

**REQUEST FOR PROPOSAL # 2020-02
EMW 2020 4-INCH EXPANSION PROJECT**

Solicitation may be found at www.emwgas.org/procurements/

Bid Posting Date
August 19, 2020

Bid Submittal Due Date
Tuesday, September 10, 2020
11:00 A.M. Local Time

**PERSONS RECEIVING THIS RFP FROM THE INTERNET OR BY FAX *MUST* CALL (505-384-2369)
or E-MAIL jeng@emwgas.org AND REGISTER THEMSELVES AS A BIDDER.**

**FAILURE TO REGISTER AS A BIDDER MAY RESULT IN MISSING A BID ADDENDUM.
MISSING A BID ADDENDUM MAY
CAUSE YOUR OFFER TO BE FOUND NON-RESPONSIVE.
*PLEASE REGISTER!***



Mandatory Pre-bid Conference
2 p.m., Thursday, August 27, 2020

EMW North Shop, 409 Roosevelt Ave., Moriarty, New Mexico 87035

TO:
Jennifer Gauna, Chief Procurement Officer
416 5th Street
Estancia, NM 87016
505-384-2369
jeng@emwgas.org

TABLE OF CONTENTS

ADVERTISEMENT FOR PROPOSALS	AB 1
1.0 INSTRUCTIONS TO BIDDERS	IB 1 TO 10
2.0 CONTRACT TERMS	IB 11 TO 13
3.0 EXECUTION: AWARDED CONTRACTOR REQUIREMENTS	IB 14 TO 15
4.0 BID FORMS	IB 16 TO 17
4.7 FORM OF ACKNOWLEDGEMENT & LIST OF CONTRACTOR’S CONTRACT EXCEPTIONS	IB 18
5.0 SCOPE OF WORK	IB 19 TO 21
6.0 CORRESPONDENCE PROCEDURE	IB 22
7.0 SCHEDULE	IB 23
8.0 SAFETY REQUIREMENTS	IB 24 TO 26
9.0 EXCEPTIONS & CONTRACT DOCUMENT CONFLICTS	IB 26
AGREEMENT	APPENDIX A 1 TO 5
BID FORM	APPENDIX B 1 TO 3
FORM OF ACKNOWLEDGEMENT & CONTRACTOR’S LIST OF EXCEPTIONS	APPENDIX C
CONTRACTOR’S AFFIDAVIT OF COMPLETION, PAYMENT OF DEBTS & CLAIMS & RELEASE OF LEINS	APPENDIX D
BIDDER’S STATEMENT OF QUALIFICATIONS	APPENDIX F 1 TO 5
GENERAL CONDITIONS	APPENDIX G 1 TO 40
SUPPLEMENTAL CONDITIONS	APPENDIX H 1 TO 3
DRAWINGS AND SPECIFICATIONS	APPENDIX I
CONFLICT OF INTEREST AND DEBARMENT/SUSPENSION CERTIFICATION FORM	COI-1
AFFIDAVIT OF NON-COLLUSION	ANC 1
BID BOND	BB 1
PERFORMANCE BOND	PB 1 TO 2
LABOR AND MATERIAL PAYMENT BOND	LMB 1 TO 2
BIDDER’S CHECKLIST	BCL 1
AWARDED CONTRACTOR’S CHECKLIST	ACCL 1

ADVERTISEMENT FOR PROPOSALS

Project Name: 2020 EMW GAS ASSOCIATION 4 INCH EXPANSION PROJECT
Project No. RFP 2020-2

Competitive Sealed Proposals are being solicited from bona fide general contractors with appropriate New Mexico licenses for the construction of one 4-Inch Distribution Main Expansion Project in Moriarty, NM. for the installation of approximately 4,000 feet of 4-inch steel distribution main, three (3) road bores and one natural gas meter station.

The project is located in Torrance County, New Mexico. Proposal documents can be accessed through EMW Gas website: <http://www.emwgas.com/procurements/>.

Sealed proposals will be received at *EMW Gas Association, 416 5th St, Estancia, NM 87016* no later than 11:00 a.m. local time on **Thursday, September 10, 2020** at which time the proposals will be opened and reviewed by a committee in EMW Gas Association Conference Room.

Delivery of proposals is the sole responsibility of the Contractor. The proposals will be considered by the EMW Gas Association committee following the opening of the proposals, and an award of the Contract, if made, will be within thirty (30) days after the Proposal Opening.

The Owner reserves the right to reject any or all proposals and to waive irregularity in the proposals. It is understood that Proposal prices shall include all freight charges to the Owner's requested delivery location. All items shall be delivered to the EMW North Shop Warehouse at 409 Roosevelt Ave., Moriarty, NM 87035 in Moriarty, NM.

A 2 p.m. Pre-Proposal conference and Job Showing will be held on Thursday, August 27, 2020 at the EMW North Shop, 409 Roosevelt Ave, Moriarty, New Mexico 87035. Attendance at the Pre-Proposal Conference for this project **is mandatory** to qualify to submit a Proposal.

Attention of Contractors is called to the requirements that Contractors must furnish the properly executed "**Non-Collusion Affidavit**" contained with the bid documents and follow "**Buy American Act**" provisions under FAR 52.225-9 and FAR 52.225-21.

E.M.W. Gas Association hereby notifies all Contractors that it will affirmatively insure that in any contract entered into pursuant to this advertisement, Disadvantaged Business Enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, or national origin in consideration for an award.

Questions may be directed to Jennifer Gauna, Chief Procurement Officer, Email: jeng@emwgas.org.

Advertised in The Independent, Albuquerque Journal and emwgas.com on: **Wednesday, August 19, 2020**

1.0 INSTRUCTIONS TO BIDDERS

1.1 GENERAL

This Request for Proposal (RFP) is issued by EMW Gas Association (EMW) for the following project:

Project - Construction of one 4-inch steel distribution main expansion, three (3) road bores and one natural gas meter station in Moriarty, NM. The natural gas meter, bolts, gaskets, strainer and flange insulating kit will be furnished by EMW. All remaining material will be supplied by the contractor.

Project is located in Torrance County, New Mexico.

All work described in this RFP shall be performed in accordance with DOT 49 CFR Part 192 and all regulations, specifications and requirements contained within the right-of-way permits. All bidders must furnish the properly executed “**Non-Collusion Affidavit**” contained with the bid documents and follow the provision of the “**Buy American Act**” under FAR 52.225-9 and FAR 52.225-21

1.2 DEFINITIONS

Wherever the word "EMW" or "EMW Gas" is used, it shall mean "EMW Gas Association".

Wherever the word "Contractor" is used, it shall mean "Successful Bidder".

Wherever the words "bid", and "proposal" are used, they shall be used interchangeably.

1.3 PROJECT DESCRIPTION

The WORK is defined in Section 5. SCOPE OF WORK

1.4 CONTRACT PRICE

Bids must be submitted on the **Appendix B: BID FORM**. This form includes certain EMW price and quantity breakdown requirements, which will allow evaluation of the respective bids. This breakdown must be completed to be fully responsive to this RFP. Failure to comply shall warrant disqualification from the bid evaluation.

The bids price(s) shall include all costs to Contractor for materials, labor, equipment, testing and any and all items of expense, fees, duties, overhead and profit for Contractor's full and complete performance of the Work as set forth herein.

1.5 CONTRACT EXECUTION

The successful Contractor shall be expected to execute a Contract in the form included in **APPENDIX A: AGREEMENT**. Contractors are required to review the Contract Terms and provide written exceptions, if any, in writing, on **APPENDIX C: FORM OF ACKNOWLEDGEMENT AND CONTRACTOR'S CONTRACT EXCEPTIONS** upon submittal of their bid. Exceptions after bid submittal shall not be allowed.

1.6 REQUEST FOR PROPOSAL PREPARATION

Bidders must register as indicated on the cover page of this Request for Proposal.

Contractor must be fully responsive to the Request for Proposal. To be responsive, the RFP content must conform to the requirements of Section **1.8.3 BID CONTENT** and include all items listed in Bid as well as any Addendums issued as part of this solicitation.

EMW will not be responsible for any costs or expenses, including travel, in the preparation and/or submission of Contractor's bid.

1.7 REQUEST FOR PROPOSAL - QUESTIONS AND CLARIFICATIONS

Interpretation of Documents: Any person contemplating submitting a Bid for the Work and in doubt as to the meaning of any part of the plans, specifications or other Contract Documents, may submit to the Chief Procurement Officer a written request for an interpretation thereof at any time prior to **seven (7) working days** before the time of opening of bids. Any interpretation of the documents will be made only by Addendum duly issued, which shall become part of this bid request. Oral instructions shall not be binding. Contractor shall promptly acknowledge receipt of all Addendums. All such communications noted above shall be via e-mail, courier or fax.

Contractor must also register with the CPO as a bidder to receive addendum(s) which will answer all questions submitted by all registered bidders.

Addenda shall be in writing and delivered in person, by facsimile or electronically to all prospective Bidders that have registered as bidders for this project with the Chief Procurement Officer. Addenda will be made available for download on www.emwgas.com/procurements. No Addenda will be issued later than **two (2) working days** prior to the date of receipt of Bids. Each Addendum shall be a part of the Contract Documents to the same extent as though contained in the original documents and itemized listings thereof and all Bidders shall be bound by such

Addenda. Each Bidder shall ascertain, prior to submitting the bid, that the Bidder has received all Addenda issued, and shall acknowledge receipt of each Addendum on its Bid Submission.

1.8 BID SUBMITTAL GUIDELINES

1.8.1 GUIDELINES

- Original, signed copy of the complete bid plus two (2) copies will be accepted by:

**JENNIFER GAUNA, CHIEF PROCUREMENT OFFICER
EMW GAS ASSOCIATION
416 5TH STREET
ESTANCIA, NM 87016**

- Bids will be accepted until:

**Thursday, September 10, 2020
11:00 a.m. Local Time**

- **All bids must be submitted in writing. Emailed, wire, telephone or fax proposals will not be accepted.** Delivery of **Bid Packages** to EMW Gas Association is the sole responsibility of the Bidder.
- The bid shall be sealed and clearly marked:
**“CONFIDENTIAL - TO BE OPENED BY ADDRESSEE ONLY
RFP 2020-2 EMW 2020 4-Inch EXPANSION PROJECT”**
- Failure to clearly mark the original and provide original signatures may result in a bid being found non-responsive and given no consideration.
- The Contractor may, without prejudice to itself, modify or withdraw its quotation by written request, provided that the request is received by EMW prior to the due date and time at the address to which proposal was to be submitted.

1.8.2 SCHEDULE OF SOLICITATION

AUGUST 19, 2020	RFP AVAILABLE AND POSTED (Bidders must register for this RFP by registering online at emwgas.com or calling 505-384-2369)
AUGUST 27, 2020	MANDATORY Pre-bid Conference – 2 P.M. EMW North Shop 409 Roosevelt Ave. Moriarty, NM 87035
AUGUST 28, 2020	CONTRACTOR QUESTIONS DUE
SEPTEMBER 3, 2020	RFP 2020-2 ADDENDUM RELEASED
SEPTEMBER 10, 2020	BIDS DUE 11 A.M. – BID OPENING
SEPTEMBER 15, 2020	BOARD MEETING APPROVAL OF AWARD
SEPTEMBER 18, 2020	CONTRACTOR NOTIFICATION OF AWARD AND PURCHASE ORDER ISSUED
OCTOBER 19, 2020	BEGIN WORK

1.8.3 BID CONTENT

1.8.3.1 BID SECURITY

Bids submitted without the required Bid Security will not be considered.

Each Bid shall be accompanied by a **BID BOND** (BB-1) issued by a surety duly authorized to conduct business in the State of New Mexico and acceptable to EMW in the amount of five percent (5%) of the total amount of the bid.

Such surety shall be named in the current U.S. Department of the Treasury's Listing of Approved Sureties, Circular 570. Bid security is submitted as a guarantee that the Bidder, if awarded the Contract:

- will promptly execute such Contract in accordance with the Bid and in the manner and form required by the Contract Documents,
- will furnish good and sufficient bond for the faithful performance of the same and for the payment of all labor and materials,
- and furnish required certificates of insurance.

The bid security of the three lowest Bidders will be retained until the Contract is awarded or other disposition is made. The bid security of all Bidders except the three lowest will be returned after the canvas of bids. **EMW** shall have the right to retain the bid security of the three apparent lowest Bidders until either:

- the Contract has been executed and the Labor and Material Payment Bond, the Performance Bond and all required certificates of insurance have been furnished to **EMW**;
- the time specified in the Bidding Documents has elapsed so that Bidder may withdraw the Bid; or
- all bids have been rejected, whichever occurs first.

Should the Bidder refuse to enter into such Contract or fail to furnish such Bonds or certificates of insurance, the amount of the Bid Security shall be forfeited to **EMW** as liquidated damages, not as a penalty.

1.8.3.2 MODIFICATION AND WITHDRAWAL OF BIDS

Bids may be modified or withdrawn by an appropriate document duly executed (in the manner that a Bid must be executed) and delivered to the place where Bids are to be submitted at any time prior to the scheduled closing time for the receipt of bids. Bids shall be unconditionally accepted for consideration of award without alteration or correction.

EMW may allow a correction or withdrawal of a bid because of an inadvertent, non-judgmental mistake in the bid, within the limitations below.

No bidder may withdraw his/her bid within 60 days after the actual date of the opening thereof.

1.8.3.3 CONFIRMATION OF BID

EMW may require the apparent low Bidder to confirm its bid when obvious errors regarding the amount of the bid are apparent on the face of the bid or the bid amount is unreasonably lower than other bids submitted.

1.8.3.4 CORRECTION OR WITHDRAWAL OF BID

EMW may allow a Bidder to correct mistakes discovered by either EMW or Bidder after Bid Opening and prior to award of the Contract without forfeiture of bid security in the following circumstances:

- when technical irregularities exist that have no effect on the price, quantity, quality, delivery or contractual conditions.
- when mistakes exist and the intended correct bid is clearly evident on the face of the bid.

EMW may allow a Bidder to correct mistakes discovered after Bid Opening or to withdraw a bid without forfeiture of bid security if a mistake is clearly evident on the face of the Bid or the intended correct bid is not evident and the low Bidder submits evidence which clearly and convincingly demonstrates that a mistake was made which:

- is of such a grave consequence that enforcement would be unconscionable and

- relates to a material and fundamental feature of the bid and
- the Bidder acted in good faith and the mistakes did not come about as a result of the violation of a positive legal duty or from gross negligence and
- the Bidder gave prompt notice of the mistake prior to award of Bid and EMW's status has not been changed, or if changed, EMW suffers no serious hardship or prejudice other than loss of the bargain.

No bidder may withdraw his/her bid within 60 days after the actual date of the opening thereof.

1.8.3.5 OPENING OF BIDS

The opening of the Bids will be closed to the public. The person reading the bids will utilize the following procedure prior to reading the amount of the bid:

- 1) Read the **Name of the Bidder** and verify that Bidder was at pre-bid job showing (*)
- 2) Verify Bidder's acknowledged receipt of **Addenda**
- 3) Read the **Bidder's New Mexico contractor's license number and classification**
- 4) Determine whether the Bid is **signed** by an individual authorized to bind the company, or that a corporate authorization accompanies the Bid (*)
- 5) Verify that a **Bid Security (Bid Bond)** is submitted with the bid (*)
- 6) Verify Bidder's execution of the **Conflict of Interest and Debarment/Suspension Certification Form**, page COI-1
- 7) Verify Bidder's execution of the **Affidavit of Non-Collusion Form**, page ANC-1.
- 8) Verify submittal of **Bidder's Listing of Subcontractors** (if applicable)
- 9) Assign percentage points pursuant to 1.8.3.8.A
- 10) Determine whether other requirements are met.

***Unsigned bids, bids submitted without bid security, or bids submitted by bidders who did not attend a mandatory pre-bid conference shall not be read nor considered.** If any of the other requirements above have not been met, the bid shall be read after the deficiency or deficiencies have been announced and noted.

1.8.3.6 BID CONSIDERATION TIME

EMW will require time to study and canvass each Bid and to determine whether each Bid is a responsive, responsible bid. In consideration, thereof, no Bid may be withdrawn after the scheduled closing time for receipt of bids for the period of time specified in the Bid. EMW may make such investigations it deems necessary to determine the ability of the Bidder to perform the Work, and the Bidder shall furnish to EMW all such information and data for this purpose as EMW may request. EMW reserves the right to reject any bid if the evidence submitted by, or investigation of, such Bidder fails to satisfy EMW that such Bidder is properly qualified to carry out the obligations of the Contract and to complete the Work contemplated herein.

1.8.3.7 SUBCONTRACTORS, OTHER PERSONS, ORGANIZATIONS

If the Contract Documents require the identity of certain Subcontractors and other persons and organizations to be submitted to EMW in advance of the Notice of Award, the apparent successful Bidder, and any other Bidder so requested, will within seven (7) days after the day of the Bid

Opening, submit to EMW a list of all Subcontractors and other persons and organizations (including those who are to furnish the principal items of material and equipment) proposed for those portions of the Work for which such identification is required. If requested by EMW, such list shall be accompanied by an experience statement with pertinent information as to similar projects and other evidence of qualification for each such Subcontractor, person and organization. If EMW, after due investigation, has reasonable objection to any proposed Subcontractor, other person, or organization, EMW may, before giving the Notice of Award, request the apparent successful Bidder to submit an acceptable substitute without an increase in the bid amount. Any Subcontractor, other person or organization so listed and to whom EMW does not make written objection prior to the giving of the Notice of Award will be deemed acceptable to EMW.

1.8.3.8 AWARD OF CONTRACT If a Contract is awarded, it will be awarded to the responsible Bidder based on the following evaluation process:

A. Evaluation Process.

- Does the Contractor have a General Contractor License – 10%
- Does the Contractor have a GF-09 License – 10%
- Does the Contractor have a Drug and Alcohol Plan – 10%
- Does the Contractor have a third party process where their employees are qualified pursuant to Federal Pipeline Safety Regulations – 30%
- Does the Contractor have a history for performing this type of work – 20%
- Review the Contractor's Bid for the Project – 20%

EMW will assign percentage points for the above evaluation factors to assist in the process.

B. Identical Bids. In the event that two or more of the bids submitted are identical in the evaluation process, EMW may:

- Award by lottery to one of the identical Bidders.

C. Time to Award. If the Contract is to be awarded, EMW will give the apparent successful Bidder a Notice of Intent to Award within the period specified in the Bid unless the Bidder and EMW agree in writing to extend the period specified.

1.8.3.9 REJECTION OF BIDS

EMW reserves the right to accept bids, award bids and/or reject any and all bids to waive any and all informalities and technical irregularities and the right to disregard all nonconforming or conditional bids or counter proposals. **EMW** reserves the right to accept the bid that appears from all consideration to be for the best interest of EMW and to cancel the opportunity for submission of bids when it is in the best interest of **EMW**. **EMW** further reserves the right to reject any or all bids submitted for **EMW's** convenience or for cause. Bidders whose bids are rejected shall not be entitled to recover damages of any nature against **EMW** for **EMW's** rejection of a bid, for cause or for convenience.

The New Mexico Procurement Code (Sections 13-1-21 through 13-1-199, NMSA 1978) imposes civil and criminal penalties for code violations. In addition, the New Mexico Criminal Statutes impose felony penalties for illegal bribes, gratuities and kick-backs.

EMW may cancel the award of any contract or portion thereof at any time before the execution of said contract by all parties without liability against the Association. If any provisions of this Bid shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The Chief Procurement Officer shall be the sole judge in the determination of these matters. Notice of bid award, if bid is awarded, will be made within thirty (30) days of bid opening.

1.8.3.10 COLLUSION

No Bidder shall be interested in more than one bid. Collusion among Bidders or the submission of more than one bid under different names by any firm or individual shall be cause for rejection of all bids without consideration. Each Bidder shall execute and submit with the completed Bid Package the Affidavit of Non-Collusion, page **ANC-1**.

1.8.3.11 PRE-BID CONFERENCE

When a pre-bid conference date is given in the Advertisement for Proposal, the conference shall be conducted to explain the Project. Attendance at the pre-bid conference shall be mandatory only when so required in the Advertisement for Proposals. When attendance is mandatory, failure to attend shall disqualify the prospective Bidder from submitting his Bid. Nothing stated at the pre-bid conference shall change the Bidding Documents unless a change is made by Addendum.

1.8.3.12 REGISTRATION OF CONTRACTORS

The Contractor will be required to obtain a New Mexico Contractor's license and GF-09 Certificate prior to bidding any work on this job.

In addition the Contractor must have employees who are currently qualified to work on natural gas pipeline facilities. This requirement is listed in the Federal Pipeline Safety Regulations at:

Title 49, Part 192, Subpart N – Qualification of Pipeline Personnel.

1.8.3.13 DEBARRED CONTRACTORS

The bid of a Contractor that has been **debarred** or is suspended, debarred or ineligible from entering into contracts with the Federal Government, or any State agency or local public body, or in receipt of a notice or proposed debarment from any Federal or State agency or local public body shall not be considered for award of a Contract on a Public Works Project during the period for which the Bidder is **suspended, debarred or declared ineligible**. Each Bidder shall execute and submit with the completed Bid Package the **Conflict of Interest and Debarment/Suspension Certification Form**, page **CIDF-1**.

1.8.3.14 WORKERS' COMPENSATION INSURANCE – NON-RESIDENT CONTRACTORS

Notice is given that in addition to the requirements of the General Conditions of the Contract, non-Resident Contractors shall comply with the provisions of Section 52-1-66 of the Workers' Compensation Act and Sections 59A-17-10.1, 59A-18-1, and 59A-18-12 of the Insurance Code, NMSA 1978, pertaining to the worker's compensation insurance policy and rate for employers not domiciled in New Mexico.

1.8.3.15 CONFLICT OF INTEREST; GOVERNMENTAL CONDUCT ACT

By submitting its bid, the **Contractor** warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the agreement. The **Contractor** certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a current or former "public officer or employee" have been followed.

1.8.3.16 BID CHECKLIST

Delivery of **Bid Packages** to EMW Gas Association is the sole responsibility of the Bidder. **Bid Packages** received after the time specified in the *Advertisement for Proposals* shall not be considered and shall be returned to Bidder unopened. Oral, faxed, telephonic, or telegraphic bids are invalid and will not receive consideration.

Bid submission packet shall include the following:

- APPENDIX B: BID FORM (through the signature page)**
- APPENDIX C: FORM OF ACKNOWLEDGEMENT & CONTRACT EXCEPTIONS**
- APPENDIX F: STATEMENT OF BIDDER'S QUALIFICATIONS (PART ONE ONLY)**
- BID BOND(S) provided at page BB-1 (in the sum of 5% bid)**
- Conflict of Interest and Debarment/Suspension Certification Form, form provided at page CIDF-1**
- Bidder's Listing of Subcontractors**

1.9 BID VALIDITY

The Contractor's bid shall remain valid for 90 days after the closing date of this Invitation to Bid and, if accepted, through the completion of the WORK.

1.10 SIGNATURE REQUIREMENTS

Each **BID FORM (APPENDIX B)** shall be signed by a duly authorized officer of the Contractor's firm. If Contractor is a corporation, the bid must be signed in its name and on its behalf and under seal by a duly authorized officer of the corporation and shall be accomplished by a certified copy of a resolution of Contractor authorizing such execution. The office held by the signing officer shall be shown

1.11 CLARIFICATIONS AND EXCEPTIONS

The Contractor shall clearly state any clarifications or exceptions to this RFP and provide support documents on **APPENDIX C: FORM OF ACKNOWLEDGEMENT AND CONTRACTOR'S LIST OF CONTRACT EXCEPTIONS**. This includes the Contractor's, as well as the Lower-Tier Sub-Contractor's clarifications and exceptions.

1.12 DRAWINGS

Contractor may include any drawings in support of their bid.

2.0 CONTRACT TERMS

2.1 DUTIES AND TAXES

Bids must include all duties and taxes. The Contract price shall include any and all Federal, State and Local taxes, excises, duties, assessments, and other charges of any kind arising out of Contractor's performance of this Work, excluding New Mexico gross receipt taxes.

2.2 PERMITS

Contractor shall assume that all environmental; right-of-way, regulatory, excavation, street cut and related permits will be obtained by EMW for Torrance County. However, Contractor will be required to obtain all permits required in Torrance County. These include Barricading, Excavation and Traffic Control Plans to name the major three. EMW will reimburse Contractor for the Torrance County permits. Contractor shall secure all other construction, hauling and transportation, noise, dust, and traffic control permits required by State and local authorities.

2.3 PAYMENT SCHEDULE

Contractor shall submit invoicing for completed work on an EMW approved monthly schedule. Progress billings based on this payment schedule will require sufficient documentation in terms of physical progress to verify the reasonableness of the payment. EMW will make final payment once the Affidavit of Completion (Appendix D) is signed and dated for this project.

2.4 CHANGES IN THE WORK

Without invalidating this Contract, EMW may, at any time, without notice to any sureties, by written unilateral order designated or indicated to be a change order, make any change in, addition to, or deletion from the Work within the general scope of this Contract, including but not limited to, changes:

- 2.4.1 In the specifications (including drawings and designs);
- 2.4.2 In acceleration of Work;
- 2.4.3 In the method or manner of performance of the Work;
- 2.4.4 In EMW - furnished facilities, equipment, materials, services, or site; or
- 2.4.5 Start-up assistance.

Except as provided above, no order, statement or conduct of EMW or its agents shall constitute a change under this Section or entitle Contractor to an equitable adjustment.

If any Change Order causes an increase or decrease in Contractor's cost or time required for the performance of any part of the Work an equitable adjustment shall be made. If Contractor intends to assert such a claim for an equitable adjustment, it must, within seven (7) days after receipt of a written Change Order, submit to EMW a written statement setting forth the general nature and monetary extent of such claim. Failure to provide such written statement within

seven (7) days shall constitute a conclusive presumption that no equitable adjustment is claimed or warranted. No dispute here under shall interfere with the progress of the Work and Contractor shall continue such Work despite such dispute so long as EMW continues to pay to Contractor all funds not in dispute.

It is the Contractor's responsibility to notify his Surety of any changes affecting the general scope of the Contract Work or change in the Contract price and the amount of the applicable bonds shall be adjusted accordingly. The Contractor will furnish proof of such adjustment to EMW request.

2.5 INSURANCE AND BONDING

A Performance Bond and Labor and Material Payment Bond shall be required as security under this contract. Such bonds shall conform to the requirements of Section 5 of the General Conditions. Insurance shall conform to the requirements of Section 5 of the General Conditions.

2.6 ALCOHOL AND SUBSTANCE ABUSE

Alcohol and Substance Abuse shall conform to the requirements of US Department of transportation Drug Testing Programs - CFR Part 199.

2.7 REPORTS AND TIMING COMMITMENTS

Contractor agrees that it shall complete the entire Work Scope (with the exception of final cleanup), within 75 work days of the notice to proceed or by December 31, 2020 whichever the later. Adjustments to the schedule will be allowed for weather conditions, which prevent construction.

The general construction of the Work will be done in accordance with Section 7.0, entitled "Schedule".

Contractor agrees to submit to EMW on a bi-weekly basis until completion, updates to its schedule, which updates shall be accompanied by Contractor's projected manpower requirements for construction. EMW shall have the right to request from Contractor that an activity, or group of activities, or the interrelationship of activities, be addressed in greater detail as EMW may reasonably require.

2.8 CONSTRUCTION

Fabrication, storage, warehousing and parking areas shall be developed by the Contractor for EMW approval prior to moving to the site.

The Contractor will abide by all safety rules and regulations included in Section 8.0. This includes suitable fire protection arrangements. Contractor will provide for first-aid facilities including emergency provisions.

The Contractor is responsible for the return of excess material to EMW Moriarty warehouse facility.

EMW reserves the right to inspect all phases of the site work to assure conformity to the job specifications. The Contractor and EMW will establish a series of benchmarks for witnessing all key phases of construction through mechanical completion and commissioning.

Contractor shall enforce strict construction safety practices in accordance with OSHA, local and industry standards.

2.9 MECHANICAL COMPLETION

Mechanical Completion shall be considered complete when all construction, testing and tie-ins are complete all necessary inspections by EMW are finished and the Contractor has corrected all deficiencies to EMW's satisfaction.

2.10 FLOW DOWN CLAUSES

The Contractor will cause the foregoing provisions to be inserted in all Lower-Tier Subcontracts for any work covered by this Contract so that such provisions will be binding upon each Lower-Tier Contract so that such provisions will be binding upon each Lower-Tier Subcontractor, provided that the foregoing provisions shall not apply to any contracts or subcontracts for standard commercial suppliers of raw materials. The Contractor will require any Subcontractors to comply with all the applicable safety requirements and those listed in Section 8.0.

Prior to execution of the Contract, the Contractor shall bring to the attention of EMW all apparent conflicts between the invitation to bid, specifications, drawings, and the Contract.

3.0 EXECUTION: AWARDED CONTRACTOR REQUIREMENTS

3.1.1 BONDS AND INSURANCE CERTIFICATES

Simultaneously with the Contractor's delivery of the executed Contract, the **Contractor** shall furnish separate surety bonds each in the amount of one hundred percent (100%) of the total Contract Price, as follows: A **Performance Bond** as security for the faithful performance of the Contract; and a **Labor and Material Payment Bond** for the payment of all labor and materials. The sureties on such bonds shall be duly authorized to conduct business in the State of New Mexico and acceptable to **EMW**, and shall be named in the current U.S. Department of the Treasury's Listing of Approved Sureties, Circular 570. In addition, the Contractor shall furnish certificates of insurance as required by the General Conditions.

3.2 LICENSING & QUALIFICATION

Contractor must submit a completed, notarized copy of **FORM E-1 STATEMENT OF BIDDER'S QUALIFICATIONS PART II (Appendix E)**.

3.3 GUARANTEE PROVISIONS

The **Contractor** shall guarantee the Work as provided in the Contract Documents.

3.4 SUBSTITUTIONS

In the construction of this Project, if EMW has a preference for any process, type of equipment or kind of material, it will be indicated in the appropriate Technical Specification; otherwise, **EMW** will consider all processes, types of equipment or kinds of material offered on an equal competitive basis if they are in fact the equal to that specified and will accomplish the purpose intended. EMW reserves the right to be the sole judge as to whether or not a different process, type of equipment or kind of material offered is in fact the equal to that specified.

3.5 WORK WEEK

The work-week for all projects shall normally be five (5) days per week. The Contractor shall state the expected work week in terms of both days per week and hours per day, and state scheduled holidays.

3.6 LOWER-TIER SUBCONTRACTORS/SUPPLIERS

The Contractor shall include a list of all Lower-Tier Subcontractors and Suppliers planned for the project subject to the approval of EMW. Once approved, the list shall not be changed without permission of EMW.

3.7 TEMPORARY OFFICE FACILITIES

Not Required

3.8 SAFETY

The Contractor shall include safety statistics for the past (3) three years for construction work only. Statistics shall include OSHA recordable and lost time accidents, man-hours worked, incident rates and experience modifiers for each year.

3.9 ALCOHOL AND SUBSTANCE ABUSE

Drug and substance abuse testing will be required for all personnel. The Contractor shall submit a current drug and alcohol plan which conforms to CFR Part 199. All employees of the contractor to be used as part of this project must be tested and qualified under the plan.

3.10 INSURANCE AND BONDING

A copy of insurance and bond certificates, which meet the conditions of **APPENDIX G: GENERAL CONDITIONS**, must be submitted to EMW prior to any construction activity taking place by the contractor.

3.11 TAXPAYER IDENTIFICATION NUMBER & CERTIFICATION

Simultaneously with his delivery of the executed contract, the Contractor awarded this contract shall complete and execute a **Form W-9, Request for Taxpayer Identification Number and Certification**.

3.12 GROSS RECEIPTS TAX SURETY BOND

Section 7-1-55 NMSA 1978 provides that any person engaged in the construction business **who does not have its principal place of business in New Mexico** and enters into a prime construction contract to be performed in this state, the gross receipts taxes to be paid on which would be in excess of \$50,000, shall at the time such contract is entered into, furnish the New Mexico Taxation and Revenue Department with a surety bond, or other acceptable security, in a sum equivalent to the gross receipts to be paid under the Contract multiplied by the applicable rate of the gross receipts tax imposed by Section 7-9-4 NMSA1978, plus the applicable rate of local gross receipts taxes, to secure payment of the tax imposed on the gross receipts from the Contract, and shall obtain a certificate from the New Mexico Taxation & Revenue Department that the requirements of this section have been met.

4.0 BID FORMS

4.1 BID FORM

The following pipeline installation cost schedule shall be used as the basis for the Contractor's bid. Extended costs shall be computed for those items that have definite requirements. Unit costs shall be given for all other work and will be used as a basis for billing when such work is encountered. Refer to the applicable specifications for detailed requirements.

4.1.1. INSTALLATION OF PIPELINE

The following costs shall be based on providing all qualified labor, equipment, material and supplies required to provide the piping installation as indicated in the drawings and specifications.

Total Pipeline Installation Bid: _____

4.1.2. INSTALLATION OF METERING STATION

The following costs shall be based on providing all qualified labor, equipment, materials (except meter, Y-strainer and flange insulating kit by EMW) and supplies required to provide the piping fabrication as indicated in the drawings and specifications. Price will include layout, fabrication, tie-ins, piping supports, grading, graveling, sandblast and painting of the entire station.

Total Metering Station Bid: _____

4.1.3. INSTALLATION OF BORES

This item covers the installation of three bores across NM Highway #41 (about 150 feet), Eunice Street (about 96 feet) and Hazel Street (about 60 feet). Contractor shall state price per foot. Payment will be made on actual bore footage. Contractor will supply bore pipe with ARO coating. Bore pipe will be 4-inch, 0.237 inch wall, Grade X-46 or greater.

Bore price per foot Bid: _____

4.1.4. PRESSURE TESTING

The following costs shall be based on providing all qualified labor, equipment and supplies required to pressure test the installed pipeline facility. It is preferred to pressure test the entire pipeline facility with one test.. At the tie-in at Hwy #41, the Contractor should test enough 4-inch line pipe so if short pipe sections are needed on either side of the tie-in tee the pipe will be tested. At the meter station, the Contractor can test through the Y-strainer and all valves. A spool will need to be made to replace the meter. The entire pipeline facility shall be tested to 300 psig with air or nitrogen for 8 hours on a recording chart that has both pressure and temperature. The pipeline facility can be tested separately from the meter station. This test would also be an 8 hour test. The meter station can be tested separately with a 4 hour test.

TOTAL PRESSURE TESTING PRICE BID _____

4.1.5 Performance and Payment Bond Lump Sum _____

4.1.6. Bid Bond Lump Sum _____

4.1.7 Sub Total (4.1.1 to 4.1.4) _____

4.1.8 NMGRT Taxes (Labor Only) @7.6875 Location Code 22-223 _____

4.1.9 TOTAL BID FOR PROJECT _____

4.2 FORM OF ACKNOWLEDGMENT AND CONTRACTOR'S LIST OF CONTRACT EXCEPTIONS

(Also provided as Appendix D)

If Contractor is successful and awarded a Contract, Contractor agrees to, and warrants ability to perform requested services within the specified time limitations.

Company Name: _____

Name of Individual Preparing Bid: _____

Signature: _____ Date: _____

Title: _____

CONTRACTOR'S LIST OF CONTRACT EXCEPTIONS:

5.0 SCOPE OF WORK

5.1 GENERAL

The Work covered by this Invitation to Bid shall include total responsibility for providing the supervision, labor, subcontracts, equipment, tools, and supplies necessary to install and complete the Project and/or any combination of the Projects as described in Section 1.1 above.

5.2 SITE LOCATION

The Work is located in Torrance County, New Mexico.

5.3 PROJECT SCOPE

EMW Gas Association (EMW) will be installing a 4-Inch Expansion Project in Moriarty, NM. **The Work will be completed by December 31, 2020.** The Work covered under this contract will be as described in Section 1.1 above.

The right-of-way includes public road easement and private easement.

EMW will furnish the ultrasonic gas meter, gaskets and bolts for the meter, Y-strainer and a 4-inch ANSI 150 flange isolation kit. The Contractor will furnish all remaining material for the project.

The following Scope of Work is to be accomplished as part of the project and will be completed in accordance with the Schedule in Section 7.0.

5.3.1 PRE-CONSTRUCTION CONFERENCE

The awarded Contractor must be present for a pre-construction conference to be held at EMW Moriarty Shop (409 Roosevelt, Moriarty, NM 87035) on **Monday, October 19, 2020 at 10 a.m.**

5.3.2 WELDING PROCEDURE QUALIFICATION

Prior to the beginning of construction, the Contractor shall provide labor, equipment and pipe (12-inch X-52, 0.250 inch wall) for the qualification of a multi branch weld qualification test for the project. This work shall be at the Contractors expense. In addition, if Contractor has a welder who has a current New Mexico Gas Company multi-branch qualification test record, this will be acceptable for the project.

5.3.3 Final completion, testing and final tie-ins shall be completed no later than **December 31, 2020 or 75 workdays after Notice to proceed whichever the later.**

5.3.4 The Contractor shall be responsible for the complete clean-up of the right of way.

Final clean-up shall be completed by the Contractor on or before December 31, 2020.

5.4 ITEMS PROVIDED BY:

5.4.1 EMW GAS ASSOCIATION

The following items will be furnished by EMW for use by the Contractor in construction of this project. The approximate delivery dates and delivery points are noted below. The Contractor will be responsible for receiving, unloading, storing, retrieving, transporting to the work site and maintaining all EMW furnished materials and equipment after issue from EMW Moriarty warehouse facility.

<u>Item</u>	<u>Estimated Date</u>	<u>Delivery Location</u>
Untrasonic Gas Meter	Available now	Moriarty Shop
Gaskets and Bolts	Available now	Moriarty Shop
Y-Strainer	Available now	Moriarty Shop
Flange Insulating Kit – 4”	Available now	Moriarty Shop

5.4.2 THE CONTRACTOR

The following items will be furnished by the Contractor for use in construction of this project.

Item

All material listed on the drawings except what is provided by EMW that is listed above.

Also all girth welds to coated with Polyken 1027 primer and Polyken 930-35 tape.

All girth welds on the Bore Pipe to be coated with Dirax shrink sleeves.

Valve boxes are manufactured by Handley Industries.

Pipe supports are manufactured by E-Z Line pipe supports.

Valves are manufactured by Balon Valves.

Pipe, fittings and miscellaneous material shall be domestic.

No substitutions.

5.5 KEY PERSONNEL

EMW will designate a Project Manager who will act on EMW's behalf with respect to the reviews and approvals connected with the Contractor's work and shall be the primary contact between EMW and Contractor concerning the project.

The Contractor shall designate a Project Superintendent who will, act on the Contractor's behalf, is responsible for the daily direction of work activities of the Contractor and will conform to all specifications, drawings and contractual obligations as part of this contract.

The Contractor shall designate a Project Safety Representative who will, act on the Contractor's behalf, is responsible for insuring safe work activities of the Contractor.

EMW reserves the right to review and approve all phases of the work. **All Key Personnel shall be equipped with mobile telephones which provide coverage for the entire project area during the term of the Project.**

5.6 AMOUNT OF OPEN TRENCH

Project – All trench that is opened must be backfilled within 14 calendar days. Any trench left open after 14 days, Contractor will be required to provide, install and maintain nine-inch (9”) straw waddles around the spoil pile until the trench is backfilled. All road crossings by open cut must be opened and closed as soon as possible. All trench left open must be barricaded with lights to protect the public.

6.0 CORRESPONDENCE PROCEDURE

6.1 GENERAL REQUIREMENTS

This Section describes the procedures to be followed for communications between EMW, the successful Contractor, and third parties during the course of this project. The procedures have been selected to meet three basic objectives:

6.1.1 To provide assurance that the terms and requirements of the Contract are carried out in all respects and that an appropriate record is maintained.

6.1.2 To minimize the possibility of confusion or misunderstandings between the parties by documenting decisions and agreements.

6.1.3 To assure that all participants in the project have access to information and data needed to complete their work.

All correspondence between Contractor and EMW shall be initiated by the Contractor's Project Superintendent or EMW's Project Manager or designee of the Project Manager.

Scheduled day to day construction activities and changes will be approved by EMW Project Manager or designee of the Project Manager

6.2 NAMES AND ADDRESSES

6.2.1 All correspondence to Contractor will be directed as follows:

Contractor Name:
Address:
Attention: Project Superintendent:
Telephone:
Fax:

6.2.2 All Contractor correspondence to EMW will be directed as follows:

EMW Gas Association
PO Box 118
416 5th Street
Estancia, NM 87016
Phone: (505) 384-2369
Fax: (505) 384-2234
Attn.: Mr. Eddie O'Brien, EMW General Manager

7.0 SCHEDULE

7.1 The attached schedule has been developed for the purpose of conveying EMW's intention for the work. EMW will provide materials for use by the successful Contractor in the construction of this project. The expected delivery dates are as listed in Section 5.4.

As part of Contractor's offering, Contractor will need to explain in detail how the work will be coordinated and installed in support of the completion dates referring to milestones on the attached schedule.

After review of the scheduled activities and milestones Contractor determines that certain exceptions and/or modifications must be made to allow for a more efficient and cost effective bid proposal, Contractor shall prepare a revised construction schedule and submit an alternate schedule with the bid documents. **Any schedule that reflects extending the Mechanical Completion of the project completion date beyond December 31, 2020 will be considered grounds for rejection during the bid evaluation.**

7.2 SCHEDULE & KEY MILESTONES

7.2.1 Contract Award and Notice to Proceed – **September 18, 2020**

7.2.2 Pre-construction Conference Meeting– October 19, 2020

7.2.3 Project Begins – October 20, 2020

7.2.3 Final Project completion and clean-up to be no later than **December 31, 2020.**

8.0 SAFETY REQUIREMENTS

8.1 GENERAL

8.1.1 EMW expects the required work to be carried out in a safe manner. The successful Contractor's site representative shall be knowledgeable of all applicable safety rules, regulations and practices that relate to the assigned work. If necessary, a qualified safety representative should be contracted to fulfill this requirement.

8.1.2 The Contractor shall provide EMW with documentation of their accident incidence rate while performing work similar to that which EMW expects to perform. This rate shall be expressed as lost workday injuries and record able injuries per 100,000 man-hours worked. Lost workday and record able injuries shall be as defined for annual reporting in accordance with the Occupational Safety and Health Act of 1970. Said rate documentation shall be provided with Contractor's bid submittal.

8.1.3 The Contractor shall take all reasonable precautions to protect the workmen and the public and shall provide, where reasonable and necessary, barriers, guards, temporary bridges, lights, and watchmen. Contractor shall comply with any and all federal, state, county, and city laws and regulations as to methods to be used in protecting the public from injury or damage during operations.

8.1.4 The Contractor shall become familiar with the areas bordering the job site and the hazards that might be encountered therein. The Contractor should be prepared to cooperate fully with the local law enforcement and other regulatory bodies as required, and EMW Representative when requested to alter operations during times of emergency or when violating any of their regulations and rules.

8.1.5 Contractor shall comply with any and all applicable provisions of and amendments to the Williams-Steiger Occupational Safety and Health Act of 1970.

8.2 PRECAUTIONS ON THE JOB SITE

8.2.1 The Contractor shall provide fire extinguishers, fire blankets, first aid kits, and other safety equipment that may be required during the performance of the Work.

8.2.2 When excavating for piping or conduit, special care shall be taken to avoid all live buried lines, cathodic protection cables and conduit, and to maintain the specified minimum distance between existing conduits and pipe.

8.2.3 No welding or electrical work shall take place near existing piping until EMW Representative has given approval.

8.2.4 Areas of smoking, prefabrication of piping, etc. shall be designated by EMW and under no circumstances will these activities be allowed in undesignated areas.

8.2.5 During welding operations, two 30 lb. Ansul dry chemical fire extinguishers, furnished by the Contractor, shall be present at all times. If welding is done on "hot" lines, fire extinguishers shall be manned as long as welding is in progress. Hot welding will not be permitted without prior EMW approval.

8.2.6 Contractor shall conspicuously mark all open ditches. Contractor shall take sufficient preventative measures to protect livestock from open ditches, and equipment. Dangerous parts of machinery shall be indicated by safety colors or warning signs on Contractor equipment.

8.2.7 Local emergency telephone numbers for ambulance, fire department, and law enforcement agencies shall be posted in a prominent place in any temporary construction buildings and a copy retained by Contractor's site representative. Contractor shall have personnel trained in first aid on the job at all times when work is in progress. All heavy equipment shall have back -up alarms.

8.2.8 Contractor shall review traffic patterns in and around the jobsite. Contractor shall furnish any required road signs, flashers, and equipment warning signs. All equipment and vehicles shall be operated in a legal and safe manner. Contractor shall submit to EMW for approval, a traffic control plan detailing the types and amounts of construction traffic, road closings, traffic patterns, etc.

8.2.9 **All Contractors' personnel shall wear hard hats at all times.** Welders and welders' helpers will not have to wear hard hats if they are both wearing welding masks. Proper eye protection shall be required for all personnel working around welding and grinding operations. When required, approved fire retardant clothing will be supplied by the Contractor to all personnel affected by the requirement. When welding or any other construction work is taking place on "hot" lines, approved fire retardant clothing will be supplied by the Contractor to all personnel located at the "hot" tie in location. Fire retardant clothing will be provided by the Contractor at no additional cost to EMW. Failure to follow these requirements will be grounds for dismissal from the job.

8.2.10 Contractor shall prepare and submit to EMW for approval a safe work plan for all pipeline installation work to be performed near or under high voltage electrical power lines.

8.2.11 The Contractor shall conduct weekly safety meetings with all contract personnel and sub-contract personnel. EMW Project Manager and EMW representatives shall be notified in advance of these meetings.

8.3 ALCOHOL, FIREARMS AND DRUGS

Under no circumstances shall alcohol, firearms, or illegal drugs or substances of any type be present or carried in vehicles by Contractor's or EMW's personnel. Alcohol, drugs or firearms found in the possession of any person shall be grounds for dismissal of the person from the job. The Contractor shall submit for review by EMW their drug and alcohol plans in accordance with Federal DOT 199 requirements and The Contractor at EMW's request may be required to conduct random drug testing during the project period.

8.4 SITE SAFETY REPRESENTATIVE

The Contractor shall provide a full-time, on-site Safety Representative acceptable to EMW. The Contractor shall submit the Safety Representative's resume and credentials to EMW for their approval. The Contractor shall not remove or replace the approved Safety Representative without the prior written approval of EMW.

8.5 RIGHT OF WAY INTEGRITY

Under no circumstances shall the Contractor or EMW allow vehicles, equipment, or job materials be driven, parked, staged or stored outside of the right of way boundary. Failure to comply shall be grounds for dismissal of any responsible party. The Contractor shall be responsible for all off site and off right of way damages created by the Contractors employees, subcontractors, suppliers or equipment.

9.0 EXCEPTIONS & CONTRACT DOCUMENT CONFLICTS

9.1 EXCEPTIONS

9.1.1 No exceptions to this proposal are allowed unless requested in writing from the requesting party and approved in writing by EMW.

9.1.2 Any codes, regulations, or laws in a jurisdiction through which the pipeline passes, which are more stringent than this specification, shall take precedence over this specification.

9.2 CONTRACT DOCUMENT CONFLICTS

9.2.1 Should conflicts occur within the Contract Documents, the following Contract Documents shall govern in the order as given below:

1. Request for Proposal and Permits
2. Pipeline and Drawings
4. General Conditions and Construction Contract

9.2.2 All information, requirements, conditions and specifications without conflicts and those that govern in the case of each direct conflict as contained within each one of the Contract Documents shall collectively make up the Contract, and shall have equal importance within the Contract and shall be equally and collectively binding on the Contractor. The final decision on all conflicts shall be made by EMW Project Manager.

APPENDIX A
AGREEMENT BETWEEN OWNER AND CONTRACTOR ON THE BASIS OF A STIPULATED PRICE

THIS AGREEMENT is dated as of the _____ Day of _____ in the year 2020 by and between

EMW GAS ASSOCIATION (hereinafter called OWNER) and _____
 (hereinafter called CONTRACTOR). OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK.

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Project as described in Section 1.1 of the RFP

The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

As described in the document entitled: RFP #2020-2 EMW 4-Inch Expansion Project

Article 2. ENGINEER.

The Project has been designed by: **JK Associates, Inc.** who is hereinafter called ENGINEER and who is to act as OWNER's representative, assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

Article 3. CONTRACT TIMES.

3.1 The Work will be substantially completed on or before December 31, **2020** and completed and ready for final payment in accordance with paragraph 14.13 of the General Conditions on or before **December 31, 2020**.

3.1 The Work will be substantially completed within **60 workdays** after the date when the Contract Times commence, not to exceed **December 31, 2020** to run as provided in paragraph 2.3 of the General Conditions, and completed and

ready for final payment in accordance with paragraph 14.13 of the General Conditions within **75 workdays** after the date when the Contract Times commence to run, not to exceed **December 31, 2020**.

3.2 Liquidated Damages. OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER dollars (\$ 0.00) for each day that expires after the time specified in paragraph 3.1 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the time specified in paragraph 3.1 for completion and readiness for final payment or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER dollars (\$ 0.00) for each day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment.

Article 4. CONTRACT PRICE.

OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to paragraphs 4.1 and 4.2 below:

4.1 For all Lump Sum Price Work

Per Article 4 Contract Price – attached (\$ _____)
 Figures

All specific cash allowances are included in the above price and have been computed in accordance with paragraph 11.8 of the General Conditions.

4.2 For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated in this paragraph 4.2:

Per Article 4 Contract Price – attached (\$ _____)
 Figures

As provided in paragraph 11.9 of the General Conditions estimated quantities are not guaranteed, and determinations of actual quantities and classification are to be made by ENGINEER as provided in paragraph 9.10 of the General Conditions. Unit prices have been computed as provided in paragraph 11.9.2 of the General Conditions.

Article 5. PAYMENT PROCEDURES.

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

5.1. Progress Payments: CONTRACTOR shall make application for Payment no later than the 15th day of each month. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER, on or about the 30th day of each month during construction as provided in paragraphs 5.1.1 and 5.1.2 below. All such payments will be measured by the schedule of values established in

paragraph 2.9 of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

5.1.1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with paragraph

14.7 of the General Conditions.

100% of Work completed.

100% of materials and equipment incorporated in the Work

5.1.2. Upon Substantial Completion, in an amount sufficient to increase total payments to CONTRACTOR to 95 % of the Contract Price, less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with paragraph 14.7 of the General Conditions.

5.2. Final Payment. Upon final completion and acceptance of the Work in accordance with paragraph 14.13 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.13.

Article 6. INTEREST.

All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the maximum rate allowed by law at the place of the Project.

Article 7. CONTRACTOR'S REPRESENTATIONS.

In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

7.1. CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda listed in paragraph 8) and the other related data identified in the Bidding Documents including "technical data."

7.2. CONTRACTOR has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work.

7.3. CONTRACTOR is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work.

7.4. CONTRACTOR has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.2.1 of the General Conditions. CONTRACTOR accepts the "technical data" contained in such reports and drawings upon which CONTRACTOR is entitled to rely as provided in paragraph 4.2 of the General Conditions. CONTRACTOR acknowledges that such reports and drawings are not Contract Documents and may not be complete for CONTRACTOR's purposes. CONTRACTOR acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and

safety precautions and programs incident thereto. CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

7.5. CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the site that relates to the Work as indicated in the Contract Documents.

7.6. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.

7.7. CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

Article 8. CONTRACT DOCUMENTS.

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work consist of the following:

- 8.1. This Agreement (pages 1 to 5 inclusive).
- 8.2. Exhibits to this Agreement: Contractor's Bid Documents
- 8.3. Performance, Payment, and Bid Bonds, identified as exhibits
- 8.4. Notice to Proceed.
- 8.5. General Conditions (pages 1 TO 33 inclusive).
- 8.6. Drawings consisting of a cover sheet and sheets for Projects.
- 8.7. Any Addenda issued as part of this solicitation.
- 8.8. Complete CONTRACTOR's Bid
- 8.9. Documentation submitted by CONTRACTOR prior to Notice of Award.
- 8.10. Advertisement for Proposal
- 8.11. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying or supplementing the Contract Documents pursuant to paragraphs 3.5 and 3.6 of the General Conditions.

The documents listed in paragraphs 8.2 et seq. above are attached to this Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified or supplemented as provided in paragraphs 3.5 and 3.6 of the General Conditions.

Article 9. MISCELLANEOUS.

9.1. Terms used in this Agreement which are defined in Article I of the General Conditions will have the meanings indicated in the General Conditions.

9.2. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.3. OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

9.4. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with it valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in triplicate. One counterpart each has been delivered to OWNER, CONTRACTOR and ENGINEER. All portions of the Contract Documents have been signed, initialed or identified by OWNER and CONTRACTOR or identified by ENGINEER on their behalf.

This Agreement will be effective on October 15, 2020 __ (which is the Effective Date of the Agreement).

OWNER EMW Gas Association _____
_____ Estancia , NM

CONTRACTOR _____

By: _____

By: _____

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest _____

Attest _____

Address for giving notices

Address for giving notices

_____ EMW Gas Association

_____ 416 5th Street

_____ Estancia, NM

APPENDIX B: BID FORM

4.0 BID FORMS

4.1 BID FORM

The following pipeline installation cost schedule shall be used as the basis for the Contractor's bid. Extended costs shall be computed for those items that have definite requirements. Unit costs shall be given for all other work and will be used as a basis for billing when such work is encountered. Refer to the applicable specifications for detailed requirements.

4.1.1. INSTALLATION OF PIPELINE

The following costs shall be based on providing all qualified labor, equipment, material and supplies required to provide the piping installation as indicated in the drawings and specifications.

Total Pipeline Installation Bid: _____

4.1.2. INSTALLATION OF METERING STATION

The following costs shall be based on providing all qualified labor, equipment, materials (except meter, Y-strainer and flange insulating kit by EMW) and supplies required to provide the piping fabrication as indicated in the drawings and specifications. Price will include layout, fabrication, tie-ins, piping supports, grading, graveling, sandblast and painting of the entire station.

Total Metering Station Bid: _____

4.1.3. INSTALLATION OF BORES

This item covers the installation of three bores across NM Highway #41 (about 150 feet), Eunice Street (about 96 feet) and Hazel Street (about 60 feet). Contractor shall state price per foot. Payment will be made on actual bore footage. Contractor will supply bore pipe with ARO coating. Bore pipe will be 4-inch, 0.237 inch wall, Grade X-46 or greater.

Bore price per foot Bid: _____

4.1.4. PRESSURE TESTING

The following costs shall be based on providing all qualified labor, equipment and supplies required to pressure test the installed pipeline facility. It is preferred to pressure test the entire pipeline facility with one test.. At the tie-in at Hwy #41, the Contractor should test enough 4-inch line pipe so if short pipe sections are needed on either side of the tie-in tee the pipe will be tested. At the meter station, the Contractor can test through the Y-strainer and all valves. A spool will need to be made to replace the meter. The entire pipeline facility shall be tested to 300 psig with air or nitrogen for 8 hours on a recording chart that has both pressure and temperature. The pipeline facility can be tested separately from the meter station. This test would also be an 8 hour test. The meter station can be tested separately with a 4 hour test.

TOTAL PRESSURE TESTING PRICE BID _____

4.1.5 Performance and Payment Bond Lump Sum _____

4.1.6. Bid Bond Lump Sum _____

4.1.7 Sub Total (4.1.1 to 4.1.4) _____

4.1.8 NMGRT Taxes (Labor Only) @7.6875 Location Code 22-223 _____

4.1.9 TOTAL BID FOR PROJECT _____

PROJECT: SUBMISSION AUTHORITY SIGNATURE PAGE

1. Addenda: The **Bidder** acknowledges receipt of the following Addenda:

Addendum No.____ Dated_____ Addendum No.____ Dated_____

Addendum No.____ Dated_____ Addendum No.____ Dated_____

- 2.** The **Bidder** agrees that this Bid Proposal may not be withdrawn for a period of thirty (30) calendar days after the scheduled closing time for receipt of bids.
- 3.** The **Bidder** accepts all the terms and conditions contained in the Contract Documents.
- 4.** If the Contract is to be awarded, the **Owner** will give the apparent successful **Bidder** a Notice of Award within thirty (30) days after the scheduled closing time for receipt of bids.
- 5.** Within ten (10) days of **Bidder's** receipt of Notice of Award and accompanying Purchase Order, **Bidder** will execute and deliver contract documents to **Owner**.

We, the undersigned, have read all the requirements set forth in this bid proposal including the specifications, instructions, conditions, and pertinent information regarding the project, and we agree to complete this project at the prices stated.

This Bid Proposal is hereby respectfully submitted by:

Company Name of Bidder Date

Signature (*To be a valid Bid, Bidder must sign here*)

Printed Name Email Address

Title Fax Number

Address: Phone Number

APPENDIX C: FORM OF ACKNOWLEDGEMENT AND CONTRACTOR'S LIST OF CONTRACT EXCEPTIONS

If Contractor is successful and awarded a Contract, Contractor agrees to, and warrants ability to perform requested services within the specified time limitations.

Company Name: _____

Name of Individual Preparing Bid: _____

Signature: _____ Date: _____

Title: _____

CONTRACTOR'S LIST OF CONTRACT EXCEPTIONS:

APPENDIX D: CONTRACTOR’S AFFIDAVIT OF COMPLETION, PAYMENT OF DEBTS AND CLAIMS, AND RELEASE OF LIENS

Project Name: EMW 4-Inch Expansion Project
Project Number: 2020-2
Location: Torrance County, New Mexico

I CERTIFY to the best of my knowledge and belief that all work has been performed and materials supplied in strict accordance with the terms and conditions of the corresponding contract documents between EMW Gas Association, hereinafter called EMW, and, _____ hereinafter called the CONTRACTOR, for the above referenced project.

I further certify and declare that all bills for materials, supplies, utilities and for all other things furnished or caused to be furnished by the CONTRACTOR and used in the execution of the contract will be fully paid upon receipt of Final Payment and that there are no unpaid obligations, liens, claims, security interests, encumbrances, liabilities and/or demands of State Agencies, and EMW’s, subcontractors, material men, mechanics, laborers or any others resulting from or arising out of any work done, caused to be done or ordered to be done by the CONTRACTOR under the contract.

In consideration of the prior and final payments made and all payments made for authorized changes, the CONTRACTOR releases and forever discharges EMW from any and all obligations, liens, claims, security interests, encumbrances and/or liabilities arising by virtue of the contract and authorized changes between the parties, either verbal or in writing, and any and all claims and demands of every kind and character whatsoever against EMW, arising out of or in any way relating to the contract and authorized changes.

I further certify and agree that the warranty period is defined as commencing with Substantial Completion (or with each Substantial Completion if there is more than one) of the Project, or any portion thereof, and continuing for one (1) calendar year from the date of Final Acceptance of the entire project unless otherwise modified in writing as part of the Mechanical Completion and Final Acceptance.

This statement is made for the purpose of inducing EMW to make FINAL PAYMENT under the terms of the contract, relying on the truth and statements contained herein.

CONTRACTOR _____ (Seal)

Signature: _____

Name: _____

Title: _____

Subscribed and sworn to me this _____ Day of, _____

Month Year

NOTARY

Notary Public for the State of _____

My Commission Expires: _____

APPENDIX F: BIDDER'S STATEMENT OF QUALIFICATIONS

Contractors shall submit the following with their proposal:

1. Contractors shall submit their General Contractor's License Number.
2. Contractors shall submit the name of the qualifying person for their GF-09 License.
3. Contractors shall submit the name(s) of the third party entity they use to qualify their employees pursuant to the Federal Pipeline Safety Regulations. This is the OQ regulation.
4. Contractors shall submit the name of the third party that administers their Drug and Alcohol Plan.
5. Contractor shall submit at least two previous project that were similar to this project.

APPENDIX G: GENERAL CONDITIONS

ARTICLE I - DEFINITIONS

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

1.1. **Addenda** - Written or graphic instruments issued prior to the opening of Bids which clarify, correct or change the Bidding Requirements or the Contract Documents.

1.2. **Agreement** - The written contract between EMW and CONTRACTOR covering the Work to be performed; other Contract Documents are attached to the Agreement and made a part thereof as provided therein.

1.3. **Application for Payment** - The form accepted by ENGINEER which is to be used by CONTRACTOR in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

1.4. **Asbestos** - Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

1.5. **Bid** - The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

1.6. **Bidding Documents** - The advertisement or invitation to Bid, instructions to bidders, the Bid form, and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

1.7. **Bidding Requirements** - The advertisement or invitation to Bid, instructions to bidders, and the Bid form.

1.8. **Bonds** - Performance and Payment bonds and other instruments of security.

1.9. **Change Order** - A document recommended by ENGINEER, which is signed by CONTRACTOR and EMW and authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

1.10. **Contract Documents** - The Agreement, Addenda (which pertain to the Contract Documents), CONTRACTOR's Bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Request for Quotation, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders and ENGINEER's written interpretations and clarifications issued pursuant to paragraphs 3.5, 3.6.1, and 3.6.3 on or after the Effective Date of the Agreement. Shop Drawing submittals approved pursuant to paragraphs 6.26 and 6.27 and the reports and drawings referred to in paragraphs 4.2.1.1 and 4.2.2.2 are not Contract Documents.

1.11. **Contract Price** - The moneys payable by EMW to CONTRACTOR for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of paragraph 11.9.1 in the case of Unit Price Work).

1.12. **Contract Times** - The numbers of days or the dates stated in the Agreement: (i) to achieve Substantial Completion, and (ii) to complete the Work so that it is ready for final payment as evidenced by ENGINEER's written recommendation of final payment in accordance with paragraph 14.13.

1.13. **CONTRACTOR** - The person, firm or corporation with whom EMW has entered into the Agreement.

1.14. **Defective** - An adjective which when modifying the word Work refers to Work that is unsatisfactory, faulty or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to ENGINEER's recommendation of final payment

(unless responsibility for the protection thereof has been assumed by EMW at Substantial Completion in accordance with paragraph 14.8 or 14.10).

1.15. **Drawings** - The drawings which show the scope, extent and character of the Work to be furnished and performed by CONTRACTOR and which have been prepared or approved by ENGINEER and are referred to in the Contract Documents. Shop drawings are not Drawings as so defined.

1.16. **Effective Date of the Agreement** - The date indicated in the Agreement on which it becomes effective, but if no such date is indicated it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

1.17. **ENGINEER** - The person, firm or corporation named as such in the Agreement.

1.18. **ENGINEER's Consultant** - A person, firm or corporation having a contract with ENGINEER to furnish services as ENGINEER's independent professional associate or consultant with respect to the Project and who is identified as such in the Supplementary Conditions.

1.19. **Field Order** - A written order issued by ENGINEER which orders minor changes in the Work in accordance with paragraph 9.5 but which does not involve a change in the Contract Price or the Contract Times.

1.20. **General Requirements** - Sections of Division 1 of the Specifications.

1.21. **Hazardous Waste** - The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

1.22. **Laws and Regulations; Laws or Regulations** - Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.

1.23. **Liens** - Liens, charges, security interests or encumbrances upon real property or personal property.

1.24. **Milestone** - A principal event specified in the Contract Documents relating to an intermediate

completion date or time prior to Substantial Completion of all the Work.

1.25. **Notice of Award** - The written notice by EMW to the apparent successful bidder stating that upon compliance by the apparent successful bidder with the conditions precedent enumerated therein, within the time specified, EMW will sign and deliver the Agreement.

1.26. **Notice to Proceed** - A written notice given by EMW to CONTRACTOR (with a copy to ENGINEER) fixing the date on which the Contract Times will commence to run and on which CONTRACTOR shall start to perform CONTRACTOR's obligations under the Contract Documents.

1.27. **EMW** - The public body or authority, corporation, association, firm or person with whom CONTRACTOR has entered into the Agreement and for whom the Work is to be provided.

1.28. **Partial Utilization** - Use by EMW of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

1.29. **PCBs** - Polychlorinated biphenyls.

1.30. **Petroleum** - Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Wastes and crude oils.

1.31. **Project** - The total construction of which the Work to be provided under the Contract Documents may be the whole, or a part as indicated elsewhere in the Contract Documents

1.32. **Radioactive Material-Source** - Special nuclear, or by product material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

1.33. **Resident Project Representative** - The authorized representative of ENGINEER who may be assigned to the site or any part thereof.

1.34. **Samples** - Physical examples of materials, equipment, or workmanship that are representative

of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

1.35. **Shop Drawings** - All drawings, diagrams, illustrations, schedules and other data or information which are specifically prepared or assembled by or for CONTRACTOR and submitted by CONTRACTOR to illustrate some portion of the Work.

1.36. **Specifications** - Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

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

1.38. **Substantial Completion** - The Work (or a specified part thereof) has progressed to the point where, in the opinion of ENGINEER as evidenced by ENGINEER's definitive certificate of Substantial Completion, it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended; or if no such certificate is issued, when the Work is complete and ready for final payment as evidenced by ENGINEER's written recommendation of final payment in accordance with paragraph 14.13. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

1.39. **Supplementary Conditions** - The part of the Contract Documents which amends or supplements these General Conditions.

1.40. **Supplier** - A manufacturer, fabricator, supplier, distributor, material man or vendor having a direct contract with CONTRACTOR or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by CONTRACTOR or any Subcontractor.

1.41. **Underground Facilities** - All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed

underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.

1.42. **Unit Price Work** - Work to be paid for on the basis of unit prices.

1.43. **Work** - The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials and equipment into the construction, and performing or furnishing services and furnishing documents, all as required by the Contract Documents.

1.44. **Work Change Directive** - A written directive to CONTRACTOR, issued on or after the Effective Date of the Agreement and signed by EMW and recommended by ENGINEER, ordering an addition, deletion or revision in the Work, or responding to differing or unforeseen physical conditions under which the Work is to be performed as provided in paragraph 4.2 or 4.3 or to emergencies under paragraph 6.23. A Work Change Directive will not change the Contract Price or the Contract Times, but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times as provided in paragraph 10.2.

1.45. **Written Amendment** - A written amendment of the Contract Documents, signed by EMW and CONTRACTOR on or after the Effective Date of the Agreement and normally dealing with the nonengineering or nontechnical rather than strictly construction-related aspects of the Contract Documents.

ARTICLE 2 - PRELIMINARY MATTERS

Delivery of Bonds:

2.1. When CONTRACTOR delivers the executed Agreements to EMW, CONTRACTOR shall also deliver to EMW such Bonds as CONTRACTOR may

be required to furnish in accordance with paragraph 5.1.

Copies of Documents:

2.2. EMW shall furnish to CONTRACTOR up to five copies (unless otherwise specified in the Supplementary Conditions) of the Contract Documents as are reasonably necessary for the execution of the Work. Additional copies will be furnished upon request, at the cost of reproduction.

Commencement of Contract Times; Notice to Proceed:

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

Starting the Work:

2.4. CONTRACTOR shall start to perform the Work on the date when the Contract Times commence to run, but no Work shall be done at the site prior to the date on which the Contract Times commence to run.

Before Starting Construction:

2.5. Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. CONTRACTOR shall promptly report in writing to ENGINEER any conflict, error, ambiguity or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from ENGINEER before proceeding with any Work affected thereby; however, CONTRACTOR shall not be liable to EMW or ENGINEER for failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents, unless CONTRACTOR knew or reasonably should have known thereof.

2.6. Within ten days after the Effective Date of the Agreement (unless otherwise specified in the

General Requirements), CONTRACTOR shall submit to ENGINEER for review:

2.6.1. a preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2.6.2. a preliminary schedule of Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing and processing such submittal;

2.6.3. a preliminary schedule of values for all of the Work which will include quantities and prices of items aggregating the Contract Price and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.7. Before any Work at the site is started, CONTRACTOR and EMW shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which CONTRACTOR and EMW respectively are required to purchase and maintain in accordance with paragraphs 5.4, 5.6 and 5.7.

Preconstruction Conference:

2.8. Within twenty days after the Contract Times start to run, but before any Work at the site is started, a conference attended by CONTRACTOR, ENGINEER and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in paragraph 2.6, procedures for handling Shop Drawings and other submittals, processing Applications for Payment and maintaining required records.

Initially Acceptable Schedules:

2.9. Unless otherwise provided in the Contract Documents, at least ten days before submission of the first Application for Payment a conference attended by CONTRACTOR, ENGINEER and others as appropriate will be held to review for acceptability to ENGINEER as provided below the

schedules submitted in accordance with paragraph 2.6. CONTRACTOR shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to CONTRACTOR until the schedules are submitted to and acceptable to ENGINEER as provided below. The progress schedule will be acceptable to ENGINEER as providing an orderly progression of the Work to completion within any specified Milestones and the Contract Times, but such acceptance will neither impose on ENGINEER responsibility for the sequencing, scheduling or progress of the Work nor interfere with or relieve CONTRACTOR from CONTRACTOR's full responsibility therefor. CONTRACTOR's schedule of Shop Drawing and Sample submissions will be acceptable to ENGINEER as providing a workable arrangement for reviewing and processing the required submittals. CONTRACTOR's schedule of values will be acceptable to ENGINEER as to form and substance.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT,
AMENDING, REUSE

Intent:

3.1. The Contract Documents comprise the entire agreement between EMW and CONTRACTOR concerning the Work. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the law of the place of the Project.

3.2. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be furnished and performed whether or not specifically called for. When words or phrases which have a well-known technical or construction industry or trade meaning are used to describe Work, materials or equipment, such words or phrases shall be interpreted in accordance with that meaning. Clarifications and interpretations of the Contract Documents shall be issued by ENGINEER as provided in paragraph 9.4.

3.3. Reference to Standards and Specifications of Technical Societies; Reporting and Resolving Discrepancies:

3.3.1. Reference to standards, specifications, manuals or codes of any technical society, organization or association, or to the Laws or Regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard, specification, manual, code or Laws or Regulations in effect at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

3.3.2. If, during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity or discrepancy within the Contract Documents or between the Contract Documents and any provision of any such Law or Regulation applicable to the performance of the Work or of any such standard, specification, manual or code or of any instruction of any Supplier referred to in paragraph 6.5, CONTRACTOR shall report it to ENGINEER in writing at once, and, CONTRACTOR shall not proceed with the Work affected thereby (except in an emergency as authorized by paragraph 6.23) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in paragraph 3.5 or 3.6; provided, however, that CONTRACTOR shall not be liable to EMW or ENGINEER for failure to report any such conflict, error, ambiguity or discrepancy unless CONTRACTOR knew or reasonably should have known thereof.

3.3.3. Except as otherwise specifically stated in the Contract Documents or as may be provided by amendment or supplement thereto issued by one of the methods indicated in paragraph 3.5 or 3.6, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity or discrepancy between the provisions of the Contract Documents and:

3.3.3.1. the provisions of any such standard, specification, manual, code or instruction (whether or not specifically incorporated by reference in the Contract Documents); or

3.3.3.2. the provisions of any such Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the

provisions of the Contract Documents would result in violation of such Law or Regulation).

No provision of any such standard, specification, manual, code or instruction shall be effective to change the duties and responsibilities of EMW, CONTRACTOR or ENGINEER, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to EMW, ENGINEER or any of ENGINEER's Consultants, agents or employees any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of paragraph 9.13 or any other provision of the Contract Documents.

3.4. Whenever in the Contract Documents the terms "as ordered," "as directed," "as required," "as allowed," "as approved" or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper" or "satisfactory" or adjectives of like effect or import are used to describe a requirement, direction, review or judgment of ENGINEER as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to ENGINEER any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.13 or any other provision of the Contract Documents.

Amending and Supplementing Contract Documents:

3.5. The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

- 3.5.1. a formal Written Amendment,
- 3.5.2. a Change Order (pursuant to paragraph 10.4), or
- 3.5.3. a Work Change Directive (pursuant to

paragraph 10.1).

3.6. In addition, the requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, in one or more of the following ways:

- 3.6.1. a Field Order (pursuant to paragraph 9.5),
- 3.6.2. ENGINEER's approval of a Shop Drawing or Sample (pursuant to paragraphs 6.26 and 6.27), or
- 3.6.3. ENGINEER's written interpretation or clarification (pursuant to paragraph 9.4).

Reuse of Documents:

3.7. CONTRACTOR, and any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with EMW (i) shall not have or acquire any title to or EMWship rights in any of the Drawings, Specifications or other documents (or copies of any thereof) prepared by or bearing the seal of ENGINEER or ENGINEER's Consultant, and (ii) shall not reuse any of such Drawings, Specifications, other documents or copies on extensions of the Project or any other project without written consent of EMW and ENGINEER and specific written verification or adoption by ENGINEER.

ARTICLE 4 - AVAILABILITY OF LANDS;
SUBSURFACE AND PHYSICAL CONDITIONS;
REFERENCE POINTS

Availability of Lands:

4.1. EMW shall furnish, as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for the use of CONTRACTOR. Upon reasonable written request, EMW shall furnish CONTRACTOR with a correct statement of record legal title and legal description of the lands upon which the Work is to be performed and EMW's interest therein as

necessary for giving notice of or filing a mechanic's lien against such lands in accordance with applicable Laws and Regulations. EMW shall identify any encumbrances or restrictions not of general application but specifically related to use of lands so furnished with which CONTRACTOR will have to comply in performing the Work. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by EMW, unless otherwise provided in the Contract Documents. If CONTRACTOR and EMW are unable to agree on entitlement to or the amount or extent of any adjustments in the Contract Price or the Contract Times as a result of any delay in EMW's furnishing these lands, rights-of-way or easements, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.2. Subsurface and Physical Conditions:

4.2.1 Reports and Drawings: Reference is made to the Supplementary Conditions for identification of:

4.2.1.1. Subsurface Conditions: Those reports of explorations and tests of subsurface conditions at or contiguous to the site that have been utilized by ENGINEER in preparing the Contract Documents; and

4.2.1.2. Physical Conditions: Those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) that have been utilized by ENGINEER in preparing the Contract Documents.

4.2.2. Limited Reliance by CONTRACTOR Authorized; Technical Data: CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," CONTRACTOR may not rely upon or make any claim against EMW, ENGINEER or any of ENGINEER's Consultants with respect to:

4.2.2.1. the completeness of such reports and drawings for CONTRACTOR's purposes, including,

but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto, or

4.2.2.2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings, or

4.2.2.3. any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any such data, interpretations, opinions or information.

4.2.3. Notice of Differing Subsurface or Physical Conditions:

If CONTRACTOR believes that any subsurface or physical condition at or contiguous to the site that is uncovered or revealed either:

4.2.3.1. is of such a nature as to establish that any "technical data" on which CONTRACTOR is entitled to rely as provided in paragraphs 4.2.1 and 4.2.2 is materially inaccurate, or

4.2.3.2. is of such a nature as to require a change in the Contract Documents, or

4.2.3.3. differs materially from that shown or indicated in the Contract Documents, or

4.2.3.4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents; then

CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as permitted by paragraph 6.23), notify EMW and ENGINEER in writing about such condition. CONTRACTOR shall not further disturb such conditions or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

4.2.4. ENGINEER's Review: ENGINEER will promptly review the pertinent conditions, determine the necessity of EMW's obtaining additional exploration or tests with respect thereto and advise EMW in writing (with a copy to

CONTRACTOR) of ENGINEER's findings and conclusions.

4.2.5. Possible Contract Documents Change: If ENGINEER concludes that a change in the Contract Documents is required as a result of a condition that meets one or more of the categories in paragraph 4.2.3., a Work Change Directive or a Change Order will be issued as provided in Article 10 to reflect and document the consequences of such change.

4.2.6. Possible Price and Times Adjustments: An equitable adjustment in the Contract Price or in the Contract Times, or both, will be allowed to the extent that the existence of such uncovered or revealed condition causes an increase or decrease in CONTRACTOR's cost of, or time required for performance of, the Work; subject, however, to the following:

4.2.6.1. such condition must meet any one or more of the categories described in paragraphs 4.2.3.1 through 4.2.3.4, inclusive;

4.2.6.2. a change in the Contract Documents pursuant to paragraph 4.2.5 will not be an automatic authorization of nor a condition precedent to entitlement to any such adjustment;

4.2.6.3. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of paragraphs 9. 10 and 11.9; and

4.2.6.4. CONTRACTOR shall not be entitled to any adjustment in the Contract Price or Times if:

4.2.6.4.1. CONTRACTOR knew of the existence of such conditions at the time CONTRACTOR made a final commitment to EMW in respect of Contract Price and Contract Times by the submission of a bid or becoming bound under a negotiated contract; or
4.2.6.4.2. the existence of such condition could reasonably have been discovered 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 CONTRACTOR prior to CONTRACTOR's making such final commitment; or

4.2.6.4.3. CONTRACTOR failed to give the written notice within the time and as required by paragraph 4.2.3.

If EMW and CONTRACTOR are unable to agree on entitlement to or as to the amount or length of any such equitable adjustment in the Contract Price or Contract Times, a claim may be made therefor as provided in Articles 11 and 12. However, EMW, ENGINEER and ENGINEER's Consultants shall not be liable to CONTRACTOR for any claims, costs, losses or damages sustained by CONTRACTOR on or in connection with any other project or anticipated project.

4.3. Physical Conditions-Underground Facilities:

4.3.1. Shown or Indicated: The information and data shown or indicated in the Contract Documents with respect to existing Under-ground Facilities at or contiguous to the site is based on information and data furnished to EMW or ENGINEER by EMWs of such Underground Facilities or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

4.3.1.1. EMW and ENGINEER shall not be responsible for the accuracy or completeness of any such information or data; and

4.3.1.2. The cost of all of the following will be included in the Contract Price and CONTRACTOR shall have full responsibility for: (i) reviewing and checking all such information and data, (ii) locating all Underground Facilities shown or indicated in the Contract Documents, (iii) coordination of the Work with EMWs of such Underground Facilities during construction, and (iv) the safety and protection of all such Underground Facilities as provided in paragraph 6.20 and repairing any damage thereto resulting from the Work.

4.3.2. Not Shown or Indicated: If an Underground Facility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the Contract Documents, CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by paragraph 6.23), identify EMW of such Underground Facility and give written notice to that EMW and to EMW and ENGINEER. ENGINEER will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence of the Underground Facility. If ENGINEER concludes that a change in

the Contract Documents is required, a Work Change Directive or a Change Order will be issued as provided in Article 10 to reflect and document such consequences. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility as provided in paragraph 6.20. CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, to the extent that they are attributable to the existence of any Underground Facility that was not shown or indicated in the Contract Documents and that CONTRACTOR did not know of and could not reasonably have been expected to be aware of or to have anticipated. If EMW and CONTRACTOR are unable to agree on entitlement to or the amount or length of any such adjustment in Contract Price or Contract Times, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12. However, EMW, ENGINEER and ENGINEER's Consultants shall not be liable to CONTRACTOR for any claims, costs, losses or damages incurred or sustained by CONTRACTOR on or in connection with any other project or anticipated project.

Reference Points:

4.4. EMW shall provide engineering surveys to establish reference points for construction which in ENGINEER's judgment are necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for laying out the Work, shall protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of EMW. CONTRACTOR shall report to ENGINEER whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points by professionally qualified personnel.

4.5. Asbestos, PCBS, Petroleum, Hazardous Waste or Radioactive Material:

4.5.1. EMW shall be responsible for any Asbestos, PCBS, Petroleum, Hazardous Waste or Radioactive Material uncovered or revealed at the site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work and which may present a substantial danger to persons or property exposed thereto in connection with the Work at the site. EMW shall not be responsible for

any such materials brought to the site by CONTRACTOR, Subcontractor, Suppliers or anyone else for whom CONTRACTOR is responsible.

4.5.2. CONTRACTOR shall immediately: (i) stop all Work in connection with such hazardous condition and in any area affected thereby (except in an emergency as required by paragraph 6.23), and (ii) notify EMW and ENGINEER (and thereafter confirm such notice in writing). EMW shall promptly consult with ENGINEER concerning the necessity for EMW to retain a qualified expert to evaluate such hazardous condition or take corrective action, if any. CONTRACTOR shall not be required to resume Work in connection with such hazardous condition or in any such affected area until after EMW has obtained any required permits related thereto and delivered to CONTRACTOR special written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (ii) specifying any special conditions under which such Work may be resumed safely. If EMW and CONTRACTOR cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of such Work stoppage or such special conditions under which Work is agreed by CONTRACTOR to be resumed, either party may make a claim therefor as provided in Articles 11 and 12.

4.5.3. If after receipt of such special written notice CONTRACTOR does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then EMW may order such portion of the Work that is in connection with such hazardous condition or in such affected area to be deleted from the Work. If EMW and CONTRACTOR cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a claim therefor as provided in Articles 11 and 12. EMW may have such deleted portion of the Work performed by EMW's own forces or others in accordance with Article 7.

4.5.4. To the fullest extent permitted by Laws and Regulations, EMW shall indemnify and hold harmless CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and the officers, directors, employees, agents, other consultants, and sub contractors of each and any of

them from and against all claims, costs, losses and damages arising out of or resulting from such hazardous condition, provided that (1) any such claim, cost, loss or damage is attributable to bodily injury, sickness disease or death, or to injury or destruction to tangible property (other than the Work itself), including the loss of use resulting therefrom, and (ii) nothing in this subparagraph 4.5.4 shall obligate EMW to indemnify any person or entity from and against the consequences of that person's or entity's own negligence.

4.5.5. The provisions of paragraphs 4.2 and 4.3 are not intended to apply to Asbestos, PCBS, Petroleum, Hazardous Waste or Radioactive Material uncovered or revealed at the site.

ARTICLE 5 - BONDS AND INSURANCE

Performance, Payment and Other Bonds:

5.1. CONTRACTOR shall furnish Performance and Payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all CONTRACTOR's obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. CONTRACTOR shall also furnish such other Bonds as are required by the Supplementary Conditions. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff, Financial Management Service, Surety Bond Branch, U.S. Treasury Department. (Phone 202-874-6850). All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

5.2. If the surety on any Bond furnished by CONTRACTOR is declared a bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of paragraph 5.1, CONTRACTOR shall within ten days thereafter

substitute another Bond and surety, both of which must be acceptable to EMW.

5.3 Licensed Sureties and Insurers; Certificates of Insurance:

5.3.1. All Bonds and insurance required by the Contract Documents to be purchased and maintained by EMW or CONTRACTOR shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue Bonds or insurance policies for the list and coverage's so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions

5.3.2. CONTRACTOR shall deliver to EMW, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by EMW or any other additional insured) which CONTRACTOR is required to purchase and maintain in accordance with paragraph 5.4. EMW shall deliver to CONTRACTOR, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by CONTRACTOR or any other additional insured) which EMW is required to purchase and maintain in accordance with paragraphs 5.6 and 5.7 hereof.

CONTRACTOR's Liability Insurance:

5.4. CONTRACTOR shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and furnished and as will provide protection from claims set forth below which may arise out of or result from CONTRACTOR's performance and furnishing of the Work and CONTRACTOR's other obligations under the Contract Documents, whether it is to be performed or furnished by CONTRACTOR, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform or furnish any of the Work, or by anyone for whose acts any of them may be liable:

5.4.1. claims under workers' compensation, disability benefits and other similar employee benefit acts;

5.4.2. claims for damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR's employees;

5.4.3. claims for damages because of bodily injury, sickness or disease, or death of any person other than CONTRACTOR's employees;

5.4.4. claims for damages insured by customary personal injury liability coverage which are sustained: (i) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (ii) by any other person for any other reason;

5.4.5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and

5.4.6. claims for damages because of bodily injury or death of any person or- property damage arising out of EMWship, maintenance or use of any motor vehicle.

The policies of insurance so required by this paragraph 5.4 to be purchased and maintained shall-

5.4.7. with respect to insurance required by paragraphs 5.4.3 through 5.4.6 inclusive, include as additional insured (subject to any customary exclusion in respect of professional liability) EMW, ENGINEER, ENGINEER's Consultants and any other persons or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers and employees of all such additional insureds;

5.4.8. include the specific coverage's and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;

5.4.9. include completed operations insurance;

5.4.10. include contractual liability insurance covering CONTRACTOR's indemnity obligations under paragraphs 6.1 2, 6.16 and 6.31 through 6.33;

5.4.11. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days prior written notice has been given to EMW and CONTRACTOR and to each other additional

insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the CONTRACTOR pursuant to paragraph 5.3.2 will so provide);

5.4.12. remain in effect at least until final payment and at all times thereafter when CONTRACTOR may be correcting, removing or replacing defective Work in accordance with paragraph 13.12; and

5.4.13. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and CONTRACTOR shall furnish EMW and each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued evidence satisfactory to EMW and any such additional insured of continuation of such insurance at final payment and one year thereafter).

EMW's Liability Insurance:

5.5. In addition to the insurance required to be provided by CONTRACTOR under paragraph 5.4, EMW, at EMW's option, may purchase and maintain at EMW's expense EMW's own liability insurance as will protect EMW against claims which may arise from operations under the Contract Documents.

Property Insurance:

5.6. Unless otherwise provided in the Supplementary Conditions, EMW shall purchase and maintain property insurance upon the Work at the site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:

5.6.1. include the interests of EMW, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and any other persons or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;

5.6.2. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings,

falsework and Work in transit and shall insure against at least the following perils: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, and such other perils as may be specifically required by the Supplementary Conditions;

5.6.3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

5.6.4. cover materials and equipment stored at the site or at another location that was agreed to in writing by EMW prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by ENGINEER; and

5.6.5. be maintained in effect until final payment is made unless otherwise agreed to in writing by EMW, CONTRACTOR and ENGINEER with thirty days written notice to each other additional insured to whom a certificate of insurance has been issued.

5.7. EMW shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of EMW, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and any other persons or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

5.8. If the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained by EMW in accordance with paragraphs 5.6 and 5.7 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least thirty days' prior written notice has been given to EMW and CONTRACTOR and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with paragraph 5.11.

5.9. EMW shall not be responsible for purchasing and maintaining any property insurance to protect the interests of CONTRACTOR, Subcontractors or others in the Work to the extent of any deductible amounts that are identified in the Supplementary

Conditions. The risk of loss within such identified deductible amount, will be borne by CONTRACTOR, Subcontractor or others suffering any such loss and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

5.10. If CONTRACTOR requests in writing that other special insurance be included in the property insurance policies provided under paragraphs 5.6 or 5.7, EMW shall, if possible, include such insurance, and the cost thereof will be charged to CONTRACTOR by appropriate Change Order or Written Amendment. Prior to commencement of the Work at the site, EMW shall in writing advise CONTRACTOR whether or not such other insurance has been procured by EMW.

5.11. Waiver of Rights:

5.11.1. EMW and CONTRACTOR intend that all policies purchased in accordance with paragraphs 5.6 and 5.7 will protect EMW, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and all other persons or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds in such policies and will provide primary coverage for all losses and damages caused by the perils covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. EMW and CONTRACTOR waive all rights against each other and their respective officers, directors, employees and agents for all losses and damages caused by, arising out of or resulting from any of the perils covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, ENGINEER, ENGINEER's Consultants and all other persons or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by EMW as trustee or otherwise payable under any policy so issued.

5.11.2. In addition, EMW waives all rights against CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and the officers,

directors, employees and agents of any of them, for:

5.11.2.1. loss due to business interruption, loss of use or other consequential loss extending beyond direct physical loss or damage to EMW's property or the Work caused by, arising out of or resulting from fire or other peril, whether or not insured by EMW; and

5.11.2.2. loss or damage to the completed Project or part thereof caused by, arising out of or resulting from fire or other insured peril covered by any property insurance maintained on the completed Project or part thereof by EMW during partial utilization pursuant to paragraph 14.10, after substantial completion pursuant to paragraph 14.8 or after final payment pursuant to paragraph 14.13

Any insurance policy maintained by EMW covering any loss, damage or consequential loss referred to in this paragraph 5.11.2 shall contain provisions to the effect that in the event of payment of any such loss, damage or consequential loss the insurers will have no rights of recovery against any of CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and the officers, directors, employees and agents of any of them.

Receipt and Application of Insurance Proceeds:

5.12. Any insured loss under the policies of insurance required by paragraphs 5.6 and 5.7 will be adjusted with EMW and made payable to EMW as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of paragraph 5.13. EMW shall deposit in a separate account any money so received, and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof and the Work and the cost thereof covered by an appropriate Change Order or Written Amendment.

5.13. EMW as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within fifteen days after the occurrence of loss to EMW's exercise of this power. If such objection be made, EMW as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement

among the parties in interest is reached, EMW as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, EMW as fiduciary shall give bond for the proper performance of such duties.

Acceptance of Bonds and Insurance; Option to Replace:

5.14. If either party (EMW or CONTRACTOR) has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within ten days after receipt of the certificates (or other evidence requested) required by paragraph 2.7. EMW and CONTRACTOR shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the Bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent Bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

Partial Utilization-Property Insurance:

5.15. If EMW finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, such use or occupancy may be accomplished in accordance with paragraph 14.10; provided that no such use or occupancy shall commence before the insurers providing the property insurance have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

Supervision and Superintendence:

6.1. CONTRACTOR shall supervise, inspect and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, but CONTRACTOR shall not be responsible for the negligence of others in the design or specification of a specific means, method, technique, sequence or procedure of construction which is shown or indicated in and expressly required by the Contract Documents. CONTRACTOR shall be responsible to-see that the completed Work complies accurately with the Contract Documents.

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

Labor, Materials and Equipment:

6.3. CONTRACTOR shall provide competent, suitably qualified personnel to survey, lay out and construct the Work as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the site. Except as otherwise required for the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during regular working hours and CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday or any legal holiday without EMW's written consent given after prior written notice to ENGINEER.

6.4. Unless otherwise specified in the General Requirements, CONTRACTOR shall furnish and assume full responsibility for all materials,

equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work.

6.5. All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of EMW. If required by ENGINEER, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.

Progress Schedule:

6.6. CONTRACTOR shall adhere to the progress schedule established in accordance with paragraph 2.9 as it may be adjusted from time to time as provided below:

6.6.1. CONTRACTOR shall submit to ENGINEER for acceptance (to the extent indicated in paragraph 2.9) proposed adjustments in the progress schedule that will not change the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto.

6.6.2. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of paragraph 12.1. Such adjustments may only be made by a Change Order or Written Amendment in accordance with Article 12.

6.7. Substitutes and "Or-Equal" Items:

6.7.1. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function and quality required. Unless the

specification or description contains or is followed by words reading that no like, equivalent or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be accepted by ENGINEER under the following Circumstances:

6.7.1.1. "Or-Equal": If in ENGINEER's sole discretion an item of material or equipment proposed by CONTRACTOR is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by ENGINEER as an "or-equal" item, in which case review and approval of the proposed item may, in ENGINEER's sole discretion, be accomplished without compliance with some or all of the requirements for acceptance of proposed substitute items.

6.7.1.2. *Substitute Items*: If in ENGINEER's sole discretion an item of material or equipment proposed by CONTRACTOR does not qualify as an "or-equal" item under subparagraph 6.7. 1. 1, it will be considered a proposed substitute item. CONTRACTOR shall submit sufficient information as provided below to allow ENGINEER to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. The procedure for review by the ENGINEER will include the following as supplemented in the General Requirements and as ENGINEER may decide is appropriate under the circumstances. Requests for review of proposed substitute items of material or equipment will not be accepted by ENGINEER from anyone other than CONTRACTOR. If CONTRACTOR wishes to furnish or use a substitute item of material or equipment, CONTRACTOR shall first make written application to ENGINEER for acceptance thereof, certifying that the proposed substitute will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified and be suited to the same use as that specified. The application will state the extent, if any, to which the evaluation and acceptance of the proposed substitute will prejudice CONTRACTOR's achievement of Substantial Completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with EMW 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 contractors affected by the resulting change, all of which will be considered by ENGINEER in evaluating the proposed substitute. ENGINEER may require CONTRACTOR to furnish additional data about the proposed substitute.

6.7.1.3. *CONTRACTOR's Expense*: All data to be provided by CONTRACTOR in support of any proposed "or-equal" or substitute item will be at CONTRACTOR's expense.

6.7.2. *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, CONTRACTOR may furnish or utilize a substitute means, method, technique, sequence or procedure of construction acceptable to ENGINEER. CONTRACTOR shall submit sufficient information to allow ENGINEER, in ENGINEER's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by ENGINEER will be similar to that provided in subparagraph 6.7.1.2.

6.7.3. *ENGINEER's Evaluation*: ENGINEER will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to paragraphs 6.7.1.2 and 6.7.2. ENGINEER will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized without ENGINEER's prior written acceptance which will be evidenced by either a Change Order or an approved Shop Drawing. EMW may require CONTRACTOR to furnish at CONTRACTOR's expense a special performance guarantee or other surety with respect to any "or-equal" or substitute. ENGINEER will record time required by ENGINEER and ENGINEER's Consultants in evaluating substitutes proposed or submitted by CONTRACTOR pursuant to paragraphs 6.7.1.2 and 6.7.2 and in making changes in the Contract Documents (or in the provisions of any other direct contract with EMW for work on the Project) occasioned thereby. Whether or not ENGINEER

accepts a substitute item so proposed or submitted by CONTRACTOR, CONTRACTOR shall reimburse EMW for the charges of ENGINEER and ENGINEER's Consultants for evaluating each such proposed substitute item.

Concerning Subcontractors, Suppliers and Others:

6.8.1. CONTRACTOR shall not employ any Subcontractor, Supplier or other person or organization (including those acceptable to EMW and ENGINEER as indicated in paragraph 6.8.2), whether initially or as a substitute, against whom EMW or ENGINEER may have reasonable objection. CONTRACTOR shall not be required to employ any Subcontractor, Supplier or other person or organization to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection.

6.8.1.1 - EMW may request that the CONTRACTOR replace the Construction Superintendent if in the sole opinion of EMW, the Construction Superintendent conducts the Work in a manner that is unsafe and presents a hazard to the public or employees of the CONTRACTOR or EMW. In this event no adjustment in the Contract price will be made.

6.8.2. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers or other persons or organizations (including those who are to furnish the principal items of materials or equipment) to be submitted to EMW in advance of the specified date prior to the Effective Date of the Agreement for acceptance by EMW and ENGINEER, and if CONTRACTOR has submitted a list thereof in accordance with the Supplementary Conditions, EMW's or ENGINEER's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the bidding documents or the Contract Documents) of any such Subcontractor, Supplier or other person or organization so identified may be revoked on the basis of reasonable objection after due investigation, in which case CONTRACTOR shall submit an acceptable substitute, the Contract Price will be adjusted by the difference in the cost occasioned by such substitution and an appropriate Change Order will be issued or Written Amendment signed. No acceptance by EMW or ENGINEER of any such Subcontractor, Supplier or other person or organization shall constitute a

waiver of any right of EMW or ENGINEER to reject defective *Work*.

6.9.1. CONTRACTOR shall be fully responsible to EMW and ENGINEER for all acts and omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier or other person or organization any contractual relationship between EMW or ENGINEER and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of EMW or ENGINEER to pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization except as may otherwise be required by Laws and Regulations.

6.9.2. CONTRACTOR shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR. CONTRACTOR shall require all Subcontractors, Suppliers and such other persons and organizations performing or furnishing any of the Work to communicate with the ENGINEER through CONTRACTOR.

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

6.11. All Work performed for CONTRACTOR by a Subcontractor or Supplier will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of EMW and ENGINEER. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in paragraph 5.6 or 5.7, the agreement between the CONTRACTOR and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against EMW, CONTRACTOR, ENGINEER, ENGINEER'S

Consultants and all other additional insureds for all losses and damages caused by, arising out of or resulting from any of the perils covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, CONTRACTOR will obtain the same.

Patent Fees and Royalties:

6.12. CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of EMW or ENGINEER its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by EMW in the Contract Documents. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless EMW, ENGINEER, ENGINEER's Consultants and the officers, directors, employees, agents and other consultants of each and any of them from and against all claims, costs, losses and damages arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device not specified in the Contract Documents.

Permits:

6.13. Unless otherwise provided in the Supplementary Conditions, CONTRACTOR shall obtain and pay for all construction permits and licenses. EMW shall assist CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work, which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. CONTRACTOR shall pay all charges of utility EMWs for connections to the Work, and EMW shall pay all charges of such utility EMWs for capital costs related thereto such as plant investment fees.

Laws and Regulations:

6.14.1. CONTRACTOR shall give all notices and comply with all Laws and Regulations applicable to furnishing and performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither EMW nor ENGINEER shall be responsible for monitoring CONTRACTOR's compliance with any Laws or Regulations.

6.14.2. If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, CONTRACTOR shall bear all claims, costs, losses and damages caused by, arising out of or resulting therefrom; however, it shall not be CONTRACTOR's primary responsibility to make certain that the Specifications and Drawings are in accordance in accordance with the Laws and Regulations with Laws and Regulations, but this shall not relieve CONTRACTOR of CONTRACTOR's obligations under paragraph 3.3.2.

Taxes:

6.15. CONTRACTOR shall pay all sales, consumer, use and other similar taxes required to be paid by CONTRACTOR of the place of the Project which are applicable during the performance of the Work.

Use of Premises:

6.16. CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to the site and land and areas identified in and permitted by the Contract Documents and other land and areas permitted by Laws and Regulations, rights-of-way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to EMW 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 EMW 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 EMW, 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 EMW or occupant against EMW, ENGINEER or any other party indemnified hereunder to the extent caused by or based upon CONTRACTOR's performance of the Work.

6.17. During the progress of the Work, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery and surplus materials. CONTRACTOR shall leave the site clean and ready for occupancy by EMW at Substantial Completion of the Work. CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents.

6.18. CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

Record Documents:

6.19. CONTRACTOR shall maintain in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Change Directives, Field Orders and written interpretations and clarifications (issued pursuant to paragraph 9.4) in good order and annotated to show all changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to ENGINEER for reference. Upon completion of the Work, these record documents, Samples and Shop Drawings will be delivered to ENGINEER for EMW.

Safety and Protection:

6.20. CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the

Work. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

6.20.1. all persons on the Work site or who may be affected by the Work;

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

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

CONTRACTOR shall comply with all applicable Laws and Regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify EMWs of adjacent property and of Underground Facilities and utility EMWs when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to in paragraph 6.20.2 or 6.20.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of EMW or ENGINEER or ENGINEER's Consultant or anyone employed by any of them or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR or any Subcontractor, Supplier or other person or organization directly or indirectly employed by any of them). CONTRACTOR's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and ENGINEER has issued a notice to EMW and CONTRACTOR in accordance with paragraph 14.13 that the Work is acceptable (except

as otherwise expressly provided in connection with Substantial Completion).

Safety Representative:

6.21. CONTRACTOR shall designate a qualified and experienced safety representative at the site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

Hazard Communication Programs:

6.22. CONTRACTOR shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the site in accordance with Laws or Regulations.

Emergencies:

6.23. In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, CONTRACTOR, without special instruction or authorization from EMW or ENGINEER, is obligated to act to prevent threatened damage, injury or loss. CONTRACTOR shall give ENGINEER prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If ENGINEER determines that a change in the Contract Documents is required because of the action taken by CONTRACTOR in response to such an emergency, a Work Change Directive or Change Order will be issued to document the consequences of such action.

6.24. Shop Drawings and Samples:

6.24.1. CONTRACTOR shall submit Shop Drawings to ENGINEER for review and approval in accordance with the accepted schedule of Shop Drawings and Sample submittals (see paragraph 2.9). All submittals will be identified as ENGINEER may require and in the number of copies specified in the **General Requirements**. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and

design criteria, materials and similar data to show ENGINEER the materials and equipment CONTRACTOR proposes to provide and to enable ENGINEER to review the information for the limited purposes required by paragraph 6.26.

6.24.2. CONTRACTOR shall also submit Samples to ENGINEER for review and approval in accordance with said accepted schedule of Shop Drawings and Sample submittals. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended and otherwise as ENGINEER may require to enable ENGINEER to review the submittal for the limited purposes required by paragraph 6.26. The numbers of each Sample to be submitted will be as specified in the Specifications.

6.25. Submittal Procedures:

6.25.1. Before submitting each Shop Drawing or Sample, CONTRACTOR shall have determined and verified:

6.25.1.1. all field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar information with respect thereto,

6.25.1.2. all materials with respect to intended use, fabrication, shipping, handling, storage, assembly and installation pertaining to the performance of the Work, and

6.25.1.3. all information relative to CONTRACTOR's sole responsibilities in respect of means, methods, techniques, sequences and procedures of construction and safety precautions and programs incident thereto. CONTRACTOR shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.

6.25.2. Each submittal will bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR's obligations under the Contract Documents with respect to CONTRACTOR'S review and approval of that submittal.

6.25.3. At the time of each submission, CONTRACTOR shall give ENGINEER specific written notice of such variations, if any, that the Shop Drawing or Sample submitted may have from

the requirements of the Contract Documents, such notice to be in a written communication separate from the submittal; and, in addition, shall cause a specific notation to be made on each Shop Drawing and Sample submitted to ENGINEER for review and approval of each such variation.

6.26. ENGINEER will review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals accepted by ENGINEER as required by paragraph 2.9. ENGINEER's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. ENGINEER's review and approval will not extend to means, methods, techniques, sequences or procedures of construction (except where a particular means, method, technique, sequence or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. CONTRACTOR shall make corrections required by ENGINEER, and shall return the required number of corrected copies of Shop Drawings and submit as required new Samples for review and approval. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by ENGINEER on previous submittals.

6.27. ENGINEER's review and approval of Shop Drawings or Samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called ENGINEER's attention to each such variation at the time of submission as required by paragraph 6.25.3 and ENGINEER has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample approval; nor will any approval by ENGINEER relieve CONTRACTOR from responsibility for complying with the requirements of paragraph 6.25. 1.

6.28. Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submissions accepted by ENGINEER as required by

paragraph 2.9, any related Work performed prior to ENGINEER's review and approval of the pertinent submittal will be at the sole expense and responsibility of CONTRACTOR.

Continuing the Work:

6.29. CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with EMW. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by paragraph 15.5 or as EMW and CONTRACTOR may otherwise agree in writing.

6.30. CONTRACTOR's General Warranty and Guarantee:

6.30.1. CONTRACTOR warrants and guarantees to EMW, ENGINEER and ENGINEER's Consultants that all Work will be in accordance with the Contract Documents and will not be defective. CONTRACTOR's warranty and guarantee hereunder excludes defects or damage caused by:

6.30.1.1. abuse, modification or improper maintenance or operation by persons other than CONTRACTOR, Subcontractors or Suppliers; or

6.30.1.2. normal wear and tear under normal usage.

6.30.2. CONTRACTOR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents:

6.30.2.1. observations by ENGINEER;

6.30.2.2. recommendation of any progress or final payment by ENGINEER;

6.30.2.3. the issuance of a certificate of Substantial Completion or any payment by EMW to CONTRACTOR under the Contract Documents;

6.30.2.4. use or occupancy of the Work or any part thereof by EMW;

6.30.2.5. any acceptance by EMW or any failure to do so;

6.30.2.6.any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by ENGINEER pursuant to paragraph 14.13;

6.30.2.7.any inspection, test or approval by others; or

6.30.2.8. any correction of defective Work by EMW.

6.30.3. CONTRACTOR will repair or replace all defective work at no additional cost to EMW for a period of one year after final completion and acceptance by EMW of the entire Work.

Indemnification:

6.31 To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless EMW, ENGINEER, ENGINEER's Consultants and the officers, directors, employees, agents and other consultants of each and any of them from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from the performance of the Work, provided that any such claim, cost, loss or damage: (i) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (ii) is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any negligence or omission of a person or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such person or entity.

6.32. In any and all claims against EMW or ENGINEER or any of their respective consultants, agents, officers, directors or employees by any employee (or the survivor or personal representative of such employee) of CONTRACTOR, any Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work, or anyone for whose acts

any of them may be liable, the indemnification obligation under paragraph 6.31 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any such Subcontractor, Supplier or other person or organization under workers' compensation acts, disability benefit acts or other employee benefit acts.

6.33. The indemnification obligations of CONTRACTOR under paragraph 6.31 shall not extend to the liability of ENGINEER and ENGINEER's Consultants, officers, directors, employees or agents caused by the professional negligence, errors or omissions of any of them.

Survival of Obligations:

6.34. All representations, indemnification's, warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Work and termination or completion of the Agreement.

ARTICLE 7 - OTHER WORK

Related Work at Site:

7.1. EMW may perform other work related to the Project at the site by EMW's own forces, or let other direct contracts therefor which shall contain General Conditions similar to these, or have other work performed by utility EMWs. If the fact that such other work is to be performed was not noted in the Contract Documents, then: (i) written notice thereof will be given to CONTRACTOR prior to starting any such other work, and (ii) CONTRACTOR may make a claim therefor as provided in Articles 11 and 12 if CONTRACTOR believes that such performance will involve additional expense to CONTRACTOR or requires additional time and the parties are unable to agree as to the amount or extent thereof.

7.2. CONTRACTOR shall afford each other contractor who is a party to such a direct contract and each utility EMW (and EMW, if EMW is performing the additional work with EMW's employees) proper and safe access to the site and a reasonable opportunity for the introduction and

storage of materials and equipment and the execution of such other work and shall properly connect and coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, CONTRACTOR shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of ENGINEER and the others whose work will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of such utility EMWs and other contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between EMW and such utility EMWs and other contractors.

7.3. If the proper execution or results of any part of CONTRACTOR's Work depends upon work performed by others under this Article 7, CONTRACTOR shall inspect such other work and promptly report to ENGINEER in writing any delays, defects or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of CONTRACTOR's Work. CONTRACTOR's failure so to report will constitute an acceptance of such other work as fit and proper for integration with CONTRACTOR's Work except for latent or non-apparent defects and deficiencies in such other work.

Coordination:

7.4. If EMW contracts with others for the performance of other work on the Project at the site, the following will be set forth in Supplementary Conditions:

7.4.1. the person, firm or corporation who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified;

7.4.2. the specific matters to be covered by such authority and responsibility will be itemized; and

7.4.3. the extent of such authority and responsibilities will be provided. Unless otherwise provided in the Supplementary Conditions, EMW shall have sole authority and responsibility in respect of such coordination.

ARTICLE 8 - EMW's RESPONSIBILITIES

8.1 Except as otherwise provided in these General Conditions, EMW shall issue all communications to CONTRACTOR through ENGINEER.

8.2. In case of termination of the employment of ENGINEER, EMW shall appoint an engineer against whom CONTRACTOR makes no reasonable objection, whose status under the Contract Documents shall be that of the former ENGINEER.

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

8.4. EMW's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.1 and 4.4. Paragraph 4.2 refers to EMW's identifying and making available to CONTRACTOR copies of reports of explorations and tests of subsurface conditions at the site and drawings of physical conditions in existing structures at or contiguous to the site that have been utilized by ENGINEER in preparing the Contract Documents.

8.5. EMW's responsibilities in respect of purchasing and maintaining liability and property insurance are set forth in paragraphs 5.5 through 5.10.

8.6. EMW is obligated to execute Change Orders as indicated in paragraph 10.4.

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

8.8. In connection with EMW's right to stop Work or suspend Work, see paragraphs 13.10 and 15.1. Paragraph 15.2 deals with EMW's right to terminate services of CONTRACTOR under certain circumstances.

8.9. EMW shall not supervise, direct or have control or authority over, nor be responsible for, CONTRACTOR'S means, methods, techniques, sequences or procedures of construction or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the furnishing

or performance of the Work. EMW will not be responsible for CONTRACTOR'S failure to perform or furnish the Work in accordance with the Contract Documents.

8.10. EMW's responsibility in respect of undisclosed Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Materials uncovered or revealed at the site is set forth in paragraph 4.5.

8.11 If and to the extent EMW has agreed to furnish CONTRACTOR reasonable evidence that financial arrangements have been made to satisfy EMW's obligations under the Contract Documents, EMW's responsibility in respect thereof will be as set forth in the Supplementary Conditions.

ARTICLE 9 - ENGINEERS STATUS DURING CONSTRUCTION

EMW's Representative:

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

Visits to Site:

9.2. ENGINEER will make visits to the site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of CONTRACTOR's executed Work. Based on information obtained during such visits and observations, ENGINEER will endeavor for the benefit of EMW to determine, in general, if the Work is proceeding in accordance with the Contract Documents. ENGINEER will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. ENGINEER's efforts will be directed toward providing for EMW a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and on-site observations, ENGINEER will keep EMW informed of the progress of the Work and will endeavor to guard EMW against defective Work.

ENGINEER's visits and on-site observations are subject to all the limitations on ENGINEER's authority and responsibility set forth in paragraph 9.13, and particularly, but without limitation, during or as a result of ENGINEER's on-site visits or observations of CONTRACTOR's Work ENGINEER will not supervise, direct, control or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of the Work.

Project Representative:

9.3. If EMW and ENGINEER agree, ENGINEER will furnish a Resident Project Representative to assist ENGINEER in providing more continuous observation of the Work. The responsibilities and authority and limitations thereon of any such Resident Project Representative and assistants will be as provided in paragraph 9.13 and in the Supplementary Conditions. If EMW designates another representative or agent to represent EMW at the site who is not ENGINEER's Consultant, agent or employee, the responsibilities and authority and limitations thereon of such other person will be as provided in the Supplementary Conditions.

Clarifications and Interpretations:

9.4. ENGINEER will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) as ENGINEER may determine necessary, which shall be consistent with the intent of and reasonably inferable from Contract Documents. Such written clarifications and interpretations will be binding on EMW and CONTRACTOR. If EMW or CONTRACTOR believes that a written clarification or interpretation justifies an adjustment in the Contract Price or the Contract Times and the parties are unable to agree to the amount or extent thereof, if any, EMW or CONTRACTOR may make a written claim therefor as provided in Article 11 or Article 12.

Authorized Variations in Work:

9.5. ENGINEER may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on EMW and also on CONTRACTOR who shall perform the Work involved promptly. If EMW or CONTRACTOR believes that a Field Order justifies an adjustment in the Contract Price or the Contract Times and the parties are unable to agree as to the amount or extent thereof, EMW or CONTRACTOR may make a written claim therefor as provided in Article 11 or 12.

Rejecting Defective Work:

9.6. ENGINEER will have authority to disapprove or reject Work which ENGINEER believes to be defective, *or* that ENGINEER believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. ENGINEER will also have authority to require special inspection or testing of the Work as provided in paragraph 13.9, whether or not the Work is fabricated, installed or completed.

Shop Drawings, Change Orders and Payments:

9.7. In connection with ENGINEER's authority as to Shop Drawings and Samples, see paragraphs 6.24 through 6.28 inclusive.

9.8. In connection with ENGINEER's authority as to Change Orders, see Articles 10, 11, and 12.

9.9. In connection with ENGINEER's authority as to Applications for Payment, see Article 14.

Determinations for Unit Prices:

9.10. ENGINEER will determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR. ENGINEER will review with CONTRACTOR the ENGINEER's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). ENGINEER's written decision thereon will be final and binding upon EMW and

CONTRACTOR, unless, within ten days after the date of any such decision, either EMW or CONTRACTOR delivers to the other and to ENGINEER written notice of intention to appeal from ENGINEER's decision and: (i) an appeal from ENGINEER's decision is taken within the time limits and in accordance with the procedures set forth in Exhibit GC-A, "Dispute Resolution Agreement," entered into between EMW and CONTRACTOR pursuant to Article 16, or (ii) if no such Dispute Resolution Agreement has been entered into, a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction to exercise such rights or remedies as the appealing party may have with respect to ENGINEER's decision, unless otherwise agreed in writing by EMW and CONTRACTOR. Such appeal will not be subject to the procedures of paragraph 9.1.1.

Decisions on Disputes:

9.11. ENGINEER will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and Claims under Articles 11 and 12 in respect of changes in the Contract Price or Contract Times will be referred initially to ENGINEER in writing with a request for a formal decision in accordance with this paragraph. Written notice of each such claim, dispute or other matter will be delivered by the claimant to ENGINEER and the other party to the Agreement promptly (but in no event later than thirty days) after the start of the occurrence or event giving rise thereto, and written supporting data will be submitted to ENGINEER and the other party within sixty days after the start of such occurrence or event unless ENGINEER allows an additional period of time for the submission of additional or more accurate data in support of such claim, dispute or other matter. The opposing party shall submit any response to ENGINEER and the claimant within thirty days after receipt of the claimant's last submittal (unless ENGINEER allows additional time). ENGINEER will render a formal decision in writing within thirty days after receipt of the opposing party's submittal, if any, in accordance with this paragraph. ENGINEER's written decision on such claim, dispute or other matter will be final and binding upon EMW and CONTRACTOR unless: (i) an appeal from ENGINEER's decision is taken within the time

limits and in accordance with the procedures set forth in EXHIBIT GC-A, "Dispute Resolution Agreement," entered into between EMW and CONTRACTOR pursuant to Article 16, or (ii) if no such Dispute Resolution Agreement has been entered into, a written notice of intention to appeal from ENGINEER's written decision is delivered by EMW or CONTRACTOR to the other and to ENGINEER within thirty days after the date of such decision and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction to exercise such rights or remedies as the appealing party may have with respect to such claim, dispute or other matter in accordance with applicable Laws and Regulations within sixty days of the date of such decision, unless otherwise agreed in writing by EMW and CONTRACTOR.

9.12. When functioning as interpreter and judge under paragraphs 9.10 and 9.11, ENGINEER will not show partiality to EMW or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by ENGINEER pursuant to paragraphs 9.10 or 9.11 with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.15) will be a condition precedent to any exercise by EMW or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such claim, dispute or other matter pursuant to Article 16.

9.13. Limitations on ENGINEER's Authority and Responsibility:

9.13.1. Neither ENGINEER's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by ENGINEER in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise or performance of any authority or responsibility by ENGINEER shall create, impose or give rise to any duty owed by ENGINEER to CONTRACTOR, any Subcontractor, any Supplier, any other person or organization, or to any surety for or employee or agent of any of them.

9.13.2. ENGINEER will not supervise, direct, control or have authority over or be responsible for CONTRACTOR'S means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto,

or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of the Work. ENGINEER will not be responsible for CONTRACTOR'S failure to perform or furnish the Work in accordance with the Contract Documents.

9.13.3. ENGINEER will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.

9.13.4. ENGINEER's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees bonds and certificates of inspection, tests and approvals and Other documentation required to be delivered by paragraph 14.12 will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests and approvals that the results certified indicate compliance with, the Contract Documents.

9.13.5. The limitations upon authority and responsibility set forth in this paragraph 9.13 shall also apply to ENGINEER's Consultants. Resident Project Representative and assistants.

ARTICLE 10 - CHANGES IN THE WORK

10.1. Without invalidating the Agreement and without notice to any surety, EMW may, at any time or from time to time, order additions, deletions or revisions in the Work. Such additions, deletions or revisions will be authorized by a Written Amendment, a Change Order, or a Work Change Directive. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

10.2. If EMW and CONTRACTOR are unable to agree as to the extent, if any, of an adjustment in the Contract Price or an adjustment of the Contract Times that should be allowed as a result of a Work Change Directive, a claim may be made therefor as provided in Article 11 or Article 12.

10.3. CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any Work

performed that is not required by the Contract Documents as amended, modified and supplemented as provided in paragraphs 3.5 and 3.6 except in the case of an emergency as provided in paragraph 6.23 or in the case of uncovering Work as provided in paragraph 13.9.

10.4 EMW and CONTRACTOR shall execute appropriate Change Orders recommended by ENGINEER (or written Amendments) covering:

10.4.1 changes on the work which are ordered by the (i) EMW pursuant to paragraph 10.4. by EMW pursuant to paragraph 10.1, (ii) required because of acceptance of defective Work under paragraph 13.13 or correcting defective Work under paragraph 13.14, or (iii) agreed to by the parties;

10.4.2. changes in the Contract Price or Contract Times which are agreed to by the parties; and

10.4.3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by ENGINEER pursuant to paragraph 9.1.1; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents' and applicable Laws and Regulations, but during any such appeal, CONTRACTOR shall carry on the Work and adhere to the progress schedule as provided in paragraph 6.29.

10.5. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be CONTRACTOR's responsibility, and the amount of each applicable Bond will be adjusted accordingly.

ARTICLE 11 - CHANGE OF CONTRACT PRICE

11.1. The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by CONTRACTOR shall be at CONTRACTOR's expense without change in the Contract Price.

11.2. The Contract Price may only be changed by a Change Order or by a Written Amendment. Any claim for an adjustment in the Contract Price shall be based on written notice delivered by the party making the claim to the other party and to ENGINEER promptly (but in no event later than thirty days) after the start of the occurrence or event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within sixty days after the start of such occurrence or event (unless ENGINEER allows additional time for claimant to submit additional or more accurate data in support of the claim) and shall be accompanied by claimant's written statement that the adjustment claimed covers all known amounts to which the claimant is entitled as a result of said occurrence or event. All claims for adjustment in the Contract Price shall be determined by ENGINEER in accordance with paragraph 9.11 if EMW and CONTRACTOR cannot otherwise agree on the amount involved. No claim for an adjustment in the Contract Price will be valid if not submitted in accordance with this paragraph 11.2.

11.3. The value of any Work covered by a Change Order or of any claim for an adjustment in the Contract Price will be determined as follows:

11.3.1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraphs 11.9.1 through 11.9.3, inclusive);

11.3.2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 11.6.2);

11.3.3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under paragraph 11.3.2, on the basis of the Cost of the Work (determined as provided in paragraphs 11.4 and 11.5) plus a CONTRACTOR's fee for overhead and profit (determined as provided in paragraph 11.6).

Cost of the Work:

11.4. The term Cost of the Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the

Work. Except as otherwise may be agreed to in writing by EMW, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in paragraph 11.5:

11.4.1. Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by EMW and CONTRACTOR. Such employees shall include without limitation superintendents, foremen and other personnel employed full-time at the site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays, shall be included in the above to the extent authorized by EMW.

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

11.4.3. Payments made by CONTRACTOR to the Subcontractors for Work performed or furnished by Subcontractors. If required by EMW, CONTRACTOR shall obtain competitive bids from subcontractors acceptable to EMW and CONTRACTOR and shall deliver such bids to EMW who will then determine, with the advice of ENGINEER, which bids, if any, will be accepted. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work Plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as CONTRACTOR's Cost of the Work and fee as

provided in paragraphs 11.4, 11.5, 11.6 and 11.7. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.

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

11.4.5. Supplemental costs including the following:

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

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

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

11.4.5.4. Sales, consumer, use or similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by Laws and Regulations.

11.4.5.5. Deposits lost for causes other than negligence of CONTRACTOR, any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

11.4.5.6. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the

performance and furnishing of the Work (except losses and damages within the deductible amounts of property insurance established by EMW in accordance with paragraph 5.9), provided they have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of EMW. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR's fee. If, however, any such loss or damage requires reconstruction and CONTRACTOR is placed in charge thereof, CONTRACTOR shall be paid for services a fee proportionate to that stated in paragraph 11.6.2.

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

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

11.4.5.9. Cost of premiums for additional Bonds and insurance required because of changes in the Work.

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

11.5.1. Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the site or in CONTRACTOR's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.4.1 or specifically covered by paragraph 11.4.4 - all of which are to be considered administrative costs covered by the CONTRACTOR's fee.

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

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

11.5.4. Cost of premiums for all Bonds and for all insurance whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same (except for the cost of premiums covered by subparagraph 11.4.5.9 above).

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

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

11.6. The CONTRACTOR's fee allowed to CONTRACTOR - for overhead and profit shall be determined as follows:

11.6.1. a mutually acceptable fixed fee; or

11.6.2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

11.6.2.1. for costs incurred under paragraphs 11.4.1 and 11.4.2, the CONTRACTOR's fee shall be fifteen percent;

11.6.2.2. for costs incurred under paragraph 11.4.3, the CONTRACTOR's fee shall be five percent;

11.6.2.3. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of paragraphs 11.4.1, 11.4.2, 11.4.3 and 11.6.2 is that the Subcontractor who actually performs or furnishes the Work, at whatever tier, will be paid a fee of fifteen percent of the costs incurred by such Subcontractor under paragraphs 11.4.1 and 11.4.2 and that any higher tier Subcontractor and CONTRACTOR will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

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

11.6.2.5. the amount of credit to be allowed by CONTRACTOR to EMW for any change which

results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in CONTRACTOR's fee by an amount equal to five percent of such net decrease; and

11.6.2.6. when both additions and credits are involved in any one change, the adjustment in CONTRACTOR's fee shall be computed on the basis of the net change in accordance with paragraphs 11.6.2.1 through 11.6.2.5, inclusive.

11.7. Whenever the cost of any Work is to be determined pursuant to paragraphs 11.4 and 11.5, CONTRACTOR will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in form acceptable to ENGINEER an itemized cost breakdown together with supporting data.

Cash Allowances:

11.8. It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be furnished and performed for such sums as may be acceptable to EMW and ENGINEER. CONTRACTOR agrees that:

11.8.1. the allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the site, and all applicable taxes; and

11.8.2. CONTRACTOR's costs for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances and no demand for additional payment on account of any of the foregoing will be valid.

Prior to final payment, an appropriate Change Order will be issued as recommended by ENGINEER to reflect actual amounts due CONTRACTOR on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.9. Unit Price Work:

11.9.1. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work,

initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made by ENGINEER in accordance with paragraph 9.10.

11.9.2. Each unit price will be deemed to include an amount considered by CONTRACTOR to be adequate to cover CONTRACTOR's overhead and profit for each separately identified item.

11.9.3. EMW or CONTRACTOR may make a claim for an adjustment in the Contract Price in accordance with Article 11 if:

11.9.3.1. the quantity of any item of Unit Price Work performed by CONTRACTOR differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

11.9.3.2. there is no corresponding adjustment with respect to any other item of Work; and

11.9.3.3. if CONTRACTOR believes that CONTRACTOR - is entitled to an increase in Contract Price as a result of having incurred additional expense or EMW believes that EMW is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 12 - CHANGE OF CONTRACT TIMES

12.1. The Contract Times (or Milestones) may only be changed by a Change Order or a Written Amendment. Any claim for an adjustment of the Contract Times (or Milestones) shall be based on written notice delivered by the party making the claim to the other party and to ENGINEER promptly (but in no event later than thirty days) after the occurrence of the event giving rise to the claim and

stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within sixty days after such occurrence (unless ENGINEER allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Times (or Milestones) shall be determined by ENGINEER in accordance with paragraph 9.11 if EMW and CONTRACTOR cannot otherwise agree. No claim for an adjustment in the Contract Times (or Milestones) will be valid if not submitted in accordance with the requirements of this paragraph 12.1.

12.2. All time limits stated in the Contract Documents are of the essence of the Agreement.

12.3. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of CONTRACTOR, the Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a claim is made therefor as provided in paragraph 12.1. Delays beyond the control of CONTRACTOR shall include, but not be limited to, acts or neglect by EMW, acts or neglect of utility EMWs or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions or acts of God. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of CONTRACTOR.

12.4. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both EMW and CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be CONTRACTOR's sole and exclusive remedy for such delay. In no event shall EMW be liable to CONTRACTOR, any Subcontractor, any Supplier, any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from (i) delays caused by or within the control of CONTRACTOR, or (ii) delays beyond the control of both parties including but not limited to fires, floods, epidemics, abnormal weather conditions,

acts of God or acts or neglect by utility EMWs or other contractors performing other work as contemplated by Article 7.

**ARTICLE 13 - TESTS AND INSPECTIONS;
CORRECTION, REMOVAL OR ACCEPTANCE OF
DEFECTIVE WORK**

13.1. *Notice of Defects:* Prompt notice of all defective Work of which EMW or ENGINEER have actual knowledge will be given to CONTRACTOR. All defective Work may be rejected, corrected or accepted as provided in this Article 13.

Access to Work:

13.2. EMW, ENGINEER, ENGINEER's Consultants, other representatives and personnel of EMW, independent testing laboratories and governmental agencies with jurisdictional interests will have access to the Work at reasonable times for their observation, inspecting and testing. CONTRACTOR shall provide them proper and safe conditions for such access and advise them of CONTRACTOR's site safety procedures and programs so that they may comply therewith as applicable.

Tests and Inspections:

13.3. CONTRACTOR shall give ENGINEER timely notice of readiness of the Work for all required inspections, tests or approvals, and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

13.4. EMW shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

13.4.1. for inspections, tests or approvals covered by paragraph 13.5 below;

13.4.2. that costs incurred in connection with tests or inspections conducted pursuant to paragraph 13.9 below shall be paid as provided in said paragraph 13.9; and

13.4.3. as otherwise specifically provided in the Contract Documents.

13.5. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested or approved by an employee or other representative of such public body, CONTRACTOR shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, pay all costs in connection therewith, and furnish ENGINEER the required certificates of inspection, or approval. CONTRACTOR shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for EMW's and ENGINEER's acceptance of materials or equipment to be incorporated in the Work, or of materials, mix designs, or equipment submitted for approval prior to CONTRACTOR's purchase thereof for incorporation in the Work.

13.6. If any Work (or the work of others) that is to be inspected, tested or approved is covered by CONTRACTOR without written concurrence of ENGINEER, it must, if requested by ENGINEER, be uncovered for observation.

13.7. Uncovering Work as provided in paragraph 13.6 shall be at CONTRACTOR's expense unless CONTRACTOR has given ENGINEER timely notice of CONTRACTOR's intention to cover the same and ENGINEER has not acted with reasonable promptness in response to such notice.

Uncovering Work:

13.8. If any Work is covered contrary to the written request of ENGINEER, it must, if requested by ENGINEER, be uncovered for ENGINEER's observation and replaced at CONTRACTOR's expense.

13.9. If ENGINEER considers it necessary or advisable that covered Work be observed by ENGINEER or inspected or tested by others, CONTRACTOR, at ENGINEER's request, shall uncover, expose or otherwise make available for observation, inspection or testing as ENGINEER may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, CONTRACTOR shall pay all claims, costs, losses and damages caused by, arising out of or resulting from such uncovering, exposure, observation, inspection and testing and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and EMW shall be

entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, may make a claim therefor as provided in Article 11. If, however, such Work is not found to be defective, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement and reconstruction; and, if the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12.

EMW May Stop the Work:

13.10. If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, EMW may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of EMW to stop the Work shall not give rise to any duty on the part of EMW to exercise this right for the benefit of CONTRACTOR or any surety or other party.

Correction or Removal of Defective Work:

13.11 If required by ENGINEER, CONTRACTOR shall promptly, as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by ENGINEER, remove it from the site and replace it with Work that is not defective. CONTRACTOR shall pay all claims, costs, losses and damages caused by or resulting from such correction or removal (including but not limited to all costs of repair or replacement of work of others).

13.12. Correction Period:

13.12.1. If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be defective, CONTRACTOR shall promptly, without cost to EMW and in accordance with EMW's written instructions: (i) correct such defective Work, or, if it has been rejected by EMW, remove it from the site and replace it with Work that is not defective, and (ii) satisfactorily correct or

remove and replace any damage to other Work or the work of others resulting therefrom. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, EMW may have the defective Work corrected or the rejected Work removed and replaced, and all claims, costs, losses and damages caused by or resulting from such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by CONTRACTOR.

13.12.2. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications or by Written Amendment.

13.12.3. Where defective Work (and damage to other Work resulting therefrom) has been corrected, removed or replaced under this paragraph 13.12, the correction period there under with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

Acceptance of Defective Work:

13.13. If, instead of requiring correction or removal and replacement of defective Work, EMW (and, prior to ENGINEER's recommendation of final payment, also ENGINEER) prefers to accept it, EMW may do so. CONTRACTOR shall pay all claims, costs, losses and damages attributable to EMW's evaluation of and determination to accept such defective Work (such costs to be approved by ENGINEER as to reasonableness). If any such acceptance occurs prior to ENGINEER's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and EMW shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, EMW may make a claim therefor as provided in Article 11. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to EMW.

EMW May Correct Defective Work:

13.14. If CONTRACTOR fails within a reasonable time after written notice from ENGINEER to correct

defective Work or to remove and replace rejected Work as required by ENGINEER in accordance with paragraph 13.11, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, EMW may, after seven days' written notice to CONTRACTOR, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph EMW shall proceed expeditiously. In connection with such corrective and remedial action, EMW may exclude CONTRACTOR from all or part of the site, take possession of all or part of the Work, and suspend CONTRACTOR's services related thereto, take possession of CONTRACTOR's tools, appliances, construction equipment and machinery at the site and incorporate in the Work all materials and equipment stored at the site or for which EMW has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow EMW, EMW's representatives, agents and employees, EMW's other contractors and ENGINEER and ENGINEER's Consultants access to the site to enable EMW to exercise the rights and remedies under this paragraph. All claims, costs, losses and damages incurred or sustained by EMW in exercising such rights and remedies will be charged against CONTRACTOR and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and EMW shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, EMW may make a claim therefor as provided in Article 11. Such claims, costs, losses and damages will include but not be limited to all costs of repair or replacement of work of others destroyed or damaged by correction, removal or replacement of CONTRACTOR's defective Work. CONTRACTOR shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by EMW of EMW's rights and remedies there under.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

Schedule of Values:

14.1. The schedule of values established as provided in paragraph 2.9 will serve as the basis for

progress payments and will be incorporated into a form of Application for Payment acceptable to ENGINEER. Progress payments on account of Unit Price Work will be based on the number of units completed.

Application for Progress Payment:

14.2. At least twenty days before the date established for each progress payment (but not more often than once a month), CONTRACTOR shall submit to ENGINEER for review an Application for Payment filled out and signed by CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that EMW has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect EMW's interest therein, all of which will be satisfactory to EMW. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

CONTRACTOR's Warranty of Title:

14.3. CONTRACTOR warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to EMW no later than the time of payment free and clear of all Liens.

Review of Applications for Progress Payment:

14.4. ENGINEER will, within ten days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to EMW, or return the Application to CONTRACTOR indicating in writing ENGINEER's reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application. Ten days after presentation of the Application for Payment to EMW with ENGINEER's recommendation, the amount recommended will (subject to the provisions of the last sentence of

paragraph 14.7) become due and when due will be paid by EMW to CONTRACTOR.

14.5. ENGINEER's recommendation of any payment requested in an Application for Payment will constitute a representation by ENGINEER to EMW, based on ENGINEER's on-site observations of the executed Work as an experienced and qualified design professional and on ENGINEER's review of the Application for Payment and the accompanying data and schedules, that to the best of ENGINEER's knowledge, information and belief:

14.5.1. the Work has progressed to the point indicated,

14.5.2. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9. 10, and to any other qualifications stated in the recommendation), and

14.5.3. the conditions precedent to CONTRACTOR's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe the Work.

However, by recommending any such payment ENGINEER will not thereby be deemed to have represented that: (i) exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to ENGINEER in the Contract Documents or (ii) that there may not be other matters or issues between the parties that might entitle CONTRACTOR'S to be paid additionally by EMW or entitle EMW to withhold payment to CONTRACTOR.

14.6. ENGINEER's recommendation of any payment, including final payment, shall not mean that ENGINEER is responsible for CONTRACTOR'S means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of Work, or for any failure of CONTRACTOR to perform or furnish Work in accordance with the Contract Documents.

14.7. ENGINEER may refuse to recommend the whole or any part of any payment if, in ENGINEER's opinion, it would be incorrect to make the representations to EMW referred to in paragraph 14.5. ENGINEER may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in ENGINEER's opinion to protect EMW from loss because:

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

14.7.2. the Contract Price has been reduced by Written Amendment or Change Order,

14.7.3. EMW has been required to correct defective Work or complete Work in accordance with paragraph 13.14, or

14.7.4. ENGINEER has actual knowledge of the occurrence of any of the events enumerated in paragraphs 15.2.1 through 15.2.4 inclusive.

EMW may refuse to make payment of the full amount recommended by ENGINEER because:

14.7.5. claims have been made against EMW on account of Contractors performance or furnishing of the Work,

14.7.6. Liens have been filed in connection with the Work, except where CONTRACTOR has delivered a specific Bond satisfactory to EMW to secure the satisfaction and discharge of such Liens,

14.7.7. there are other items entitling EMW to a set-off against the amount recommended, or

14.7.8. EMW has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.7.1 through 14.7.3 or paragraphs 15.2.1 through 15.2.4 inclusive; but EMW must give CONTRACTOR immediate written notice (with a copy to ENGINEER) stating the reasons for such action and promptly pay CONTRACTOR the amount so withheld, or any adjustment thereto agreed to by EMW and CONTRACTOR, when CONTRACTOR corrects to EMW's satisfaction the reasons for such action.

Substantial Completion:

14.8. When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall notify EMW and ENGINEER in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that ENGINEER issue a certificate of Substantial Completion. Within a reasonable time thereafter, EMW, CONTRACTOR and ENGINEER shall make an inspection of the Work to determine the status of completion. If ENGINEER does not consider the Work substantially complete, ENGINEER will notify CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers the Work substantially complete, ENGINEER will prepare and deliver to EMW a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. EMW shall have seven days after receipt of the tentative certificate during which to make written objection to ENGINEER as to any provisions of the certificate or attached list. If, after considering such objections, ENGINEER concludes that the Work is not substantially complete, ENGINEER will within fourteen days after submission of the tentative certificate to EMW notify CONTRACTOR in writing, stating the reasons therefor. If, after consideration of EMW's objections, ENGINEER considers the Work substantially complete, ENGINEER will within said fourteen days execute and deliver to EMW and CONTRACTOR a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as ENGINEER believes justified after consideration of any objections from EMW. At the time of delivery of the tentative certificate of Substantial Completion ENGINEER will deliver to EMW and CONTRACTOR a written recommendation as to division of responsibilities pending final payment between EMW and CONTRACTOR with respect to security, operation, safety, maintenance, heat, utilities, insurance and warranties and guarantees. Unless EMW and CONTRACTOR agree otherwise in writing and so inform ENGINEER in writing prior to ENGINEER's issuing the definitive certificate of Substantial Completion, ENGINEER's aforesaid recommendation will be binding on EMW and CONTRACTOR until final payment.

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

Partial Utilization:

14.10. Use by EMW at EMW's option of any substantially completed part of the Work which: (i) has specifically been identified in the Contract Documents, or (ii) EMW, ENGINEER and CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by EMW for its intended purpose without significant interference with CONTRACTOR's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following:

14.10.1. EMW at any time may request CONTRACTOR in writing to permit EMW to use any such part of the Work which EMW believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees that such part of the Work is substantially complete, CONTRACTOR will certify to EMW and ENGINEER that such part of the Work is substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. CONTRACTOR at any time may notify EMW and ENGINEER in writing that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, EMW, CONTRACTOR and ENGINEER shall make an inspection of that part of the Work to determine its status of completion. If ENGINEER does not consider that part of the Work to be substantially complete, ENGINEER will notify EMW and CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers that part of the Work to be substantially complete, the provisions of paragraphs 14.8 and 14.9 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

14.10.2. No occupancy or separate operation of part of the Work will be accomplished prior to

compliance with the requirements of paragraph 5.15 in respect of property insurance.

Final Inspection:

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

Final Application for Payment:

14.12. After CONTRACTOR has completed all such corrections to the satisfaction of ENGINEER and delivered in accordance with the Contract Documents all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance required by paragraph 5.4, certificates of inspection, marked-up record documents (as provided in paragraph 6.19) and other documents, CONTRACTOR may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by subparagraph 5.4.13, (ii) consent of the surety, if any, to final payment, and (iii) complete and legally effective releases or waivers (satisfactory to EMW) of all Liens arising out of or filed in connection with the Work. In lieu of such releases or waivers of Liens and as approved by EMW, CONTRACTOR may furnish receipts or releases in full and an affidavit of CONTRACTOR that: (i) the releases and receipts include all labor, services, material and equipment for which a Lien could be filed, and (ii) all payrolls, material and equipment bills and other indebtedness connected with the Work for which EMW or EMW's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to EMW to indemnify EMW against any Lien.

Final Payment and Acceptance:

14.13. If, on the basis of ENGINEER's observation of the Work during construction and final inspection, and ENGINEER's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, ENGINEER is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, ENGINEER will, within ten days after receipt of the final Application for Payment, indicate in writing ENGINEER's recommendation of payment and present the Application to EMW for payment. At the same time ENGINEER will also give written notice to EMW and CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.15. Otherwise, ENGINEER will return the Application to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application. Thirty days after the presentation to EMW of the Application and accompanying documentation, in appropriate form and substance and with ENGINEER's recommendation and notice of acceptability, the amount recommended by ENGINEER will become due and will be paid by EMW to CONTRACTOR.

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

Waiver of Claims:

14.15. The making and acceptance of final payment will constitute:

14.15.1. a waiver of all claims by EMW against CONTRACTOR, except claims arising from

unsettled Liens, from defective Work appearing after final inspection pursuant to paragraph 14.1 1, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from CONTRACTOR's continuing obligations under the Contract Documents; and

14.15.2. a waiver of all claims by CONTRACTOR against EMW other than those previously made in writing and still unsettled.

ARTICLE 15 - SUSPENSION OF WORK AND
TERMINATION

EMW May Suspend Work:

15.1 At any time and without cause, EMW may suspend the Work or any portion thereof for a period of not more than ninety days by notice in writing to CONTRACTOR and ENGINEER which will fix the date on which Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if CONTRACTOR makes an approved claim therefor as provided in Articles 11 and 12.

EMW May Terminate:

15.2. Upon the occurrence of any one or more of the following events:

15.2.1. if CONTRACTOR persistently fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.9 as adjusted from time to time pursuant to paragraph 6.6);

15.2.2. if CONTRACTOR disregards Laws or Regulations of any public body having jurisdiction;

15.2.3. if CONTRACTOR disregards the authority of ENGINEER; or

15.2.4. if CONTRACTOR otherwise violates in any substantial way any provisions of the Contract Documents;

EMW may, after giving CONTRACTOR (and the surety, if any,) seven days' written notice and to the extent permitted by Laws and Regulations, terminate the services of CONTRACTOR, exclude CONTRACTOR from the site and take possession of the Work and of all CONTRACTOR's tools, appliances, construction equipment and machinery at the site and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which EMW has paid CONTRACTOR but which are stored elsewhere, and finish the Work as EMW may deem expedient. In such case CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses and damages sustained by EMW arising out of or resulting from completing the Work such excess will be paid to CONTRACTOR. If such claims, costs, losses and damages exceed such unpaid balance, CONTRACTOR shall pay the difference to EMW. Such claims, costs, losses and damages incurred by EMW will be reviewed by ENGINEER as to their reasonableness and when so approved by ENGINEER incorporated in a Change Order, provided that when exercising any rights or remedies under this paragraph EMW shall not be required to obtain the lowest price for the Work performed.

15.3. Where CONTRACTOR's services have been so terminated by EMW, the termination will not affect any rights or remedies of EMW against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due CONTRACTOR by EMW will not release CONTRACTOR from liability.

15.4. Upon seven days' written notice to CONTRACTOR and ENGINEER, EMW may, without cause and without prejudice to any other right or remedy of EMW, elect to terminate the Agreement. In such case, CONTRACTOR shall be paid (without duplication of any items):

15.4.1. for completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of

termination, including fair and reasonable sums for overhead and profit on such Work;

15.4.2. for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

15.4.3. for all claims, costs, losses and damages incurred in settlement of terminated contracts with Subcontractors, Suppliers and others; and

15.4.4. for reasonable expenses directly attributable to termination.

CONTRACTOR shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

CONTRACTOR May Stop Work or Terminate:

15.5. If, through no act or fault of CONTRACTOR, the Work is suspended for a period of more than ninety days by EMW or under an order of court or other public authority, or ENGINEER fails to act on any Application for Payment within thirty days after it is submitted or EMW fails for thirty days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon seven days' written notice to EMW and ENGINEER, and provided EMW or ENGINEER do not remedy such suspension or failure within that time, terminate the Agreement and recover from EMW payment on the same terms as provided in paragraph 15.4. In lieu of terminating the Agreement and without prejudice to any other right or remedy, if ENGINEER has failed to act on an Application for Payment within thirty days after it is submitted, or EMW has failed for thirty days to pay CONTRACTOR any sum finally determined to be due, CONTRACTOR may upon seven day's written notice to EMW and ENGINEER stop the Work until payment of all such amounts due CONTRACTOR, including interest thereon. The provisions of this paragraph 15.5 are not intended to preclude CONTRACTOR from making claim under Articles 11 and 12 for an increase in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to CONTRACTOR's stopping Work as permitted by this paragraph.

ARTICLE 16 - DISPUTE RESOLUTION

If and to the extent that EMW and CONTRACTOR have agreed on the method and procedure for resolving disputes between them that may arise under this Agreement, such dispute resolution method and procedure, if any, shall be as set forth in Exhibit GC-A, "Dispute Resolution Agreement," to be attached hereto and made a part hereof. If no such agreement on the method and procedure for resolving such disputes has been reached, and subject to the provisions of paragraphs 9.10, 9.11, and 9.12, EMW and CONTRACTOR may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute.

ARTICLE 17 - MISCELLANEOUS

Giving Notice:

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

Computation of Times:

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

17.2.2. A calendar day of twenty-four hours measured from midnight to the next midnight will constitute a day.

Notice of Claim:

17.3. Should EMW or CONTRACTOR suffer injury or damage to person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally

liable, claim will be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions of this paragraph 17.3 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose.

Cumulative Remedies:

17.4. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon CONTRACTOR by paragraphs 6.12, 6.16, 6.30, 6.31, 6.32, 13.1, 13.12, 13.14, 14.3 and 15.2 and all of the rights and remedies available to EMW and ENGINEER thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available, by Laws or Regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.

Professional Fees and Court Costs Included:

17.5. Whenever reference is made to "claims, costs, losses and damages," it shall include in each case, but not be limited to, all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs.

EXHIBIT GC-A to General
Conditions of the Agreement
Between EMW and CONTRACTOR
Dated_____

DISPUTE RESOLUTION AGREEMENT

EMW and CONTRACTOR hereby agree that Article 16 of the General Conditions to the Agreement between EMW and CONTRACTOR is amended to include the following agreement of the parties:

16.1. All claims, disputes and other matters in question between EMW and CONTRACTOR arising out of or relating to the Contract Documents or the breach thereof (except for claims which have been waived by the making or acceptance of final payment as provided by paragraph 14.15) will be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, subject to the limitations of this Article 16. This agreement so to arbitrate and any other agreement or consent to arbitrate entered into in accordance herewith as provided in this Article 16 will be specifically enforceable under the prevailing law of any court having jurisdiction.

16.2. No demand for arbitration of any claim, dispute or other matter that is required to be referred to ENGINEER initially for decision in accordance with paragraph 9.11 will be made until the earlier of (a) the date on which ENGINEER has rendered a written decision or (b) the thirty-first day after the parties have presented their evidence to ENGINEER if a written decision has not been rendered by ENGINEER before that date. No demand for arbitration of any such claim, dispute or other matter will be made later than thirty days after the date on which ENGINEER has rendered a written decision in respect thereof in accordance with paragraph 9.11; and the failure to demand arbitration within said thirty days' period will result in ENGINEER's decision being final and binding upon EMW and CONTRACTOR. If ENGINEER renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence but will not supersede the arbitration proceedings, except where the decision is acceptable to the parties concerned. No demand for arbitration of any written decision of ENGINEER rendered in accordance with paragraph 9.10 will be made later than ten days after the party making such demand has delivered written notice of intention to appeal as provided in paragraph 9.10.

16.3. Notice of the demand for arbitration will be filed in writing with the other party to the Agreement and with the American Arbitration Association, and a copy will be sent to ENGINEER for information. The demand for arbitration will be made within the thirty-day or ten- day period

specified in paragraph 16.2 as applicable, and in all other cases within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall any such demand be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

16.4. Except as provided in paragraph 16.5 below, no arbitration arising out of or relating to the Contract Documents shall include by consolidation, joinder or in any other manner any other person or entity (including ENGINEER, ENGINEER's Consultant and the officers, directors, agents, employees or consultants of any of them) who is not a party to this contract unless:

16.4.1. 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

16.4.2. 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

16.4.3. the written consent of the other person or entity sought to be included and of EMW and CONTRACTOR has been obtained for such inclusion, which consent shall make specific reference to this paragraph; but 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.

16.5. Notwithstanding paragraph 16.4 if a claim, dispute or other matter in question between EMW and CONTRACTOR involves the Work of a Subcontractor, either EMW or CONTRACTOR may join such Subcontractor as a party to the arbitration between EMW and CONTRACTOR there under. CONTRACTOR shall include in all subcontracts required by paragraph 6.11 a specific provision whereby the Subcontractor consents to being joined in an arbitration between EMW and CONTRACTOR involving the Work of such Subcontractor. Nothing in this paragraph 16.5 nor in the provision of such subcontract consenting to joinder shall create any claim, right or cause of action in favor of Subcontractor and against EMW,

ENGINEER or ENGINEER's Consultants that does not otherwise exist.

16.6. The award rendered by the arbitrators will be final, judgment may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal.

16.7. EMW and CONTRACTOR agree that they shall first submit any and all unsettled claims, counterclaims, disputes and other matters in question between them arising out of or relating to the Contract Documents or the breach thereof ("disputes"), to mediation by The American Arbitration Association under the Construction Industry Mediation Rules of the American

Arbitration Association prior to either of them initiating against the other a demand for arbitration pursuant to paragraphs 16.1 through 16.6, unless delay in initiating arbitration would irrevocably prejudice one of the parties. The respective thirty and ten-day time limits within which to file a demand for arbitration as provided in paragraphs 16.2 and 16.3 above shall be suspended with respect to a dispute submitted to mediation within those same applicable time limits and shall remain suspended until ten days after the termination of the mediation. The mediator of any dispute submitted to mediation under this Agreement shall not serve as arbitrator of such dispute unless otherwise agreed.

APPENDIX H: SUPPLEMENTAL CONDITIONS

1.0 Technical Data

All technical data is included in the drawings. EMW does not furnish any technical data regarding subsurface conditions except as shown on the contract drawings. The Contractor shall be responsible for all subsurface investigations.

2.0 Road Repair

All road repairs shall meet the requirements of the State and County requirements. At the minimum, road shall be compacted to 95% standard density in the driving surface and 90% standard density on the shoulder and borrow ditches. Compaction will be made in minimum 6" to 8" lifts or as approved by EMW. The Contractor will replace road base material with like materials, subject to the approval of EMW. The minimum road base fill requirement is 6 inches from the top of the compacted surface to the bottom of the driving surface. All compaction shall be 90% Procter in road shoulders and 95% Procter in unpaved and paved roads. Compaction shall be in accordance with the Torrance County regulations.

3.0 Bonds

The Contractor shall at the time of the execution of this Contract furnish Performance and Payment Bonds as security for the faithful performance and payment of all his obligations under the Contract Documents. These Bonds shall be in amounts at least equal to the Contract Price and in such form and with such sureties as are acceptable to EMW Gas Association. All sureties shall be qualified to conduct business in the State of New Mexico.

EMW Gas Association will reimburse the Contractor for Bond premiums upon satisfactory evidence of payment. Contractor agrees that bid prices do not include any amount for payment of the bond premium. All bonds must be submitted to the EMW prior to any construction activity taking place by the Contractor.

A Bid Bond must be submitted with the Contractors bid.

4.0 Right of Way Width

4.1.1 -Public Roads: The width of public roads (subject to the limitations of the local governmental authority and the requirements for traffic control) are available for construction activities.

4.1.2 - Private Lands: Unless otherwise noted on the plans, the right of way on private lands is fifteen (15) Ft. in width with an additional 10 Ft. for Temporary Use Area. The Contractor shall limit all construction activities to this corridor.

5.0 Security of Materials

The Contractor is responsible for the security of materials upon issuance by EMW. The Contractor shall remain responsible for these materials until Mechanical Completion and/or return to the EMW Moriarty Warehouse. The Contractor shall promptly replace any lost or stolen material with like material subject to the approval by EMW.

6.0 Guidelines for Construction Spread

The Contractor shall coordinate and manage the work to minimize the distance between the front end of the job and the tail end of the job.

Ditching in Public Rights of Way – All trench that is opened must be backfilled within 14 calendar days. Any trench left open after 14 days, Contractor will be required to provide, install and maintain 9 inch straw waddles around the spoil pile until the trench is backfilled. All driveways crossings by open cut must be opened and closed as soon as possible. All trench left open must be barricaded to protect the public.

- Open trench ends must be barricaded. EMW shall take into consideration the impact of the project on the public, access and safety concerns. The Contractor will take all necessary precautions to protect the Public and animals from an open ditch. These measures include but are not limited to: signing, and traffic control in accordance with NM State Highway Department regulations, County regulations, electric fencing and gates.

7.0 Sub-contractors and Suppliers

The Contractor shall provide EMW a list of all Sub-contractors and Suppliers.

8.0 Buried Utilities

The Contractor is responsible for the arranging with the owners of buried utilities for the surface location of these facilities. The Contractor shall notify all owners at least 48 hours prior to the beginning of underground construction in any area. The Contractor shall abide by the New Mexico Underground Excavation laws. The Contractor is responsible for any damage to these facilities resulting from the actions of the Contractor during the project.

9. Incorporation by Reference

All provisions of the Request for Proposal document are incorporated in the Supplementary Conditions by reference to conform to the General Conditions.

10. Protection of Girth Welds

The Contractor shall use Polyken 1027 primer and Polyken 930-35 tape in a half lap process for girth welds on the line pipe.

The Contractor shall use Dirax Shrink Sleeves for the girth welds on the Bore pipe.

11. Testing for Holidays

The Contractor shall use a Holiday Detector to check the coating prior to backfilling. The following Test Voltages should be used:

Coating Thickness (Mils)	Test Voltage Volts
10	1,650
11	1,750
12	1,800
13	1,900
14	1,950
15	2,050
16	2,100
20	2,350
25	2,650
30	2,900

12. Insurance

The Contractor shall provide insurance during the course of the project work and during any warranty work after the completion of the project work.

<u>Insurance</u>	<u>Form</u>	<u>Each Occurrence</u>	<u>Aggregate</u>
Workers Compensation & Employer's Liability	Standard Statutory or	\$100,000/500,000/100,000	Employers Liability
Contractor's Public Liability Bodily Injury Property Damage	(1) (3) Commercial General Liability	Combined Single Limit \$1,000,000	\$1,000,000
Motor Vehicle Liability Bodily Injury Property Damage	(2) Comprehensive	Combined Single Limit \$1,000,000	

- (1) Must include coverage under all sections of policy and must include collapse(C), explosion(X) and underground utility (U) liability.
- (2) Policy must include non-ownership liability and hired automobile liability coverage.
- (3) All policies must include EMW Gas Association as "additionally insured".

All insurance proof must be submitted to the EMW prior to any construction activity taking place by the Contractor.

APPENDIX I: DRAWING AND SPECIFICATIONS

Please find the following documents by accessing the corresponding links below:

1. DRAWINGS TABLE OF CONTENTS:

2. DRAWINGS:

3. SPECIFICATIONS:

CONFLICT OF INTEREST AND DEBARMENT/SUSPENSION CERTIFICATION FORM

Project Name: 2020 EMW 4-INCH EXPANSION PROJECT

Project No.2020-2

As utilized herein, the term "Bidder" shall mean the entity submitting a bid to the Owner in response to the above-referenced request for bids.

CONFLICT OF INTEREST; GOVERNMENTAL CONDUCT ACT:

The Bidder warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the agreement. The Bidder certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a current or former "public officer or employee" have been followed.

DEBARMENT/SUSPENSION STATUS:

The Bidder certifies that it is not suspended, debarred or ineligible from entering into contracts pursuant to the **Regulation Governing the Award and Rejection of Bids/Offer and the Debarment of Contractors for Public Works Projects of the City of Albuquerque**. The Bidder certifies that it is not suspended, debarred or ineligible from entering into contracts with the Federal Government, or any State agency or local public body. The Bidder agrees to provide immediate notice to the Owner in the event of being suspended, debarred or declared ineligible by any department or agency of the Federal government, or any agency of local public body in the State of New Mexico, or upon receipt of a notice of proposed debarment that is received after the submission of the bid but prior to the award of the contract.

CERTIFICATION:

The undersigned hereby certifies that he/she has read the above Conflict of Interest and Debarment/Suspension Status requirements and that he/she understands and will comply with these requirements. The undersigned further certifies that it/they have the authority to certify compliance for the Bidder named and that the information contained in this document is true and accurate to the best of their knowledge and understand that a false statement on this certification may be grounds for rejection of this bid proposal or termination of the contract award.

Company Name of Bidder

Telephone Number

Signature of Bidder's Authorized Representative

FAX Number

Printed Name of Bidder's Authorized Representative

E-Mail Address

Printed Title of Bidder's Authorized Representative

Date

Address: _____

BID BOND

**PROJECT NAME: EMW 2020-2 4-INCH EXPANSION PROJECT
Project No. 2020-2**

KNOW ALL MEN BY THESE PRESENTS:

THAT _____, as Principal, hereinafter called the **Principal**, and _____, a corporation duly organized and existing under and by virtue of the laws of the State of _____ and authorized to do business in the State of New Mexico, as Surety, hereinafter called the **Surety**, are held and firmly bound unto EMW Gas Association as Obligee, hereinafter called EMW, in the sum of **five percent (5%) of the amount bid** for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted the accompanying Bid dated _____, for the above-referenced Project which Bid is by reference made a part hereof and is hereinafter referred to as the Bid.

NOW, THEREFORE, the condition of this obligation is such that, if EMW shall accept the Bid of the Principal and the Principal shall enter into a Contract with EMW in accordance with the terms of such Bid, and give such bond or bonds as may be specified in the Bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof or in the event of the failure of the Principal to enter into such Contract and give such bond or bonds, if the Principal shall pay to EMW the difference not to exceed the penalty hereof between the amount specified in said Bid and such larger amount for which EMW may in good faith contract with another party to perform the Work covered by said Bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and Sealed this _____ day of _____.

ATTEST:

Principal
By: _____
Title: _____

ATTEST:

Surety
By: _____
Title: _____

PERFORMANCE BOND

PROJECT NAME: EMW 2020-2 4-INCH EXPANSION PROJECT
Project No. 2020-2

KNOW ALL MEN BY THESE PRESENTS:

THAT _____, as Principal, hereinafter called **Contractor**, and _____, a corporation organized and existing under and by virtue of the laws of the State of _____ and authorized to do business in the State of New Mexico, as a surety, hereinafter called **Surety**, are held and firmly bound unto the EMW Gas Association as Obligee, hereinafter called **Owner**, in _____ the _____ amount _____ of _____ Dollars

(\$ _____), for the payment whereof **Contractor** and **Surety** firmly bind themselves, their heirs, executors, administrators, successors, and assigns jointly and severally by these presents.

WHEREAS, **Contractor** shall by written agreement enter into a contract with **Owner** for the above-referenced Project, which Contract shall by reference be made a part hereof and is hereinafter referred to as the Contract.

NOW, THEREFORE, the condition of this obligation is such that, if **Contractor** shall faithfully perform and complete said Contract according to its terms and comply with all requirements of law, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Surety hereby waives notice of any alteration or extension of time made by **Owner**.

Surety hereby consents to progress payments to **Contractor** and acknowledges that such payments shall not preclude **Owner** from showing the true character and quality of materials furnished or services rendered or from recovering from **Contractor** or **Surety** such damages as **Owner** may sustain by reason of deficiency in quantity or quality of materials or services furnished with respect to which a progress payment was made.

Whenever **Contractor** shall be, and is declared by **Owner** to be, in default under the Contract, **Owner** having performed its obligations thereunder; **Surety** may promptly remedy the default or shall promptly:

- 1. Complete the Contract in accordance with its terms and conditions, or
- 2. Obtain a bid or bids for submission to **Owner** for completing the Contract in accordance with its terms and conditions and, upon determination by **Owner** and **Surety** of the lowest responsible Bidder, arrange for a contract between such Bidder and **Owner** and make available as Work progresses (even though there should be default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Price but not exceeding, including other costs and damages for which **Surety** may be liable hereunder, including but not limited to liquidated damages and additional consultant fees caused by

the default, the amount set forth in the first paragraph hereof. The term "balance of the Contract Price," as used in this paragraph shall mean the total amount payable by **Owner** to **Contractor** under the Contract and any amendments thereto, less the amount properly paid by **Owner** to **Contractor**. Within fifteen (15) days of receipt of notice of default, the **Surety** shall notify the **Owner** of the **Surety's** plan to remedy the default.

Surety acknowledges that the Contract may contain express guarantees and agrees that said guarantees, if any, are covered by **Surety's** obligation hereunder.

Any suit under this bond must be instituted before the expiration of three years from the date on which final payment under the Contract falls due, except that, with respect to express guarantees of a longer term, a suit thereon must be initiated within six months following the expiration of said express guarantees, if any.

Right of action with respect to any express guarantees, if any, in the Contract shall accrue following completion and formal acceptance of the Work under the Contract.

No right of action shall accrue on this bond to or for the use of any persons or corporation other than **Owner** named herein or its successors or assigns.

Signed and Sealed this _____ day of _____.

ATTEST: _____ Contractor
By: _____
_____ Title: _____

ATTEST: _____ Surety
By: _____
_____ Title: _____

Claims or Notice given to **Surety** pursuant to this Bond shall be sent to the following Mailing Address:

LABOR AND MATERIAL PAYMENT BOND

Project Name: EMW 2020-2 4-INCH EXPANSION PROJECT

Project No.2020-2

KNOW ALL MEN BY THESE PRESENTS:

THAT _____, as Principal, hereinafter called **Contractor**, and _____, a corporation organized and existing under and by virtue of the laws of the State of _____ and authorized to do business in the State of New Mexico, as a surety, hereinafter called **Surety**, are held and firmly bound unto the EMW Gas Association as Obligee, hereinafter called **Owner**, in the amount of _____ Dollars (\$_____), for the payment whereof **Contractor** and **Surety** firmly bind themselves, their heirs, executors, administrators, successors, and assigns jointly and severally by these presents.

WHEREAS, **Contractor** shall by written agreement enter into a contract with **Owner** for the above-referenced Project, which Contract shall by reference be made a part hereof and is hereinafter referred to as the Contract.

NOW, THEREFORE, the condition of this obligation is such that, if **Contractor** shall pay as they become due, all just claims for labor performed and materials and supplies furnished upon or for the Work under said Contract, whether said labor be performed and materials and supplies be furnished under the original Contract or any contract thereunder, then this obligation shall be null and void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

The right to sue on this bond accrues only to **Owner** and the parties to whom Sections 13-4-18 through 13-4-20 NMSA 1978, as amended, grant such right; and any such right shall be exercised only in accordance with the provisions and limitations of said statutes.

Signed and Sealed this _____ day of _____.

ATTEST:

Contractor

By: _____

Title: _____

ATTEST:

Surety

By: _____

Title: _____

Claims or Notice given to **Surety** pursuant to this Bond shall be sent to the following Mailing Address:

This bond is issued simultaneously with the Performance Bond in favor of **Owner** for the faithful performance of the Contract.

Bidder's Bid Package Checklist

- APPENDIX B: BID FORM (through the signature page)**
- APPENDIX C: FORM OF ACKNOWLEDGEMENT & CONTRACT EXCEPTIONS**
- APPENDIX F: STATEMENT OF BIDDER'S QUALIFICATIONS**
- BID BOND(S) provided at page BB-1 (in the sum of 5% for each project bid)**
- Conflict of Interest and Debarment/Suspension Certification Form, form provided at page CIDF-1**
- Bidder's Listing of Subcontractors**

Awarded Contractor Checklist

___ **APPENDIX A: Agreement (Two copies of Contract Documents to be provided for execution)**

___ **Form W-9, Request for Taxpayer Identification Number and Certification**

<http://www.irs.gov/pub/irs-pdf/fw9.pdf>

___ **Insurance Certificate(s)** (Commercial General Liability including Auto, EMWs/ Contractors Protective Liability Insurance, and Workers' Compensation)

___ **Builders Risk Insurance Certificate** (in the amount of 100% of Contract Price)

___ **Form CC-1, Contractor's List of Subcontractors/Suppliers**

___ **Performance Bond**, form provided at pages PB-1 – PB-2 and **Labor and Materials Payment Bond**, form provided at page LMB-1 (in the amount of 100% of total Contract Price), accompanied by Power of Attorney

___ **Gross Receipts Tax Surety Bond** (If applicable – out of state contractor)
See Section 3.13