutting or closing streets or other traffic areas or excavating near underground utilities or pole lines. The CONTRACTOR must submit to the ENGINEER and each affected utility a written description of the area, time, duration, and proposed method of disruption and reparation. With the exception of emergencies and/or events that may compromise the public safety, no disruption will be allowed without the CONTRACTOR having first obtained the express written approval of the ENGINEER.

1.11 PROJECT MEETINGS

A. Preconstruction Conference

1. Prior to the commencement of Work at the Site, a preconstruction conference will be held at a mutually agreed time and place which shall be attended by the CONTRACTOR'S Project Manager, its Superintendent, its Safety Representative, and its Subcontractors as the CONTRACTOR deems appropriate. Other attendees will be:
 - a. OWNER'S CONSTRUCTION MANAGER;
 - b. Representatives of OWNER;
 - c. Governmental representatives as appropriate;
 - d. Others as requested by CONTRACTOR, OWNER, or OWNER'S CONSTRUCTION MANAGER;
 - e. ENGINEER; and
 - f. CONTRACTOR'S personnel assigned to Scheduling. In the event CONTRACTOR elects to utilize an outside agency to perform its scheduling requirements, the responsible personnel from such Agency is required to attend.
2. Bring to the conference the submittals prepared by the CONTRACTOR prior to the conference along with a schedule of submittals for the project.
3. The purpose of the conference is to designate responsible personnel, discuss contract requirements and establish a working relationship. Matters requiring coordination will be discussed and procedures for handling such matters established. The complete agenda will be furnished to the CONTRACTOR prior to the meeting date. Any additions to the agenda by CONTRACTOR must be forwarded to the ENGINEER at least 24 hours prior to the scheduled meeting date and time.
4. The CONTRACTOR shall be prepared to discuss all of the items listed below.
 - a. CONTRACTOR'S assignments for safety and first aid, including Designated Competent person(s) and CONTRACTOR'S Safety Representative.
 - b. CONTRACTOR'S schedules as required by Contract.
 - c. Transmittal, review, and distribution of all documents between the CONTRACTOR and the ENGINEER including CONTRACTOR'S submittals, RFI'S, Survey Requests, etc.
 - d. Processing applications for payment.
 - e. Maintaining record documents.
 - f. Critical work sequencing.
 - g. Field decisions and Change Orders.

- h. Use of project site, office and storage areas, security, housekeeping, and OWNER'S needs.
 - i. Major equipment deliveries and priorities.
 - j. Permits required for construction.
 - k. Utilities required for construction.
 - l. Contract authority and channels of communication.
 - m. Coordination with others.
 - n. Conflict resolution procedures.
5. The OWNER'S CONSTRUCTION MANAGER will preside at the pre-construction conference and will arrange for keeping and distributing the minutes to all persons in attendance.

B. Subcontractor Coordination Meetings

1. The CONTRACTOR is expected to conduct regularly scheduled coordination meetings with Subcontractors, Suppliers, and Manufacturers to manage and ensure the smooth progression of the work. Request representation at each meeting by all applicable parties involved in the coordination of current activities or concerned with the planning of upcoming work. During each meeting the following topics need to be addressed:
- a. The development of a four week look-ahead schedule (to be distributed to the OWNER'S CONSTRUCTION MANAGER at the subsequent progress meeting).
 - b. Any concerns relating to the progress of the work.
 - c. Any other items as deemed necessary by any of the related parties.

C. Pre-Activity/Specialty Coordination Meetings

Pre-Activity meetings are to be held no later than twenty-four (24) hours prior to the execution of any activity requiring inspection or as deemed necessary by the OWNER. Required attendees should include at a minimum the OWNER'S CONSTRUCTION MANAGEMENT TEAM, the CONTRACTOR'S Project Manager, Superintendent and any other related personnel.

1.12 CONTRACTOR'S REQUEST FOR INFORMATION (RFI)

- A. In the event that the CONTRACTOR determines that some portion of the Contract Documents requires additional information or interpretation, the CONTRACTOR shall submit a written statement to the OWNER'S CONSTRUCTION MANAGER requesting clarification on the issue. Such request must be provided by the CONTRACTOR to the OWNER'S CONSTRUCTION MANAGER immediately upon discovery. Prior to the submittal of the RFI the CONTRACTOR shall carefully study and review the Contract Documents to ensure that the requested information is not contained

therein. Submit only one issue to be clarified per form. The CONTRACTOR must include in a properly written RFI the following information:

1. Project number and title, RFI number (sequentially numbered), date, person requesting clarification and signature.
 2. A clear and concise summary of the issue in question and why further clarification or information is required from the OWNER.
 3. The specific drawing shall be identified by drawing number and location on the drawing sheet.
 4. The specific specification section shall be identified by section number, page and paragraph.
 5. Where applicable, the CONTRACTOR shall include his own interpretation of the drawings or specifications and why he believes such an understanding is correct.
 6. In cases requesting clarification of coordination issues, the CONTRACTOR shall include a suggested solution with necessary drawings or sketches with the RFI.
- B. Only RFI'S submitted by the CONTRACTOR will be accepted. Any clarifications required by the Subcontractors, Manufacturers, or Suppliers of the CONTRACTOR must be properly routed through the CONTRACTOR to the OWNER'S CONSTRUCTION MANAGER on the appropriate form. All RFI'S must be limited to clarifications of the Contract Documents. RFI'S shall not be used for the purpose of notifying the OWNER of the following:
1. To request approval of submittals.
 2. To request approval of substitutions.
 3. To request changes which entail additional cost or credit.
 4. To request methods of performing work different than those shown or specified.
- C. If the OWNER'S CONSTRUCTION MANAGER determines that the RFI is not in relation to clarifications relating to the Contract Documents, such RFI will be returned to the CONTRACTOR with an explanation which may include references to other sections within the Contract for the CONTRACTOR to follow.
- D. Improper or frivolous RFI'S that are not properly prepared as detailed above, or request information that is clearly shown in the Contract Documents, will be returned to the CONTRACTOR labeled as either Improper or Frivolous with the reasons for such determination. Should additional costs be incurred by OWNER as a result of reviews of RFI'S that were deemed Improper or Frivolous, OWNER will withhold from CONTRACTOR'S payment an amount based on ENGINEER'S current fee schedule, including applicable miscellaneous expenses, so that OWNER may reimburse ENGINEER for such reviews.
- E. After receipt of the RFI, the OWNER'S CONSTRUCTION MANAGER will be allowed fourteen (14) calendar days to review and respond to the issue. If

additional time is required by the OWNER'S CONSTRUCTION MANAGER, the CONTRACTOR will be notified in writing. Responses by the OWNER'S CONSTRUCTION MANAGER shall not be interpreted as authorization to proceed with extra work. In the event that the CONTRACTOR believes that additional cost or time is involved from the clarification provided by the OWNER'S CONSTRUCTION MANAGER, the CONTRACTOR shall notify the OWNER'S CONSTRUCTION MANAGER in writing that a change order is required and the reasons for his belief that this work constitutes a change in his Contractual requirements. At no point in time is the CONTRACTOR to proceed with extra work without the written consent of the OWNER.

1.13 DAILY ACTIVITIES REPORT

- A. Commencing with the date of Notice to Proceed, which shall be considered as Contract Day No. 1, the CONTRACTOR shall prepare and forward to the OWNER'S CONSTRUCTION MANAGER a Daily Activity Report. A Daily Activity Report shall be executed by the CONTRACTOR for each Contract day, for each shift, whether work takes place or not. Report shall be submitted to the OWNER'S CONSTRUCTION MANAGER on a weekly basis. This report shall contain not less than the following data:
1. Contractor.
 2. Contract name and number.
 3. Contract day, date and shift.
 4. All personnel engaged in the Contract, including management, supervisory, clerical, engineering and manual.
 5. An exact count of personnel hours by trade, craft, duties, CONTRACTOR or Subcontractor.
 6. An exact account of all equipment that is on site or committed to the Contract, indicating hours worked and idle.
 7. All personnel hours and equipment hours shall be identified by the activity number or node displayed in the approved construction schedule.
 8. List all accidents.
 9. List all Subcontractors active on site.
 10. Name and Signature of CONTRACTOR'S Authorized Representative.
 11. Work performed, including area (i.e. - station).
 12. Conflicts encountered.
- B. As-Built Drawings
1. The CONTRACTOR shall, during progress of the work, keep a careful record of all changes and corrections to the Contract Drawings. This record shall show the actual field locations, all project conditions, configurations, and any other changes or deviations that vary from the details provided in the original Contract drawings. The horizontal and vertical locations of any buried or concealed construction and utility

features that were either not shown on the drawings or vary from the locations indicated, shall be carefully recorded. Include detailed sketches to fully illustrate the constructed work. The as-built drawings shall be available for review by the OWNER'S CONSTRUCTION MANAGER at all times during the construction period. At the end of each month, prior to each monthly progress payment, these drawings will be inspected by the OWNER'S CONSTRUCTION MANAGER. If these drawings are not found to be complete and up-to-date, a non-compliance report will be issued and an additional ten (10) percent will be withheld from the CONTRACTOR'S progress payment in addition to the specified Liquidated Damages. If the OWNER receives a written notice of the correction of the condition that resulted in the withholding, signed by an authorized agent of the CONTRACTOR, the OWNER shall pay the amount withheld within 30 days after receiving the next progress estimate.

2. The as-built drawing format shall be red-line mark-ups on a set 24" x 36" drawing paper prints.
3. Upon completion of construction and prior to final payment, the CONTRACTOR shall submit to the OWNER'S CONSTRUCTION MANAGER two (2) copies of the red-lined mark-ups showing all changes, including the type, make, model, class, manufacturer, etc., as applicable, of all major items of material used in the project as well as the source of all said items.
4. Throughout the construction period and at all work areas, utilize the project coordinate system and bench marks to survey and record the horizontal and vertical location (using the survey control information provided in the plans) of new transmission line and appurtenances and existing utilities and improvements within the work area. Annotate the diameter, material and type of utility encountered. Assign each utility type to a unique drawing layer. Submit the proposed drawing nomenclature, layer listing and workplan to the ENGINEER for review prior to start of field work.
5. The as-built and utilities surveying shall be performed under the direct control and personal supervision of a person who is duly registered as a professional land surveyor and is currently authorized to practice as such in the State of New Mexico.
 - a. Pipeline line grades and alignment shall be surveyed at all changes in horizontal and vertical alignment or a minimum 200 foot interval, whichever is greater. New utilities parallel to transmission lines and existing parallel utilities uncovered by construction shall be surveyed at all changes in direction. Utility crossings shall be surveyed with a minimum of two or more points, one at each side of the excavation and at intermediate changes in horizontal and vertical grades. ASCII point files depicting this information shall include x, y, z and description fields. Electronic drawing files shall be annotated and configured with two dimensional lines with attached elevations (three dimensional lines will be rejected).

- b. In addition to the as-built drawings, provide an electronic as-built file in AutoCAD Release 2011 following the specified requirements above. At the preconstruction conference, the ENGINEER will provide to the CONTRACTOR an electronic copy of the project digital mapping database for use.

Prior to each payment application submittal, the CONTRACTOR shall provide a paper and electronic copy of the survey as-built file for review by the ENGINEER. The electronic as-built file shall be provided via email or other acceptable format along with a hard copy signed and stamped by a New Mexico Registered Professional Surveyor.

6. Survey Services Requirements: The CONTRACTOR shall perform the survey services specified below.

- a. Description. This work shall consist of construction staking lines, grades and layouts by the CONTRACTOR in accordance with the plans and specifications and as directed by the ENGINEER, as-built surveying of newly constructed utilities, structures and improvements, surveying of existing buried utilities encountered during construction and production and delivery of electronic survey data.
- b. Materials. The CONTRACTOR shall furnish all stakes, templates, straightedges, surveying equipment and other devices necessary for establishing, checking, marking, and maintaining points, including P.I.'s, P.C.'s, P.T.'s, and lines, grades and layouts. As directed by the ENGINEER, points shall be referenced so that they may later be re-established.
- c. Construction Requirements (Construction Staking by the CONTRACTOR). Construction staking by the CONTRACTOR shall include use of vertical and horizontal survey control points to establish construction survey points and establish additional bench marks as necessary; setting grades for pipes, structures, culverts or drains, slopes, subgrade, subbase, base course, paving, and any other points or elevations deemed necessary for proper control of the work.

Field notes shall be kept in standard field notebooks and shall become the property of the OWNER upon completion of the Work. The standard field notebooks shall be made available to the ENGINEER upon request at any time during the prosecution of the work.

Any discrepancies in grade, alignment, locations, and/or dimensions detected by the CONTRACTOR shall immediately be brought to the attention of the ENGINEER.

The CONTRACTOR shall employ sufficient qualified personnel experienced in surveying and layout to complete the work accurately. The construction staking shall be performed under the direct control and personal supervision of a person who is duly registered as a professional land surveyor and is currently

authorized to practice as such in the State of New Mexico. The CONTRACTOR shall present the credentials of the surveyor at the preconstruction conference for review and approval by the ENGINEER. Any errors in the construction of the project because of the construction staking detected by the ENGINEER shall be corrected by the CONTRACTOR. Any overruns resulting from the CONTRACTOR'S errors will be at the expense of the CONTRACTOR.

The ENGINEER may check the accuracy of the construction stakes, lines, grades and layouts but will assume no responsibility for the accuracy or the final result of the construction stakes, lines, grades and layouts.

7. Method of Measurement: Construction staking, as-built and utilities surveying by the CONTRACTOR as specified herein shall each be measured as a lump sum unit.
8. Basis of Payment: For Unit Price Bids, Construction staking, as-built and utilities surveying by the CONTRACTOR will be paid for at the contract lump sum bid price and all necessary personnel, equipment and supplies to accomplish this work shall be incidental to the contract Unit Bid Price of this item.

No adjustments in the lump sum unit price will be made for staking required due to normal increases in contract items.

C. Noise Ordinance Compliance And Permits For Work Outside Normal Working Hours

1. CONTRACTOR shall comply with the requirements of the Village of Magdalena noise ordinance at all times.
2. If necessary, CONTRACTOR shall obtain all permits and/or variances required to permit work outside of normal working hours, including Extended Hours of Construction if required on this project.

D. Permits

The CONTRACTOR shall procure all permits and encroachments except for those already obtained by the OWNER.

PART 2 – PRODUCTS

2.01 PRODUCT REQUIREMENTS

Supplemental Specifications shall take priority over the standard specifications.

PART 3 – EXECUTION

3.01 SEQUENCE OF WORK / CONSTRAINTS

The work associated with this project shall be accomplished in the sequence of work deemed necessary by the CONTRACTOR.

3.02 LIQUIDATED DAMAGES

Construction is required to be accomplished within described phases, schedules, and/or durations and liquidated damages shall be assessed. The sequencing of phasing is not dictated by the OWNER, except as it is impacted by the scheduling constraints. Phases can be accomplished concurrently. Liquidated damages will be cumulative for each calendar day that work within each construction phase remains incomplete beyond either the allowable duration.

NOTE: All Liquidated Damages Shall Be Cumulative.

PART 4 – MEASUREMENT AND PAYMENT

4.01 GENERAL

Costs for the work in this Section shall not be paid for separately but shall be considered incidental to the contract work to be accomplished, unless otherwise noted.

END OF SECTION

SECTION 01300
CONTRACTOR SUBMITTALS

PART 1 – GENERAL

1.01 GENERAL

- A. CONTRACTOR "Submittals" may be Shop Drawings, schedules, surveys, reports, samples, plans, lists, drawings, documents, findings, programs, manuals, data, or any other item or information required by the Contract Documents to be submitted or offered by the CONTRACTOR in accomplishing the Work.
- B. Wherever Submittals are required hereunder, all such documents shall be furnished to the OWNER'S CONSTRUCTION MANAGER.
- C. The CONTRACTOR shall be responsible for the accuracy, completeness, and coordination of all Submittals, including but not limited to, Submittals of or from an item, product, thing, service, person or firm which is specified in the Contract Documents; such specified Submittals shall not be presumed to be acceptable to the OWNER and shall be subject to the same approval process as all other Submittals. The CONTRACTOR shall not delegate this responsibility in whole or in part to any Subcontractor. Submittals may be prepared by the CONTRACTOR, Subcontractor, or Supplier, but the CONTRACTOR shall ascertain that each Submittal meets the requirements of the Contract and the Project. The CONTRACTOR shall ensure that there is no conflict with other Submittals and shall notify the OWNER'S CONSTRUCTION MANAGER in each case where its Submittal may affect the work of another Contractor or the OWNER. The CONTRACTOR shall ensure coordination of Submittals of related crafts and Subcontractors.
- D. Failure to make timely submittals in accordance with the requirements of the specifications shall constitute grounds for the OWNER to withhold payment.

1.02 PRE-CONSTRUCTION CONFERENCE SUBMITTALS

At the preconstruction conference, submit the following items for review:

- A. A preliminary schedule of Shop Drawings, Samples, and proposed Substitute ("Or-Equal") submittals.
- B. A list of all permits and licenses the CONTRACTOR shall obtain indicating the agency required to grant the permit, the expected date of submittal for the permit, and required date for receipt of the permit.
- C. A preliminary schedule of values.
- D. A graphic construction schedule prepared by the critical path method of analysis, listing all significant construction activities and items of work, in expected sequence and depicting expected duration.

- E. The names and qualifications of Key Personnel as described in Section 01010: SUMMARY OF WORK.

1.03 PROGRESS REPORTS

- A. Furnish a progress report to OWNER'S CONSTRUCTION MANAGER with each Application for Payment. If the Work falls behind schedule, submit additional progress reports at such intervals as OWNER'S CONSTRUCTION MANAGER may request.
- B. Each progress report shall include sufficient narrative to describe any current and anticipated delaying factors, effect on the construction schedule, and proposed corrective actions. Any Work reported complete, but which is not readily apparent to OWNER'S CONSTRUCTION MANAGER, must be substantiated with satisfactory evidence.
- C. Each progress report shall include a list of the activities completed with their actual start and completion dates, a list of the activities currently in progress, and the number of working days required to complete each.

1.04 SHOP DRAWINGS

- A. Wherever called for in the Contract Documents, or where required by the ENGINEER, furnish to the OWNER'S CONSTRUCTION MANAGER for review, via the BHITRACKER website. The term "Shop Drawings" as used herein shall be understood to include detail design calculations, shop drawings, fabrication, and installation drawings, erection drawings, lists, graphs, catalog sheets, data sheets, and similar items. Whenever the CONTRACTOR is required to submit design calculations as part of a Submittal, such calculations shall bear the signature and seal of a professional engineer registered in New Mexico unless otherwise directed.
- B. All Shop Drawing Submittals shall be accompanied by a Submittal transmittal form acceptable to the OWNER'S CONSTRUCTION MANAGER. Any Submittal not accompanied by such a form, or where all applicable items on the form are not completed, will be returned for resubmittal.
- C. Organization
 - 1. A single Shop Drawing Submittal transmittal form shall be used for each technical specification section or item or class of material or equipment for which a Submittal is required. A single Submittal covering multiple sections will not be acceptable, unless the primary specification references other sections for components. Example: If a pump section references other sections for the motor, protective coating, anchor bolts, local control panel, and variable frequency drive, a single Submittal would be accepted; a single Submittal covering vertical turbine pumps and horizontal split case pumps would not be acceptable.
 - 2. On the transmittal form, index the components of the Submittal and insert tabs in the Submittal to match the components. Relate the Submittal components to specification paragraph and subparagraph, drawing

number, detail number, schedule title, or room number or building name, as applicable.

3. Unless otherwise approved by OWNER, terminology and equipment names and numbers used in Submittals shall match the Contract Documents.

D. Format

1. Where product data from a manufacturer is submitted, clearly mark which model is proposed, with all pertinent data, capacities, dimensions, clearances, diagrams, controls, connections, anchorage, and supports. Sufficient level of detail shall be presented for assessment of compliance with the Contract Documents.
2. Each Submittal shall be assigned a unique number. Submittals shall be numbered sequentially. The Submittal numbers shall be clearly noted on the transmittal. Original Submittals shall be assigned a numeric Submittal number. Resubmittals shall bear an alpha-numeric system which consists of the number assigned to the original Submittal for that item followed by a letter of the alphabet to represent that it is a subsequent Submittal of the original. For example, if Submittal 25 requires a resubmittal, the first resubmittal will bear the designation "25-A" and the second resubmittal will bear the designation "25-B" and so on.

- E. Disorganized Submittals which do not meet the requirements above will be returned without review.

- F. Except as may otherwise be indicated herein, the OWNER'S CONSTRUCTION MANAGER will return each Submittal to the CONTRACTOR, with its comments noted thereon, within 2 calendar days following their receipt by the OWNER'S CONSTRUCTION MANAGER. For resubmittal of Submittals, the OWNER'S CONSTRUCTION MANAGER will be allowed the same review period as for the original Submittal. It is considered reasonable that the CONTRACTOR shall make a complete and acceptable Submittal to the OWNER'S CONSTRUCTION MANAGER by the second submission of a Submittal item. Should the ENGINEER be required to review third and subsequent submittals, OWNER will withhold from CONTRACTOR'S next payment request an amount based on ENGINEER'S current fee schedule, including applicable miscellaneous expenses, so that OWNER may reimburse ENGINEER for such reviews.

- G. The OWNER'S CONSTRUCTION MANAGER'S and/or ENGINEER'S review of Shop Drawing Submittals shall not relieve the CONTRACTOR of the entire responsibility for the correctness of details and dimensions and for compliance with the Contract Documents. The CONTRACTOR shall assume all responsibility and risk for any problems due to any errors in Submittals. The CONTRACTOR shall be responsible for the dimensions and the design of adequate connections and details.

- H. No changes in the Contract times will be considered for schedule delays resulting from non-compliant Submittals.

- I. At the preconstruction meeting, the CONTRACTOR shall bring a complete list of anticipated Submittals which includes Specification and Drawing references.
- J. If the CONTRACTOR submits an incomplete Submittal, the Submittal may be returned without review. A complete Submittal shall contain sufficient data to demonstrate that the items contained therein comply with the Contract Documents, meet the minimum requirements for Submittals as described in the Contract Documents, and include all corrections as required from previous Submittals.

1.05 SURVEY DATA

The CONTRACTOR shall make available for examination throughout the construction period all field books, notes, and other data developed by CONTRACTOR in performing the surveys required by the Work and shall submit all such data to OWNER'S CONSTRUCTION MANAGER with documentation required for final acceptance of the Work.

1.06 UTILITY INVESTIGATION

The CONTRACTOR shall submit the findings of all utility investigations performed.

PART 2 – PRODUCTS

NOT USED

PART 3 – EXECUTION

NOT USED

PART 4 – PAYMENT

Costs for the work in this Section shall not be paid for separately but shall be considered incidental to the Contract work to be accomplished.

END OF SECTION

SECTION 01700
CONTRACT CLOSEOUT

PART 1 - GENERAL

1.1. SECTION INCLUDES

- A. Contract Closeout Procedures and Submittals.

1.2. CLOSEOUT PROCEDURES

- A. Upon completion of the work certify that:
 - 1. Contract Documents have been reviewed;
 - 2. Work has been inspected for compliance with Contract Documents;
 - 3. Work has been completed in accordance with the Contract Documents;
 - 4. Equipment and systems have been tested as required, and are operational;
 - 5. Substantial completion walk through has been completed and punch list items provided to Contractor.
 - 6. Completion and certification of record drawings
 - 6. Work is completed and punch list items addressed and ready for final inspection.
 - 7. Letter of final acceptance signed by OWNER, CONTRACTOR, and ENGINEER.
- B. Should the work be found to be incomplete or defective, the ENGINEER will notify the CONTRACTOR in writing, listing the incomplete or defective work.
- C. Correct the deficiencies promptly and notify the ENGINEER when the work is ready for re- inspection.
- D. When the work is determined to be acceptable, the ENGINEER will request the CONTRACTOR to make closeout submittals.

1.3. FINAL CLEANING

- A. Execute final cleaning prior to final inspection.
- B. Clean interior and exterior glass and surfaces exposed to view; remove temporary labels, stains and foreign substances.
- C. Clean equipment and fixtures to a sanitary condition.
- D. Clean filters of operating equipment.
- E. Clean site; sweep paved areas.

- F. Remove waste and surplus materials, rubbish, and construction facilities from the site.

1.5. TRANSMITTAL OF SUBMITTALS

- A. Transmit submittals per Section 01300, Submittals.

1.6. CONTRACT CLOSEOUT SUBMITTAL REQUIREMENTS

- A. Prepare and submit Contract Closeout Submittals per Section 01300 – Contractor Submittals.
- B. Contract Closeout Submittals will be reviewed and returned per Section 01300 – Contractor Submittals.

1.7. DEFINITION OF CONTRACT CLOSEOUT SUBMITTAL TYPES

- A. Provide the following types of Contract Closeout Submittals:
 - 1. Maintenance and Operating Manuals and Instructions/Data As Applicable
 - 2. Warranties and Software Licenses.
 - 3. Project Record Documents.
 - 4. Final Application for Payment.
 - 5. Consent of Surety.
 - 6. List of all Claims.
 - 7. Release of liens or waivers.
 - 8. Certification of Labor Standards for Required Closeout Submittals.

1.10. PROJECT RECORD DOCUMENTS

- A. Maintain on site, one set of the following record documents; record actual revisions to the Work:
 - 1. Contract Drawings.
 - 2. Specifications
 - 3. Addenda.
 - 4. Change Orders and other Modifications to the Contract.
 - 5. Reviewed shop drawings, product data, and samples.
- B. Store Record Documents separate from documents used for construction.
- C. Record information concurrent with construction progress.
- D. Specifications: Legibly mark and record at each Product section description of actual products installed, including the following:

1. Manufacturer's name and product model and number.
 2. Product substitutions or alternates utilized.
 3. Changes made by Addenda and Modifications.
- E. Record Documents and Shop Drawings: Legibly mark each item to record actual construction including:
1. Measured depths of foundations in relation to finish floor datum.
 2. Measured horizontal and vertical locations of underground utilities and appurtenances, referenced to visible and accessible features of the Work.
 3. Measured locations of internal utilities and appurtenances concealed in construction, referenced to visible and accessible features of the Work.
 4. Field changes of dimension and detail.
 5. Details not on original Contract Drawings.
- F. Submit documents to ENGINEER with final Application for Payment

1.11 PROJECT RECORD DOCUMENTS TO NMED

- A. The Owner will request a final reimbursement request including the final certified construction pay request prepared by the OWNER and ENGINEER.
- B. OWNER to submit letter of final acceptance will be submitted to NMED.
- C. OWNER to provide certification letter that the Labor Standards Contract Provisions have been met.
- D. OWNER will provide ledger sheets including all payments made will be provided to NMED prior to final reimbursement.

PART 2 - PRODUCTS

Not used.

PART 3 - EXECUTION

Not used.

PART 4 - MEASUREMENT AND PAYMENT

4.1. GENERAL

Costs for the work in this Section shall not be paid for separately but shall be considered incidental to the Contract work to be accomplished.

END OF SECTION

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: that

(Name of Contractor)

(Address of Contractor)
a _____, hereinafter called Principal, and
(Corporation, Partnership or individual)
and _____
(Name of Surety)

(Address of Surety)
hereinafter called Surety, are held and firmly bound unto _____

(Name of Owner)

(Address of Owner)

hereinafter called OWNER, and the United States of America in the total aggregate
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, 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 _____
19____, a copy of which is hereto attached and made a part here of for the construction of:

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 all amounts due for materials, lubricants, oil, gasoline, coal and
coke, repairs on machinery, equipment and tools, consumed or used in connections with the
construction of such WORK, and all insurance premiums on said WORK whether by
SUBCONTRACTOR or otherwise, then this obligation shall be void; otherwise to remain in
full force and effect.

PROVIDED, that beneficiaries or claimants hereunder shall be limited to the **SUBCONTRACTORS**, and persons, firms, and corporations having a direct contract with the **PRINCIPAL** or its **SUBCONTRACTORS**.

PROVIDED, FURTHER, that it 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 the **WORK** to be performed thereunder or the **SPECIFICATIONS** accompanying 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 suit or action shall be commenced hereunder by any claimant: (a) Unless claimant, other than one having a direct contract with the **PRINCIPAL** (or with the **GOVERNMENT** in the event the **GOVERNMENT** is performing the obligations of the **OWNER**), shall have given written notice to any two of the following: The **PRINCIPAL**, the **OWNER** or the **SURETY** above named within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the work or labor, or furnished the last of the materials for the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the **PRINCIPAL**, **OWNER** or **SURETY**, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer. (b) After the expiration of one (1) year following the date or which **PRINCIPAL** ceased work on said **CONTRACT**, is being understood, however, that if any limitation embodied in the **BOND** is prohibited by any law controlling the construction hereof, such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

PROVIDED, FURTHER, that it is expressly agreed that is **BOND** shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract not increasing the contract price more than 20 percent, so as to bind the **PRINCIPAL** and the **SURETY** to the full and faithful performance of the Contract as so amended. The term "Amendment", wherever used in this **BOND** and whether referring to this **BOND**, the contract or the loan Documents shall include any alteration, addition, extension or modification of any character whatsoever.

PROVIDED, FURTHER, that no final settlement between the **OWNER** or **GOVERNMENT** and the **CONTRACTOR** shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

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

ATTEST:

Principal

(Principal) Secretary

(SEAL)

By _____ (s)

(Witness as to Principal)

(Address)

(Address)

(Surety)

ATTEST:

Witness to Surety

By _____

Attorney-in-Fact

(Address)

(Address)

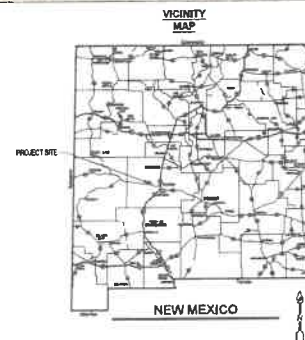
NOTE: Date of BOND must not be prior to date of Contract.

If CONTRACTOR is partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the Project is located.

PAYMENT BOND

<u>SHEET NUMBER</u>	<u>DWG NUMBER</u>	<u>DESCRIPTION</u>
1	G-01	COVER SHEET
2	G-02	GENERAL NOTES
3	G-03	SURVEY CONTROL & OVERALL MAP
4	G-04	HYDRAULIC PROFILE
5	C-01	WATERLINE- PLAN AND PROFILE STA 10+00 TO STA 21+00
6	C-02	WATERLINE- PLAN AND PROFILE STA 21+00 TO STA 32+00
7	C-03	WATERLINE- PLAN AND PROFILE STA 32+00 TO STA 43+00
8	C-04	WATERLINE- PLAN AND PROFILE STA 43+00 TO STA 54+00
9	C-05	WATERLINE- PLAN AND PROFILE STA 54+00 TO STA 61+50
10	D-01	CIVIL DETAILS 1
11	D-02	CIVIL DETAILS 2
12	TC-01	DIRECTIONAL DRILL BORE PIT LOCATION



ENGINEER'S STAMP & SIGNATURE

Bohannon & Huston
www.bhinc.com 800.477.5332

VILLAGE OF MAGDALENA WATERLINE REPLACEMENT
COVER SHEET

IN PROJECT NO.	20200347	ORG NO.	G-01	SHEET	01	OF	12
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© 2000 Blackwell Science Ltd
Journal of Internal Medicine 247: 395–402

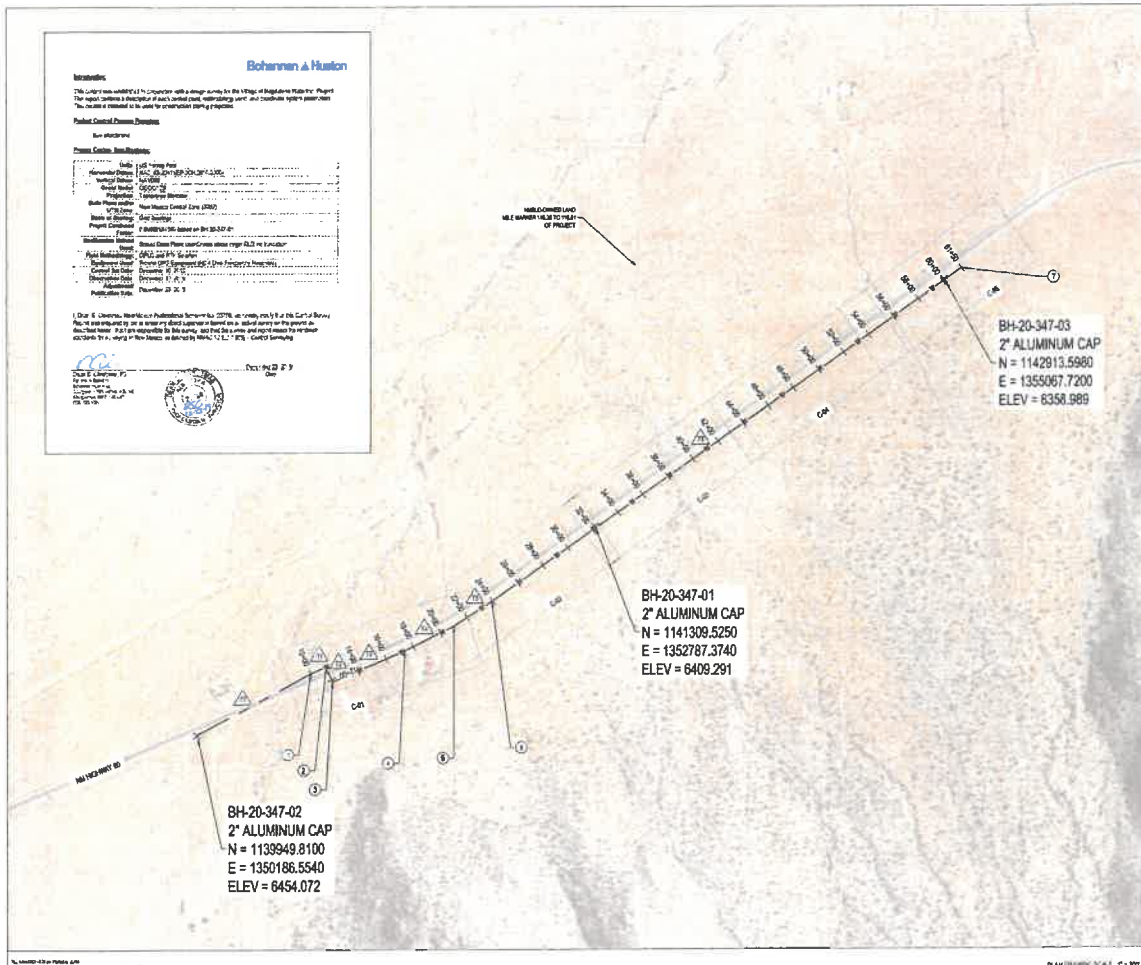
18. THE CONTRACTOR SHALL CONFINED HIS WORK TO WITHIN THE CONSTRUCTION LIMITS AND/OR PUBLIC RIGHTS-OF-WAY TO PRESERVE EXISTING VEGETATION, LANDSCAPING, AND PRIVATE PROPERTY. APPROVAL OF THESE PLANS DOES NOT GIVE OR IMPLY ANY PERMISSION TO TRESPASS OR WORK ON PRIVATE PROPERTY. PERMISSION MUST BE GRANTED IN WRITING BY THE OWNER OF THAT PROPERTY.

1. CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR EROSION CONTROL, INCIDENTAL TO THE CONSTRUCTION ACTIVITIES IN THE EVENT THAT ONE (1) ACRE OR MORE IS DISTURBED. THE CONTRACTOR SHALL SUBMIT TO THE OWNER A STORM-WATER POLLUTION PREVENTION PLAN THAT WILL ADDRESS ALL CONSTRUCTION PHASES AND THE PROPOSED POLLUTION PREVENTION AND SEDIMENT CONTROL MEASURES. THIS SHALL BE DONE IN ACCORDANCE WITH THE NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) GENERAL PERMIT REQUIREMENT FOR ALL CONSTRUCTION ACTIVITIES.

2. HISTORIC PRESERVATION - ANY EXCAVATION BY THE CONTRACTOR THAT UNCOVERS A HISTORICAL OR ARCHAEOLOGICAL ARTIFACT SHALL BE IMMEDIATELY REPORTED TO THE PROJECT ENGINEER. CONTRACTOR SHALL STOP ALL WORK UNTIL THE STATE HISTORICAL PRESERVATION OFFICE HAS BEEN NOTIFIED AND FURTHER DIRECTION ISSUED BY THE PROJECT ENGINEER. AFTER CONSULTATION WITH THE STATE HISTORICAL PRESERVATION OFFICE OR PHD.

1. FOR STAGING OF MATERIALS AND EQUIPMENT STORAGE, THE CONTRACTOR MAY HAVE TO OBTAIN AN OFF-SITE STORAGE AND STAGING YARD, PROPERTY WITHIN THE PROJECT AREA MAY BE AVAILABLE FOR USE BUT MUST BE COORDINATED WITH OWNER.

10

[illegible]

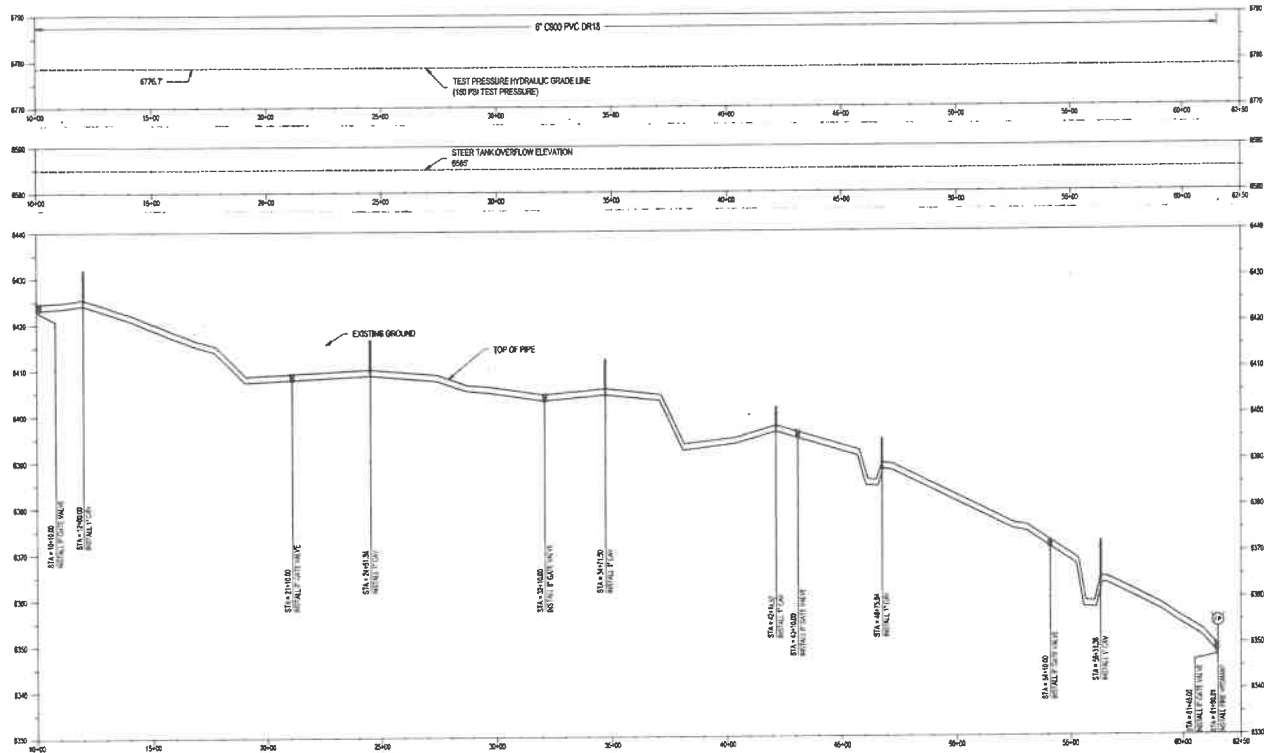
POINT TABLE		
ID	NORTHING	EASTING
1	154325.85	125022.48
2	154325.85	125022.77
3	154325.55	125026.95
4	154325.80	125054.42
5	154325.82	125088.67
6	154325.84	125218.20
7	154325.83	125585.88

TANGENT TABLE		
ID	BEARING	LENGTH
	N67°00'14"E	110.13'
	S22°50'02"E	105.68
	N67°03'58"E	518.54'
	N67°38'53"E	380.08'
	N57°12'50"E	287.53'
	N64°47'12"E	3757.08'
	S61°24'32"W	838.04'

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VILLAGE OF MAGDALENA WATERLINE REPLACEMENT
SURVEY CONTROL & OVERALL MAP

DATE PROJECT MO.	20200347	ORG. NO.	G-03	SHEET	03	OF	12
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GENERAL NOTES:

1. CONTRACTOR SHALL SUBMIT HYDRAULIC TESTING AND DESIGN SECTION PLAN TO ENGINEER AND OWNER 30 DAYS PRIOR TO CONDUCTING TESTS.
2. ENGINEER AND OWNER MUST APPROVE HYDRAULIC TESTING PLAN PRIOR TO CONDUCTING PRESSURE TEST. THE PLAN SHALL INCLUDE ALL CALCULATIONS, SHEETS, LOSSING CALCULATIONS, PUMP CURVES, ETC. FOR THE EQUIPMENT (PUMP, VALVE, STOP, AND APPURTENANCES) USED FOR FILLING, PRESSURE TESTING AND DISINFECTION.
3. CONTRACTOR MUST UTILIZE 1" DIAMETER PRESSURE GAUGE (0-400 PSI FOR 150 PSI) DURING TESTING.
4. ANY WATER DISCHARGED FROM THE PIPELINE SHALL BE RE-CHARGED.
5. ALL COSTS ASSOCIATED WITH TESTING AND DISINFECTION SHALL BE INCIDENTAL.
6. CONSTRUCTION AND TEST WATER SHALL BE COORDINATED WITH OWNER. CONTRACTOR SHALL SUBMIT TO OWNER DURING CONSTRUCTION.

Bohannon & Huston
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VILLAGE OF MAGDALENA WATERLINE REPLACEMENT
HYDRAULIC PROFILE

HORIZONTAL SCALE 1" = 200' VERTICAL SCALE 1" = 10'

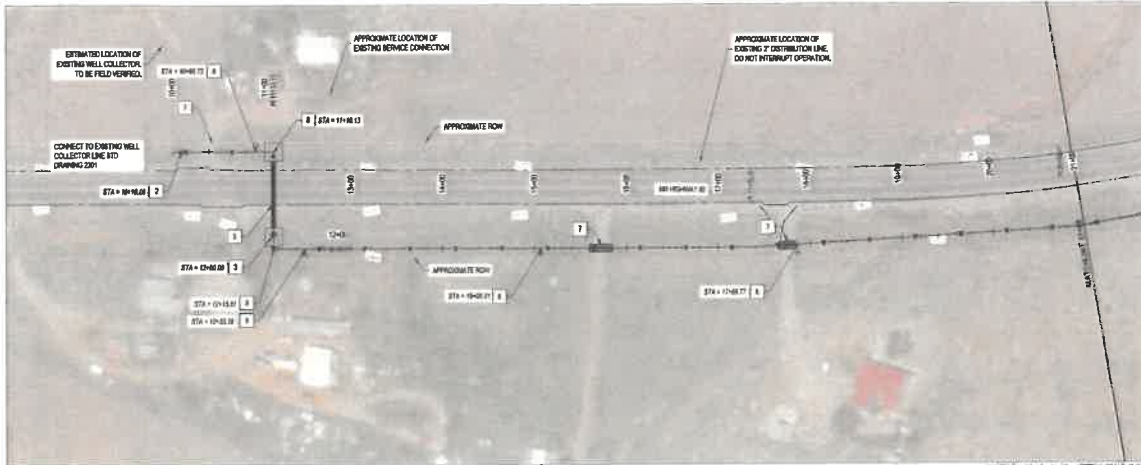
20200347

SHEET 04 OF 12

ENGINEER'S SEAL

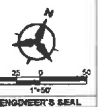
AS-BUILT INFORMATION	
DATE	BY
REVISIONS	DESIGN
DATE	BY
REVISIONS	DESIGN
DATE	BY
REVISIONS	DESIGN

BENCH MARKS

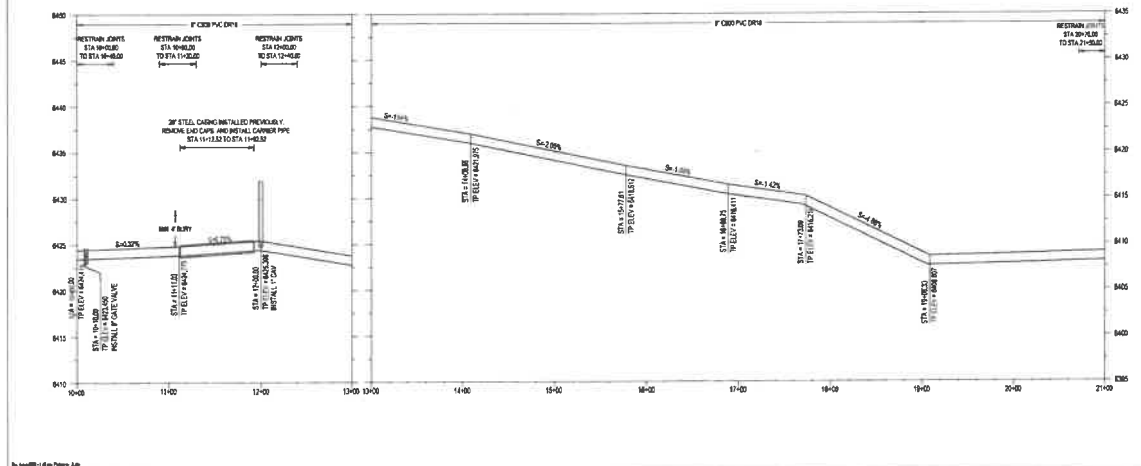


- GENERAL NOTES:**
1. FIELD VERIFY ALL EXISTING UTILITY LOCATIONS AND NOTIFY OWNER IMMEDIATELY OF ANY DISCREPANCIES.
 2. ALL TRENCHES SHALL BE 48\"/>

- KEYED NOTES:**
1. INSTALL 12\"/>



ENGINEER'S SEAL

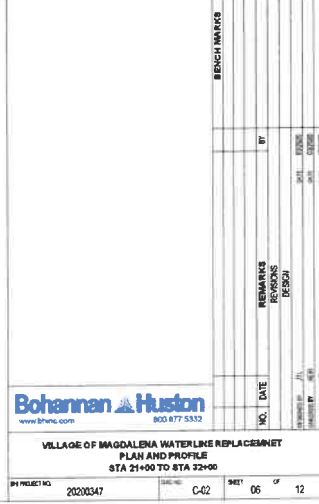
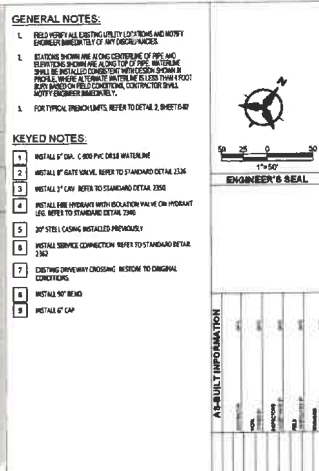


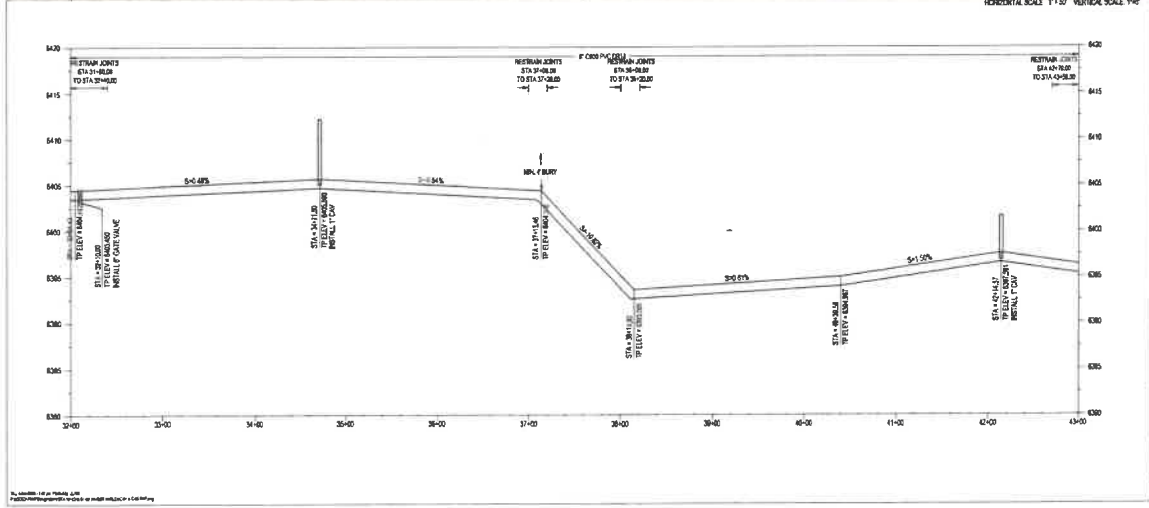
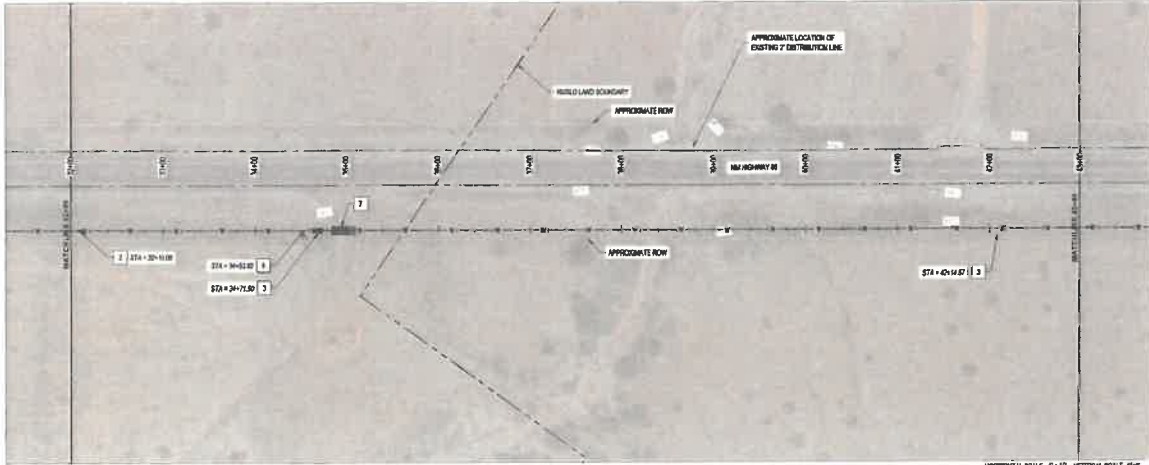
Bohannon & Huston
www.bhnc.com 800.677.5332

**VILLAGE OF MAGDALENA WATERLINE REPLACEMENT
PLAN AND PROFILE
STA 10+00 TO STA 21+00**

PROJECT NO. 20230347 SHEET NO. C-01 OF 05

Bohannon & Huston, Inc.
Professional Engineer No. 15014 and Survey License No. 15014





GENERAL NOTES:

1. FIELD VERIFY ALL EXISTING UTILITY LOCATIONS AND DEPTHS. CORRECT ANY DISCREPANCIES TO ANY DISCREPANCIES.
2. EXISTING SLOPE IS ALONG CENTERLINE OF PIPE AND EXISTING SLOPE IS ALONG TO 1/2 PIPE DIAMETER. IF EXISTING SLOPE IS SHOWN AS 1/2 PIPE DIAMETER, IT SHALL BE USED TO DETERMINE EXISTING SLOPE. IF EXISTING SLOPE IS SHOWN AS 1/2 PIPE DIAMETER, IT SHALL BE USED TO DETERMINE EXISTING SLOPE.
3. FOR TYPICAL BENCH MARKS REFER TO SHEET 1.9 SHEET 1.9.

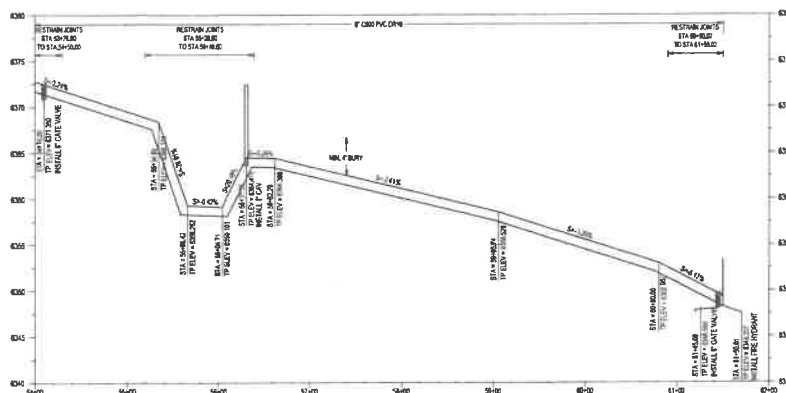
KEYED NOTES:

1. INSTALL 12" DIA. C-900 PVC SLOPE PROTECTION.
2. INSTALL 12" DIA. GATE VALVE. REFER TO STANDARD DETAIL 2346.
3. INSTALL 12" DIA. CAP. REFER TO STANDARD DETAIL 2346.
4. INSTALL 12" DIA. CAP. REFER TO STANDARD DETAIL 2346.
5. 20" STEEL COUPLER INSTALLED PREVIOUSLY.
6. INSTALL SERVICE CONNECTION. REFER TO STANDARD DETAIL 2346.
7. EXISTING UNDERGROUND EXISTING. REFER TO STANDARD DETAIL 2346.
8. INSTALL 12" DIA. CAP.
9. INSTALL 12" DIA. CAP.

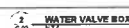
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**VILLAGE OF MADDALENA WATERLINE REPLACEMENT
PLAN AND PROFILE
STA 32+00 TO STA 44+00**

DATE: 20200317
C-03
SHEET 07 OF 12



BY PROJECT NO.	20200347	DATE	C-05	SHEET	09	OF	12
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Village of Magdalena
RESOLUTION No. 2020-08

PARTICIPATION IN LOCAL GOVERNMENT ROAD FUND PROGRAM ADMINISTERED
BY NEW MEXICO DEPARTMENT OF TRANSPORTATION

WHEREAS, the *Village of Magdalena* and the New Mexico Department of Transportation enter into a Cooperative Agreement.

WHEREAS, the total cost of the project will be **\$75,768.00** to be funded in proportional share by the parties hereto as follows:

- a. New Mexico Department of Transportation's share shall be 75% or **\$56,826.00**

and
- b. *The Village of Magdalena's* proportional matching share shall be 25% or **\$18,942.00**

TOTAL PROJECT COST IS \$75,768.00

The Village of Magdalena shall pay all costs, which exceed the total amount of **\$75,768.00**.

Now therefore, be it resolved in official session that the *Board of Trustees of the Village of Magdalena* determines, resolves, and orders as follows:

That the project for this Cooperative agreement is adopted and has a priority standing.

The agreement terminates on **December 31, 2021** and the *Village of Magdalena* incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into the written agreement.

NOW therefore, be it resolved by the *Village of Magdalena* to enter into Cooperative Agreement Project Number (XXXX), Control Number **L100458** with the New Mexico Department of Transportation for LGRF Project for year 2020 - 2021 for *pavement rehabilitation/improvements of streets in the Village of Magdalena; furnishing bituminous and aggregate materials and preparing and treating the following street termini with these materials: 1. Oak Street: Hwy 60 to .4 miles south; 2. Duggins Drive: Hwy 60 to .35 miles south* within the control of the *Village of Magdalena* in *Magdalena/Socorro County, New Mexico*.

PASSED, APPROVED and ADOPTED on this 8th day of June, 2020.

Richard Rumpf, Mayor

DATE

Deborah Abingdon, Clerk/Treasurer

DATE

