SECTION 00300

AIA DOCUMENT A201-2007
(AS AMENDED AND MODIFIED BY CNM AS OF OCTOBER 2005).
SUPPLEMENTARY CONDITIONS TO AIA DOCUMENT A201-1997

NOTE: RED LINE COPY OF AIA A201-2007 IS AVAILABLE FOR INSPECTION AT CNM'S PURCHASING DEPARTMENT.

PART 1 - GENERAL

The Contract award shall be based upon the GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION, 2007 EDITION, AIA document A201 as amended and modified by Central New Mexico Community College (CNM). THE STANDARD FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR, AIA form A101 shall be used in the execution of the Contract. A document showing the changes made to the 2007 AIA A201 is available for review at the CNM Purchasing Department upon request. These SUPPLEMENTARY CONDITIONS amend and modify the provisions of A201; the AIA documents and these Supplementary Conditions together, however, do not constitute an exhaustive statement of the Contract provisions, nor do they limit the definition of Contract Documents in the Instructions to Bidders.

NOTWITHSTANDING ANYTHING ELSE CONTAINED IN THE CONTRACT between Owner and Contractor (the "Contract"), whether or not in GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION, 2007 EDITION, AIA document A201, THE STANDARD FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR, AIA form A101, these SUPPLEMENTARY CONDITIONS TO AIA

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DOCUMENT A201-2007, the Project manual for the Contractor's Bid, or any other document or matter included or incorporated in the Contract by reference or implication, the following provisions of Sections A, B, C, D, E, F, G, H, I and J shall control:

Prompt Payment Act N.M.S.A. 57-28-1 (2007)

A. Improperly Completed Invoices/Notice. If Owner receives an improperly completed invoice, Owner shall notify Contractor within seven (7) days of receipt in what way the invoice is improperly completed. Contractor is hereby notified and acknowledges (i) that any invoice is improperly completed if it (a) contains arithmetic errors, (b) is not signed by Contractor, (c) is not certified by Architect as correct as to work completed and materials actually supplied, compliance with the Contract, and calculations, (d) fails to show Owner's applicable Purchase Order (PO) number correctly, or (e) invoices for work completed or materials supplied pursuant to a Change Order that has not been approved in writing by the Owner, (f) does not include properly executed lien and bond claim releases from the contractor, subcontractor, and major suppliers. (ii) that Contractor has received timely notice by this Contract of improper completion of any and all improperly completed invoices described in the foregoing subparagraph (i) and is not entitled to payment upon or consideration of such invoices until they are resubmitted as complete regardless of the giving or timing of giving of any additional notice of improper completion, and (iii) that the foregoing subparagraph (i) is not an exhaustive list of ways in which an invoice may be improperly completed.

B. Unless grant money is a source of funding for this Contract, amounts due shall be paid within twenty-one (21) days after Owner receives a properly completed undisputed request for payment.

IF GRANT MONEY IS A SOURCE OF FUNDING FOR THIS CONTRACT, AMOUNTS DUE SHALL BE PAID WITHIN FORTY-FIVE (45) DAYS AFTER OWNER RECEIVES A PROPERLY COMPLETED UNDISPUTED REQUEST FOR PAYMENT.

If grant money is a source of funding for this Contract, Owner shall have included the following legend on each page of the plans, including bid plans and construction plans:

> **NOTICE OF EXTENDED PAYMENT PROVISION: This Contract allows the Owner to make payment within forty-five (45) days after submission of an undisputed request for payment.**

Contractor and subcontractors shall make prompt payment to their subcontractors and suppliers for amounts owed for work performed on the construction project within seven (7) days after receipt of payment from the Owner, Contractor, or subcontractor, as may be applicable. Contractor shall, by appropriate agreement with each subcontractor, require each subcontractor to make payments to sub-subcontractors in a similar manner.

Subparagraph 13.6.1 of the General Conditions of the Contract for Construction, 2007 Edition, AIA document A201, as otherwise amended by these Supplemental Conditions below, is hereby deleted in its entirety.

Contractor hereby indemnifies and holds harmless Owner for all claims by subcontractors or suppliers against Owner or its property arising under or related to the New Mexico Prompt Payment Act Act, including, but not limited to, all costs and expenses of defense of such claims

including reasonable attorneys' fees.

F. Subcontracts. Contractor is responsible to make all subcontractors aware of the foregoing provisions of this Contract and to include all necessary and appropriate parallel provisions in each subcontract. Contractor is responsible to have made all proposed subcontractors listed in the Bid Response Form aware of the foregoing provisions of this Contract prior to submission of their bids. Contractor is entirely and solely responsible, as between and among Contractor and subcontractors, for compliance with the New Mexico Prompt Payment Act.

G. Modification of Pay Application. CNM reserves the right to modify pay applications to correct mathematical errors without returning the pay application to the contractor for correction and resubmission.

H. Requests for Additional Time. Contractor bears the burden to demonstrate that additional contract time is warranted due to changes, including Owner requested changes, weather, or any other reason. Contractor bears the burden of demonstrating that any such changes, modifications, or delays impact the critical path for the project.

I. Dispute Resolution. If at any time during the course of the project a dispute arises between the Contractor and the Owner, including a dispute between the Contractor and the Engineer, the procedure shall be mediation, or litigation as described in the amended AIA A201-1997 in this Project Manual.

for the following PROJECT: T-2867
(Name and location or address):
Central New Mexico Community College (CNM)
CNM ATC Landscaping and Related Services Project #1 ATC Turf Removal

THE OWNER:
(Name and address):
Governing Board for the Central New Mexico Community College (CNM)
525 Buena Vista SE
Albuquerque, New Mexico 87106

THE ARCHITECT:
(Name and address):
TBD

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. The Contract Documents shall also include Instructions to Bidders, Invitation to Bid, sample forms, the Bid Response form, and Contractor's Bid.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Contractor, (2) between the Owner and a Subcontractor or Sub-subcontractor, (3) between the Owner and Architect or (4) between any persons or entities other than the Owner and Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services. The Specifications are of the abbreviated or "streamlined" type and include incomplete sentences. Omissions of words or phrases such as "the Contractor shall," "in conformity therewith," "shall be," "as noted," or "as indicated" or "as noted and/or indicated on the Drawings," "according to the Plans," "A," "an," the," and "all" are intentional. Omitted words or phrases shall be supplied by inference in the same manner as they are when a "Note" occurs on the Drawings. Where "as directed," "as required," "as permitted," "as approved," "as accepted," or words of similar import are used, it shall be understood that the directions, requirements, permission, approval, and acceptance of the Architect is intended unless otherwise stated.

§ 1.1.7 THE PROJECT MANUAL

The Project Manual is a volume or volumes assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications."

§ 1.1.8 THE ARCHITECT

The Architect for this Project is TBD and its authorized representatives.

§ 1.1.9 RECORD DRAWINGS

Record Drawings are drawings maintained by the Contractor during the period of construction of the Project. The Record Drawings shall depict, on the appropriate drawings, all deviations to the Contract Drawings. Permitted set by CID would be the Record Drawings and shall be delivered to the Owner with the Application for Final Payment.

§ 1.1.10 REQUEST FOR INFORMATION
Contractor may ask questions and make inquiries with respect to the Contract documents. Such inquiries and questions shall be made in writing in the form of a request for information to the Architect. The Architect shall respond to requests for information in a reasonable time.

§ **1.1.11 MODIFICATION CHANGE REQUEST**
A Modification Change Request ("MCR") is a form which initiates the change order process. The MCR is form which is provided to the Contractor by the Owner. The MCR shall be completed and signed by the Owner, Architect, and Contractor prior to the Contractor starting work on any proposed change order. The MCR is utilized for the purpose of authorizing work prior to the execution of a fully completed change order.

§ 1.1.12 SECTIONS AND SUBPARAGRAPHS
As used in these Owner modified General Conditions of the Contract for Construction, the terms "Section(s)" and "Subparagraph(s)" refer to the Sections and Subparagraphs contained in these General Conditions unless otherwise noted.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS
§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of conflicts or discrepancies within the Contract Documents such as between referenced codes, standards, drawings, specifications or Project Manual or any combination thereof, the most stringent requirements or provisions shall govern. The codes and standards specified in the Contract Documents shall be the "Edition" including supplements and revisions in effect at time of bid.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.4 Each Section of Specifications shall be deemed to have as its leading Article the following, which shall become part of each section as if written out in full:

SCOPE OF WORK: Contractor performing this Work shall furnish all labor, equipment, tools, appurtenances, and materials, except those specified to be furnished by others, and pay for all special taxes or permits necessary to complete all Work as hereinafter required, or as shown or called for on Drawings, in the best accepted workmanlike manner.

The PART 2 PRODUCTS portion of each work section of the Specifications shall be deemed to have as its last Article the following, which shall become part of each section as if written out in full:

OTHER MATERIALS: All other materials, products, etc., not specifically described but required for a complete and proper installation of the Work of this Section or the Project, shall be new, first quality of their respective kinds, submitted to the Architect for approval, and furnished and installed at Contractor's expense."

§ 1.2.5 In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:

.1 Addenda/Amendments, with those of later date having precedence over those of earlier date.

.2 Specifications

.3 Drawings

.4 The Supplementary Conditions.

.5 The Agreement, AIA A101, current edition.as amended

.6 The General Conditions of the Contract for Construction, A1A, A201, 2007 Edition, as amended.

.7 The Instructions to Bidders.

.8 Bid Terms and Conditions.

In the case of an inconsistency between Drawings and Specifications or within either Document not clarified by addendum, the better quality or greater quantity of Work shall be provided in accordance with the Owner's Interpretation.

§ 1.3 CAPITALIZATION

§ 1.3.1 Terms capitalized in these General Conditions include those which are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

§ 1.4.1 In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 EXECUTION OF CONTRACT DOCUMENTS

§ 1.5.1 The Contract Documents shall be signed in not less than quintuplicate by the Owner and Contractor. No contract shall be binding on the Owner until it has been fully executed and approved pursuant to applicable CNM rules, procedures, regulations, and statutes, which will be made available to Contractor upon request.

§ 1.5.2 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 1.5.3 The Contractor shall familiarize himself with the work required by each subcontractor or material supplier. Where it is specified that certain work is excluded from a work section of the Technical Provisions of the Specifications, the Contractor shall either specifically assign such excluded work to the proper subcontractor, or shall assume such responsibility as his own to furnish, install or complete.

§ 1.6 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.6.1 All original drawings and specifications, Instruments of Service and other documents furnished by the Architect become the property of this Owner and are not to be used by the Contractor or any Subcontractor, Sub-subcontractor, or material or equipment supplier on other projects or for additions to

this Project outside the scope of Work without the specific written consent of the Owner. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents."

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 Owner's Representatives: The Owner's Purchasing Director and Vice President for Finance and Operations shall be the Owner's Representatives, authorized to act on the Owner's behalf with respect to oversight and approval of the Construction Contract and Change Orders. The Owner's Facilities Construction Project Manager shall be the Owner's Representative with respect to oversight of the project and work to be completed. The Purchasing Director further designates authority to the Owner's Facilities Construction Project Manager to recommend and approve change orders that do not exceed $20,000.00.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 INTENTIONALLY OMITTED

§ 2.2.2 Except for permits and fees, including those required under Section 3.7.1, which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 Information or services required of the Owner by the Contract Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Contractor's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Contractor of a written request for such information or services.

§ 2.2.5 The Contractor will be furnished free of charge a minimum of fifteen (15) copies of the Drawings and Project Manuals. If additional sets are available from the bid process, Owner may, at no charge, distribute such additional sets to Contractor, at Owner's sole discretion. Additional sets will be furnished to the Contractor at the cost of reproduction, postage and handling.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

§ 2.3.1 If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or persistently fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

§ 2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence

and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven-day period give the Contractor a second written notice to correct such deficiencies within a three-day period. If the Contractor within such three-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order and/or Construction Directive shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

§2.5 OWNER'S RIGHT TO VISIT THE JOB SITE AND REQUEST CHANGES IN WORK

§2.5.1 The Owner shall at all times have access to the Work whenever it is in preparation and progress. The Owner, as outlined in the Contract Documents, shall request change orders through the Architect. The final acceptance of the Project shall be made by representatives of the Architect and the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Before each portion of the Work the Contractor shall carefully study and compare the various drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Subparagraph 2.2.3 and shall report promptly to the Architect errors, inconsistencies or omissions discovered. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Architect, the Contractor shall assume responsibility for such performance and shall bear all the costs for correction.

§ 3.2.2 Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Architect, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to the Contractor shall be reported promptly to the Architect.

§ 3.2.3 If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Architect in response to the Contractor's notices or requests for information pursuant to Subparagraphs 3.2.1, 3.2.2 and 3.2.4, the Contractor shall make Claims as provided in Subparagraphs 4.3.6 and 4.3.7. If the Contractor fails to perform the obligations of Subparagraphs 3.2.1, 3.2.2 and 3.2.4, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the Owner or Architect for damage resulting from errors, inconsistencies or omissions in the Contract Documents unless the Contractor should have recognized such error, inconsistency or omission and failed to report it to the Architect.

§ 3.2.4 The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract

Documents before commencing activities. Errors, inconsistencies or omissions shall be reported to the Architect at once.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.4 The Contractor shall lay out Work, be responsible for measurements, exercise proper precaution to verify all dimensions, grades, lines, utility connections and levels, before layout of Work, and will be held responsible for any errors therein that otherwise might have been avoided. The Architect shall be promptly informed of any errors or discrepancies discovered in the Drawings and Project Manual, in order that the proper correction may be made. The Work must be executed systematically and so managed at all times to insure the Contractor maintains the Project Schedule.

§ 3.3.5 The Contractor shall at the completion of the Work, and prior to receipt of the final payment for construction, furnish to the Architect, at the Contractor's expense, "Record" Drawings. The Contractor shall maintain during the period of construction a record of all deviations to the Contract Drawings to facilitate the completion of the "Record" drawings." Record drawings shall be delivered to the Owner with the application for final payment.

§ 3.4 LABOR AND MATERIALS

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

§ 3.4.2 The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order.

§ 3.4.3 By making requests for substitutions based on Subparagraph 3.4.2 above, the Contractor:

1. represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respect to that specified;

2. represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified;

3. certifies that the cost data presented is complete and includes all related costs under this Contract except the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and

4. will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be completed in all respects.

§ 3.4.4 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

§ 3.4.5 The Contractor and all Subcontractors and Sub subcontractors on the Project shall use, whenever the species of lumber necessary for such construction or repair work is available in the State of New Mexico, such species of lumber produced from the timber grown in the State of New Mexico in accordance with NMSA 1978 § 13 4 7 as amended.

§ 3.4.6 The Contractor shall make contributions to approved apprentice and training programs in New Mexico in which the Contractor is a participant or to the public works apprentice and training fund administered by the Public Works Bureau of the Labor and Industrial Division of the New Mexico Labor Department, all as required pursuant to the New Mexico Public Works Apprentice and Training Act, NMSA 1978 § 13 4D 1 et seq. as amended.

§ 3.5 WARRANTY

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 The Contractor shall and hereby does warrant to Owner all workmanship, labor, and materials performed and supplied by him or his subcontractors, for a period of one (1) year from the date of completion as evidenced by date of fully executed Certificate of Substantial Completion identified in Section 9.8. This also includes **all labor** required for replacing materials or equipment found to be defective within the one (1) year period. All warranties for a longer period of time required by the Contract Documents shall be secured by the Contractor from subcontractors and delivered to the Architect and are hereby warranted by the Contractor as much as if countersigned by him.

§ 3.6 TAXES

§ 3.6.1 The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.6.2 All Contractors on the Project shall comply with provisions of the New Mexico Gross Receipts (NMGRT) and Compensating Tax Act, NMSA 1978 § 7-9-1 et seq. as amended, and all amendments to same and require all of their subcontractors to do likewise.

§ 3.7 PERMITS, FEES AND NOTICES

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

§ 3.7.4 If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.5 The Contractor shall procure and pay for all building fees and permits. Building permits shall be obtained from the applicable Code Administration Department or agency having jurisdiction over the Project, Albuquerque, New Mexico, or other regulatory agency; in addition, the Contractor shall obtain all additional fees and permits not necessarily aforementioned but required for the Work and pay all additional required fees to same. The Owner shall pay fees for water meters and impact fees.

§ 3.8 ALLOWANCES
§ 3.8.1 INTENTIONALLY OMITTED
§ 3.8.2 INTENTIONALLY OMITTED
§ 3.8.3 INTENTIONALLY OMITTED

§ 3.9 SUPERINTENDENT
§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES
§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The Contractor's proposed schedule shall be submitted for the Owner's and Architect’s review and information only and does not constitute approval by the Owner or the Architect.

§ 3.10.2 The Contractor shall prepare and keep current, for the Architect's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Architect reasonable time to review submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.10.4 Within ten (10) calendar days after receipt of "Notice to Proceed," the Contractor shall submit a Progress Schedule to the Architect. It shall be revised by Contractor from time to time but at least monthly to reflect all changes in contract work and adjustments in time, money, or both that are approved by the Architect after consultation with the Owner. Schedule shall show date of commencement of work on each pertinent phase or item of construction, percentage of scheduled completion at end of each ten (10) days, and date of completion of each phase or item of Work. Progress schedule shall indicate labor, materials and equipment actually incorporated into the Work (construction in place). No payment will be made without the Owner having reviewed the progress schedule submittal.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE
§ 3.11.1 The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to

record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

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

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action.

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

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive or an MCR has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services which constitute the practice of Architecting or Architecting unless such services are specifically required by the Contract Documents

for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

§ 3.13 USE OF SITE

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

§ 3.13.2 The Contractor’s scheduled outage/tie-in plan, time, and date is subject to approval by the Owner. Failure of Contractor to secure Owner’s approval shall cause the Contractor to waive any right to an adjustment of the Contract Sum or Contract Time for any postponement, rescheduling or other delays ordered by Owner in connection with such Work. Owner’s approval shall not be unreasonably withheld.

The Contractor shall coordinate all Work so there shall be no prolonged interruption of existing utilities, systems and equipment of Owner. Any existing plumbing, heating, ventilating, air conditioning, or electrical disconnection necessary, which affect portions of this construction or building or any other building, must be scheduled with the Owner to avoid any disruption of operation within the building under construction or other buildings or utilities. In no case shall utilities be left disconnected at the end of a workday or over a weekend. Any interruption of utilities, either intentionally or accidentally, shall not relieve the Contractor from repairing and restoring the utility to normal service. Repairs and restoration shall be made before the workers responsible for the repair and restoration leave the job.

The Contractor shall be responsible for repair of damage to property caused by the Contractor on or off the project occurring during construction of the project, and all such repairs shall be make to meet code requirements or to the satisfaction of the Owner if code is not applicable, if possible, given the availability of parts, equipment and services necessary to effect the repair/restoration. Cost of expediting repair/restoration shall be the Contractor’s provided the cause of the accidental interruption is the Contractor’s.

§ 3.13.3 The Contractor shall limit operations and storage of material to the area within the Work limit lines shown on Drawings, except as necessary to connect to existing utilities, shall not encroach on neighboring property, and shall exercise caution to prevent damage to existing structures**.**

The Contractor shall ensure that the Work is at all times performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials and equipment likely to cause hazardous conditions. Without limitations of any other provision of the Contract Documents, Contractor shall not interfere with the occupancy or beneficial use of (1) any areas and buildings adjacent to the site of the Work or (2) the work in the event of partial occupancy. Owner may agree, in writing, to disruption of adjacent buildings, if necessary to properly perform the Work. Contractor shall assume full responsibility for any damage to the property comprising

the work or to the owner or occupant of any adjacent land or areas resulting from the performance of the Work.

The Contractor shall not permit any workers to use existing facilities at the Work site, including, without limitation, lavatories, toilets, entrances and parking areas other than those designated by Owner. The Contractor, Subcontractor of any tier, suppliers and employees shall comply with instructions or regulations of the Owner's governing access to, operation of, and conduct while in or on the premises and shall perform all Work required under the contract Documents in such a manner as not to unreasonably interrupt or interfere with the conduct of Owner's operations. Any request for Work, a suspension of Work or any other request or directive received by the Contractor from occupants of existing buildings shall be referred to the Owner for determination.

The Contractor shall keep the Work site and surrounding areas free from accumulation of waste materials, rubbish, debris, and dirt resulting from the Work and shall clean the Work site and surrounding areas as requested by the Owner. The Contractor shall be responsible for clean up and removal of debris from premises. The building and premises shall be kept clean, safe, in workmanlike manner, in compliance with OSHA standards at all times. At completion of the Work, the Contractor shall remove from and about the Work site tools, construction equipment, machinery, fencing, and surplus materials. Further, at the completion of the work, all dirt, stains, and smudges shall be removed from every part of the building, all glass in doors and windows shall be washed, and entire Work shall be left broom clean in a finished state ready for occupancy. If the Contractor fails to comply with the provisions of this paragraph, the Owner may do so, upon proper notice, and the cost shall be charged to the Contractor.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

§ 3.16 ACCESS TO WORK

§ 3.16.1 The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

§ 3.17.1 The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnity and hold harmless the Owner, Architect, Architect's consultants, and agents, officers, and employees of any of them, against liability, claims, damages, losses, and expenses, including but not limited to attorneys fees, arising out of or resulting from performance of the Work , provided that such claim, damage, loss, or expenses is attributable to bodily injury, sickness, disease, or death, or to physical injury to real or personal property, including the loss of use resulting therefrom, but only to the extent that the liability, damages, losses, or costs are caused by, or arise out of, the acts or omissions of the Contractor or its officers, employees, or agents. Both parties to this Contract represent and agree that this indemnity provision is valid and enforceable and meets the requirements of N.M. Stat. Ann. § 56-7-1 (1978 as amended).

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 4 ADMINISTRATION OF THE CONTRACT

§ 4.1 ARCHITECT

§ 4.1.1 The Architect is the person lawfully licensed to practice Architecting or an entity lawfully practicing Architecting identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a new Architect against whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the former Architect.

§ 4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents, (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the one-year period for correction of Work described in Section 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check quality or quantity of the Work. On the basis of on-site observations as an Architect, the Architect will keep the Owner informed of progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work.

§ 4.2.2.1 The Architect will, from time to time, make inspections of Work. Contractor shall be responsible for Work being performed in strict accordance with the Drawings and Specifications, and shall call any deviation to attention of Architect or his representative immediately upon discovery. The inspection of the Work by the Architect does not relieve the Contractor of any of his responsibility under the Contract that pertains to matters performed at the site. Contractor shall be responsible for detailed supervision of Work. Owner and Architect have full authority to demand of the Contractor or his representative that the Contractor comply with all terms of the Contract and perform Work in strict accordance with Contract Drawings and Specifications. All demands upon the Contractor shall be made in writing, but where

necessary to make demands orally, oral instructions will be confirmed in writing later. Minor matters that are adjustable amicably need not be in writing, at discretion of party making demand.

§ 4.2.3 The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications Facilitating Contract Administration. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect will have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives as may be authorized and directed by the Owner as provided in Subparagraph 7.4. Owner will provide forms for changes in the Work.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of the Owner.

§ 4.2.11(a) The Contractor may submit questions or requests for information to the Architect in writing. Responses to such requests for information shall be in writing and signed by the Architect.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings.

§ 4.2.13 If consistent with the intent expressed in the Contract Documents and with Owner's Consent, the Architect's decisions on matters relating to aesthetic effect will be final.

§ 4.3 CLAIMS AND DISPUTES

§ 4.3.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 4.3.2 Time Limits on Claims. Claims by either party must be initiated within ten (10) days after occurrence of the event giving rise to such Claim or within ten (10) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the Architect and the other party.

§ 4.3.3 Continuing Contract Performance. Pending final resolution of a Claim except as otherwise agreed in writing or as provided in Section 9.7.1 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 4.3.4 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 5 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the Architect has given notice of the decision. Notwithstanding the foregoing, no adjustment in the Contract Sum or Contract Time or both shall occur except through the change order process in accordance with Article 7.

§ 4.3.5 Claims for Additional Cost. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given and written authorization obtained from Accountant and Owner before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.6.

§ 4.3.6 If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with this Section 4.3.

§ 4.3.7 Claims for Additional Time
§ 4.3.7.1 If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

§ 4.3.7.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 4.3.8 Injury or Damage to Person or Property. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 4.3.9 INTENTIONALLY OMITTED

§ 4.3.10 Claims for Consequential Damages. The Contractor waives all claims against the Owner for all consequential damages arising out of or relating to this Contract. This waiver includes damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit other than anticipated profits arising directly from the Work. This waiver is applicable, without limitation, to all consequential damages due to Owner's termination in accordance with Article 14.

§ 4.4 RESOLUTION OF CLAIMS AND DISPUTES
§ 4.4.1 Decision of Architect. Claims, including those alleging an error or omission by the Architect but excluding those arising under Paragraph 10.3 through 10.4, shall be referred initially to the Architect for decision. An initial decision by the Architect shall be required as a condition precedent to mediation and litigation of all Claims between the Contractor and Owner arising prior to the date final payment is due, unless thirty (30) days have passed after the Claim has been referred to the Architect with no decision having been rendered by the Architect. The Architect will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 4.4.2 The Architect will review Claims and within ten days of the receipt of the Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Architect is unable to resolve the Claim if the Architect lacks sufficient information to evaluate the merits of the Claim or if the Architect concludes that, in the Architect's sole discretion, it would be inappropriate for the Architect to resolve the Claim.

§ 4.4.3 In evaluating claims, the Architect may, but shall not be obligated to, consult with or seek information from either party, or from persons with special knowledge or expertise who may assist the Architect in rendering a decision.

§ 4.4.4 If the Architect requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either provide a response on the requested supporting data, advise the Architect when the response or supporting data will be furnished or advise the Architect that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Architect will either reject or approve the Claim in whole or in part.

§ 4.4.5 The Architect will approve or reject Claims by written decision, which shall state the reasons therefor and which shall notify the parties of any change in the Contract Sum or Contract Time or both. The approval or rejection of a Claim by the Architect shall be final and binding on the parties but subject to mediation and litigation.

§ 4.4.6 INTENTIONALLY OMITTED

§ 4.4.7 Upon receipt of a Claim against the Contractor or at any time thereafter, the Architect or the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Architect or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 4.4.8 In the event that any dispute is not resolved under the procedures set forth in Paragraphs 4.4.1 through 4.4.7 hereinabove, the matter shall be submitted to mediation in accordance with Paragraph 4.5.1.

§ 4.4.9 In the event that any dispute is not resolved under the procedures identified in Subparagraphs 4.4.1 through 4.4.8 hereinabove, either of Contractor or Owner may seek judicial relief in a court of law, which shall be a trial de novo. The parties agree that venue and jurisdiction for any such action shall properly lie with the Second Judicial District Court, County of Bernalillo, State of New Mexico. In any such court action, the prevailing party shall be entitled to an award against the non-prevailing party of the prevailing party's reasonable attorneys' fees and court costs in addition to any other awards by the court.

§ 4.5 MEDIATION

§ 4.5.1 Notwithstanding any provision of any Contract Document to the contrary, any claim, dispute or other matter in question between the Contractor and the Owner, except those relating to artistic effect as provided in Subparagraph 4.2.13, and except to those which have been waived by the making or acceptance of final payment as provided in Subparagraph 9.10.4 shall be subject to mediation pursuant to and under the provisions of the New Mexico Public Works Mediation Act, NMSA 1978 § 13 4C 1 et seq. as amended. A party seeking to resolve a dispute under this Agreement or any of the Contract Documents shall proceed under the procedures and provisions of the Public Works Mediation Act subject to the following conditions. No demand for mediation may be made until the earlier of (1) the date on which the Architect has rendered a written decision, if presented to the Architect, or (2) the tenth day after the parties have presented their evidence to the Architect or have been given a reasonable opportunity to do so, if the Architect has not rendered his written decision by that date. When the written decision of the Architect states (1) that the decision is final and subject to appeal, and (2) that any demand for mediation must be made within thirty (30) days after the date on which the party making the demand receives the Architect's written decision, failure to demand mediation within the thirty (30) day period will result in the Architect's decision becoming final and binding on the Owner and Contractor. If the Architect renders a decision after mediation proceedings have been initiated, such decision may be entered as evidence but will not supersede any mediation proceedings unless the decision is acceptable to all parties concerned.

§ 4.5.2 INTENTIONALLY OMITTED

§ 4.5.3 INTENTIONALLY OMITTED

§ 4.6 INTENTIONALLY OMITTED

§ 4.6.1 INTENTIONALLY OMITTED

§ 4.6.2 INTENTIONALLY OMITTED

§ 4.6.3 INTENTIONALLY OMITTED

§ 4.6.4 INTENTIONALLY OMITTED

§ 4.6.5 INTENTIONALLY OMITTED

§ 4.6.6 INTENTIONALLY OMITTED

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTORS

§ 5.2.1 All awards of subcontracts shall be in accordance with the New Mexico Subcontractors Fair Practices Act.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 INTENTIONALLY OMITTED

§ 5.2.4 INTENTIONALLY OMITTED

§ 5.3 SUBCONTRACTUAL RELATIONS

§ 5.3.1 By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

- **.1** assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- **.2** assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Section 4.3.

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

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.1.5 The Owner reserves the right to place and install as much equipment and machinery during progress of Work as is possible before completion of various parts of the Work and Contractor and Owner further agree that such placings and installations of equipment does not in any way evidence the completion of the Work or any portion of it, nor signify the Owner's acceptance of the Work or any portion of it.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs not reasonably avoidable incurred by the Contractor because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

§ 6.2.4 The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

§ 6.3.1 If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive, or an Order for a minor change in the Work as issued by the Architect, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work issued by the Architect.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect, stating their agreement upon all of the following:

- **.1** change in the Work;
- **.2** the amount of the adjustment, if any, in the Contract Sum; and
- **.3** the extent of the adjustment, if any, in the Contract Time.

§ 7.2.1.2 Every Change Order shall be initiated by an agreement by Owner, Architect, and Contractor to a Modification Change Request (MCR) on the form provided by the Owner. An MCR is a form which initiates the Change Order process. The MCR is a form which is provided to the Contractor by the Owner. The MCR shall be completed and signed by the Owner, Architect, and Contractor prior to Contractor starting work on any proposed Change Order. The MCR is a written document utilized for the purposes of authorizing work prior to the execution of a fully completed Change Order Document.

§ 7.2.2 Methods used in determining adjustments to the Contract Sum may include:

- **.1** cost plus proposal; or
- **.2** unit price proposal as defined in the following provisions.

§ 7.2.2.1 Cost Plus Change Order ProposalsArchitect .1 The Contractor will submit a properly itemized Cost Plus Change Order Proposal covering the additional work or work to be deleted. This proposal will be itemized for the various components of Work and segregated by labor, material, and equipment using the attached Change Order Forms. The Owner will require itemized change orders and contractor pricing certifications on all Change Order proposals over $10,000.00 from the Contractor, subcontractors, sub subcontractors regardless of tier, and major material suppliers. Details to be submitted will include a material and labor quantity take off and related pricing information and extensions (by drawing if applicable). Upon final approval of the MCR, the Contractor shall perform such authorized extra Work at actual cost for direct labor (working foremen, journeymen, apprentices, helpers, etc.), actual cost of labor burden, actual cost of material used to perform the extra Work, and actual cost of rental of major equipment (without any charge for administration, clerical expense, general supervision or superintendence of any nature whatsoever, including general foremen, or the cost or rental of small tools, minor equipment, or plant) plus the approved Markup Percentage Fee. Owner and Contractor shall agree in advance in writing on a maximum price for this Work and Owner shall not be liable for any charge in excess of the maximum.

.2 Labor: Estimated labor costs to be included for self performed Work shall be based on the actual cost per hour paid by the Contractor for those workers or crews of workers whom the Contractor reasonably anticipates will perform the Change Order Work. Estimated labor hours shall include hours only for those workmen and working foremen directly involved in performing the Change Order Work. Supervision above the level of working foremen (such as general foremen, superintendent, project manager, etc.) is considered to be included in the agreed upon Markup Percentage Fee.

.3 Labor Burden: Labor burden allowable in Change Orders shall be defined as employer's net actual cost of payroll taxes (FICA, Medicare, SUTA, FUTA), net actual cost for employer's cost of union benefits, and net actual cost to employer for worker's compensation insurance taking into consideration adjustments for experience modifiers, premium discounts, dividends, rebates, expense constants, assigned risk pool costs and assigned risk rebates. Contractor shall reduce their standard payroll tax percentages to properly reflect the effective cost reduction due to the estimated impact of the annual maximum wages subject to payroll taxes. Labor burden shall not be considered to include costs of small tools, comprehensive general liability insurance, auto insurance, or umbrella insurance all of which shall be considered covered by the Markup Percentage Fee.

.4 Material: Estimated material Change Order prices shall reflect the Contractor's reasonably anticipated net actual cost for the purchase of the material needed for the Change Order Work. Estimated material prices shall reflect the Contractor's reasonably anticipated cost reductions due to available trade discounts and/or volume rebates.

.5 Equipment: Allowable Change Order estimated costs may include appropriate amounts for rental of major equipment specifically needed to perform the Change Order Work (defined as tools and equipment with an individual purchase cost of more than $750). However, the aggregate rentals chargeable for any one piece of equipment shall be limited to 75% of its fair market value at the time the Change Order is priced.

.6 Markup Percentage Fee: With respect to Cost Plus Change Order Proposals, the Markup Percentage Fee to be paid to any Contractor (regardless of tier) on self performed work shall be a single markup percentage not to exceed 15% of the net amount of (1) direct labor and allowable labor burden costs applicable to the Change Order or extra Work; (2) material and equipment incorporated into the change or extra Work, and (3) rental cost of major equipment necessary to complete the change in the Work.

.7 The Markup Percentage Fee to be paid to any Contractor (regardless of tier) on any Subcontractor Work shall be a single percentage not to exceed 5% of the total allowable cost of sublet Work.

.8 Sales and use tax (if applicable) shall not be subject to any Markup Percentage Fee. Any sales or use tax properly payable by the Contractor shall be added after computing the Change Order amount before tax.

.9 As a further clarification, the agreed upon Markup Percentage Fee is intended to cover the Contractor's profit and all indirect costs associated with the Change Order Work. Items intended to be covered by the Markup Percentage Fee include, but are not limited to: home office expenses, branch office and field office overhead expense of any kind; project management; superintendents, general foremen; Architecting; coordination; expediting; purchasing; detailing; legal, accounting, data processing or other administrative expenses; shop drawings; permits; general liability and excess umbrella insurance; pick up truck costs. The cost for the use of small tools is also to be considered covered by the Markup Percentage Fee. Small tools shall be defined as tools and equipment (power or non power) with an individual purchase cost of less than $750).

.10 The application of the markup percentages referenced in the preceding Subparagraphs 7.2.2.1.7 and 7.2.2.1.8 will apply to additive Change Orders. In those instances where changes involved

both additive and deductive work, the additions and deductions will be netted and the markup percentage will be applied to the net additive amount.

.11 In no event will any amounts for "contingency" be allowed to be added as a separate line item in change order estimates. Variables attributable to labor hours will be accounted for when estimating labor hours anticipated to do the work.

.12 The Contractor's proposals and proposed MCR for changes in the Contract Sum or Contract Time shall be submitted within seven (7) calendar days of the Owner's request, unless the Owner extends such period of time due to the circumstances involved. If such proposals are not received in a timely manner, if the proposals are not acceptable to Owner, or if the changed Work should be started immediately to avoid damage to the Project or costly delay, the Owner may direct the Contractor to proceed with the changes without waiting for the Contractor's proposal or for the formal Change Order or Modification Change Request to be issued. Such directions to the Contractor by the Owner shall be confirmed in writing by a "Construction Change Directive" letter. The cost, credit, and time extensions, if any, will be determined by negotiations as soon as practicable thereafter and incorporated in a Change Order to the Contract.

.13 Contractor agrees that it is responsible for submitting accurate cost and pricing data to support its Cost Plus Change Order Proposals or other contract price adjustments under the Contract containing the information identified on the attached Change Order or Modification Change Request Forms. Contractor further agrees that it will certify that to the best of his knowledge and belief, the cost and pricing data submitted was accurate, complete, current and in accordance with the terms of the Contract with respect to pricing of Change Orders. Contractor will also further represent that he has made reasonable good faith inquiries to appropriate individuals within his organization to confirm that the data submitted was accurate, complete and current. It is agreed that such certifications will be required for all contract price adjustments. The Contractor shall provide backup documentation or Contractor will not be paid for the changed work. The Contractor shall not bill or invoice for changed work until the formal Change Order is agreed to and executed by the Architect, Contractor, and Owner.

.14 Contractor also understands that the Owner has the right to audit the Contractor's records to verify the accuracy and appropriateness of the pricing data used to price Change Order Proposals. Even after a Change Order Proposal has been approved, Contractor agrees that if it is later determined by audit or otherwise that the cost and pricing data submitted was inaccurate, incomplete, not current or not in compliance with the terms of the Contract regarding pricing of Change Orders; then an appropriate Contract Sum revision will be made.

.15 Contractor also agrees that it will incorporate the provisions of this Subparagraph 7.2.2.1 into all agreements with subcontractors and major material suppliers. It is understood that the Change Order, pricing terms outlined in this Subparagraph 7.2.2.1 will apply to Contractor, all Subcontractors, all sub subcontractors and all major material suppliers, unless specific modifications are approved in advance by Owner and documented in a written amendment to this Contract.

.16 Contractor agrees to provide and require all subcontractors to provide labor and labor burden cost and pricing information as outlined in the Change Order and MCR Forms. This information will be used to evaluate the potential cost of labor and labor burden related to Change Order Work. It is intended that this information represent the Contractor's best estimate of its actual costs at the time the estimate is presented. It is anticipated that this information or similar cost and pricing data may be used from time to time for the pricing of Change Orders. This information is not intended to establish fixed billing or Change Order pricing labor rates. At the time Change Order or MCR are priced, the Owner and Contractor may agree to use the submitted data to price Change Order Work. It is intended for all such pricing data to be subject to audit and adjustment at a later date if the information was not accurate and in accordance with the Contract terms.

§ 7.2.2.2 Unit Price Change Order Proposals

1. As an alternative to Cost Plus Change Order Proposals, the Owner may choose the option to use Contract Unit Prices, if unit prices are stated in the Contract Documents. The Contractor will submit within seven (7) calendar days after receipt of the Owner's written request for a Unit Price Proposal, a written Unit Price Proposal itemizing the quantities of each item of Work for which there is an applicable Contract Unit Price on the attached Change Order Forms. The quantities must be itemized in relation to each specific contract drawing. Contract Unit Prices will be applied to net differences of quantities of the same item. Such Contract Unit Prices will be considered to cover all direct and indirect costs of furnishing and installing the item including the Contractor's Markup Percentage Fee.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment , if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order. If the Construction Change Directive provides for an adjustment to the Contract Sum the adjustment shall be based as prescribed in Section 7.2.2 as amended. Upon receipt of a Construction Directive, the Contractor shall promptly proceed with the change in work involved.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- **.1** mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- **.2** unit prices stated in the Contract Documents or subsequently agreed upon;
- **.3** cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- **.4** as provided in Section 7.3.6.

§ 7.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Architect on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.6 shall be limited to the following:

- **.1** costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- **.2** costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- **.3** rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

.4 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and

.5 additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.7 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Architect will make an interim determination for purposes of monthly certification for payment for those costs. That determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a claim in accordance with Article 4.

§ 7.3.9 When the Owner and Contractor agree with the determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

§ 7.4 MINOR CHANGES IN THE WORK

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

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement. The date shall not be postponed by the failure to act of the Contractor or persons or entities for whom the Contractor is responsible.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.1.5 Work required to be performed after regular working hours shall be done without additional cost to the Owner. The Contractor shall include the cost of all overtime work necessary to complete the Contract in his original Bid. After substantial completion, the Contractor and his Subcontractors shall employ all of the measures prescribed for safeguarding the continuous and satisfactory operation of the building, as interruption of such service will be considered a breach of contract.

§ 8.1.6 The Owner has established the Completion Date based on the Owner's previous experience with similar projects using average time, not one particular Contractor's experience or ability. Any Contractor who estimates the actual construction in less time than given in the Contract, shall do so at his own risk and may not pass on any additional costs due to under estimating the actual construction time. The Contractor's proposed schedule shall be submitted for the Owner's review and information only and does not constitute approval by the Owner or Architect. Contractor shall not be entitled to any delay damages for any reason if Contractor achieves substantial completion within the time allowed in the Contract Documents.

§ 8.2 PROGRESS AND COMPLETION
§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five (5) days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanics liens and other security interests.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.2.4 It is hereby understood and mutually agreed that the date for beginning, rate of progress, and time for completion for Work to be done hereunder are **ESSENTIAL CONDITIONS** of this Contract. Contractor agrees that said work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will insure full completion thereof within time specified. It is expressly understood and agreed that the time provided in the Contract Documents for completion of the Work was calculated taking into consideration average climatic range and usual industrial conditions prevailing in this locality, and is a reasonable amount of time in which to complete the Work.

§ 8.2.5 If Contractor shall neglect, fail or refuse to complete the Work within time herein specified, then Contractor does hereby agree, as part consideration for awarding of this contract, to pay to the Owner the amount specified in the Contract, not as a penalty but as liquidated damages for such breach of contract as hereinafter set forth for each and every calendar day that the Contractor shall be in default after time stipulated in the Contract for completing Work. Provided, that Contractor shall not be charged with liquidated damages or any excess when delay in completion of the Work is due:

.1 To any performance, priority or allocation order duly issued by the government;

.2 To unforeseeable cause beyond Contractor's control and without fault or negligence of Contractor including but not limited to acts of God or public enemy, acts of Owner, acts of another contractor in performance of a different contract with Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; and

.3 To any delays of Subcontractors and/or material suppliers occasioned by any of the causes specified in subsections 1 and 2 of this Subparagraph 8.2.5.

§ 8.2.6 Provided, further, that Contractor shall within three (3) days from beginning of such delay notify Architect, in writing, of the causes of delay, the facts underlying the delay and extent of delay

§ 8.3 INTENTIONALLY OMITTED
§ 8.3.1 INTENTIONALLY OMITTED
§ 8.3.2 INTENTIONALLY OMITTED
§ 8.3.3 INTENTIONALLY OMITTED

ARTICLE 9 PAYMENTS AND COMPLETION
§ 9.1 CONTRACT SUM
§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 SCHEDULE OF VALUES

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

§ 9.2.2 The schedule provided by Contractor under Subparagraph 9.2.1 shall not be effective unless also submitted to the Owner and not objected to within a reasonable time.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten (10) days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for in the Contract Documents.

§ 9.3.1.1 Such applications may include requests for payment on account of changes in the Work which have been properly authorized for payment in accordance with Paragraph 7.2 of the Contract.

§ 9.3.1.2 Such applications may not include requests for payment of amounts the Contractor does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. Payment for materials and equipment stored on site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.3.4 Each waiver of application for Payment shall be certified as correct by Contractor and shall be accompanied by waivers of liens and payment and performance bond claims and other documentation from Subcontractors and Sub subcontractors as reasonably may be required by the Owner. In addition, such Application for Payment shall contain a certification by the Contractor that there are no written claims of mechanics' or materialmen's liens submitted to the Contractor at the date of such Application for Payment, that the Contractor has no knowledge of any filed mechanics' or materialmen's liens on the Work, and that waivers from all Subcontractors constitute an effective waiver of payments that have been made or are to be made concurrently with payment pursuant to such Application for Payment. A copy of all Applications for Payment shall be submitted by Contractor directly to Owner. The Architect shall not certify any payment for a period of at least five (5) days after receipt of an Application for Payment or if objected to by either the Architect or the Owner.

§ 9.3.5 The Contractor shall indemnify and hold harmless the Owner against any assertion of claims for mechanics' or materialmen's liens by Subcontractors, Sub subcontractors or material suppliers and against any assertion of security interests by suppliers of goods or materials, to include court costs and attorneys' fees incurred by the Owner in connection therewith.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of:

- **.1** defective Work not remedied;
- **.2** third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- **.3** failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- **.4** reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- **.5** damage to the Owner or another contractor;
- **.6** reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- **.7** persistent failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification, including those listed in Subparagraph 9.3.4 are removed or satisfied, certification will be made for amounts previously withheld.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.1.1 A retainage of 5% of the value of the Work in place, and of materials adequately stored may be withheld from each payment to the Contractor, pursuant to N.M. Stat. Ann. § 57-1-28, et. seq. as amended.

Owner has determined to establish retainage as prescribed/outlined within Supplementary Conditions to AIA document A201-1997.

§ 9.6.2 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

§ 9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who perform Work or furnish materials, or both, under contract with the Contractor for which payment was made by the Owner.

§ 9.7 FAILURE OF PAYMENT

§ 9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within the time allowed by law and provided in the Contract Documents after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven (7) days after the date established in the Contract Documents the amount certified by the Architect or awarded by a final judgment of a court of competent jurisdiction, then the Contractor may, upon seven (7) additional days written notice to the Owner and Architect, stop the Work until payment for the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable cost of shutdown, delay and start up.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 The date of Substantial Completion of the work or designated portion thereof shall be determined by the Owner's Representatives signing the AIA Document #G704 Certificate of Substantial Completion. This date shall commence on or before a date to be specified in a written "Notice to Proceed" of the Owner; and the construction is to be sufficiently complete, in accordance with the Contract Documents, so the Owner can occupy or utilize the area or designated portion thereof for the use for which it is intended. For new construction, the Certificate of Substantial Completion shall not issue before the final Certificate of Occupancy is issued by the appropriate code authority.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for

its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. No adjustment in retainage will be made unless approved by the Owner.

§ 9.8.6 Copies of all submissions by the Contractor to the Architect under Subparagraph 9.8.2 shall also be delivered promptly to the Owner. All decisions by the Architect as to Substantial Completion shall be made in consultation with the Owner.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.4.1.5 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.1.1 The Contractor shall notify the Owner in writing, with a copy to the Architect, at least ten (10) days prior to the date on which the Work will be ready for final inspection. Final inspection will not be performed until all Work under the Contract is completed. The Owner will make a final inspection on date requested, but any delay in making final inspection shall not relieve the Contractor of responsibility for the

Work, nor shall the Owner be held responsible for damages or claims for compensation on account of continuing overhead, maintenance, etc., occasioned by such delay. If the Owner making final inspection with the Architect finds the Work so far from completion as to make a later visit necessary, or that undue delay in making final inspection is incurred, Contractor shall, if determined by Owner, be liable for expense to Owner incurred by reason of such delay or re-inspection.

§ 9.10.1.2 The Owner will participate in the final inspection of the Project. Neither the final acceptance nor the remaining retained percentage of the Contract shall become due until the Contractor submits to the Architect the following documents:

.1 AIA Form G706, Contractor's Affidavit of Payment of Debts and Claims (2 copies).

.2 AIA Form G706A, Contractor's Affidavit of Release of Liens (2 copies).

.3 AIA Form G707, Consent of Surety Company to Final Payment (2 copies).

.4 All bonds and guarantees (4 copies), especially for roof and HVAC.

.5 Maintenance and Operations Manual – Three (3) sets.

.6 Construction Record Drawings and Specifications – Two (2) sets.

.7 Lien waivers from all suppliers, Subcontractors and Sub subcontractors.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

.1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
.2 failure of the Work to comply with the requirements of the Contract Documents; or
.3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

§ 10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall be responsible for taking reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- **.1** employees on the Work and other persons who may be affected thereby;
- **.2** the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- **.3** other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction and the Contractor shall be responsible for paying for the repair or replacement of any such lost, or stolen, or damaged Work, materials, equipment or property.

§ 10.2.1.2 The Work and materials and equipment to be incorporated therein, stored on site, under care, custody or control of the Contractor or Contractor's Subcontractors or Sub subcontractors; and

§ 10.2.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

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

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

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

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 INTENTIONALLY OMITTED

§ 10.3.3 INTENTIONALLY OMITTED

§ 10.4 The Owner shall not be responsible under Paragraph 10.3 for materials or substances brought to the site by the Contractor.

§ 10.5 INTENTIONALLY OMITTED

§ 10.6 EMERGENCIES

§ 10.6.1 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Section 4.3 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

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

- **.1** claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- **.2** claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- **.3** claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- **.4** claims for damages insured by usual personal injury liability coverage;
- **.5** claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- **.6** claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- **.7** claims for bodily injury or property damage arising out of completed operations; and
- **.8** claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an

additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section 9.10.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

§ 11.1.4 Contractor's Insurance Requirements:

§ 11.1.4.1 General Requirements: Contractor shall not commence nor continue to perform any Work unless he, at his own expense, has in full force and effect all insurance required by the Contract Documents. The Contractor shall not permit any Sub contractor to perform Work on the Project unless the Worker's Compensation Insurance requirement have been complied with by such Subcontractor. The types of insurance the Contractor shall obtain and maintain are set forth herein.

Worker's Compensation Insurance and Liability Insurance shall be maintained in full force and effect for the full warranty period provided for in the Contract Documents. [See Subparagraph 12.2.2 of the General Conditions].

Insurers must be authorized to do business (and have an agent for service of process) in New Mexico and either (1) have an "A" policyholder's rating and a financial rating of at least Class XI in accordance with the most current Best's Rating; or (2) be acceptable to Owner as evidenced by Owner's written approval of such Insurer. If by the terms of any insurance to be provided herein, any mandatory deductibles are required, or if Contractor should so elect, with the written concurrence of Owner, to increase the mandatory deductible amounts or purchase insurance with voluntary deductible amounts, the Contractor shall be responsible (without entitlement to any reimbursement from Owner) for payment of the amount of the deductible in the event of a paid claim.
Certificates of insurance (and endorsements) must be on forms acceptable to Owner delivered to Owner prior to commencement of the Work. The Contractor shall furnish a Certificate of Insurance under either AIA Document G705 or ACORD 25 S (11/85) Form. The Certificate shall include a 30 day cancellation clause. The Certificate must include the provision the insurance company will mail 30 day written notice to Owner. The wording “will endeavor” is not acceptable. Contractor surety shall provide Owner with a transmittal letter stating that all insurance documents have been reviewed and have met or exceeded the contract document requirements.

In addition, Contractor, if requested by Owner, shall deliver to Owner (within 10 days of Owner's request) a certified copy of any policies called for herein. Contractor shall also immediately furnish Owner with copies of any endorsements, addenda, or amendments to such policies. If Owner is damaged by Contractor's failure to obtain and maintain the insurance called for herein, then Contractor shall be liable to Owner for all costs, expenses, and damages resulting therefrom. All insurance policies to be furnished by Contractor under the Contract Documents shall be subject to approval by Owner. All policies shall be on an occurrence (as opposed to claims made) basis.

§ 11.1.4.2 Worker's Compensation and Employer's Liability Insurance: Contractor shall comply with all applicable provisions of the New Mexico Worker's Compensation Act, the New Mexico Subsequent Injury Act, and the New Mexico Occupational Disease Disablement Law. Contractor shall procure and maintain during the life of the Contract Documents complete Worker's and Employer's liability Insurance in accordance with New Mexico laws and regulations.

Contractor shall require each Subcontractor similarly to provide such coverage (or qualify as a self insured) for all the latter's employees to be engaged in such Work. The Owner, the Architect, any consultants of Owner or Architect and its consultants, and each of their directors, officers, board members, representatives, agents and employees, will not be responsible for any claims or actions occasioned by the failure of the Contractor to comply with this obligation of Contractor. Worker's Compensation coverage shall be carried in the amounts of the statutory limits. Contractor shall provide and shall cause each Subcontractor to provide Employer's Liability coverage of not less than $100,000 each person.

At the time of Contractor's execution of the Contract Documents, Contractor shall deliver to Owner a certificate(s) of insurance certifying that he has obtained full Worker's Compensation and Employer's Liability Insurance coverage for all persons whom he employs or may employ in carrying out the Work under the Agreement. Contractor shall maintain such coverage for the period of the Agreement (and the warranty period). At the same time, the Contractor shall deliver to Owner any required insurance endorsement(s) on forms approved by Owner. This insurance shall be in strict accordance with the requirement of the most current and applicable Worker's Compensation Insurance laws and regulations in the State where the Project is located.

§ 11.1.4.3 Liability Insurance: The Contractor shall procure and maintain, during the life of the Contract Documents, an Owner's Protective Liability Insurance Policy. The policy will be written with the Owner, its officers, agents and employees as named insured. The policy shall provide limits as follows:

$1,000,000 Bodily Injury and Property Damage per occurrence.
$1,000,000 Bodily Injury and Property Damage Aggregate.

The Contractor shall procure and maintain, during the life of the Agreement, Commercial General Liability Insurance. The policy will be written with the Owner, its officers, agents and employees as named insured. The policy shall provide limits as follows, if under the ISO 11/85 policy.

$1,000,000 General Aggregate
$1,000,000 Products/Completed Operations Aggregate
$1,000,000 Personal Injury & Advertising Injury
$1,000,000 Each Occurrence
$50,000 Fine Damage (any one fire)
$5,000 Medical Expense (any one person)

If coverage is provided under Comprehensive General Liability (prior to 11/85 ISO policy) limits shall be:

$1,000,000 Bodily Injury and Property Damage combined per occurrence
$1,000,000 Bodily Injury and Property Damage combined Aggregate

The policy must include:

Premises/Operations (including X, C, and U coverage's as applicable)
Independent Contractors' Protective
Products and Completed Operations
Contractual Liability Covering the Agreement
Board Form Property Damage including Completed Operations
Personal Injury Liability with Employment Exclusion deleted
Underground coverage……Endorsement showing Owner as an additional insured under the Contractor's liability policy

The Contractor shall procure and maintain, during the life of the Contract Documents Automobile Liability Insurance. The limits shall be:

$1,000,000 Combined Single Limit Bodily Injury or Property Damage per occurrence.

Coverage must be on an "Any Auto" basis or include Owned, Hired, and non Owned Automobile Coverage.

Excess Insurance or Umbrella Liability Insurance will be acceptable in attaining above limits. Without limiting the foregoing, the liability limits shall be sufficient to meet the Owner's obligation under the New Mexico Tort Claims Act, as it may be amended from time to time.

If the General Liability coverages are provided by a Commercial General Liability Policy on a claims made basis, the policy date or Retroactive Date shall predate the Contract; the termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of coverages required to be maintained after final payment certified in accordance with Subparagraph 9.10.2.

§ 11.1.4.4 Builder's Risk Insurance: The Owner shall purchase and maintain property insurance upon the entire Work at the site to the full insurable value thereof. This insurance shall include the interests of the Owner, the Contractor, Subcontractors and Sub subcontractors in the Work and shall insure against the perils of fire and extended coverage and shall include "all risk" insurance for physical loss or damage including, without duplication of coverage, theft, vandalism and malicious mischief. In the event the Owner agrees to make payments for materials suitably stored offsite, the Contractor shall effect and maintain similar property insurance coverage on portions of the Work stored off the site or in transit when such portions of the Work are to be included in an Application for Payment. Such insurance shall include the Owner as an additional insured.

The Owner's Builder's Risk Insurance will include a $15,000 deductible. The Contractor will be liable for the deductible amount and may wish to secure his own insurance to cover the deductible amount.

§ 11.1.4.5 Adjustment: Any loss insured under Paragraphs 11.1, 11.2, and 11.3 shall be adjusted with the Owner and made payable to Owner. Owner shall reimburse Contractor (or his Subcontractors) for insured losses incurred (for which they hadn't received payment) upon receipt of the insurance proceeds (less any deductible charged to the Owner).

To the extent Contractor (or any Subcontractor) is reimbursed by Owner for any loss covered by the insurance provided in Paragraphs 11.1, 11.2, and 11.4, then Contractor/Subcontractor shall waive any claim they have for such losses to the extent covered by the insurance called for in Paragraphs 11.1, 11.2, and 11.4.

§ 11.1.4.6 Contractor's Liability Not Limited By Insurance: Nothing contained in these insurance requirements is to be construed to limit the liability of the Contractor or the Contractor's Surety.

§ 11.2 OWNER'S LIABILITY INSURANCE

§ 11.2.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 PROJECT MANAGEMENT PROTECTIVE LIABILITY INSURANCE

§ 11.3.1 Optionally, the Owner may require the Contractor to purchase and maintain Project Management Protective Liability insurance from the Contractor’s usual sources as primary coverage for the Owner’s, Contractor’s, Sub-subcontractor’s, and Architect’s vicarious liability for construction operations under the Contract. Unless otherwise required by the Contract Documents, the Owner shall reimburse the Contractor by increasing the Contract Sum to pay the cost of purchasing and maintaining such optional insurance coverage, and the Contractor shall not be responsible for purchasing any other liability insurance on behalf of the Owner. The minimum limits of liability purchased with such coverage shall be equal to the aggregate limits required for Contractor’s Liability Insurance under Paragraph 11.1.

§ 11.3.2 To the extent damages are covered by Project Management Protective Liability insurance, the Owner, Contractor and Architect waive all rights against each other for damages, except such rights as they may have to the proceeds of such insurance. The policy shall provide for such waivers of subrogation by endorsement or otherwise.

§ 11.3.3 The Owner shall require the Contractor to include the Owner, Architect or other persons or entities as additional insured on the Contractor’s Liability Insurance coverage under Paragraph 11.1.

§ 11.4 PROPERTY INSURANCE

§ 11.4.1 The Owner shall purchase and maintain property insurance upon the entire Work at the site to the full insurable completed value thereof. This insurance shall include the interests of the Owner, the

Contractor, Subcontractors and Sub subcontractors in the Work and shall insure against the perils of fire and extended coverage and shall include "all risk" insurance for physical loss or damage including, without duplication of coverage, theft, vandalism and malicious mischief. The Owner shall purchase such insurance for the full insurable value of the entire Work. The Owner shall effect insurance which will protect the interests of the Owner, the Contractor, his Subcontractors and the Sub subcontractors in the Work. If not covered under the all risk insurance or otherwise provided in the Contract Documents, the Contractor shall effect and maintain similar property insurance on portions of the Work stored off the site or in transit when such portions of the Work are to be included in an Application for Payment under Subparagraph 9.3.2.

§ 11.4.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.4.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance which will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.4.1.3 If the property insurance requires minimum deductibles and such deductibles are identified in the Contract Documents, the Contractor shall pay costs not covered because of such deductibles. If the Owner or insurer increases the required minimum deductibles above the amounts so identified, or if the Owner elects to purchase this insurance with voluntary deductible amounts, the Owner shall be responsible for payment of the additional costs not covered because of such increase or voluntary deductible. If the deductibles are not identified in the Contract Documents, the Owner shall pay costs not covered because of the deductibles.

§ 11.4.1.4 INTENTIONALLY OMITTED

§ 11.4.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.4.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.4.3 Loss of Use Insurance. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.4.4 The Contractor shall file a copy of all policies with the Owner before an exposure to loss may occur.

§ 11.4.5 If the Contractor desires insurance for risks other than those described in Subparagraphs 11.3.1 and 11.3.2 or other special hazards he shall include those in the property insurance policy, but the costs for such insurance shall be paid by the Contractor.

§ 11.4.6 INTENTIONALLY OMITTED

§ 11.4.7 Waivers of Subrogation. The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.4.8 A loss insured under Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.4.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.4.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or in accordance with an arbitration award in which case the procedure shall be as provided in Section 4.6. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.4.10 The Owner as fiduciary shall have power to adjust and settle with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner’s exercise of this power; if such objection is made, the dispute shall be resolved as provided in Paragraphs 4.4 and 4.5.

§ 11.5 PERFORMANCE BOND AND PAYMENT BOND

§ 11.5.1 The Contractor to whom the Contract is awarded shall furnish and pay for reputable and approved Performance and Labor and Material Payment Bonds, each for full amount of Contract Sum including all Addenda/Amendments and applicable taxes. Bonds shall be executed on Standard AIA form A311. Bonds shall be obtained from a Bonding Company that is approved by the U.S. Treasury Department for bonding in the amount required for this project, has at least an "A" Best's key rating, and is licensed in the jurisdiction in which the Work is located. The cost of such bonds shall be included in the Contract Sum.

§ 11.5.1.1 The Contractor shall deliver the required bonds to the Owner not later than the date of execution of the Contract, or if the Work is commenced prior thereto in response to a letter of Notice to Proceed, the Contractor will submit evidence satisfactory to the Owner that such bonds will be furnished.

§ 11.5.1.2 The Contractor shall require the attorney in fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

§ 11.5.1.3 Pursuant to N.M. Stat. Ann § 13-1-1, et seq., and applicable New Mexico law, Contractor shall require all subcontractors whose contracts are written for $125,000 or more, to provide payment and performance bonds per the provisions of §11.5.1. Such subcontractor payment and performance bonds shall be delivered to CNM prior to the execution of this Agreement.

§ 11.5.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered which the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

§ 12.2.1.1 The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligation under Paragraph 3.5, if within one (1) year after the date of acceptance and approval of the Final Application for Payment of the work, or after the date for commencement of warranties established under Subparagraph 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. This obligation under this Subparagraph 12.2.2 shall survive acceptance of the Work under the Contract and termination of the Work under the Contract and termination of the contract.

§ 12.2.2.3 INTENTIONALLY OMITTED

§ 12.2.3 The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's

correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.2.6 If the Contractor fails to initiate the correction of non-conforming Work within seven (7) days of being notified of such non-conforming work, and fails to complete the correction of such non-conforming work within a reasonable amount of time as established by the Owner, the Owner may correct it in accordance with Paragraph 2.4. If the Contractor does not proceed with correction of such non-conforming Work within a reasonable time fixed by written notice from the Architect, the Owner may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, the Owner may upon ten (10) additional days written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then, or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

§ 12.3.1 If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

§ 13.1.1 The Contract shall be governed by the law of the place where the Project is located.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to an institutional lender providing construction financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

§ 13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

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

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

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

§ 13.5.1.1 Tests specifically called for by Specifications shall be made by professional testing laboratory acceptable to the Architect. The Contractor shall employ same and pay all charges in connection therewith. Records of tests shall be delivered to Architect in duplicate on acceptable forms. The Owner shall receive one (1) copy of all tests or certificates of inspection.

§ 13.5.1.2 The Contractor shall notify the Architect 48 hours in advance before covering up any concealed work, pouring of any concrete or conducting any tests by any trade on the Work.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

§ 13.6.1 Payments due and unpaid under the Contract Documents shall bear interest in accordance with N.M. Stat. Ann. **§** 57-28-1, et. seq., as amended (the Retainage Act).

§ 13.7 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

§ 13.7.1 As between the Owner and Contractor:

.1 Before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;

.2 Between Substantial Completion and Final Certificate for Payment. As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Certificate for Payment; and

.3 After Final Certificate for Payment. As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any Warranty provided under Section 3.5, the date of any correction of the Work or failure to correct the Work by the Contractor under Section 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

Architect

§ 13.8 MINIMUM WAGES Minimum wages determined by the Office of Labor Commissioner, Santa Fe, New Mexico, follow hereinafter. The minimum wages to be paid on the Project will be as determined by the New Mexico State Labor Commissioner.

§ 13.9 PAYMENT OF EMPLOYEES AND WEEKLY PAYROLLS Attention of Contractor is called to the fact that minimum wage rates to be paid various classes of laborers and mechanics, if based upon wages determined by the State Labor Commission, will be in accordance with NMSA 1978 § 13 4 11, as amended. The Contractor and each of his subcontractors shall deliver or mail copies of the certified weekly payrolls prepared in accordance with available New Mexico labor regulations to the Office of the Labor Commissioner no more than five (5) working days following the close of the payroll period, and such payrolls shall depict the decision number for this Project and the county in which the Work is being performed. The scale of wages to be paid shall be posted by the Contractor in a prominent and easily accessible place at the job site.

§ 13.10 TIME FOR COMPLETION AND LIQUIDATED DAMAGES The Contractor agrees that said Work shall be prosecuted regularly, diligently and uninterruptedly at such rate of progress as will insure full completion thereof as specified in Paragraph 1.10 of SECTION 00100 of Instructions to Bidders. It is expressly understood and agreed, by and between the Contractor and the Owner, that the time for the completion of the Work described herein is a reasonable time for the completion of the same, taking into consideration the average climate range and usual industrial conditions prevailing in this locality. If the said Contractor shall neglect, fail or refuse to complete the Work within the time herein specified, or any proper extension thereof granted by the Owner, then the Contractor does hereby agree, as part consideration for the awarding of this Contract, not as a penalty but as liquidated damages for such breach of contract as hereinafter set forth to pay the sum specified in Paragraph 1.10 of SECTION 00100 of Instructions to Bidders for each and every calendar day that the Work remains uncompleted after the time stipulated in the Contract for completing the Work. Any Contractor who estimates the actual construction in less time than given in the Contract, shall do so at his own risk and may not pass on any additional costs due to under estimating the actual construction time. The Contractor's proposed schedule shall be submitted for the Owner's review and information only and does not constitute approval by the Owner or Architect. Liquidated damages may be withheld from progress payments, final payment, retainage, followed by a Change Order or a Construction Change Directive.

§ 13.11 MULTIPLE LOCATIONS: If multiple locations are involved in the Work, then separate Applications for Payment shall be submitted for each location.

§ 13.12 REFERENCES TO ARBITRATION. All references to arbitration of disputes between the Owner and the Contractor contained in the Contract Documents are hereby deleted, and references to the manner

of resolution of claims and disputes as contained in Paragraphs 4.4 and 4.5 are hereby substituted in their place in each instance.

§ 13.13 INSPECTION AND AUDIT. The Owner may inspect, at any reasonable time, any part of Contractor's operations and place of business which is related to performance of the Contract Documents. All records of the Contractor in connection with the Project shall be subject to audit by the Owner, whether conducted as an internal or external audit. Payment under this Contract shall not preclude the Owner from recovering excessive, erroneous or illegal payments previously made to the Contractor.

§ 13.14 AFFIRMATIVE ACTION. The Contractor shall not discriminate with regard to hiring, termination or other incidents of employment on the basis of race, sex, national origin, religion, age or handicap. The Contractor agrees to: (a) adhere to the principles set forth in Executive Order 11246 and 11375, and to undertake specifically to maintain employment policies and practices that affirmatively promote equality of opportunity for handicapped persons, minority group persons and women; (b) take affirmative steps to hire and promote women and minority group persons at all job levels and in all aspects of employment; (c) communicate this policy in both English and Spanish to all persons concerned within the company, with outside recruiting services and the minority community at large; (d) provide the Owner on request a breakdown of labor force by ethnic group, sex, and job category; and (e) discuss with the Owner its policies and practices relating to its affirmative action program.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- **.1** issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;
- **.2** an act of government, such as a declaration of national emergency which requires all Work to be stopped;
- **.3** because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- **.4** the Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven (7) days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor:

- **.1** persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- **.2** fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- **.3** persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
- **.4** otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Architect that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- **.1** take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- **.2** accept assignment of subcontracts pursuant to Section 5.4; and
- **.3** finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and the Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or, interruption as described in Subparagraph 14.3.1, excluding profit. No adjustment shall be made to the extent:

- **.1** that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- **.2** that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:

- **.1** cease operations as directed by the Owner in the notice;
- **.2** take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- **.3** except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed.