

# **GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION**

## **The University of New Mexico**

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## **ARTICLE 1: GENERAL PROVISIONS**

### **1.1 BASIC DEFINITIONS**

#### **1.1.1 APPROVED**

The terms “approved”, “equal to”, “directed”, “required”, “ordered”, “designated”, “acceptable”, “satisfactory”, and similar words or phrases will be understood to have reference to action on the part of the Architect and/or the Owner’s Representative.

#### **1.1.2 ARCHITECT**

When the term “Architect” is used herein, it shall refer to the Architect or the Engineer specified and defined in the Contract for Construction or its duly authorized representative. The Architect is the person or entity lawfully licensed for professional practice.

#### **1.1.3 COMMISSIONING**

Commissioning shall mean the verification by Owner or its separate contractors that systems and components are installed in accordance with the plans and specifications and will meet the minimum operational and environmental characteristics indicated in the Contract Documents, commissioning plan and submittals. Commissioning shall be conducted in accordance with the commissioning plan. Contractor support of the Commissioning, where required, shall be a part of the Work of this Contract.

#### **1.1.4 CHANGE ORDER**

The Contract may be amended or modified without invalidating the Contract, only by a Change Order, subject to the limitations in Article 7 and elsewhere in the contract documents. A change Order is a written instrument signed by the Owner and the Contractor stating their agreement to a change in the Work, the amount of the adjustment to the Contract Sum, if any, and the extent of the adjustment to the Contract Time, if any. Agreement to any Change Order shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments of the Contract sum, time and schedule.

#### **1.1.5 CONTRACT, THE**

The Contract Documents form the Contract and are the exclusive statements of agreement between the parties. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior representations or agreements, either written or oral. The Contract Documents shall not be construed to create a contractual relationship of any kind between the Owner and a Subcontractor or any lower-tier Subcontractor.

#### **1.1.6 THE CONTRACT DOCUMENTS**

The Contract Documents consist of (1) the executed Contract for Construction, (2) these General Conditions of the Contract for Construction, (3) any

Supplemental Conditions or Special Conditions identified in the Contract for Construction, (4) The Project manual identified in the Contract for Construction, (5) the Drawings identified in the Contract for Construction, (6) Addenda issued prior to the receipt of bids, (7) Contractor's completed Qualification Statement if requested by Owner, (8) Contractor's Performance Bond and Contractor's Payment Bond, (9) Notice to Proceed, (10) and any other exhibits and/or post bid adjustments identified in the contract for Construction, (11) Advertisement for Bid, (12) Information for Bidders, and (13) Change Orders.

#### **1.1.7 CONTRACTOR**

The Contractor is the person or entity with whom the Owner has entered into the Contract for Construction. The term "Contractor" means the Contractor or the Contractor's authorized representative.

#### **1.1.8 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS**

**1.1.8.1** 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 intended results.

**1.1.8.2** 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.

**1.1.8.3** Data in the contract Documents concerning lot size, ground elevations, present obstructions on or near the site, locations and depths of sewers, conduits, pipes, wires, etc., position of sidewalks, curbs, pavements, etc., and nature of ground and subsurface conditions have been obtained from sources the Architect believes reliable, but the Architect and Owner do not represent or warrant that this information is accurate or complete. The Contractor shall verify such data to the extent possible through normal construction procedures, including but not limited to contacting utility owners and by prospecting.

#### **1.1.9 DAY**

The term "day" as used in the Contract Documents shall mean calendar day unless otherwise stated.

#### **1.1.10 THE DRAWINGS**

The Drawings herein referred to, consist of drawings prepared by the Architect and are enumerated in the Contract Documents. Drawings are intended to show general arrangements, design, and dimensions of work and are partly diagrammatic. Dimensions shall not be determined by scale or rule.

#### **1.1.11 FINAL COMPLETION**

The date when all punch list items are completed, including all closeout submittals and approval by the Architect is given to the Owner in writing.

**1.1.12 KNOWLEDGE**

The terms “knowledge,” “recognize” and “discover,” their respective derivatives and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows or should know, recognizes or should recognize and discovers or should discover in exercising the care, skill, and diligence of a diligent and prudent Contractor familiar with the Work. Analogously, the expression “reasonably inferable” and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a diligent and prudent Contractor familiar with the Work.

**1.1.13 MINORITY BUSINESS ENTERPRISE**

Minority Business Enterprise [MBE] shall mean a business concern which is at least fifty-one percent (51%) owned by one (1) or more minorities as defined below or, in the case of any publicly-owned business, in which at least fifty-one percent (51%) of the stock of which is owned by one (1) or more minorities as defined below, and whose management and daily business operations are controlled by one (1) or more minorities as defined herein.

- .1 “African American,” which includes persons having origins in any of the black racial groups of Africa.
- .2 “Hispanic Americans,” which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.
- .3 “Native Americans,” which includes persons of American Indian, Eskimo, Aleut, or Native Hawaiian origin.
- .4 “Asian-Pacific Americans”, which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S Trust territories of the Pacific, or the northern Marinas.
- .5 “Asian-Indian Americans,” which includes persons whose origins are from India, Pakistan, or Bangladesh.

**1.1.14 OWNER**

The Regents of the University of New Mexico. The Owner may act through its Board of Regents or any duly authorized committee or representative thereof.

**1.1.15 OWNER’S REPRESENTATIVE**

The Owner’s Representative is authorized by the Owner as the administrator of the Contract and will represent the Owner during the progress of the Work. Communications from the Architect to the Contractor and from the Contractor to the Architect shall be as indicated in the Contract Documents.

**1.1.16 PROJECT, THE**

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.

**1.1.17 PROJECT MANUAL, THE**

The project manual is a document assembled for the Work, which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

**1.1.18 PUNCH LIST**

“Punch list” means the list of items, prepared in connection with the inspection of the Project by the Owner’s Representative/Architect in connection with Substantial Completion of the Work or a Portion of the Work, which the Owner’s Representative/Architect has designated as remaining to be performed, completed or corrected before the Work will be accepted by the Owner.

**1.1.19 SPECIFICATIONS**

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment systems, standards and workmanship and performance of related services for the Work identified in the Contract for Construction. Specifications are separated into titled divisions for convenience of reference only. 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 extent of Work to be performed by any trade. Such separation will not operate to make the Owner or the Architect an arbiter of labor disputes or work agreements.

**1.1.20 SUBCONTRACTOR AND LOWER-TIER SUBCONTRACTOR**

A Subcontractor is a person or entity that has a contract with the Contractor to perform any of the Work. The term “Subcontractor” is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or its authorized representative. The term “Subcontractor” also is applicable to those furnishing materials to be incorporated in the Work whether work performed is at the Owner’s site or off site, or both. A lower-tier Subcontractor is a person or entity that has a contract with a Subcontractor or another lower-tier Subcontractor to perform any of the Work at the site. Nothing contained in the Contract Documents shall create contractual relationships between the Owner or the Architect and any Subcontractor or lower-tier Subcontractor of any tier. General Contractor shall include these General Conditions in all Sub-Contractor, third tier and vendor contract agreements.

**1.1.21 SUBSTANTIAL COMPLETION**

The terms “Substantial Completion” or “substantially complete” as used herein shall be construed to mean the completion of the entire Work, including all submittals required under the contract Documents, except minor items which in the opinion of the Architect, and/or the Owner’s Representative will not interfere with the complete and satisfactory use of the facilities for the purposes intended.

### **1.1.22 SUPPLEMENTAL OR SPECIAL CONDITIONS**

The terms “Supplemental Conditions” or “Special Conditions” shall mean the part of the Contract Documents, which amend, supplement, delete from, or add to these General Conditions.

### **1.1.23 WOMEN BUSINESS ENTERPRISE**

Women Business Enterprise [WBE] shall mean a business concern which is at least fifty-one percent (51%) owned by one (1) or more women or, in the case of any publicly-owned business, in which at least fifty-one percent (51%) of the stock of which is owned by one (1) or more women, and whose management and daily business operations are controlled by one (1) or more women.

### **1.1.24 THE WORK**

Work shall mean construction and service including: supervision, labor, equipment, tools, material, supplies, incidentals, operations and activities required by the Contract Documents or reasonably inferable by the Contractor as necessary to produce the results intended by the Contract Documents in a safe, expeditious, orderly, and workman like manner, and in the best manner known to each respective trade. Only work included in the Contract documents is authorized, and the Contractor shall do no work other than that described.

## **1.3 INTERPRETATION OF CONTRACT REQUIREMENTS**

**1.3.1 Conflicts:** In the event of conflict in the contract documents, the priorities stated below shall govern.

- .1 Addenda shall govern over all other contract documents and subsequent addenda shall govern over prior addenda only to the extent modified.
- .2 In case of conflict between plans and specifications, the specifications shall govern.
- .3 Conflicts within the plans:
  - (a) Schedules, when identified as such, shall govern over all other portions of the plans.
  - (b) Specific notes shall govern over all other notes and all other portions of the plans.
  - (c) Larger scale drawing shall govern over smaller scale drawings.
  - (d) Figured or numerical dimensions shall govern over dimensions obtained by scaling.
- .4 Conflicts within the specifications:

“Contract General Conditions” shall govern over all sections of the specifications except for specific modifications that may be stated in the Supplementary General Conditions or addenda. No other section of the specifications shall modify the Contract General Conditions.
- .5 In the event that provisions of codes, safety orders, contract documents, referenced manufacturers specifications or industry standards are in conflict, the more restrictive or higher quality shall govern.

**1.3.2 Omissions:** In the event of omissions in the contract documents, the following shall apply:

- .1 If the contract documents are not complete as to any minor detail of a required construction system or with regard to the manner of combining or installing of parts, materials, or equipment, but there exists an accepted trade standard for good and skillful construction, such detail shall be deemed to be an implied requirement of the contract documents in accordance with such standard. "Minor Detail" shall include the concept of substantially identical components, where the price of each such component is small even though the aggregate cost or importance is substantial, and shall include a single component that is incidental, even though its cost or importance may be substantial.
- .2 The quality and quantity of the parts or material so supplied shall conform to trade standards and be compatible with the type, composition, strength, size, and profile of the parts of materials otherwise set forth in the contract documents.

**1.3.3** Before ordering any materials or doing any Work, the Contractor, and each Subcontractor shall verify measurements at the Work site and shall be responsible for the correctness of such measures.

#### **1.4 EXECUTION OF CONTRACT DOCUMENTS**

**1.4.1** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. Contractor represents that it has performed its own investigation and examination of the Work site and its surroundings and satisfied itself before entering into this contract as to:

- .1 conditions bearing upon transportation, disposal, handling, and storage of materials;
- .2 the availability of labor, materials, equipment, water, electrical power, utilities and roads;
- .3 uncertainties of weather, river stages, flooding and similar characteristics of the site;
- .4 conditions bearing upon security and protection of material, equipment, and Work in progress;
- .5 the form and nature of the Work site, including the surface and sub-surface conditions;
- .6 the extent and nature of Work and materials necessary for the execution of the Work and the remedying of any defects therein; and
- .7 the means of access to the site and the accommodations it may require and, in general, shall be deemed to have obtained all information as to risks, contingencies and other circumstances.

- 1.4.2** The Owner assumes no responsibility or liability for the physical conditions or safety of the Work site of any improvements located on the Work site. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the contract Sum or Contract Time concerning any failure by the Contractor or any Subcontractor to comply with the requirements of this Paragraph.
- 1.4.3** Each and every provision of law and clause required by law to be inserted in this Contract shall be read and enforced as though it were included herein; and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the written application of either party the Contract shall forthwith be physically amended to make such insertion or correction.

**1.5 OWNERSHIP AND USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS, AND OTHER INSTRUMENTS OF SERVICE**

- 1.5.1** The Drawings, Specifications, and other similar or related documents, including electronic media editions and copies, are furnished to the Contractor for the purpose of performing the Work, and are, and shall remain, the property of the Owner. The Contractor, and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work under a direct or indirect contract with the Owner (1) shall not have, acquire or claim any title or ownership rights in any of the Drawings, Specifications, or other documents (or copies) prepared by or bearing the seal of Architect or Architect's consultants, including any electronic media editions, and (2) shall not reuse any of such Drawings, Specifications, other documents, or copies thereof on any other Project without written consent of the Owner and Architect. This prohibition survives final payment, completion, and acceptance of the Work, or termination of the Contract. The Contractor may retain one copy of the Contract Documents for record purposes only. All other copies of such documents shall be returned to the Owner upon Completion of the Work or termination of the Contract.

**ARTICLE 2: OWNER**

**2.1.1 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, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.
- 2.1.2** When requested in writing by the Contractor, information or services under the Owner's control which are reasonably necessary to perform the Work will be



furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the Work.

**2.2.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

**2.2.2** Except for permits and fees which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, test and balance, 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. Data in the Contract Documents concerning lot size, ground elevations, present obstructions on or near the site, locations and depths of sewers, conduits, pipes, wires, etc., position of sidewalks, curbs, pavements, etc., and nature of ground and subsurface conditions have been obtained from sources the Architect believes reliable, but the Architect and Owner do not represent or warrant that this information is accurate or complete. The Contractor shall verify such data to the extent possible through normal construction procedures, including but not limited to contracting utility owners and by prospecting.

**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** Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, such copies of Drawings and Project manuals as are reasonably necessary for execution of the Work

**2.3 OWNER'S RIGHT TO STOP THE WORK**

**2.3.1** If the Contractor fails to perform or correct Work which is not in accordance with the requirements of the Contract Documents, fails to supply adequate working force (number and skill level), fails to supply material of proper quality, or 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 Subparagraph 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 (7) day period after receipt of a written notice from the Owner to correct such default or neglect, the Owner may,

without prejudice to other remedies the Owner may have, correct such default or neglect. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Architect's additional services and expenses made necessary by such default or neglect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the differences to Owner.

**2.4.2** In the event the Contractor has not satisfactorily completed all items on the Punch List within thirty (30) days of its receipt, or by the Final Completion Date, whichever is latest, the Owner reserves the right to complete the Punch List without further notice to the Contractor or its surety. In such case, Owner shall be entitled to deduct from payments then or thereafter due the Contractor the cost of completing the Punch List items, including compensation for the Architect's additional services. If payments then or thereafter-due Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to Owner.

## **2.5 EXTENT OF OWNER'S RIGHTS**

**2.5.1** The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner (1) granted in the Contract Documents, (2) at law or (3) in equity.

**2.5.2** In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

## **ARTICLE 3: CONTRACTOR**

### **3.1 GENERAL**

**3.1.1** The Contractor shall perform the Work in accordance with the Contract Documents.

**3.1.2** 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 and Owner in the Architect or Owner's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

**3.1.3** During the progress of the Work, Contractor shall verify all field measurements prior to fabrication of components or equipment, and proceed with the fabrication to meet field conditions. Contractor shall consult all Contract Documents to determine the exact location of all Work and verify spatial relationships to all Work. Any question concerning the location or spatial relationship shall be submitted to the Owner and Architect. Specific locations for equipment,

pipelines, ductwork and other such items of Work, where not dimensioned on plans, shall be determined in consultation with the Owner.

### **3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

**3.2.1** Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Contractor's coordination drawings as required and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner and Architect, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly, so as not to delay progress of the work, to the Architect and Owner as a request for information in such form as the Architect and Owner may require.

**3.2.2** The Contractor shall be responsible for preparing construction coordination drawings to plan the Work and proper fitting of the Work. Drawings shall be produced using the same technological level as original design production documents unless otherwise stated. The Contractor shall coordinate all construction operations, all Subcontractors, all material suppliers and all Work for this project to insure the efficient and orderly installation of all Work so as to produce a high quality project that complies with the Contract Documents. Specific locations for partitions, structure, equipment, pipelines, ductwork, and all other such items of Work, both above ceilings, below slabs and in the useable spaces shall be indicated. The best sequence of Work shall be considered. During the process of preparing the drawings, the Contractor shall verify all field dimensions and measurements prior to fabricating and installation of Work. The Contractor shall consult all Contract Documents to determine the location of all Work and to verify spatial relationships of the Work. The purpose of assembling these drawings is to coordinate the location and installation sequence of Work, to avoid waste and loss, but not to perform design functions. Any questions and conflicts shall be brought to the attention of the Owner and Architect for resolution before Work proceeds. Reasonable time for this Work shall be included in the Contract Time.

**3.2.3** Any design inconsistencies, errors or omissions noted by the Contractor during this review shall be reported promptly, so as not to delay the progress of the Work, to the Architect and Owner, 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, but shall use best efforts 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 and Owner.

- 3.2.4** If the Contractor performs any construction activity that it knows involves a recognized error, inconsistency, or omission in the Contract Documents without such written notice to the Owner and Architect, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction. The Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Architect and Owner.
- 3.2.5** 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, the Contractor shall submit change request proposal(s) within 14 days. If the Contractor fails to perform the obligations of Subparagraphs 3.2.1, 3.2.2 and 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations.

### **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 job site safety, 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 job site safety and 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 Owner and Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any resulting loss or damage.
- 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. The Contractor shall supply sufficient

and competent supervision and personnel, and sufficient material, plant, and equipment to prosecute the Work with diligence to ensure completion within the time specified in the Contract Documents.

- 3.3.3** The Contractor shall be represented at the site by a competent superintendent from the beginning of the Work, who shall not be reassigned until its final acceptance, unless permitted in writing by the Owner. The superintendent for the Contractor shall exercise general supervision over the Work and such superintendent shall have decision-making authority of the Contractor.
- 3.3.4** Communications given to the superintendent shall be binding as if given to the Contractor. These communications shall be provided in writing to the superintendent, with a copy to the Contractor.
- 3.3.5** 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.
- 3.3.6** The Contractor's scheduled outage/tie-in plan, time, and date is subject to written approval by the Owner. Failure of Contractor to secure Owner's written 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.
- 3.3.7** 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.
- 3.3.8** 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 made 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.
- 3.3.9** All directions from Owner to Contractor shall be in writing

## **3.4 USE OF SITE**

- 3.4.1** The Contractor shall limit operations and storage of material to the area within the Work limit lines shown on Drawings, or as separately defined or approved by the Owner, except as necessary to connect to existing utilities, shall not encroach on neighboring property, and shall exercise caution to prevent damage to existing structures.
- 3.4.2** 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.
- 3.4.3** 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.
- 3.4.4** 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 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.

### **3.5 LABOR AND MATERIALS**

- 3.5.1** 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.
- 3.5.2** The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order, as set forth in Section 3.13.
- 3.5.3** The Contractor shall enforce strict discipline and good conduct 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.

### **3.6 WARRANTY**

- 3.6.1** 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 for a period of twelve (12) months after Substantial Completion or specific acceptance as provided in this Contract. 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 or Owner, the Contractor shall furnish satisfactory evidence as the kind and quality of materials and equipment. Should the Contractor fail or refuse to make the necessary repairs, replacements, and tests when requested by the Architect or Owner, the Architect or Owner may perform, or cause the necessary work and tests to be performed, at the Contractor's expense, or exercise the Owner's rights under Article 14.
- 3.6.2** Neither the final payment nor any provision in the Contract Documents nor partial or entire occupancy of the premises by the Owner, nor expiration of warranty stated herein, will constitute an acceptance of Work not done in accordance with the Contract Documents or relieve the Contractor of liability in respect to any responsibility for non-conforming work. The Contractor shall immediately remedy any defects in the Work and pay for any resulting damage upon written notice from the Owner. Should the Contractor fail or refuse to remedy the non-conforming work, the Owner may perform, or cause to be performed the work

necessary to bring the work into conformance with the Contract Documents at the Contractor's expense.

### **3.7 TAXES**

**3.7.1** 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.

**3.7.2** The Contractor will comply with the requirements of the State of New Mexico Gross Receipts Law and all amendments to same and will require all subcontractors to comply with the same.

**3.7.3** Contractor shall cooperate with Cost Segregation requirements as stipulated in the solicitation Terms and Conditions.

### **3.8 PERMITS, FEES AND NOTICES**

**3.8.1** The Contractor will procure all permits, licenses, and certificates of inspection, use and occupancy, and will pay all charges and fees and give all notices necessary and incidental to the due and lawful prosecution of the Work. Certificates of inspection, use and occupancy will be delivered to the Owner upon completion of the Work in sufficient time for occupation of the Project in accordance with the approved schedule for the Work. A copy of the building permit will be delivered to the Architect and Owner as soon as it is obtained. Upon final completion, the Contractor will deliver all original permits, licenses, and certificates to the Owner and will deliver copies to the Architect. The costs of such procurement, payment and delivery are included within the Contract Sum. If a Change Order affects any applicable building code approvals for the Project, new Drawings will be submitted by the Contractor to proper authorities for approval. The Contractor will alert the Architect of the need for additional drawings if the Contractor knows that additional Drawings will be needed to submit to appropriate governmental authorities for approval.

**3.8.2** The contractor shall comply with and give notices required by laws, regulations and lawful orders of public authorities applicable to performance of the Work.

### **3.9 ALLOWANCES**

**3.9.1** The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

**3.9.2** Unless otherwise provided in the Contract Documents:

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discount;



- .2 contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances;
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual cost and the allowances under Subparagraph 3.9.2.1 and (2) changes in Contractor's costs under Subparagraph 3.9.2.2.

**3.9.3** Materials and equipment under an allowance shall be selected by the Owner in sufficient time to avoid delay in the Work.

### **3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES**

**3.10.1** The Contractor, within fifteen (15) days after issuance of Notice to Proceed or receipt of a Purchase Order, shall prepare and submit for the Owner 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 include a critical path schedule, 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.

**3.10.2** The Contractor shall prepare and keep current, for the Architect or Owner Representative approval, a schedule of submittals that is coordinated with the Contractor's construction schedule and allows the Architect or Owner Representative 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** In the event the Owner determines that the performance of the Work is not progressing or has not reached the level of completion required by the Construction Schedule, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, (1) working additional shifts or overtime, (2) supplying additional manpower, equipment, or facilities, (3) expediting delivery of materials, and (4) other similar measures. Such corrective measures shall continue until the progress of the Work complies with the stage of completion required by the Construction Documents. The Owner's right to require corrective measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule. The Contractor shall not be entitled to an adjustment in the Contract Sum specific to these corrective measures.

### **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 (collectively “record drawings”). These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work. As part of the monthly pay request, Contractor shall update record drawings. **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. Shop drawings shall be provided in electronic format.
- 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. 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 Drawings, 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 and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Drawings.
- 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 Contract 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 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 architecture or engineering 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 certification 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 and 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. 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 SUBSTITUTIONS AFTER AWARD**

**3.13.1** A substitution is a Contractor proposal of an alternate product or method in lieu of

what has been specified or shown in the Contract Documents.

**3.13.2** Contractor may make a proposal to the Architect and the Owner Representative to use substitute products or methods as set forth herein, but the Owner Representative's decision concerning acceptance of a substitute shall be final. The Contractor must do so in writing and setting forth the following:

- .1 full explanation of the proposed substitution and submittal of all supporting data including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution.
- .2 reasons the substitution is advantageous and necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable.
- .3 the adjustment, if any, in the Contract Sum, in the event the substitution is acceptable.
- .4 the adjustment, if any, in the time of completion of the Contract and the construction schedule in the event the substitution is acceptable.
- .5 proposals for substitutions shall be submitted to the Architect and Owner in sufficient time to allow the Architect and Owner no less than ten (10) working days for review. No substitution will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated herein.

**3.13.3** Substitutions may be rejected at the Owner's sole discretion.

**3.13.4** Whether or not any proposed substitution is accepted by the Owner, the Contractor shall reimburse the Owner for any additional service fees charged by the Architect or other consultants for evaluating each proposed substitute if the substitution is made after the submittal process has been completed.

### **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 by 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 ROYALTIES, PATENTS AND COPYRIGHTS**

**3.15.1** 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.

### **3.16 INDEMNIFICATION**

**3.16.1** To the fullest extent permitted by law and to the extent claims, damages, losses or expenses are not covered by Project Management Protective Liability insurance purchased by the Contractor in accordance with Paragraph 11.3, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, penalties, civil fines, 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 expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by the party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person.

**3.16.2** In claims against any person or entity indemnified under this Paragraph 3.16 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 Subparagraph 3.16.1 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.

### **3.17 REPRESENTATIONS AND WARRANTIES**

**3.17.1** The Contractor represents and warrants the following to the Owner (in addition to the other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute the Owner-Contractor Agreement, which representations and warranties will survive the execution and delivery of the Owner-Contractor Agreement and the final completion of the Work:

- .1 that the Contractor is financially solvent, able to pay his debts as they mature, and possessed of sufficient working capital to complete the Work and perform Contractor's obligations under the Contract Documents;
- .2 that the Contractor is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform Contractor's obligations hereunder and has sufficient experience and competence to do so;

- .3 that the Contractor is authorized to do business in the State of New Mexico where the Project is located and properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over the Contractor and over the Work and the site of the Project;
- .4 that Contractor's execution of the Owner-Contractor Agreement and Contractor's performance thereof is within Contractor's duly authorized powers; and
- .5 that Contractor's duly authorized representative has visited the site of the Work, familiarized themselves with the local conditions under which the Work is to be performed, and correlated their observations with the requirements of the Contract Documents.

**3.18 SUBSURFACE UTILITIES**

**3.18.1** Owner will comply with NMSA 1978, Chapter 62, Article 14 (the New Mexico Excavation Law) by performing utility spotting activities or by employing a qualified utility spotting company, or both. The Owner will provide the latest and best underground utility information available regarding the campus in the form of Utility Mapping Drawings. In addition, the Contractor shall perform utility spotting work. The Contractor shall locate, spot and find all utilities within the project boundaries or affected by the project. The Contractor shall repair any and all damaged utilities caused by excavation and spotting activities. Costs for this work shall be included in the Contract Price. Owner will not recognize claims for spotting or repairing concealed or unknown subsurface utilities. The Owner will process an appropriate Change Order if concealed or unknown subsurface utilities must be relocated in order to construct the project as indicated in the Contract Documents.

**ARTICLE 4: ADMINISTRATION OF THE CONTRACT**

**4.1 OWNER**

**4.1.2** The Owner reserves the right to appoint a representative empowered to act for the Owner during the administration of the Contract with such duties and responsibilities as set forth in a written notice to the Architect and the Contractor.

**4.1.3** The Owner may employ or retain any licensed Architect to perform any part of the duties or responsibilities of the Architect hereunder or perform them through the Owner's representative. In the event that employment of the Architect is terminated, Owner will give prompt written notice to the Contractor of the termination and of the scope of the Architect's duties to be assumed by a replacement Architect or the Owner's representative.

**4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT**

**4.2.1** The Architect, at the discretion of the Owner, will provide administration of the Contract as described in the Contract Documents.

**4.2.2** The Architect, as a representative of the Owner, will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become familiar with and to keep the Owner informed about the progress and quality of the Work, (2) to use best efforts to guard the Owner against defects and deficiencies in the Work, (3) to determine if the Work is proceeding in accordance with the Contract Documents; and (4) to cause the Architect's Consultants to perform observations necessary to determine that key components of the Work are being carried out in accordance with the Contract Documents. If the Architect or its Consultants becomes aware of the failure of the Contractor, Subcontractor or any other persons performing any of the Work not in accordance with the Contract Documents the Architect shall promptly notify the Owner.

**4.2.3** The duties and responsibilities of the Architect set forth in Subparagraph 4.2.2 are solely for the benefit of the Owner, and the Architect's performance or non-performance of its obligations under Subparagraph 4.2.2 shall not relieve the Contractor of its responsibility to perform the Work in accordance with 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.

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. Communication protocol shall be agreed upon prior to mobilization.

**4.2.4** Based on the Architect's and the Owner's evaluations of the progress and quality of the Work, the Applications for Payment and all other information available to the Architect, the Architect shall within seven (7) business days of receipt of a properly executed Application for Payment certify to the Owner the undisputed amount recommended for payment to the Contractor.

**4.2.5** The Architect will have authority to reject Work that does not conform to the Contract Documents, and shall do so unless, after consultation with the Owner, the Owner instructs otherwise. Whenever the Architect in the exercise of the Architect's professional opinion considers it necessary or advisable, the Architect will have authority subject to the Owner's prior approval to require inspection or testing of the Work 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.

- 4.2.6** The Architect will promptly review and approve, reject 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 the Contract Documents. Review of such submittals shall not relieve the Contractor of responsibility for determining the accuracy and completeness of other details such as dimensions, quantities, proper fit of portions or components of the Work to each other, 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 Article 3. 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.
- 4.2.7** The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work subject to the limitations stated in Article 7. All Change Orders and Construction Change Directives shall require the approval of the Owner in writing to be binding on the Owner.
- 4.2.8** The Architect will make recommendations to the Owner of the date or dates of Substantial Completion and the date of final completion, will receive, approve and forward to the Owner, written warranties and related documents required by the Contract, and will recommend a final Certificate for Payment upon compliance with the requirements of the Contract Documents and the Retainage Act.
- 4.2.9** 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.
- 4.2.10** Subject to the claims procedures set forth in Paragraph 4.3, the Architect will interpret matters concerning performance under the Contract Documents on written request of either the Owner or Contractor. Upon receipt of such request from either the Owner or Contractor, the Architect shall promptly notify the non-requesting party of the details of the request. The Architect's response to the request will be made promptly, and in no event later than 15 days after the date on which such request is made. Delay shall not be recognized on account of failure by the Architect to furnish such interpretations until 15 days after written request is made for them.
- 4.2.11** Interpretations of the Architect will be consistent with Contract Documents and will be in writing or in the form of drawings. When making such interpretations, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations so rendered in good faith.



### **4.3 CLAIMS AND DISPUTES**

**4.3.1** 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, demands, and assertions arising out of or related to the Contract Documents, including claims based upon breach of contract, mistake, misrepresentation or other cause for contract modification or rescission. 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 the Owner or Contractor must be initiated within fourteen (14) days after occurrence of the event giving rise to such Claim or within fourteen (14) 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 directed by the Owner in writing or as provided in Subparagraph 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. The Owner, Contractor and Architect shall cooperate in efforts to mitigate the alleged or potential damages, delay, or other adverse consequences arising out of the condition which is the cause of such Claim.

#### **4.3.4 Claims for Concealed or Unknown Conditions:**

- .1 If conditions are encountered at the site which are (1) non-utility related 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 five (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 notify the Owner and Contractor stating the reasons, request information from the Contractor substantiating such cost and time impacts, and recommend to the Owner 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 14 days after the Architect has given notice of the decision. If the conditions encountered are

materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Architect for initial determination, subject to further proceedings pursuant to Paragraph 4.4.

**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 before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 10.6. Contractor shall, upon recognition of a condition giving rise to a claim for additional cost, establish separate accounting codes or other methods for quantifying the cost or time impact attributable to the Claim. Written notice of the Claims shall itemize the claim and contain sufficient detail, including but not limited to the information required above, to permit evaluation of the claim by the Owner and Architect. Architect will give prompt notice to Contractor of inadequacies in the supporting information. No claim for delay shall be recognized for periods of time between the initial assertion of the claim and submission of adequate information for the Owner and Architect to evaluate the claim or for a period of fifteen (15) days after submission of adequate information for evaluation.

**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) unjustified 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 Paragraph 4.3.

**4.3.7 CLAIMS FOR ADDITIONAL TIME**

- .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 revised schedule showing the impact of the delay to the critical path. In the case of a continuing delay only one Claim is necessary.
- .2 If adverse weather conditions are the basis for a Claim for additional time, such claim shall be documented by U.S. Weather Bureau Climatological Reports for the month(s) involved plus a report indicating the average precipitation, temperature, etc. for the past ten (10) years from the nearest reporting station. The ten-year average shall be the basis for determining the number of adverse weather days that the Contractor should reasonably have anticipated and the conditions the Contractor should reasonably have expected to encounter.

**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 seven (7) days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

**4.3.9** If unit prices are stated in the contract Documents or subsequently agreed upon, and if quantities originally contemplated are changed by 15% or greater in a proposed Change Order so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

**4.3.10 Claims for Consequential Damages:** The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal and field office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit.

This mutual waiver is applicable, without limitation to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Subparagraph 4.3.10 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

#### **4.4 RESOLUTION OF CLAIMS AND DISPUTES**

**4.4.1 Interpretation by Architect:** Claims, including those alleging an error or omission by the Architect but excluding those arising under Paragraphs 10.3 and 10.4, shall be referred initially to the Architect for interpretation. An interpretation by the Architect shall be required as a condition precedent to mediation, arbitration or 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 interpretation 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 (10) days of the receipt of the Claim take one or 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, or (4) suggest a compromise.

**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 an

interpretation. The Architect may request the Owner to authorize retention of such persons at the Owner's expense.

- 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 interpretation, which shall state the reasons therefore 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 precedent to arbitration, mediation or litigation.
- 4.4.6** A written decision of the Architect shall state that (1) the interpretation is final but subject to mediation, arbitration or litigation and (2) a demand for arbitration of a Claim covered by such decision must be made within 30 days after the date on which the party making the demand receives the final written interpretation and must be agreed to by the Owner. Failure to demand arbitration within said thirty- (30) day period shall result in the Architect's interpretation becoming final and binding upon the Owner and Contractor. If the Architect renders an interpretation after arbitration proceedings have been initiated, such interpretation may be entered as evidence, but shall not supersede arbitration proceedings unless the interpretation is acceptable to all parties concerned.
- 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.

#### **4.5      **MEDIATION****

The University of New Mexico is subject to the New Mexico Public Works Mediation Act

#### **4.6      **ARBITRATION****

- 4.6.1.** Any Claim arising out of or related to the Contract, except Claims waived as provided for in Subparagraphs 4.3.10, 9.10.4 and 9.10.5 may, after decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to arbitration if mutually agreed upon.
- 4.6.2** Claims not resolved by mediation may be decided by arbitration, if mutually agreed upon, shall be in accordance with the Construction Industry Arbitration

Rules of the American Arbitration Association currently in effect. Any request for arbitration shall be filed in writing with the other party to the Contract and a copy shall be filed with the Architect.

- 4.6.3** A request for arbitration shall be made within the time limits specified in Subparagraphs 4.4.6 and 4.6.1 as applicable, and in other cases within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to Paragraph 13.7.
- 4.6.4 Claims and Timely Assertion of Claims:** The party filing a notice of request for arbitration must assert in the request all Claims then known to that part on which arbitration is permitted to be requested.

## **ARTICLE 5: SUBCONTRACTORS**

### **5.1 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK**

- 5.1.1** Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design and where applicable the name of the installing contractor), trades and proposed Work scope for each portion of the Work. The Owner will promptly reply to the Contractor in writing stating whether or not the Owner, after due investigation, has reasonable objection to any such proposed person or entity. All Subcontractors must meet all the required contracting licensing and bonding requirements.
- 5.1.2** The Contractor shall not contract with a proposed person or entity to which 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.
- 5.1.3** If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, or Subcontractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection.
- 5.1.4** The Contractor shall furnish a complete list of Subcontractors changes, each and every time a proposed change is to be requested by the Contractor. Any substitutions of a Subcontractor will comply with the New Mexico Subcontractor Fair Practices Act to the extent that the Subcontractors Fair Practices Act is applicable. The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner makes reasonable objection to such substitution.

## **5.2 SUBCONTRACTURAL RELATIONS**

**5.2.1** 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 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 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.

**5.2.2** All agreements between the Contractor and a Subcontractor or supplier shall contain provisions whereby Subcontractor or supplier waives all rights against the Owner, Contractor, Owner's representative, Architect and all other additional insureds for all losses and damages caused by, arising out of, or resulting from any of the perils covered by property or builders risk insurance coverage required of the Contractor in the Contract Documents. If insureds on any such policies require separate waiver forms to be signed by any Subcontractors of any tier or suppliers, the Contractor shall obtain the same.

## **5.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

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

- 5.3.2** Upon such assignment, if the Work has been suspended for more than thirty (30) consecutive 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 Paragraph 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 or Architect 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 the other separate contractors, the Owners' forces and the Owner in reviewing and coordinating the construction Work and schedules. 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. The Contractor shall complete the Work correctly and at the proper time and not delay or cause additional expense to another contractor.

**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.

**6.1.5** Owners Commissioning Agent: In addition to the Contractors equipment start-up and operational testing as required by the Contract Documents, the Owner may enter into separate contracts for Commissioning Services, the scope of which is generally contained in the Contract Documents. The Contractor and

the associated Subcontractors shall fully support the Owners Commissioning activities as required by the Contract Documents.

**6.2 MUTUAL RESPONSIBILITY**

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

**6.2.2** If the proper execution or results of the Contractor's Work depends upon construction or operations by the Owner or a separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly, so as not to delay the project, report to the Architect and Owner apparent discrepancies or defects in such other construction that would render it unsuitable for proper execution and results. The Contractor's failure to promptly reportsuch discrepancies or defects constitutes acknowledgement and acceptance that the Owner's or separate Contractor's completed or partially completed Work 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 incurred by the Contractor because of delays, improperly timed activities, damage to the Work or defective construction of the Owner or separate Contractor.

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

**6.2.5** The Owner and each separate Contractor shall have the same responsibilities for cutting and patching and clean up as are described for the Contractor in Subparagraph 3.14 and 3.15.

**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 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 order for a minor change in the Work, 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 may or may not be agreed to by the Contractor. An order for a minor change in the works 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 will proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

**7.2 CHANGE ORDERS**

**7.2.1** Methods used in determining adjustments to the Contract Sum may include those listed in Subparagraph 7.3.3.

**7.2.2** With each proposal for a change in the Scope of Work, the Contractor will submit an itemized breakdown of all increases or decreases in the cost of the Contractor’s and all Subcontractor’s Work to include the following detail in the order listed:

- .1 Material quantities and unit costs.
- .2 Labor amounts and hourly rates, (identified with specific items of material to be placed or operation to be performed).
- .3 Labor Burden, including specific entries for Workman’s Compensation Insurance, employee benefits, and employment taxes (Federal and State). The Labor Burden total will not exceed forty-six percent (46%) of labor amounts.
- .4 Equipment costs, if any, (cars and pick-up trucks) will not be included as equipment.
- .5 Bonds and Public Liability Insurance.
- .6 Do not include State Gross Receipts Tax. It will be computed with each pay application.
- .7 Overhead and profit.

**7.2.3** Overhead and profit on Change Orders shall be applied as follows:

- .1 the overhead and profit charged by the Contractor shall be considered to include, but not limited to, performance bond, builder’s risk and public liability insurance, job site office expense, normal hand tools, incidental job supervision, field supervision, company benefits, and general office overhead. The percentages for overhead and profit charged on Change Orders shall be negotiated and may vary according to the nature, extent, and complexity of the Work involved but in no case shall exceed the following:

Subtotal before applying overhead and	Under \$500	\$500 to \$5,000	\$5,000 to \$25,000	Over \$25,000
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profit:				
Contractor (for work performed by his own forces):	Maximum: 15.00%	Maximum: 15.00%	Maximum: 15.00%	Maximum: 12.00%
Subcontractor (for work performed by his own forces):	Maximum: 10.00%	Maximum: 10.00%	Maximum: 10.00%	Maximum: 10.00%
Contractor (for work performed by Subcontractor):	Maximum: 08.00%	Maximum: 08.00%	Maximum: 08.00%	Maximum: 05.00%

Not more than three mark-ups, not to exceed individual maximums shown above, shall be allowed regardless of the number of tier Subcontractors. Overhead and profit shall be shown separately for each Subcontractor of any tier and the Contractor.

- .2 On proposals covering both increases and decreases in the amount of the Contract, the application of overhead and profit shall be on the net change in direct cost for the Contractor and Subcontractor of any tier performing the Work.
- .3 The percentages for overhead and profit credit to the Owner on Change Orders that are strictly decreases in the quantity of Work or materials shall be negotiated and may vary according to the nature, extent, and complexity of the Work involved, but shall not be less than the following:  
Overhead and Profit:  
10% credit to the Owner from the Contractor or Subcontractor of any tier for Work performed with their respective forces or materials purchased.  
5% credit to the Owner from the Contractor on Work performed by other than his forces.  
5% credit to the Owner from the first tier Subcontractor on Work performed by his Subcontractor of any tier.
- .4 If there is additional time granted in a Change Order, it strictly applies toward liquidated damages. No additional money can be charged for overhead for time extensions.
- .5 No overhead or profit will be allowed on FICA or FUTA taxes.

### **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.

- 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 as outlined in 7.2.3.
  - .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 Subparagraph 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 the 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 change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Clause 7.3.3, 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 Subparagraph 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 that result 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 CONTRACTOR COMPLIANCE WITH THE CHANGE ORDER PROCESS**

**7.4.1** The Contractor shall provide Change Order Pricing and backup in a timely manner. No claim for an addition to the Contract Sum will be valid unless authorized in writing by the Owner.

**7.4.2** No changes or additions to the Work to be performed, materials to be furnished, or in the provisions of the Contract will be authorized until execution and delivery by the Owner to the Contractor of the written Change Order. Any Work completed by the Contractor outside the original project scope without written approval from the Owner will be deemed as a waiver by the Contractor for additional compensation for said Work.

**7.5 MINOR CHANGES TO THE WORK**

**7.5.1** 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. 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 of the Contractor or of persons or entities for which the Contractor is responsible.
- 8.1.3** The date of Substantial Completion is the date certified by the Architect and the Owner in accordance with paragraph 9.8.
- 8.1.4** The date of Final Completion is the date certified by the Architect and the Owner in accordance with paragraph 9.10.
- 8.2** **PROGRESS AND COMPLETION**
- 8.2.1** Time limits stated in the Contract Documents are the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.
- 8.2.1.1** 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 and Owner. The date of commencement of the Work will not be changed by the effective date of such insurance.
- 8.2.2** The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.
- 8.2.3** The Owner shall not be liable to the Contractor if the Contractor submits a progress report or any construction schedule expressing an intention to achieve completion of the Work prior to the Contract Time. No liability on the part of the Owner shall be created or implied for failure of the Contractor to so complete the Work.
- 8.3** **DELAYS AND EXTENSIONS OF TIME**
- 8.3.1** If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of a separate Contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner pending mediation and arbitration, or by other causes which the Architect and the Owner determines may justify delay, then the Contract Time may be extended by Change Order for such reasonable time as the Architect and the Owner may determine.
- 8.3.2** Claims relating to time shall be made in accordance with applicable provisions of Paragraph 4.3 and the applicable provisions of Paragraph 7.3.

**8.3.3** This paragraph does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

**8.4 CONTRACT TIME AND LIQUIDATED DAMAGES**

**8.4.1** The Contractor agrees that the Work will be prosecuted regularly, diligently and without interruption at such rate of progress as will ensure completion within the Contract Time. It is expressly understood and agreed, by and between the Contractor and the Owner, that the Contract Time is a reasonable time for completion of the Work, taking into consideration the average climate range and usual industrial conditions prevailing in this locality. If the Contractor neglects, fails or refuses to complete the Work within the Contract Time, or any proper extension granted by the Owner, then the Contractor agrees to pay to the Owner the amount specified in the Contract Documents, not as a penalty, but as liquidated damages.

**8.4.2** The parties agree that the amount of the likely damage to the Owner for such delay is difficult to ascertain at the time of execution of this agreement, but that a reasonable estimate of such damages for delay is set forth in the Contract Documents. Liquidated damages may be deducted from any monthly progress payments due to the Contractor or from other moneys being withheld from the Contractor.

**8.4.3** The Owner and Architect shall establish the date of Substantial Completion and the date of Final Completion of the Work which shall be conclusive and binding on the Owner and the Contractor for the purpose of determining whether or not Liquidated Damages shall be assessed and the sum total amount due.

**8.4.4** Liquidated Damages, or any matter related thereto, shall not relieve the Contractor or its surety of any responsibility or obligation under this Contract.

**8.4.5** The Contractor and Surety are liable for any other liquidated damages over and above monies held by the Owner.

**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.

**9.1.2** The Owner may withhold any payments to the Contractor if the Contractor fails to perform any of its obligations or is in default under any of the Contract Documents identified in Paragraph 9.5; provided, however, that any payments withheld will be limited to an amount sufficient to cure any default or failure of

performance by the Contractor or as liquidated damages pursuant to paragraph 8.4.1.

## **9.2 SCHEDULE OF VALUES**

**9.2.1** Before the first Application for Payment, the Contractor shall submit to the Architect and the Owner 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 and Owner may require. This schedule, upon acceptance by the Architect and the Owner shall be used as a basis for reviewing the Contractor's Applications for Payment. No Applications for Payment will be processed until the schedule of values is received and approved by the Architect and the Owner.

**9.2.2** The Owner will assign a dollar value to a line item in the schedule of values for "Contract Closeout". It will represent the estimated value of costs associated with closeout procedures, including but not limited to, preparation and delivery of project record drawings, warranties, affidavits of training sessions in the use of building equipment, operation and maintenance manuals, certification of compliance with final commissioning reports; certification of conformity to final testing and balancing of air-handling systems, and delivery of all close-out documentation.

## **9.3 APPLICATION FOR PAYMENT**

**9.3.1** By the date established as the end of each progress payment period, the Contractor shall submit to the Architect and the Owner an itemized Application for Payment completed in accordance with the schedule of values and accompanied by the Owner's Certificate for Payment form. The Application for Payment shall be notarized, 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.

- .1 As provided in Subparagraph 7.2 and 7.3 such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives, or by interim determinations of the Architect or the Owner, but not yet included in Change Orders.
- .2 Such applications may not include requests for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier unless such Work has been performed by others whom the Contractor intends to pay.
- .3 It is the Contractor's responsibility to comply with the provisions of the New Mexico Retainage Act (NMSA 57-28-1-et. seq.), including but not limited to making Subcontractors aware of the forms and provisions of the escrow account entered into by the Owner.
- .4 It is the Contractor's responsibility to comply with Section 57-28-5(C) of the New Mexico Retainage Act requiring Contractors to make prompt payment to Sub-Contractors for Work performed within (7) seven days

after receipt of payment from the Owner or pay interest for failing to make prompt payment.

- .5 The Owner will pay the amount due the Contractor for progress payments less those amounts identified through the procedures in Paragraph 9.1.2 and in accordance with the requirements of the New Mexico Retainage Act.

**9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made for materials and equipment delivered and suitably stored at the site for incorporation in the Work. Any payments for such materials or equipment shall be conditioned upon the Contractor's demonstrating that they are adequately protected from weather, damage, vandalism and theft and that such materials or equipment have been inventoried and stored in accordance with procedures established by or approved by the Owner. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a secure location agreed upon in writing. Payment for materials and equipment stored on or off the 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, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. There will be no partial payment of the value stated for this line item.

**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 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.

#### **9.4 CERTIFICATE FOR PAYMENT**

**9.4.1** The Architect and the Owner, within seven (7) days after receipt of the Contractor's Application for Payment, will issue a Certificate for Payment to the Contractor, for such amount as the Architect and the Owner determine is properly due, or notify the Contractor in writing of the reasons for withholding certification in whole or in part as provided in Subparagraph 9.5.1.

**9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, 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.

- 9.4.3** Except as provided in Subsection B of 57-25-5 NMSA, all construction contracts shall provide that payment for amounts due shall be paid within twenty-one days after the owner receives an undisputed request for payment. Payment by the owner to the contractor may be made by first-class mailing, electronic funds transfer or by hand delivery of the undisputed amount of a pay request based on work completed or service provided under the contract. If the owner fails to pay the contractor within twenty-one days after receipt of an undisputed request for payment, the owner shall pay interest to the contractor beginning on the twenty-second day after payment was due, computed at one and one-half percent of the undisputed amount per month or fraction of a month until the payment is issued. If an owner receives an improperly completed invoice, the owner shall notify the sender of the invoice within seven days of receipt in what way the invoice is improperly completed, and the owner has no further duty to pay on the improperly completed invoice until it is resubmitted as complete.
- 9.4.4** A local public body may make payment within forty-five days after submission of an undisputed request for payment when grant money is a source of funding, if:
- .1 The construction contract specifically provides in a clear and conspicuous manner for a payment later than twenty-one days after submission of an undisputed request for payment; and
- 9.4.5** All construction contracts shall provide that contractors and subcontractors make prompt payment to their subcontractors and suppliers for amounts owed for work performed on the construction project within seven days after receipt of payment from the owner, contractor or subcontractor. If the contractor or subcontractor fails to pay the contractor's or subcontractor's subcontractor and suppliers by first-class mail or hand delivery within seven days of receipt of payment, the contractor or subcontractor shall pay interest to the subcontractors and suppliers beginning on the eighth day after payment was due, computed at one and one-half percent of the undisputed amount per month or fraction of a month until payment is issued. These payment provisions apply to all tiers of contractors, subcontractors and suppliers.
- 9.4.6** A creditor shall not collect, enforce a security interest against, garnish or levy execution on those progress payments or other payments that are owed by an owner, contractor or subcontractor to a person, or the owner's contractor's or subcontractor's surety, who has furnished labor or material pursuant to a construction contract.
- 9.4.7** When making payments, an owner, contractor or subcontractor shall not retain,

withhold, hold back or in any other manner not pay amounts owed for work performed.

## **9.5 DECISIONS TO WITHHOLD CERTIFICATION**

**9.5.1** The Architect or Owner may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if the representations to the Owner required by Subparagraph 9.4.2 cannot be made. If the Contractor and Architect and Owner 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 or subsequent observations, 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 Subparagraph 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.
- .8 Disputed certification amounts shall be subject to the provisions of the New Mexico Retainage Act (NMSA 57-28-1 et. Seq.).

**9.5.2** When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

## **9.6 PROGRESS PAYMENTS**

**9.6.1** After the Architect has issued a Certificate for Payment and the Owner has independently verified the information and approved the Certificate for Payment, the Owner will make payment in the manner and within the time provided in the Contract Documents.

**9.6.2** The Contractor shall pay each Subcontractor, upon receipt of payment from the Owner, the amount to which each Subcontractor is entitled in conformance with paragraph 9.3.1.4. The Contractor shall 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 information regarding percentages of completion or amounts applied for by the Contractor and action taken 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 moneys 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 Subparagraphs 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.

## **9.7 FAILURE OF PAYMENT**

**9.7.1** If the Owner does not pay the Contractor the amount approved by the Architect and the Owner, within thirty (30) days from the date specified in paragraph 9.4.3, then the Contractor may, upon written notice to the Owner and Architect, stop the Work until payment of such amount has been received. Unless the Contractor's action was improper or if the amount claimed is shown not to have been due, the Contract Time may be adjusted appropriately and the Contract Sum may be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, which will be accomplished as provided in Article 7. Contractor will nevertheless be liable to Owner for loss, damage, or expense caused by any wrongful stop-work by the Contractor.

## **9.8 SUBSTANTIAL COMPLETION**

**9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents and when all required occupancy permits, if any, have been issued so the Owner can occupy and utilize the Work for its intended use. The Contractor will secure and deliver to the Owner written warranties and guarantees from its Subcontractors, Sub-subcontractors and suppliers bearing the date of Substantial Completion or some other date as may be agreed to by the Owner and stating the period of warranty as required by the Contract Documents. The Contractor is responsible for the warranty of all Work, whether performed by it or by its Subcontractors at any tier. The Contractor will also participate in a walk-through of the project within one year after Substantial Completion.

**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 and the Owner 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 and the Owner will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If inspection by the Architect or the Owner discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the requirements of the Contract, the Contractor shall complete or correct such item. In such case, the Contractor shall then submit a request for another inspection by the Architect and the Owner to determine Substantial Completion.
- 9.8.4** When, in the opinion of the Owner and the Architect, the Work or designated portion thereof is substantially complete, the Architect will notify the Owner. The Architect will prepare a Certificate of Substantial Completion which shall establish the Date of Substantial Completion, shall establish the 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 furnish 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 Owner may withhold approval of a Certificate of Substantial Completion of the Work until commissioning is successfully completed.

**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 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, 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 and the Owner as provided under Subparagraph 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.

**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 from the Contractor that the Work is ready for final inspection and acceptance, the Architect and the Owner will promptly make such inspection and, when the Architect and the Owner find the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will notify the Owner, and unless the Owner disagrees with the Architect's opinion that Final Completion has been reached, 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 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 Subparagraph 9.10.2 as precedent to the Contractor's entitlement to final payment has been fulfilled.

- .1 Final Completion of the Work shall be accomplished no later than thirty (30) days following Substantial Completion except as noted in paragraph 9.10.3.
- .2 If Final Completion is not accomplished thirty (30) days after Substantial Completion, the Contractor will pay an amount specified in the Contract Documents, not as a penalty, but as liquidated damages for Final Completion until such time as Final Completion is accomplished and the conditions of paragraph 9.10.1 and 9.10.2 are met. This provision is subject to the conditions noted in paragraph 9.10.3.

**9.10.2** Final payments shall not become due until the Contractor submits to the Architect and the Owner (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 thirty (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, to final payment, (5) 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 Owner, and (6) other closeout requirements noted in paragraph 9.2.2. 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 is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, 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 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.

**10.1.2** The Contractor shall at all times conduct operations under this Contract in a manner to avoid risk of bodily harm to persons or risk of damage to any property. The Contractor shall promptly take precautions, which are necessary and adequate against conditions created during the progress of the Work which

involve a risk of bodily harm to persons or a risk of damage to property. The Contractor shall continuously inspect the Work, materials and equipment to discover and determine any such conditions and shall be responsible for discovery, determination and correction of such conditions. The Contractor shall comply and shall cause its Subcontractors and others on the Project site to comply with applicable safety laws, standards, codes and regulations of the jurisdiction in which the Project is located.

## **10.2 SAFETY OF PERSONS AND PROPERTY**

**10.2.1** The Contractor shall take 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 hereby;
- .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.
- .4 students, staff, faculty, visitors, and members of the general public on or in the vicinity of the University of New Mexico property or facilities.

**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 Paragraph 10.2 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, except damage or loss attributable solely 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 stated elsewhere in the Contract Documents.

- 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.
- 10.2.8** The Contractor shall promptly report in writing to the Owner and the Architect all accidents arising out of or in connection with the Work which cause lost time injury, personal injury, death or property damage, giving full details and statements of any witnesses. In cases of serious bodily injury, death or serious property damage, Contractor shall also contact Owner and Architect immediately by the most expeditious means.
- 10.2.9** The Contractor shall promptly notify the Owner and the Architect in writing of any claims received by the Contractor for personal injury or property damage related to the Work.

### **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 known by the Contractor to be hazardous, including but not limited to asbestos, polychlorinated biphenyl (PCB), or other substances listed by the EPA as hazardous, encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area, take steps to contain spread of the material and immediately report the condition to the Owner and Architect in writing.
- 10.3.2** The Owner shall obtain the services of an agency certified to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. The Owner shall, at its own expense, employ persons to render material encountered on the Site harmless. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contract Time and the Contract Sum shall be adjusted as provided in Article 7. "Rendered Harmless" shall mean that the levels of such materials are less than any applicable exposure standards set forth in OSHA or EPA regulations.
- 10.3.3** The Owner shall not be responsible under Paragraph 10.3 for materials and substances brought to the site by the Contractor.



**10.3.4** If, without negligence on the part of the Contractor, the Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Document, the Contract shall be adjusted in accordance with Article 7.

**10.4 EMERGENCIES**

**10.4.1** In an emergency affecting the safety of persons or property, the Contractor shall use its best efforts 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 Paragraph 4.3 and Article 7.

**ARTICLE 11: INSURANCE AND BONDS**

**11.1 CONTRACTOR'S LIABILITY INSURANCE**

**11.1.1** The Contractor will purchase from and maintain in a company or companies lawfully authorized to transact insurance in New Mexico 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 liability coverage;
- .5 claims for damages, other than to the Work itself, because of damage 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 Paragraph 3.18.

**11.1.2** The insurance required by Subparagraph 11.1.1 will be written for not less than limits of liability specified herein or required by law, whichever coverage is greater. Coverages will be written on an occurrence basis and will 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 will be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Paragraph 11.1 will contain a provision that coverages afforded under the policies will not be cancelled or allowed to expire until at least forty-five (45) 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 will be submitted with the final Application for Payment as required by Subparagraph 9.10.2. The Contractor shall furnish information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, with reasonable promptness.

.1 The Contractor will furnish the Owner one copy of each of the Certificates of Insurance herein required for each copy of the Contract, showing the coverages, limits of liability, covered operations, effective dates and dates of expiration of policies of Insurance carried by the Contractor. The Contractor will furnish to the Owner copies of any endorsements that are subsequently issued amending coverage or limits. The Certificates of Insurance will be in the form of AIA Document G705, or similar format acceptable to the Owner. Such certificates will be filed with the Owner and will also contain the following statements:

- (a) "The Regents of The University of New Mexico, The University of New Mexico, its agents, servants and employees are recognized as Additionally Insured."
- (b) "The insurance coverage certified herein will not be canceled or materially changed except after forty-five (45) calendar days written notice has been provided to the Owner."

**11.1.4 Minimum Required Coverages:**

- .1 Compensation Insurance: During the life of this Contract the Contractor will procure and will maintain Worker's Compensation Insurance as required by applicable State law for all of the Contractor's employees to be engaged at the site of the Project under this Contract and in case of any such Work being sublet, the Contractor will require the Subcontractor or Sub-subcontractor similarly to provide Worker's Compensation Insurance for all of the Subcontractor's or Sub-subcontractor's employees which are not covered under the Contractor's Worker's Compensation Insurance. In case any class of employee engaged in Work on the Project under this Contract is not protected under the Worker's Compensation Statute, the Contractor will provide and will cause each Subcontractor and Sub-subcontractor to provide Employer's Insurance in an amount not less than \$500,000.
- .2 Contractor's Public Liability Insurance: The Contractor will maintain a minimum liability insurance coverage of \$1,000,000 per occurrence.
- .3 Comprehensive Vehicle Liability: During the life of this Contract, including any extensions to same, the Contractor will procure and will

maintain Vehicle Liability Insurance with a minimum amount of \$1,000,000 per occurrence.

- .4 Subcontractor's and Sub-subcontractor's Public Liability and Vehicle Liability Insurance: The Contractor will either:
- (a) Require each Subcontractor and Sub-subcontractor to procure and maintain during the life of the Subcontract or Sub-subcontract, Public Liability Insurance of the types and amounts specified above, or
  - (b) Insure the activities of the Subcontractor and Sub-subcontractor in the Contractor's policy as required under this Article.

## **11.2 OWNER'S LIABILITY INSURANCE**

**11.2.1** The Owner will provide the Owner's 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 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 of the limits required for Contractor's Liability Insurance under paragraph 11.1.4.

## **11.4 PROPERTY INSURANCE**

**11.4.1** The Owner will provide property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance will be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Paragraph 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Paragraph 11.4 to be covered, whichever is later. This insurance will include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

**11.4.2** The Builder's Risk coverage to be furnished by the Owner is provided under the State of New Mexico's Blanket Property Coverage Policy, a copy of which is available at UNM's Department of Purchasing.

- 11.4.3** If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverage in the amount described above, the Owner will so inform the Contractor in writing prior to commencement of the Work. The Contractor may then affect insurance, which will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order, the cost thereof will 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 will bear all reasonable costs properly attributable thereto.
- 11.4.4** The policy does not insure for theft of any building materials or supplies. Nor is there coverage provided for Contractor's, Subcontractor's or Sub-subcontractor's tools, machinery, or equipment. Any loss resulting there from will be borne by the Contractor incurring the loss. The Contractor will be responsible for the first deductible amount of any insured loss.
- 11.4.5** Partial occupancy or use in accordance with Paragraph 9.9 will 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 will take reasonable steps to obtain consent of the insurance company or companies and will, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.
- 11.4.6 **Boiler and Machinery Insurance.**** The Owner may provide boiler and machinery insurance required by the Contract Documents or by law, which will specifically cover such insured objects during installation and until final acceptance by the Owner. This insurance will include interests of the Owner, Contractor, Subcontractors, and Sub-Subcontractors in the Work, and the Owner and Contractor will be named insureds.
- 11.4.7 **Loss of Use Insurance:**** The Owner may provide such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused.
- 11.4.8** A loss insured under Owner's property insurance will be adjusted by the Owner and made payable to the Owner for the insureds, as their interests may appear, subject to requirements of any applicable mortgage clause and of this Subparagraph 11.4.9. The Contractor will pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, will require Subcontractors to make payments to their Sub-subcontractors in similar manner.
- 11.4.9** Proceeds so received, shall be distributed by the Owner in accordance with such agreement as the parties in interest may reach, or in accordance with an

arbitration award in which case the procedure will be as provided in paragraph 4.5 and 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 will be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

**11.4.10** The Owner will have the power to adjust and settle a loss with insurers.

**11.5 PERFORMANCE BOND AND PAYMENT BOND**

**11.5.1** As required by law, the Owner requires the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

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

**ARTICLE 12: UNCOVERING AND CORRECTION OF WORK**

**12.1 UNCOVERING OF WORK**

**12.1.1** No Work will be covered until the Architect and Owner have been given written notice and have had the opportunity to examine the Work.

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

**12.1.3** If a portion of the Work has been covered which the Architect or Owner has not specifically requested to examine prior to its being covered, the Architect or Owner may request to see such Work and it will be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement will, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, uncovering, correction and replacement will be at the Contractor's expense. If the Owner caused the non-compliant condition, the Owner will be responsible for payment of such costs.

**12.2 CORRECTION OF WORK**

**12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION**

.1 The Contractor will promptly correct Work rejected by the Architect or Owner 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

rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses will be at the Contractor's expense.

**12.2.2 AFTER SUBSTANTIAL COMPLETION**

- .1 In addition to the Contractor's obligations under Paragraph 3.6, if, within one year after the date of Substantial Completion of the Work or designated portion thereof 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 will correct it promptly after receipt of written notice from the Owner or Architect to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner or Architect will give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming Work within the time established in Paragraph 2.4 the Owner may correct the Work in accordance with Paragraph 2.4.
- .2 The one (1) year period for correction of Work will be extended, with respect to portions of Work first performed after Substantial Completion, by the period of time between Substantial Completion and Acceptance of the Work.
- .3 Corrected nonconforming Work will have a new one-year period for correction, starting when the corrected Work has been accepted by the Owner.

**12.2.3** The Contractor will 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 will bear the cost of correcting 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 Paragraph 12.2 will 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 Subparagraph 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.

**12.3 ACCEPTANCE OF NONCONFORMING WORK**

**12.3.1** If the Owner prefers to accept Work that 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 adjusted as appropriate and equitable. Such adjustment will be effected whether or not final payment has been made.

**ARTICLE 13: MISCELLANEOUS PROVISIONS**

**13.1 GOVERNING LAW**

**13.1.1** The Contract will be governed by the laws of the State of New Mexico.

**13.2 SUCCESSORS AND ASSIGNS**

**13.2.1** The Contractor hereby binds itself, its partners, successors, assigns and legal representatives to the Owner in respect to covenants, agreements and obligations contained in the Contract Documents. Contractor shall not assign the Contract or proceeds hereof without written consent of the Owner. If the Contractor attempts to make such an assignment without such consent, it shall be void and confer no rights on third parties; the Contractor shall nevertheless remain legally responsible for all obligations under the Contract. The Owner's consent to any assignment is conditioned upon the Contractors entering into a written assignment which contains the following language: "It is agreed that the funds to be paid to the assignee under this assignment are subject to performance by the Contractor and to claims and to liens for services rendered or materials supplied for the performance of the Work required in said Contract in favor of all persons, firms, corporations rendering such services or supplying such materials." Except as provided in Subparagraph 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 as 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 Document. The Contractor shall execute all consents reasonably required to facilitate such assignment.

**13.3 WRITTEN NOTICE**

**13.3.1** All notices required to be given by the Contractor shall be made in writing. Written notice, when served by the Owner, shall be considered served if delivered in person to the Contractor, or 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 to a breach thereunder, except as may be specifically agreed in writing.
- 13.4.3** The Contractor shall carry out the Work and adhere to the current construction schedule during all disputes or disagreements with the Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements except as the Owner may otherwise agree in writing.
- 13.4.4** The Contractor shall specifically incorporate the obligations of this Article 13 into the subcontracts, supply agreements and purchase orders for the Work and require the same of any Subcontractors of any tier.

**13.5 TEST AND INSPECTIONS**

- 13.5.1** Test, inspections and approval of portions of the Work required by the Contract Document 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 the Owner's designated testing entity. The Contractor shall give the Owner and the Architect timely notice of when and where tests and inspections are to be made so that the Owner and the Architect may observe such procedures. The Owner shall bear the cost of tests, inspections or approvals.
- 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 Subparagraph 13.5.1, the Architect or the Owner will instruct the Contractor to make arrangements for such additional testing, inspection or approval by the Owner's independent testing entity, and the Contractor shall give timely notice to the Owner and the Architect of when and where tests and inspections are to be made so that the Owner and the Architect may observe such procedures. Such cost, except as provided in Subparagraph 13.5.3, shall be at the Owner's expense.
- 13.5.3** If such procedures for testing, inspection or approval under Subparagraph 13.5.1 and 13.5.2 reveal failure of the portions of 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, inspections or approvals shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Owner and the Architect.

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

**13.5.6** Test or inspections conducted pursuant to the Contract Documents shall be made so as to avoid unreasonable delay in the Work.

### **13.6 INTEREST**

**13.6.1** Payments due and unpaid under the Contract Document shall bear interest from the date payment is due in conformance with New Mexico statutes.

### **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, as described in Subparagraph 9.8.1, 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 Warrant provided under Paragraph 3.6, the date of any correction of the Work or failure to correct the Work by the Contractor under Paragraph 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.
- .4 **Equal Employment Opportunity:** The Contractor agrees not to discriminate against any employee or applicant for employment because or race, color, religion, sex, national origin or sexual preference, in accordance with U.S. Executive Order 11246, as amended, and N.M. Executive Order 85-15. If the Contract constitutes a federally assisted construction contract within the meaning of 41 C.F.R. 60-1.3 (1987), then

the equal opportunity clause of 41 C.F.R. 60-1.4 (b) is incorporated herein by reference.

### **13.8 WAGE RATES**

**13.8.1 Minimum Wage:** Minimum wages will be paid as determined by the Secretary of Labor, U.S. Department of Labor, Washington, D.C. 20210, or as determined by the Office of the Labor Commissioner, State of New Mexico, Santa Fe, New Mexico, as following hereinafter. The minimum wages to be paid on the project will be the higher of the Wage Determinations for each class of laborers and mechanics. All rules and regulations pursuant to State and/or Federal Labor Laws will apply to this Work.

**13.8.2 Payment of Employees and Weekly Payrolls:** Attention of bidders 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 the 6-6-6 N.M.S.A. 1953 Compilation.

- .1 Following public hearings, the rule on submission of payrolls, contained in Paragraph 4 of Part II, reads as follows: "The contractual provision will require that the Contractor and each Subcontractor will deliver or mail copies of the certified weekly payrolls, prepared in accordance with these regulations, to the Office of the Labor Commission, no more than five working days following the close of the Payroll Period." It is further stated that such payrolls will depict the decision number for this Project and the County in which the Work is being performed.
- .2 The scale of wages to be paid will be posted by the Contractor in a prominent and easily accessible place at the job site. Public works construction projects, except for street, highway, bridge, road, utility or maintenance contracts with employers who elect not to participate in training, will not be constructed unless an employer agrees to make contribution to approved apprentice and training programs in New Mexico in which the employer is a participant, or to the public works apprentice and training program fund administered by the Public Works Bureau of Labor and Industrial Division of the Labor Department. Contributions will be made in the same manner and in the same amount as apprentice and training contributions required pursuant to wage rate determinations made by the Department of Labor.

### **13.8.3 RESIDENT CONTRACTOR CERTIFICATION**

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

### **13.9 RECORDS**

**13.9.1** The Owner shall have access to and the right to examine any accounting or other records of the Contractor involving transactions and Work related to this Contract for five (5) years after final payment or five (5) years after the final

resolution of any ongoing disputes at the time of final payment. All records shall be maintained in accordance with generally accepted accounting procedures, consistently applied. Subcontractors of any tier shall be required by the Contractor to maintain records and to permit audits as required of the Contractors herein.

**13.10 MISCELLANEOUS GENERAL PROVISIONS**

**13.10.1** Any specific requirement in this Contract that the responsibilities or obligations of the Contractor also apply to a Subcontractor is added for emphasis and is also hereby deemed to include a Subcontractor of any tier. The omission of a reference to a Subcontractor in connection with any of the Contractor's responsibilities or obligation shall not be construed to diminish, abrogate or limit any responsibilities or obligations of a Subcontractor of any tier under the Contract Documents or the applicable subcontract.

**13.10.2** This Contract shall be interpreted, construed, enforced and regulated under and by the laws of the State of New Mexico. Whenever possible, each provision of this Contract shall be interpreted in a manner as to be effective and valid under applicable law. If, however, any provision of this Contract, or a portion thereof, is prohibited by law or found invalid under any law, only such provision or portion thereof shall be ineffective, without invalidating or affecting the remaining provisions of this Contract or valid portions of such provision, which are hereby deemed severable. The Contractor and the Owner further agree that in the event any provision of this Contract, or a portion thereof, is prohibited by law or found invalid under any law, this Contract shall be reformed to replace such prohibited or invalid provisions or portion thereof with a valid and enforceable provision which comes as close as possible to expressing the intention of the prohibited or invalid provision.

**13.10.3** The Contractor and the Owner each agree that the State of New Mexico District Court of the County where the Project is located shall have exclusive jurisdiction to resolve all Claims and any issue and disputes between the Contractor and the Owner. The Contractor agrees that it shall not file any petition, complaints, lawsuit or legal proceedings against the Owner in any other court other than the State of New Mexico District Court for the County where the Project is located.

**13.10.4** The Owner's total liability to the Contractor and anyone claiming by, through, or under the Contractor for any Claim, cost, loss, expense or damage caused in part by the fault of the Owner and in part by the fault of the Contractor or any other entity or individual shall not exceed the percentage share that the Owner's fault bears to the total fault of the Owner, the Contractor and all other entities and individuals as determined on the basis of comparative fault principles.

**13.10.5** The Contractor agrees that the Owner shall not be liable to the Contractor for any special, indirect, incidental, or consequential damage whatsoever, whether

caused by the Owner's negligence, fault, errors or omissions, strict liability, breach of contract, breach of warranty or other cause or causes whatsoever. Such special, indirect, incidental or consequential damages include, but are not limited to loss of profits, loss of savings or revenue, loss of anticipated profits, labor inefficiencies, idle equipment, home office overhead, and similar types of damages.

- 13.10.6** Nothing contained in this Contract or the Contract Documents shall create any contractual relationships with or cause of action in favor of a third party against the Owner.
- 13.10.7** No member or officer of the Board of Regents of the University incurs or assumes any individual or personal liability under the Contract or by reason of the default of the Owner in the performance of any terms thereof. The Contractor releases and discharges all members or officers of the Board of Regents of the University of New Mexico from any liability as a condition of and as consideration for the award of the Contract to the Contractor.
- 13.10.8** The Owner reserves the right to conduct commissioning activities during the construction, testing and acceptance phases of the Work.
- .1 If the Owner includes the commissioning plan, including components' testing schedule, in the plans and specifications for the Project, the Contractor shall include all costs associated with commissioning support in the base bid for the Project and the Contractor's schedule shall reflect all time associated with the commissioning plan, including component testing schedule, commissioning and commissioning support in the Contractor's schedule. The Contractor shall not be entitled to a change in the Contract price or time for the Owner's commissioning activities unless, without the fault of or delay by the Contractor or those for whom the Contractor is responsible, the commissioning agent fails to conduct the component testing in accordance with the component testing schedule. Should the Contractor:
    - (a) fail to complete the component testing checklists in accordance with the commissioning plan;
    - (b) install components or systems in such a manner that they fail to achieve the minimum levels of performance set forth in the commissioning plan; or
    - (c) fail to provide equipment and other components of systems that do not meet the minimum performance levels required by the specifications or identified in the submittals; the Contractor shall not be entitled to any time extension or adjustment of the contract price for correction of such conditions and shall be liable to the Owner for any additional costs of commissioning caused by such conditions in addition to any liquidated damages for delay in Project completion.
  - .2 If, after entering into the Agreement, the Owner determines that commissioning shall be required, a Change Order or Construction Change

Directive shall modify the Contract provided in Article 7.

**ARTICLE 14:           TERMINATION 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 thirty (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 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    The Work is stopped pursuant to Subparagraph 9.7.1.

**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 performing portions of the Work under contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Paragraph 14.3 constitute in the aggregate more than one hundred percent (100%) of the total number of days scheduled for completion, or one hundred twenty (120) days in any three hundred sixty-five (365) day period, whichever is less. A condition to receiving the payment due under this Subparagraph 14.1.2, the Contractor shall execute and deliver to the Owner such documents requested by the Owner, including the legal assignment of the Contractor's contractual rights with respect to any Contracts or documents pertaining to the Work. In addition, the Contractor shall return all drawings, plans, specifications, and other materials pertaining to the Work to the Owner; and will further execute a full release, waiver and assignment of the Contractor's rights in interest in a form acceptable to the Owner.

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

**14.1.4**   If the Work is stopped for a period of sixty (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 Document with respect to matters important to the progress of the Work, the Contractor may, upon seven (7) additional days

written notice to the Owner and the Architect, terminate the Contract and recover payment from the Owner as provided in Subparagraph 14.1.3.

## **14.2 TERMINATION BY THE OWNER FOR CAUSE**

### **14.2.1** The Owner may terminate the Contract if the Contractor:

- .1 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, or otherwise fails to comply with the New Mexico Retainage Act (NMSA 57-28-1 et seq.);
- .3 Disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction; or
- .4 Disregards the authority of the Owner's Representative or Architect;
- .5 Fails to furnish the Owner with assurance satisfactory to the Owner evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents;
- .6 Fails after commencement of the Work to proceed continuously with the construction and completion of the Work for more than ten (10) consecutive days, except as permitted under the Contract Documents;
- .7 Fails to maintain a satisfactory rate of progress with the Work or fails to comply with approved progress schedules;
- .8 Otherwise is guilty of a substantial breach of the Contract Documents.

### **14.2.2** When any of the reasons described in Subparagraph 14.2.1 exist, the Owner, may without prejudice to any other rights or remedies and after giving the Contractor and the Contractor's surety seven (7) 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 Paragraph 5.4, and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient.

### **14.2.3** When the Owner terminates the Contract for one of the reasons stated in Subparagraph 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is accepted.

### **14.2.4** If the unpaid balance of the Contract Sum exceeds cost of finishing the Work, including compensation for the Architect's services and other expenses and damages incurred by the Owner and not expressly waived, such excess may be paid to the Contractor to the extent the Work is properly completed by 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.

**14.2.5** In exercising the Owner's right to secure completion of the Work under any of the provisions hereof, the Owner shall have the right to exercise the Owner's sole discretion as to the manner, methods, and reasonableness of costs of completing the Work.

**14.2.6** The rights of the Owner to terminate pursuant to Paragraph 14.2 will be cumulative and not exclusive and shall be in addition to any other remedy provided by law or the Contract Documents.

**14.2.7** Should the Contractor fail to achieve Final Completion of the Work within thirty (30) calendar days following the date of Substantial Completion, the Owner may exercise its rights under Paragraph 14.2.

**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 may be adjusted for increases in cost and time caused by suspension, delay or interruption as described in Subparagraph 14.3.1. Adjustment of the Contract Sum may include profit. No adjustments 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 the 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.

In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for the Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work executed.