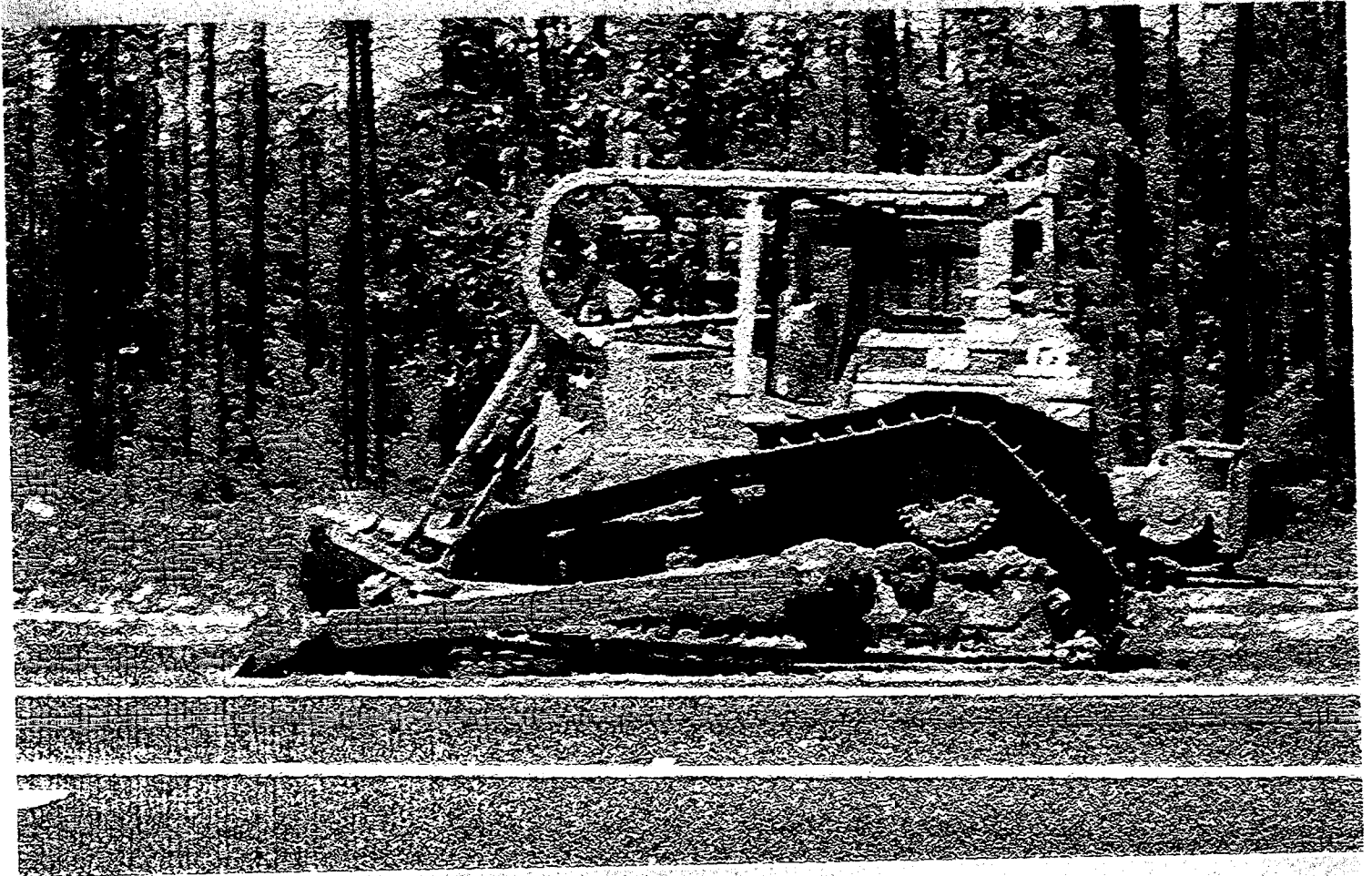


# *City of Las Cruces*

## General Conditions for Construction Contracts



2004 Edition

## SECTION A

BASIC INFORMATION

GC-1. Definitions.....	1
GC-2. Execution, Correlation and Intent of Documents.....	4
GC-3. Standard Specifications and Test Methods ..	5
GC-4. Ownership of Drawings .....	5

## SECTION B

BID INFORMATION

BID-1. Qualifications of Bidders .....	6
BID-2. Bid Acceptance or Rejection .....	6
BID-3. Taxes and Permits .....	6
BID-4. Royalties and Patents .....	6
BID-5. Bid Clarification .....	6
BID-6. Proposal Form.....	7
BID-7. Subcontractors Fair Practices Act.....	7
BID-8. Performance of Work with Own Forces .....	8
BID-9. Collusion or Kickback .....	8
BID-10. Bid Quantities .....	8
BID-11. Change in Quantities or Time .....	8
BID-12. Bid Consideration Time.....	9
BID-13. Procedure for Bid Opening .....	9
BID-14. Substitutes and "or Equal" Items or Procedures .....	9

SECTION C

WAGES AND EMPLOYMENT

GC-5. Wage Rates and Conditions of Employment .....12  
GC-6. Labor - Payment, Wages, EEO and Affirmative Action.....12  
GC-7. Nondiscrimination.....13  
GC-8. Apprentices .....15  
GC-9. Posting Minimum Wage Rates .....15  
GC-10. Wage Underpayments and Adjustments .....15

INSURANCE AND BOND

GC-11. Contract Security.....15  
GC-12. Contractor's and Subcontractor's Insurance.....16  
GC-13. Indemnification .....17  
GC-14. Workers' Compensation Insurance .....18

CONSTRUCTION

GC-15. Notice to Proceed .....19  
GC-16. Construction Schedule .....19  
GC-17. Shop Drawings .....20  
GC-18. Applicable Laws, Ordinances, and Regulations.....21  
GC-19. Work and Inspection Outside Normal Hours.....21  
GC-20. Toilet Facilities .....22  
GC-21. Protection of the Public, Property and Work .....22  
GC-22. Work and Material .....25  
GC-23. Changes in the Work .....26  
GC-24. Engineer's Direction .....26  
GC-25. Inspection of Work.....27  
GC-26. Superintendence .....28  
GC-27. Contract Time and Liquidated Damages.....28  
GC-28. Subcontractors.....30  
GC-29. Assignment.....30  
GC-30. Termination of Contract.....31  
GC-31. Baselines, Grades and Staking .....32  
GC-32. Survey Monument Protection .....33  
GC-33. Rights of Various Interests and Separate Contracts .....33  
GC-34. Intent of Plans and Specifications .....33  
GC-35. Use of Completed Portions .....34  
GC-36. Traffic Control/Interference with Traffic.....34  
GC-37. Dust Control.....35  
GC-38. Guarantee .....36  
GC-39. Change Orders.....36

GC-40. Water for Construction.....37  
GC-41. Construction Removals and Site Clean Up.....37  
GC-42. Record Documents and Drawings.....38  
GC-43. Contractor's Contact Person.....39  
GC-44. Differing Site Conditions .....39

PAYMENT

GC-45. Request for Payment Submittal.....42  
GC-46. Monthly Payment Submittal/Status Meeting .....42  
GC-47. Payments to Contractor .....43  
GC-48. Correction of Work Before Final Payment .....44  
GC-49. Acceptance of Final Payment.....44  
GC-50. Retainage (Reserved) .....46

MISCELLANEOUS

GC-51. Arbitration.....46  
GC-52. ADA Contract Compliance.....48  
GC-53. Contractor/Consultant Evaluation.....48  
GC-54. Value Engineering.....48

# GENERAL CONDITIONS

## SECTION A

### BASIC INFORMATION

#### GC-1. DEFINITIONS

Terms used in these General Conditions which are also used in the Conditions of the Contract for Construction (General, Special, Supplementary, and other Conditions) have the following meanings assigned to them.

- A. ADDENDUM: A written or graphic instrument issued prior to the opening of bids which clarifies, corrects, or changes the Bidding Documents or Contract Documents. Plural: addenda.
- B. ADDITIVE AND DEDUCTIVE BIDS: A separate amount stated in the Bid as the sum to be added or subtracted from the amount of the Base Bid if the corresponding change in the project scope, materials, and/or methods of construction is awarded by the City.
- C. BASE BID: Amount stated in the Bid as the sum for which the Bidder offers to perform the work, excluding all additive and deductive bids.
- D. BID: The offer of the Bidder submitted on the prescribed form setting forth the prices for the work to be performed in conformance with the Bidding Documents.
- E. BID LOT: A group of bid items of similar scope that make up a major item of work.
- F. BIDDER: One, who submits a Bid directly to the City, is distinct from a Subcontractor, who submits a bid to a Contractor, which can be an individual, partnership, firm, corporation, joint venture, or other legal entity allowed to contract with the City.
- G. BIDDING DOCUMENTS: The Bidding Requirements and the Contract Documents.
- H. BIDDING REQUIREMENTS: Notice of Invitation to Bid, Pre bid Information, the Bid Form, Supplements to the Bid Form and Addenda relating to any of these.
- I. CASH: United States of America legal tender for payment of goods or services, including (but not limited to) currency, wire transfer, or check.
- J. CHANGE ORDER: A written authorized directive to the Contractor, approved and issued by the City, issued on or after the effective date of the contract and/or agreement and agreed to and signed by the City and Contractor, ordering an addition, deletion or revision in the work, a contract modification, or a contract price adjustment. A change order may adjust the contract price and/or the allowable contract times.

- K. CITY AND CONTRACTOR: The City and the Contractor are those parties mentioned as such in the Contract.
- L. CITY'S OVERTIME: Any hours worked by the City's employees due to the contractor's work schedule that are outside of the City's regular working hours. Unless agreed to in writing prior to commencement of work. Overtime shall be paid as stated in GC-19. The City will not charge the Contractor Overtime during an emergency not caused by the Contractor as determined by the Project Manager.
- M. CONTRACT: An agreement covering the performance of the work described in the Contract Documents, including all supplemental agreements and all general and special conditions pertaining to the work or materials. The contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral.
- N. CONTRACT DOCUMENTS: The Contract Documents consist of the Invitation to Bid, Bid Forms, Instructions to Bidders, Contract, Labor and Material Payment Bond, Contract Form, Performance and Payment Bond, Certificate of Insurance, Bond, Notice of Award, Notice to Proceed, Special Conditions, General Conditions, Final Receipt, Prevailing Wage Rate Schedule, Project Status Form, Quantity Measurement Sheet, Wage Interview Form, Technical Specifications, Plans and Drawings, all Addenda thereto issued prior to the time of opening bids for the work, Equal Employment Opportunity Provisions, Federal Requirements (if applicable), other accepted drawings, specifications, field notices and change orders. The contract documents also consist of engineering data or other documents which may be furnished to the Contractor and approved by the City, together with such additional drawings which may be furnished by the Project Manager from time to time as are necessary to make clear and to define in greater detail the intent of the specifications and drawings.
- O. CONTRACTOR: One who contracts with the City to carry out and complete work in return for a financial consideration. The Contractor is responsible for the planning of the work and for the acquisition and deployment of resources on site to achieve the completion of the project. Subject to any term to the contrary he is liable to the city for the defaults of his sub-contractors.
- P. CONTRACT TIME: The number of calendar days specified in the special conditions of the contract and bidding documents for completion of the proposed work. The beginning and ending date of the proposed work will be listed in the Notice to Proceed.
- Q. DAY: A calendar day of twenty-four (24) hours.
- R. ENGINEER: Wherever in this Contract the word 'Engineer' is used, it shall be understood as referring to the licensed professional engineer in the state of New Mexico

- in charge for the City, acting personally or through any assistants duly authorized by the Engineer.
- S. FIELD NOTICE: A written notice issued by the Engineer and/or his designee which who orders changes in the work which may involve a change in the contract price or the contract time within the provisions of the City's change order policy and within the City's approved contingency amount. The contents of all field notices shall be considered for inclusion in a subsequent Change Order.
- T. INVITATION TO BID: All documents including those attached or incorporated by reference or utilized for soliciting sealed bids. This document sets forth the time, date and location for the receipt of bids. As per City Procurement Code 24-91.
- U. LATE BID: Any bid presented after the deadline for receipt as defined in the advertisement for bids and/or any issued addenda. As defined in City Procurement Code 24-91 Sec D. The City will not accept any Late Bid.
- V. PROJECT MANAGER: Wherever in this contract the term "Project Manager" is used it shall refer to the person, or his designee/inspector acting on his behalf, assigned by the City Contract Administrator to facilitate the construction contract for the City.
- W. RESPONSIBLE BIDDER: A Bidder who submits a Responsive Bid and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation, equipment and experience are adequate to make satisfactory delivery of the services, construction, or items of tangible personal property described in the Invitation for Bid.
- X. RESPONSIVE BID: A bid that conforms in all material respects to the requirements set forth in the Invitation for Bid. As per City Procurement Code 24-91.
- Y. SEGREGATED BID: A bid in which the bidder has chosen to bid only on part but not all of the bid items in the bid proposal, rather than providing bids for all items in each bid lot. The City will not accept this type of bid unless specified in the special conditions of the contract and bidding documents.
- Z. SUBCONTRACTOR: The term Subcontractor, as employed herein, includes only an individual, firm, or corporation having a direct contract with the Contractor or with any other Subcontractor for the performance of a part of the work under the contract.
- AA. SUBSTANTIAL COMPLETION: The Time at which the work has progressed to a point where it is sufficiently complete and can be utilized for the purposes for which it is intended before all punch list items are complete.
- AB. SUCCESSFUL BIDDER: The lowest Responsible and Responsive Bidder whose bid meets the requirements and criteria set forth in the Invitation for Bid shall be awarded the contract. A Successful Bidder does not become the Contractor until a contract with the

City is signed and authorized by the Purchasing Manager, City Manager and/or City Council. As per City Procurement Code 24-91 sec G, 44-99, and 24-256.

- AC. TERMINOLOGY: Whenever in these Contract Documents the words “as ordered,” or “as directed,” “as required,” as permitted,” “as allowed,” or words or phrases of like import are used, it shall be understood that the order, direction, requirement, permission, or allowance of the City and Engineer or his designee is intended. Similarly the words “approved,” “reasonable,” “suitable,” “acceptable,” “properly,” “satisfactory,” or words of like effect and import, unless otherwise particularly specified herein, shall mean approved reasonable, suitable, acceptable, proper, or satisfactory in the judgment of the City and the Engineer or his designee.
- AD. TIME: See Contract Time.
- AE. WEATHER DAY: Any day when, in the judgment of the Project Manager, soil and weather conditions are such as would not permit work to be performed on the project for six (6) consecutive hours or more.
- AF. WORK: Any and all obligations, duties, and responsibilities necessary to the successful completion of the project assigned to or undertaken by the Contractor under the Contract Documents, including the furnishing of all labor, materials, equipment, and other incidentals.
- AG. WRITTEN NOTICE: A communication in writing in a standard business format. Written notice shall be deemed to have been duly served when it is posted, by registered mail, to the last given address, or delivered in person to the person for whom the notice is intended, or to his authorized representative.

## **GC-2. EXECUTION, CORRELATION AND INTENT OF DOCUMENTS**

The City and the Contractor shall sign the Contract Documents in their several counterparts. Unless otherwise requested by the Engineer or City, eight (8) counterpart copies shall be prepared and signed.

The Contract Documents are complementary and what is called for by any one shall be as binding as if called for by all. The intention of the Documents is to include all labor and materials, equipment, and transportation necessary for the proper execution of the work.

The Contractor shall follow the order of precedence (highest to lowest) below in case of conflict between the plans and specifications:

1. Special conditions
2. Technical specifications & Supplemental Specifications
3. General Conditions
4. Plans
5. Referenced specifications



**GC-3. STANDARD SPECIFICATIONS AND TEST METHODS**

All Standard Specifications, Utility Specifications, American Public Works Association Specifications and American Water Works Association Specifications and Test Methods referred to in the Contract and Bidding Documents (Technical Specifications) are hereby made a part of these Contract Documents to the same extent as if written in full.

Where reference is made to any society, association, or organization, these references refer to the latest standards and tentative standards as are in force on the date when bids on this Contract are received and opened.

**GC-4. OWNERSHIP OF DRAWINGS**

All drawings, specifications and copies thereof furnished by the City are owned by the City. The Contractor shall not reuse these documents on other work, and with the exception of the signed contract, sets are to be returned to the Engineer on request at the completion of the work.

## ***SECTION B***

### **BID INFORMATION**

#### **BID-1. QUALIFICATIONS OF BIDDERS**

Pre-qualification statements are not required of the Bidders. Bidders may be required to submit a list of references and review financial statements prior to the awarding of the Contract, together with such other information as may be required, to determine that a contemplated awardee is qualified to receive the award. Such statements and information shall be made immediately available upon the City's request.

#### **BID-2. BID ACCEPTANCE OR REJECTION**

Subject to the rights reserved herein, the work will be awarded as a whole to one (1) Bidder. A bid may be rejected if the Bidder cannot show that he has the necessary labor, equipment, experience and resources to do the work by the time prescribed in the specifications or that he is not already obligated for the performance of other work which would delay the commencement, prosecution, or completion of the work contemplated in this proposal. Any unbalanced bid, which in the opinion of the City jeopardizes the interest of the City, will be subject to rejection for that reason.

#### **BID-3. TAXES AND PERMITS**

The Contractor shall include all applicable taxes except gross receipt taxes and any local option taxes, whether now enacted into law or hereafter made applicable, in the amount of the bid. State gross receipt taxes and any local option taxes will be added to the bid prices when payments are made for work completed. The Contractor shall obtain all necessary permits for the prosecution of the work, including those required for occupying, excavating in, or otherwise obstructing streets and alleys.

#### **BID 4. ROYALTIES AND PATENTS**

The Contractor shall include in his bid all royalties and license fees. He shall hold the City and Engineer harmless from loss on account of charges or claims for any patent right. He shall determine in advance of his bid the existence of any patent, which is or may be infringed by any provisions of the plans and specifications and pay such royalties or fees that may be required.

#### **BID-5. BID CLARIFICATION**

If any person contemplates submitting a bid for a Contract and is in doubt as to the true meaning of any part of the specifications or other proposed Contract documents, he may submit to the City of Las Cruces Purchasing Manager a written request for an interpretation thereof not less than two (2) working days prior to bid opening time. The person submitting the request will be responsible for its prompt delivery. Any interpretation of the proposed documents will be made only

by a written addendum duly issued by the City. No verbal response shall be binding. The addendum will be mailed, faxed, or delivered to all, who are known by the Purchasing Manager, to have received a complete set of Bidding Documents. Copies of the addendum will be made available for inspection wherever Bidding Documents are on file for that purpose. An addendum will be issued no later than two (2) working days prior to the date for receipt of Bids, except an addendum withdrawing the request for Bids or one which includes postponement of the date for receipt of Bids. Each Bidder shall ascertain, prior to submitting the Bid, that the Bidder has received all addenda issued, and shall acknowledge his receipt on the Bid Proposal in the space provided. Failure to acknowledge receipt of any or all addenda will deem the bid as non-responsive. The City will not be responsible for any other explanations or interpretations of the proposed documents.

#### **BID 6. PROPOSAL FORM**

Bid Proposals shall be made on the forms that are a part of the Contract and Bidding Documents. As a minimum, a Contractor may submit a bid with the following pages: bid proposal, addenda acknowledgement form, list of subcontractors form, list of references form, and the bid bond.

Each proposal must be signed in ink by the Bidder or Bidder's Authorized Agent, with his full name and with his business address.

For lump sum contracts, the bid shall be presented as a total base bid proposal plus any alternate(s) selected by the City of Las Cruces. A bid must be submitted on all bid items and additive and deductive bid lots and/or items. The City will not accept incomplete bids unless specified in the special conditions of the contract and bidding documents.

For unit item contracts, bids shall be based on the cost of an individual item totaled for the quantities estimated by the project Engineer plus any additive and/or deductive bids as selected by the City of Las Cruces. Quantities will be increased or decreased based upon the actual needs for the project. A bid must be submitted on all bid items and additive and/or deductive bids. The City will not accept incomplete bids unless specified in the special conditions of the contract and bidding documents. In the event of a mathematical error, the unit bid price will prevail. Erasures or other changes in the bids must follow the Procedure in City Procurement code 24-91 Section F.

Failure to comply with instructions above shall subject the bid to rejection.

#### **BID-7. SUBCONTRACTORS FAIR PRACTICES ACT**

The Bidder shall list the Subcontractors he/she proposes to use on the project on the Subcontractor Listing Form attached to the Bidding Documents, pursuant to the Subcontractors Fair Practices Act, Sections 13-4-31 through 13-4-43, NMSA 1978 as amended, and any material suppliers if required by Special Condition. Omission or noncompliance with the intent of the Subcontractor Listing Form will be grounds for considering a bid as non-responsive. If the bidder is awarded the contract, the Subcontractors Fair Practices Act and penalties set forth therein shall continue to apply. Any Contractor who has been suspended or debarred from bidding on City projects shall not be used as a subcontractor during the time such suspension or debarment is in effect.

**BID 8. PERFORMANCE OF WORK WITH OWN FORCES**

Except as stated herein the Contractor shall perform, with his own organization, work amounting to not less than fifty percent (50%) of the total contract cost. The value of the work to be performed by the Contractor will be determined by multiplying the contract quantity for any subcontracted item by the unit bid price for that item (or by a price agreed to by the City if no unit bid price is included in the contract), and subtracting the total amount to be subcontracted from the original, total contract bid. This calculation shall include any accepted, alternate bids. The percent of work to be performed by the Contractor will be determined by the City before final award is made. If the Contractor does not meet this condition it shall be used as grounds for rejection of his/her bid as determined by the Purchasing Manager or his/her designee.

Any items designated as "Specialty Items" by the City in the Special Conditions will be excluded from these requirements. The contract value of the "Specialty Item" will not be included in the total amount to be subcontracted and will be deducted from the total contract cost before the final calculation is made. However, if the Contractor elects to perform a "Specialty Item" with his own forces, that item will be treated as a non-subcontracted bid item for purposes of these requirements.

The Contractor shall furnish signed copies of any subcontracts upon request to the City.

**BID 9. COLLUSION OR KICKBACK**

No Bidders shall be financially interested in more than (1) bid. Collusion among, through, or by the Purchasing Manager, any City employee or elected official, Bidders or the submission of more than (1) bid under different names by any firm or individual shall be cause for rejection of all such bids without consideration. All bid participants shall be responsible for complying with the New Mexico criminal laws prohibiting bribes, gratuities, and kickbacks" (Sections 30-24-1, 30-24-2, and 30-41-1 to 30-41-3, NMSA, 1978).

**BID-10. BID QUANTITIES**

The quantities listed in the bid proposal are an estimate for the purpose of comparing bids. Payment will be made for actual work performed at the Contract unit price.

**BID-11. CHANGE IN QUANTITIES OR TIME**

Quantities contained in the bid proposal are estimates only, and the City reserves the right to decrease such quantities by any amount and increase the total contract by ten percent (10%) without the consent of the Contractor. If any item is decreased by more than 25% the Contractor may submit documentation indicating the actual unit cost is no longer reflective of the bid unit price. The unit price may be renegotiated if the claim is determined, by the Project Manager, to be valid. Both parties, by mutual agreement in writing, may increase the total contract by as much as, but not to exceed fifty percent (50%). The unit price may be renegotiated if it is determined the actual unit cost is no longer reflective of the bid unit price. In this event, unit bid

prices will not be increased and changes should be within the scope of work for this original bid.

Notice of any changes in time or work will be done in writing by the City. The City will convey any changes in time or work to the Contractor by a duly authorized change order. As per City Procurement Code 24-316.

The City with mutual agreement with the Contractor may purchase from the Contractor materials called for and not used on the project. The City will compensate the Contractor at a price equal to the price the City has paid for same items or the Contractor's invoice price. In the alternative, the City may decide to pay the Contractors a verifiable cost of restocking any item.

#### **BID-12. BID CONSIDERATION TIME**

The City will require time to evaluate each proposal and to determine which proposal it deems to be in the City's best interest to accept. No bid may be withdrawn after the scheduled closing time for receipt of bids before a period of sixty (60) days, unless it is in compliance with the City's Procurement Code 24-91 Sec F.

#### **BID-13. PROCEDURE FOR BID OPENING**

Prior to the opening of the bid, the face of the envelope will be checked for the Bidder's name and address, and the project name and number of the project/contract for which the bid is for. The New Mexico Contractor's License Number will be shown on the signature page of the bid proposal or bid form.

The following procedure will be followed in opening this bid:

The Purchasing Manager or the assigned designee shall read aloud the following:

1. Name the Bidder.
2. Acknowledgment of the bid bond.
3. Acknowledgment of the list of subcontractors.
4. Acknowledgment of the addenda Receipt.
5. Acknowledgment of the signature on bid form.
6. Read the base bid proposal(s), alternate bid proposals and total bid proposals if applicable.
7. Acknowledge that the bidder was present at the mandatory pre-bid meeting, if applicable (federally funded projects will not have a mandatory pre-bid meeting).

#### **BID 14. SUBSTITUTES AND "OR EQUAL" ITEMS OR PROCEDURES**

Whenever an item or material or equipment is specified or described in the Contract Documents stating the name of a proprietary item or the name of a particular supplier, the specification or description is intended to establish the standard of quality, performance, characteristics, type, and function desired, and is not intended to limit or restrict competition. Unless the specification or

description contains or is followed by words stating that no like, equivalent or "or-equal" item or no substitution is permitted, other items of material or equipment may be accepted by the Engineer under the following circumstances:

- A. "Or-Equal". Requests for use of an "or-equal" item must be made in writing to the Purchasing Manager at least five (5) working days before the bid opening, and will be reviewed and a response given to all bidders by written addendum.

If the Engineer makes a written determination that an item of material or equipment proposed by the Bidder is functionally equal to that named and sufficiently similar so that no change in related work will be required, it may be considered by the Engineer as an "or-equal" item, in which case, review and approval of said item may, in the Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for acceptance of the proposed substitute items.

- B. Substitute Items. If the Engineer makes a written determination that an item of material or equipment proposed by the bidder does not qualify as an "or-equal" item, it will be considered a proposed substitute item. The bidder shall submit sufficient information as provided below to allow the Engineer to determine that the item of material or equipment proposed is essentially equivalent to that named as an acceptable substitute thereof.

1. Requests for review of proposed substitute items of material or equipment will not be accepted by the Engineer from anyone other than the bidder.
2. Application Requirements. If the bidder wishes to furnish or use a substitute item of material or equipment the bidder shall, at least five (5) working days prior to the bid opening, make written application to the Engineer for acceptance thereof, certifying that the proposed substitute item will:
  - a. Perform adequately the functions and achieve the results called for by the general design, and
  - b. Be similar in substance to that specified, and
  - c. Be suited to the same as that specified.

The application will state the extent, if any, to which the evaluation and acceptance of the proposed substitute will prejudice the bidder's achievement of substantial completion on time; whether or not acceptance of the substitute will require a change in any of the Contract Documents (or in the provisions of any other direct contract with the City for work on the project) to adapt the design to the proposed substitute; and, whether or not incorporation or use of the substitute in connection with the work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs or credits that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other bidders affected by the resulting

change. The Engineer may require the bidder to furnish additional data about the proposed substitute.

3. Any data required to be provided by the bidder in support of any proposed "or-equal" or substitute item, will be at the bidder's expense.
- C. Substitute Construction Methods or Procedures. If a specific means, method, technique, sequence or procedure of construction is shown or indicated in and expressly required by the Contract Documents, the bidder may furnish or utilize a substitute means, method, technique, sequence or procedure of construction acceptable to the Engineer. Contractor shall submit sufficient information to allow the Engineer, at the Engineer's sole discretion, to determine that the proposed substitution is equivalent to that expressly called for by the Contract Documents. The procedure for review by Engineer will be similar to that provided for in Paragraph B above.
- D. Engineer's Evaluation. The Engineer will, at least two (2) working days before the bid opening, make a determination in writing to the bidder, in the form of an addendum, whether or not the "or equal" or substitute item will be acceptable.

Engineer will be the sole judge of acceptability. No "or-equal" or substitute will be ordered, installed or utilized without the Engineer's prior written acceptance. The City may require the bidder to furnish at the bidder's expense a special performance guarantee or other surety with respect to any "or-equal" or substitute.

## SECTION C

### WAGES AND EMPLOYMENT

#### **GC-5. WAGE RATES AND CONDITIONS OF EMPLOYMENT**

If the bid exceeds \$20,000.00 (twenty-thousand dollars), the Contractor must comply with the Public Works Minimum Wage Act and/or if the bid exceeds \$2000.00 (two thousand dollars) and is federally funded, Davis-Bacon wage rates may apply. If a City project has both federal and state/local funding, both federal and state wage rates are required. Employees must be paid weekly and at the higher of the two rates for each job classification. The higher rate is decided by adding the base rate, fringe rate and the apprenticeship contribution rate (if there is one listed on state rates only). The higher total determines the rate paid for that job classification. If the federal rate is higher, the state's apprenticeship contribution rate does not apply. If the bid is under \$20,000.00 (twenty-thousand dollars), state wage rates will not be applicable. As long as there are no federal funds being used to pay for improvements, federal wage rates are not required.

#### **GC-6. LABOR - PAYMENT, WAGES, EEO AND AFFIRMATIVE ACTION**

- A. Payment of Employees. The Contractor and each of his Subcontractors shall pay each of his employees, engaged in work under the Contract, in full and in cash, or equivalent and not less often than once each week, less legally required deductions. When circumstances render payment in cash infeasible or impracticable, payment by check may be made upon consideration that funds are made available in a local bank and checks may be cashed without charge, trade requirements or inconvenience to the worker.
- B. Minimum Wages. Each employee engaged in work under the Contract shall be paid an amount not less than the minimum wage rate provided for in the wage rates contained in the Contract and Bidding documents. It is mandatory upon the Contractor and upon any Subcontractor under him to pay not less than the specified minimum wages to all laborers, workmen, and mechanics employed by them in execution of this Contract, and/or any contract between the Contractor or Subcontractor and such laborers, workmen, and mechanics.
- C. Rates and Wages. Each mechanic or laborer of the Contractor or Subcontractor engaged in work on the project shall be paid an amount under the Contract, not less than the hourly wage rate in effect at the time of the Contract and as listed by the Office of Labor Commissioner of the State of New Mexico pursuant to Section 50-4-19 to 50-4-30, N.M.S.A. 1978 entitled "Minimum Wage Act". This Act shall apply regardless of any contractual relationship, which may be alleged to exist between the Contractor or any Subcontractor and such laborers and mechanics.
- D. Additional Compensation. The specified wage rates are minimum rates only, and the City will not consider any claims for additional compensation made by the Contractor



because of payment by the Contractor of any wage rate in excess of the applicable rate specified for this Contract. The Contractor shall adjust all disputes in regard to the payment of wages in excess of those specified in the Contract.

- E. Disputes. Except as may be otherwise required by law, all claims and disputes pertaining to the classification of labor employed on the project under this Contract shall be adjusted by the Contractor.
- F. Extra Work. In case the City orders the Contractor to perform extra work or additional work which may make it necessary for the Contractor or any Subcontractor under him to employ, in the performance of such work, any person in any trade or occupation for which no minimum wage is specified, the City will include in the contract change order, for extra or additional work, the minimum wage rate for such trade or occupation. Insofar as such extra or additional work is concerned, each employee engaged in the work in such trade or occupation shall be paid not less than the minimum wage rate included in the contract change order.
- G. Payrolls. The Contractor, and each of his Subcontractors, if any, shall deliver or mail copies of the certified weekly payrolls, prepared in accordance with applicable regulations, to the State, no more than five working days following the close of the payroll period. Payrolls shall depict the decision number for the project and the county in which the work is being performed.
- H. Equal Employment Opportunity. All Contractors and Subcontractors, hired to do work for the City of Las Cruces, shall comply with all applicable federal, state, and municipal laws to ensure that employees and applicants are not subject to discrimination on the basis of race, color, national origin, gender religion, disability, age or other protected status outlined by law. Job applicants and the employees of the contractor or subcontractor who feel that they have been the victim of unlawful discrimination may file a complaint with either of the following agencies:

United States Equal Employment  
Opportunity Commission  
505 Marquette, NW  
Albuquerque, NM 87102  
Telephone: (800) 669-4000

New Mexico Human Rights Division  
OR 1596 Pacheco Street  
Santa Fe, NM 87505  
Telephone: (800) 566-9471

The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the City that explain this clause.

#### **GC -7. NONDISCRIMINATION**

- A. Discrimination in all phases of employment is prohibited by, among other laws and regulations including but not limited to, Title VII of the Civil Rights Act of 1964, the Vietnam Era Veterans Readjustment Act of 1974, sections 503 and 504 of the Vocational Rehabilitation Act of 1973, the Equal Employment Act of 1972, the Age Discrimination

Act of 1967, the Americans with Disabilities Act of 1990, the Civil Rights Act of 1991, Presidential Executive Order 11246, Executive Order 11375, These laws and regulations establish minimum requirements for affirmative action and fair employment practices which the Contractor must meet.

B. During performance of the Work:

1. Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, marital status, the presence of any physical, sensory, or mental disability, sexual orientation, Vietnam-era veteran status, disabled veteran status or political affiliation, nor commit any unfair practices as defined in RCW 49.60.
2. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin, of any physical, sensory, or mental disability, sexual orientation, Vietnam-era veteran status, disabled veteran status, or political affiliation. Such action shall include, but not be limited to, (1) employment, (2) upgrading, (3) demotion, (4) transfer, (5) recruitment or recruitment advertising, (6) layoff or termination, (7) rates of pay or other forms of compensation, and (8) selection for training, including apprenticeship.
3. The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the City that explains this clause.
4. Contractor shall, in all solicitations or advertisements for employees placed by or for it, state that all qualified applicants will be considered for employment, without regard to race, creed, color, national origin, sex, age, marital status, the presence of any physical, sensory, or mental disability, sexual orientation, Vietnam-era veteran status, disabled veteran status or political affiliation.
5. Contractor shall send to each labor union, employment agency, or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the labor union, employment agency, or workers' representative of Contractor's obligations according to the Contract Documents.
6. Contractor shall permit access to its books, records, and accounts, and to its premises by City, for the purpose of investigation to ascertain compliance with this section of the Contract Documents.
7. Contractor shall include the provisions of this section in every Subcontract.

**GC-8. APPRENTICES**

The minimum wage rates, if any, specified for apprentices shall apply only to persons working with the tools of the trade they are learning under the direct supervision of the journeyman mechanics. Except as otherwise required by law, the number of apprentices in each trade or occupation employed by the Contractor or any Subcontractor shall not exceed the number permitted by the applicable standards of the United States Department of Labor. In the absence of such standards, the number permitted under the usual practice prevailing between the unions and the employer's associations of the respective trades or occupations.

**GC-9. POSTING MINIMUM WAGE RATES**

The Contractor shall post, at appropriate conspicuous points at the site of the work, a schedule showing: all determined minimum wage rates for the various classes of laborers and mechanics to be engaged in work on the project under this Contract. Additionally, the Contractor shall post all deductions, if any, required by law to be made from unpaid wages actually earned by the laborers and mechanics so engaged. Postings must comply with either the State of New Mexico minimum wage act or Davis-Bacon Act.

**GC-10. WAGE UNDERPAYMENTS AND ADJUSTMENTS**

In the case of underpayment of wages to any worker on the project under the Contract, the City may withhold out of payments due, an amount sufficient to pay such worker the difference between the wages required to be paid under the Contract and the wages actually paid such worker for the total number of hours worked. The City may disburse such amount so withheld by it, for and on account of the Contractor to the employee to which such amount is due. Requirements must comply with either the State of New Mexico minimum wage act or Davis-Bacon Act.

**INSURANCE AND BOND****GC-11. CONTRACT SECURITY**

The Contractor shall furnish a labor and material bond and a Performance bond each in an amount at least equal to one hundred percent (100%) of the contract price, for at least the full term of the contract and a period of (1) one year following completion of the contract. This will serve as security for the faithful performance of the contract and for the payment of all persons performing labor and furnishing materials in connection with all contracts in excess of \$25,000. Surety bonds may be required for contracts under \$25,000 at the City's discretion including any other requirements per City Procurement Code 24-227. The bonds furnished by the Contractor shall be substantially in the form set forth in the contract documents.

**GC-12. CONTRACTOR'S AND SUBCONTRACTOR'S INSURANCE**

- A. General. The Contractor shall not commence work under this contract until Contractor has obtained all insurance required under this paragraph and such insurance has been approved by the City and no officer or employee of the City shall have authority to waive these requirements without written approval of the City Risk Manager. The Contractor shall not allow any Subcontractor to commence work on his subcontract until all similar insurance required of the said Subcontractor has been obtained. The Contractor may cover any or all Subcontractors in his insurance policies or require such Subcontractor to secure insurance to protect him against all hazards enumerated herein which are not covered by the General Contractor's policies.
- B. Commercial General Liability Insurance. During the life of the contract, the Contractor shall procure and maintain and shall require Subcontractors, if any, to procure and maintain (during the life of this contract, his subcontract) Commercial General Liability Insurance in an amount of not less than \$1,000,000.00, with the City named as an additional insured with the same coverage as the Contractor. Such policies of insurance must include coverage under all sections of the Schedule of Hazards of the said Commercial General Liability policy form, and must include Collapse (C), Explosion (X), and Underground (U) Liability coverage. The Contractor's contractual liability coverage shall specifically insure the indemnity provision of the Contract, Section GC-13 of the General Conditions.

The above requirements shall include protection against:

- 1 Damage to, or destruction of public and private property located below the surface of the ground, including telephone conduit and cables; power conduit and cables; traffic signal conduit and cables; any and all other underground conduits and cables, utility or fiber optic lines and cables; fire alarm circuits; gas main; gas service connections; sanitary sewers; house sewer or building sewer connections; water mains; water service connections; steam lines; petroleum products pipelines; storm sewers and inlet lines; and, including all appurtenances thereto and injury or death to person or persons caused by the Contractor's construction operations, including blasting, trenching and backfilling with or without the use of mechanical equipment.
- 2 The collapse of, or structural damage to any building, house or structure, utility poles, curb and gutter and sidewalk on public and private property including injury or death to person or persons caused by the Contractor's operations under this Contract and removal of buildings, structures (including their supports), trees and utility poles, excavation below the surface of the ground, including blasting, trenching and backfilling with or without the use of mechanical equipment. The liability insurance shall include the standard assault and battery endorsement.

- C. City's and Contractor's Public Liability and Protective Property Damage Insurance. The Contractor shall procure and maintain during the life of the Contract, at his own expense, City's and Contractor's Public Liability and Protective Property Damage Insurance in favor of the City in amounts not less than the amounts set forth in Section (B) This policy shall also include the standard Assault and Battery endorsement.
- D. Automobile Liability Insurance. The Contractor shall maintain automobile liability insurance in the amount of not less than the amounts set forth in Section (B) hereof, to protect the Contractor and the City, as an additional named insured, for any and all claims arising from the use of the following in the execution of work included in the Contract:
1. Hired automobiles and trucks.
  2. Automobiles and trucks now owned by the Contractor.
- This insurance shall cover the use of automobiles and trucks on and off the site of the project.
- E. Approval of Insurance. Neither approval by the City of any insurance supplied by a Contractor, or a Subcontractor, nor a failure to disapprove that insurance shall relieve the Contractor or Subcontractor of full responsibility to maintain in full force and effect during the term of this contract the above described insurance for liability, damages, and accidents as set forth herein.
- F. Proof of Insurance. Prior to the commencement of any work hereunder, the Contractor shall furnish to the City. The City's and Contractor's Public Liability and Protective Property Damage Insurance Policy and Certificates of Insurance, on forms approved by the City evidencing the other insurance required by this contract. The Contractor shall require any Subcontractor to furnish all required Certificates of Insurance before such Subcontractor shall commence work hereunder. All such Certificates of Insurance shall provide that the Insurance company(s) will give the City ten (10) days prior written notice before any material change in or cancellation of any such policy.

### **GC-13. INDEMNIFICATION**

The Contractor shall defend, release, indemnify and save and hold harmless the City, its officers, elected officials, agents and employees from and against (1) any and all damages, including but not limited to loss of use, to property, or injuries to or death of any person or persons, including property and officers, agents and employees of the City, and (2) any and all claims, demands, suits, actions, liabilities, costs, expenses (including but not limited to reasonable attorney fees, expert witness fees and all associated defense fees), causes of action, or other legal, equitable or administrative proceedings of any kind or nature whatsoever, of or by anyone whomsoever, regardless of the legal theory(ies) upon which premised, including but not limited to contract, tort, express and/or implied warranty, strict liability, and workers compensation, in any way resulting from, connected with, or arising out of, directly or indirectly, actions or omissions of the Contractor or those performing under it in connection with its operations or performance

herewith or its use or occupancy of real or personal property hereunder, including actions or omissions of Subcontractors and Suppliers, and acts or omissions of officers, employees, agents, representatives, invitees or licensees of the Contractor or its Subcontractors or Suppliers; provided however, that the Contractor need not indemnify the City or its officers, agents and employees from damages proximately caused by and apportioned to the negligence of the City's officers, agents and employees.

This indemnity clause shall also cover the City's defense costs, in the event that the City, in its sole discretion elects to provide its own defense. The City retains the right to disapprove counsel, if any, selected by Contractor to fulfill the foregoing defense indemnity obligation, which right of disapproval shall not be unreasonably exercised.

Insurance coverage requirements specified herein shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor shall obtain at its own expense any additional insurance that it deems necessary for the City's protection in the performance of this Agreement.

Whenever the City or the Engineer receives a claim, notice of claim, summons or demand which is, or could be, subject to the foregoing indemnification, such claims, notice, summons or demand shall be immediately forwarded to the Contractor. The Contractor shall then forward it to the insurance carrier for response and defense, as required.

This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

#### **GC-14. WORKERS' COMPENSATION INSURANCE**

The Contractor or the Contractor on behalf of itself and any subcontractors agrees to comply with state laws pertaining to worker's compensation insurance coverage for its employees. Upon award of the contract, the Contractor shall provide the City with a certificate verifying that they have procured worker's compensation insurance coverage in accordance with all applicable state laws. If the contractor fails to comply with the worker's compensation act and applicable rules when required to do so, the contract will be cancelled.

## **CONSTRUCTION**

### **GC-15. NOTICE TO PROCEED**

The Notice to Proceed will be issued within twenty-one (21) calendar days after the award of the contract by the City per City Procurement Code 24-99 or at such time as may be mutually agreed between the City and Contractor. The contract time shall start as noted in the Notice to Proceed.

### **GC-16. CONSTRUCTION SCHEDULE**

The Contractor shall, before actual commencement of work, prepare and submit to the Project Manager for approval a practical schedule, showing the order in which he proposes to carry on the work, the date on which he will start the major portions of the work (including procurement of materials, and equipment) and the contemplated dates for completing the same. The schedule shall be in the form of a progress chart to be prepared on a form approved by the City.

The Contractor shall submit an updated schedule with each payment request or at such other times as may reasonably be requested by the Engineer. Revised schedules shall show the order in which the Contractor proposes to continue the work, with dates at which the Contractor will start the several remaining parts of the work, and estimated dates of completion of the several parts.

The Contractor shall submit a construction schedule which shall provide for the expeditious and practicable execution of the Work. Such construction schedule shall be in a Critical Path Method (CPM) format or such other format approved by the Project Manager prior to the Notice to Proceed. A CPM schedule shall be required in any event for any Contractor change request and any resulting claim. The receipt of the schedule by the Project Manager shall in no way constitute acceptance of the Contractor's anticipated schedule of construction activities. The schedule will be reviewed for comment by the Project Manager. Any Contract completion date set forth in the Contractor's schedule shall in no way change the Contract Time. The Project Manager's review and comment on the schedule shall not constitute approval or acceptance thereof by the City.

The CPM schedule shall provide reasonable detail as described in the technical specifications and shall include a time scaled network and computer printout. Additionally, float or slack is defined as the amount of time between the early start date and the late start date, or the early finish date and the late finish date, of any activities in the schedule. Float or slack is not time for the exclusive use or benefit of either the Contractor or the City.

The Contractor shall, once a month, submit a progress report and an updated schedule in a form acceptable to the Project Manager.

**GC-17. SHOP DRAWINGS**

The Contractor shall furnish to the Engineer five (5) copies of all shop drawings required. The Contractor shall submit five (5) copies of technical descriptive literature on all items of installed equipment unless the Engineer or Project Manager waives this requirement in writing. The Engineer or Project Manager will return two (2) copies of all submitted literature to the Contractor after approval. The Engineer shall have up to fourteen (14) calendar days to review this material. Failure to complete review of the submitted material may be cause for additional contract time upon justifiable claim.

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 portions of the work.

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.

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

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 the way the Contractor proposes to conform to the information given and the design concept expressed in the contract documents.

The Contractor shall review, approve and submit to the Engineer shop drawings, product data, samples and similar submittals required by the contract documents within fourteen (14) days and in such sequence as to cause no delay in the work or in the activities of the City or of separate contractors. Submittals made by the Contractor, which are not required by the contract documents, may be returned without action.

The Contractor shall perform no portion of the work requiring submittal and review of shop drawings, product data, samples or similar submittals until the Engineer has approved the respective submittal. Such work shall be in accordance with approved submittals.

By approving and submitting shop drawings, product data, samples and similar submittals, the Contractor represents that he/she has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the work and of the contract documents.

The Contractor shall not be relieved of responsibility for deviations from requirements of the contract documents by the Engineer's approval of shop drawings, product data, samples or similar submittals unless the Contractor has specifically informed the Engineer in writing of such deviation at the time of submittal and the Engineer has given written approval to the specific



deviation. The Contractor shall not be relieved of responsibility for errors or omissions in shop drawings, product data, samples or similar submittals by the Engineer's approval thereof.

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 Engineer on previous submittals.

#### **GC-18. APPLICABLE LAWS, ORDINANCES, AND REGULATIONS**

Work performed on City contracts shall comply with all applicable City, State and Federal laws, regulations, and ordinances.

#### **GC-19. WORK AND INSPECTION OUTSIDE NORMAL HOURS**

Any work necessary to be performed before or after the City's regular working hours, on Saturday, Sunday, or City scheduled holidays, must be performed without additional expense to the City. The Contractor shall pay seventy five (\$75) per hour (\$500/day maximum) which will be used to cover inspection and other project related activities for work that requires inspection, and actual cost of standby or overtime fees directly related to materials testing, for a minimum of four (2) hours. The Project Manager and Contractor may agree to amend this provision as needed. The Contractor may work outside the normal working hours with permission and approval of the Project Manager on any work that does not require inspection. The City's regular working hours under City contracts shall be Monday through Friday excluding holidays, and a normal work day shall be eight (8) hours in length. If an inspector is not available, the City may prohibit any work from being performed outside of normal work hours that requires inspection. The Contractor shall adhere to Las Cruces Municipal Code (LCMC) 1997, Section 19-131 and latest revision, which limits working outside the hours of 7:00 a.m. to 6:00 p.m.

Work shall not be done on Saturdays, Sundays, City observed holidays, or outside of the daytime working hours which may be specified in the Special Conditions, except for such work as may be necessary for proper care, maintenance, and protection of Work already done, or in cases when the Work would be endangered or when hazard to life or property would result. Project manager may approve of schedule changes requested by Contractor, in writing, without additional charge.

If the Contractor believes it may be necessary to work on Saturdays, Sundays, holidays, or at night, the Contractor shall make prior arrangements in writing with the Project Manager and receive written approval at least forty-eight (48) hours before such work period so that proper inspection and engineering services can be provided. Such approval may be revoked by the Project Manager if the Contractor fails to maintain adequate equipment and lighting at night for the proper prosecution, control and inspection of the Work. If Work is done outside of approved working hours, and the Project Manager has not assigned inspectors to the Work, the Work performed during those periods of time may be declared defective solely on the grounds that it was not properly inspected.

The Contractor shall schedule and coordinate the performance of all of its Subcontractors and Suppliers, including their use of the Work site. The Contractor shall keep the Subcontractors and

Suppliers informed of the Project construction schedule to enable the Subcontractors and Suppliers to plan and perform their work properly.

#### **GC-20. TOILET FACILITIES**

Adequately serviced chemical toilets, properly secluded from public observation, shall be provided by the contractor at every major location of work unless the Project Manager waives this requirement.

#### **GC-21. PROTECTION OF THE PUBLIC, PROPERTY AND WORK**

The Contractor shall comply at all times during the term of this Contract and will require its Subcontractors, if any, to comply with the accident prevention provisions hereinafter set forth. Additional and more specific requirements may be made in the specifications, which form a part of this contract. However, such requirements shall always be in addition to, and not in lieu of, the provisions of this section.

- A. Job Site Safety. In accordance with generally accepted construction practices, the contractor will be solely and completely responsible for conditions of the job site, including safety of all persons and property during performance of the work. The requirement will apply continuously and not be limited to normal working hours. The duty of the engineer to conduct construction review of the contractor's performance is not intended to include superintendence or review of the adequacy of the contractor's safety measures in or near the construction site and shall in no way imply any responsibility to any of the City's personnel.
- B. Protection of Employees and Others. The Contractor shall exercise precaution for the safety of employees on the work, bystanders or observers, engineering personnel and inspectors, and also comply with all applicable provisions of Federal, State and Municipal safety laws and building construction codes. All machinery and equipment and other physical hazards shall be guarded by the Contractor in accordance with the "Manual of Accident Prevention in Construction:" of the Associated General Contractors of America, unless such instructions are incompatible with Federal, State or Municipal laws or regulations. If required by the Engineer, the Contractor shall furnish reports on all lost time accidents.
- C. Excavations. The Contractor shall comply with all applicable standards of the Occupational Health and Safety Standards for the Construction Industry. An individual qualified as "competent person", as defined by these standards shall be employed by the Contractor to identify and promptly correct hazardous, unsanitary, or dangerous conditions.

No trenches longer than ten (10) feet, except bore pits, will be left open overnight. In these situations, proper flashing lights, barricades, channelization devices, signs, and all other necessary nighttime and daytime traffic and pedestrian control devices will be utilized at all times from before dusk to after dawn, (flashing lights and barricades on a

maximum of ten (10) feet centers shall be placed around the entire perimeter of the trench or excavation, and the entire perimeter shall be completely and securely roped off). In addition, if work is to be suspended for three (3) or more days, absolutely no trenches or bore pits will be left open and all construction areas shall be completely cleaned up and set up for smooth and complete traffic and pedestrian flows. Proper traffic and pedestrian control devices shall be utilized continuously during construction, overnight, on weekends, and during holidays.

- D. Underground and Above Ground Structures. The Contractor shall blow all storm sewer lines and other underground structures with fresh air immediately before and during the time workmen are in such structures. Contractor's employee's shall be prevented from smoking within twenty-five (25) feet of any underground structure, and shall be prevented from smoking or having any open flame or other source of ignition within seventy-five (75) feet of any above or below ground gas piping or equipment. Any natural gas leaks shall be immediately reported to the gas utility company, and the work in the immediate vicinity shall be suspended until such leaks are repaired.
- E. Protection of Utilities. Where there are electric or telephone poles, hydrants, water or gas mains or other pipes, conduits or other construction either public or private in or on the street, the Contractor shall conduct the work in such a manner as will not cause any damage to such property or any undue interruption or delay in the operation of same. The Contractor shall make all reasonable efforts to locate and protect all underground structures. Any damage caused by Contractors negligence shall be repaired or replaced at Contractors expense.
1. Utilities Shown on Drawings or marked by New Mexico One Call. The Engineer has made reasonable effort to show the general location of existing underground and overhead utility lines (gas, telephone, electrical, water, and sewer) on the Drawings. Any utility accurately indicated on plans and marked by locator service that is damaged by contractor shall be replaced or repaired as new at no expense to the City. Any utility damaged by contractor will be subject to State of New Mexico underground damage law (Chapter 62, Article 14 NMSA 1978 and all amendments) to determine liability.
  2. Relocation of Overhead Utilities. The Contractor shall be responsible for determining in advance of his construction operations if overhead utility lines, support structures, poles, guys, etc., whether shown on the Drawings or not, are an obstruction to construction operations. If any obstruction to construction operations is evident, the City shall be responsible for coordinating with the appropriate utility company to remove or relocate the utility obstructions. The Contractor shall immediately notify the Engineer of any obstructions, and during relocation shall coordinate his crews to allow utility crews to complete their work.
  3. Relocation of Underground Utilities. The Contractor shall be responsible for determining in advance of construction operations the location of all underground utilities (gas, telephone, electrical, water, sewer, fiber optic, etc.), whether shown

on the Drawings or not, that may interfere with the Contractor's construction operations.

4. Gas, Electric, Telephone, and Other Above and Underground Utilities in Service: The Contractor shall notify the City who shall be responsible for coordinating with the appropriate utility company to remove or relocate the existing utilities which interfere with the Contractor's construction.
  5. Gas, Electric, Telephone, and Other Above and Underground Utilities not in Service: The Contractor shall notify the City who shall be responsible for coordinating with the appropriate utility company to determine if the line is not in service. The City shall coordinate with the appropriate utility to determine if the line will remain in place or be removed by the contractor under a negotiated field notice/change order if the line interferes with the Contractor's construction. Any charges by any utility company for removal or relocation of utilities will be the responsibility of the City or the utility company per existing franchise agreements.
  6. Accessibility to Valves. It shall be the Contractor's responsibility to maintain constant accessibility to all valves during the construction period. Any time during construction, any valve that is covered up or has its box removed shall be recorded for location and flag-referenced by the Contractor for fast location in case of emergency. Any valve which is not shown on the drawings shall be brought to the Engineer's attention by submitting to him a written description of the construction, the size, and location of such valve. Valves in the construction area shall be field referenced by the Contractor and shown on the record drawings by the Contractor. In case of fills, valve boxes shall be brought up as fill progresses so that accessibility to valves will be maintained.
  7. New Mexico One Call. Contractor shall call for underground services location (800) 321-ALERT at least 2(two) working days before beginning any excavation.
- F. Restoration of Property. The Contractor shall restore at his own expense any public or private property damages, for which he is directly or indirectly responsible to a condition equal to that existing before the damage. If he fails to do so or refuses to do so upon notice, the Engineer may do such restoration and deduct the cost thereof from monies due, or which may become due to the Contractor.
- G. Temporary Traffic Control Devices. The Contractor shall at his expense and without further order other than the awarding of the Contract, provide, erect, and maintain, at all times during the progress of the work, barricades, warning signs, guide signs, and other adequate protection. The Contractor shall provide and maintain flares, warning lights, and watchman or flagman, if necessary or as requested by Engineer. All barricades and warning signs shall at a minimum be as specified in the Manual on Uniform Traffic Control Devices (latest edition). The Contractor may be required to submit a proposed traffic control plan to the Engineer for review and approval, at least seven (7) days before commencement of work.

- H. Permanent Traffic Control Devices. The Contractor shall not remove or adjust any official City traffic control device. The Contractor shall give the Project Manager forty-eight (48) hours notice of any official City permanent traffic control devices that need to be moved or altered. The City shall move all traffic control devices as soon as practical thereafter.

## **GC-22. WORK AND MATERIAL**

- A. General. Only new materials and the quality workmanship shall be used throughout the project by the contractor. The methods and appliances adopted by the Contractor shall insure a satisfactory quality of work and shall enable him to complete the work in the time agreed upon. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

If at any time such methods, materials and/or equipment appear inadequate, the Project Manager or his representatives shall immediately notify the Contract Administrator. The Project Manager may order the Contractor to such methods; materials and/or equipment and the Contractor must conform to such order. Such notification or orders shall be followed by a written notification from the Project Manager within 10 days. Failure of the Project Manager to order such improvement of methods, increase of efficiency, or notification of inadequacies will not relieve the Contractor from the obligation to perform quality work or finish same in the time agreed upon.

The Contractor shall submit samples or specimens of any and all materials proposed to be used in the work when required to do so by the Project Manager. All materials must be of specified quality and fully equal to approved samples, when samples are required. All work must be done and completed in a thorough workmanlike manner. All work done and all materials furnished must be satisfactory to the Project Manager and will be subject to rigid inspection, and if not in accordance with the specification, shall be made to conform thereto. Unsatisfactory materials will be replaced, and if so ordered by the Project Manager, shall be immediately removed from the premises at the Contractor's expense. No inspector shall have the authority to waive the obligations resting upon the Contractor to furnish material of a quality equal to that specified or to perform the work in accordance with recognized standards of quality. Any failure or any omission of any inspector or the Project Manager to condemn any material or work shall not release the Contractor from the obligation to tear out, remove and properly rebuild the same at any time the discovery of the defect is called to his attention by the Project Manager.

- B. Protection of Work. The Contractor will be held responsible for the care and condition of all work until final completion and acceptance, and will be required to make good, at his own cost, any damage or injury it may sustain from any cause. This includes any additional time added to the contract. The Contractor shall take all risks from floods and casualties of every description and make no charge for delays, work or damages due to such causes. The Contractor may, however, at the option of the City, be allowed a reasonable extension of time on account of such delays beyond his control and may be given a contract time extension equal to the time required to repair the damages.

- C. On Site Storage of Materials and Equipment. All materials, and equipment delivered at the site shall be adequately housed or otherwise protected against deterioration and damage to the satisfaction of the Engineer. In case the material or equipment furnished and stored by the Contractor on which payments have been made by the City becomes damaged or destroyed due to improper protection, the Contractor shall replace such material at his own expense.

The Contractor shall confine construction equipment, the storage of materials and equipment and the operations of workers to the site and areas identified in and permitted by the Contract Documents, laws and regulations, rights-of-way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment.

The Contractor shall assume full responsibility for any damage to any such land or area, or to the Owner or occupant thereof or of any adjacent land or areas, resulting from the performance of the work. Should any claim be made by any such Owner or occupant because of the performance of the work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law. Contractor shall, to the fullest extent permitted by laws and regulations, indemnify and hold harmless City, Engineer, Engineer's Consultant and anyone directly or indirectly employed by any of them from and against all claims, costs, losses and damages arising out of or resulting from any claim or action, legal or equitable, brought by any such Owner or occupant against City, Engineer or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the work.

### **GC-23. CHANGES IN THE WORK**

The Engineer, or his designee, without invalidating the Contract or changing the Contract price, shall have the right to make reasonable changes in the line, grade, form, position, plan, profile, dimensions, quantity, and material of work, either before or after construction has begun, in order to carry out and complete the work or any part or parts thereof closer to the design and purposes intended. Such change will be directed by a duly authorized field notice or change order, when applicable.

### **GC-24. ENGINEER'S DIRECTION**

- A. General. The Engineer and the City's Project Manager shall be responsible for administration of the Construction Contract, interpretation of the Contract Documents, inspection of the product of the work being done and materials supplied under the Contract. The Engineer, or his designee, has authority to stop the work whenever such stoppage may be necessary to insure the proper execution of the Contract. He shall also have authority to reject all work and materials, which do not conform to the Contract, and to decide questions that arise in the execution of the work.

- B. Engineer's Decisions. The Engineer or Project Manager shall, within a reasonable time after their presentation to him, make decisions in writing on all claims of the City or the Contractor and on all other matters relating to the execution and progress of the work or the interpretation of the Contract Documents.
- C. No verbal agreement or conversation with any officer, agent, or employee of the City, either before or after the execution of this Contract, shall affect or modify any of the terms or obligations herein contained.

#### **GC-25. INSPECTION OF WORK**

The Engineer, his representative, and any governmental agencies with jurisdictional interests shall at all times have access to the work whenever it is in preparation or progress, and the Contractor shall provide proper facilities for such access and for inspection. If the work period is varied from that ordinarily carried on in the daytime, the Project Manager shall be informed so that proper inspection may be provided. Proper illumination shall be provided by the prime contractor for night work.

If the specifications, the Project Manager instructions, laws, ordinances, or any public authority require any work to be specially tested or approved, the Contractor shall give the Project Manager timely notice (one hour minimum) of its readiness for inspection and if the inspection is by another authority other than the Project Manager, timely notice of the date fixed for such inspection. Inspections by the Project Manager shall be promptly made, and where practicable at the source of supply. If any work should be covered up, erected, or installed without scheduled inspection, approval or consent of the Project Manager, it must, if required by the Project Manager, be removed or uncovered for examination and properly restored at the Contractor's expense. The burden of proof will be on the contractor to meet all specifications.

If work was inspected by the City, the Project Manager may order re-examination of any work, and, if so ordered, the Contractor must uncover the work. If such work is found to be in accordance with the Contract Documents, the City shall pay the cost of re-examination and replacement. If such work is not in accordance with the Contract Documents, the Contractor shall pay such cost.

In order that inspections handled by the City are efficiently scheduled, with a minimum of loss of time to the Contractor, the following shall be noted:

Inspection requests called on regular working days may be inspected the same day depending on the location of work, availability of inspectors and testing laboratories. Refer to GC-19 for situations that would require the additional payment.

All installations including tracing tape and wire shall be inspected by the Engineer, Project Manager or his Inspectors in their entirety before they are backfilled (covered) painted or coated-and-wrapped. Anything that is backfilled (covered), painted or coated-and-wrapped without proper inspection shall be uncovered or shall have paint or coat-and-wrap removed by the Contractor at the Contractor's expense for proper inspecting.

The City of Las Cruces shall pay for all testing of materials. The Project Manager shall determine the number, type and location of tests. Tests shall be conducted at the request of the Contractor at such time that the materials are in a condition required according to the plans and specifications. Any failed tests shall be deducted by the City from the Contractors invoice at the actual cost borne by the City.

The Project Manager may supplement tests by already performed by the assigned testing laboratory with additional tests to check or verify the results and to determine compliance. If required, the Contractor shall furnish a laborer for assistance.

#### **GC-26. SUPERINTENDENCE**

The Contractor shall keep on his work, during its progress, a competent superintendent and any necessary assistants, all satisfactory to the Project Manager. The superintendent shall represent the Contractor in his absence and all directions given to him shall be binding as if given to the Contractor. Important directions shall immediately be confirmed on written request in each case. The Contractor shall give efficient, detailed and complete superintendence to all work under the Contract at all times, using his best skill and attention. The Contractor is solely responsible for all methods and means of construction as well as all safety precautions on this project.

On the job relations with the Contractor. The Contractor shall at all times have a competent superintendent or other representation on the job in immediate charge of the work who shall receive instructions and interpretations from the Engineer, or project manager in the completion of the work in accordance with the plans and specifications. The Contractor shall at all times enforce strict discipline and good order among his employees, and shall seek to avoid employing on the work site any unfit person or anyone not skilled in the work assigned to him. Any person employed on the work site who, in that, in the opinion of the Project manager or his designee, appears to be incompetent or to act in a disorderly or intemperate manner, shall be immediately removed from the work and not again be employed on any part of the work. Any such conduct will be authority for the Project manager or his designee to stop the work without additional compensation for delay or extension of time until the seemingly incompetent or offending individual or individuals are removed from the work.

#### **GC-27. CONTRACT TIME AND LIQUIDATED DAMAGES**

- A. Commencement and Completion. The Contractor will be issued a Notice to Proceed, and the Contractor will commence work as outlined in the Notice to Proceed. The Contractor shall fully complete the work in its entirety within the contract time specified in the Special Conditions, plus/minus any approved contract modifications. Contract time will be suspended from the time all items are installed, as solely determined by the project manager, and shall resume when contractor begins work on punch list items.
- B. Damages Occasioned by Contractor's Delay. If the work is not completed in the specified time, it is understood that the City will suffer damage; and it being impracticable and infeasible to determine the amount of actual damage, it is agreed that the Contractor shall



pay to the City as fixed and liquidated damages, and not as a penalty, an amount per day as specified in the Special Conditions section of these documents. The Contractor and their surety shall be liable for the amount thereof; provided that the Contractor shall not be charged liquidated damages because of any delay in the completion of the work due to unforeseeable causes beyond his control and not due to negligence of the Contractor (including, but not restricted to acts of God or the public enemy, acts of the Government, general acts of the City, or acts of another Contractor in the performance of a contract with the City, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays of Subcontractors due to such causes). If the Contractor shall, within ten calendar (10) days from the beginning of any such delay, notify the City in writing of the causes of delay, the City shall ascertain the facts and the extent of the delay and extend the time for completing the work when in its judgment, the facts justify such an extension. The City's decision shall be final and conclusive.

- C. Extension of Time. The Contractor shall not be entitled to claim any damages for delay, except verifiable direct expenses with invoices, from any cause whatsoever in the progress of the work, or any portion thereof, but such delay may entitle him to an extension of time for completing the work. In computing any period of time added to this contract the Contractor and City will agree to the amount of contract time, or a fraction thereof, the contractor has lost as a direct cause of the event. The total change in contract time will include the 1.4 multiplier to convert it to calendar days. An extension of time, however, shall remain in full force and effect until discharge of the Contract.
- D. Suspension of Work. The Project manager or his designee may from time to time order the Contractor to suspend any work, which may be damaged by inclement weather, climate conditions, or any other reason deemed legitimate by the City, and prescribe the time for resuming prosecution of the work with commensurate contract time.
- E. Charges for Engineering and Inspection. Should the completion and acceptance of the work, together with any modifications or additions be delayed by the Contractor beyond the time set, it is understood that aside from any other penalty or damage, all costs of the engineering and inspection caused by the delay on behalf of the Contractor may be charged to the Contractor and be deducted from any estimate or payment otherwise due in addition to liquidated damages, when applicable.
- F. Rights-of-way. The City will furnish all lands and rights-of-way required for completion of this contract. In acquiring right-of-way, the City will proceed as expeditiously as possible but in the event all rights-of-way or easements are not acquired prior to the beginning of construction, the Contractor shall begin work on such lands and rights-of-way as have been acquired. No claim for damage, except verifiable direct expenses with invoices, will be allowed by reason of the City's delay in obtaining lands, easements or rights-of-way. In the event of litigation or other delays in acquiring rights-of-way, the time allowed herein for completion will be extended to compensate for the time actually lost by such delay.

**GC-28. SUBCONTRACTORS**

- A. Specialty Contractors. The Contractor may utilize the services of Subcontractors on part of the work, provided the work of all such Subcontractors is performed in accordance with the applicable provisions of these documents.
- B. Responsibility of Contractor. The Contractor shall be as fully responsible to the City for the acts and omissions of his Subcontractors, and of persons either directly or indirectly employed by him as he is for the acts and omissions of persons directly employed by him.
- C. Subcontractor's Liability. The Contractor shall have appropriate provisions inserted in all subcontracts relative to the work to bind Subcontractors to the Contractor by the terms of the General Conditions and other Contract Documents insofar as applicable to the work of the Subcontractor. These provisions shall give the Contractor the same power as regards to termination of any subcontract as the City may exercise over the Contractor under any provision of the Contract Documents.
- D. Contractual Relations of Subcontractor. Nothing contained in this Contract shall create any contractual relation between any Subcontractor and the City.
- E. Any contractor who has been suspended or debarred from bidding on Federal, State, or City of Las Cruces projects shall not be used as a subcontractor during the time such suspension or debarment is in effect.

**GC-29. ASSIGNMENT**

- A. Assignment of Work. The Contractor shall not assign or sub-let the whole or any part of this Contract without the written consent of the City and the Contractor shall be directly responsible for the quality of any assigned work and the performance of the same.
- B. Assignment of Monies Due. The Contractor shall not assign the whole or any part of this Contract or any monies due or to become due hereunder without the written consent of the City. In case the Contractor assigns all or part of the monies due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due to the Contractor shall be subject to prior liens of all persons, firms, and corporations for services rendered or materials supplied for the performance of the work called for in this Contract.

**GC-30. TERMINATION OF CONTRACT**

- A. General. If the Contractor should file for bankruptcy or make a general assignment for the benefit of their creditors, or if a receiver should be appointed on account of his insolvency, or if the Contractor should persistently disregard laws and ordinances, or if any of the provisions of this Contract are violated by the Contractor or by any of his Subcontractors, the City may serve written notice upon the Contractor and the Surety of its intention to terminate the Contract. Unless within ten (10) calendar days after the serving of such notice upon the Contractor such violation or delay shall cease and satisfactory arrangement for correction is made, the Contract shall, upon expiration of said ten (10) calendar days, cease and terminate. In event of any such termination, the City shall immediately serve notice thereof upon the Surety and the Contractor. The Surety shall have the right to take over and perform the Contract. If the Surety does not commence performance thereof within thirty (30) calendar days from the date of the mailing to such Surety of notice of termination, the City may take over the work and prosecute the same to completion by contract, or otherwise, for the account and at the expense of the Contractor. The Contractor and his Surety shall be liable to the City for any excess cost to the City. The Contractor and his surety shall maintain liability insurance and all related protections to the City for any exposed, incomplete or questionable work products in such event the City may take possession of and utilize in completing the work, such materials and equipment as may be on the site of the work.
- B. Delay of Work. If work is unnecessarily or unreasonably delayed, or if the Contractor is not making adequate progress to complete the work within the required time, the City shall have the power, at its option, to require the Engineer to employ forces, machinery, and materials in addition to those used by the Contractor and pay the cost of same and deduct said cost from the next or any subsequent payment falling due on this Contract, or to notify said Contractor to discontinue all work or any part thereof under this Contract. Upon such notification the Contractor shall discontinue the work or such part, as the City shall designate. The City shall have power to employ by contract or otherwise in such manner and at such prices as it may determine, any labor, machinery, and materials and other means which it may deem necessary to complete the work, or such part as the City may designate. The City shall also have the right to use all materials at the site owned by the Contractor and to charge the expense of any and all labor materials and equipment necessary to complete the work to such monies as may be due or may become due to the Contractor or that may be reserved under this Contract or any excess of the expense of such work over and above the consideration to be paid under this Contract, including compensation for additional managerial and administrative services.
- C. Improper Work. If in the opinion of the City, the Contractor shall be improperly performing the work under this Contract, or shall neglect or refuse to take out or rebuild such work as shall have been rejected by the Engineer as being defective or unstable, the City shall notify the Contractor to that effect in writing. If the Contractor does not within ten (10) calendar days thereafter take such measures as will in the opinion of the City insure the satisfactory performance or construction of the work; the City may terminate this Contract. The City shall immediately notify the surety of this action.

- D. The performance of Work under the Contract may be terminated with cause by the City whenever the Director of Public Works shall determine that such termination is in the best interest of the City or whenever the City is prohibited from completing the Work for any reason. Such termination shall be effected by giving not less than three (3) calendar days written notice to the Contractor specifying the extent to which performance of the Work is terminated and the date such termination becomes effective.

The Director of Public Works may, from time to time, under such terms and conditions as the Director may prescribe, authorize partial payments and payments against costs incurred by the Contractor for the terminated portion of the Contract, if it is estimated that the total of such payments will not exceed the amount to which the Contractor will be entitled. If the total of such payments is in excess of the amount to which the Contractor is entitled, the excess shall be payable by the Contractor to the City upon demand, together with interest computed pursuant to state law, for the period from the date the excess payment is received by the Contractor to the date the excess is repaid to the City.

The settlement for the Work performed shall not relieve the Contractor or its surety from responsibility for defective Work and/or materials on the completed portion of the Work nor for labor and materials or any other items as guaranteed by the surety bond or bonds.

The City shall be given full access to all books, correspondence, records, electronic files and data bases, and other materials of the Contractor relating to the Contract in order to determine the amounts to be paid when the contract is terminated under this General Condition. The Contractor shall, as requested by the City, furnish legible copies of any such materials.

In the event the parties fail to agree in whole or in part on the amount or amounts to be paid to the Contractor in connection with the termination of work pursuant to this G.C., the Contractor may appeal the Project Manager's determination as to the amount owed to the Director of Public Works, except that, if the Contractor has failed to submit its request for payment within the time provided above and has failed to request an extension of such time, it shall have no such right of appeal.

Should the Contractor be terminated for performance, the purchasing manager may start debarment and suspension as per City Procurement Code 24-256, 24-257, and 24-258.

### **GC-31. BASE LINES, GRADES AND STAKING**

The City will provide the horizontal and vertical control points in the field. It is the responsibility of the contractor to verify these and all project control points prior to initiating any construction activity. Any discrepancies in design or control points and bench marks shown on the plans or established by the Engineer during construction operations shall be brought to the Engineer's attention immediately for correction or clarification. If the Contractor elects to proceed with construction before such corrections or clarifications are made, he shall do so at his own risk and expense, pending approval by the Engineer. Re-staking or resetting of horizontal and vertical

control or bench marks due to Contractor's negligence in preserving stakes or horizontal or vertical control points shall be at the Contractor's expense with the exception of those disturbed by the Contractor under direction from the City.

The Contractor shall provide any and all additional surveying and staking (e.g., to establish reference points, temporary bench-marks, and grade staking, etc.) beyond the horizontal and vertical control, already established by the City, that is required to construct the project. Construction staking provided by the Contractor is not required to be under the direct, responsible charge of a licensed professional surveyor, unless specifically required by the New Mexico Engineering and Surveying Practice Act. The Contractor shall coordinate the placement of permanent benchmark markers within the project at locations designated during construction by the City or Engineer. The City will be responsible for the location and documentation the permanent benchmarks.

### **GC-32. SURVEY MONUMENT PROTECTION**

The Contractor shall not move or disturb any monuments, property corners, section corners or other survey markers until the Engineer has referenced them and has given permission to move them.

Any monument in conflict with construction of this contract shall be brought to the Engineer's attention immediately without disturbing the survey monument. The Engineer will determine a solution and notify the Contractor how to proceed.

If the Contractor disturbs any survey monuments without the permission of the Engineer, he shall, as soon as practical, have a Surveyor licensed in the state of New Mexico restore the monuments to a condition as directed by the Engineer. This work shall be done at the Contractor's expense.

### **GC-33. RIGHTS OF VARIOUS INTERESTS AND SEPARATE CONTRACTS**

Wherever work being done by the City's employees or by other contractors is contiguous to work covered by this Contract, the respective rights of the various interests involved shall be established by the Project Manager, to secure the completion of the various portions of the work in general harmony. The City reserves the right to let other contracts in connection with this work. The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate Contractors work with theirs.

### **GC-34. INTENT OF PLANS AND SPECIFICATIONS**

It is intended that the plans and specifications include everything necessary to finish the entire work properly, notwithstanding that every necessary item involved is not particularly mentioned. All work when finished shall be delivered in a complete and undamaged condition and in proper working order. It is the intent of the specifications, together with the plans, that sufficient detail and information have been furnished for the complete prosecution of the work. Any inadvertent

omission, which by virtue of common sense should be incorporated in the work to make it function completely and be ready for use, shall be considered as being understood to be included in the Contract.

### **GC-35. USE OF COMPLETED PORTIONS**

The City 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. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the City 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 has reached substantial completion as described in GC-1 the Contractor should request a final inspection. 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 City and Contractor.

Immediately prior to such partial occupancy or use, the City, Contractor and Engineer 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.

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.

### **GC-36. TRAFFIC CONTROL/INTERFERENCE WITH TRAFFIC**

The Contractor may submit a revised traffic control plan, meeting the requirements of the latest edition of the Manual of Uniform Traffic Control Devices with specific reference to Part VI of the Standards and Guidelines for Traffic Control for Street and Highway Construction, Maintenance, Utility, and Incident Management Operations. Prior to the Contractor commencing construction, the City must consider the approval of the revised submittal for the project. The revised plan shall be considered incidental to the specific project's traffic control bid item(s).

All traffic control shall be paid on a lump sum basis. This lump sum price will be held for contract variations that are within 5% of the original contract amount. If the contract total varies greater than 5%, a change order shall be negotiated for either a decrease or an increase in the traffic control amount. If there are any other circumstances that are covered by the situations described above, the Contractor shall have 10 days to file a claim with a request and complete justification for consideration.

The Contractor shall conduct his work with as little interference as possible with traffic, and shall be subject to any safety regulations the City may require. When required or when traffic conditions dictate, the Contractor shall provide a safe substitute vehicular and pedestrian route for any public right-of-way that is obstructed or occupied by his operations. He shall erect and maintain all necessary barricades, warning signs, detour signs, route markers, and flares or approved flashers with flares, according to plans approved by the City. He shall take all

necessary precautions for the protection of the work and the safety of his employees and of the public.

When a street or thoroughfare is to be partially or completely closed, the Contractor shall notify the Fire Department, Police Department, Traffic Operations Engineer and the Project Manager with the length of time it will be closed to traffic at least 48 hours before closure. The Contractor shall give notice forty-eight (48) hours prior to the closing.

The Contractor shall contact the City in writing or in person forty-eight (48) hours prior to beginning construction work on any public street, alley, or easement which, in any manner, will interfere with traffic. The Contractor and City shall establish an orderly sequence of construction operations that will minimize interference with traffic. The Contractor shall pile excavated material along the line of work in a manner to cause as little inconvenience as possible to public travel, access to abutting property and to gutter and street drainage.

The Contractor will maintain local access for all streets and driveways. The Contractor shall also maintain the jobsite, traffic control, and dust control in accordance with the City's ordinance for the complete duration of weekends and holidays. All sidewalks and public walkways shall be open to the greatest extent possible.

If the Contractor is unable for any reason to comply with any of these requirements, the City will do the work at the Contractor's expense, including any traffic control and administrative costs deemed necessary for the safe operation of the project site.

### **GC-37. DUST CONTROL**

The Contractor may submit a revised dust control plan or method, meeting the requirements of Las Cruces Ordinance No. 1789, which addresses erosion control for dust during construction. Prior to the Contractor commencing construction, the City shall approve the revised submittal for the project. The cost of compliance with Las Cruces Ordinance No. 1789 is incidental to the construction of other bid items on a project unless specifically stated otherwise. Dust control shall be required within the entire jobsite and include any borrow pits and storage areas. Dust control shall be maintained throughout the project including weekends and holidays and shall be maintained until final acceptance by the City.

The Contractor shall provide suitable means, by sprinkling, wetting, or other approved method for the abatement of dust conditions in the construction area and on access and detour roads. Such dust abatement by sprinkling, wetting, or other approved methods shall be done no less than four (4) times daily including weekends and holidays or as further directed by the Engineer. The Contractor shall meet all local regulations for dust control.

At any point in the project including the event of any project delay or shutdown the Project Manager may require any additional dust control measures deemed appropriate, at any portion of the project site or extensions thereof, such as borrow pits, storage and, staging areas, at the contractors expense.

**GC-38. GUARANTEE**

By accepting a contract for the work covered by the contract conditions, the Contractor guarantees against any defect or failure in proper use or operation caused by omission of material or defective material or workmanship, for a period of one (1) year, as defined in the notice of final inspection. The Contractor shall attend a follow up inspection scheduled by the City prior to the end of the one (1) year period and make prompt remedial actions to address any punch list items identified by the city at that time.

**GC-39. CHANGE ORDERS**

A. Calculations. The Contractor and the City are bound to the following method of calculating Change Orders. This method excludes changes in quantities shown as bid items in the bid proposal:

1. With each proposal for a change in the amount of the Contract, the Contractor shall submit an itemized breakdown of all increases or decreases in the cost of the Contractor's and all Subcontractor's work. The Project Manager may require the following additional information:
  - a. Material quantities and unit costs.
  - b. Labor amounts and hourly rates (identified with specific items of material to be placed or operation to be performed).
  - c. Costs inherent to use of Contractor/subcontractor owned equipment.
  - d. Equipment rental (if any).
  - e. Worker's Compensation and Public Liability Insurance.
  - f. General administration, overhead, project insurance and profit (see schedule below).
  - g. Employment taxes under FICA and FUTA.
  - h. State Gross Receipts Tax (Contractor only).
  - i. Specialty Insurance - not part of the project's general insurance.



2. The “Not to Exceed” allowance for General Administration, overhead, project insurance bonds and profit combined shall be based on the following schedule.

	<u>The Percentage Shown</u>	
	<u>\$500 &amp; Less</u>	<u>Over \$500</u>
Contractor for work performed by his own forces.....	22%	19%
Subcontractor for work performed by own forces.....	18%	15%
Contractor for work performed by Subcontractor.....	15%	10%

3. Item (2) above will include all costs associated with the change, excluding only the direct cost of materials, labor, including Field Supervisor, equipment, and Subcontractors. Included, but not limited to, Item (2) and the percentages listed are the following: home office overhead and expenses, safety warranty and maintenance expenses, profit, bond costs, project, Worker's Compensation and Public Liability Insurance, General administration, overhead, project insurance and profit, Employment taxes under FICA and FUTA, State Gross Receipts Tax (Contractor only), and Specialty Insurance not part of the project's general insurance.

**GC-40. WATER FOR CONSTRUCTION**

The Contractor shall be responsible for obtaining construction water for use during the construction project. The Contractor shall be responsible for arranging with a water provider regarding time, method, metering and location of proposed water use source and shall pay all fees associated with the water use. Special service lines shall be at the Contractor’s expense.

**GC-41. CONSTRUCTION REMOVALS AND SITE CLEAN UP**

The Contractor shall comply with City Ordinance 1231, approved by the City Council on May 6, 1991, which states that all removals shall be disposed of at a permitted sanitary landfill unless regulated as hazardous. The contractor is required to identify and properly dispose of any hazardous material in accordance with the latest United States Environmental Protection Agency Regulations, O.S.H.A. regulations, or New Mexico Environmental Department Regulations where the most stringent regulations shall apply. The City, while making every reasonable effort to identify, shall not be held responsible to specifically to identify any such hazardous material prior to or during construction, nor be held liable for any improper or illegal handling or disposal of any such substance(s).

The Contractor shall keep the Work site and the surrounding premises free of accumulated waste materials at all times. If space is available, the Project Manager may designate a place on the premises to collect all debris and rejected materials. If such space is designated, the Contractor shall, at his expense, install fencing and whatever else is needed to keep loose materials confined so that they are not scattered by the winds. The Contractor shall remove the waste material to a

suitable licensed landfill at least weekly or more often, whenever the waste material creates a safety or health hazard or interferes with any Contractor's, Subcontractor's or Supplier's work.

Accumulations of mud or debris which are tracked onto areas adjacent to the Work site, or onto streets, airfield pavements, City property or public rights-of-way even if not adjacent to the Work site, by construction equipment of the Contractor or any Subcontractor or Supplier, must be removed promptly and not allowed to create a hazard or an unsightly condition.

Equipment and tools needed for the Work must be kept out of traveled ways such as streets, alleys, parking areas, sidewalks and airfield pavement areas. Equipment which may endanger vehicular or pedestrian traffic must be suitably stored to prevent motorists and pedestrians from colliding with that equipment.

If, in the sole opinion of the Project Manager, the Contractor fails to maintain the work site in a clean, orderly, and safe condition or the City may either suspend project operations for ten (10) calendar days, without compensation or additional contract time, have others perform the clean up work and deduct the cost thereof from such progress payments due the Contractor. If more than one Contractor was working in the uncleaned area, a proportionate part of the cost will be deducted from invoice(s) to all such contractors in the area based upon a breakdown determined by the Project Manager.

#### **GC-42. RECORD DOCUMENTS AND DRAWINGS**

For the purposes of record, the Contractor shall maintain one copy of all specifications, addenda, written amendments, change orders, work change directives, and one (1) two (2) sets of contract drawings all in good order and annotated to show all changes made during construction in a safe place at the construction site. The Contractor shall maintain these record documents in good order with annotations to show all changes made during construction. The record documents including all material compliance submittal and/or material compliance certifications, material samples, and approved shop drawings will be available to the Engineer or his representative for reference.

As part of the record documents, the Contractor shall maintain one (1) two (2) set of record drawings during construction of the project. The record drawings shall be kept clean and neat and shall be kept up-to-date within two (2) weeks after the work has been performed or sooner if required by the nature and condition of the work. The actual field conditions of the work, as it is performed, shall be accurately shown on the record drawing. The record drawings shall be subject to review by the project manager for accuracy and completeness throughout the construction of the project.

Upon completion of the work, the Contractor shall turn over the record documents the Project Manager. The contract shall not be considered complete and the final payment will not be made until the record documents, the material submittal, and material samples have been delivered to the Engineer or City.

**GC-43. CONTRACTOR'S CONTACT PERSONS**

The Contractor shall provide the name and home phone number of at least two (2) people to be contacted in case of emergencies at the work site during non-working hours. The contact people must be qualified and have the authority to make decisions on behalf of the Contractor. There must be at least one contact person on call and available to be at the site within one hour. This item is to be considered incidental to the project and no additional or separate payment will be made.

The Contractor shall provide the name of the Project Manager. This person will be the Contractor's representative to whom the City or Engineer shall address all relevant correspondence. The Contractor shall not change the Project Manager without the approval of the City or Engineer.

The names of the Project Manager and the two (2) Emergency Contact Persons shall be provided upon receipt of the Notice to Proceed.

**GC-44. DIFFERING SITE CONDITIONS****A. Background Information and Reliance on Data**

1. Site Conditions. Drawings and specifications defining the Work to be done were prepared on the basis of interpretation by Design Professionals of information derived from investigations of the Work site. Such information and data are subject to sampling errors, and the interpretation of the information and data depends to a degree on the judgment of the Design Professional. Information about the degree of difficulty of the Work to be done cannot totally be derived from either the drawings and or specifications or from the Project Manager. The Contractor shall not be entitled to an adjustment to the Contract Time or Contract Amount for any condition which was or would have been evident, as solely determined by the Project Manager, at the time of a pre-bid site inspection. By executing the Contract, the Contractor represents that it has visited the site to the extent it believed necessary, familiarized itself with the location and conditions under which the work is to be performed and correlated its observations with the requirements of the Contract Documents.

If the Contractor, in the course of the work, finds any discrepancy between the plans and the physical conditions of the locality, or any errors or omissions in plans or in the layout as given by survey points and instructions, he shall immediately inform the Project Manager, in writing, and the Project Manager shall promptly verify the same. If it is determined by the Project Manager that the Contractor's project schedule has been adversely affected, the Contractor will be entitled additional time for the delay imposed the project schedule. The City and contractor will mutually agree on a timeline within 2 (two) days. Any work done after such discovery, until authorized, will be done at the Contractor's risk.

2. Geotechnical and Other Design Professional Reports, Investigations and Tests.

The Contractor acknowledges that certain soils reports, borings, and other geotechnical data, if they exist, more particularly described or referenced in the Technical Specifications of the Contract, when applicable, have been made available for inspection during the pre-bid phase of the project. When borings are made they are made for the use of the City and are not intended to be interpreted for use in temporary construction facilities designed by the Contractor. To determine if the City has such documents, please contact the purchasing office for more information.

The City in no way warrants the accuracy or reliability of said borings and other geotechnical data or of the data, information or interpretations contained in said soils reports, and is not responsible for any deduction, interpretation, or conclusion drawn therefrom by the Contractor. Said soil reports may contain interpretations by Design Professionals of borings and geotechnical data obtained at the Work site. Such borings and geotechnical data are subject to sampling errors, and any interpretations or conclusions based on such borings and data depend to a degree on the judgment of the Design Professionals.

3. Hazardous Materials. Asbestos, PCBs, petroleum, hazardous wastes, radioactive materials, explosives, or other materials which, by their presence at or contiguous to the work site, present a substantial danger to persons or property exposed thereto in connection with the work at the site.
  4. Archeological/Historical Sites. The City shall be responsible for any such sites uncovered or revealed at the project site, which were not shown or indicated in drawings, specifications, or the Contract Documents.
- B. Protection of the Environment. The Contractor shall comply with all applicable federal, state and local environmental protection rules, laws and regulations and accept responsibility for compliance with all environmental quality standards, limitations and permit requirements promulgated thereunder, including but not limited to the City's noise control ordinance, federal and state air quality standards for fugitive dust control, prevention of surface and groundwater contamination, and hazardous and other waste disposal practices and procedures.

If the City, as owner, is determined by any federal, state or local government agency, department, board or commission, or in any judicial proceeding to have violated any such environmental protection rules, laws or regulations as a result of the Contractor's acts or omissions, the Contractor agrees to indemnify and hold harmless the City from any and all prosecutions, payment of any and all fines or penalties, and the cost of abatement and remediation, except that the Contractor shall not be required under these general conditions to indemnify the City from any amounts which are attributable to the negligence of the City.

- C. Notification of City by Contractor. If the Contractor believes that any subsurface or physical condition, underground structure, hazardous material, or archeological/historical site at or contiguous to the site that is uncovered or revealed is either:
1. Of such nature as to establish that any data on which the Contractor is entitled to rely is materially inaccurate, or
  2. Of such a nature as to require a change in the Contract Documents, or
  3. Different, materially, from that shown or indicated in the Contract Documents, or
  4. Of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character and scope provided for in the Contract Documents, or
  5. Subsurface or latent physical conditions at the Work site differing materially from those indicated in the Contract Documents, or physical conditions differing from those conditions present at the time of bidding; then

The Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any work in connection therewith, notify the City and Project Manager, first verbally and later with a properly documented letter about such differing site condition. In the case of underground facilities, the Contractor shall identify the owner of it and give written notice to the City. Contractor shall not further disturb such conditions or perform any work in connection therewith except for emergencies, until receipt of written order to do so. Any work so performed before written authorization from the Engineer shall be at the Contractor's risk.

- D. Differing Condition Review. Upon receipt of notice the Project Manager will promptly review the differing site condition and determine the extent, if any, to which a change is required in the Contract Documents. If the Project Manager concludes that a change in the Contract Documents is required, a change order will be issued to reflect and document the consequences of said differing site condition. During the review period, the Contractor shall be responsible for the safety and protection of any underground facility or archeological/historical site within the construction limits.

In the case of hazardous material, the Contractor shall not be required to resume work in connection with such hazardous condition or in any such affected area until after the City has obtained any required permits related thereto and delivered, to the Contractor, special written notice specifying:

1. Such condition and affected area is or has been rendered safe for the resumption of work, or
2. Any special conditions under which such work may be resumed safely.

- E. Adjustments. The Contractor may be allowed an equitable increase in the Contract price or in the Contract time, or both, to the extent that such differing site condition causes an increase in the Contractor's cost of, or time required for, performance of the work. Any additional work for which a unit price is included in the Contract Documents will be paid for at the unit price.

The Contractor shall not be entitled to any adjustments in the contract price or contract time if:

1. The Contractor knew of the existence of such conditions at the time Contractor made a final commitment to the City in respect of contract price and contract time by the submission of a bid or becoming bound under a negotiated contract; or,
2. The existence of such condition could reasonably have been discovered, foreseen, or revealed as a result of any examination, investigation, exploration, test or study of the site and contiguous areas required by the bidding requirements or Contract Documents to be conducted by or for the Contractor prior to Contractor's making a final commitment, or
3. The Contractor has not fully complied with the notice and submittal requirements of this General Condition, with particular attention to not disturbing the site prior to allowing the Project Manager to investigate the condition, the Contractor shall be deemed to have waived its right to assert a claim for an adjustment in the Contract Amount or Contract Time arising out of such differing site conditions

## **PAYMENT**

### **GC-45. REQUEST FOR PAYMENT SUBMITTAL**

1. The Contractor shall submit one pay request including all items The Contractor shall submit request for payment to the Project Manager, monthly on a date mutually agreed upon at the onset of the construction.

### **GC-46. MONTHLY PAYMENT SUBMITTAL/STATUS MEETING**

The Contractor shall submit a revised project schedule and a project status report form with each monthly pay request, 72-hours prior to the project status meeting, containing the following items:

1. Number of additional contract days requested by the contractor in accordance General Condition GC-27.
2. A listing of all change order requests for the month.
3. A pay request including all items completed for that period
4. Field notices - the number received and a copy of each.
5. An estimated completion date for project and percent of work completed to date.

A monthly meeting will be held to discuss the submittals and settle any disputes on time or quantities. Processing the monthly pay request shall begin at the monthly meeting if the invoice, quantity measurement sheet, and wage rate interview sheet(s) are complete and accurate. The meetings will be held at the City Office Center at a mutually agreed time between the Contractor and the City of Las Cruces.

#### **GC-47. PAYMENTS TO CONTRACTOR**

- A. The Contractor should submit payment invoices to the Engineer at the project status meetings or as otherwise mutually agreed upon by both the City and Contractor for work completed for work completed in accordance with this Contract. The City will make a partial payment to the Contractor on the basis of a duly certified and approved estimate of the work performed during the preceding month, no later than twenty-one (21) days after each estimate is presented to the City.

If Contractor submits invoice, including payments for materials on site, Contractor must attach the copy of the invoice received when the materials were procured. The invoice for payment should correlate each item with its corresponding bid items. If the price for this item is equal to or more than the contract unit price, the City reserves the right not to pay for the materials until the item(s) are installed complete in place. Once an item that has been paid as materials on site, it will remain as an amount earned until such time as the contract item is installed under the terms of the contract. At such time the contract item will be charged and the materials on site will be deducted from the unit price.

All materials on hand that shall be submitted for payment shall have the following:

1. All materials on hand that will be submitted for payment shall be on site, unless a written request stating specific items were previously approved by the City.
2. All copies of invoices shall be legible. Copies of invoices shall be from the Suppliers or in the form of a summary of invoices from the Contractor.
3. Invoices from the Supplier shall contain, at a minimum:
  - a. Date ordered
  - b. Date delivered
  - c. Material description
  - d. Units (ex. LF, EA, SY)
  - e. Price per unit
  - f. Quantity ordered
  - g. Quantity delivered
  - h. Supplier letterhead & address, phone number, etc.
  - i. Total invoice cost
  - j. Be typewritten or printed
4. The invoice Summary Sheet shall contain the following, at a minimum:

- k. Material description
  - l. Material units
  - m. Material price
  - n. Material quantity
  - o. Reference the corresponding bid item material purchased for.
  - p. Reference the original invoice number from supplier
  - q. Each bid lot (as defined in the Contract Documents) shall be totaled (ex. Roadway Total, Sewer Total, Gas Total, etc.)
  - r. Running total per invoice/month on what was held over.
  - s. When item is installed it shall be subtracted from contract work to date. (It should now be included in Bid Item Quantity)
- B. The final payment estimate on this project shall not be submitted to or accepted by the Engineer until all requirements of this Contract are 100% fulfilled by the Contractor and record documents and drawings have been submitted to the City. The final payment under the contract shall be paid, as approved by the Project Manager, within twenty-one (21) calendar days after it is submitted to the Project Manager.

#### **GC-48. CORRECTION OF WORK BEFORE FINAL PAYMENT**

The Contractor shall promptly remove from the premises all materials determined by the Engineer as failing to meet Contract requirements, whether incorporated in the work or not. The Contractor shall promptly replace his own work in accordance with the Contract and without expense to the City and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.

If the Engineer deems it expedient for the City to correct work that has been damaged or that was not done in accordance with the contract, an equitable deduction from the contract price shall be made.

#### **GC-49. ACCEPTANCE AND FINAL PAYMENT**

The Project Manager will make a final inspection of the work. If the work has been substantially and satisfactorily completed, and record documents and drawings submitted to the City and accepted, the Project Manager will make a final inspection of the work. After acceptance by the City, the balance found to be due the Contractor, according to the terms of payment, shall be due payment by the City. Acceptance or final payment shall not be construed to be an acceptance of defects. The Project Manager will review a final payment request prepared by the Contractor and statement that the work performed under this Contract has been completed and that he recommends acceptance, subject to the terms and conditions of the Contract. After acceptance by the City, the balance found to be due the Contractor, according to the terms of payment, shall be due payment by the City. Acceptance of final payment shall not be construed to be an acceptance of defects.

The City shall not authorize final payment until all items on the punch list have been completed and, a document declaring Final Acceptance is issued. If the Work is substantially completed, but



Final Completion thereof is prevented by the unavailability of materials, or other causes beyond the control of the Contractor, and if consistent with any applicable bond ordinance, the City, in its sole discretion, may release to the Contractor all amounts due.

The Contractor agrees that he will indemnify and save the City harmless from all claims growing out of the lawful demands of subcontractors, laborers, workmen, mechanics, material-men and furnishers of machinery and parts thereof, equipment, power tools, and all supplies including commissary incurred in the furtherance of the performance of this Contract. Prior to filing a final payment request and prior to authorization of final payment, the Contractor shall furnish an affidavit showing satisfactory evidence that all obligation of the nature above designated have been paid, discharged or waived.

Before the City will authorize final payment, the Contractor shall demonstrate to the operating personnel of the City the proper operation and maintenance of all equipment and systems, and deliver to the Project Manager:

- A. All warranties;
- B. Required operations and maintenance manuals and instructions as required;
- C. Record as-built drawings and technical specifications as required by the Contract Documents;
- D. To the extent not already furnished, the number of copies of all As-Built Shop Drawings or submittal documents, required by the Contract Documents, but in no case less than two (2);
- E. Satisfactory evidence that all payroll, material bills, taxes and other indebtedness connected with the work have been paid or otherwise satisfied;
- F. A complete and final, unconditional waiver or release of any and all lien and claim rights from each Subcontractor, material-man, Supplier, manufacturer and dealer for all labor, equipment and material, mechanic, furnisher of machinery and parts thereof, equipment, power tools, and all supplies including commissary used or furnished by each on the Work; in the furtherance of the performance of this Contract;
- G. An Affidavit stating that there are no outstanding prevailing wage claims or disputes at either the New Mexico Department of Labor or the United States Department of Labor concerning the work.
- H. Consent of the Surety to final payment;
- I. All submittals required by the Contract Documents;
- J. Any other documents required to be furnished by the Contract Documents.

If any unpaid claim for labor, materials, rental machinery, tools, supplies, or equipment is filed prior to the date set for final settlement, the City shall withhold from payments to the Contractor sufficient funds to ensure the payment of such claim, until the same shall have been paid or withdrawn. Such payment or withdrawal shall be evidenced by filing with the Project Manager

an unconditional receipt in full or an order for withdrawal signed by the claimant or its duly authorized agent or assignee. The City will withhold from payment any funds it may be required by law to withhold or that it may in the determination of the Project Manager be entitled to withhold and final payment will not be made until, in the sole determination of the Project Manager, all conditions of the Contract and of law have been met.

In the event there are outstanding claims against the Contractor or its Subcontractors or for any other reason the Contractor is not able to fulfill one or more of the requirements of these General Conditions, the Contract Administrator may, at his sole discretion, waive the requirement; provided the surety on the Performance and Payment Bonds will agree to the City making final settlement without in any way lessening or modifying the surety's liability under such Performance and Payment Bonds.

Final payment will not be made until all tax reports, properly certified, have been filed with the City and all sales, use and occupational privilege taxes have been paid. If any sales, use, occupational privilege or personal property taxes remain unpaid, the City shall withhold from payment to the Contractor sufficient funds to ensure the payment of the taxes. The City Manager may treat these withheld funds as subject to tax lien. The Contractor, however, retains all rights to protest, to a refund and to appeal, as set forth in any applicable sections of the City of Las Cruces Municipal Code or by State of New Mexico Statute.

In the event an overpayment was made by the City, the Contractor shall immediately return amounts overpaid and provide the required documentation described herein.

At the time of delivery to the Contractor of the final payment, the Contractor shall execute and give to the City a final receipt for the same.

The acceptance of final payment shall constitute a waiver of all Claims by the Contractor except those previously identified by the Contractor and accepted by the City as unsettled in the final Project Application for Payment, and which the City agrees in writing may be set over for resolution after final payment.

All provisions of these Contract Documents, including without limitation those establishing obligations and procedures, shall remain in full force and effect notwithstanding the making or acceptance of final payment.

#### **GC- 50. RETAINAGE (RESERVED)**

### **MISCELLANEOUS**

#### **GC-51. ARBITRATION**

- A. General. Any claims, dispute or other matters in question between the City and Contractor, arising out of or relating to the Contract Documents or the breach thereof, if not settled by good faith negotiations will then proceed to arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association,

currently in effect, subject to the limitations of this provision. This agreement to arbitrate and any other agreement or consent to arbitrate be entered into in accordance herewith will be specifically enforceable under the prevailing law of any court having jurisdiction.

- B. Notice. Notice of the demand for arbitration will be filed in writing with the other party and with the American Arbitration Association within thirty (30) calendar days of a party stating in writing to the other party that good faith negotiations have not resolved the dispute. The demand for arbitration will be made within thirty (30) calendar days following written notice for any claim, dispute or other matter in question, or within thirty (30) calendar days following a written decision by the Engineer concerning any claim, dispute or other matter that is required to be initially referred to the Engineer for decision in accordance with GC-24, whichever is greater.
- C. Inclusion. Except as provided herein, no arbitration arising out of or relating to the Contract documents shall include by consolidation, joinder or in any other manner by any other person or entity (including the Engineer or any officers, directors, agents, employees, or consultants of the Engineer) who is not a party to this Contract unless:
1. The inclusion of such other person or entity is necessary if complete relief is to be afforded among those who are already parties to the arbitration, and
  2. Such other person or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration and which will arise in such proceedings, and
  3. Such other person or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration and which will arise in such proceedings, and
  4. The written consent of the other person or entity sought to be included and of the City and Contractor has been obtained for such inclusion, which consent shall make specific reference to this provision; however, no such consent shall constitute consent to arbitration of any dispute not specifically described in such consent or to arbitration with any party not specifically identified in such consent.

Notwithstanding paragraphs 1-3 above, if a claim, dispute or other matter in question between City and Contractor involves the work of a Subcontractor, either the City or Contractor may join such Subcontractor as a party to the arbitration between the City and Contractor hereunder. Contractor shall include in all subcontracts required by these Contract Documents a specific provision whereby the Subcontractor consents to being joined in arbitration between the City and Contractor involving the work of such subcontractor. Nothing in this provision or in the provision of such subcontract consenting to joinder shall create any claim, right or cause of action in favor of Subcontractor and against the City or Engineer that does not otherwise exist.

- D. Final Decision. The award rendered by the arbitrators will be final and binding. Judgment may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal.

#### **GC-52. ADA CONTRACT COMPLIANCE**

The Contractor shall insure all proposed products, services or activities contained as a part of the proposal comply with the current requirements of the Americans with Disabilities Act (ADA) and Americans with Disabilities Act Accessibility Guideline (ADAAG) requirements; American National Standards Institute (ANSI) Accessibility Guidelines and the New Mexico Building Code (NMBC) Accessibility Requirements (when applicable) to ensure accessibility to persons with disabilities. Failure to comply may result in termination of the contract.

#### **GC-53. CONTRACTOR/CONSULTANT EVALUATION**

The City will continually evaluate the Contractor and provide feedback at monthly meetings. The City may use the outcome of the evaluation records when awarding Contracts for future projects. Results of a negative past evaluation may be used as the sole reason to disqualify the Contractor from award of any City project.

#### **GC-54. VALUE ENGINEERING**

In projects with original contract amounts in excess of \$100,000 the Contractor may submit, in writing, a proposal for modifying the contract. The contractors shall not submit cost reduction proposals prior to receiving a Notice to Proceed. The cost-reduction proposal shall not impair, in any manner, the essential functions or characteristics of the project, including, but not limited to, service life, economy of operation, ease of maintenance, desired appearance, or safety. The provisions of this subsection will not apply unless the Contractor identifies the submission as a cost-reduction proposal.

Proposed changes in the pavement type, minor changes in a suggested traffic control plan, or a change in the pit location will not be considered as an acceptable cost-reduction proposal. This restriction will normally include, but not necessarily be limited to, dimensional changes of pavements, construction phasing or other structures.

The cost-reduction proposal shall be capable of standing on its own merit and shall require only a minimum of verification by the City.

Cost reduction proposals shall contain, at a minimum, the following information:

1. A statement identifying the submittal as a cost-reduction proposal.
2. A description of the performance of the work under the existing contract requirements and under the proposed changes.
3. A comprehensive analysis including drawings, computations, and other documents necessary for evaluation by the City.

4. A listing of the contract requirements that must be changed if the proposal is adopted, and a recommendation as to the manner in which the change(s) should be made.
5. A detailed estimate for performing the work under the existing contract and for performing it under the cost-reduction proposal. An estimate of the cost to the Contractor for developing and implementing the changes must also be included.
6. A listing of the contract items affected by the proposal and identifying the resulting difference in quantities.
7. An assessment of the effects that the adoption of the proposal will have on other costs to the City, including future maintenance and operation.
8. A deadline, if any, for the City to approve the proposal.
9. A statement on the effect that the adoption of the proposal will have on the contract time.

The requirements and procedures for cost-reduction proposals are as follows:

1. In order to process cost-reduction proposals expeditiously and to minimize costly studies by the Contractor which may have little chance of acceptance, the Contractor may submit, on a form provided by the City, a summary of the cost-reduction proposal for determination of merit. The summary will be evaluated by the City, and the City's recommendation will be submitted to the Contractor. Submittal of a favorable recommendation to the Contractor will not be construed as acceptance of the entire summary or any part of the submittal.
2. If a cost-reduction proposal is similar to a change in the plans or specifications that the City is considering for the project at the time the proposal is submitted or if the submittal is based upon or similar to the standard specifications, special provisions, standard drawing serials, or procedures adopted by the City after the advertisement for the contract the cost-reduction proposal will not be accepted.
3. The City reserves the right to deny any and all cost-reduction proposal and install the contract item as outlined in the original contract specification.
4. If the City accepts a cost-reduction proposal, the necessary contract modifications will be effected by the execution of a change order.
5. When an accepted cost-reduction proposal is adopted for general use, only the Contractor who initially submitted such proposal will be eligible for compensation pursuant to this Section; and in that case, only as to those contracts awarded to the Contractor prior to submission of the accepted cost-reduction proposal and as to which such cost-reduction proposal is also submitted and accepted.

6. All costs incurred by the City in implementing the accepted cost-reduction proposal, and in implementing the changes, will be deducted from the actual savings.
7. The Engineer will be the sole judge of the estimated net savings in construction cost resulting from the adoption of all or any portion of a cost-reduction proposal. In determining the estimated net savings, the right is reserved to disregard the unit bid prices if, in the judgment of the Engineer, the prices do not represent a fair measure of the value of the work that was performed or that was deleted. Also, the net savings will be determined by taking into account the actual job mix formulas, shrink and swell factors, and other actual design criteria used.
8. The Contractors share of a cost-reduction proposal will be 50% of the actual net savings.
9. The Contractors share will be considered full compensation to the Contractor for effecting all changes pursuant to the change order stemming from the cost-reduction proposal.
10. If the actual cost of the cost-reduction proposal exceeds the costs that would have been incurred if the work had proceeded according to the contract, the City will not pay beyond the amount originally committed.
11. When the actual net savings have been determined, a second change order providing for a lump sum payment of the Contractors share will be executed. Partial progress payments may be made on a schedule approved by the Engineer.
12. In preparing cost-reduction proposals, the Contractor must perform an independent examination of the affected work site. The City shall rely exclusively upon the accuracy of the engineering data upon which the cost-reduction proposal is based. The City is not required to perform additional investigations, cross checks, or site examinations. Acceptance or adoption of a Contractors cost-reduction proposal shall not be construed to alleviate or reduce the Contractors full and absolute liability if the proposal upon implementation fails to satisfactorily perform because of the Contractors use of inaccurate or incomplete engineering data or because of the Contractors failure to adequately investigate and examine the affected construction site. Final acceptance, such liability on the part of the Contractor shall not extend beyond final written acceptance of the project.