

Contract Documents For Construction of The Chichiltah-Vanderwagen Water Supply Project

The Navajo Nation



VOLUME 1

April 2024

Bid Open Date: May 17th, 2024

Bid Time: 2:00 PM (MDT)

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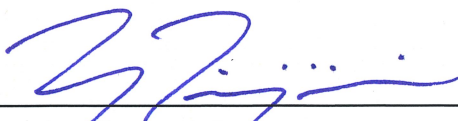
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ENGINEER CERTIFICATION


These Contract Documents and Construction Specifications for the
Chichiltah-Vanderwagen Water Supply Project were prepared by:

Souder, Miller & Associates
5454 Venice Avenue NE, Suite D
Albuquerque, NM 87113
(505) 299-0942 or Fax (505) 293-3430

The technical material and data contained in the specifications were prepared under the supervision and direction of **Ty Tsinnijinnie, P.E.**, whose seal as a Professional Engineer licensed to practice in the state of New Mexico is affixed below.



Ty Tsinnijinnie, P.E.
New Mexico PE License # 25520



Date

All questions about the meaning of intent of these documents shall be submitted only to the Engineer of Record stated above, IN WRITING for interpretations.



ENGINEER CERTIFICATION

These Contract Documents and Construction Specifications for the **Chichiltah-Vanderwagen Water Supply Project** were prepared by:

Souder, Miller & Associates
5454 Venice Avenue NE, Suite D
Albuquerque, NM 87113
(505) 299-0942 or Fax (505) 293-3430

The technical material and data contained in the specifications were prepared under the supervision and direction of **Hunter Riek, P.E.**, whose seal as a Professional Engineer licensed to practice in the state of New Mexico is affixed below.



Hunter Riek, P.E.

New Mexico PE License # 23567



Date

All questions about the meaning of intent of these documents shall be submitted only to the Engineer of Record stated above, IN WRITING for interpretations.

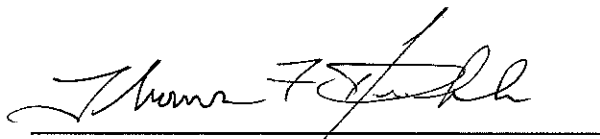


ENGINEER CERTIFICATION

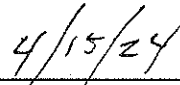
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5454 Venice Avenue NE, Suite D
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(505) 299-0942 or Fax (505) 293-3430

The technical material and data contained in the specifications were prepared under the supervision and direction of **Thomas F. Ruehle, P.E.**, whose seal as a Professional Engineer licensed to practice in the state of New Mexico is affixed below.



Thomas F. Ruehle, P.E.
New Mexico PE License # 25211



Date

All questions about the meaning of intent of these documents shall be submitted only to the Engineer of Record stated above, IN WRITING for interpretations.



ADVERTISEMENT FOR BIDS

Owner: The Navajo Department of Water Resources on behalf of Chichiltah Chapter

Separate sealed BIDS for the construction of the CHICHILTAH-VANDERWAGEN WATER SUPPLY PROJECT, Navajo Nation Bid No. 24-03-3295LE, will be received by the OWNER at the office of the ENGINEER, Souder, Miller & Associates, until 2:00 PM (Local Time), FRIDAY, MAY 17th, 2024, and then at said office publicly opened and read aloud.

Project Description: Work of the project consists of construction of 1.1 miles of 4" diameter PVC pipes, 0.6 miles of 2" diameter PVC pipes, site improvements for 5 existing water wells, one 200,000 gallon welded steel water storage tank and chlorination building site, site piping, valves, electrical, and appurtenances.

The PROJECT is located within the Vanderwagen community of Chichiltah Navajo Chapter, McKinley County, NM, approximately 20 miles south of Gallup, NM via Highway 602.

A MANDATORY PRE-BID MEETING AND SITE VISIT will be held at the Chichiltah Chapter House, McKinley County, New Mexico on FRIDAY, APRIL 26th, 2024 at 10:00 am (MDT).

The CONTRACT DOCUMENTS in electronic media format, directions to the pre-bid meeting, agenda for pre-bid meeting and site visit, as well as any other updates are available through the ENGINEER's website:

www.soudermiller.com/bid-requests

The office of the ENGINEER is located at:
5454 Venice Avenue, N.E., Suite D
Albuquerque, NM 87113
(505) 299-0942

Bidders are responsible for monitoring the website referenced above for notifications of changes and addenda related to this project.

Preference will be given in accordance with the Navajo Nation Business Opportunities Act, N.N.C. Title 5, Chapter 2. Bidders claiming preference shall submit evidence of their priority certification with their bid. All firms submitting bids under this solicitation must comply with all other qualification requirements referenced in the solicitation documents for their bid to be considered responsive.

INSTRUCTIONS TO BIDDERS

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ARTICLE 1 – DEFINED TERMS

- 1.01 Terms used in these Instructions to Bidders have the meanings indicated in the Standard General Conditions and Navajo Nation Supplemental Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below:

A. *Issuing Office* – The office from which the Bidding Documents are to be issued.

ARTICLE 2 – COPIES OF BIDDING DOCUMENTS

- 2.01 Complete sets of the Bidding Documents may be obtained via the Engineer's website (www.soudermiller.com) in the number and format stated in the advertisement or invitation to bid.
- 2.02 Complete sets of Bidding Documents shall be used in preparing Bids; neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
- 2.03 Bidding Documents in electronic media format are furnished to bidding contractors for the sole purpose of preparing bids, and not for construction. The selected construction Contractor shall not rely on files provided in electronic media format for construction, but rather hard copies of such data provided by the Engineer or Owner upon award of the Contract.
- 2.04 Owner and Engineer, in making copies of Bidding Documents available on the above terms, do so only for the purpose of obtaining Bids for the Work and do not authorize or confer a license for any other use.

ARTICLE 3 – QUALIFICATIONS OF BIDDERS

- 3.01 To demonstrate Bidder's qualifications to perform the Work, the Bidder shall complete and submit the Bidder's Qualifications Statement included in the Project Manual along with all supporting data together with the Bid, which will be used in the evaluation of the Bid prior to Award, as stipulated in Article 19 of these Instructions to Bidders. The Bidder may be considered non-responsive if the Bidder's Qualifications Statement is not submitted together with the Bid.
- 3.02 This Procurement is being conducted pursuant to all applicable Navajo Nation laws, including but not limited to the Navajo Nation Business Opportunity Act, 5 N.N.C. § 201, *et seq.*
- 3.03 A Bidder's failure to submit required qualification information within the times indicated may disqualify Bidder from receiving an award of the Contract.
- 3.04 No requirement in this Article 3 to submit information will prejudice the right of Owner to seek additional pertinent information regarding Bidder's qualifications.
- 3.05 Bidder is advised to carefully review those portions of the Bid Form requiring Bidder's representations and certifications.

ARTICLE 4 – SITE AND OTHER AREAS; EXISTING SITE CONDITIONS; EXAMINATION OF SITE; OWNER'S SAFETY PROGRAM; OTHER WORK AT THE SITE

- 4.01 *Site and Other Areas*

A. The Site is identified in the Bidding Documents. By definition, the Site includes rights-of-way, easements, and other lands furnished by Owner for the use of the Contractor. Any additional lands required for temporary construction facilities, construction equipment, or

storage of materials and equipment, and any access needed for such additional lands, are to be obtained and paid for by Contractor.

- B. Acquisition of right-of-way and/or easements for this project is currently in process and the selected Contractor will be able to start field work only after Contractor is notified in writing by the Engineer.

4.02 *Existing Site Conditions*

A. Subsurface and Physical Conditions; Hazardous Environmental Conditions

1. The Technical Specifications identify:

- a. those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site.
- b. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).
- c. reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site.
- d. Technical Data contained in such reports and drawings.

- 2. Owner will make copies of reports and drawings referenced above available to any Bidder on request. These reports and drawings are not part of the Contract Documents, but the Technical Data contained therein upon whose accuracy Bidder is entitled to rely, as provided in the General Conditions, has been identified and established in the Technical Specifications. Bidder is responsible for any interpretation or conclusion Bidder draws from any Technical Data or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.

- 3. If the Technical Specifications, specifically Section 01 00 00, do not identify Technical Data, the default definition of Technical Data set forth in Article 1 of the General Conditions will apply.

- 4. If the Technical Specifications, specifically Section 01 00 00, specifically identify information or test results as not being Technical Data upon which the Bidder is entitled to rely, then the Bidder shall not be entitled to rely upon said information.

- B. with respect to existing Underground Facilities at or contiguous to the Site are set forth in the Contract Documents and are based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities, including Owner, or others. Bidder shall, per the provisions in the following paragraph, undertake additional subsurface investigation work to develop a sound understanding of subsurface conditions prior to preparing the Bid.

- C. Adequacy of Data: Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions, and Underground Facilities, and possible changes in the Bidding Documents due to differing or unanticipated subsurface or physical conditions appear in Paragraphs 5.03, 5.04, and 5.05 of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to a Hazardous Environmental Condition at the Site, if any, and possible changes in the Contract Documents due to any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or

indicated in the Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work, appear in Paragraph 5.06 of the General Conditions.

4.03 *Site Visit and Testing by Bidders*

- A. Bidder shall conduct the required Site visit during normal working hours, and shall not disturb any ongoing operations at the Site.
- B. Bidder is not required to conduct any subsurface testing, or exhaustive investigations of Site conditions.
- C. On request, and to the extent Owner has control over the Site, and schedule permitting, the Owner will provide Bidder access to the Site to conduct such additional examinations, investigations, explorations, tests, and studies as Bidder deems necessary for preparing and submitting a successful Bid. Owner will not have any obligation to grant such access if doing so is not practical because of existing operations, security or safety concerns, or restraints on Owner's authority regarding the Site.
- D. Bidder shall comply with all applicable Laws and Regulations regarding excavation and location of utilities, obtain all permits, and comply with all terms and conditions established by Owner or by property owners or other entities controlling the Site with respect to schedule, access, existing operations, security, liability insurance, and applicable safety programs.
- E. Bidder shall fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies.

4.04 *Owner's Safety Program*

- A. Site visits and work at the Site may be governed by an Owner safety program. As the General Conditions indicate, if an Owner safety program exists, it will be furnished to the Contractor.

4.05 *Other Work at the Site*

- A. The Technical Specifications identify the general nature of other work of which Owner is aware (if any) that is to be performed at the Site by Owner or others (such as utilities and other prime contractors) and relates to the Work contemplated by these Bidding Documents. If Owner is party to a written contract for such other work, then on request,

Owner will provide to each Bidder access to examine such contracts (other than portions thereof related to price and other confidential matters), if any.

ARTICLE 5 – BIDDER’S REPRESENTATIONS

5.01 It is the responsibility of each Bidder before submitting a Bid to:

- A. examine and carefully study the Bidding Documents, and any data and reference items identified in the Bidding Documents;
- B. visit the Site, conduct a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfy itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work;
- C. become familiar with and satisfy itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work;
- D. carefully study all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Technical Specifications, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Technical Specifications, especially with respect to Technical Data in such reports and drawings;
- E. consider the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder’s safety precautions and programs;
- F. agree, based on the information and observations referred to in the preceding paragraph, that at the time of submitting its Bid no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents;
- G. become aware of the general nature of the work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents;
- H. promptly give Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by Engineer is acceptable to Bidder;
- I. determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work; and
- J. agree that the submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

ARTICLE 6 – PRE-BID CONFERENCE

- 6.01 A **Mandatory Pre-Bid conference and site visit** will be held at the time and location stated in the invitation or advertisement to bid. Representatives of Owner and Engineer will be present to discuss the Project. Bidders are required to attend and participate in the conference. Engineer will transmit to all prospective Bidders of record such Addenda as Engineer considers necessary in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective. **Any Bid presented by a Bidder who did not attend the Mandatory Pre-Bid Conference and site visit will not be considered.**

ARTICLE 7 – INTERPRETATIONS AND ADDENDA

- 7.01 All questions about the meaning or intent of the Bidding Documents are to be submitted to Engineer in writing. Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda delivered to all parties recorded as having received the Bidding Documents. Questions received less than seven days prior to the date for opening of Bids may not be answered. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.
- 7.02 Addenda may be issued to clarify, correct, supplement, or change the Bidding Documents.

ARTICLE 8 – BID SECURITY

- 8.01 A Bid must be accompanied by Bid security made payable to Owner in an amount of five percent (5%) of Bidder's maximum Bid price (determined by adding the base bid and all alternates) and in the form of a certified check, bank money order, or a Bid bond (on the form included in the Bidding Documents) issued by a surety meeting the requirements of Paragraphs 6.01 and 6.02 of the General Conditions.
- 8.02 The Bid security of the apparent Successful Bidder will be retained until Owner awards the contract to such Bidder, and such Bidder has executed the Contract Documents, furnished the required contract security, and met the other conditions of the Notice of Award, whereupon the Bid security will be released. If the Successful Bidder fails to execute and deliver the Contract Documents and furnish the required contract security within 15 days after the Notice of Award, Owner may consider Bidder to be in default, annul the Notice of Award, and the Bid security of that Bidder will be forfeited. Such forfeiture shall be Owner's exclusive remedy if Bidder defaults.
- 8.03 The Bid security of other Bidders that Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of seven days after the Effective Date of the Contract or 61 days after the Bid opening, whereupon Bid security furnished by such Bidders will be released.
- 8.04 Bid security of other Bidders that Owner does not select for a Contract Award shall be released within seven days after the Owner's execution of a Contract.

ARTICLE 9 – CONTRACT TIMES

- 9.01 The number of days within which, or the dates by which, the Work is to be substantially completed and ready for final payment are set forth in the Agreement.

ARTICLE 10 – LIQUIDATED DAMAGES

- 10.01 Provisions for liquidated damages, if any, for failure to timely attain a Milestone, Substantial Completion, or completion of the Work in readiness for final payment, are set forth in the Agreement.

ARTICLE 11 – SUBSTITUTE AND “OR-EQUAL” ITEMS

- 11.01 The Contract for the Work, as awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents without consideration during the bidding and Contract award process of possible substitute or “or-equal” items. In cases in which the Contract allows the Contractor to request that Engineer authorize the use of a substitute or “or-equal” item of material or equipment, application for such acceptance may not be made to and will not be considered by Engineer until after the Effective Date of the Contract.
- 11.02 All prices that Bidder sets forth in its Bid shall be based on the presumption that the Contractor will furnish the materials and equipment specified or described in the Bidding Documents, as supplemented by Addenda. Any assumptions regarding the possibility of post-Bid approvals of “or-equal” or substitution requests are made at Bidder’s sole risk.

ARTICLE 12 – SUBCONTRACTORS, SUPPLIERS, AND OTHERS

- 12.01 If a List of Proposed Subcontractors is identified as a required attachment to the Bid Proposal, the Bidder is required to identify all Subcontractors whose subcontracted work surpasses the Subcontractor listing threshold of five thousand dollars (\$5,000).
- 12.02 If the Bidder fails to specify a Subcontractor in excess of the listing threshold, the Bidder represents that the Bidder, as the prime Contractor, is fully qualified to perform that portion of the Work. For each such listed Subcontractor, the Bidder shall include the following information:
- A. the name of Subcontractor that will perform work or labor or render service on the project identified in the Contract Documents and the city or county of its principal place of business; and
 - B. the category of the work that will be done by each Subcontractor; only one Subcontractor may be listed for each category of work as defined by the Bidder.
- 12.03 Contractor shall not substitute any person as Subcontractor in place of those identified on the List or Proposed Subcontractors without prior approval from Owner. The same applies to equipment manufacturers identified on the Equipment Suppliers List, when such a list is included in the Project Manual.
- 12.04 A Bidder shall be prepared to retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of the Work if required by the Bidding Documents (most commonly in the Specifications) to do so. If a prospective Bidder objects to retaining any such Subcontractor, Supplier, or other individual or entity, and the concern is not relieved by an Addendum, then the prospective Bidder should refrain from submitting a Bid.
- 12.05 Subsequent to the submittal of the Bid, Owner may not require the Successful Bidder or Contractor to retain any Subcontractor, Supplier, or other individual or entity against which Contractor has reasonable objection.
- 12.06 If a List of Proposed Subcontractors is not identified as a required attachment to the Bid, the apparent Successful Bidder, and any other Bidder so requested, shall within five days after Bid

opening, submit to Owner a list of the Subcontractors or Suppliers proposed for Geophysical Logging and portions of the Work over \$5,000.

If requested by Owner, such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, or other individual or entity. If Owner or Engineer, after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, individual, or entity, Owner may, before the Notice of Award is given, request apparent Successful Bidder to submit an acceptable substitute, in which case apparent Successful Bidder shall submit a substitute, without an increase in Bid price.

- 12.07 If apparent Successful Bidder declines to make any such substitution, Owner may award the Contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers, or other individuals or entities. Declining to make requested substitutions will not constitute grounds for forfeiture of the Bid security of any Bidder. Any Subcontractor, Supplier, individual, or entity so listed and against which Owner or Engineer makes no written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner and Engineer subject to subsequent revocation of such acceptance as provided in Paragraph 7.06 of the General Conditions.

ARTICLE 13 – PREPARATION OF BID

- 13.01 The Bid Form is included with the Bidding Documents.
- A. All blanks on the Bid Form shall be completed in ink and the Bid Form signed in ink. Erasures or alterations shall be initialed in ink by the person signing the Bid Form. A Bid price shall be indicated for each section, Bid item, alternate, adjustment unit price item, and unit price item listed therein.
 - B. If the Bid Form expressly indicates that submitting pricing on a specific alternate item is optional, and Bidder elects to not furnish pricing for such optional alternate item, then Bidder may enter the words “No Bid” or “Not Applicable.”
- 13.02 A Bid by a corporation shall be executed in the corporate name by a corporate officer (whose title must appear under the signature), accompanied by evidence of authority to sign. The corporate address and state of incorporation shall be shown.
- 13.03 A Bid by a limited liability company shall be executed in the name of the firm by a member or other authorized person and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm shall be shown.
- 13.04 A Bid by an individual shall show the Bidder’s name and official address.
- 13.05 A Bid by a joint venture shall be executed by an authorized representative of each joint venturer in the manner indicated on the Bid Form. The official address of the joint venture shall be shown.
- 13.06 All names shall be printed in ink below the signatures.
- 13.07 The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers of which shall be filled in on the Bid Form.
- 13.08 Postal and e-mail addresses and telephone number for communications regarding the Bid shall be shown.
- 13.09 The Bid shall contain evidence of Bidder’s authority and qualification to do business in the state where the Project is located, or Bidder shall covenant in writing to obtain such authority and

qualification prior to award of the Contract and attach such covenant to the Bid. Bidder's state contractor license number, if any, shall also be shown on the Bid Form.

ARTICLE 14 – BASIS OF BID

14.01 Unit Price

- A. Bidders shall submit a Bid on a unit price basis for each item of Work listed in the unit price section of the Bid Form.
- B. The "Bid Price" (sometimes referred to as the extended price) for each unit price Bid item will be the product of the "Estimated Quantity" (which Owner or its representative has set forth in the Bid Form) for the item and the corresponding "Bid Unit Price" offered by the Bidder. The total of all unit price Bid items will be the sum of these "Bid Prices"; such total will be used by Owner for Bid comparison purposes. The final quantities and Contract Price will be determined in accordance with Paragraph 13.03 of the General Conditions.
- C. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

ARTICLE 15 – SUBMITTAL OF BID

- 15.01 A Bid shall be received no later than the date and time prescribed and at the place indicated in the advertisement or invitation to bid and shall be enclosed in a plainly marked package. All submitted Bids must be sealed and the package/envelope must be clearly marked "**Bid for Chichiltah-Vanderwagen Water Supply Project**". All Bids to be considered by a Bidder certified as a Priority 1 or Priority 2 business entity under the Navajo Business Opportunity Act must be clearly marked as "**Priority 1**" or "**Priority 2**" on the outside of the envelope. Bids submitted by email or fax shall be disqualified. The Bid shall be accompanied by the Bid security and other required documents. If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid shall be enclosed in a separate package plainly marked on the outside as described above. A mailed Bid shall be addressed to Souder, Miller & Associates, Attention Ty Tsinnijinnie, P.E., 5454 Venice Avenue NE, Suite D, Albuquerque, NM 87113.
- 15.02 Bids received after the date and time prescribed for the opening of bids, or not submitted at the correct location or in the designated manner, will not be accepted and will be returned to the Bidder unopened.

ARTICLE 16 – MODIFICATION AND WITHDRAWAL OF BID

- 16.01 A Bid may be withdrawn by an appropriate document duly executed in the same manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids. Upon receipt of such notice, the unopened Bid will be returned to the Bidder.
- 16.02 If a Bidder wishes to modify its Bid prior to Bid opening, Bidder must withdraw its initial Bid in the manner specified in Paragraph 16.01 and submit a new Bid prior to the date and time for the opening of Bids.
- 16.03 If within 24 hours after Bids are opened any Bidder files a duly signed written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid,

and the Bid security will be returned. Thereafter, if the Work is rebid, that Bidder will be disqualified from further bidding on the Work.

ARTICLE 17 – OPENING OF BIDS

- 17.01 Bids will be opened at the time and place indicated in the advertisement or invitation to bid. Eligible Bids shall be opened in accordance with the bid opening procedures of the Navajo Business Opportunity Act (“NBOA”) at 5 N.N.C. §205 C, and a staff member of the Navajo Nation Business Regulatory Department shall be in attendance at the opening of Bids. An abstract of the amounts of the base Bids and major alternates, if any, will be made available to Bidders after the opening of Bids.

ARTICLE 18 – BIDS TO REMAIN SUBJECT TO ACCEPTANCE

- 18.01 All Bids will remain subject to acceptance for the period of time stated in the Bid Form, but Owner may, in its sole discretion, release any Bid and return the Bid security prior to the end of this period.

ARTICLE 19 – EVALUATION OF BIDS AND AWARD OF CONTRACT

- 19.01 Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Owner will reject the Bid of any Bidder that Owner finds, after reasonable inquiry and evaluation, to not be responsible. If Bidder purports to add terms or conditions to its Bid, takes exception to any provision of the Bidding Documents, or attempts to alter the contents of the Contract Documents for purposes of the Bid, then the Owner will reject the Bid as nonresponsive; provided that Owner also reserves the right to waive all minor irregularities not involving price, time, or changes in the Work.
- 19.02 If Owner awards the contract for the Work, such award shall be to the responsible Bidder submitting the lowest responsive Bid. However, the ultimate determination of eligibility for a Contract Award and ultimate selection of a Contractor for a Contract Award shall be in accordance with the Navajo Business Opportunity Act, and other applicable Navajo Nation laws.
- 19.03 Evaluation of Bids
- A. In evaluating Bids, Owner will consider whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices, and other data, as may be requested in the Bid Form or prior to the Notice of Award.
 - B. If the Contract is to be awarded, Owner will award the Contract to the Bidder whose Bid is in the best interests of the Project. The Additive and/or Deductive Bid Items, as well as Alternate Bid Items are listed in order of priority on the Bid Form. Award will be made to the lowest responsible and responsive Bidder that offers the lowest aggregate amount for the Base Bid, plus or minus (in the order stated in the list of priorities on the Bid Form) those Additive or Deductive Bid Items, respectively, and Alternate Bid Items (if applicable) that fit within the funds determined available, and are in the Owner’s best interests. However, in the case of additive bid items, if adding another item from the bid schedule list of priorities would make the award exceed the available funds for all Bidders, the Owner reserves the right to skip that item and go to the next item from the list of Additive Bid Items. Ultimately, all Bids will be evaluated on the basis of the same Base Bid plus Additive or Deductive, and Alternate Bid Items.

- C. If bids received are substantially lower or higher than the Owner's available budget, the Owner may choose to compare bids based on modified quantities for one or more items.
 - D. After determination of the Successful Bidder based on this comparative process and on the responsiveness, responsibility, and other factors set forth in these Instructions, the award may be made to said Successful Bidder on its base Bid and any combination of its additive alternate Bids for which Owner determines funds will be available at the time of award.
- 19.04 In evaluating whether a Bidder is responsible, Owner will consider the qualifications of the Bidder and may consider the qualifications and experience of Subcontractors and Suppliers proposed for those portions of the Work for which the identity of Subcontractors and Suppliers must be submitted as provided in the Bidding Documents.
- 19.05 Owner may conduct such investigations as Owner deems necessary to establish the responsibility, qualifications, and financial ability of Bidders and any proposed Subcontractors or Suppliers.
- 19.06 Per requirements of the Navajo Business Opportunity Act ("NBOA"), a preference will be applied for Navajo-owned Priority 1 and Priority 2 contractors.

ARTICLE 20 – BONDS AND INSURANCE

- 20.01 Article 6 of the Standard General Conditions and Navajo Nation Supplemental Conditions, sets forth Owner's requirements as to performance and payment bonds and insurance. When the Successful Bidder delivers the Agreement (executed by Successful Bidder) to Owner, it shall be accompanied by required bonds and insurance documentation.

ARTICLE 21 – SIGNING OF AGREEMENT

- 21.01 When Owner issues a Notice of Award to the Successful Bidder, it shall be accompanied by the unexecuted counterparts of the Agreement along with the other Contract Documents as identified in the Agreement. **Within 7 days thereafter**, Successful Bidder shall execute and deliver the required number of counterparts of the Agreement (and any bonds and insurance documentation required to be delivered by the Contract Documents) to Owner. **Owner shall deliver one fully executed counterpart of the Agreement to Successful Bidder, together with printed and electronic copies of the Contract Documents as stated in Paragraph 2.02 of the General Conditions.**

ARTICLE 22 – SALES AND USE TAXES

- 22.01 All work performed and services provided within the territorial jurisdiction of the Navajo Nation are subject to the 6% Navajo Nation Sales Tax.
- 22.02 Taxes shall not be included in the Bid, except where specifically requested on the Bid Form.
- 22.03 The Navajo Nation does not impose taxes on work performed by Subcontractors or on materials for re-sale, provided the General Contractor pays applicable taxes on pay requests to the Owner. The Navajo Nation Commission has forms available for the General Contractor to fill out and provide to vendors and Subcontractors for this purpose.

ARTICLE 23 – RETAINAGE

- 23.01 Provisions concerning retainage and/or Contractor's rights to deposit securities in lieu of retainage are set forth in the Agreement and further detailed in the Standard General Conditions and Navajo Nation Supplemental Conditions.

ARTICLE 24 – NAVAJO NATION DISCLAIMERS

- 24.01 In accordance with Section XIII.B. of the Navajo Nation Procurement Regulations, at any time prior to a final Contract Award, the Navajo Nation may cancel this Bid for any of the reasons as follows:
- A. inadequate or ambiguous specifications were cited in the Project Manual;
 - B. specifications or descriptions for the Scope of Work have been revised;
 - C. the services are no longer required;
 - D. the Project Manual did not provide for consideration of all factors of cost to the Navajo Nation;
 - E. all Bids received indicate that the needs of the Navajo Nation can be satisfied by a less expensive service differing from that described in the Project Manual;
 - F. all Bids received exceed the Maximum Feasible Price (budget);
 - G. submitted Bids were not the result of open competition, were collusive, contained fraudulent statements or information, contained any material misrepresentation, or were submitted in bad faith; or
 - H. cancellation is in the best interest of the Navajo Nation.
- 24.02 A determination to cancel the Bid shall be published in the same manner as the initial Bid advertisement, and such cancellation shall be mailed or faxed to all Interested Parties who have received the Bid Package. Upon cancellation, all Bids shall be returned to a submitting Party upon written request by such Party.
- 24.03 Appropriations Required:
- A. No Contract Award shall be made to any Party if there are not sufficient appropriations or authorizations regarding the Project, and any awarded Contract may be terminated if such appropriations or authorizations are lacking. The determination whether sufficient appropriations or authorizations are present is at the sole discretion of the Navajo Nation.

ARTICLE 25 – NAVAJO NATION LABOR LAWS

- 25.01 The Navajo Business Opportunity Act (NBOA) and Navajo Preference in Employment Act (NPEA) apply to this project. These laws require that Contractors give preference to qualified Navajo subcontractors and employees. The Contractor shall be solely responsible to determine whether a particular subcontractor or candidate for employment is qualified or not.
- 25.02 Contractors should consult with the Navajo Business Regulatory Department by calling Mr. Ernest Pahe of the Navajo Nation Division of Economic Development at 928-871-7363 or by visiting www.navajobusiness.com to obtain a current listing of Navajo-owned sub-contractors. The local chapter houses can assist the Contractor to interview qualified local candidates for employment after the contract is awarded.

ARTICLE 26 – WAGE RATE REQUIREMENTS

- 26.01 The prevailing wage rates of the Navajo Nation Office of Labor Relations apply to this Project. The corresponding wage rate determination may be found in the appendices of these Contract Documents.

BID FORM

Chichiltah-Vanderwagen Water Supply Project

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ARTICLE 1 – BID RECIPIENT

1.01 This Bid is submitted to:

Navajo Nation – Water Management Branch
C/O Souder, Miller & Associates
Attention: Ty Tsinnijinnie, P.E.
5454 Venice Avenue NE, Suite D
Albuquerque, New Mexico 87113

1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 2 – BIDDER’S ACKNOWLEDGEMENTS

2.01 Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

ARTICLE 3 – BIDDER’S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents that:

- A. Bidder has examined and carefully studied the Bidding Documents, and any data and reference items identified in the Bidding Documents, and hereby acknowledges receipt of the following Addenda:

<u>Addendum No.</u>	<u>Addendum, Date</u>
_____	_____
_____	_____
_____	_____
_____	_____

- B. Bidder has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfied itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Bidder is familiar with and has satisfied itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Technical Specifications, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
- E. Bidder has considered the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and any Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder’s safety precautions and programs.
- F. Bidder agrees, based on the information and observations referred to in the preceding paragraph, that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.
- G. Bidder 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 Bidding Documents.
- H. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents and confirms that the written resolution thereof by Engineer is acceptable to Bidder.
- I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work.

The submission of this Bid constitutes an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, and that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

ARTICLE 4 – BIDDER’S CERTIFICATION

4.01 Bidder certifies that:

- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:
 - 1. “corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process;
 - 2. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 - 3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
 - 4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

BID
Chichiltah-Vanderwagen Water Supply Project

Notes: Price Not to Include Tax.

Multiply Est. Qty. by Unit Price to calculate Total Price.

ITEM NO.	ITEM DESCRIPTION	UNIT	EST. QTY.	UNIT PRICE	TOTAL PRICE
General and Miscellaneous					
1	Mobilization (75%) / demobilization (25%).	LS	1		
2	Testing allowance, (reimbursable lab fees only, incl. compaction, concrete, materials, water quality. Excludes bacteriological lab test fees).	Allow.	1	\$ 50,000.00	\$ 50,000.00
3	Traffic control, per county and BIA requirements.	LS	1		
4	Construction Staking and Surveying	LS	1		
5	As-built Surveying	LS	1		
6	Contingency Allowance	Allow.	1	\$ 250,000.00	\$ 250,000.00
Erosion and Storm Water Controls					
7	Wire-caged riprap (item includes rock, wire cage, geotextile, and staking) or cable concrete. Final quantities, dimensions and locations TBD in field, CIP.	CY	5		
8	Re-seeding of waterline ROW and TCE, CIP.	LF	8,616		
9	Re-seeding of well sites and tank site, CIP	LS	1		
10	SWPPP pursuant to NPDES stormwater program and consistent with USEPA's general construction permit. Includes preparation of document, implementation of all BMPs required by SWPPP, filing of all notices and inspections required by EPA, etc.	LS	1		
Water Mainline					
11	4-inch PVC DR 18 C900 Pipeline, with appurtenances, CIP. Includes fusible or bell and spigot joint as indicated on plans and specifications.	LF	5,631		
12	2-inch PVC DR 18 C900 Pipeline, with appurtenances, CIP. Includes fusible or bell and spigot joint as indicated on plans and specifications.	LF	2,985		
13	Flushing, disinfection and bacteriological testing, CIP.	LF	8,616		
14	Hydrostatic testing of main pipeline, CIP	LF	8,616		
Water Valve Assemblies					
15	8-inch Gate valve assembly, CIP.	EA	4		
16	4-inch Gate valve assembly, CIP.	EA	11		
17	2-inch Gate valve assembly, CIP.	EA	9		
18	1-inch Combination air valve assembly including 1-inch flood safe inflow preventor with enclosure, CIP.	EA	5		
19	2-inch flush valve assembly with above- grade discharge, CIP.	EA	7		
Road Crossings					
20	12-inch diameter standard wall open cut cased road crossings, incl. steel casing and end seals, CIP. Excludes carrier pipe.	LF	40		

Well Site Work					
21	Site earthwork and grading for sub-foundation and driveways, CIP. Excludes surfacing material and riprap.	LS	5		
22	Well Site #1 piping, (incl. all new plumbing components within the site, drain lines and drain line ROWs not separately listed) and dual meter vault, CIP.	LS	1		
23	Site piping, (incl. all new plumbing components within the site, drain lines and drain line ROWs not separately listed) and single meter vault, CIP.	LS	4		
24	Meter vault with two electric mag meters and all associated plumbing, CIP	LS	1		
25	Meter vault with one electric mag meters and all associated plumbing, CIP	LS	4		
Vanderwagen Tank Site Work					
26	Site earth work and grading for sub-foundation, pads and driveways, incl. all earthwork and imported fill material, and material removal within the ROW for the Vanderwagen Tank site not separately listed, per plans, specifications and geotechnical report, CIP. Excludes surfacing material and riprap.	LS	1		
27	225,000 gallon welded steel water storage tank, painting of tank per Sections 33 16 19, and 09 97 14, CIP.	EA	1		
28	Tank foundation for 225,000 gallon welded steel tank, CIP	EA	1		
29	Filling, disinfection, and bacteriological testing of new 225,000 gallon tank, CIP	EA	1		
30	Concrete walkways and all other site concrete work not separately listed, CIP	LS	1		
31	Pressure Transducer vault, (incl. structure and wetted components), CIP. Excludes electrical.	LS	1		
32	Vanderwagen Tank site piping, (incl. all new plumbing components within the site easement, drain lines and drain line ROWs not separately listed), CIP. Excludes gate valves and air valves.	LS	1		
Chlorinator Building					
33	Chlorinator building, (incl. all structural elements), CIP.	LS	1		
34	Chlorinator building plumbing, CIP.	LS	1		
35	Chlorinator building foundation, CIP.	LS	1		
36	Gas chlorination equipment, CIP.	LS	1		
General Site Work					
37	Sites surfacing with 2-inch gravel over 3-inch base course, CIP	SY	2,585		
38	Sites Access road surfacing with 6-inch NMDOT specification base course, CIP.	CY	15		
39	Site fencing (8 ft. chain-link fence with 3-strand barbed wire), incl. two (2) 20' double swinging gates and 3' personnel gate, CIP.	LF	1,236		
Electrical					
40	Tank Site electrical, CIP. Includes meter pole, socket, and all electrical components and connections not separately listed. Excludes SCADA equipment listed separately and primary pole, primary conductor, transformer and meter provided by utility.	EA	1		

41	Well Site 1 electrical (Includes meter pole, socket, and all electrical components and connections not separately listed. Excludes SCADA equipment listed separately and primary pole, primary conductor, transformer and meter provided by utility), CIP.	EA	1		
42	Well Site 2-5 electrical (Includes meter pole, socket, and all electrical components and connections not separately listed. Excludes SCADA equipment listed separately and primary pole, primary conductor, transformer and meter provided by utility), CIP.	EA	4		
43	Impressed current cathodic protection system for 225,000 gallon welded steel tank per Section 26 42 10, including installation, energizing, adjusting, and testing, CIP.	LS	1		
44	Chlorination building electrical, lightning protection, HVAC, and all building electrical not separately listed, CIP. Excludes SCADA equipment listed separately.	LS	1		
45	SCADA equipment for tank site, including radios, RTU/PLCs, antennas, antenna masts, and all other SCADA equipment not separately listed, CIP	LS	1		
46	SCADA equipment for well sites, including radios, RTU/PLCs, antennas, antenna masts, and all other SCADA equipment not separately listed, CIP	EA	5		
47	SCADA and water metering programming allowance, programming sub-contractor to be selected by Owner, CIP	Allow.	1	\$ 100,000.00	\$ 100,000.00
Powerlines					
48	Powerline and Electrical Service Drop Construction Allowance	Allow.	1	\$ 150,000.00	\$ 150,000.00

TOTAL PRICE (without tax): \$ _____

IN WORDS: _____

- E. Bidder acknowledges that (1) each Bid Unit Price includes an amount considered by Bidder to be adequate to cover Contractor's overhead and profit for each separately identified item, and (2) estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all unit price Bid items will be based on actual quantities, determined as provided in the Contract Documents.
- F. All prices identified above do not include taxes, as further clarified in the Supplementary Conditions. The Navajo Sales Tax of 6% will be included with each payment made to the selected contractor.

ARTICLE 5 – TIME OF COMPLETION

- 5.01 Bidder agrees that the Work will be substantially complete within 365 calendar days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions and will be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within 450 calendar days after the date when the Contract Times commence to run.
- 5.02 Bidder accepts the provisions of the Agreement as to liquidated damages.

ARTICLE 6 – ATTACHMENTS TO THIS BID

- 6.01 The following documents are submitted with and made a condition of this Bid:
 - A. Required Bid security;
 - B. Bidder's Qualifications Statement with Supporting Data;
 - C. List of Proposed Subcontractors;
 - D. List of Proposed Equipment Manufacturers;
 - E. Navajo Nation Certification Regarding Debarment and Suspension;
 - F. Affidavit of Responsibility for Subcontractors;
 - G. Affidavit of Non-Collusion;
 - H. Affidavit of Non-Debarment and Non-Suspension;
 - I. New Mexico Contractor's License No. _____;
 - J. Documentation of eligibility for certification as Priority 1 or 2 business entity under the Navajo Business Opportunity Act (if applicable);

ARTICLE 7 – DEFINED TERMS

- 7.01 The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the Standard General Conditions, and Navajo Nation Supplementary Conditions of the Construction Contract.

ARTICLE 8 – BID SUBMITTAL

Bidder acknowledges that the document known as EJCDC® C-700, Standard General Conditions for the Construction Contract and Supplementary Conditions, published by the Engineers Joint Contract Documents Committee® has been substantially modified by the Owner and such modified document has been given the label of "C-700 NN" and forms part of the present Agreement.

Yes _____

No _____

Bidder hereby attests that Bidder is in good standing with the State of New Mexico and the Navajo Nation and will provide such certification if selected for Contract award following the bidding process and prior to execution of the Contract.

Yes _____

No _____

By:

[Signature] _____

[Printed name] _____

(If Bidder is a corporation, a limited liability company, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest:

[Signature] _____

[Printed name] _____

Title: _____

Submittal Date: _____

Address for giving notices:

Telephone Number: _____

Fax Number: _____

Contact Name and e-mail address: _____

New Mexico Department of Workforce Solutions Registration No. _____

Is Bidder certified as a Priority 1 or 2 business entity under the Navajo Business Opportunity Act?

Yes, Priority 1 _____

Yes, Priority 2 _____

No _____

If yes, attach documentation of certification.

BID BOND

Any singular reference to Bidder, Surety, Owner or other party shall be considered plural where applicable.

BIDDER (*Name and Address*):

SURETY (*Name, and Address of Principal Place of Business*):

OWNER (*Name and Address*):

BID

Bid Due Date:

Description (*Project Name— Include Location*):

BOND

Bond Number:

Date:

Penal sum

\$

(Words)

(Figures)

Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.

BIDDER

SURETY

(Seal)

(Seal)

Bidder's Name and Corporate Seal

Surety's Name and Corporate Seal

By:

Signature

By:

Signature (Attach Power of Attorney)

Print Name

Print Name

Title

Title

Attest:

Signature

Attest:

Signature

Title

Title

Note: Addresses are to be used for giving any required notice.

Provide execution by any additional parties, such as joint venturers, if necessary.

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond shall be Owner's sole and exclusive remedy upon default of Bidder.
2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation shall be null and void if:
 - 3.1 Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
 - 3.2 All Bids are rejected by Owner, or
 - 3.3 Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from the Bid due date without Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety and in no case later than one year after the Bid due date.
7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

LIST OF PROPOSED SUBCONTRACTORS

The following listing must be completed and signed by the Bidder and submitted with the Bid Proposal. Bids submitted without this completed and signed listing or with more than one listed for each item may be considered non-responsive. The subcontractor listing threshold shall be as indicated in the Instructions to Bidders. If none of the work will be subcontracted, Bidder shall write "NONE", sign the sheet, and include with Bid to avoid being found non-responsive.

The General Contractor will determine categories of work that will be performed by the General Contractor, Subcontractors, and Tiers of Subcontractors. The following will be employed to perform the designated categories of work under this Contract.

Prior to award of the contract to the lowest qualified Bidder, the Contractor may be required to supply additional information regarding the Subcontractors listed below, as called for in the Instructions to Bidders, Bidder's Qualifications Statement, and in the technical specifications.

Contractor shall not substitute any person as Subcontractor in place of those identified on this form without prior approval from Owner.

* Category of Work	Firm Name and Business Address, Phone # and License Number of Subcontractors	** Range

List of Proposed Subcontractors - Continued

* Category of Work	Firm Name and Business Address, Phone # and License Number of Subcontractors	** Range

Use additional sheets if necessary.

Attest: _____

 Authorized Officer

 Name and Title

 Name of Firm

_____ Date

* Place title of subcontractor specialty.

** Subcontractor's contract range: In the column marked "Range", enter the letter corresponding to the subcontract amount.

A = Equal to or greater than \$5,000 but less than \$15,000

B = Equal to or greater than \$15,000 but less than \$50,000

C = Equal to or greater than \$50,000

LIST OF PROPOSED EQUIPMENT MANUFACTURERS

The following listing of material and/or equipment manufacturers must be completed and signed by the Contractor and submitted with the Bid Proposal. Bids submitted without this completed and signed listing or with more than one manufacturer listed for each item may be considered non-responsive.

MATERIAL/EQUIPMENT	MANUFACTURER
Gate Valves	
Air Valves Assembly	
Tank Cathodic Protection	
SCADA / PLC Equipment	
Storage Tanks	

Bidder's Name: _____

By (Signature): _____

Print or Type Name and Title: _____

BIDDER'S QUALIFICATIONS STATEMENT

Important Note:

Completion of this statement is required of all Bidders and must be submitted together with the Bid, as stipulated in the Instructions to Bidders.

Project Title: **Chichiltah-Vanderwagen Water Supply Project**_____

Submitted By: _____
(Print or Type Name of Bidder)

Address: _____

The undersigned certifies the truth and correctness of all statements and of all answers to questions made hereinafter. Use additional sheets for any responses, as necessary.

1. How many years has your organization been in business as a utilities contractor? _____

2. How many years has your organization been in business under its present name? _____

3. If a corporation, answer the following:

a. Date of Incorporation: _____

b. State of Incorporation: _____

c. President's Name: _____

d. Vice President's Name: _____

c. Secretary or Clerk's Name: _____

d. Treasurer's Name: _____

4. If individual or partnership, answer the following:

a. Date of Organization: _____

b. Name and Address of all Partners:

(State if general or limited partnership)

5. If other than corporation or partnership, describe organization and name principals. _____

6. Do you plan to subcontract any part of this Project. _____ if so, briefly describe below and identify subcontractors on the List of Proposed Subcontractors form included in these Contract Documents, that meet the listing threshold. _____

7. Has any construction contract to which you have been a party been terminated by the owner; you ever terminated work on a project prior to its completion for any reason; has any surety which issued a performance bond on your behalf ever completed the work in its own name or financed such completion on your behalf; has any surety expended any monies in connection with the contract for which they furnished a bond on your behalf; have you been late in completing a project during the last five years resulting in the assessment of liquidated damages? If the answer to any portion of this question is "yes", please furnish details of all such occurrences including name of owner, architect or engineer, and surety, and name and date of project. _____

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- This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and extend across the width of the page. There are no margins, text, or other markings on the paper.

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- This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

- [illegible]

12. List the states and categories of construction in which your organization is legally qualified to do business. Include all license classifications your organization possesses in the State of New Mexico, as stipulated in the New Mexico Administrative Code (NMAC), Title 14, Chapter 6, Part 6. _____

13. List name, address, and telephone number of an individual who represents each of the following and who may be contacted for a financial reference.

a. A surety: _____

b. A bank: _____

c. A major material supplier: _____

14. The Owner may require the low Bidder to submit a financial statement, prepared on an accrual basis in a form that clearly indicates Bidder's assets, liabilities and net worth, prior to issuance of the Notice of Award.

Dated this _____ day of _____ 20_____

Bidder: _____

(Print or Type Name of Bidder)

By: _____

Title: _____

(Seal, if Corporation)

NOTICE OF AWARD

Date of Issuance:

Owner: **Navajo Nation**

Owner's Contract No.:

Engineer: **Souder, Miller & Associates**

Engineer's Project No.: **6924837**

Project: **Chichiltah-Vanderwagen Water
Supply Project**

Contract Name:

Bidder:

Bidder's Address:

TO BIDDER:

You are notified that Owner has accepted your Bid dated _____ for the above Contract, and that you are the Successful Bidder and are awarded a Contract for: _____

The Contract Price of the awarded Contract is: _____

_____ a set of the Drawings will be delivered separately from the other Contract Documents.

You must comply with the following conditions precedent within 10 days of the date of receipt of this Notice of Award:

1. Deliver to Owner 5 counterparts of the Agreement, fully executed by Bidder.
2. Deliver with the executed Agreement(s) the Contract security [*e.g., performance and payment bonds*] and insurance documentation as specified in the Instructions to Bidders and General Conditions, Articles 2 and 6.
3. Other conditions precedent (if any):

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Owner: _____
Authorized Signature

By: _____

Title: _____

Date Issued: _____

Copy: Engineer

**AGREEMENT
BETWEEN OWNER AND CONTRACTOR FOR
CONSTRUCTION CONTRACT (STIPULATED PRICE)**

Prepared by



Issued and Published Jointly by



AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

Contract No. _____

Business Unit No. _____

THIS AGREEMENT is by and between the Navajo Nation through its Department of Water Resources ("Owner") and _____ ("Contractor") (collectively "the parties"). The Owner and Contractor agree as follows regarding the **Chichiltah-Vanderwagen Water Supply Project**:

ARTICLE 1 – WORK

- 1.01 Contractor shall complete all Work as specified on the Bid Form and elsewhere in the Contract Documents.

ARTICLE 2 – THE PROJECT

- 2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: Construction of 1.1 miles of 4" diameter waterline, 0.6 miles of 2" diameter waterline, site improvements for 5 existing water wells, one 225,000 gallon welded steel water storage tank and chlorination building site, site piping, valves, electrical, and appurtenances.
- 2.02 The Project location is generally described as follows: The project is located within the Vanderwagen community of Chichiltah Navajo Chapter, McKinley County, NM.

ARTICLE 3 – ENGINEER

- 3.01 The Project has been designed by **Souder, Miller & Associates**.
- 3.02 The Owner has retained **Souder, Miller & Associates** ("Engineer") 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 the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACTOR ENTITIES AND PERSONS

The following named single business entity, or two or more business entities has/have submitted a single bid for consideration for a contract award for the project, and shall execute this contract:

A.

_____	_____
Name of Business Entity	Address of Business Entity
_____	_____
Individual with Business Entity	Individual's Title

Individual's/Business Entity's Role in Project	

This individual has signature authority to legally bind the business entity: yes / no

B.

_____	_____
Name of Business Entity	Address of Business Entity
_____	_____
Individual with Business Entity	Individual's Title

Individual's/Business Entity's Role in Project	

This individual has signature authority to legally bind the business entity: yes / no

C.

_____	_____
Name of Business Entity	Address of Business Entity
_____	_____
Individual with Business Entity	Individual's Title

Individual's/Business Entity's Role in Project	

This individual has signature authority to legally bind the business entity: yes / no

ARTICLE 5 – CONTRACT TIMES

5.01 *Commencement of the Work*

- A. The Contractor shall not commence performance of any work or the provision of any services under this Contract until (A) Owner issues a formal "Notice to Proceed" for the Project; (B) All insurance and bonding required by this Contract are in full force and effect; and (C) Owner has received copies of all insurance policies and bonds.

5.02 *Time of the Essence*

- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

5.03 *Contract Times*

- A. The Contract Times shall be the following:
- B. The Work will be substantially completed within 365 days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of EJCDC C-700 NN and ready for final payment in accordance with Paragraph 15.06 of EJCDC C-700 NN within 450 days after the date when the Contract Times commence to run.
1. The Notice to Proceed date on which the Contract Times commence to run may be negotiated to a mutually agreeable date between Contractor and Owner. However, in

no case shall the date of final completion, acceptance, and payment for project work extend beyond September 30th, 2026.

5.04 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 5.02 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 5.03 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving a legal or arbitration proceeding and 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):
1. Substantial Completion: Contractor shall pay Owner **\$1,000** for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 5.03.A above for Substantial Completion until the Work is substantially complete.
 2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner **\$1,000** for each day that expires after such time until the Work is completed and ready for final payment.
 3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

ARTICLE 6 – CONTRACT PRICE

6.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to the availability of funds, as described below: *For all Work in accordance with* the prices stated in the Contractor's Bid, attached hereto as an exhibit., with an estimated total of all unit price work equivalent to _____, plus 6% Navajo Nation Sales Tax equivalent to _____, resulting in a Total Net Contract Value of _____.

6.02 Availability of Funds

- A. Appropriations required: Pursuant to 2 N.N.C. § 223(A), the obligation of the Navajo Nation to pay Contractor the entire Contract Amount, or any portion thereof as invoiced, or any amounts under any and all Change Orders, amendments, or modifications to this Contract, shall be contingent upon the availability of funds, from whatever source, at the time payment to the Contractor is due. Any available funds must be appropriated or allocated specifically for the Project which is the subject of this Contract.
- B. Subsequent fiscal periods: Pursuant to 12 N.N.C. § 350(D), if funds adequate to support continuation of performance under this Contract are not appropriated or otherwise become unavailable during any fiscal period(s) subsequent to that period in which this Contract is entered into, then this Contract may be cancelled at the sole discretion of the Navajo Nation, but no sooner than fourteen (14) business days following the Navajo Nation's notification to Contractor of cancellation.
- C. Payment upon cancellation: In the event of such cancellation, Contractor shall be reimbursed only for the reasonable value of any non-recurring costs incurred on account of work performed or services provided under this Contract up to the date of notification of

cancellation, whether or not invoice(s), billing(s), or payment application(s) have been received by the Navajo Nation for such work or services prior to the date of cancellation, except for costs amortized in the price of such work or services.

ARTICLE 7 – PAYMENT PROCEDURES

7.01 *Submittal and Processing of Payments*

- A. Contractor shall submit the EJCDC C-620 “Application for Payment” form in accordance with Article 15 of the EJCDC C-700 NN. Applications for Payment will be processed by Engineer as provided in the EJCDC C-700 NN.
- B. Contract Number: This Contractor shall be assigned a Contract Number by the Navajo Nation Division of Finance, which number shall be shown on the front page of this Contract. Reference to the Contract Number shall be indicated on all invoices submitted to the Navajo Nation for payment, and reference to the Project and Business Unit Number for each payment shall be on all invoices submitted by the Contractor to the Navajo Nation.
- C. A total of forty-five (45) days is required to process any payment related to the Work. Therefore, any provision in EJCDC C-700 NN which references a ten (10) day and/or thirty (30) day allowable period for Owner to effect payment shall hereby be changed to a forty-five (45) day payment terms.

7.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor’s Applications for Payment on or about the 25th day of each month during performance of the Work as provided in Paragraph 7.02A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the EJCDC C-700 NN (and in the case of Unit Price Work based on the number of units completed) or as provided elsewhere in the Contract.
 - 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 Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.
 - a. No retainage will be withheld.
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the EJCDC C-700 NN, and less 100 percent of Engineer’s estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

7.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the EJCDC C-700 NN, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

ARTICLE 8 – INTEREST

- 8.01 All amounts not paid when due shall bear no interest.

ARTICLE 9 – CONTRACTOR’S REPRESENTATIONS

- 9.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:
- A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
 - B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
 - D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Technical Specifications, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Contract Documents, especially with respect to Technical Data in such reports and drawings.
 - E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor’s safety precautions and programs.
 - F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
 - G. 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.
 - H. 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.
 - I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
 - J. Contractor’s entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Contract are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 10 – CONTRACT DOCUMENTS

10.01 *Contents*

- A. The Contract Documents consist of the following:
 - 1. This Agreement (pages 1 to ___, inclusive).

2. Performance bond (pages 1 to 3, inclusive).
3. Payment bond (pages 1 to 3, inclusive).
4. Other bonds.
 - a. ____ (pages ____ to ____, inclusive).

[Note to User: If “other bonds” aren’t required, delete Paragraph 10.01.A.4. and renumber accordingly.]

5. Contractor’s Bid Form [EJCDC C-410] (pages 1 to ____, inclusive), plus required attachments to the Bid as stipulated in Article 7 of the Bid Form.
 6. Standard General Conditions and Navajo Nation Supplemental Conditions of the Construction Contract [EJCDC C-700 NN].
 7. Appendices as listed in the Index to Appendices of the Project Manual.
 8. Technical Specifications as listed in the table of contents of the Project Manual.
 9. Drawings (not attached but incorporated by reference) as listed in the Index to Design Drawings of the Project Manual.
 10. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
 11. Addenda (numbers ____ to ____, inclusive)
- B. The Contract Documents may only be amended, modified, or supplemented as provided in the EJCDC C-700 NN.

ARTICLE 11 – MISCELLANEOUS

11.01 Terms

Terms used in EJCDC C-520 will have the meanings stated in EJCDC C-700 NN.

11.02 Severability

- A. 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 a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

11.03 Other Provisions

- A. Owner and all interested parties acknowledge that the document known as EJCDC® C-700, Standard General Conditions for the Construction Contract, published by the Engineers Joint Contract Documents Committee® has been substantially modified by the Owner and such modified document has been given the label of “C-700 NN” and forms part of the present Contract.

- B. Non-Appropriations Clause: The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the Owner may immediately terminate this Agreement by giving the Contractor written notice of such termination. The Owner's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the Owner or the New Mexico Indian Affairs Department or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the Owner or the Department.
- C. Termination Clause: This contract is funded in whole or in part by funds made available under a New Mexico Indian Affairs Department Grant Agreement. Should the New Mexico Indian Affairs Department early terminate the grant agreement, the Owner may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the Owner's only liability shall be to pay Contractor or Vendor for acceptable goods delivered and services rendered before the termination date.

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

This Contract will be effective on the date identified on the signed Notice to Proceed (which is the Effective Date of the Contract).

OWNER:

CONTRACTOR:

By: _____

Title: Dr. Buu Nygren,
President of the Navajo Nation

By: _____

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

Address for giving notices:

Address for giving notices:

License No.: _____

(where applicable)

Pursuant to 1 N.N.C. §554(J)(2) and (K)(2), Navajo Nation Department of Justice approval is required for all agreements that include a limited waiver of sovereign immunity to compel or enforce arbitration under the Navajo Nation Arbitration Act, as amended, 7 N.N.C. §1101 et seq.

Navajo Nation Department of Justice

NOTICE TO PROCEED

Owner: **Navajo Nation**

Owner's Contract No.:

Contractor:

Contractor's Project No.:

Engineer: **Souder, Miller & Associates**

Engineer's Project No.: **6924837**

Project: **Chichiltah-Vanderwagen Water Supply
Project**

Contract Name:

Effective Date of Contract:

TO CONTRACTOR:

Owner hereby notifies Contractor that the Contract Times under the above Contract will commence to run on _____, 20__.

On that date, Contractor shall start performing its obligations under the Contract Documents. No Work shall be done at the Site prior to such date. In accordance with the Agreement, the date of Substantial Completion is _____, and the date of readiness for final payment is _____.

Before starting any Work at the Site, Contractor must comply with the following:

Owner:

Authorized Signature

By:

Title:

Date Issued:

Copy:

Engineer

PERFORMANCE BOND

CONTRACTOR *(name and address):*

SURETY *(name and address of principal place of business):*

OWNER *(name and address):*

CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description *(name and location):*

BOND

Bond Number:

Date *(not earlier than the Effective Date of the Agreement of the Construction Contract):*

Amount:

Modifications to this Bond Form: ☐ None ☐ See Paragraph 16

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

Contractor's Name and Corporate Seal

Surety's Name and Corporate Seal

By: _____
Signature

By: _____
Signature *(attach power of attorney)*

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.

3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after:

3.1 The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;

3.2 The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and

3.3 The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence,

to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:

5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:

7.1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

7.2 additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and

7.3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.

9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.

10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.

11. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

14. Definitions

14.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims

for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

14.2 Construction Contract: The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

14.3 Contractor Default: Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

14.4 Owner Default: Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

14.5 Contract Documents: All the documents that comprise the agreement between the Owner and Contractor.

15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

16. Modifications to this Bond are as follows:

PAYMENT BOND

CONTRACTOR *(name and address):*

SURETY *(name and address of principal place of business):*

OWNER *(name and address):*

CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description *(name and location):*

BOND

Bond Number:

Date *(not earlier than the Effective Date of the Agreement of the Construction Contract):*

Amount:

Modifications to this Bond Form: ☐ None ☐ See Paragraph 18

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

(seal)

Contractor's Name and Corporate Seal

By: _____

Signature

Print Name

Title

Attest: _____

Signature

Title

(seal)

Surety's Name and Corporate Seal

By: _____

Signature *(attach power of attorney)*

Print Name

Title

Attest: _____

Signature

Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond shall arise after the following:
 - 5.1 Claimants who do not have a direct contract with the Contractor,
 - 5.1.1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
 - 5.1.2 have sent a Claim to the Surety (at the address described in Paragraph 13).
 - 5.2 Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
 - 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
 - 7.2 Pay or arrange for payment of any undisputed amounts.
 - 7.3 The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.
8. The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.

12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
13. Notice and Claims to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.
14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

16. Definitions

16.1 **Claim:** A written statement by the Claimant including at a minimum:

1. The name of the Claimant;
2. The name of the person for whom the labor was done, or materials or equipment furnished;
3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
4. A brief description of the labor, materials, or equipment furnished;
5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
7. The total amount of previous payments received by the Claimant; and

8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.

16.2 **Claimant:** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

16.3 **Construction Contract:** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

16.4 **Owner Default:** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

16.5 **Contract Documents:** All the documents that comprise the agreement between the Owner and Contractor.

17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

18. Modifications to this Bond are as follows:

CERTIFICATE OF INSURANCE

Certificate of Insurance to be inserted here. All coverage to be in accordance with and per the limits established in the Standard General Conditions (C-700 NN).

Contractor's Application for Payment No. _____

To (Owner): Navajo Nation	Application Period: From (Contractor):	Application Date: Via (Engineer): Souder, Miller & Associates
Project: Chichiltah-Vanderwagen Water Supply Project	Contract:	
Owner's Contract No.:	Contractor's Project No.:	Engineer's Project No.: 6924837

Application For Payment Change and Field Order Summary

Approved Change and Field Orders			1. ORIGINAL CONTRACT PRICE (w/ tax) \$ _____	
Number	Additions (w/ tax)	Deductions (w/ tax)	2. Net change by Change Orders (w/ tax) \$ _____	
			3. Current Contract Price (Line 1 ± 2) (w/ tax)..... \$ _____	
			4. TOTAL COMPLETED AND STORED TO DATE (w/ tax) (Column F total on Progress Estimates)..... \$ _____	
			5. RETAINAGE (w/ tax):	
			a. 5% X <u>Total Completed and Stored (line 4)</u> \$ _____	
			b. ____% X \$ _____	
			c. Total Retainage (Line 5.a + Line 5.b)..... \$ _____	
			6. AMOUNT ELIGIBLE TO DATE (Line 4 - Line 5.c) (w/ tax)..... \$ _____	
			7. LESS PREVIOUS PAYMENTS (Line 6 from prior App) (w/ tax)..... \$ _____	
			8. AMOUNT DUE THIS APPLICATION (w/ tax)..... \$ _____	
			9. NN SALES TAX @ 6% \$ _____	
			10. TOTAL AMOUNT DUE (w/o tax) \$ _____	
			11. BALANCE TO FINISH, PLUS RETAINAGE (w/ tax) (Column G total on Progress Estimates + Line 5.c above)..... \$ _____	
TOTALS (w/ tax)				
NET CHANGE BY CHANGE ORDERS				

Contractor's Certification	
The undersigned Contractor certifies, to the best of its knowledge, the following:	
(1) All previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with the Work covered by prior Applications for Payment;	
(2) Title to all Work, materials and equipment incorporated in said Work, or otherwise listed in or covered by this Application for Payment, will pass to Owner at time of payment free and clear of all Liens, security interests, and encumbrances (except such as are covered by a bond acceptable to Owner indemnifying Owner against any such Liens, security interest, or encumbrances); and	
(3) All the Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.	
Contractor Signature	
By: _____	Date: _____

Payment of:	\$ _____	Line 8 - includes amount to be paid Contractor (line 10) plus amount to be paid NN Tax Commission (line 9)
is recommended by:	_____ (Engineer)	_____ (Date)
Payment of:	\$ _____	Line 8 - includes amount to be paid Contractor (line 10) plus amount to be paid NN Tax Commission (line 9)
is approved by:	_____ (Owner)	_____ (Date)
Approved by:	_____ Funding or Financing Entity (if applicable)	_____ (Date)

Progress Estimate - Unit Price Work

Contractor's Application

[illegible]

Stored Material Summary

Contractor's Application

[illegible]

CERTIFICATE OF SUBSTANTIAL COMPLETION

Owner: The Navajo Nation	Owner's Contract No.:
Contractor:	Contractor's Project No.:
Engineer: Souder, Miller & Associates	Engineer's Project No.: 6924837
Project: Chichiltah-Vanderwagen Water Supply Project	Contract Name:

This [preliminary] [final] Certificate of Substantial Completion applies to:

☐ All Work ☐ The following specified portions of the Work:

Date of Substantial Completion

The Work to which this Certificate applies has been inspected by authorized representatives of Owner, Contractor, and Engineer, and found to be substantially complete. The Date of Substantial Completion of the Work or portion thereof designated above is hereby established, subject to the provisions of the Contract pertaining to Substantial Completion. The date of Substantial Completion in the final Certificate of Substantial Completion marks the commencement of the contractual correction period and applicable warranties required by the Contract.

A punch list of items to be completed or corrected is attached to this Certificate. This list may not be all-inclusive, and the failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract.

The responsibilities between Owner and Contractor for security, operation, safety, maintenance, heat, utilities, insurance, and warranties upon Owner's use or occupancy of the Work shall be as provided in the Contract, except as amended as follows: *[Note: Amendments of contractual responsibilities recorded in this Certificate should be the product of mutual agreement of Owner and Contractor; see Paragraph 15.03.D of the General Conditions.]*

Amendments to Owner's responsibilities: ☐ None
☐ As follows

Amendments to Contractor's responsibilities: ☐ None
☐ As follows:

The following documents are attached to and made a part of this Certificate: *[punch list; others]*

This Certificate does not constitute an acceptance of Work not in accordance with the Contract Documents, nor is it a release of Contractor's obligation to complete the Work in accordance with the Contract.

EXECUTED BY ENGINEER: By: _____ (Authorized signature) Title: _____ Date: _____	RECEIVED: By: _____ Owner (Authorized Signature) Title: _____ Date: _____	RECEIVED: By: _____ Contractor (Authorized Signature) Title: _____ Date: _____
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STANDARD GENERAL CONDITIONS AND NAVAJO NATION SUPPLEMENTAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by



Issued and Published Jointly by



**STANDARD GENERAL CONDITIONS AND NAVAJO NATION
SUPPLEMENTAL CONDITIONS
OF THE CONSTRUCTION CONTRACT**

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—Shall have the same meaning as Contract.
 3. *Application for Payment*—The document acceptable to Engineer which is to be used by Contractor during the course of the Work, to request progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents or by the Owner.
 4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the Bidder's firm proposed price for the Work to be performed.
 5. *Bidder*—An individual or business entity that submits a Bid to Owner.
 6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
 7. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.
 8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
 9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.
 10. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or Navajo Nation statute, law, rule, regulation, ordinance, resolution, code, order, policy, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

11. *Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
12. *Contract Documents*—All documents listed in EJCDC Document C-520 “Agreement Between Owner and Contractor for Construction Contract (Stipulated Price)” Article 10.
13. *Contract Price*—The money that Owner has agreed to pay Contractor for satisfactory completion of the Work in accordance with the Contract Documents, including all Change Orders, if any.
14. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
15. *Contractor*—The individual or business entity that has entered into the Contract with the Owner for performance of the Work.
16. *Contractor’s Claim* - A written document issued by the Contractor, duly submitted to the Owner and Engineer in compliance with the procedural requirements set forth herein, submitted for purposes of: (1) contesting the Engineer’s decision regarding a Change Proposal; or (2) seeking resolution of a contractual issue that the Engineer has declined to address; or (3) seeking other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Contractor’s Claim.
17. *Cost of the Work*—See Paragraph 13.01 for definition.
18. *Drawings*— The part of the Contract Documents that have been prepared and stamped by the Engineer, graphically showing the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date of the Contract*—The date indicated in the Contract on which the Contract becomes effective.
20. *Engineer*—The individual or entity named as such in the Contract.
21. *Field Order*— A written order issued to the Contractor by the Engineer which requires the Contractor to perform changes in the Work for the Project, but does not change the Contract Price or the Contract Times, and therefore does not require a Change Order.
22. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.
23. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction over the Project.
24. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.

25. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date or by a time prior to Substantial Completion of all the Work.
26. *Notice of Award*— A written notice issued by the Owner to a selected Bidder, notifying the Bidder that its Bid has been accepted by the Owner. A Notice of Award does not constitute a promise of Contract Award by the Owner, and the Contractor is not guaranteed a Contract Award until a Contract is duly executed by the Navajo Nation.
27. *Notice to Proceed*— A written notice by Owner to the Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall commence its performance of the Work.
28. *Owner*—The Navajo Nation.
29. *Owner's Claim* - A written document issued by the Owner, duly submitted to the Contractor and Engineer in compliance with the procedural requirements set forth herein, submitted for purposes of: (1) contesting an initial decision by the Engineer concerning the requirements of the Contract Documents or the acceptability of the Contractor's Work under the Contract Documents; or (2) contesting the Engineer's decision regarding a Change Proposal; or (3) seeking resolution of a contractual issue that the Engineer has declined to address; or (4) seeking other relief with respect to the terms of the Contract.
30. *Progress Schedule*—A time schedule, prepared and maintained by the Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to complete the Work within the Contract Times, including descriptions and dates of Milestones.
31. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, which includes activities such as planning, study, design, construction, testing, commissioning, mobilization and start-up, among others, and which is the subject of the Contract Documents and the Work under this Contract.
32. *Project Manual*—The Package containing all information, terms, and conditions governing the Invitation to Bid, including, but not limited to, Instructions to Bidders, Bid Bond Form, Bid Form, and the Contract Documents.
33. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative.
34. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
35. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer's review of the submittals and the performance of related construction activities.
36. *Schedule of Values*—A breakdown or detailed listing of specific fees, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
37. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and

submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.

38. *Site*—The land upon which the Work is to be performed, and the Project is to be located, including rights-of-way and easements, if any, necessary appurtenant lands. The Site includes any appurtenant premises that the Owner permits the Contractor to use or occupy for a temporary period of time, only as necessary for performance of the Work and completion of the Project.
39. *Specifications*—The part of the Contract that consists of written requirements for goods, materials, equipment, systems, supplies, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
40. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
41. *Substantial Completion*—The time at which the Work (or a specified part thereof as determined by the Engineer and approved by the Owner) has progressed to the point where, in the opinion of the Owner, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
42. *Selected Contractor*—The Bidder whose Bid the Owner accepts, and to which the Owner makes an award of contract.
43. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish goods, supplies, materials or equipment to be incorporated in the Work.
44. *Technical Data*—Those items expressly identified as Technical Data in the Project Manual, with respect to either (a) subsurface conditions at the Site, or physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) or (b) Hazardous Environmental Conditions at the Site. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then the data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical or environmental report prepared for the Project and made available to Contractor are hereby defined as Technical Data with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06.
45. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including but not limited to those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, fiber optic transmissions, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
46. *Unit Price Work*— Specific incremental portions of the Work for the Project that are assigned a specific price by the Contractor and that the Contractor requests the Owner to pay in separate increments.

47. *Work*—The entire construction of the Project, or the various separately identifiable parts thereof, that are required to be provided under the Contract Documents, and documentation necessary to complete construction of the Project; furnishing, installing, and incorporating all goods, supplies, materials and equipment into such construction; and may include related services such as testing, start-up, mobilization and commissioning, as necessary for complete and satisfactory performance of the Work.
48. *Work Change Directive*—A written directive to Contractor issued by the Engineer on or after the Effective Date of the Contract, authorized by the Owner, ordering an addition, deletion, or revision in the Work, which will be incorporated in a subsequently issued Change Order.

1.02 Terminology

- A. The words and terms discussed in the following paragraphs are not defined but, when used in the Project Manual or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives:*
 1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory” or similar adjectives, are used herein to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents, except as specifically provided in the Contract between the Owner and the Engineer.
- C. *Day:*
 1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective:*
 1. The word “defective,” when modifying the word “Work,” refers to Work that is determined, in the judgment of the Engineer, to be unsatisfactory, faulty, or deficient in that it:
 - a. does not conform to the Contract Documents; or
 - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or 15.04).

E. *Furnish, Install, Perform, Provide:*

1. The word “furnish,” when used in connection with goods, supplies, services, materials, or equipment, shall mean to supply and deliver said goods, supplies, services, materials, or equipment to the Site ready for use or installation and in usable or operable condition.
 2. The word “install,” when used in connection with goods, supplies, services, materials, or equipment, shall mean to put into use or place in final position said goods, supplies, services, materials, or equipment complete and ready for intended use.
 3. The words “perform” or “provide,” when used in connection with goods, supplies, services, materials, or equipment, shall mean to furnish and install said goods, supplies, services, materials, or equipment complete and ready for intended use.
 4. If the Contract Documents establish an obligation of Contractor with respect to specific goods, supplies, services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then the Contractor shall furnish and install said goods, supplies, services, materials, or equipment complete and ready for intended use.
- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Licensing and Registration Requirements*

- A. *State license required:* As an express condition of the award of this Contract, at least one of the Contractor’s individual owners, co-owners, principals, partners, managers, team members, officers, employees, or subcontractors, as identified in EJCDC C-520 “Agreement Between Owner and Contractor” (herein “EJCDC C-520”) Article 4, shall provide a current and valid license from an appropriate state licensing board or agency for the type of work to be performed and services to be provided by the Contractor, which license is customarily maintained in the Contractor’s industry (a valid license held by an individual with an ancillary firm shall be acceptable, so long as the provisions of Article 6 herein are satisfied). Each entity or individual listed in EJCDC C-520 Article 4 shall indicate its business name, business address, and state license number. Said license must be issued by the state which is the geographical location of the primary location of the Work. For the entire duration of performance under this Contract, said license must be maintained as active and current and must remain directly associated with a signatory party to this Contract, and failure of such shall be deemed a material breach for which the Navajo Nation may terminate this Contract.
- B. *Business registration required:* Each entity or individual identified in EJCDC C-520 Article 4 shall be registered to do business with an appropriate state agency, as either a domestic or foreign business entity within such state, and each shall indicate its business name, business address, and state business registration number in EJCDC C-520 Article 4. Said registration must be issued by the state which is the primary location of the Work. For the entire duration of performance under this Contract, said registration must be maintained as active and current and must remain directly associated with a signatory party to this Contract, and failure of such shall be deemed a material breach for which the Navajo Nation may terminate this Contract. Each must also comply with the registered agent and

business registration requirements of the Navajo Nation Business Registration Department and be duly approved to engage in business activity within the Navajo (see 5 N.N.C. § 3166, § 3170, § 3171).

2.02 *Debts Owed; Right to Offset*

- A. By execution of this Contract, the Contractor expressly represents to the Owner that the Contractor in its present form or any other identifiable capacity as an individual, business, corporation, partnership, or other entity, has no outstanding money judgment against it in favor of the Owner as defined in 12 N.N.C. § 1503(A), and further represents that there exists no delinquent accounts receivable debt which is due and owing to the Owner as defined in 12 N.N.C. § 1503(A), from the Contractor or other such related individual or entity. The Contractor expressly agrees that, pursuant to 12 N.N.C. § 1507, if the Contractor or other entity owes such debt to the Owner, the Owner may, upon thirty (30) calendar days prior notice to the Contractor, offset its financial claim against any amount owed to the Contractor for work performed or services provided under this Contract.

2.03 *Delivery of Bonds and Evidence of Insurance*

When Contractor delivers the executed counterparts of the Contract to Owner, Contractor shall also deliver to Owner bonds and evidence of insurance as required by Article 6 below.

2.04 *Copies of Documents*

- A. Owner shall furnish to Contractor one executed copy of the Contract. Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed record version of all Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract Documents available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

2.05 *Before Starting Construction*

- A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Contract (or as otherwise specifically required by the Contract Documents), Contractor shall submit to Engineer for timely review:
 - 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
 - 2. a preliminary Schedule of Submittals; and
 - 3. a preliminary Schedule of Values for all of the Work which includes Unit Price Work and which divides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work.

2.06 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss (1) the schedules referred to in Paragraph 2.05.A, (2) procedures for handling Shop Drawings, Samples, and other submittals, (3) processing Applications for Payment, (4) electronic or digital transmittals, and (5) maintaining required records.

- B. In the Contract, Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.07 *Initial Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review for acceptability to Engineer as provided below, the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until the Engineer approves all submitted schedules.
 - 1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
 - 2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
 - 3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.

2.08 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may transmit, and shall accept, Project-related correspondence, text, data, documents, drawings, information, and graphics, including but not limited to Shop Drawings and other submittals, in electronic media or digital format, either directly, or through access to a secure Project website.
- B. If the Contract does not establish protocols for electronic or digital transmittals, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

ARTICLE 3 – DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic or digital versions of the Contract Documents (including any printed copies

derived from such electronic or digital versions) and the printed record version, the printed record version shall govern.

- D. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.

3.02 *Reference Standards*

A. Standards Specifications, Codes, Laws and Regulations

1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
2. No provision of any such standard specification, manual, reference standard, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies:*

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

3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies:*

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

3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and shall determine the acceptability of the Work thereunder.
- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents via a Change Order. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor and the Owner, unless the Contractor appeals by submitting a Change Proposal or unless the Owner appeals by filing an Owner's Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 *Reuse of Documents*

- A. Contractor and its Subcontractors, Suppliers, Laborers, or Employees shall not:
 1. have or acquire any title to or ownership rights in any of the Contract Documents prepared by or bearing the seal of Engineer or its consultants, including electronic media editions, and shall not reuse any of the Contract Documents without written consent of Owner and Engineer and without specific written verification of adaptation by Engineer; or
 2. violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for recordkeeping purposes.

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed; Starting the Work*

- A. The Contract Times will commence to run on the date identified by the Owner in the Notice to Proceed.
- B. Notwithstanding the Notice to Proceed, Contractor shall not commence any work under this Contract until the effective date of all insurance required by this Contract.

4.02 *Reference Points*

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

4.03 *Progress Schedule*

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

4.04 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times or Contract Price, if such adjustment is necessary to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of any of the Contractor's Subcontractors, Suppliers, Laborers, or Employees shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is necessary to Contractor's ability to

complete the Work within the Contract Times. Adjustment of the Contract Times shall be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:

1. severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 2. abnormal weather conditions;
 3. impeded access to the Project site not caused by either party;
 4. acts or failure to act of utility providers; and
 5. acts of war or terrorism.
- D. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5.
- E. Paragraph 8.03 governs delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.
- F. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor.
- G. Contractor must submit any Change Proposal seeking an adjustment in Contract Price or Contract Times under this paragraph within 30 days of the commencement of the delaying, disrupting, or interfering event.

ARTICLE 5 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 *Use of Site and Other Areas*

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

1. Contractor shall confine construction equipment, temporary construction facilities, the storage of goods, supplies, materials and equipment, and the operations of workers to the Project Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and

Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other goods, supplies, materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.

2. Contractor shall limit its use and occupation of all lands and access roads and areas to what is minimally necessary to perform the Work, so as to keep new land disturbances to a minimum.
 3. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.12, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and those identified in Paragraph 7.18.A against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner and those identified in Paragraph 7.18.A to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work, Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus goods, supplies, and materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading of Structures:* Contractor shall not load nor permit any part of any existing structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Project Manual identifies:
1. those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site;
 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities); and

3. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Project Manual with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of, or conclusion drawn, from any Technical Data or any such other data, interpretations, opinions, or information.

5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site either:
1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate; or
 2. is of such a nature as to require a change in the Drawings or Specifications; or
 3. differs materially from that shown or indicated in the Contract Documents; or
 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;
- then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.
- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine the necessity of Owner's obtaining additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A above; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.

- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Possible Price and Times Adjustments:*
1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, or both, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
 - b. with respect to any Unit Price Work, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.02; and,
 - c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
 2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
 - a. Contractor knew of the existence of such condition at the time Contractor submitted its Bid or executed this Contract; or
 - b. the existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Project Manual or Contract Documents to be conducted by or for Contractor prior to Contractor submitting its Bid or executing this Contract; or
 - c. Contractor failed to give the written notice as required by Paragraph 5.04.A.
 3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
 4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or adjacent to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Project Manual:

1. Owner and Engineer do not warrant or guarantee the accuracy or completeness of any such information or data provided by others; and
 2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents as being at the Site;
 - c. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
 - d. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer.
- C. *Engineer's Review:* Engineer will promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the Underground Facility in question; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and advise Owner in writing of Engineer's findings, conclusions, and recommendations. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question, addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Possible Price and Times Adjustments:*
1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, or both, to the extent that any existing Underground Facility at the Site that was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the existence or actual location of the Underground Facility in question;
 - b. With respect to any Unit Price, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.02;
 - c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times; and
 - d. Contractor gave the notice required in Paragraph 5.05.B.
2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
 3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.

5.06 *Hazardous Environmental Conditions at Site*

- A. *Reports and Drawings:* The Project Manual shall identify:
 1. those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
 2. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Project Manual with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the Scope of Work for the Project.

- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the Scope of Work for the Project, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner may take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.
- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off.
- H. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.
- I. Contractor shall indemnify and hold harmless Owner and those identified in Paragraph 7.18.A against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.I shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

- J. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 6 – BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a performance bond and a payment bond as provided herein.
1. Performance Bond: The Contractor shall provide to Owner a Performance Bond underwritten and executed by a surety company that guarantees the Contractor's complete and satisfactory performance under the Contract. The Performance Bond shall be equal to one hundred percent (100%) of the Original Contract Amount.
 2. Payment Bond: The Contractor shall provide to the Owner a Payment Bond underwritten and executed by a surety company that will protect all persons, subcontractors, or other entities supplying labor and material to the Contractor or its subcontractors for the performance under this Contract. The Payment Bond shall be in an amount equal to one-hundred percent (100%) of the Original Contract Amount. The Payment Bond must be provided in addition to the Performance Bond required in Paragraph 2.03.A herein.
- B. Bond documentation required: The Owner's Representative must receive written documentation of all required bonds prior to the issuance of a Notice to Proceed for the Project, and the Contractor shall not commence any work to be performed or services to be provided under this Contract unless and until such documentation has been submitted to the Owner. If the Contractor is able to furnish such documentation prior to the Owner's execution of this Contract, such documentation shall be made an attachment to the Contract. The Contractor expressly acknowledges that the Owner may terminate this Contract for breach if, subsequent to the final execution of the Contract, any statement or documentation regarding bonding is determined to be false, any bond has expired or been suspended or revoked, or the Contractor has failed to submit in a timely manner any requested documentation pertaining to bonding and that the Owner is unable to issue a Notice to Proceed in a timely manner.
- C. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements above.
- D. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.
- E. Upon request, Owner shall provide a copy of the payment bond to any Subcontractor, Supplier, or other person or entity claiming to have furnished labor or materials used in the performance of the Work.

6.02 *Insurance*

- A. Contractor shall obtain and maintain insurance as provided herein.
1. Builder's Risk Insurance: Contractor shall obtain, on behalf of the Owner, a "builder's risk" insurance policy for all aspects of the Project; such insurance coverage shall be in amount adequate to cover any potential loss, relating to the Project or any portion

thereof, that may occur prior to the effective date and time of the Owner's property insurance coverage for the Project. The Contract Price may be increased to accommodate the cost of builder's risk insurance if such cost was not included.

2. **Liability Insurance:** The Contractor shall, at its sole expense, procure and maintain adequate and sufficient insurance for all of Contractor's potential liabilities, in accordance with this Paragraph 6.02, relating to any claims by any party for any injury to persons or damage to property arising out of or connected with any work performed or services provided under this Contract by the Contractor; such insurance shall remain in effect for the duration of performance under this Contract up to and including the date and time of issuance of a Certificate of Occupancy for the Project or the until effective date and time of the Contractor's warranty for the Project, whichever occurs last.
3. **Minimum Insurance Coverages:** Contractor shall obtain and maintain minimum coverages shown as follows:
 - a. **Commercial General Liability – ISO CG 0001 Form or equivalent.** Coverages shall include:
 - *Premises and Operations*
 - *Personal/Advertising Injury*
 - *Products/Completed Operations*
 - *Liability assumed under an Insured Contract (including defense costs assumed under contract)*
 - *Broad Form Property Damage*
 - *Independent Contractors/Consultants*
 - b. **Automobile Liability** including all:
 - *Contractor-Owned Vehicles*
 - *Non-owned Vehicles*
 - *Rented/Hired Vehicles*
 - *Personal Injury Protection (where applicable)*
 - c. **Worker's Compensation:**
 - *Statutory Benefits (Coverage A)*
 - *Employers Liability (Coverage B)*
4. **Limits required:** Contractor shall carry the limits of liability shown below ("state Law" means limits shall be in accordance with laws and regulations of the state wherein this Contract shall be primarily performed):

COMMERCIAL GENERAL LIABILITY

GENERAL AGGREGATE	\$	2,000,000
PRODUCTS/COMPLETED OPERATIONS AGGREGATE	\$	2,000,000
OCCURRENCE BASIS/ PER EACH OCCURRENCE LIMIT	\$	1,000,000
PERSONAL/ADVERTISING INJURY	\$	1,000,000

FIRE DAMAGE (ANY ONE FIRE)	\$	50,000
MEDICAL PAYMENTS (ANY ONE PERSON)	\$	5,000
AUTOMOBILE LIABILITY		
BODILY INJURY/PROPERTY DAMAGE (EACH ACCIDENT)	\$	1,000,000
PERSONAL INJURY PROTECTION (IF APPLICABLE)	BY STATE LAW	
WORKERS' COMPENSATION		
COVERAGE A (WORKERS' COMPENSATION)	BY STATE LAW	
COVERAGE B (EMPLOYERS LIABILITY)	\$	500,000
AGGREGATE MINIMUM	\$	2,000,000

5. Claims-made basis: In the event Contractor's liability insurance required by this Contract is written on a claims-made basis, the Contractor shall warrant that any retroactive date under the policy shall precede the effective date of this Contract, and either continuous coverage will be maintained by or an extended discovery period will be exercised for a period of two (2) calendar years beginning as of the date performance is completed.
6. Primary coverage basis: For payment of any claims, Contractor's insurance coverage shall be on a primary, non-contributory basis with other coverages and/or self-insurance carried by the Owner or other sources.
7. Required language: The Contractor's General Liability and Umbrella Liability policy shall be endorsed to include the following language: "THE NAVAJO NATION, ITS ELECTED OFFICIALS, EMPLOYEES, AGENTS, AND VOLUNTEERS ARE NAMED AS AN ADDITIONAL INSURED WITH RESPECT TO LIABILITY ARISING OUT OF THE ACTIVITIES PERFORMED BY THE INSURED [THE CONTRACTOR] PURSUANT TO A CONTRACT WITH THE NAVAJO NATION." (ISO Forms CG 2010 and CG 20 37 "Additional Insured-Owners, Lessees or Contractors-Completed Operations" 2004 Editions or equivalent).
8. Waiver of subrogation: All Contractor's policies shall contain a waiver of subrogation in favor of the Owner, its divisions, departments, offices, agencies, boards, commissions, committees, enterprises and its employees, officers, officials, and agents for losses arising from work performed or services provided by the Contractor pursuant to a Contract with the Owner.
9. Separation of Insureds: Contractor's policy shall include a "Separation of Insureds" clause (Cross Liability).
10. Insurer rating: The Contractor's insurance policy shall be issued by a licensed or approved insurer with an "A.M. Best" rating of not less than A- VII. The Owner in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.
11. Certificates of insurance: The Contractor shall provide to the Owner certificates of insurance as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Each insurance policy required by this Contract must be in effect upon, or prior to, commencement of performance under this Contract and shall remain in effect until such time as all of its obligations under this Contract or any subsequent modifications have been fully and satisfactorily completed. Insurance certificates shall be sent to the

Navajo Nation Department of Risk Management, P.O. Box 1690, Window Rock, Arizona, 26515. The Contract Number and a description of the work performed or services provided thereunder shall be indicated on such certificates.

12. Subcontractors: Contractor's subcontractors shall be included as insureds under Contractor's policy, or Contractor shall provide separate certificates and endorsements for each of its subcontractors holding separate policies, which policies shall meet the minimum policy amounts shown herein.
13. Notification of change required: The insurance policy required herein shall provide the required coverage and shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) calendar days prior written notice has been given to the Owner. Such notice shall be sent directly to the address shown in 6.02.A.11 and shall be sent by certified mail, return receipt requested.
14. Approval of modifications: Any modifications of the insurance requirements set forth herein shall be approved by the Navajo Nation Risk Management Program, whose decision shall be final. Such modification shall not require a formal Contract modification, but may be approved by administrative action of the Risk Management Program. Contractor may request, for itself or its subcontractors, that the insurance requirements shown herein be modified, provided that such request include a justification for the modification with supporting documentation and be delivered in writing to the Risk Management Program prior to contract execution or modification. Any modifications approved shall be on a case-by-case basis and shall not affect the insurance requirements of other subcontractors for whom modifications have not been approved. ALL MODIFICATIONS SHALL BE APPROVED BY THE NAVAJO NATION RISK MANAGEMENT PROGRAM PRIOR TO COMMENCEMENT OF ANY PERFORMANCE UNDER THIS CONTRACT.
15. Owner's disclaimers: The insurance requirements and coverages set forth herein are minimum requirements only and in no way limit the indemnity covenants contained in this Contract. The Owner in no way warrants that the minimum limits herein are sufficient to protect Contractor or its subcontractors from any liabilities arising from any work performed or services provided under this Contract, and Contractor and its subcontractors are free to purchase additional insurance. By requiring such minimum insurance, the Owner shall not be deemed to have assessed any risks that may be applicable to Contractor under the Contract. Contractor shall assess all risks and may maintain higher limits and/or broader coverages. Contractor is not relieved of any liability or other obligations assumed or pursuant to this Contract due to failure to obtain or maintain insurance in sufficient amounts, duration, or types.
16. No sovereign immunity waiver: The Parties acknowledge and agree that the Owner is relying on, and does not waive or intend to waive by any provision of this Contract, the monetary limitations and other rights, immunities, and protections provided under 1 N.N.C. §§551 et. seq., as from time to time amended, or otherwise available to the Owner or its elected officials, employees, agents, and volunteers.
17. Mutual cooperation: The Owner and Contractor shall cooperate in good faith in the collection of any insurance proceeds which may be payable in the event of any loss, including the execution and delivery of any proof of loss or other actions required to effect recovery.

18. Contractor's Insurance: The Contractor, and each entity of a team, shall maintain insurance as required herein, for the specific type of work to be performed and services to be provided by such entity or individual.
 19. Insurance Documentation Required: The Owner's Representative must receive written documentation of all required insurance prior to issuance of a Notice to Proceed for the Project, and Contractor shall not commence any work or services under this Contract unless and until such documentation has been submitted to the Owner.
- B. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 16.

ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES

7.01 *Supervision and Superintendence*

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

7.02 *Labor*

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

7.03 *Goods, Supplies, Services, Materials, and Equipment*

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

7.04 "Or Equals"

- A. Whenever an item of goods, supplies, 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 or Manufacturer, such specification or description is intended to establish the type, function, appearance, and quality required, however, the Owner may, at its discretion, authorize the use of other items of goods, supplies, material or equipment.
- B. *Contractor's Expense*: Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.

7.05 Substitutes

- A. Unless the specification or description of an item of material or equipment required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment under the circumstances described below. To the extent possible such requests shall be made before commencement of related construction at the Site.
 - 1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of material or equipment from anyone other than Contractor.
 - 2. The requirements for review by Engineer will be as set forth in Paragraph 7.05.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.
 - 3. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
 - a. shall certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design,
 - 2) be similar in substance to that specified, and
 - 3) be suited to the same use as that specified.
 - b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times,
 - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
 - c. will identify:
 - 1) all variations of the proposed substitute item from that specified, and

- 2) available engineering, sales, maintenance, repair, and replacement services.
- d. shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- E. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination:* If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.05.D, by timely submittal of a Change Proposal.

7.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner.
- B. Owner may not require Contractor to retain any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against which Contractor has reasonable objection.
- C. Prior to the Owner's execution of this Contract, at the time of Bid (if applicable), Contractor shall submit to Owner the identity of all proposed Subcontractors or Suppliers.
- D. Owner may require the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors, Suppliers, or other individuals or entities for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make

written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor, Supplier, or other individual or entity so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity.

- E. If Owner requires the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work, then Contractor may submit a Change Proposal for an adjustment of the Contract Price or Contract Times, within 30 days of Owner's requirement of replacement.
- F. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of the Owner's right to the completion of the Work in accordance with the Contract Documents.
- G. On a monthly basis Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- H. Contractor shall be fully responsible to Owner for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions.
- I. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.
- J. Contractor shall restrict all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed herein.
- K. 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, except that any specialized Work shall be performed by Subcontractors or Suppliers who are specifically licensed and qualified to perform such specialized Work.
- L. All Work performed for Contractor by a Subcontractor or Supplier shall be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer.
- M. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by the particular Subcontractor or Supplier.
- N. Nothing in the Contract Documents:
 - 1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier, or other individual or entity; nor
 - 2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity.

7.07 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If 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 Owner or Engineer at the time of execution of this Contract by the Owner, 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 Owner in the Contract Documents.
- B. Contractor shall indemnify and hold harmless Owner and those identified in Paragraph 7.18.A against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

7.08 *Permits*

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the Contractor's execution of this Contract. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

7.09 *Taxes*

- A. Contractor acknowledges and agrees that all work performed and services provided within the territorial jurisdiction of the Navajo Nation is subject to the six percent (6%) Navajo Sales Tax (24 N.N.C. §601 et seq.).
- B. *Identification of taxable activity:* The Contractor shall separately indicate, on each invoice or payment application submitted to the Owner, any and all of its work performed or services provided within the Navajo Nation pursuant to this Contract, and shall itemize the Navajo Sales Tax.
- C. *Withholding:* The Owner shall withhold from each payment six percent (6%) of each invoice amount for work performed and services provided within the Navajo Nation under this Contract, and shall transfer such six percent (6%) amount to the Office of the Navajo Tax Commission (ONTC) on behalf of the Contractor. The Contractor shall indicate on its quarterly tax return filed with the ONTC that the Navajo Sales Tax has been withheld and paid. It is the Contractor's sole responsibility to make certain that all withholding applies only to that work performed and services provided under this contract, or portion thereof, that is subject to the Navajo Sales Tax.
- D. *Filing and other payments:* The Contractor acknowledges that the Owner's withholding of tax in no way removes Contractor's responsibility for timely filing of tax returns and payment of interest, penalties, or any other amounts relating to Contractor's tax obligations under the Navajo Nation's or any other jurisdiction.

7.10 *Compliance with Navajo Nation Laws and Regulations*

- A. *Financial responsibility:* At all times for the effective duration of this Contract, the Contractor shall be in compliance with all provisions of the Navajo Business and Procurement Act, at 12 N.N.C. §1501 et seq.
- B. *Navajo Preference in hiring:* In the hiring of any employees (under an employer-employee relationship) who will perform primarily at the Project site, the Contractor shall comply with all provisions of the Navajo Preference in Employment Act, at 15 N.N.C. §601 et seq.
- C. *Navajo Preference in subcontracting:* Contractor expressly acknowledges and agrees that it is deemed a "Prime Contractor" under 5 N.N.C. §202 K, and as such must comply with all applicable provisions of the Navajo Business Opportunity Act, at 5 N.N.C. §201 et seq., and with all rules and regulations promulgated thereto. In accordance with 5 N.N.C. §205 F, the NNBRD shall have the authority to require the Contractor to comply with current minimum percentages for procurement and subcontract awards to Navajo-owned and controlled entities, firms and organizations, based upon availability and upon the qualifications of such entities to provide specific products and services necessary or appropriate for the Project.
- D. *Other laws:* The Contractor shall comply with all other Navajo Nation laws and regulations and of the United States, now in force and effect or as hereafter may come into force and effect that pertain to the work to be performed or services to be provided under this Contract.
- E. *Funding grants:* The Contractor shall comply with any and all applicable laws, regulations, policies, or guidance governing the procurement, administration, contract performance, payment procedures, reporting, or other matters relating to the Project or to Contractor's performance under this Contract.
- F. *Non-compliance constitutes breach:* The terms and provisions of said laws and regulations are fully incorporated herein by reference, and any violation thereof shall constitute a breach of this Contract and provide just cause for the Owner's unilateral termination of this Contract.
- G. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and those identified in Paragraph 7.18.A against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action.

7.11 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one printed record copy of all Contract Documents. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. These record documents, together with all approved Samples, will be made readily available to Engineer and Owner for reference. Upon completion of the Work, Contractor shall deliver these record documents to Engineer or to the Owner if directed by the Owner.

7.12 *Safety and Protection*

- A. Contractor is wholly responsible for safety at the Site. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in

connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:

1. all persons on the Site or who may be affected by the Work;
 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site;
 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction; and
 4. any discovered historical, archeological, or cultural remains or property.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may potentially affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- C. Contractor shall comply with the applicable requirements of Owner's safety programs or procedures as contained in the Project Manual.
- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 7.12.A.2 through 7.12.A.4 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- F. Contractor's duties and responsibilities for safety and protection shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 15.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).
- G. Contractor's duties and responsibilities for safety and protection shall resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.13 *Safety Representative*

- A. 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.

7.14 *Hazard Communication Programs*

- A. 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.

7.15 *Emergencies*

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

7.16 *Shop Drawings, Samples, and Other Submittals*

A. *Shop Drawing and Sample Submittal Requirements:*

1. Before submitting a Shop Drawing or Sample, Contractor shall have:
 - a. reviewed and coordinated the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
 - c. determined and verified the suitability of all goods, supplies, materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that submittal, and that Contractor approves the submittal.
3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be set forth in a written communication separate from the Shop Drawings or Sample submittal; and, in addition, in the case of Shop Drawings by a specific notation made on each Shop Drawing submitted to Engineer for review and approval of each such variation.

- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals. Each submittal will be identified as Engineer may require:
1. *Shop Drawings:*
 - a. Contractor shall submit the number of copies required in the Specifications.
 - b. 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 services, goods, supplies, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.D.
 2. *Samples:*
 - a. Contractor shall submit the number of Samples required in the Specifications.
 - b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 7.16.D.
 3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Other Submittals:* Contractor shall submit other submittals to Engineer in accordance with the accepted Schedule of Submittals, and pursuant to the applicable terms of the Specifications.
- D. *Engineer's Review:*
1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. 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.
 2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto.
 3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
 4. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order.

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

E. *Resubmittal Procedures:*

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

7.17 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee. Contractor warrants to the Owner that all labor, materials, equipment and furnishings used in, or incorporated into, the Project will be of good quality, new, that the Work will be free from defects in design, materials and workmanship, and that all Work will conform with the requirements of the Contract. If required by the Owner's Representative, the Contractor shall furnish satisfactory evidence of compliance with this warranty. The type, quality and quantum of such evidence, and whether such evidence is satisfactory, shall be within the sole discretion of the Owner's Representative. Any portion of the Work not conforming to these requirements, including substitutions not properly approved and authorized by the Owner, and including non-conformance relating to any materials, equipment, furnishings, labor, installation, or workmanship, may be considered defective.

- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 2. normal wear and tear under normal usage.
- C. 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:
1. observations by Engineer or Owner;
 2. recommendation by Engineer or payment by Owner of any progress or final payment;
 3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 4. use or occupancy of the Work or any part thereof by Owner;
 5. any review and approval of a Shop Drawing or Sample submittal;
 6. the issuance of a notice of acceptability by Engineer;
 7. any inspection, test, or approval by others; or
 8. any correction of defective Work by Owner or others under the control of Owner.
- D. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract shall govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.
- E. *Repair or replacement:* Contractor agrees to repair, replace, or re-perform, or pay the Owner the reasonable cost of such repair, replacement, or re-performance, any portion of the Work that the Owner deems in its sole discretion to be defective, so long as the Owner submits to the Contractor a written notice of any defect within 1 calendar year following the issuance of a Certificate of Substantial Completion for the Project or as otherwise required in the Technical Specifications, whichever is later. The choice among repair, replacement, re-performance, or payment shall be the Contractor's. Any steps taken by the Contractor to correct defects shall not act to extend the term of this warranty. All costs for work or services, including third party fees or costs, for all repairs, replacement, or re-performance by the Contractor shall be at no charge to the Owner and shall be performed within 60 calendar days of the Contractor's receipt of notification of the defect, which period may be extended for delays outside the Contractor's control.
- F. *Maintenance:* Failure of the Owner to perform reasonable regular maintenance and proper care of the finished Project shall NOT void this warranty as it covers defects that are inherent in the goods or services provided as part of the Project.
- G. *Access to the Project:* Owner must provide access to the Contractor during its normal business hours, Monday through Friday, 8 a.m. to 5 p.m., to inspect the defect reported and, if necessary, to take corrective action.
- H. *No liens:* Contractor guarantees that, as of the conclusion of this Contract, all work will be free of liens, claims and security interests of any third parties.

7.18 *Indemnification*

- A. Contractor shall indemnify and hold harmless Owner and its officers, directors, members, partners, agencies, boards, commissions, committees, enterprises, employees, agents, consultants, subcontractors and Engineer from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.
- B. In any and all claims against Owner or those identified in Paragraph 7.18.A by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A 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 individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor under Paragraph 7.18.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
 - 1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 - 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

7.19 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable Laws and Regulations.
- B. If professional design services or certifications by a design professional related to systems, goods, supplies, materials, or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, or approvals performed by such design

professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.

- D. Pursuant to this paragraph, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 7.16.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria specified by Owner or Engineer.

ARTICLE 8 – OTHER WORK AT THE SITE

8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any utility work at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford each other contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.
- D. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 8, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

8.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Project Manual or provided to Contractor prior to the start of any such other work:

1. the identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
 2. an itemization of the specific matters to be covered by such authority and responsibility; and
 3. the extent of such authority and responsibilities.
- B. Unless otherwise provided in the Project Manual, Owner shall have sole authority and responsibility for such coordination.

8.03 *Legal Relationships*

- A. If, in the course of performing other work at or adjacent to the Site for Owner, the Owner's employees, any other contractor working for Owner, or any utility owner causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment shall take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the Owner's execution of this Contract. When applicable, any such equitable adjustment in Contract Price shall be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment and such adjustment must be necessary for Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due to Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this paragraph.
- C. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due to Contractor.
- D. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or

otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and those identified in Paragraph 7.18.A.

ARTICLE 9 – OWNER’S RIGHTS AND RESPONSIBILITIES

9.01 *Right to Assurance*

- A. If at any time prior to completion of performance under this Contract, the Owner has reason to believe that Contractor does not intend or is unable to fully perform under this Contract, the Owner may demand in writing that Contractor submit written assurance of its intent to complete performance. Failure to provide assurance within fourteen (14) business days of issuance of such demand shall constitute a material breach.

9.02 *Communications to Contractor*

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

9.03 *Replacement of Engineer*

- A. Owner may at its discretion appoint an engineer to replace Engineer. The replacement engineer’s status under the Contract Documents shall be that of the former Engineer.

9.04 *Furnish Data*

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

9.05 *Pay When Due*

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

9.06 *Lands and Easements; Reports, Tests, and Drawings*

- A. Owner’s duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Owner’s duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.02.
- C. Article 5 refers to Owner’s identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

9.07 *Change Orders*

- A. Owner’s responsibilities with respect to Change Orders are set forth in Article 11.

9.08 *Inspections, Tests, and Approvals*

- A. Owner’s responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

9.09 *Limitations on Owner’s Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor’s failure to perform the Work in accordance with the Contract Documents.

9.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.11 *Safety Programs*

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

ARTICLE 10 – ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *Owner's Representative*

- A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in this Contract.
- B. No payment shall be authorized or remitted to the Contractor unless and until the Owner's Representative, or his/her successor or designee, approves in writing in advance the work performed or services provided under this Contract, and has given prior written approval of invoice(s), billing(s), or payment application(s) submitted to the Owner. All invoices must be supported by adequate verification, documentation, and itemization of all required Project deliverables received by the Owner.
- C. Any cooperative or joint supervision, or joint approval authority involving person(s) other than the Owner's Representative, whether Owner's staff or other person(s), shall be conducted through a duly approved and executed cooperative agreement that sets forth the extent of decision-making, supervision, and approval authority of the Owner's Representative and such other person(s).

10.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe, as an experienced and qualified design professional, the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.08. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Project Representative*

- A. The Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work. The authority and responsibilities of the Resident Project Representative will be as provided in Paragraph 10.08 and further detailed in the Technical Specifications. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent, or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Project Manual.

10.04 *Rejecting Defective Work*

- A. Engineer has the authority to reject Work in accordance with Article 14.

10.05 *Shop Drawings, Change Orders and Payments*

- A. Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, are set forth in Paragraph 7.16.
- B. Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, are set forth in Paragraph 7.19.
- C. Engineer's authority as to Change Orders is set forth in Article 11.
- D. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.06 *Determinations for Unit Price Work*

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.02.

10.07 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

10.08 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 15.06.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, and other documentation required to be delivered by Paragraph 15.06.A shall be to determine compliance with the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 10.08 shall also apply to the Resident Project Representative, if any.

10.09 Compliance with Safety Program

- A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs and procedures (if any) of which Engineer has been informed.

ARTICLE 11 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK

11.01 Amending and Supplementing Contract Documents

- A. The Contract Documents may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
 - 1. *Change Order*
 - a. If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order. A Change Order also may be used to establish amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.
 - b. Owner and Contractor may amend those terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, without the recommendation of the Engineer. Such an amendment shall be set forth in a Change Order.
 - c. 20% Limitation if Bid used. If the Original Contract Amount is based on a "Bid" submitted by the Contractor and accepted by the Navajo Nation, pursuant to 2 N.N.C. §223(F), such modifications shall not exceed, in the aggregate, twenty percent (20%) of the accepted Bid.
 - 2. *Work Change Directives:* A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.04 regarding

change of Contract Price. Contractor must submit any Change Proposal seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 30 days after the completion of the Work set out in the Work Change Directive. Owner must submit an Owner's Claim seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 60 days after issuance of the Work Change Directive.

3. *Field Orders*: Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.
- B. *Approval required for any modification, Change Order, or Contract Price over 10%*: Every modification, Change Order, or Contract Price that exceeds ten percent (10%) of the Original Contract Amount shall be approved in advance by the Owner's Representative, in accordance with 12 N.N.C. § 345.

11.02 *Unilateral Changes in the Work by Owner*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. The Owner shall give timely written notice as defined in the Contract, or if not therein defined, upon thirty (30) calendar days' prior written notice for such unilateral changes. Such changes shall be supported by Engineer's recommendation, to the extent the change involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters. Such changes may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work shall be performed under the applicable conditions of the Contract Documents. Nothing in this paragraph shall obligate Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.
- B. The Contractor agrees that payment for additional work/goods/services provided in accordance with such changes described in this paragraph shall be determined in the same manner as all costs for such work/goods/services included in the Contract Amount, unless the Contractor provides written justification for any cost increase and the Owner's Representative, in his/her sole discretion, approves such increase. Such additional payments must be approved via a Change Order.

11.03 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, if such work is not approved prior to commencement in a Change Order in accordance with Article 11, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.

11.04 *Change of Contract Price*

- A. The Contract Price may only be changed by a duly approved Change Order in accordance with this Article 11.
- B. An adjustment in the Contract Price will be determined as follows:
 - 1. where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.02); or
 - 2. where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum; or
 - 3. where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01).
- C. Contractor's Fee under a change in Contract Price shall be determined as follows:
 - 1. a mutually acceptable fixed fee or if a fixed fee is not agreed upon, then a fee based on the Unit Price Work.
 - 2. no fee shall be payable on the basis of costs itemized under Paragraph 13.01.B.4, 13.01.B.5, and 13.01.C.

11.05 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order.
- B. An adjustment of the Contract Times shall be subject to the limitations set forth in Paragraph 4.04, concerning delays in Contractor's progress.

11.06 *Change Proposals*

- A. Contractor shall submit a Change Proposal to Engineer to (1) request an adjustment in the Contract Times or Contract Price; (2) appeal an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; (3) contest a set-off against payment due; or (4) seek other relief under the Contract. The Change Proposal shall specify any proposed change in Contract Times or Contract Price, or both, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents.
 - 1. *Procedures:* Contractor shall submit each Change Proposal to Engineer promptly (but in no event later than 30 days) after the start of the event giving rise thereto, or after such initial decision. The Contractor shall submit supporting data, information, and materials regarding the proposed change, to the Engineer and Owner within 15 days after the submittal of the Change Proposal. Engineer shall advise Owner regarding the Change Proposal.
 - 2. *Engineer's Action:* Engineer will review each Change Proposal and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.
 - 3. *Binding Decision:* Engineer's decision will be final and binding upon Owner and

Contractor, unless Owner or Contractor appeals the decision by filing an Owner's Claim or Contractor's Claim under Article 12.

4. *Owner's Approval:* For a Change Proposal to take effect, the Owner must give written approval of any Change Proposal in accordance with Article 11.

B. *Resolution of Certain Change Proposals:* If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice shall be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

11.07 *Execution of Change Orders*

A. The Engineer may issue appropriate Change Orders covering:

1. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
2. changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
3. changes in the Scope of Work for the Project which are: (a) ordered by Owner pursuant to Paragraph 11.02, (b) required because of Owner's acceptance of defective Work under Paragraph 14.03 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters; and
4. changes in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results under Paragraph 11.06, or Article 12.

11.08 *Notification to Surety*

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

ARTICLE 12 – JURISDICTION, SOVEREIGN IMMUNITY, CLAIMS; DISPUTE RESOLUTION

12.01 *Navajo Nation Jurisdiction*

A. By voluntarily entering into and executing this Contract, the Contractor expressly consents to the full territorial, administrative, legislative, executive and judicial jurisdiction of the Navajo Nation, including but not limited to, the jurisdiction to regulate, adjudicate disputes, and to levy fines or enter judgments for injunctive relief and/or compensatory and punitive damages, in connection with all activities conducted by the Contractor within the Navajo Nation or which have a proximate (legal) effect on persons or property within the Navajo Nation. The Contractor hereby acknowledges and agrees that this Contract constitutes a voluntary consensual relationship between the Contractor and the government of the Navajo Nation.

12.02 *Sovereign Immunity*

- A. Nothing in this Contract shall be considered a waiver, express or implied, of the sovereign immunity of the Navajo Nation, except to the limited extent provided for in the Navajo Sovereign Immunity Act, as amended, at 1 N.N.C. §§551 et seq.

12.03 *Claims; Dispute Resolution*

- A. Any claim (including an Owner's Claim and Contractor's Claim), dispute, or other matter in question arising out of or relating to this Contract shall be resolved by the negotiation and arbitration proceedings set forth in this Article.
- B. *Negotiation:* The parties shall endeavor to resolve claims, disputes or other matters between them by informal good faith negotiation, which negotiation period shall not exceed thirty (30) calendar days, commencing as of the receipt by either party of the other party's written "Notice to Invoke Dispute Resolution Procedures."
- C. *Arbitration:* If the negotiation provided for in Paragraph 12.03.B herein does not result in resolution of the parties' dispute within thirty (30) calendar days of commencement of negotiation, then, unless the parties agree in writing to extend the time for negotiation, either party may invoke arbitration according to the procedures referenced in the Navajo Sovereign Immunity Act, as amended, at 1 N.N.C. §554(J) and §554(K), and in the Navajo Nation Arbitration Act, as amended, at 7 N.N.C. §§1101 et seq. Arbitration shall be conducted under the Commercial Arbitration Rules of the American Arbitration Association, except as such rules are modified by the following:
 - 1. unless otherwise agreed to in writing by the parties, all arbitration proceedings shall be held in Window Rock, Arizona; and
 - 2. the arbitration shall be conducted by a single arbitrator selected by the Owner, unless one of the parties' claims exceeds \$1,000,000.00, exclusive of interest, costs, and fees; in such case the arbitration shall be conducted by a panel consisting of three (3) arbitrators, one of which shall be chosen by each party, with the two arbitrators choosing the third; at least one arbitrator shall possess at least ten (10) years of experience in Indian Law; and
 - 3. a Notice of Intent to Invoke Arbitration shall be filed in strict compliance with the notice requirements of the Navajo Sovereign Immunity Act, at 1 N.N.C. §555; and
 - 4. whether as a result of an arbitration provided for herein or of any judicial action to enforce an arbitration award resulting from such arbitration, any award against the Owner shall be in strict conformance with the provisions of 1 N.N.C. §554(K) 1-6; and
 - 5. whether in the context of an arbitration provided for herein or any judicial action to enforce an arbitration award resulting from arbitration, Navajo Nation laws and regulations shall exclusively govern the interpretation of this Contract, the arbitration provisions herein, the arbitration procedures conducted pursuant thereto, and the application of all provisions of the Contract to the Contractor, and
 - 6. pursuant to 1 N.N.C. § 554(J)-(K) and 7 N.N.C. §1102, the appropriate Navajo Nation district court shall have exclusive jurisdiction to compel the Owner's participation in an arbitration, and shall have exclusive jurisdiction to enforce, modify, or vacate an

arbitration award resulting from such arbitration; neither party may recover from the other any attorney fees or costs.

- D. *Waiver of Suit:* The negotiation and arbitration provisions herein shall constitute the sole and exclusive procedural remedy to any dispute or controversy arising from this Contract. Commencement of negotiation or arbitration shall be a complete defense to any suit, claim, action or proceeding in any federal, state, or tribal judicial or administrative tribunal, with respect to any dispute or controversy arising out of this Contract.
- E. *Post-termination; Post-expiration:* Regarding any dispute arising from this Contract, the dispute resolution procedures set forth herein shall survive the termination or expiration of this Contract.
- F. *Challenges limited:* By entering into this Contract, the Contractor expressly covenants and agrees that it shall not contest or challenge the territorial, administrative, legislative, executive or judicial jurisdiction of the Navajo Nation on the basis that such jurisdiction is inconsistent with the status of the Navajo Nation as an Indian tribal Nation, or that the Navajo Nation government is not a government of general jurisdiction, or that the Navajo Nation government does not possess full police power (i.e., the power to legislate and regulate for the public's general health and welfare) over all lands, persons, activities, transactions, or occurrences within its territorial boundaries, or on any other basis not generally applicable in a similar challenge to the jurisdiction of a state government.
- G. *Partial Approval:* If the party receiving a claim approves the claim in part and denies it in part, such action shall be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 12.

12.04 *Navajo Nation Department of Justice Approval*

- A. Pursuant to 1 N.N.C. §554(J)(2) and (K)(2), Navajo Nation Department of Justice approval is required for all agreements that include a limited waiver of sovereign immunity to compel or enforce arbitration under the Navajo Nation Arbitration Act, as amended, 7 N.N.C. §1101 *et seq.* The previous sentence and the Navajo Nation Department of Justice's signature are required on the signature page of C-520.

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

13.01 *Cost of the Work*

- A. The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue.
- B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:
 - 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
 - 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.

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.
 4. 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.
 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.
- C. *Contractor's Fee*: When the Work as a whole is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Contract. When the value of any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 11.04.C.
 - D. *Contingency Allowance*: Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
 - E. 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.

13.02 *Unit Price Work*

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Contract.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of the following subsection.
- E. Within 30 days of Engineer's written decision under the preceding paragraph, Contractor may submit a Change Proposal, or Owner may file a Claim, seeking an adjustment in the Contract Price if:
 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 Contract;
 2. there is no corresponding adjustment with respect to any other item of Work; and
 3. Contractor believes that it is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner 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 14 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

14.01 *Access to Work*

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

14.02 *Tests, Inspections, and Approvals*

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work shall be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
 - 1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
 - 2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
 - 3. by manufacturers of equipment furnished under the Contract Documents;
 - 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
 - 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

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

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.

- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering shall be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

14.03 *Defective Work*

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 *Acceptance of Defective Work*

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

14.05 *Uncovering Work*

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

14.06 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

14.07 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer, 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, then Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.

- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

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

15.01 *Progress Payments*

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.02. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments:*
 - 1. At least 20 days before the date established in the Contract 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 Owner 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, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
 - 2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
 - 3. The amount of retainage with respect to progress payments will be as stipulated in the Contract.
- C. *Review of Applications:*
 - 1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
 - 2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design

professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:

- a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.02, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
- a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
- a. to supervise, direct, or control the Work, or
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
- a. the Work is defective, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;

- c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
- d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
- e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. *Payment Becomes Due:*

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

E. *Reductions in Payment by Owner:*

- 1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
 - a. claims have been made against Owner on account of Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages on account of Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
 - b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. Contractor has failed to provide and maintain required bonds or insurance;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
 - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - f. the Work is defective, requiring correction or replacement;
 - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - h. the Contract Price has been reduced by Change Orders;
 - i. an event that would constitute a default by Contractor and therefore justify a termination for cause has occurred;
 - j. liquidated damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
 - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
 - l. there are other items entitling Owner to a set off against the amount recommended.

2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed shall be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.
3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 15.01.C.1 and subject to interest as provided in the Contract.

15.02 *Contractor's Warranty of Title*

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

15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which shall fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a

permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.

- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases, Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
 - 1. At any time Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through E for that part of the Work.
 - 2. At any time Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
 - 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
 - 4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.02 regarding builder's risk or other property insurance.

15.05 *Final Inspection*

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

15.06 *Final Payment*

A. *Application for Payment:*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.11), and other documents, Contractor may make application for final payment.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents;
 - b. consent of the surety, if any, to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
 - d. a list of all disputes that Contractor believes are unsettled; and
 - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.

B. *Engineer's Review of Application and Acceptance:*

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the Application for Payment to Owner for payment. Such recommendation shall account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to the provisions of Paragraph 15.06.F. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

- C. *Completion of Work*: The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment.
- D. *Payment Becomes Due*: Thirty days after the presentation to Owner of the final Application for Payment and accompanying documentation, the amount recommended by Engineer (less any further sum Owner is entitled to set off against Engineer's recommendation, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions above with respect to progress payments) will become due and shall be paid by Owner to Contractor.
- E. *Submittal of Invoices & Work Product*: Copies of all work product documents, reports, photographs, drawings, schematics, related correspondence, invoices, and other information or documents regarding the Project shall be provided to the Owner's Representative no later than thirty (30) calendar days following the expiration or termination of this Contract. Final invoice(s) shall be due no later than thirty (30) calendar days following the expiration or termination of this Contract.
- F. *Waiver of Claims*
 - 1. The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor. Owner expressly reserves claims and rights arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 15.05, from Contractor's failure to comply with the Contract Documents or the terms of any special guarantees specified therein, from outstanding Claims by Owner, or from Contractor's continuing obligations under the Contract Documents.
 - 2. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted or appealed under the provisions of Article 12.03.

15.07 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the 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, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. correct the defective repairs to the Site or such other adjacent areas;
 - 2. correct such defective Work;
 - 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals

and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).

- C. 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.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- E. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

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

16.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
 - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule);
 - 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
 - 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
 - 4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) ten days written notice that Owner is considering a declaration that Contractor is in default and termination of the contract, Owner may proceed to:
 - 1. declare Contractor to be in default, and give Contractor (and any surety) notice that the Contract is terminated; and
 - 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the

Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.

- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within seven days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.
- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond shall govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 *Owner May Terminate For Convenience*

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
 - 3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid on account of loss of anticipated overhead, profits, or revenue, or other economic loss arising out of or resulting from such termination.

16.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided

Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.

- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

16.05 *Additional Rights of Navajo Nation to Suspend or Terminate*

- A. Generally: The rights of the Parties to suspend or terminate this Contract shall be as provided for in this Section. In addition, upon prior written notice to the Contractor of not less than thirty (30) calendar days, the Navajo Nation may unilaterally order a temporary stoppage of work on the Contract. Additional payment to the Contractor for such change, if any, shall be in accordance with Article 11 herein.
- B. Non-compliance or violation of laws: In addition to the Navajo Nation's right of suspension and termination provided for in this Section, the Navajo Nation may terminate this Contract for breach if the Nation's Representative determines in writing that the Contractor or any of its subcontractors has violated any applicable law or regulation. For purposes of this Article, "violated" means an intentional or negligent failure to comply with any said law or regulation, or an intentional or negligent act that is inconsistent with any said law or regulation; "applicable law or regulation" means any Navajo Nation law or regulation, any federal law or regulation, or any state law or regulation that is applicable to this Contract, to its award or procurement, or to Contractor's performance under this Contract.
- C. Falsification, Lack of Documentation: The Navajo Nation may terminate this Contract for breach if:
 - 1. any statement or documentation regarding any licensing, business registration, insurance coverage, or debts owed, as described in Paragraphs 2.01, 2.02 and 6.0, herein is determined to be false; or
 - 2. Contractor has failed to submit in a timely manner any requested documentation pertaining to any licensing, business registration, insurance coverage, or debts owed, as described in Paragraphs 2.01, 2.02 and 6.0 herein, and the Nation's Representative determines that the Navajo Nation is unable to issue a Notice to Proceed, or to otherwise proceed with the Project, in a timely manner.
 - 3. Financial Responsibility, Solvency: The Navajo Nation may terminate this Contract for breach if:
 - a. any debt as described in Paragraph 2.02 is discovered or arises subsequent to the execution of this Contract; or the required licensing, business registration, or insurance coverage has expired or has been suspended or revoked at any time during the performance of this Contract; or
 - b. the Contractor becomes insolvent or its insolvency is imminent, or the Contractor files for bankruptcy under any chapter of federal law; or

- c. the provider of the Contractor's insurance is not solvent or its insolvency is imminent; or
 - d. the Nation receives notice that the Contractor has failed to pay its subcontractors, employees, suppliers or other ancillary firm(s) for any work on this Project.
- D. Debarment; Suspension: The Navajo Nation may terminate this Contract if the Nation or any of its political subdivisions, enterprises, or other related entities, or if any federal or state governmental entity, has for any reason debarred or suspended the Contractor or any of its subcontractors, or other entity owned or co-owned by any related individual. Such debarment or suspension shall be considered effective notwithstanding any appeal, and shall be effective unless and until conclusively resolved in favor of the Contractor or subcontractor.
- E. Payment upon termination: In the event of termination under this Paragraph 16.05, the Contractor shall be reimbursed only for the reasonable value of any non-recurring costs incurred on account of work performed or services provided under this Contract up to the date of notification of termination, whether or not invoice(s), billing(s), or payment application(s) have been received by the Navajo Nation for such work or services prior to the date of cancellation, except for costs amortized in the price of such work or services.

ARTICLE 17 – MISCELLANEOUS

17.01 *Miscellaneous Provisions*

- A. Requests for Information: When requested by the Owner, Contractor shall submit, within fourteen (14) calendar days of the Owner's notice to Contractor of such request, proper verification of invoices, pay applications, reports, documents or any other information related to the Project or any provision of this Contract, or related to the Contractor's duties under this Contract, including requested information related to any entity which may owe the Nation money as provided in 12 N.N.C. § 1503 A.
- B. Owner's Ownership of Work Product: All raw or manufactured materials, supplies, or equipment purchased specifically for the purpose of incorporation into or use with the Project or any portion thereof, shall be considered the property of the Owner as of the date of purchase. Notwithstanding, the Contractor assumes all risks and liabilities associated with the acquisition, transportation, delivery, storage, use, disposal, or destruction of such materials, supplies, or equipment, whether occurring at the Project site or at any other location; and such risks and liabilities are assumed by the Contractor up to the effective date and time of the Owner's property insurance coverage for the Project.
- C. Records; Audits
 - 1. Retention and audit period: Pursuant to 12 N.N.C. §352, Contractor shall maintain books, records, documents or other materials related to performance under this Contract for a period of six (6) calendar years from the date of issuance of final payment under this Contract. Upon issuance of a Notice of Audit to Contractor, the Owner may audit such documents and records any time during the effective period of this Contract, up to the five (5) calendar year period following final payment.
 - 2. Permission for release: Contractor agrees to have an authorized individual execute and have notarized a release authorizing the Owner to release the Contractor's ledgers, books, records, documents or other materials related to performance under this Contract, as such information may be required by a governmental agency under

an agreement with the Owner for purposes of an audit by such agency of such documents and records. Contractor agrees that said executed release shall constitute permission for disclosure of information pursuant to 2 N.N.C. §85 A.5.d. and 2 N.N.C. §86 C.

- D. Issuance of Notices; Mailings: Any notices or correspondence relating to this Contract sent by either party to the other shall be deemed to have been validly given if:
 - 1. Mailed to the appropriate address as shown on the signature page of EJCDC C-520, via certified U.S.P.O. mailing with return receipt requested, and shall be deemed issued or submitted to the receiving party as of the date of such certified mailing; or
 - 2. Delivered in person, by a commercial courier service or otherwise, to the appropriate individual as listed in the Contract Documents or their authorized representative.
- E. Private Contractor: The Contractor shall perform and conduct all activities under this Contract as a private independent contractor and shall not be considered an employee of the Owner or receive any benefits to which the Owner's employees are entitled.
- F. No Third Party Beneficiaries: Notwithstanding any provision of Navajo Nation law, codified or uncoded, or any Navajo Nation common or fundamental law, no provision of this Contract shall be construed as conferring any rights to, and may not be invoked by or for the benefit of, any other person or entity that is not one of the signatory Parties hereto.
- G. Assignment Restricted: The Contractor shall not in any manner whatsoever assign, convey, transfer, or sublet any rights to this Contract or any interest therein including any amendments or modifications thereto, any work product resulting from the work performed or services provided under this Contract including any amendments or modifications thereto, or any monetary claims against the Owner relating to this Contract or any amendments or modifications thereto, without the prior written consent of the Owner. Any attempted assignment without such prior consent shall be void; said consent may be granted, granted upon conditions, or withheld, at the Owner's sole discretion.
- H. Severability: If any provision of this Contract is determined by a court of competent jurisdiction, or by a ruling resulting from arbitration procedures provided for in Article 12, to be invalid, illegal or incapable of being enforced under any rule of law, all other conditions and provisions of this Contract shall nevertheless remain in full force and effect. If any such a ruling affects the rights of either party under this Contract in a materially adverse manner, the Parties may agree in writing to execute a Change Order in accordance with Article 11 herein.
- I. Partners, Successors, Subcontractors: All provisions, conditions and covenants contained herein shall extend to and be binding upon each of the Contractor's owners, partners, team members, successors, heirs, assigns, executors, administrators, employees, officials and agents, including all of the Contractor's subcontractors, and the Contractor expressly agrees that the term "Contractor" whenever used herein, or in any other Contract document, shall be deemed to include all such owners, partners, team members, successors, heirs, assigns, executors, administrators, employees, designees, consultants, officials, agents, and subcontractors.

- J. Right to Refuse Contract: The Owner reserves its right to refuse to execute this Contract if the Navajo Nation issues a written determination that any of the following has occurred prior to the Owner's execution of this Contract:
1. faulty procurement; a document, procedure, decision, action, or other event pertaining to the procurement of this Contract, or to any related pre-procurement activities, is in violation of any applicable Navajo Nation, federal, or state laws or regulations governing said procurement; or
 2. ancillary firm(s); an ancillary firm is ineligible for the award of this Contract or is unavailable to perform on the Project, for any reason; in such case, the Navajo Nation may, in its discretion, either (1) reject the selected Proposal containing the ancillary firm's qualifications and refuse to execute this Contract; or (2) decide not to reject the Proposal and consider only the license and relevant qualifications of the Contractor standing alone; or (3) decide not to reject the Proposal and permit another equally/more qualified firm to perform those Contract services that would have been performed by the ineligible or unavailable firm; or
 3. lack of funding availability; funding for the Scope of Work, as specifically described in the Project Manual or any addenda, has become wholly or partially unavailable; in which case the Project Manual for this Project shall be cancelled in accordance with Section XIII(B) of the Navajo Nation Procurement Rules and Regulations, and this Contract shall not be executed until completion of a new procurement process for this Project; or
 4. change to Scope of Work or other requirements; there has been a change to the Scope of Work or any other mandatory requirement, as specifically described in the Project Manual or any addenda; in which case additional procedures under Section XIII(A) of the Navajo Nation Procurement Rules and Regulations shall be required and this Contract shall not be executed until the completion of such procedures; or
 5. change to Budget/Maximum Feasible Price; there has been a revision (whether increase or decrease) of the Maximum Feasible Price that was originally established by the Navajo Nation prior to the initiation of the procurement process for this Contract; in which case additional procedures under Section XIII(A) of the Navajo Nation Procurement Rules and Regulations shall be required and this Contract shall not be executed until the completion of such procedures; or
 6. protest filed; a protest has been timely filed in accordance with 12 N.N.C. §360(A), unless a determination has been made to proceed with a Contract award pursuant to 12 N.N.C. §360(F); or
 7. other reasons cited in Regulations; any of the following pertains to this procurement:
 - a. inadequate or ambiguous specifications were cited in the Project Manual;
 - b. the services contemplated under this Contract are no longer required;
 - c. the Project Manual did not provide for consideration of all factors of cost to the Navajo Nation
 - d. all Bids received indicate that the needs of the Navajo Nation can be satisfied by a less expensive service differing from that described in the Project Manual;

- e. all Bids received exceed the Maximum Feasible Price after opportunity for negotiation pursuant to 12 N.N.C. §346(D);
- f. the selected Bidder was collusive, contained fraudulent statements or information, contained any material misrepresentation, or was submitted in bad faith;
- g. cancellation of the Bid process and refusal to enter into this Contract is in the best interest of the Navajo Nation.

17.02 *No Waiver*

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

17.03 *Headings*

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

SUPPLEMENTARY CONDITIONS

INTRODUCTION

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (No. C-710, 2002 Edition) and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect.

The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof.

SC-4.01.B. Revise Paragraph 4.01.B to read as follows:

- B Notwithstanding the Notice to Proceed, Contractor shall not commence any work under this Contract until the effective date of the bonding and insurance required by this Contract.

SC-4.04.B. Revise Paragraph 4.04.B to read as follows:

- B Contractor ~~shall~~ may not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of any of Contractor's Subcontractors, Suppliers, Laborers, or Employees shall be deemed to be within the control of Contractor.

SC-5.04.D. Revise Paragraph 5.04.D to read as follows:

- D Contractor ~~shall~~ may be entitled to an equitable adjustment in Contract Price or Contract Times, or both, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

SC-6.02.A.5 Revise Paragraph 6.02.A.5 to read as follows:

- 5 Per occurrence basis. All policies must be written on a "per-occurrence" basis, unless otherwise approved in writing by the Navajo Nation Risk Management Program.

SC-7.18.A Revise Paragraph 6.02.A.5 to read as follows:

- A Contractor agrees to hold harmless and indemnify the Navajo Nation and its divisions, departments, offices, agencies, boards, commissions, committees, enterprises, employees, officers, officials, and agents against any and all losses, costs, damages, claims, expenses, or other liabilities whatsoever, including but not limited to any accident or injury to any persons or property, arising out of or connected with any work performed or services provided under this Contract, and any other related activities, by Contractor, except for accident or injury arising out of Contractor's performance of work or provision of services that is determined to be professionally and adequately performed with the due competence and professional skill generally exercised in Contractor's industry and in accordance with applicable industry standards

set forth in relevant laws and regulations of the Navajo Nation, the Federal Government, or the state of primary performance under the Contract.

SC-11.07.A Insert the following after Paragraph 11.07.A:

- B Any revisions, amendments, addendums, alterations, change orders, modifications, increase in payment, or changes whatsoever to any provision of this Contract shall be made only by a duly approved written agreement, deemed a Modification, that is duly executed by the Parties. Any and all modifications to this Contract must be duly approved by Owner.

SC-12.03.G Remove Paragraph 12.03.G in its entirety.

SC-15.01 Insert the following before Paragraph 15.01:

15.01 Payment

- A Consideration; Compensation: For the Project, Contractor shall be paid a sum not to exceed the Original Contract Amount. Contractor expressly agrees that the Original Contract Amount constitutes complete and adequate consideration for all work for the Project that is fully and satisfactorily performed by Contractor pursuant to this Contract, for all applicable taxes, permit fees, licensing or registration fees, for all bonding or surety costs, insurance or any other expenses necessary or convenient for Contractor to perform under this Contract, or to perform in compliance with applicable laws or regulations of the Navajo Nation or any other jurisdiction whose laws or regulations may be applicable to the Project.
- B Risk of additional expenses: Contractor assumes all risks associated with, and is solely responsible for, any and all applicable taxes, permit fees, licensing or registration fees, bonding or surety costs, insurance or any other expenses necessary or convenient for Contractor to satisfactorily complete its duties under this contract, or to perform in compliance with applicable laws or regulations of the Navajo Nation or any other jurisdiction, if such expenses exceed the Original Contract Amount. Expenses that exceed the Original Contract Amount may be paid at the sole discretion of Owner, via a Modification duly approved by the Parties in accordance with Article 11.
- C Subcontractor expenses: Contractor is solely responsible for any and all consideration, compensation, applicable taxes, permit fees, licensing or registration fees, bonding or surety costs, insurance or any other expenses whatsoever, related to Contractor's use of any subcontractors, agents, representatives, employees or consultants in the fulfillment of Contractor's obligation pursuant to this contract. If subcontractor expenses are not included in the Original Contract Amount, such expenses may be paid at the sole discretion of Owner, via a Modification duly approved by the Parties in accordance with Article 11.
- D Payment of pre-contract costs: Costs of the Contractor incurred before the finalization and execution of this Contract, and not included in the Original Contract Amount shown herein, may be paid at the sole discretion of Owner so long as such costs are deemed by Owner as reasonable, allowable, and are in accordance with the design, specifications, and scope of work for the Project, and the Parties enter into a Modification duly approved in accordance with Article 11.

Notwithstanding the provisions herein, Contractor expressly assumes any and all responsibility for payment of such costs if such costs are not paid under this Contract.

SC-17.01.B Insert the following after Paragraph 17.01.B:

All intangible and intellectual property or work product that is produced by Contractor or any of its subcontractors which work product is embodied in any tangible medium such as notes, plans, or drawings, including the overall form as well as the arrangement and composition of spaces and elements in the medium, and is produced for purposes of fulfilling any duties under this Contract, shall be and remain the property of Contractor at all times, whether or not such product is completed or certified. The property may be used by the Navajo Nation for the following purposes:

Limited disclosure. Said property shall not be distributed or disclosed to any party other than the Navajo Nation or its divisions, departments, offices, agencies, boards, commissions, committees, enterprises, employees, officers, officials, and agents, except: (1) upon prior written consent of Contractor; or (2) pursuant to a duly authorized and executed contract between the Navajo Nation and any other tribal, county, state or federal agency; or (3) pursuant to any applicable law requiring disclosure.

Right to reuse. Contractor acknowledges and agrees that the Navajo Nation may make and retain copies of the property for information and reference in connection with the use and occupancy of the Project by the Navajo Nation. However, such documents are not intended or represented to be suitable for reuse by the Navajo Nation or others on any other project. Any such reuse without written verification or adaptation by Contractor for the specific purpose intended, will be at the Navajo Nation's sole risk and without liability or legal exposure to Contractor, or to Contractor's independent professional associates or consultants. Any such verification or adaptation for any purpose other than a use for the Project, will entitle Contractor to further compensation at rates to be agreed upon by the Navajo Nation and Contractor.

WORK CHANGE DIRECTIVE NO. _____

Date of Issuance:	Effective Date:
Owner: Navajo Nation	Owner's Contract No.:
Contractor:	Contractor's Project No.:
Engineer: Souder, Miller & Associates	Engineer's Project No.: 6924837
Project: Chichiltah-Vanderwagen Water Supply Project	Contract Name:

Contractor is directed to proceed promptly with the following change(s):

Description:

Attachments: *[List documents supporting change]*

Purpose for Work Change Directive:

Directive to proceed promptly with the Work described herein, prior to agreeing to changes on Contract Price and Contract Time, is issued due to: *[check one or both of the following]*

- ☐ Non-agreement on pricing of proposed change.
- ☐ Necessity to proceed for schedule or other Project reasons.

Estimated Change in Contract Price and Contract Times (non-binding, preliminary):

Contract Price \$ _____ [increase] [decrease].

Contract Time _____ days [increase] [decrease].

Basis of estimated change in Contract Price:

- | | |
|---|-------------------------------------|
| <input type="checkbox"/> Lump Sum | <input type="checkbox"/> Unit Price |
| <input type="checkbox"/> Cost of the Work | <input type="checkbox"/> Other |

RECOMMENDED:		AUTHORIZED BY:		RECEIVED:	
By: _____	By: _____	By: _____		By: _____	
Engineer (Authorized Signature)	Owner (Authorized Signature)	Contractor (Authorized Signature)			
Title: _____	Title: _____	Title: _____			
Date: _____	Date: _____	Date: _____			

Approved by Funding Agency (if applicable)

By: _____ Date: _____

Title: _____

CHANGE ORDER NO. _____

Date of Issuance:

Owner: **Navajo Nation**

Contractor:

Engineer: **Souder, Miller & Associates**

Project: **Chichiltah-Vanderwagen Water Supply**

Effective Date:

Owner's Contract No.:

Contractor's Project No.:

Engineer's Project No.: **6924837**

Contract Name:

The Contract is modified as follows upon execution of this Change Order:

Description:

Attachments: *[List documents supporting change]*

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES <i>[note changes in Milestones if applicable]</i>
Original Contract Price: \$ _____	Original Contract Times: Substantial Completion: _____ Ready for Final Payment: _____ days or dates
[Increase] [Decrease] from previously approved Change Orders No. ____ to No. ____: \$ _____	[Increase] [Decrease] from previously approved Change Orders No. ____ to No. ____: Substantial Completion: _____ Ready for Final Payment: _____ days
Contract Price prior to this Change Order: \$ _____	Contract Times prior to this Change Order: Substantial Completion: _____ Ready for Final Payment: _____ days or dates
[Increase] [Decrease] of this Change Order: \$ _____	[Increase] [Decrease] of this Change Order: Substantial Completion: _____ Ready for Final Payment: _____ days or dates
Contract Price incorporating this Change Order: \$ _____	Contract Times with all approved Change Orders: Substantial Completion: _____ Ready for Final Payment: _____ days or dates

RECOMMENDED:	ACCEPTED:	ACCEPTED:
By: _____ Engineer (if required)	By: _____ Owner (Authorized Signature)	By: _____ Contractor (Authorized Signature)
Title: _____	Title: _____	Title: _____
Date: _____	Date: _____	Date: _____

Approved by Funding Agency (if applicable)

By: _____ Date: _____
Title: _____

FIELD ORDER NO. _____

Date of Issuance:	Effective Date:
Owner: Navajo Nation	Owner's Contract No.:
Contractor:	Contractor's Project No.:
Engineer: Souder, Miller & Associates	Engineer's Project No.: 6924837
Project: Chichiltah-Vanderwagen Water Supply	Contract Name:

Contractor is hereby directed to promptly execute this Field Order, issued in accordance with General Conditions Paragraph 11.01, without changes in Contract Price or Contract Times. If Contractor considers that a change in Contract Price or Contract Times is required, submit a Change Proposal before proceeding with this Work.

Reference: _____
Specification(s) Drawing(s) / Detail(s)

Description:

Attachments:

Issued:		Received:	
By: _____	By: _____	By: _____	By: _____
Engineer		Contractor	
(Authorized Signature)		(Authorized Signature)	
Title: _____	Title: _____	Title: _____	Title: _____
Date: _____	Date: _____	Date: _____	Date: _____

Copy to: Owner

APPENDIX A

Navajo Nation Forms

- Navajo Nation Certification Regarding Debarment and Suspension
- Affidavit of Responsibility for Subcontractors
- Affidavit of Non-Collusion
- Affidavit of Non-Debarment and Non-Suspension

NAVAJO NATION CERTIFICATION

Regarding Debarment and Suspension

Consultant acknowledges that to the best of his knowledge that his company and principal participants on this contract:

- 1. Are not debarred, suspended, or otherwise slated for debarment, ineligible and/or excluded from participation on Federal, State and Tribal Government contracts etc.**
- 2. Are not presently nor have been under criminal indictment or civilly charged by a governmental entity (Federal, State, and Tribal Government) for fraud, forgery, falsification, theft, bribery, destruction of records, receiving stolen property and other criminal offenses in the administration of a government contract.**
- 3. Have not been terminated for cause or convenience by a governmental entity in the administration of a government contract (Federal, State, and Tribal Government).**
- 4. If the Navajo Nation determines that the Certificate provided herein is not true, it will be grounds to terminate the contract and pursue other legal remedies.**

Applicant's Company and Address:

Name & Signature of Signatory

Name: _____

Signature

Date

AFFIDAVIT OF RESPONSIBILITY FOR SUBCONTRACTORS

Chichiltah-Vanderwagen

for construction services for the Water Supply Project
architectural, engineering, design-build, construction, etc. description of project

located in the Chichiltah Chapter of the Navajo Nation

State of New Mexico) ss.

County of McKinley)

Affiant: _____, being first duly sworn, hereby deposes and says:

1. that he/she is the _____ of _____, the Business Entity
owner, partner, officer, representative, agent company, firm, partnership, etc.
that has submitted/is submitting to the Navajo Nation a Proposal or Statement of Qualifications (SOQ) or Bid for the above-named Project;
2. that he/she is authorized to represent said Business Entity for purposes of the declarations set forth herein, and that all such declarations are made on behalf of said Entity and all of its owners, partners, officers, members, employees, officials, agents, or parties-in-interest;
3. that, as of the date of signature below, said Entity intends to use the subcontractors listed on "Exhibit A" attached hereto, for the above-named Project;
4. that none of the subcontractors so listed are debarred, suspended, or otherwise ineligible to receive a contract from the Federal Government, any State Government, the Navajo Nation, or from any other Tribal Government in the United States;
5. that none of the subcontractors listed are the subject of any imminent debarment, suspension, or other determination of ineligibility from the Federal, any State, Navajo Nation, or other Tribal Government;
6. no subcontractors are currently, or have been within the past ten (10) years, under any criminal indictment or under any civil complaint or charge by the Federal, any State, Navajo Nation, or other Tribal Government, for fraudulent activities, forgery, falsification, theft, bribery, destruction of records, obstruction of justice, receiving stolen property, or other offense related to the receipt or administration of a government contract;
7. no subcontractors have had a contract with such Government terminated, either for cause or convenience;
8. that the Entity named in Line 1 herein shall assume all legal responsibility for the work of all such subcontractors on the Project, and shall perform all subcontractors' duties as necessary, or shall replace any subcontractor as necessary, in order to guarantee successful completion of all Contract duties for the Project;
9. that all statements set forth herein, and in said Proposal/SOQ/Bid submitted to the Navajo Nation, are true.

Affiant acknowledges and agrees that, if any statement herein is determined to be false or misleading, such will be grounds for immediate termination of the subject Contract or Agreement with the Navajo Nation, and that the Navajo Nation may pursue appropriate legal remedies related to such termination and any false or misleading statements.

Signature of Affiant: _____

printed Name of Affiant: _____

Title of Affiant: _____

Name of Business Entity: _____

Type of Entity (LLC, Partnership, etc.): _____

Address of Business Entity: _____

Business Entity's EIN: _____

NOTARY:

Subscribed and sworn to before me this _____ day
of _____, 20____.

Notary Signature _____

My commission expires _____, 20____.

AFFIDAVIT OF NON-COLLUSION

Chichiltah-Vanderwagen

for construction services for the Water Supply Project
architectural, engineering, design-build, construction, etc. description of project

located in the Chichiltah Chapter of the Navajo Nation

State of New Mexico) ss.

County of McKinley)

Affiant: _____, being first duly sworn, hereby deposes and says:

1. that he/she is the _____ of _____, the Business Entity
owner, partner, officer, representative, agent company, firm, partnership, etc.
that has submitted/is submitting to the Navajo Nation a Proposal or Statement of Qualifications (SOQ) or Bid for the above-named Project;
2. that Affiant is fully informed with respect to the preparation and contents of the Proposal/SOQ/Bid submitted by said Business Entity for the above-named Project, and with respect to all pertinent circumstances regarding the submission of said Proposal/SOQ/Bid to the Navajo Nation;
3. that he/she is authorized to represent said Business Entity for purposes of the declarations set forth herein, and that all such declarations are made on behalf of said Entity and all of its owners, partners, officers, members, employees, officials, agents, or parties-in-interest;
4. that said proposal/SOQ/bid is genuine and not collusive or sham;
5. that said Entity has not in any manner colluded, conspired, connived, or agreed, directly or indirectly, with any other entity, bidder, or person, to submit a sham Proposal/SOQ/Bid to the Navajo Nation in connection with the proposed Contract for which said Proposal/SOQ/Bid was submitted, or to refrain from submitting a Proposal/SOQ/Bid to the Navajo Nation in connection with the proposed Contract;
6. that said Entity has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference, with any other entity, bidder, or person, to fix any price or fee relating to any Proposal/SOQ/Bid of Entity or of any other entity, bidder, or person, or to fix any price, overhead, profit, reimbursement, or cost element of said Proposal/SOQ/Bid, or of that of any other entity, bidder, or person;
7. that said Entity has not -through any collusion, conspiracy, connivance, or unlawful written or oral agreement- secured any advantage against the Navajo Nation or against any other entity, bidder or person interested in the proposed Contract for the above-named Project;
8. that all statements set forth herein, and in said Proposal/SOQ/Bid submitted to the Navajo Nation, are true.

signature of Affiant: _____

printed name of Affiant: _____

title of Affiant: _____

name of Business Entity: _____

type of Entity (LLC, Partnership, etc.): _____

address of Business Entity: _____

Business Entity's EIN: _____

NOTARY:

Subscribed and sworn to before me this _____
day of _____, 20____.

Notary Signature _____

My commission expires _____, 20____.

AFFIDAVIT OF NON-DEBARMENT & NON-SUSPENSION

Chichiltah-Vanderwagen
for construction services for the Water Supply Project
architectural, engineering, design-build, construction, etc. description of project
located in the Chichiltah Chapter of the Navajo Nation

State of New Mexico) ss.

County of McKinley)

Affiant: _____, being first duly sworn, hereby deposes and says:

1. that he/she is the _____ of _____, the Business Entity
owner, partner, officer, representative, agent company, firm, partnership, etc.
that has submitted/is submitting to the Navajo Nation a Proposal or Statement of Qualifications (SOQ) or Bid for the above-named Project;
2. that he/she is authorized to represent said Business Entity for purposes of the declarations set forth herein, and that all such declarations are made on behalf of said Entity and all of its owners, partners, officers, members, employees, officials, agents, or parties-in-interest;
3. that, as of the date of signature below, said Entity is not currently debarred, suspended, or otherwise ineligible to receive a contract from the Federal Government, any State Government, the Navajo Nation, or from any other Tribal Government in the United States;
4. that, as of the date signed below, said Entity is not the subject of any imminent debarment, suspension, or other determination of ineligibility from the Federal, any State, Navajo Nation, or other Tribal Government;
5. that said Entity is not currently, or within the past ten (10) years, under any criminal indictment or under any civil complaint or charge by the Federal, any State, Navajo Nation, or other Tribal Government, for fraudulent activities, forgery, falsification, theft, bribery, destruction of records, obstruction of justice, receiving stolen property, or other offense related to the receipt or administration of a government contract;
6. that said Entity has never had a contract with such Government terminated, either for cause or convenience;
7. that all statements set forth herein, and in said Proposal/SOQ/Bid submitted to the Navajo Nation, are true.

Affiant acknowledges and agrees that, if any statement herein is determined to be false or misleading, such will be grounds for immediate termination of the subject Contract or Agreement with the Navajo Nation, and that the Navajo Nation may pursue appropriate legal remedies related to such termination and any false or misleading statements.

signature of Affiant: _____

printed name of Affiant: _____

title of Affiant: _____

name of Business Entity: _____

type of Entity (LLC, Partnership, etc.): _____

address of Business Entity: _____

Business Entity's EIN: _____

NOTARY:

Subscribed and sworn to before me this _____
day of _____, 20____.

Notary Signature _____

My commission expires _____, 20____.

APPENDIX B

Office of Navajo Labor Relations Minimum Wage Rate Determinations and Requirements



The Navajo Nation **DR. BUU NYGREN** *PRESIDENT*
Yideeskáadi Nitsáhákees **RICHELLE MONTOYA** *VICE PRESIDENT*

April 8, 2024

AD24-319

Jason John, Director
NNDWR – WATER MANAGEMENT BRANCH
Post Office Box 678
Fort Defiance, Arizona 86504

RE: CHICHILTAH-VANDERWAGEN WATER SUPPLY

Dear Mr. John:

The Office of Navajo Labor Relations (ONLR) received your request for prevailing wage rates for the above reference project. Please find attached the ONLR wage rates which are applicable to the Pipeline/Water construction project.

Pursuant to the NPEA Section 607(B)(1) "...In all cases where construction is contemplated for which prevailing wage rates have not been set, the contract letting entity shall submit to ONLR a written request for a project prevailing wage scale. Such request shall be submitted not less than 60 days prior to the scheduled date for bid solicitation and shall include detailed information on the anticipated construction classifications, nature' of the project and completion plans...."

The ONLR respectfully requests that NNDWR – Water Management Branch to review the requirements of the Navajo Preference in Employment Act (NPEA) before any work begins. If a Pre-Construction Conference is scheduled, the ONLR Office at (928) 871-6800 is to be notified and a representative will explain the applicable laws to the general contractor and subcontractors, where necessary.

Should you have any questions, contact our office at (928) 871-6800. Thank You.

Sincerely,

Michael Armijo, CEA
OFFICE OF NAVAJO LABOR RELATIONS

CONCURRENCE.

Ronald M. Curtis, Program Manager I

ATTACHMENTS



OFFICE OF NAVAJO LABOR RELATIONS PREVAILING WAGE

Wage Decision: ONLR24-0674P

Date Issued: April 8, 2024

PIPELINE CONSTRUCTION

Pipeline Construction includes the construction, demolition, rehabilitation or repairs of gas, oil and water pipelines, gas and oil pumping stations and compressor station work.

CHICHILTAH-VANDERWAGEN WATER SUPPLY NNDWR – WATER MANAGEMENT BRANCH

Effective January 1, 2024

Trade Classifications:	Hourly Rate:
Carpenter	\$ 28.13
Cement Mason	\$ 24.40
Concrete Finisher	\$ 24.46
Derrick / Floor Hand	\$ 25.86
Electrician	\$ 25.26
Grouting Technician	\$ 25.81
Insulator	\$ 24.74
Ironworker	\$ 26.40
Laborer	\$ 21.13
Mechanic	\$ 23.41
Painter	\$ 21.77
Pipefitter / Pipe Layer	\$ 27.41
Pumper	\$ 27.72
Roustabout	\$ 25.86
Sheet Metal	\$ 26.78
Welder	\$ 41.19
Rig time will be determined between Employer and Employee(s) at time of need.	
Welder's Helper	\$ 27.10
Truck Drivers:	Hourly Rate:
Truck / Trailer	\$ 23.07
Water Truck	\$ 22.74
Equipment Operators:	Hourly Rate:
Backhoe	\$ 24.33
Boom	\$ 33.27

Bulldozer	\$ 25.10
Compactor (Rubber/Steel)	\$ 22.74
Crane	\$ 27.21
Driller	\$ 29.88
Forklift	\$ 24.12
Front End Loader	\$ 24.54
Motor Grader	\$ 25.63
Rig	\$ 26.93
Scraper	\$ 25.89
Track Hoe	\$ 26.92
Trencher	\$ 25.63

The rates listed above are required minimum ONLR Prevailing Wage Rates. Contractors may pay rates above these rates. The ONLR Director will add wage rates for unlisted classifications needed for work only after review and approval. Overtime is one and one - half time the basic rate for hours worked over forty hours in one week. Foremen will receive an additional \$7.41 per hour. **Where Federal Funds are involved, the Davis-Bacon rates apply.** Other exceptions may apply in accordance with the *Navajo Preference in Employment Act (NPEA)*, Section 7(E). Apprentices must be enrolled in a recognized apprenticeship program as required by Section 7(A)(6) of the NPEA. The appropriate apprenticeship program as outlined by the NPEA Section 7(E)(7) will govern wage rates for such apprentices. These wages apply only to the **CHICHILTAH-VANDERWAGEN WATER SUPPLY** construction project.

APPROVED:


 Ronald M. Curtis, Program Manager I


 Date

REVISED 01/02/2024 marmijo

**Office of Navajo Labor Relations
Pre-construction Conference Presentation**



Office of Navajo Labor Relations

Pre-construction Conference Presentation

Many questions do arise when ONLR conducts an orientation, and some presenters will allow participants to ask questions until the presentation is completed. However, in my presentation, you may pose a question for clarification at any time, which will enable you to comprehend and fully comply with the requirements of the Navajo Preference in Employment Act with respect to this project.



Office of Navajo Labor Relations

- ❑ Is mandated to monitor and enforce the Navajo Preference in Employment Act;
- ❑ is responsible for implementing and carrying out the labor policies of the Navajo Nation;
- ❑ Acts as an administrative agency for matters relating to employment;
- ❑ Gathers information relating to employment; and
- ❑ Recommends and proposes policies, rules, regulations, and specific Navajo preference plans to the Human Services Committee of the Navajo Nation Council



Office of Navajo Labor Relations

- Administration: 928.871.6800
- Fort Defiance Agency: 928.871.7429
- Eastern Agency: 928.871.7431
- Central Agency: 928.674.2214
- Northern Agency: 505.368.1142
- Tuba City Agency: 928.283.3100
- Kayenta Agency: 928.697.5645



Navajo Preference in Employment Act with respect to jurisdiction

- ❑ All employers doing business within the Navajo Nation or having a contract with the Navajo Nation are required to fully abide by the Navajo Preference in Employment Act
- ❑ Within the Navajo Nation there are various employers e.g. the Navajo Nation Government; Navajo Nation Entities (NTUA, NHA etc.); and private employers (Mining Companies, Construction Contractors, etc.).
- ❑ Employers in communities outside the Navajo Nation that are dependent on the Navajo Nation for services e.g. Fire Dept, Police Dept, etc.



Contractors' Responsibilities

- ❑ Comply with each provision of the Navajo Preference in Employment Act
- ❑ Give preference in employment to enrolled members of the Navajo Nation
- ❑ Compensate its workers in accordance with the project's established wage rates
- ❑ Submit information and/or documents to the ONLR
- ❑ Note that the Prime Contractor is responsible for all its subcontractors



Give preference in employment to enrolled members of the Navajo Nation

- ❑ Utilize Navajo Nation employment sources and job services for recruitment and referrals of enrolled members of the Navajo Nation (Section 4.B)
- ❑ Advertise all vacancies in one newspaper covering the Navajo Nation (Section 4.B.);
- ❑ Advertise all vacancies in one radio station covering the Navajo Nation (Section 4.B.);
- ❑ Specify a Navajo employment preference policy statement in all job announcements and advertisements (Section 4.B.);



Compliance with the Navajo Preference in Employment Act

- ❑ Post in a conspicuous place on its premises for its employees and applicants a Navajo preference policy notice (Section 4.B);
- ❑ Use non-discriminatory job qualifications and selection criteria in employment (Section 4.B);
- ❑ Not penalize, discipline, discharge not take any adverse action against any employee without just cause (Section 4.B);
- ❑ Issue a written notification to the employee for any and all actions e.g. employment termination taken against the employee (Section 4.B);



Compliance with the Navajo Preference in Employment Act

- ❑ Maintain a safe and clean working environment and provide employment conditions which are free of prejudice, intimidation and/or harassment (Section 4.B)
- ❑ Establish written necessary qualifications for each employment position to be utilized on the project; (Section 4.D);
- ❑ Provide to applicants and or candidates a copy of the written necessary qualifications at the time they express an interest in such position (Section 4.D);
- ❑ Post in a conspicuous place on its premises a copy of the Project Wage Determination (Section 4.B);



Compensate its employees in accordance with the established Project Wage Determination

- ❑ Federally Funded Projects – Davis Bacon Wage Determination;
- ❑ State Funded Projects – State Wage Determination;
- ❑ Privately Funded Projects – Navajo Nation Wage Determination; and
- ❑ Navajo Nation Funded Projects – Navajo Nation Wage Determination.



Compliance with the Navajo Preference in Employment Act

- ❑ Irrespective of the qualification of any non-Navajo applicant or candidate, any Navajo applicant or candidate who demonstrates the necessary qualifications for an employment position: 1.) shall be selected by the employer in the case of hiring, promotion, transfer, upgrading, recall and other employment opportunities with respect to such position; and 2.) shall be retained by the employer in the case of a reduction-in-force affecting such class of positions until all non-Navajos employed in that class of positions are laid-off
- ❑ Among a pool of applicants or candidates who are solely Navajo and meet the necessary qualifications, the Navajo with the best qualifications shall be selected or retained.



Give preference in employment to enrolled members of the Navajo Nation

- 1st preference: enrolled members of the Navajo Nation (census number)
- 2nd preference: non-Navajo spouses (a non-Navajo who is legally married to a Navajo by proof of marriage by a valid marriage certificate and who has resided within the territorial jurisdiction of the Navajo Nation for one continuous year preceding the application for Navajo preference consideration)
- 3rd preference: all others

Submit required information and/or documents to ONLR

(Note: The Prime Contractor shall be responsible for each of their subcontractor's submittals)

- List of Key personnel – Project Manager, Project Superintendent, and/or an individual with signatory authority, including telephone number, e-mail address, etc.
- Manpower Projection Report – must be submitted by each contractor two weeks prior to commencing work on project;
- Weekly Manpower Report – must be submitted on a weekly basis (all subcontractors will forward to prime contractor, who will then forward reports, as a package, for that week to ONLR);
- Certified Payroll Report – shall be attached to the Weekly Manpower Report;
- Project Completion Report – must be submitted two week prior to ending work on the project;



Submit required information and/or documents to ONLR

- ❑ Copies of advertisements (radio and newspaper covering the Navajo Nation)*
- ❑ Copy of job orders / request for referrals submitted to employment agencies covering the Navajo Nation*
- ❑ Job Descriptions – for each position to be utilized on the project, which shall include necessary qualifications and the duties & responsibilities for the position;*
- ❑ Employer Interview Report – name of applicant, date of interview, interviewer, hired/not hired (reasons)*
- ❑ Subcontractor listing – name and address of contact person, phone number, brief description of work to be performed and duration of subcontract work*;

(* Shall be submitted with 1st WMR/CPR)



Submit required information and/or documents to ONLR

- Navajo Affirmative Action Plan – Employer commences business within the territorial jurisdiction of the Navajo Nation shall file with ONLR a written Navajo Affirmative Action Plan (prior to commencing work). In any case where a labor organization represents employees of the employer, the plan shall be jointly filed by the employer and labor organization. A copy of the NAAP Regulations in provided in assisting each contractor in submitting a NAAP (Note: **the NAAP shall be submitted two weeks prior to commencing work**; however if it has already been submitted, indicate date & for what project)



Other required information and/or documents

- An employer-sponsored cross-cultural program shall be an essential part of the affirmative actions plans - Such program shall primarily focus on the education of management and supervisory personnel regarding the cultural and religious traditions or beliefs of Navajos and their relationship to the development of employment policies which accommodate such traditions and beliefs.
- Training – shall be an integral part of the specific affirmative action plans or activities for Navajo Preference in employment (Note: This information will be part of the NAAP and shall be submitted by each prime contractor/subcontractor commencing work on the Navajo Nation)



Clarification Time

- If you have any questions to any of the information presented, now is the time to ask, as you, as employers (contractors) commencing business within the territorial jurisdiction of the Navajo Nation, are required to fully comply with all requirements of the Navajo Preference in Employment Act and shall be accountable for full compliance, including all submittals e.g. advertisements, weekly reports, etc.



Thank You!

Remember!

Do not hesitate to contact
any of our offices should a question arise!

.....<<<<<<>>>>>>.....

OFFICE OF NAVAJO LABOR RELATIONS
Post Office Box 1943
Window Rock, AZ 86515
928.871.6800/6801

THE NAVAJO PREFERENCE IN EMPLOYMENT ACT

**(Amended August 1, 1985)
(Amended October 25, 1990)**

The Great Seal of the Navajo Nation is a circular emblem. It features a central sun with rays, a mountain range, and a Navajo hogan. The words "GREAT SEAL OF THE NAVAJO NATION" are inscribed around the perimeter, separated by a decorative border of leaf-like shapes.

**The Office of Navajo Labor Relations
The Navajo Nation
P.O. Drawer 1943
Window Rock, Arizona 86515
Phone (928) 871-6800/6801**

Class "C" Resolution
No BIA Action Required.
Executive Branch Action
Necessary

RESOLUTION OF THE
NAVAJO NATION COUNCIL

Amending the Navajo Preference in Employment Act,
Title 15, Chapter 7 of the Navajo Tribal Code

WHEREAS:

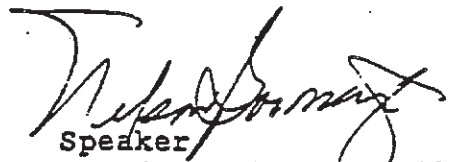
1. The Navajo Nation Council is the governing body of the Navajo Nation, 2 N.T.C., Section 102; and
2. The ability of members of the Navajo Nation to secure and retain employment within the territorial jurisdiction implicates the health, safety and welfare of the Nation; and
3. Pursuant to an Executive Order, dated February 24, 1986, the Navajo Labor Investigative Task Force was created to assess and investigate labor issues important to the Nation; and
4. By Executive Order dated November 17, 1989, the Navajo Labor Investigative Task Force was reconstituted and its authority to investigate labor matters pursuant to the 1986 Executive Order was reaffirmed; and
5. During the course of its investigation, the Navajo Labor Investigative Task Force received comments in various forms concerning labor matters as well as company and union officials. The Task Force incorporated its findings into a document, entitled Report to the Navajo Nation Council Regarding the Proposed Amendments to the Navajo Preference in Employment Act. Based on these findings and the comments received from the interested public, the Task Force proposed that the Navajo Preference in Employment Act (15 N.T.C., Section 601, et. seq.) be amended; and
6. The Navajo Labor Investigative Task Force presented its report, minutes of public meetings it conducted and proposed amendments to the Navajo Preference Act to the Human Services Committee of the Navajo Nation Council; and
7. Pursuant to its powers to recommend legislation on labor matters (2 N.T.C., Section 604(b)(3)), the Human Services Committee of the Navajo Nation Council by Resolution HSC-0024-91 dated September 26, 1990, adopted the Report to the Navajo Nation Council Regarding the Proposed Amendments to the Navajo Preference in Employment Act and recommended that the Navajo Nation Council enact into law, the Proposed Amendments to the Navajo Preference in Employment Act. (Resolution attached hereto as Exhibit "A")

NOW THEREFORE BE IT RESOLVED THAT:

The Navajo Nation Council hereby repeals in its entirety, Title 15, Chapter 7 of the Navajo Tribal Code and enacts in its place, the amendments to Title 15, Chapter 7 of the Navajo Tribal Code, attached hereto as Exhibit "B", with the exception of Section 6 (B).

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 63 in favor, 0 opposed and 9 abstained, this 25th day of October 1990.



Speaker
Navajo Nation Council

October 29, 1990

Date Signed

ACTION BY THE EXECUTIVE BRANCH

1. Pursuant to 2 N.T.C., Section 1005 (c)(1), I hereby sign into law the foregoing legislation this 5th day of November, 1990:


Leonard Haskie, Interim President
Navajo Nation

* * * *

2. Pursuant to 2 N.T.C., Section 1005 (c)(10), I hereby veto the foregoing legislation this _____ day of _____ 1990 for the reason(s) expressed in the attached letter to the Speaker:

Leonard Haskie, Interim President
Navajo Nation

NAVAJO PREFERENCE IN EMPLOYMENT ACT
AMENDED OCTOBER 1990

Section 1. TITLE

- A. This Act shall be cited as the Navajo Preference in Employment Act and is hereby codified as Title 15 Chapter 7 of the Navajo Tribal Code.

Section 2. PURPOSE

- A. The purposes of the Navajo Preference in Employment Act are:
1. To provide employment opportunities for the Navajo work force;
 2. To provide training for the Navajo people;
 3. To promote the economic development of the Navajo Nation;
 4. To lessen the Navajo Nation's dependence upon off reservation sources of employment, income, goods and services;
 5. To foster the economic self-sufficiency of Navajo families; and
 6. To protect the health, safety, and welfare of Navajo workers;
 7. To foster cooperative efforts with employers to assure expanded employment opportunities for the Navajo work force.
- B. It is the intention of the Navajo Nation that the provisions of this Act be construed and applied to accomplish the purposes set forth above.

Section 3. DEFINITIONS

1. The term "Commission" shall mean the Navajo Nation Labor Commission.
2. The term "employment" shall include, but is not limited to, the recruitment, hiring, promotion, transfer, training, upgrading, reduction-in-force, retention, and recall of employees.
3. The term "employer" shall include all persons, firms, associations, corporations, and the Navajo Nation and all of its agencies and instrumentalities, who engage the services of any person for compensation, whether as employee, agent, or servant.
4. The term "Navajo" means any enrolled member of the Navajo Nation.
5. The term "ONLR" means the Office of Navajo Labor Relations.

6. The term "probable cause" shall mean a reasonable ground for belief in the existence of facts warranting the proceedings complained of.
7. The term "territorial jurisdiction" means the territorial jurisdiction of the Navajo Nation as defined in 7 NTC §254.
8. The term "counsel" or "legal counsel" shall mean (a) a person who is an active member in good standing of the Navajo Nation Bar Association and duly authorized to practice law in the courts of the Navajo Nation; and (b) for the sole purpose of co-counseling in association with a person described in clause (a), an attorney duly authorized, currently licensed and in good standing to practice law in any State of the United States who has, pursuant to written request demonstrating the foregoing qualifications and good cause, obtained written approval of the Commission to appear and participate as co-counsel in a particular Commission proceeding.
9. The term "necessary qualifications" shall mean those job-related qualifications which are essential to the performance of the basic responsibilities designated for each employment position, including any essential qualifications concerning education, training and job-related experience, but excluding any qualifications relating to ability or aptitude to perform responsibilities in other employment positions. Demonstrated ability to perform essential and basic responsibilities shall be deemed satisfaction of necessary qualifications.
10. The term "qualifications" shall include the ability to speak and/or understand the Navajo language, and familiarity with Navajo culture, customs and traditions.
11. The term "person" shall include individuals; labor organizations; tribal, federal, state and local governments, their agencies, subdivisions, instrumentalities and enterprises; and private and public, profit and non-profit, entities of all kinds having recognized legal capacity or authority to act, whether organized as corporations, partnerships, associations, committees or in any other form.
12. The term "employee" means an individual employed by an employer.
13. The term "employment agency" means a person regularly undertaking, with or without compensation, to procure employees for an employer or to obtain for employees opportunities to work for an employer.
14. The term "labor organization" or "union" means an organization in which employees participate or by which employees are represented and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours or other terms and conditions of employment, including a national or international labor organization and any subordinate conference, general committee, joint or system board, or joint council.

15. The term "petitioner" means a person who files a complaint seeking to initiate a Commission proceeding under the Act.
16. The term "respondent" means the person against whom a complaint is filed by a petitioner.
17. The term "Act" means the Navajo Preference in Employment Act.

Section 4. NAVAJO EMPLOYMENT PREFERENCE

- A. All employers doing business within the territorial jurisdiction of the Navajo Nation, or engaged in any contract with the Navajo Nation shall:
1. Give preference in employment to Navajos. Preference in employment shall include specific Navajo affirmative action plans and timetables for all phases of employment to achieve the tribal goal of employing Navajos in all job classifications including supervisory and management positions.
 2. Within 90 days after the later of the effective date of this Section 4(A)(2) or the date on which an employer commences business within the territorial jurisdiction of the Navajo Nation, the employer shall file with ONLR a written Navajo affirmative action plan which complies with this Section and other provisions of the Act. In any case where a labor organization represents employees of the employer, the plan shall be jointly filed by the employer and labor organization. ~~Any such associated labor organization shall have obligations under this Section equivalent to those of the employer as to employees represented by such organization.~~ Failure to file such a plan within the prescribed time limit, submission of a plan which does not comply with the requirements of the Act, or failing to implement or comply with the terms of a conforming plan shall constitute a violation of the Act. In the event of a required joint plan by an employer and associated labor organization, only the non-complying party shall be deemed in violation of the Act, as long as the other party has demonstrated a willingness and commitment to comply with the Act.
 3. Subject to the availability of adequate resources, ONLR shall provide reasonable guidance and assistance to employers and associated labor organizations in connection with the development and implementation of a Navajo affirmative action plan. Upon request, ONLR shall either approve or disapprove any plan, in whole or in part. In the event of approval thereof by ONLR, no Charge shall be filed hereunder with respect to alleged unlawful provisions or omissions in the plan, except upon 30 days prior written notice to the employer and any associated labor organization to enable voluntary correction of any stated deficiencies in such plan. No Charge shall be filed against an employer and any associated labor organization for submitting a non-conforming plan, except upon 30 days prior notice by ONLR identifying deficiencies in the plan which require correction.

B. Specific Requirements for Navajo Preference

1. All employers shall include and specify a Navajo employment preference policy statement in all job announcements and advertisements and employer policies covered by this Act.
2. All employers shall post in a conspicuous place on its premises for its employees and applicants a Navajo preference policy notice prepared by ONLR.
3. Any seniority system of an employer shall be subject to this Act and all other labor laws of the Navajo Nation. Such a seniority system shall not operate to defeat nor prevent the application of the Act; provided, however, that nothing in this Act shall be interpreted as invalidating an otherwise lawful and bona fide seniority system which is used as a selection or retention criterion with respect to any employment opportunity where the pool of applicants or candidates is exclusively composed of Navajos or non-Navajos.
4. The Navajo Nation when contracting with the federal or state government or one of its entities shall include provisions for Navajo preference in all phases of employment as provided herein. When contracting with any federal agency, the term Indian preference may be substituted for Navajo preference for federal purposes; provided that any such voluntary substitution shall not be construed as an implicit or express waiver of any provision of the Act nor a concession by the Navajo Nation that this Act is not fully applicable to the federal contract as a matter of law.
5. All employers shall utilize Navajo Nation employment sources and job services for employee recruitment and referrals; provided, however, that employers do not have the foregoing obligations in the event a Navajo is selected for the employment opportunity who is a current employee of the employer.
6. All employers shall advertise and announce all job vacancies in at least one newspaper and radio station serving the Navajo Nation; provided, however, that employers do not have the foregoing obligations in the event a Navajo is selected for the employment opportunity who is a current employee of the employer.
7. All employers shall use non-discriminatory job qualifications and selection criteria in employment.
8. All employers shall not penalize, discipline, discharge nor take any adverse action against any Navajo employee without just cause. A written notification to the employee citing such cause for any of the above actions is required in all cases.

9. All employers shall maintain a safe and clean working environment and provide employment conditions which are free of prejudice, intimidation and harassment.
 10. Training shall be an integral part of the specific affirmative action plans or activities for Navajo preference in employment.
 11. An employer-sponsored cross-cultural program shall be an essential part of the affirmative action plans required under the Act. Such program shall primarily focus on the education of non-Navajo employees, including management and supervisory personnel, regarding the cultural and religious traditions or beliefs of Navajos and their relationship to the development of employment policies which accommodate such traditions and beliefs. The cross-cultural program shall be developed and implemented through a process which involves the substantial and continuing participation of an employer's Navajo employees, or representative Navajo employees.
 12. No fringe benefit plan addressing medical or other benefits, sick leave program or any other personnel policy of an employer, including policies jointly maintained by an employer and associated labor organization, shall discriminate against Navajos in terms or coverage as a result of Navajo cultural or religious traditions or beliefs. To the maximum extent feasible, all of the foregoing policies shall accommodate and recognize in coverage such Navajo traditions and beliefs.
- C. Irrespective of the qualifications of any non-Navajo applicant or candidate, any Navajo applicant or candidate who demonstrates the necessary qualifications for an employment position:
1. Shall be selected by the employer in the case of hiring, promotion, transfer, upgrading, recall and other employment opportunities with respect to such position; and
 2. Shall be retained by the employer in the case of a reduction-in-force affecting such class of positions until all non-Navajos employed in that class of positions are laid-off, provided that any Navajo who is laid-off in compliance with this provision shall have the right to displace a non-Navajo in any other employment position for which the Navajo demonstrates necessary qualifications.
- Among a pool of applicants or candidates who are solely Navajo and meet the necessary qualifications, the Navajo with the best qualifications shall be selected or retained, as the case may be.
- D. All employers shall establish written necessary qualifications for each employment position in their work force, a copy of which shall be provided to applicants or candidates at the time they express an interest in such position.

SECTION 5. REPORTS

All employers doing business or engaged in any project or enterprise within the territorial jurisdiction of the Navajo Nation or pursuant to a contract with the Nation shall submit employment information and reports as required to ONLR. Such reports, in a form acceptable to ONLR, shall include all information necessary and appropriate to determine compliance with the provisions of this Act. All reports shall be filed with ONLR not later than 10 business days after the end of each calendar quarter, provided that ONLR shall have the right to require filing of reports on a weekly or monthly schedule with respect to part-time or full-time temporary employment.

SECTION 6. UNION AND EMPLOYMENT AGENCY ACTIVITIES/RIGHTS OF NAVAJO WORKERS

- A. Subject to lawful provisions of applicable collective bargaining agreements, the basic rights of Navajo workers to organize, bargain collectively, strike, and peaceable picket to secure their legal rights, shall not be abridged in any way by any person. The right to strike and picket does not apply to employees of the Navajo Nation, its agencies, or enterprises.
- B. It shall be unlawful for any labor organization, employer or employment agency to take any action, including action by contract, which directly or indirectly causes or attempts to cause the adoption or use of any employment practice, policy or decision which violates the Act.

SECTION 7. NAVAJO PREVAILING WAGE

- A. Definitions. For purposes of this Section, the following terms shall have the meanings indicated:
 - 1. The term "prevailing wage" shall mean the wage paid to a majority (more than 50 percent) of the employees in the classification on similar construction projects in the area during a period not to exceed 24 months prior to the effective date of the prevailing wage rate set hereunder; provided that in the event the same wage is not paid to a majority of the employees in the classification, "prevailing wage" shall mean the average of the wages paid, weighted by the total number of employees in the classification.
 - 2. The term "prevailing wage rate" shall mean the rate established by ONLR pursuant to this Section.
 - 3. The term "wage" shall mean the total of:
 - (A) the basic hourly rate; and
 - (B) the amount of (i) contributions irrevocably made by a contractor or

subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan or program for the benefit of employees and (ii) costs to the contractor or subcontractor which may be reasonably anticipated in providing bona fide fringe benefits to employees pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the employees affected. The types of fringe benefits contemplated hereunder include medical or hospital health care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing; unemployment benefits; life insurance, disability insurance, sickness insurance, or accident insurance; vacation or holiday pay; defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits.

4. The term "area" in determining the prevailing wage means the geographic area within the territorial jurisdiction of the Navajo Nation; provided that in the event of insufficient similar construction projects in the area during the period in question, "area" shall include the geographic boundaries of such contiguous municipal, county or state governments as ONLR may determine necessary to secure sufficient wage information on similar construction projects.
5. The term "classifications" means all job positions in which persons are employed, exclusive of classifications with assigned duties which are primarily administrative, executive or clerical, and subject to satisfaction of the conditions prescribed in Sections (E)(7) and (8), exclusive of "apprentice" and "trainee" classifications as those terms are defined herein.
6. "Apprentice" means (a) a person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with an Apprenticeship Agency administered by a State or Indian Tribe and recognized by the Bureau, or (b) a person in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State or Tribal Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.
7. "Trainee" means a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, as meeting its standards for on-the-job training programs and which has been so certified by that Administration, or (b) employed and/or receiving on-the-job training under a public employment or work experience program which is approved and funded by the Navajo Nation.

8. The term "construction" shall mean all activity performed under a contract which relates to (a) the building, development, rehabilitation, repair, alteration or installation of structures and improvements of all types, including without limitation buildings, bridges, dams, plants, highways, sewers, water mains, powerlines and other structures; (b) drilling, blasting, excavating, clearing and landscaping, painting and decorating; (c) transporting materials and supplies to or from the site of any of the activities referred to in (a) or (b) by employees of the contractor or subcontractor; and (d) manufacturing or finishing materials, articles, supplies or equipment at the construction site of any of the foregoing activities by employees of the contractor or subcontractor.
9. The term "contract" shall mean the prime construction contract and all subcontracts of any tier thereunder entered into by parties engaged in commercial, business or governmental activities (whether or not such activities are conducted for profit).

B. Establishment

1. For all construction reasonably anticipated to occur in the area on a regular basis, ONLR shall establish a general prevailing wage rate for each classification within specified types of construction. ONLR shall define classifications and types of construction in accordance with guidelines generally recognized in the construction industry. In all cases where construction is contemplated for which prevailing wage rates have not been set, the contract letting entity shall submit to ONLR a written request for a project prevailing wage scale. Such request shall be submitted not less than 60 days prior to the scheduled date for bid solicitation and shall include detailed information on the anticipated construction classifications, nature of the project and completion plans. ONLR shall use its best efforts to provide a project prevailing wage scale, for each classification involved in the project construction, within 60 days after receipt of a request therefor.
2. In setting prevailing wage rates, ONLR shall conduct such surveys and collect such data as it deems necessary and sufficient to arrive at a wage determination. Wage data may be collected from contractors, contractors' associations, labor organizations, public officials and other sources which reflect wage rates paid in classifications on types of construction in the area, including the names and addresses of contractors and subcontractors; the locations, approximate costs, dates and types of construction; the number of workers employed in each classification on the project; and the wage rates paid such workers. Wage rate data for the area may be provided, and considered in making wage determinations, in various forms including signed statements, collective bargaining agreements and prevailing wage rates established by federal authorities for federally-assisted construction projects.
3. Any classification of workers not listed in a prevailing wage rate and which is to be used under a construction contract shall be classified in conformance

with the prevailing wage determination issued and applicable to the project; provided that an additional classification and prevailing wage rate therefor will be established in the event each of the following criteria are satisfied:

- (a) The work performed by the proposed classification is not performed by a classification within the existing prevailing wage scale;
 - (b) The proposed classification is utilized in the area by the construction industry; and
 - (c) The wages set for the proposed classification bear a reasonable relationship to the wage rates contained in the existing scale for other classifications.
4. (a) Subject to the prior written approval thereof by the Director of ONLR, a general prevailing wage rate shall be effective on the date notice of such rate is published in a newspaper in general circulation in the Navajo Nation. The notice shall contain the following information:
- (i) The fact a prevailing wage rate has been set and approved in writing by the Director of ONLR;
 - (ii) The type of construction for which the rate was established;
 - (iii) The effective date, described as the date of publication of the notice or other specified date;
 - (iv) The address and telephone number of ONLR; and
 - (v) A statement that ONLR will provide a copy of the full wage determination on request, and respond to any reasonable questions regarding such determination or its application.

General prevailing wage rates shall continue in effect until such time as any modifications are adopted.

- (b) A prevailing wage rate for a particular project shall be effective on the date of issuance to the requesting party of a written wage determination approved by the Director of ONLR. The wage determination shall continue in effect for the duration of the project; provided that any such determination may be modified by ONLR in the event the period of time from the effective date of the determination to the date bids are solicited exceeds 180 days and the estimated date of completion of the project is more than one year after the effective date of the determination.

- (c) Project and general wage determinations may be modified from time to time, in whole or in part, to adjust rates in conformity with current conditions, subject to the special conditions applicable to project determinations. Such modifications become effective upon the same terms and conditions which are applicable to original determinations.
- (d) Fringe Benefits. The fringe benefit amount of wages reflected in a prevailing wage rate shall be paid in cash to the employee, and shall not be deducted from such employee's wages, unless each of the following conditions is satisfied:
 - (i) The deduction is not contrary to applicable law;
 - (ii) A voluntary and informed written consent authorizing the deduction is obtained from the employee in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining or continuing employment;
 - (iii) No profit or other benefit is obtained as a result of a deduction, directly or indirectly, by the contractor, subcontractor or any person affiliated with them in the form of a commission, dividend or other consideration; and
 - (iv) The deduction serves the convenience and interests of the employee.

- D.
 - 1. No contract-letting entity, contractor or subcontractor shall proceed with a construction contract subject to this Section in the absence of a contractual requirement for payment of prevailing wages pursuant to a specified wage determination issued by ONLR. Violation of this obligation shall render the contract-letting entity, and the employer contractor or subcontractor, jointly and severally liable for the difference between wages actually paid and the prevailing wage rate, together with interest thereon (or if no prevailing wage rates have been set, such wage rate as may be issued by ONLR during the course, or after the completion, of the construction project).
 - 2. Failure by any employer, contractor or subcontractor to pay prevailing wages shall render such employer liable for the difference between the amount of wages actually paid and the prevailing rate, together with interest thereon.
 - 3. Any deduction of fringe benefits by an employer contractor or subcontractor in violation of Section 7(C) shall render such employer liable for the amount of such deduction, together with interest thereon.
 - 4. Upon written request of ONLR, a contract-letting entity or contractor, as the case may be, shall withhold from any monies payable on account of work performed by an employer contractor or subcontractor under a construction

contract such sums as may be determined by ONLR as necessary to satisfy any liabilities of such contractor or subcontractor for unpaid prevailing wages or wrongful deduction of fringe benefits.

5. If following a hearing under Section 11 a contract-letting entity (other than the Navajo Nation), contractor or subcontractor is found to have willfully violated this Section the Commission may enter a debarment order disqualifying such party from receiving any contract, or subcontract thereunder, with the Navajo Nation for a period not to exceed three years.
6. The liabilities described in this Section 7(D) shall not foreclose the Commission from awarding such other relief or imposing such other civil penalties as may be appropriate following a hearing conducted under Section 11.

E. Exemptions. This Section shall not apply to:

1. A contract associated with a construction activity which relates to the provision of architect, engineer, legal or consultant services, or, except as provided under Section 7(A)(8)(d), the manufacturing or furnishing of materials or performance of services and maintenance work by persons not employed by a prime contractor or any of its subcontractors.
2. A construction contract relating to a project having a total cost of \$2,000 or less.
3. A construction contract which is let by a natural person who is an owner or person legally authorized to let such contract, for such person's personal, family or household purposes.
4. A construction contract to the extent the work thereunder is performed by employees of the owner, or employees of the person or entity legally authorized to let the prime contract.
5. A construction contract for a project receiving federal financial assistance to the extent the prevailing wage is set by federal authorities pursuant to the Davis-Bacon Act, 40 U.S.C. §§ 276a et seq. (as amended), or other federal law applicable to such project.
6. A construction contract to the extent such contract requires payment of wages pursuant to a wage scale established under a collective bargaining agreement between any contractor or subcontractor and a labor organization.
7. With the exception of the provisions of Section 7(C), an apprentice provided that the apprentice is paid not less than (a) the basic hourly rate prescribed in the registered program for the apprentice's level of progress, expressed as a percentage of the applicable journeyman rate specified in the prevailing

wage rate, and (b) the fringe benefit amount prescribed in the registered program or, if not specified, the fringe benefit amount set in the prevailing wage rate for the applicable journeyman classification. An apprentice who is not enrolled in a registered program (within the meaning of Section 7(A)(6)), shall be paid wages in an amount not less than the level prescribed for the applicable journeyman classification specified in the prevailing wage rate.

8. With the exception of the provisions of Section 7(c), a trainee provided that the trainee is paid not less than (a) the basic hourly rate prescribed in the approved program for the trainee's level of progress, expressed as a percentage of the applicable journeyman rate specified in the prevailing wage rate and (2) the fringe benefit amount prescribed in the approved program or, if not specified and as to federally approved programs only, the fringe benefit amount set in the prevailing wage rate for the applicable journeyman classification. A trainee who is not enrolled in an approved program (within the meaning of Section 7(A)(8)), shall be paid wages in an amount not less than the level prescribed for the applicable journeyman classification specified in the prevailing wage rate.

SECTION 8. HEALTH AND SAFETY OF NAVAJO WORKERS

Employers shall, with respect to business conducted within the territorial jurisdiction of the Navajo Nation, adopt and implement work practices which conform to occupational safety and health standards imposed by law.

SECTION 9. CONTRACT COMPLIANCE

- A. All transaction documents, including without limitation, leases, subleases, contracts, subcontracts, permits, and collective bargaining agreements between employers and labor organizations (herein collectively "transaction documents") which are entered into by or issued to any employer and which are to be performed within the territorial jurisdiction of the Navajo Nation shall contain a provision pursuant to which the employer and any other contracting party affirmatively agree to strictly abide by all requirements of this Act. With respect to any transaction document which does not contain the foregoing provision, the terms and provisions of this Act are incorporated therein as a matter of law and the requirements of the Act shall constitute affirmative contractual obligations of the contracting parties. In addition to the sanctions prescribed by the Act, violation of the Act shall also provide grounds for the Navajo Nation to invoke such remedies for breach as may be available under the transaction document or applicable law. To the extent of any inconsistency or conflict between a transaction document and the Act, the provision of the transaction document in question shall be legally invalid and unenforceable and the Act shall prevail and govern the subject of the inconsistency or conflict.
- B. Every bid solicitation, request for proposals and associated notices and advertisements which relate to prospective contracts to be performed within the

territorial jurisdiction of the Navajo Nation shall expressly provide that the contract shall be performed in strict compliance with this Act. With respect to any such solicitation, request, notice or advertisement which does not contain the foregoing provision, the terms and provisions of this Act are incorporated therein as a matter of law.

SECTION 10. MONITORING AND ENFORCEMENT

- A. Responsible Agency. Compliance with the Act shall be monitored and enforced by ONLR.
- B. Charges.
 - 1. Charging Party. Any Navajo may file a charge ("Individual Charge") claiming a violation of his/her rights under the Act. ONLR, on its own initiative, may file a charge ("ONLR Charge") claiming a violation of rights under the Act held by identified Navajos or a class of Navajos, including a claim that respondent is engaging in a pattern of conduct or practice in violation of rights guaranteed by the Act. An Individual Charge and ONLR Charge are collectively referred to herein as a "Charge".
 - 2. Form and Content. A Charge shall be in writing, signed by the charging party (which shall be the Director of ONLR in the case of an ONLR Charge), and contain the following information:
 - (a) The name, address and any telephone number of the charging party;
 - (b) The name and address or business location of the respondent against whom the Charge is made;
 - (c) A clear and concise statement of the facts constituting the alleged violation of the Act, including the dates of each violation and other pertinent events and the names of individuals who committed, participated in or witnessed the acts complained of;
 - (d) With respect to a Charge alleging a pattern or practice in violation of the Act, the period of time during which such pattern or practice has existed and whether it continues on the date of the Charge;
 - (e) The specific harm sustained by the charging party in the case of an Individual Charge or the specific harm sustained by specified Navajos or a class of Navajos with respect to an ONLR Charge; and
 - (f) A statement disclosing whether proceedings involving the alleged violation have been initiated before any court or administrative agency or within any grievance process maintained by the respondent, including the date of commencement, the court, agency or process and the status of the proceeding.

ONLR shall provide assistance to persons who wish to file Individual Charges. Notwithstanding the foregoing provisions, a Charge shall be deemed sufficient if it contains a reasonably precise identification of the charging party and respondent, and the action, pattern or practice which are alleged to violate the Act.

3. Place of Filing. Individual Charges may be filed in any office of ONLR. An ONLR Charge shall be filed in ONLR's administrative office in Window Rock.
4. Date of Filing. Receipt of each Individual Charge shall be acknowledged by the dated signature of an ONLR employee which shall be deemed the date on which the Individual Charge is filed. The date on which an ONLR Charge is signed by the ONLR Director shall be deemed the date of filing for such Charge.
5. Amendment. A Charge may be amended by filing, in the office where the Charge was first submitted, a written instrument which sets forth the amendment and any portions of the original Charge revised thereby. To the extent the information reflected in the amendment arose out of the subject matter of the original Charge, the amendment shall relate back and be deemed filed as of the filing date of such Charge. Any portion of the amendment which does not qualify for relation back treatment shall constitute a new Charge.
6. Time Limitation. A Charge shall be filed within one year after accrual of the claim which constitutes the alleged violation of the Act. The date of accrual of a claim shall be the earlier of
 - (a) the date on which the charging party had actual knowledge of the claim, or
 - (b) taking into account the circumstances of the charging party, the date on which the charging party should reasonably have been expected to know of the existence of the claim; provided, however, that a Charge relating to a continuing, or pattern or practice, violation of the Act shall be filed within one year after the later of
 - (i) the date of termination of such violation, pattern or practice or
 - (ii) the date of accrual of the claim to which the Charge relates. Failure to file a Charge within the time limitations prescribed herein shall bar proceedings on the related claim before the Commission or in any Court of the Navajo Nation; provided, however, that nothing herein shall be interpreted as foreclosing proceedings before any Navajo Court or administrative body (other than the Commission) on any claim which also arises

under applicable common, statutory or other law independent of this Act.

7. Notice to Respondent. Within 20 days after a Charge is filed, ONLR shall serve a copy thereof on respondent; provided, however, that if in ONLR's judgment service of a copy of the Charge would impede its enforcement functions under the Act, ONLR may in lieu of a copy serve on respondent a notice of the Charge which contains the date, place and summary of relevant facts relating to the alleged violation, together with the identity of the charging party unless withheld for the reason stated above. Service of any amendment to the Charge shall be accomplished within 20 days after the amendment is filed. Failure of ONLR to serve a copy of a Charge or notice thereof within the prescribed time period shall not be a ground for dismissal of the Charge or any subsequent proceedings thereon.
8. Withdrawal of Charge.
 - (a) ONLR may, in its discretion, withdraw any ONLR Charge upon written notice thereof to respondent and each person identified in the Charge whose rights under the Act were alleged to have been violated. Any person receiving notice of withdrawal or any other person who asserts a violation of his/her rights as a result of the violation alleged in the withdrawn ONLR Charge may file an Individual Charge which, if filed within 90 days after the issuance date of ONLR's withdrawal notice, shall relate back to the filing date of the ONLR Charge.
 - (b) Any charging party may, in his/her discretion, withdraw an Individual Charge by filing a written notice of withdrawal with the ONLR office where the Charge was submitted, with a copy thereof filed with the ONLR administrative office in Window Rock. ONLR shall, within 20 days after receiving the notice, transmit a copy to the respondent. Within 90 days after receipt of the withdrawal notice, ONLR may file an ONLR Charge relating in whole or part to the violations alleged in the withdrawn Individual Charge. Any filing of an ONLR Charge within the prescribed time period shall relate back to the filing date of the withdrawn Charge.
9. Overlapping Charges. Nothing herein shall be construed as prohibiting the filing of any combination of Individual Charges and an ONLR Charge which, in whole or part, contain common allegations of violations of the Act.
10. Informants. Irrespective of whether a person is otherwise eligible to file an Individual Charge, any such person or an organization may in lieu of filing a Charge submit to ONLR written or verbal information concerning alleged violations of the Act and may further request ONLR to file an ONLR Charge thereon. In addition to other limitations on disclosure provided in Section 10(M) and in the absence of the written consent of the informant, neither the

identity of the informant nor any information provided by such informant shall be disclosed to the respondent, agents or legal counsel for the respondent, or the public, either voluntarily by ONLR or pursuant to any discovery or other request for, or order relating to, such information during the course of any judicial or non-judicial proceeding, including a proceeding before the Commission or any subsequent appeal or challenge to a Commission or appellate decision; provided, however, that in the event the informant is called as a witness by ONLR at a Commission proceeding involving the information provided by the informant,

- (a) the informant's name may be disclosed, but his/her status as an informant shall remain privileged and confidential and shall not be disclosable through witness examination or otherwise, and
- (b) with the exception of the witness status as an informer, information provided by the informant is disclosable in accordance with the procedures outlined under Section 10(M).

C. Investigation of Charges.

1. General. ONLR shall conduct such investigation of a Charge as it deems necessary to determine whether there is probable cause to believe the Act has been violated.
2. Subpoenas.
 - (a) The Director of ONLR shall have the authority to sign and issue a subpoena compelling the disclosure by any person evidence relevant to a Charge, including a subpoena ordering, under oath as may be appropriate:
 - (i) The attendance and testimony of witnesses;
 - (ii) Responses to written interrogatories;
 - (iii) The production of evidence, including without limitation books, records, correspondence or other documents (or lists or summaries thereof) in the subpoenaed person's possession, custody or control or which are lawfully obtainable by such person; and
 - (iv) Access to evidence for the purposes of examination and copying. Neither an individual charging party nor a respondent shall have a right to demand issuance of a subpoena prior to the initiation of any proceedings on the Charge before the Commission, in which event subpoenas are issuable only pursuant to the procedures governing such proceedings.

- (b) Service of the subpoena shall be effected by one of the methods prescribed in Section 10(O). A subpoena directed to a natural person shall be served either on the person at his/her residence or office address or, in the case of personal delivery, at such residence or office either on the person subpoenaed or on anyone at least eighteen years of age (and in the case of office service, a person who is also an employee of such office). Service of a subpoena directed to any other person shall be addressed or delivered to either the statutory agent (if any) of such person or any employee occupying a managerial or supervisory position at any office of the person maintained within or outside the territorial jurisdiction of the Navajo Nation. Personal service may be performed by a natural person at least eighteen years of age, including an employee of ONLR.
- (c) The subpoena shall set a date, time and place for the attendance of a witness, or production of or access to evidence, as the case may be, provided that the date for compliance shall be not less than 30 days after the date on which service of the subpoena was effected.
- (d) Any person served with a subpoena intending not to fully comply therewith shall, within five business days after service, serve on the Director of ONLR a petition requesting the modification or revocation of the subpoena and identifying with particularity each portion of the subpoena which is challenged and the reasons therefor. To the extent any portion of the subpoena is not challenged, the unchallenged parts shall be complied with in accordance with the terms of the subpoena as issued. The ONLR Director shall issue and serve on petitioner a decision and reasons therefor within eight business days following receipt of the petition, and any failure to serve a decision within such period shall be deemed a denial of the petition. In the event the Director's decision reaffirms any part of the subpoena challenged in the petition, the Director may extend the date for compliance with such portion for a period not to exceed 10 business days. Any petitioner dissatisfied with the decision of the ONLR Director shall either
- (1) comply with the subpoena (with any modifications thereto reflected in the Director's decision) or
 - (2) within five business days following receipt of the Director's decision or the date such decision was due, file a petition with the Commission (with a copy concurrently served on the ONLR Director) seeking modification or revocation of the subpoena and stating with particularity therein each portion of the subpoena challenged and the reasons therefor. A copy of the ONLR Director's decision, if any, shall be attached to the petition.

- (e) In the event a person fails to comply with a served subpoena, ONLR may petition the Commission for enforcement of the subpoena. For purposes of awarding any relief to petitioner, the Commission may issue any order appropriate and authorized in a case where it is established that a Commission order has been violated. A copy of the petition shall be concurrently served on the non-complying person.
- (f) Beginning on the first day of non-compliance with a subpoena served on a respondent, or any employee or agent of respondent, until the date of full compliance therewith, there shall be a tolling of all periods of limitation set forth in this Section 10.

D. Dismissal of Charges.

- 1. Individual Charges. ONLR shall dismiss an Individual Charge upon reaching any one or more of the following determinations:
 - (a) The Individual Charge, on its face or following an ONLR investigation, fails to demonstrate that probable cause exists to believe a violation of the Act has occurred;
 - (b) The Individual Charge was not filed within the time limit prescribed by Section 10(B)(6);
 - (c) The charging party has failed to reasonably cooperate in the investigation of, or attempts to settle, the Individual Charge;
 - (d) The charging party has refused, within 30 days of receipt, to accept a settlement offer agreed to by respondent and approved by ONLR, which accords substantially full relief for the harm sustained by such party; or
 - (e) The Charge has been settled pursuant to Section 10(G).
- 2. ONLR Charges. ONLR shall dismiss an ONLR Charge upon determining that
 - (a) no probable cause exists to believe a violation of the Act has occurred,
 - (b) the Charge was not filed within the time limits prescribed by Section 10(B)(6), or
 - (c) the Charge has been settled pursuant to Section 10(G).
- 3. Partial Dismissal. In the event a portion of a Charge is dismissable on one or more of the foregoing grounds, only such portion of the Charge

shall be dismissed and the remainder retained by ONLR for final disposition.

4. Notice. Written notice of dismissal, stating the grounds therefor, shall be served on respondent and the individual charging party in the case of an Individual Charge or, in the case of an ONLR Charge, on the respondent and any person known to ONLR who claims to be aggrieved by the violations alleged in such Charge. Such notice shall be accompanied by a right to sue authorization pursuant to Section 10(H).

- E. Probable Cause Determination. Following its investigation of a Charge and in the absence of a settlement or dismissal required under Section 10(D), ONLR shall issue written notice of its determination that probable cause exists to believe a violation of the Act has occurred or is occurring. Such notice shall identify each violation of the Act for which probable cause has been found, and copies thereof shall be promptly sent to the respondent, the charging party in the case of an Individual Charge, and, in the case of an ONLR Charge, each person identified by ONLR whose rights are believed to have been violated. Any probable cause determination shall be based on, and limited to, the evidence obtained by ONLR and shall not be deemed a judgment by ONLR on the merits of allegations not addressed in the determination.
- F. Conciliation. If, following its investigation of a Charge, ONLR determines there is probable cause to believe the Act has been or is being violated, ONLR shall make a good faith effort to secure compliance and appropriate relief by informal means through conference, conciliation and persuasion. In the event there is a failure to resolve the matter informally as to any allegations in an Individual Charge for which probable cause has been determined, ONLR shall either issue the notice prescribed in Section 10(H) or initiate a Commission proceeding under Section 10(I) concerning unresolved allegations. A successful resolution of any such allegation shall be committed to writing in the form required under Section 10(G). Nothing herein shall be construed as prohibiting ONLR from initiating or participating in efforts to informally resolve a Charge prior to issuance of a probable cause determination.
- G. Settlement.
 1. Settlement agreements shall be committed to writing and executed by respondent, the individual charging party if any and, in the case of any Charge, by the Director of ONLR. Refusal of an individual charging party to execute a settlement agreement subjects the Individual Charge to dismissal under the conditions set forth in Section 10(D)(1)(d). Settlement agreements may also be signed by those aggrieved persons identified as having a claim with respect to an ONLR Charge.
 2. Settlement agreements hereunder shall be enforceable among the parties thereto in accordance with the terms of the agreement. Any member of a

class of persons affected by the settlement who is not a signatory to the agreement shall have the right to initiate proceedings before the Commission pursuant to the procedure in Section 10(H)(2)(a)(iii).

3. Each settlement agreement shall provide for the dismissal of the Charge to the extent the violations alleged therein are resolved under the agreement.
4. Any breach of a settlement agreement by respondent shall present grounds for filing a Charge under this Section 10. A charging party asserting a claim for breach may either seek
 - (a) enforcement of that portion of the settlement agreement alleged to have been breached, or
 - (b) in the case of a material breach as to any or all terms, partial or total rescission of the agreement, as the case may be, and such other and further relief as may have been available in the absence of settlement. A Charge asserting a breach of a settlement agreement with respect to any original allegation in the Charge covered by such agreement shall, for purposes of all time limitations in this Section 10, be deemed to arise on the accrual date of the breach.

H. Individual Right to Sue.

1. Individual Charges.

- (a) Prior to the expiration of 180 days following the date an Individual Charge was filed, ONLR, by notice to the individual charging party, shall authorize such individual to initiate a proceeding before the Commission in accordance with the procedures prescribed in Section 10(J), if:
 - (i) The Individual Charge has been dismissed by ONLR pursuant to Section 10(D)(1);
 - (ii) ONLR has issued a probable cause determination under Section 10(E), there has been a failure of conciliation contemplated by Section 10(F), and ONLR has determined not to initiate a Commission proceeding on behalf of the individual charging party; or
 - (iii) Notwithstanding the absence of a probable cause determination or conclusion of conciliation efforts, ONLR certifies it will be unable to complete one or both of these steps within 180 days after the date on which the Individual Charge was filed.
- (b) After the expiration of 180 days following the date an Individual Charge was filed, the individual charging party shall have the right to

initiate a proceeding before the Commission irrespective of whether ONLR has issued a notice of right to sue, made a probable cause determination, or commenced or concluded conciliation efforts.

2. ONLR Charges.

- (a) Prior to the expiration of 180 days following the date an ONLR Charge was filed, ONLR, by notice to any person known to it who claims to be aggrieved by the allegations presented in such Charge, shall authorize such person to initiate a proceeding before the Commission in accordance with the procedures prescribed in Section 10(J), if:
 - (i) The ONLR Charge has been dismissed by ONLR pursuant to Section 10(D)(2);
 - (ii) ONLR has issued a probable cause determination under Section 10(E), there has been a failure of conciliation contemplated by Section 10(F), and ONLR has determined not to initiate a Commission proceeding on the Charge;
 - (iii) ONLR has entered into a settlement agreement under Section 10(G) to which such aggrieved person is not a party; or
 - (iv) Notwithstanding the absence of a probable cause determination or conclusion of conciliation efforts, ONLR certifies it will be unable to complete one or both of these steps within 180 days after the date on which the ONLR Charge was filed.
- (b) After the expiration of 180 days following the date an ONLR Charge was filed and prior to the date on which ONLR commences a Commission proceeding, any person claiming to be aggrieved by the allegations presented in such Charge shall have the right to initiate a proceeding before the Commission irrespective of whether ONLR has issued a notice of right to sue, made a probable cause determination or commenced or concluded conciliation efforts.

3. Content of Notice. A notice of right to sue shall include the following information:

- (a) Authorization to the individual charging party or aggrieved person to initiate a proceeding before the Commission pursuant to and within the time limits prescribed by Section 10(J);
- (b) A summary of the procedures applicable to the institution of such proceeding, or a copy of the Act containing such procedures;
- (c) A copy of the Charge; and

(d) A copy of any written determination of ONLR with respect to such Charge.

4. ONLR Assistance. Authorization to commence Commission proceedings hereunder shall not prevent ONLR from assisting any individual charging party or aggrieved person in connection with Commission proceedings or other efforts to remedy the alleged violations of the Act.

I. ONLR Right to Sue.

1. Individual Charges. ONLR shall have the right to initiate proceedings before the Commission based on the allegations of an Individual Charge with respect to which ONLR has issued a probable cause determination under Section 10(E) and there has been a failure of conciliation contemplated by Section 10(F). ONLR shall have such right notwithstanding that the individual charging party has a concurrent right to sue hereunder which has not been exercised. ONLR's right to sue shall continue until such time as the individual charging party commences a Commission proceeding and, in that case, shall be revived in the event the proceeding is dismissed or concluded for reasons unrelated to the merits. Initiation of Commission proceedings by ONLR shall terminate the right to sue of an individual charging party, subject to revival of such right in the event the proceeding is dismissed or concluded for reasons unrelated to the merits. Nothing herein shall be construed as foreclosing ONLR from exercising its right to intervene in a Commission proceeding under Section 10(L).
2. ONLR Charges. ONLR shall have the right to initiate proceedings before the Commission based on the allegations of an ONLR Charge with respect to which ONLR has issued a probable determination under Section 10(E) and there has been a failure of conciliation contemplated by Section 10(F). ONLR shall have such right notwithstanding that a person claiming to be aggrieved as a result of the allegations in the ONLR Charge has a concurrent right to sue hereunder which has not been exercised. In the event an aggrieved person first initiates a Commission proceeding in an authorized manner, ONLR's right to sue shall only expire as to such person and shall revive in the event the aggrieved person's proceeding is dismissed or concluded for reasons unrelated to the merits. Nothing herein shall be construed as foreclosing ONLR from exercising its right to intervene in a Commission proceeding under Section 10(L).

J. Initiation of Commission Proceedings. Proceedings before the Commission shall be initiated upon the filing of a written complaint by a petitioner with the Commission. Complaints shall satisfy each of the following conditions:

1. The petitioner is authorized to file the Complaint under the terms and conditions prescribed by this Section 10;

2. The underlying Charge was filed within the time limits prescribed in Section 10(B)(6); and
3. The complaint was filed within 360 days following the date on which the underlying Charge was filed.

Upon motion of respondent and a showing that any one or more of the foregoing conditions has not been satisfied, the Commission shall dismiss the complaint; provided, however, that no complaint shall be dismissed under (2) above as to any allegation of a pattern of conduct or practice in violation of the Act to the extent such pattern or practice continued to persist during the time limit prescribed in Section 10(B)(6); and provided further that, in the absence of dismissal or conclusion of Commission proceedings on the merits, nothing herein shall be construed as prohibiting the refiling of a Charge alleging the same or comparable pattern or practice violations of the Act which continued to persist during the time limits prescribed in Section 10(B)(6) for refiling such Charge.

- K. Preliminary Relief. Prior to the initiation of Commission proceedings on a Charge and notwithstanding the failure to satisfy any precondition to such proceedings, either ONLR, an individual charging party or aggrieved person may, upon notice to respondent, petition the Commission for appropriate temporary or preliminary relief in the form of an injunction or other equitable remedy on the ground that prompt action is necessary to carry out the purposes of the Act, including the preservation and protection of rights thereunder. Nothing herein shall be construed as foreclosing a petition which seeks comparable relief subsequent to the commencement of Commission proceedings.
- L. Intervention in Commission Proceedings. Within three business days after the date on which any complaint, or petition pursuant to Section 10(K), is filed with the Commission, other than a complaint or petition filed by ONLR, the Commission shall cause copies thereof to be sent to the ONLR Director and the Attorney General of the Navajo Nation. ONLR shall have an unconditional right to intervene in the Commission proceeding initiated by such complaint or petition upon the timely application by motion accompanied by a pleading setting forth the claims for which intervention is sought.
- M. Confidentiality.
1. Conciliation. In the absence of written consent of the persons concerned, statements or offers of settlement made, documents provided or conduct by participants in conciliation efforts under Section 10(F) shall not be admissible in any Commission or other proceeding relating to the Charge which is the subject of conciliation, to prove liability for or invalidity of the Charge or the amount or nature of relief therefor; provided, however, that nothing herein shall be construed as requiring the exclusion of such evidence merely because it was presented in the course of conciliation if:

- (a) The evidence is otherwise discoverable; or
 - (b) The evidence is offered for another purpose, including without limitation, proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.
2. Charge, Records and Information. Prior to the institution of Commission proceedings thereon, and in the absence of the written consent of the persons concerned, ONLR shall not disclose as a matter of public information any Charge, response thereto, any statements or other information obtained in the course of its investigation of the Charge, except that nothing herein shall prevent earlier disclosure of such information by ONLR in its discretion:
- (a) To charging parties or their attorneys, respondents or their attorneys, witnesses or other interested persons where the disclosure is deemed by ONLR to be necessary for securing a resolution of the Charge, including appropriate relief therefor;
 - (b) To employees or representatives of the Navajo Nation or employees or representatives of federal, state or local authorities having a governmental interest in the subject matter of the Charge; or
 - (c) To persons for the purpose of publishing data derived from such information in a form which does not reveal the identity of charging parties, aggrieved persons, respondents or persons supplying the information.

Except as otherwise provided herein, any person to whom a permissible disclosure is made hereunder shall be bound to maintain the confidentiality of such information from further disclosure and shall use the information solely for the purpose for which it was disclosed.

3. Privileged Information. Neither ONLR, charging parties, aggrieved persons, respondents, witnesses or persons supplying information in connection with a Charge shall be compelled, either before or after commencement of Commission proceedings, to disclose any information which represents the opinions or conclusions formed by ONLR during the course of its investigation of a Charge, or any information which is protected by the attorney-client privilege, the informer's privilege referred to in Section 10(B)(10), or any other absolute or limited privilege recognized under the laws of the Navajo Nation. To the extent justice requires, the Commission may, balancing the rights of parties and affected persons, prohibit or limit the disclosure of any other information for good cause shown, including a showing that disclosure would impede enforcement of the Act, jeopardize rights guaranteed thereunder, or cause annoyance, embarrassment, oppression or undue burden or expense to parties or affected persons.

- N. Non-retaliation. It shall be unlawful for any employer, labor organization, joint labor-management committee involved in apprenticeship or other matters relating to employment, employment agency or other person to, directly or indirectly, take, or attempt to induce another person to take, any action adversely affecting
- (1) the terms and conditions of any person's employment or opportunities associated with such employment,
 - (2) an applicant's opportunity for employment,
 - (3) the membership of an employee or applicant for employment in a labor organization, or
 - (4) any other right, benefit, privilege or opportunity unrelated to employment, because such person has opposed an employment practice subject to this Act or has made a charge, testified, or assisted or participated in any manner in an investigation, proceeding or hearing under the Act.
- O. Service of Documents. Service of any notice, determination or other document required to be transmitted under this Section 10 shall be accomplished by personal delivery or certified mail, return receipt requested.

Section 11. HEARING

- A. The Commission shall schedule a hearing within sixty (60) days of the filing of a written complaint by a petitioner with the Commission. The hearing shall be held at a location designated by the Commission.
1. Notice: The Commission shall issue a notice of hearing. The time and place of the hearing shall be clearly described in the notice. The notice shall also set forth in clear and simple terms the nature of the alleged violations and shall state (1) the violations may be contested at a hearing before the Commission, and (2) any party may appear by counsel and cross examine adverse witnesses.
 2. Upon application by a party to the Commission, or on the Commissions' own motion, the Commission may issue subpoenas compelling the disclosure by any person evidence relevant to the complaint, including a subpoena ordering, under oath as may be appropriate:
 - (a) The attendance and testimony of witnesses;
 - (b) Responses to written interrogatories;
 - (c) The production of evidence; and
 - (d) Access to evidence for the purpose of examination and copying.
 3. The Commission is hereby authorized to administer oaths and compel attendance of any person at a hearing and to compel production of any documents.

4. In the event a party does not make an appearance on the day set for hearing or fails to comply with the rules of procedure set forth by the Commission for the conduct of hearings, the Commission is hereby authorized to enter a default determination against the non-appearing and/or noncomplying party.
- B. Burden of Proof: In any compliance review, complaint proceeding, investigation, or hearing, the burden of proof shall be upon the respondent to show compliance with the provisions of this Act by clear and convincing evidence.
- C. Hearing: The Commission shall conduct the hearing in a fair and orderly manner and extend to all parties the right to be heard.
1. The Commission shall not be bound by any formal rules of evidence.
 2. The respondent shall have the opportunity to answer the complaint and the parties shall have the right to legal counsel, present witnesses, and cross-examine adverse witnesses.
 3. The Commission shall issue its decision by a majority vote of a quorum present and shall be signed by the Chairman of the Commission.
 4. Copies of the decision shall be sent to all parties of record in the proceeding by certified mail, return receipt.
 5. The proceeding shall be recorded. Any party may request a transcript of the proceeding at their own expense.
 6. The decision of the Commission shall be final with a right of appeal only on questions of law to the Navajo Nation Supreme Court.

Section 12. REMEDIES AND SANCTIONS

- A. If, following notice and hearing, the Commission finds that respondent has violated the Act, the Commission shall:
1. Issue one or more remedial orders, including without limitation, directed hiring, reinstatement, displacement of non-Navajo employees, backpay, frontpay, injunctive relief, mandated corrective action to cure the violation within a reasonable period of time, and/or, upon a finding of intentional violation, imposition of civil fines; provided that liability for backpay or other forms of compensatory damages shall not accrue from a date more than two years prior to the date of filing of the Charge which is the basis for the complaint.
 2. In the case of an individual suit initiated pursuant to Section 10(H) award costs and attorneys' fees if the respondent's position was not substantially justified.

3. Refer matters involving respondent contracts, agreements, leases and permits to the Navajo Nation Attorney General for appropriate action.
- B. In the absence of a showing of good cause thereof, if any party to a proceeding under this Act fails to comply with a subpoena or order issued by the Commission, the Commission may impose such sanctions as are just, including without limitation any one or more of the following:
- (1) In the case of noncompliance with a subpoena of documents or witnesses:
 - (a) An order that the matters regarding which the subpoena was issued or any other designated facts shall be deemed established for the purposes of the proceeding and in accordance with the claim of the party obtaining the order;
 - (b) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;
 - (c) An order striking pleadings or parts thereof, or staying further proceedings until the subpoena is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.
 - (2) In the case of noncompliance by a party or nonparty with a Commission subpoena of documents or witnesses or with any other order of the Commission:
 - (a) An order holding the disobedient person in contempt of the Commission and imposing appropriate sanctions therefor, including a civil fine;
 - (b) An order directing the disobedient person to pay the reasonable costs and/or attorney's fees caused by the noncompliance.
- C. The person or party in whose favor a Commission's decision providing for remedial action is entered shall have the right to seek legal and/or equitable relief in the District Courts of the Navajo Nation to enforce the remedial action; provided that the Commission itself shall have the right to seek legal and/or equitable relief in the District Courts of the Navajo Nation to enforce civil fines or sanctions imposed by the Commission against a person or party. In both instances the Attorney General of the Navajo Nation shall have an unconditional right to intervene on behalf of the Navajo Nation. Any attempted enforcement of a Commission order or decision directing payment of money by the Navajo Nation or any of its governmental entities shall, with respect to the extent of any liability be governed by the Navajo Sovereign Immunity Act, 1 N.T.C. §§351 et seq., as amended.

Section 13. APPEAL AND STAY OF EXECUTION

- A. Any party may appeal a decision of the Commission to the Navajo Nation Supreme Court by lodging a written notice of appeal, in the form prescribed by the Navajo Rules of Civil Appellate Procedure and within ten (10) days after receipt of the Commission's decision.
- B. In the absence of a stipulation by the parties approved by the Commission, a stay of execution of the decision from which the appeal is taken shall only be granted upon written application of the appellant to the Commission and an opportunity for response by appellee. The application for a stay shall be filed within the period prescribed for appeal in Subsection (A) hereof. No stay shall be issued unless the appellant presents a clear and convincing showing that each of the following requirements has been satisfied:
1. Appellant is likely to prevail on the merits of the appeal;
 2. Appellant will be irreparably harmed in the absence of a stay;
 3. Appellee and interested persons will not be substantially harmed by a stay;
 4. The public interest will be served by a stay; and
 5. An appeal bond or other security, in the amount and upon the terms prescribed by Subsection (C) below, has been filed with and approved by the Commission; provided that no appeal bond shall be required of ONLR, the Navajo Nation or any governmental agency or enterprise of the Navajo Nation.
- C. The appeal bond shall be issued by a duly authorized and responsible surety which shall obligate itself to pay to appellee, or any other person in whose favor an award is made by the Commission decision, the amounts specified or described in the bond upon conclusion of the appeal and failure of appellant, following written demand by appellee, to satisfy the foregoing obligations. The amount or nature of liability assumed by the surety shall be specified in the bond and shall include:
1. The total amount of all monetary awards made in the Commission decision, together with such interest thereon as may be prescribed in the Commission's decision;
 2. Costs of appeal and attorneys' fees incurred by appellee in defending the appeal and which may be awarded to appellee by the Navajo Nation Supreme Court;

3. Damages sustained by appellee or other recipients of a Commission award for delay in satisfaction of the Commission decision caused by the appeal; and
4. Such other amount or liability reasonably required to be secured to protect the interests of the appellee or other award recipients.

The bond shall provide that the surety submits to the jurisdiction of the Commission and the Courts of the Navajo Nation, and irrevocably appoints the Commission as the surety's agent upon whom any papers affecting the surety's liability on the bond may be served. The surety's liability may be enforced on motion of the appellee filed with the Commission, with copies thereof served on the surety and appellant.

In lieu of posting an appeal bond, appellant may, with the approval of the Commission, post a cash bond and undertaking in the amount and upon the terms which are required above with respect to an appeal bond.

No appeal bond or cash bond and undertaking, nor the liabilities of the surety or appellant thereunder, shall be exonerated or released until all amounts and liabilities prescribed therein have been fully paid and satisfied.

- D. Within three business days following the filing with the Navajo Nation Supreme Court of any appeal from a Commission proceeding, the Clerk of such Court shall, in all cases other than those in which ONLR is not either the appellant or appellee, cause copies of the notice of appeal and all other documents filed in connection therewith to be sent to the ONLR Director and the Attorney General of the Navajo Nation. ONLR shall have an unconditional right to intervene and participate as amicus in the appeal proceedings upon timely application therefor by motion lodged with the Navajo Nation Supreme Court. ONLR's right of participation shall be coextensive with that of the parties to the appeal, including the rights to file opening, answering and reply briefs, and the right to present oral argument to the Court.

Section 14. NON-NAVAJO SPOUSES

- A. When a non-Navajo is legally married to a Navajo, he or she shall be entitled to preference in employment under the Act. Proof of marriage by a valid marriage certificate shall be required. In addition such non-Navajo spouse shall be required to have resided within the territorial jurisdiction of the Navajo Nation for a continuous one-year period immediately preceding the application for Navajo preference consideration.

- B. Upon meeting the above requirements, such consideration shall be limited to preference in employment where the spouse would normally be in a pool of non-Navajo workers. In this instance, Navajo preference would place the non-Navajo spouse in the applicant pool of Navajos for consideration. However, preference priority shall still be given to all Navajo applicants who meet the necessary job qualifications within that pool.
- C. Non-Navajo spouses having a right to secondary preference under this Section shall also have and enjoy all other employment rights granted to Navajos under the Act, it being understood that Navajos retain a priority right with respect to provisions of the Act concerning preferential treatment in employment opportunities.

Section 15. LIE-DETECTOR TEST

- A. No person, shall request or require any employee or prospective employee to submit to, or take a polygraph examination as a condition of obtaining employment or of continuing employment or discharge or discipline in any manner an employee for failing, refusing, or declining to submit to or take a polygraph examination.
- B. For purposes of this section, "polygraph" means any mechanical or electrical instrument or device of any type used or allegedly used to examine, test, or question individuals for the purpose of determining truthfulness. This provision shall not apply to federal or state government employees.

Section 16. RULES AND REGULATIONS

Human Services Committee of the Navajo Nation Council is hereby delegated the authority to promulgate rules and regulations necessary for the enforcement and implementation of the provisions of this Act. The Commission is hereby delegated the authority to adopt and implement, on its own initiative and without any approval, rules of procedure and practice governing the conduct of proceedings under Section 11 of the Act; provided only that such rules are consistent with the provisions of the Act.

Section 17. ALL PRIOR INCONSISTENT LAW IS REPEALED

All prior Tribal laws, rules, regulations, and provisions of the Navajo Tribal Code previously adopted which are inconsistent with this Act are hereby repealed.

Section 18. EFFECTIVE DATE AND AMENDMENT OF THE ACT

- A. The effective date of this Act shall be 60 days after the passage of the Act by the Navajo Nation Council and shall remain in effect until amended or repealed by the Navajo Nation Council.
- B. Any amendment or repeal of the Act shall only be effective upon approval of the Navajo Nation Council, and shall not be valid if it has the effect of amending,

modifying, limiting, expanding or waiving the Act for the benefit or to the detriment of a particular person.

- C. Any amendment to the Act, unless the amendment expressly states otherwise, shall be effective 60 days after the passage thereof by the Navajo Nation Council.
- D. The time limits prescribed in Section 10 relating to filing a Charge and subsequent proceedings thereon were added by amendment adopted by the Navajo Nation Council subsequent to the effective date of the original Act. Notwithstanding an actual accrual date for any alleged violation of the Act which is prior to the effective date of the amendment which added the time limits in Section 10 hereof, such alleged violation shall be deemed to accrue on the effective date of the foregoing amendment for purposes of all time limits set forth in Section 10.

Section 19. SEVERABILITY OF THE ACT

If any provision of this Act or the application thereof to any person, association, entity or circumstances is held invalid, such invalidity shall not affect the remaining provisions or applications thereof.

NAVAJO PREFERENCE IN EMPLOYMENT ACT

NPEA ORIENTATION
Check List

<u>INITIAL</u>	<u>EXHIBIT</u>	<u>DESCRIPTION</u>
_____	(A)	<u>Navajo Preference in Employment Act</u> (information) <ul style="list-style-type: none">- NPEA Requirement Letter- <u>Navajo Preference in Employment Act</u> Poster
_____	(B)	Office of Navajo Labor Relations (information) <ul style="list-style-type: none">- ONLR Office w/ Staffs
_____	(C)	Start New Workers Out Right
_____	(D)	Manpower Projection Report
_____	(E)	List of All Subcontractors
_____	(F)	Job Description – Non-Discriminatory
_____	(G)	Newspaper and Radio Station Advertisement <ul style="list-style-type: none">- Navajo Preference Statement- Job Services
_____	(H)	Affirmative Action Regulation
_____	(I)	Notification for use of non-Navajo <ul style="list-style-type: none">- Employer Interview Report- Justification
_____	(J)	Conditions for Employment Expressed to Applicant – Orientation on Employer Policies
_____	(K)	Written Notification for any Employee Action
_____	(L)	Weekly Manpower Reports
_____	(M)	Weekly Certified Payroll Reports
_____	(N)	Contractors/Subcontractor's Reports <ul style="list-style-type: none">- Construction Progress Report (bi-weekly)- Project Completion Report
_____	(O)	Wage Rates Decision No.: _____

Company Name (**please print**)

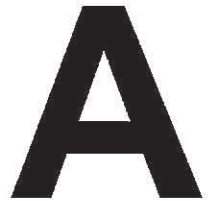
Company Representative – Name and Title (**please print**)

Company Representative Signature

Project Name and Location

OFFICE OF NAVAJO LABOR RELATIONS

NAVAJO PREFERENCE IN EMPLOYMENT ACT



PACKET INCLUDES:

Forms and Information

1. Employer Interviews Report.
2. "Start New Workers Out Right" sheet.
3. Navajo Preference in Employment Act Poster – **Post at Job Site.**
4. Contractor/Subcontractor's Manpower Projection Report.
5. Weekly Manpower Reports.
6. Weekly Certified Payroll Reports.
7. Project Completion Report Form.

The ONLR strongly recommends that all contractors use apprentices or trainees as well as female applicants on the project. Interested parties should call the ONLR for more information. The ONLR strongly recommends that contractors make every effort to recruit and hire Navajos (see NPEA, Section 4.A.(1.) and Section 4.B.(6.)).

Contractors found in non-compliance of the NPEA shall be notified by the ONLR. Attempts will be made to resolve disputes or discrepancies informally. If no resolution can be reached, the ONLR will take whatever administrative action(s) or remedies necessary. Should this occur, the contractor will be notified in writing. If no response is received by the specified date, the ONLR will proceed with other actions including filing an ONLR Charge.

Contractors are responsible for hiring Navajo workers. All contractors are required to advertise in the area using a radio station and newspaper including the Navajo Preference Statement in the advertisement. Contractors will advertise vacancies 7–10 days.

1. Contractor(s) or subcontractor(s) shall provide a detailed job summary or description, along with wage rates or salary, for all or any position considered "specialized" by the employer.
2. The contractor and its subcontractor(s) shall retain the right to reject any job applicants; however, if the contractor or its subcontractor(s) is unable to recruit or hire Navajo, the contractor shall have:
 - (a) the burden to justify the rejection of every Navajo applicant in each employee craft or category in which the contractor or its subcontractor(s) was unable to meet its requirements; and
 - (b) the burden of substantiating the criteria used in hiring such employee craft on category as relevant to the job being performed.

Navajo Occupational Safety and Health Administration (NOSHA) monitor all construction activities on the Navajo Nation. Any questions or assistance regarding safety issues, NOSHA can be contacted at (928) 871-6824.

At least **two weeks prior to completion of project**, the contractor shall complete the Project Completion Report form and submit to the ONLR (the form is provided in this packet).

PLEASE CALL IF THERE ARE ANY QUESTIONS OR CONCERNS. THANK YOU.

DATE

CHRONO

Name; Title
Company Name
Mailing Address
City, State, Zip Code

***RE: Project Name
NPEA Requirement Letter***

Dear Mr./Ms.:

Thank-you for contacting our office regarding your upcoming project.

Enclosed is the NPEA Requirement Letter along with the NPEA Orientation Checklist.

If you have any other questions, please call our office at (928) 871-6800.

Sincerely,

Name, Labor Compliance Officer
Office of Navajo Labor Relations
DIVISION OF HUMAN RESOURCES

cc: Window Rock ONLR
Chrono File

ATTACHMENT

Date

CHRONO

Name

Company

Address

City, State, Zip Code

RE: NPEA REQUIREMENT LETTER

Dear Mr./Ms.:

The Office of Navajo Labor Relations (“ONLR”) monitors construction projects on the Navajo Nation to ensure all contractors and/or subcontractors comply with the Navajo Preference in Employment Act (“NPEA”). The requirements are as follows:

- A. Give preference in employment to enrolled members of the Navajo Nation:
 - 1. Advertise all job vacancies in at least one newspaper and radio station serving the Navajo Nation. Note: All job announcements and advertisements shall specify a Navajo employment preference statement.
- B. Establish written necessary qualifications/job descriptions for each employment position in their work force, a copy of which shall be provided to applicants or candidates at the time they express an interest in such position.
- C. Use non-discriminatory job qualifications and selection criteria in employment. Any Navajo applicant or candidate who demonstrates the necessary qualifications for an employment position:
 - 1. Is to be selected by the employer in the case of hiring, promotion, transfer, upgrading, recall and other employment opportunities with respect to such position;
 - 2. To be retained by the employer in the case of the reduction-in-force affecting such class of positions until all non-Navajos employed in that class of position are laid off; and

3. Among a pool of applicants or candidates who are solely Navajos, the Navajo with the best qualifications is to be selected or retained.
- D. Provide a fringe benefit plan that does not discriminate against Navajos in terms of coverage due to Navajo cultural or religious traditions or beliefs.
- E. File with the ONLR a written Navajo Affirmative Action Plan (Program). An employer-sponsored cross-cultural program shall be an essential part of the affirmative action plans required by the NPEA. Such program shall primarily focus on the education of non-Navajo employees, including management and supervisory personnel, regarding the cultural and religious traditions or beliefs of Navajos, and their relationships to the development of employment policies that accommodate such traditions and beliefs.
- F. Maintain a safe and clean working environment free of prejudice, intimidation, and harassment.
- G. Not penalize, discipline, discharge, nor take any adverse action against any employee without a written notice showing just cause. This notice shall be given to the employee at the time of the adverse action.
- H. Post in a conspicuous place on its premises, a Navajo preference policy notice.
- I. For each Contractor/Subcontractor to be utilized on the project, the ONLR will require the following information:
 1. Contractor/Subcontractor Manpower Projection Report. A list of all classifications and number of workers that will be required. This shall be submitted two weeks before start of work.
 2. Job Description for each classification, listing experience, tool requirements, etc.
 3. Name of Individual who will conduct the interview and hiring.
 4. Employer Interview Report shall be submitted with the first certified payroll report.
 5. Weekly Manpower Report shall be submitted with each week's certified payroll report.

NPEA Requirement Letter
Page Three

6. Certified Payroll Report shall be submitted with each week's manpower report.
7. Navajo Affirmative Action Program shall be submitted two weeks before start of work.
8. Location of office(s) and telephone number(s) of contractors/subcontractors.
9. Name of Individual designated as contact person at the job site.
10. List of Key Personnel the contractor anticipates on bringing to the job site. These positions are usually the project superintendent and/or an individual with signatory authority. The contractors and/or subcontractors will be required to justify other positions not normally considered "key" personnel.
11. Job Summary and Duration of the Project.

The ONLR will provide an overview of NPEA requirements and in-depth orientation for all contractors. If you have any questions, call our office at (928) 871-6800.

Sincerely,

Name, Labor Compliance Officer
Office of Navajo Labor Relations
DIVISION OF HUMAN RESOURCES

cc: Window Rock ONLR
Project/Chrono File

NOTICE OF THE NAVAJO PREFERENCE IN EMPLOYMENT ACT

Employers must post this notice in a conspicuous place on its premises where notices to employees and job applicants are customarily posted.

Title 15, N.T.C., Chapter 7 requires that all employers doing business within the boundaries of the Navajo Nation or engaged in any contracts with the Navajo Nation, shall give preference in employment to enrolled members of the Navajo Nation, and submit an affirmative action program.

Navajo Preference in Employment Act ("NPEA") applies to:

- | | | | |
|-------------|----------------------|-------------|---------------|
| o Hiring | o Termination | o Transfers | o Recalls |
| o Promotion | o Reduction-in-force | o Training | o Recruitment |
-

NPEA requires employers doing business within the territorial jurisdiction of the Navajo Nation to:

- Provide applicant with written job descriptions.
- Provide training to enhance the skills of Navajo Employees.
- Not discipline or discharge Navajo employees without just cause and written notification.
- Provide a work place free of prejudice, intimidation and harassment.
- Pay established Prevailing Wages for construction work.
- Provide Navajo Affirmative Action Program to employ Navajos in all job classifications including supervisory and management positions.

The ONLR requires employers to receive a NPEA orientation prior to commencing work on the Navajo Nation.

If you think your rights have been violated or see other possible violations of the Navajo Preference, call or write to the Office of Navajo Labor Relations for more information.

OFFICE OF NAVAJO LABOR RELATIONS

Post Office Drawer 1943
Window Rock, Arizona 86515
Phone: (928) 871-6800/6801
Facsimile: (928) 871-7088

Post Office Box 1704
Shiprock, New Mexico 87420
Phone: (505) 368-1142
Facsimile: (505) 368-1145



Post Office Box 2660
Chinle, Arizona 86503
Phone: (928) 674-2214
Facsimile: (928) 674-2216

Post Office Box 733
Tuba City, Arizona 86045
Phone: (928) 283-3100
Facsimile: (928) 283-3107

Post Office Box 550
Kayenta, Arizona 86033
Phone: (928) 697-5645
Facsimile: (928) 697-5647

NOTE: Copies of the Navajo Preference in Employment Act are available at any of the above

OFFICE OF NAVAJO LABOR RELATIONS



The purpose of the Office of Navajo Labor Relations is as follows:

- A. To monitor and enforce the NAVAJO PREFERENCE IN EMPLOYMENT ACT (NPEA), Title 15, NNC, Chapter 7.
- B. To implement and carry out the labor policies of the Navajo Nation as established by the Navajo Nation Council.
- C. To act as administrative agency for matter relating to employment preference in hiring, recruitment, promotion, lay-off, termination, transfer and other areas of employment.
- D. To gather information from employers, employees, labor organization and governmental agencies relating to employment, compensation and working conditions.
- E. To recommend and propose policies, rules, regulations, specific Navajo Preference Plans to Human Services Committee of the Navajo Nation Council.

Window Rock/Fort Defiance, AZ

Post Office Drawer 1943
Window Rock, Arizona 86515
Telephone: (928) 871-6800/6801
Fax: (928) 871-7088

Kayenta, AZ

Post Office Box 550
Kayenta, Arizona 86033
Telephone: (928) 697-5645
Fax: (928) 697-5647

Shiprock, NM

Post Office Box 1704
Shiprock, New Mexico 87420
Telephone: (505) 368-1142
Fax: (505) 368-1145

Chinle, AZ

Post Office Box 2660
Chinle, Arizona 86503
Telephone: (928) 645-2214
Fax: (928) 645-2216

Tuba City, AZ

Post Office Box 733
Tuba City, Arizona 86045
Telephone: (928) 283-3100
Fax: (928) 283-3107

Office of Navajo Labor Relations

ADMINISTRATION OFFICE:

Post Office Drawer 1943
Window Rock, Arizona 86515
Telephone: (928) 871-6800
Fax: (928) 871-7088

PHYSICAL ADDRESS:

W008-222 Doublewide Trailer
Morgan Blvd.
Window Rock, Arizona 86515

STAFF:

Reynold R. Lee , <i>Director</i> ; reynoldrlee@navajo.org	(928) 871-6800/6801
Carletta Benally , <i>Administrative Assistant</i>	(928) 871-6801
Eugene Kirk , <i>Labor Compliance Officer</i> ; eugenekirk@navajo.org	(928) 871-6800/6801
Gililand Damon , <i>Labor Compliance Officer</i> ; gililanddamon@navajo.org	(928) 871-6800/6801
Michael Armijo , <i>Construction Employment Analyst</i> ; mikearmijo@yahoo.com	(928) 871-6800/6801
Valara James , <i>Office Assistant</i> ; valara_lola@yahoo.com	(928) 871-6800

Shiprock Sub-Office:

John P. Wilson, *Labor Compliance Officer*
Georgina Howe, *Office Assistant*
Post Office Box 1704
Shiprock, New Mexico 87420
Phone: (505) 368-1143
Fax: (505) 368-1145

Physical Location:

Northwest of Tse Bit'ai Shopping Center
First Trailer East of Hogan.

Kayenta Sub-Office:

Delight Butler, *Labor Compliance Officer*
Tanisha Nez, *Office Assistant*
Post Office Box 550
Kayenta, Arizona 86033
Phone: (928) 697-5645
Fax: (928) 697-5647

Physical Location:

Kayenta Chapter House

Chinle Sub-Office:

Harrison Bia, *Labor Compliance Officer*
Norma Horton, *Office Assistant*
Post Office Box 2660
Chinle, Arizona 86503
Phone: (928) 674-2214
Fax: (928) 674-2216

Physical Location:

Navajo Nation Government Offices
West of Chinle Chapter House.

Tuba City Sub-Office:

Vacant, *Labor Compliance Officer*
Mary L. Bracker, *Office Assistant*
Post Office Box 733
Tuba City, Arizona 86045
Phone: (928) 283-3100
Fax: (928) 283-3107

Physical Location:

Located on East Side of TCCC
Right next to Coalmine Sub-office.

START NEW WORKERS OUT RIGHT



EXECUTIVE SUMMARY

The safer construction top-management, project-management and foreman give more orientation to their workers new to the job than less safe managers. Research proves that attention to new workers is a key characteristic of safe, productive management. This information shows:

WHY orientating workers increases profits.

HOW to develop a new workers program tailored to your company.

WHY NEW WORKERS PROGRAM INCREASES PROFITS

The facts show that construction companies which are putting their workers right to work without any orientation are spending needless dollars for accident costs, lost time, damaged materials and machinery, etc. These new workers are the ones who are having the accidents, accidents, which cost thousands in workers compensation costs.

The common construction practice of putting new workers directly on the job with no orientation is creating a very high accident rate for workers in their first few days and weeks on the job.

For most construction companies, it is their new workers – no matter how experienced they are – who are having the accidents. And these accidents are costing company profits.

Accidents to new workers can be substantially reduced by an orientation for employees new to the job. The investment of time to start a new worker out right will be repaid many times over when that worker works safely and does not have an accident.

Every accident creates many costs for your company. Insurance costs are one of the major costs. A recent study by Prof. Raymond Levitt of Stanford University, of 23 construction firms engaged in highway, heavy building, industrial and specialty trade construction found that companies with formal safety orientation programs for all new hires had an average insurance modification rates, 25% lower than their competitors who did not have any such programs. These reduced costs give a distinct advantage in the bidding process and allow for greater profits. Beyond these obvious costs yet equally important, is the fact that accidents have a very adverse impact on project morale and company reputation.

Orientation will pay off by reducing accidents. Few accidents mean more profits.

HOW TO DEVELOP YOUR COMPANY'S ORIENTATION PROGRAM

A successful company orientation program includes all new workers regardless of the number of years worked in the industry. It covers every worker new to the company, new to a particular job site or only new to a crew. This means that your new worker program needs three parts – each important.

1. Top management communication to new worker of company, commitments on safety, health, and expectations for each employee.
2. Project management orientation, including the special requirements for each project.
3. Foreman orientation to job and crew.

The worker who is new to the company is also new to the project and to the crew. Such people need the most orientation. They are unfamiliar with company policies and procedures. They are unfamiliar with job site conditions. They are unfamiliar with superintendents, foremen and fellow employees. They feel that they must prove themselves to the company, the superintendent, the foreman, and their fellow workers and to themselves.

Safety orientation, however, cannot stop with them. All employees, even those with company seniority, should receive safety orientation every time they are transferred to a new job site or crew. The particular organization and layout of the work and therefore the particular safety hazards at the job site are as unfamiliar to them as to a brand new employee. On many sites, even when there is no turnover in crews on the job, conditions change so much during the course of the job that all site employees need constant update orientation. Very productive safe superintendents stop their project workers for briefing sessions every time the work changes.

TOP MANAGEMENT'S ROLE IN ORIENTATION

Your company needs to develop two programs:

1. A New Worker Orientation-to-the-Company Program.
2. A Management Training System to Insure Project and Crew Level Orientation.

ESSENTIALS OF A COMPANY ORIENTATION PROGRAM

Your company program must be developed by upper management to suit the company. After a program is implemented, it needs to be reviewed and updated to guarantee that it is functioning as designed. The type of work and number of employees will govern the extent and formality of each company's program.

NEW WORKER ACTION STEPS:

Everyone new to your crew (no matter how experienced) is a new worker

1. Ask about last job.
2. Describe the new job.
3. Show worker around site; point out hazards.
4. Introduce worker to others
5. Describe your rules.
6. Give worker a test run on tools and equipment.
7. Keep an eye on the new worker during the first few days.
8. Check back to see how the worker is coming along.

Foremen and superintendents will be more willing to spend the necessary time on a new worker orientation if they are held accountable for accidents as part of their supervisory responsibilities.

START NEW WORKERS OUT RIGHT is only the first part of the **SAFER** program. The greatest reduction in accidents and the greatest increase in savings will result from combining orientation with the other four basic points of the safer program.

1. Account for all accidents – so foremen and supervisors know that safety is an important part of their job performance.
2. Foremen and Managers plan safety into each job so the safety is an integral part of job operations.
3. Every week a toolbox/tailgate meeting is held so that what the new worker hears and learns in orientation is constantly backed up and emphasized.
4. Reinforce safe performance so that the new workers and all the others realize that foremen, supervisors, and the companies back their interest in safety with recognition of those who do a good job on safety.

Your company's program should also include:

1. An introductory letter to each employee from the company president welcoming the new worker, emphasizing the importance of safety to the company and to the president, and describing the worker's responsibility to help maintain a safe working environment.
2. A Company Safety Practices handbook issued to each new worker, which spells out the particular rules and requirements of your company.

In addition, there are a number of additional methods which construction companies have used successfully such as audio-visual presentations (films, slides, videotapes) to be viewed by each worker covering company safety policy, new employees checklists which are read by the employee before the worker begins work and which require the employee's signature of the compliance on their employment application, short booklets describing company project information, and company procedures including workweek, absentee and pay procedures, rules on safety and other basic company policies.

THE COMPANY PLANS FOR JOB SUPERINTENDENT AND FOREMAN ORIENTATION

While a company orientation program developed from the elements just described is effective in reducing accidents and accident costs, even more effective is company program combined with a strong program on the project and crew level. The most effective orientation programs depend upon the key personnel directly in contact with the new worker. The superintendent and foreman are committed to orientating the new hire.

The job superintendent has two responsibilities for orientation. First, he must communicate a project-wide commitment to safety and a continuing awareness and involvement in safety performances as well as productivity and quality. Secondly, he must be certain that the foremen understand the importance of orientation and are trained to carry it out properly. The superintendent should also take an active interest in the new worker, ensuring that the necessary safety information has been provided and that the new worker is adjusting well to the job.

The foreman is typically the most closely involved with the new worker and thus is a critical person in the orientation process. The company should expect the foreman to spend sufficient time with the new worker to start the new worker out right. Foremen who save their company money and their crewmembers' personal and economic loss by orienting their new crewmembers have well-developed methods for starting a new worker. These methods can be taught successfully to other foremen. Stanford Construction Safety Management Safety and Health Project have developed a foreman pocket card listing the new worker action steps. This card reminds the foremen what to do.

IMPORTANT NOTICE: Contractor to
Complete and return this form to ONLR
PRIOR to start of work.

D

SAMPLE
(Use Company Letterhead)

CONTRACTOR/SUBCONTRACTOR'S MANPOWER PROJECTION REPORT

CONTRACTOR: _____ DATE: _____

PROJECT: _____ LOCATION: _____

ANTICIPATED START DATE: _____ END DATE: _____

<u>CRAFT</u>	<u>NUMBER REQUIRED</u>	<u>REMARKS</u>	<u>CRAFT</u>	<u>NUMBER REQUIRED</u>	<u>REMARKS</u>
Carpenter	_____	_____	Cement Finisher	_____	_____
Electrician	_____	_____	Boilermaker	_____	_____
Laborer	_____	_____	Bricklayer	_____	_____
Drywall Installer/ Taper	_____	_____	Equipment Operator	_____	_____
Pipefitter	_____	_____	Truck Driver	_____	_____
Plumber	_____	_____	Ironworker	_____	_____
Roofer	_____	_____	Painter	_____	_____
Insulator	_____	_____	Soft Tile Setter	_____	_____
Millwright	_____	_____	Sheet Metal Worker	_____	_____
_____	_____	_____	_____	_____	_____

(Note: any special qualifications, i.e., 125-Ton Crane Operator, Testing Requirements, Journeyman or Apprenticeship/Trainee, etc.):

Important Notice: All Contractors
having subcontractors shall submit a
sub-contractor listing, which shall
include the name and address of each
subcontractor, telephone number and
contact person.

Name: _____
(Authorized Company Representative & Title) **PRINTED**

Signature: _____

Original to:

Office of Navajo Labor Relations
ATTN: John P. Wilson, LCO
Post Office Drawer 1704
Shiprock, New Mexico 87420

Copy to:

Office of Navajo Labor Relations
ATTN: Michael Armijo, CEA
Post Office Drawer 1943
Window Rock, Arizona 86515

SUBCONTRACTORS LISTING

E

Information Required:

1. Name and addresses of all subcontractors. Include telephone numbers.
2. Name and title of company representative.
3. Brief description of what type of work the subcontractor will perform.
4. A Manpower Projection is required prior to start of work. Projected start and end date should be noted.

NOTE: A pre-construction conference is required **BEFORE** any work is started. It is the subcontractor's responsibility to contact ONLR to arrange for a separate meeting before any work begins.

JOB DESCRIPTION

F

1. Brief description or narrative picture of the job that highlights its general characteristics. The job summary should provide enough information stating the major functions and activities.
2. Avoid using ambiguous words, or those that leave themselves open to a number of possible interpretations.
3. Avoid using technical words unless you are sure they will be easily understood. If you must use them anyway, explain.
4. All employers (contractors and subcontractors) shall use non-discriminatory job qualification and selection criteria in employment.
5. Job descriptions shall contain those job-related qualifications which are essential to the performance of the basic responsibilities designated for each employment position, including any essential qualification concerning education, training and job-related experience, but excluding any qualifications relating to ability or aptitude to perform responsibilities in other employment positions. Demonstrated ability to perform essential and basic responsibilities shall be deemed satisfaction of "necessary qualifications".

NOTE: A copy of a job description shall be provided to the applicants or candidates at the time they express an interest in such position (15 NNC 604.D.).

RADIO STATIONS



KNDN RADIO STATION

1515 West Main Street
Farmington, New Mexico 87401
Telephone: (505) 325-1996
Fax: (505) 327-2019

KTNN RADIO STATION

Post Office Box 2569
Window Rock, Arizona 86515
Telephone: (928) 871-2582
Fax: (928) 871-3479

NEWSPAPER

DAILY TIMES

Post Office Box 450
Farmington, New Mexico 87499
Telephone: (505) 325-4545
Fax: (505) 564-4567

NAVAJO TIMES

Post Office Box 310
Window Rock, Arizona 86515
Telephone: (928) 871-6641
Fax: (928) 871-6409

GALLUP INDEPENDENT

Post Office Box 1210
Gallup, New Mexico 87305
Telephone: (505) 863-6811
Fax: (505) 722-5750

NAVAJO/HOPI OBSERVER

2224 East Cedar Avenue
Flagstaff, Arizona 86004
Telephone: (928) 226-9696
Fax: (928) 226-1115

NAVAJO PREFERENCE STATEMENT

NPEA Section 4(B). Specific Requirements for Navajo Preference

1. "All employers shall include and specify a Navajo employment preference policy statement in all job announcements and advertisements and employer policies covered by this Act".

JOB SERVICE

New Mexico Dept. of Labor

2020 E. Aztec
Gallup, New Mexico 87301
(505) 863-3884/Fax: (505) 863-3493

AZ Workforce Connection

Post Office Box 3565
Window Rock, Arizona 86515
(928) 871-4131/Fax: (928) 871-4130

New Mexico Dept. of Labor

600 W. Arrington
Farmington, New Mexico 87401
(505) 327-6126/Fax: (505) 326-6006

Dept. of Economic Security Adm.

Post Office Box 130
Tuba City, Arizona 86045
(928) 283-5201/Fax: (928) 283-4435

NPEA Section 4(B)(5): "All employers shall utilize Navajo Nation employment sources and job services for employee recruitment and referrals; provided, however, that employers do not have the foregoing obligations in the event a Navajo is selected for the employment who is a current employee of the employer."

AFFIRMATIVE ACTION REGULATIONS



I. INTRODUCTION

- A. Pursuant to the *Navajo Preference in Employment Act* ("NPEA"), "all employers doing business within the territorial jurisdiction of the Navajo Nation, or engaged in any contract with the Navajo Nation shall give preference in employment to Navajos. Preference in employment shall include specific Navajo affirmative action plans and timetables for all phases of employment to achieve the tribal goals of employing Navajos in all job classifications including supervisory and management positions."

II. POLICY STATEMENT

- A. The employer's policy statement shall indicate the Owner/Chief Executive Officer's position on the subject matters; assign overall responsibility, reporting and monitoring procedure. Specific items to be mentioned, should include, but are not limited to:
1. Providing employment and training opportunities for Navajo workers, including supervisory and management positions.
 2. Employment decisions and personnel actions shall be based on the principles, intent and purposes of the *Navajo Preference in Employment Act* ("NPEA").

III. APPOINTMENT OF A MANAGEMENT OFFICIAL TO IMPLEMENT NAVAJO AFFIRMATIVE ACTION PROGRAM

- A. A management official who has decision-making authority shall be appointed to implement and monitor the Affirmative Action Plan Program. His/Her responsibility will include, but are not limited to the following:
1. Developing Navajo Affirmative Action Plan Program, policy statement, goals and objectives, and internal and external communication procedures.
 2. Identifying and/or assisting in the identification of problem areas in Section V.D.
 3. Determining and implementing corrective solution(s) identified under Section V.D. with the assistance of line supervisors.
 4. Designing and implementing audit and reporting systems that will:
 - a. Measure effectiveness of the employer's program.

- b. Indicate and determine the need for remedial action(s).
 - c. Determine the degree to which the employer's goal and objectives have been accomplished.
- 5. Serve as liaison between the employer and the Office of Navajo Labor Relations ("ONLR").

IV. ESTABLISHMENT OF GOALS AND TIMELINES

- A. The goals and timelines developed by the employers should be attainable based on analysis of the following:
 - 1. All positions/classifications currently held by non-Navajos.
 - 2. Qualifications required by the positions/classifications.
 - 3. Timelines for Navajo worker(s) to obtain qualifications for positions/classification(s) held by non-Navajos, and
 - 4. Identification of resources internally and externally to implement the plan.

V. WORKFORCE ANALYSIS

- A. The affirmative action plan should contain a workforce analysis, defined as a listing of each job title as it appears in applicable collective bargaining agreements or payroll records ranked from the lowest paid to the highest paid within each department or organizational unit including mid-management and top-management. Lines of progression for each unit or department must be identified through which employees could move upward. Where there are no formal progression lines or lines or usual promotional sequences, job titles should be listed in order of wages/salary ranges.
- B. An analysis of all positions/classifications of the employer, should be included, with explanation if Navajos are currently being under-utilized in any positions/classifications, "Under-utilization" is defined as having a fewer Navajos in any position/classification than would be expected by the availability of qualified Navajo workers.
- C. An in-depth analysis of the following shall be made:
 - 1. Composition of Navajo and non-Navajo employees by positions/classifications.
 - 2. Composition of applicant flow of Navajos and non-Navajos.
 - 3. Selection process including recruitment, job descriptions, interview criteria, written tests and final selection.

4. Retention, promotion, transfer, reduction in force and recall.
 5. Apprenticeship program/trainings.
 6. Company training – formal and informal.
- D. If any of the following are identified in the analysis, a plan of corrective action must be established immediately:
1. An under-utilization of Navajo employees.
 2. Vertical movement of Navajos occurs at a lesser rate than that of non-Navajos.
 3. The selection process eliminates a significantly higher percentage of Navajos than non-Navajos.
 4. Position/job descriptions are inaccurate in relation to actual duties and function.
 5. Testing and/or test forms having adverse impact at a higher rate on Navajos than non-Navajos.
 6. Non-support of the company's affirmative action policy by employees' supervisors or managers.
 7. No formal criteria established for evaluating the effectiveness of the affirmative action program.

VI. UNIONS AND LABOR ORGANIZATIONS

- A. Where employers are signatory to collective bargaining agreements, the union organizations and the employer shall file a joint employer – union affirmative action plan to the Office of Navajo Labor Relations pursuant to NPEA, Section 4.A.2.
- B. The joint employer – union affirmative action policy shall specifically include a clause that the employer and the labor organization will provide preference in employment to Navajos.
- C. When providing preference in employment to Navajos, the affirmative action policy shall require the following:
 1. The employer shall specifically request Navajo workers for work to be done on the Navajo Nation. The employer shall not accept referrals of non-Navajos for work on the Navajo Nation, so long as potentially qualified Navajos are available, through respective local union halls.

2. The labor organization shall first refer all Navajos on the labor organization's referral list (s), regardless of their relative position on those lists.
3. The labor organization shall take necessary steps to recruit additional Navajo members so as to meet manpower requests for work to be conducted on the Navajo Nation.

VII. ENFORCEMENT

- A. The designated company management official shall be responsible for compliance with the requirements of these Rules and Regulations.
- B. Employers and organizations not in compliance will be subjected to formal charges in accordance with provisions of the *Navajo Preference in Employment Act*.
- C. Failure to comply with these Rules and Regulations or failure to submit an affirmative action policy may result, in addition to formal charges, corrective action by the Office of Navajo Labor Relations, including but not limited to, compelled hiring and/or training of Navajo workers.

VIII. EFFECTIVE DATE

- A. These Regulations shall become effective 180 days from the date of approval by the Human Services Committee of the Navajo Nation Council.
- B. Within 90 days of the effective date, employers must have submitted an affirmative action plan to the Office of Navajo Labor Relations.

IX. AMENDMENT

- A. This regulation shall be amended from time to time as deemed necessary by the Human Services Committee of the Navajo Council.

OFFICE OF NAVAJO LABOR RELATIONS
EMPLOYER INTERVIEW REPORT

Project

*N = Navajo
NN= Non-Navajo

Contractor

Location

Position

DATE	APPLICANT	N/NN	ADDRESS/TELEPHONE	INTERVIEWER	RESULTS

CONDITION FOR EMPLOYMENT EXPRESSED TO APPLICANT

J

1. Explain or inform worker what's expected of him/her. The work rules or conducts.
2. Each employee should know what their position is; rate of pay, and given a written personnel action form.
3. Thorough orientation on company/employer policies and procedures.

WRITTEN NOTIFICATION FOR ANY EMPLOYEE ACTION

K

1. "All employers shall not penalize, discipline, discharge nor take any adverse action against any Navajo employee without just cause. A written notification to the employee citing such cause for any of the above actions is required in all cases."
(15 NNC 604.B.(8.))

S A M P L E
(Use Company Letterhead)



Date: _____

Office of Navajo Labor Relations
Post Office Drawer 1943
Window Rock, Arizona 86515

RE: WEEKLY MANPOWER REPORT FOR WEEK ENDING: _____

Duration of Project: Start Date: _____

Completion Date: _____

Contract Number: _____

Project Title: _____

Project Stage of Completion (%): _____

Total Work Force (*): _____

*Justification for hiring non-Navajo employee:

Important Notice: Each Weekly
Manpower shall have a
corresponding Certified Payroll
Report attached.

Representative Name & Title (Printed)

Signature

Original to:

Office of Navajo Labor Relations
Attn: John P. Wilson, LCO
Post Office Drawer 1704
Shiprock, New Mexico 87420

Copy to:

Office of Navajo Labor Relations
Attn: Michael Armijo, CEA
Post Office Drawer 1943
Window Rock, Arizona 86515

WEEKLY MANPOWER REPORT
For Week Ending: _____

	NAVAJO		NON-NAVAJO	
	<u>Male</u>	<u>Female</u>	<u>Male</u>	<u>Female</u>
Project Superintendent	_____	_____	_____	_____
Project Foreman	_____	_____	_____	_____
Carpenter	_____	_____	_____	_____
Electrician	_____	_____	_____	_____
Laborer	_____	_____	_____	_____
Drywall Installer/Taper	_____	_____	_____	_____
Plumber	_____	_____	_____	_____
Pipefitter	_____	_____	_____	_____
Truck Driver	_____	_____	_____	_____
Equipment Operator	_____	_____	_____	_____
Ironworker	_____	_____	_____	_____
Roofer	_____	_____	_____	_____
Painter	_____	_____	_____	_____
Soft Tilesetter	_____	_____	_____	_____
Insulator	_____	_____	_____	_____
Cement Mason	_____	_____	_____	_____
Apprentice	_____	_____	_____	_____
Others (Specify Craft)	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
TOTALS:	_____	_____	_____	_____

(List Only those Classifications Utilized During that Week)

OFFICE OF NAVAJO LABOR RELATIONS
CERTIFIED PAYROLL

[illegible]

(2) * N / Navajo or NN / non-Navajo (PLEASE INDICATE)

PAYROLL STATEMENT OF COMPLIANCE

Date _____

I, _____ (Name of signatory party) _____ (Title)
do hereby state:

- (1) That I pay or supervise the payment of the persons employed by _____
_____, on the _____ (Building or work)
_____, that during the payroll period commencing on the _____ day of _____, 20____ and ending the _____ day of _____, 20____ all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said

_____, from the full
(Contractor or subcontractor)
weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 CFR Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat 967; 40 U.S.C. 267c), and described below:

- (2) That any payrolls otherwise under this contract require to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

- (3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with the State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor.

- (4) That:

- (a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS,
OR PROGRAMS

جـ - In addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in Section 4(c) below.

- (b) WHERE FRINGE BENEFITS ARE PAID IN CASH

جـ - Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in Section 4(c) below.

(c) EXCEPTIONS	
EXCEPTION (CRAFT)	EXPLANATION
REMARKS	

NAME AND TITLE	SIGNATURE
THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO A CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.	

N

PROJECT STATUS REPORT
S A M P L E
(Use Company Letterhead)

Date: _____

PROJECT TITLE: _____

Duration of Project: START: _____ Completion: _____

Job Location: _____

Check Appropriate Spaces:

_____ Complete – No employees or workers on site.

_____ Near Completion, will be completed by: _____

_____ Other: _____

Additional Work Project: FROM: _____ TO: _____

Description of additional work required:

Company: _____

Representative Name: _____

Title: _____

IMPORTANT NOTICE

In the event contractor/subcontractor returns to perform additional work on this project, Office of Navajo Labor Relations must be contacted and a manpower projection report shall be submitted to ONLR before any work is to start. Form can be faxed to the Office of Navajo Labor Relations at:

Office of Navajo Labor Relations
(505) 368-1145

NOTE: Please fill out this form within two weeks of completion of project.

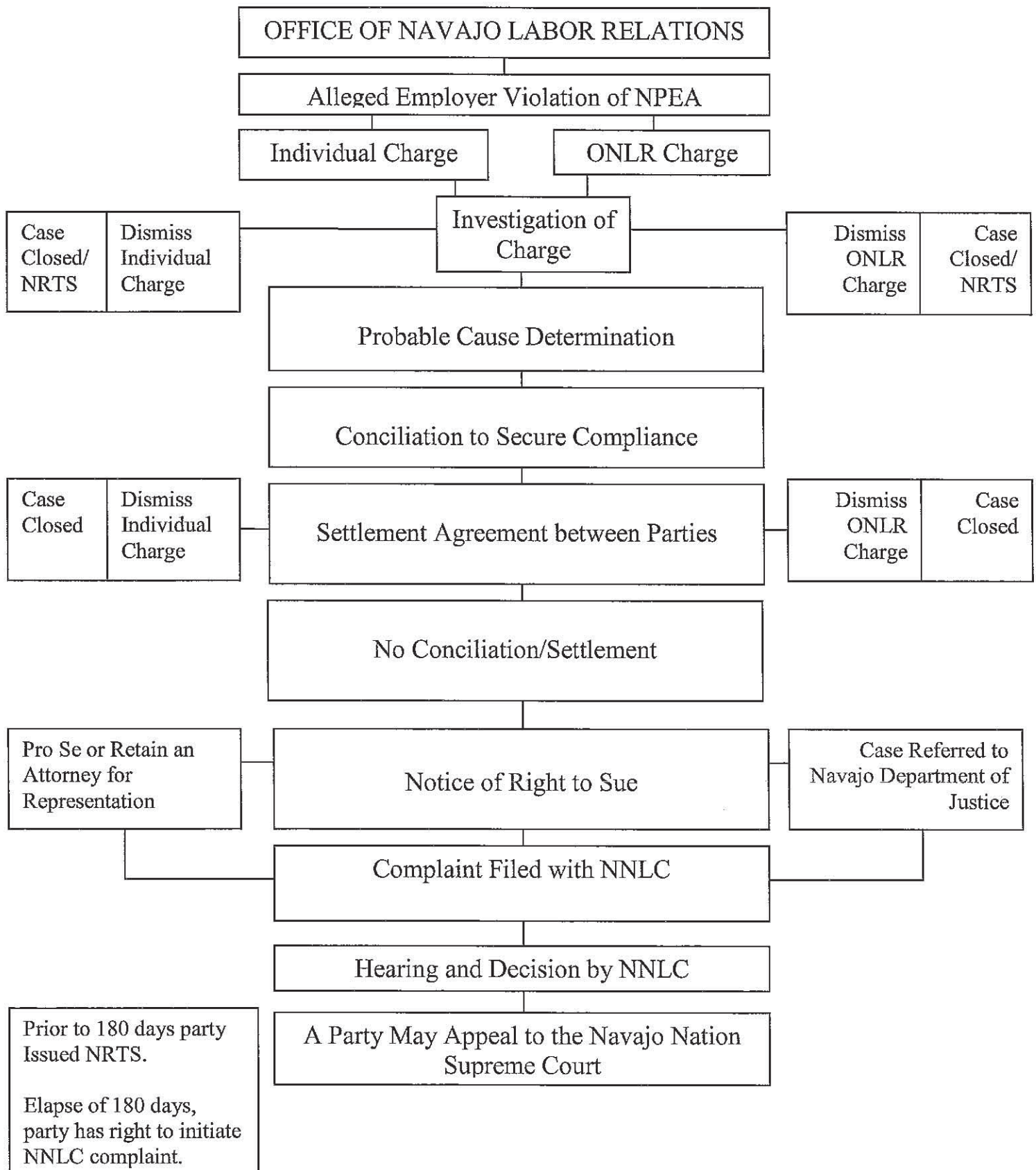
Original to:

Office of Navajo Labor Relations
Attn: John P. Wilson, LCO
P. O. Drawer 1704
Shiprock, New Mexico 87420

Copy to:

Office of Navajo Labor Relations
Attn: Michael Armijo, CEA
P. O. Drawer 1943
Window Rock, Arizona 86515

INVESTIGATION PROCESS FLOW CHART



APPENDIX C

Regulatory Requirements & Permits

- Cultural Resource Compliance Form (with conditions of compliance)
- Biological Resource Compliance Form (with conditions of compliance)
- ENVIRONMENTAL ASSESSMENT AND FINDING OF NO SIGNIFICANT IMPACT (with conditions of compliance)
- Navajo Nation EPA Construction Permit*
- Navajo Department of Agriculture Re-seeding Requirements

*Items marked with an asterisk have been applied for or requested from the appropriate entity by the Owner or Engineer and will be added to the bid or contract documents when received. Anticipated requirements of these permits have already been included in the bid documents to provide a basis of bid for Bidders.

Cultural Resource Compliance Form
(with conditions of compliance)



THE NAVAJO NATION
Heritage & Historic Preservation Department
P.O. Box 4950 • Window Rock, Arizona 86515
(928) 871-7198 (tel) • (928) 871-7886 (fax)



REVISED CULTURAL RESOURCE COMPLIANCE FORM

NNHHPD NO.: HPD-20-1004

CONSULTANT REPORT NO.: BRIC-1248

PROJECT TITLE: Cultural Resource Inventory for the Chichiltah-Vanderwagen Water System Improvement Project, Chichiltah Chapter, Eastern Agency, Navajo Nation in McKinley County, New Mexico.

LEAD AGENCY: BIA/NRO

SPONSOR: Ryan Biehl, Souder Miller & Associates, 5454 Venice Ave NE, Suite D, Albuquerque, NM, 87113

PROJECT DESCRIPTION: The sponsor is proposing to construct a waterline extension and septic tanks to serve homes, and includes five well locations. The survey area includes 1.7 miles (8,976-ft) of waterline with a 10-ft wide right of way, 1.3 miles (6,864-ft) of utility line with a 30-ft wide right-of-way, and 4.59-acres designated well pad area. The area of effect is 15.85-acres.

PROJECT ARCHAEOLOGIST: Matthew Johnson and Timothy Goddard

NAVAJO ANTIQUITIES PERMIT NO.: B20748

TOTAL ACREAGE INSPECTED: 15.9

DATE INSPECTED: 8/17/2020

DATE OF REPORT: 12/9/2020

INVESTIGATION: Class III pedestrian inventory with transects spaced 15 m apart

Number of Eligible Properties: 2

Number of Non-Eligible Properties: 1

Number of Unevaluated Properties: 1

Number of Burials: 0

Number of TCPs: 0

Number of Isolated Occurrences: 18

Number of In-Use Sites: 2

EFFECT/CONDITIONS OF COMPLIANCE: No Adverse Effect

PROCEED RECOMMENDED: Yes

CONDITIONS: Yes

SITE PROTECTIONS & EMPLOYEE EDUCATION: All employees of the project, including the project sponsor and its contractors/subcontractors, will be educated on archaeological site locations, sensitive areas, and stipulations those places before any construction activities begin. NTUA personnel, vehicles, and company equipment will avoid all cultural resources. NTUA will inform all personnel that it is illegal to collect, damage, or disturb cultural resources and that such activities are punishable by criminal and/or administrative penalties under the provision of the Archaeological Resources Protection Act (ARPA) the Navajo Nation Cultural Resources Protection Act (CRPA).

Sites NM-Q-51-10, NM-Q-51-11:

1. Site protection barrier:

- A qualified archaeologist will erect temporary site protection barriers before construction delineating site boundaries. The barrier will consist of flagging spaced no more than 10-ft apart.
- Barriers will remain in place throughout construction & removed after project completion.
- There will be no surface-disturbing activities or vehicle traffic within the barriers.

2. Restricted access:

- All vehicular traffic will remain on pre-established roads. There will be no improvement to the existing roads.
- There will be no mechanical blading or construction of new roads within site boundaries.

~ DOCUMENT IS VOID IF ALTERED ~



THE NAVAJO NATION

Heritage & Historic Preservation Department
P.O. Box 4950 • Window Rock, Arizona 86515
(928) 871-7198 (tel) • (928) 871-7886 (fax)



- All construction/ground-disturbing activities will avoid the sites by a minimum of 50-ft from the site boundaries.

3. Conditional stipulations:

- The site will be avoided by a minimum of 50-ft from the established site boundaries.
- There will be no ground disturbance within site boundaries.
- SMA Engineers designed revised the waterline route to avoid the sites.

4. Archaeological monitoring required:

- The sponsor will provide a copy of these stipulations to the archaeological monitor before the start of construction activities. No construction, including vegetation removal, may begin before the arrival of the monitor.
- The monitor will:
 - Obtain a Class C Permit before monitoring activities begin
 - Ensure the site protection barriers are visible.
 - Observe disturbing surface activities within 50-ft of the site.
 - Submit a report of the monitoring activities within 30-days of completing monitoring activities unless other arrangements are made with NNHHPD

5. Future maintenance:

- All maintenance activities will avoid site.
- All maintenance activities will follow the stipulations outlined in this document.

Site NM-Q-51-12:

1. Site protection barrier:

- A qualified archaeologist will erect temporary site protection barriers before construction delineating site boundaries. The barrier will consist of flagging spaced no more than 10-ft apart.
- Barriers will remain in place throughout construction & removed after project completion.
- There will be no surface-disturbing activities or vehicle traffic within the barriers.

2. Restricted access:

- All vehicular traffic will remain on pre-established roads. There will be no improvement to the existing roads.
- There will be no mechanical blading or construction of new roads within site boundaries.
- All construction/ground-disturbing activities will avoid the sites by a minimum of 50-ft from the site boundaries.

3. Conditional stipulations:

- The site will be avoided by a minimum of 50-ft from the established site boundaries.
- There will be no ground disturbance within site boundaries.

4. Archaeological monitoring required:

- The sponsor will provide a copy of these stipulations to the archaeological monitor before the start of construction activities. No construction, including vegetation removal, may begin before the arrival of the monitor.
- The monitor will:



THE NAVAJO NATION

Heritage & Historic Preservation Department
P.O. Box 4950 • Window Rock, Arizona 86515
(928) 871-7198 (tel) • (928) 871-7886 (fax)



- Obtain a Class C Permit before monitoring activities begin
- Ensure the site protection barriers are visible.
- Observe disturbing surface activities within 50-ft of the site.
- Submit a report of the monitoring activities within 30-days of completing monitoring activities unless other arrangements are made with NNHPD

5. Site Testing

- If site is to be impacted, NNHPD will be consulted and a site testing plan designed to determine site eligibility.

6. Future maintenance:

- All maintenance activities will avoid site.
- All maintenance activities will follow the stipulations outlined in this document.

Site NM-G-46-27:

No further work is required at this site.

In the event of a discovery ["discovery" means any previously unidentified or incorrectly identified cultural resources including but not limited to archaeological deposits, human remains, or locations reportedly associated with Native American religious/traditional beliefs or practices], all operations in the immediate vicinity of the discovery must cease, and the Navajo Nation Historic Preservation Department must be notified at (928) 871-7148.

FORM PREPARED BY: Tamara Billie

FINALIZED: 4/21/2021

Richard M. Begay, Department Manager/NNHPD
Navajo Nation Heritage and Historic Preservation Department

04/21/2021
Date

Navajo Region Approval: Yes

Bartholomew Stevens, Navajo Regional Director
BIA- Navajo Regional Office

05/03/2021
Date

~ DOCUMENT IS VOID IF ALTERED ~

SFONSORS

Ryan Biehl, Souder Miller & Associates

LOCATION INFORMATION

LAND STATUS: NN Tribal Trust Land

STATE: NM

DATUM: NAD83

ZONE: 12

COUNTY

McKinley

QUAD

Pinehaven, NM

Vanderwagen, NM

Horsehead Canyon NW, NM

Vanderwagen Draw, NM

UTM N**UTM E**

3903093

704495

3903088

706112

3902545

705858

3903155

704625

3902916

704931

3902859

705429

3903073

705535

3903078

705858

CHAPTER

Chichiltah

Township**Range****Sections**

T12N

R18W

20, 21, 28

T12N

R19W

21

Biological Resource Compliance Form
(with conditions of compliance)

**BIOLOGICAL RESOURCES COMPLIANCE FORM
NAVAJO NATION DEPARTMENT OF FISH AND WILDLIFE
P.O. BOX 1480, WINDOW ROCK, ARIZONA 86515-1480**

It is the Department's opinion the project described below, with applicable conditions, is in compliance with Tribal and Federal laws protecting biological resources including the Navajo Endangered Species and Environmental Policy Codes, U.S. Endangered Species, Migratory Bird Treaty, Eagle Protection and National Environmental Policy Acts. This form does not preclude or replace consultation with the U.S. Fish and Wildlife Service if a Federally-listed species is affected.

PROJECT NAME & NO.: Chichiltah-Vanderwagen Community Water System

DESCRIPTION: The proposal includes the installation of water lines, house service lines and 5 well pad sites.

LOCATION: Multiple areas in the areas of Pinehaven, Vanderwagen, Vanderwagen Draw, and Horsehead Canyon, T 12N, R 18W, Sec. 20, 21 and 28.

REPRESENTATIVE: Stephanie Lee - BRIC, LLC.

ACTION AGENCY: Chichiltah Chapter

B.R. REPORT TITLE / DATE / PREPARER: Request for review and compliance / April 2021 / BRIC, LLC.

SIGNIFICANT BIOLOGICAL RESOURCES FOUND: RCP Area 3

POTENTIAL IMPACTS

NESL SPECIES POTENTIALLY IMPACTED: NA

FEDERALLY-LISTED SPECIES AFFECTED: NA

OTHER SIGNIFICANT IMPACTS TO BIOLOGICAL RESOURCES: NA

AVOIDANCE / MITIGATION MEASURES: 1. All construction activities should avoid the migratory bird breeding season (March 1 - August 15, of any year). A pre-construction survey of migratory bird nests could be performed if work occurs during this time period.

2. All areas disturbed by the construction of the project shall be revegetated with a locally appropriate (i.e., native) seed mix that is free of invasive, noxious and undesirable plant species. Revegetation of the disturbed areas shall also include proper watering, mulching/straw and erosion controls so that the post construction areas is restored to suitable wildlife habitat.

3. All above ground utility poles shall conform to a design standard(s) that comply with the Raptor Electrocution Prevention Regulations, RCS-43-08, September 10, 2008, so as to avoid unintentional electrocution of raptors that may perch on the utility pole.


CONDITIONS OF COMPLIANCE*: NA

FORM PREPARED BY / DATE: Brent Powers/ 26 OCT 2021

COPIES TO: (add categories as necessary)

☐ _____

☐ _____

2 NTC § 164 Recommendation:	Signature	Date
<input checked="" type="checkbox"/> Approval		11/9/2021
<input type="checkbox"/> Conditional Approval (with memo)		
<input type="checkbox"/> Disapproval (with memo)		
<input type="checkbox"/> Categorical Exclusion (with request letter)		
<input type="checkbox"/> None (with memo)	Gloria M. Tom, Director, Navajo Nation Department of Fish and Wildlife	

*I understand and accept the conditions of compliance, and acknowledge that lack of signature may be grounds for
the Department not recommending the above described project for approval to the Tribal Decision-maker.

THE NAVAJO NATION

JONATHAN NEZ | **PRESIDENT** MYRON LIZER | **VICE PRESIDENT**



MEMORANDUM

TO : David Mikesic, Zoologist
Department of Fish and Wildlife
DIVISION OF NATURAL RESOURCES

FROM : Gloria M. Tom
Gloria M. Tom, Department Manager
III Department of Fish and Wildlife
DIVISION OF NATURAL RESOURCES

DATE : November 8, 2021

SUBJECT : DELEGATION OF AUTHORITY

I will be on leave from Monday, November 08, 2021 to Friday, November 12, 2021. I am hereby delegating you to act in the capacity of the Department Manager III, Department of Fish and Wildlife, effective 8:00 a.m. on Monday, November 08, 2021. This delegation shall end at 5:00 p.m. on Friday, November 12, 2021.

Your authority will cover the review and signing off on all routine documents pertaining to the Department of Fish and Wildlife, except for issues that you feel should have the attention of the Department Manager III.

ACKNOWLEDGEMENT:

David Mikesic 11/8/2021
David Mikesic, Zoologist
Department of Fish and Wildlife
DIVISION OF NATURAL RESOURCE

NAVAJO NATION OFFICE OF THE PRESIDENT AND VICE PRESIDENT

POST OFFICE BOX 7440 · WINDOW ROCK, AZ 86515 · PHONE: (928) 871-7000 · FAX: (928) 871-4025

**ENVIRONMENTAL ASSESSMENT AND
FINDING OF NO SIGNIFICANT IMPACT
EA-22-122621-1
(with conditions of compliance)**



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Navajo Regional Office

P.O. Box 1060

Gallup, New Mexico 87305

June 13, 2023

Jason John, General Manager
Navajo Nation Water Resources
Post Office Box 678
Fort Defiance, Arizona 86504

Dear Mr. John:

The Branch of Environmental Quality Act Compliance Review office, Navajo Region, received the Environmental Assessment (EA), **EA-22-122621-1**, requesting an addendum to **EA-19-35184 Navajo Nation Department of Water Resources Proposed Chichiltah-Vanderwagen Community Water System Project Right-of-Way (ROW)**.

Based on the EA addendum, the new action indicates the water supply wells would each require about a 200 x 200-foot well pad, fence, gravel or dirt driveway, waterline, and power line. The proposed supply waterlines for the wells would consist of approximately 1.7 miles of additional 2- to 4-inch diameter polyvinyl chloride pipe to be installed within a 30-foot ROW, for an additional waterline ROW of 6.2 acres. The water tank site would require approximately 4.50-acre easement to install up to a 1,000,000-gallon steel distribution tank and water chlorination treatment and pumphouse building within an approximately 1-acre fenced area. The project would also include installation of 1.3 miles of power lines in a 30-foot ROW (4.7 acres) to provide power to the wells and the treatment and pumphouse building on Navajo Tribal Trust Land.

The water supply wells are listed as follows: Chichiltah Well 1 footage is a total of 38,429±SQ.FT., encompassing 0.88±acres, on Navajo Tribal Trust Land, Chichiltah Well 2 footage is a total of 42,854±SQ. FT, encompassing 0.98±acres, on Navajo Tribal Trust Land, Chichiltah Well 3 footage is a total of 31,712±SQ. FT, encompassing 0.73±acres, on Navajo Tribal Trust Land, Chichiltah Well 4 footage is a total of 36,106±SQ. FT, encompassing 0.83±acres, on Navajo Tribal Trust Land, and Chichiltah Well 5 footage is a total of 38,197±SQ. FT, encompassing 0.88±acres, on Navajo Tribal Trust Land. The proposed easement will consist of approximately 187,298±Square Feet, across Navajo Nation Trust Land, encompassing 4.30±Square Acres.

The proposed supply waterlines for the wells would consist of approximately 1.7 miles of additional 2- to 4-inch diameter polyvinyl chloride pipe to be installed within a 30-foot ROW, for an additional waterline ROW of 6.2 acres.

The water tank site would require approximately 4.50-acre easement to install up to a 1,000,000-gallon steel distribution tank and water chlorination treatment and pumphouse building, within an approximately 1-acre fenced area located on Navajo Fee Land, which Bureau of Indian Affairs, Navajo Regional Office has no jurisdiction over.

The project would also include installation of 1.3 miles of power lines with up to a 30-foot ROW (4.7 acres) to provide power to the wells and treatment and pumphouse building on Navajo Tribal Trust Land totals. The power lines would be constructed, owned, and operated by Continental Divide Electric Cooperative (CDEC) as extensions to existing CDEC power line distribution networks in the Vanderwagen area.

The total area of disturbance would be approximately 15.5 acres for the water supply wells, additional waterlines, power line extensions, and associated infrastructure in addition to the 99 acres for the original water distribution pipeline proposed action, totaling about 119 acres. The completed water supply wells, waterlines, and powerline would be a part of the Chichiltah-Vanderwagen Community Water System that would initially be constructed by the Navajo Nation but transferred to NTUA for operation and maintenance. The table that is provided by BRIC Environmental indicates the total acreage for the project is **20.0 acres** (EA, Table 2: Alternatives). The Bureau of Indian Affairs, Navajo Region does not have jurisdiction over Navajo Tribal Fee Land. The BIA is not approving 4.5 Acres of an easement for the Water Storage Tank and Water Pump House. The impacted area under the jurisdiction of the Bureau of Indian Affairs, Navajo Regional Office (BIA, NRO) would be 15.5±acres.

In accordance with Section 102 (2) (c) of the National Environmental Policy Act (NEPA) of 1969, as amended, and the Council of Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500-1508), the BIA, NRO, finds that the Proposed Action is not a major federal action that will significantly impact the quality of the human environment. Therefore, an Environmental Impact Statement is not required for implementing the Proposed Action. This Finding of No Significant Impact is supported by the EA and the supporting appendices and documents.

If you have questions, you may contact Mr. Leonard Notah, Supervisory Environmental Protection Specialist at (505) 863-82873.

Sincerely,

**GREGORY
MEHOJAH**

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Gregory C. Mehojah
Regional Director

Enclosure

**ADDENDUM TO
ENVIRONMENTAL ASSESSMENT AND
FINDING OF NO SIGNIFICANT IMPACT EA-22-122621-1**

**NAVAJO NATION DEPARTMENT of WATER RESOURCES PROPOSED
CHICHILTAH-VANDERWAGEN COMMUNITY WATER SYSTEM PROJECT
RIGHT-OF-WAY (ROW)**

NAVAJO NATION DEPARTMENT OF WATER RESOURCES

**Location: Pinehaven, Vanderwagen, Vanderwagen Draw and Horsehead Canyon NW
USGS 24k quadrangles**

NTTL Sections 9, 10, 17, 18, 19, 20, 28-34 T12N, R18W, USGS 24k quadrangles

NTTL Sections 25, 35, 36 T12N, R19W, NMPM

NTTL Sections 1, 2, 11, 12 T11N, R19W, NMPM

NTTL Sections 6, T11N, R18W, NMPM

NAL Sections 20, T12N, R18W, NMPM

NAL, NW ¼ of Section 21, T12N, R18W, NMPM.

NAL Sections 24, T12N, R19W, NMPM

NAL Sections 2, T11N, R19W, NMPM

NAL Sections 6, T11N, R18W, NMPM

McKinley County, New Mexico

This addendum serves to notify the Navajo people, public and the Navajo Nation Government that additional information about EA-19-35184, the previously approved Navajo Nation Department of Water Resources (NNDWR) proposed a water distribution system and Septic Tank installation Right-of-Way, was received by the Navajo Regional Office. The project EA-19-35184, was revisited to incorporate the new information.

Background:

Originally, in EA-19-35184, the Navajo Nation Department of Water Resources (NNDWR) proposed a water distribution system and septic tank installation for basic sanitation needs. The proposed ROW will consist of approximately 118,113.6 feet with a 30-foot corridor width for a total of Phase One and Phase Two being 19.44± miles across Tribal Trust Land, total of Phase One and Phase Two being 2.93 ± miles across Navajo Allotment Land with a total of 86.4±acres across Tribal trust land and Navajo Allotment Land. (EA-19-35184)

The Finding of No Significant Impact (FONSI) previously issued for (EA-19-35184) also applies to the current proposed action which will not have a significant impact on the quality of the natural and human environment. An environmental impact statement for the proposed project is not required. This project is located near the town of Vanderwagen in the Chichiltah Chapter in McKinley County, New Mexico.

Based on the EA addendum, the new action indicates the water supply wells would each require about a 200 x 200-foot well pad, fence, gravel or dirt driveway, waterline, and power line. The proposed supply waterlines for the wells would consist of approximately 1.7 miles of additional

2- to 4-inch diameter polyvinyl chloride pipe to be installed within a 30-foot ROW, for an additional waterline ROW of 6.2 acres, The water tank site would require approximately 4.50-acre easement to install up to a 1,000,000-gallon steel distribution tank and water chlorination treatment and pumphouse building within an approximately 1-acre fenced area. The project would also include installation of 1.3 miles of power lines in a 30-foot ROW (4.7 acres) to provide power to the wells and the treatment and pumphouse building on Navajo Tribal Trust Land.

The water supply wells are listed as follows: Chichiltah Well 1 footage is a total of 38,429±SQ.FT., encompassing 0.88±acres, on Navajo Tribal Trust Land, Chichiltah Well 2 footage is a total of 42, 854±SQ. FT, encompassing 0.98±acres, on Navajo Tribal Trust Land, Chichiltah Well 3 footage is a total of 31,712±SQ. FT, encompassing 0.73±acres, on Navajo Tribal Trust Land, Chichiltah Well 4 footage is a total of 36,106±SQ. FT, encompassing 0.83±acres, on Navajo Tribal Trust Land, and Chichiltah Well 5 footage is a total of 38,197±SQ. FT, encompassing 0.88±acres, on Navajo Tribal Trust Land. The proposed easement will consist of approximately 187,298±Square Feet, across Navajo Nation Trust Land, encompassing 4.30±Square Acres.

The proposed supply waterlines for the wells would consist of approximately 1.7 miles of additional 2- to 4-inch diameter polyvinyl chloride pipe to be installed within a 30-foot ROW, for an additional waterline ROW of 6.2 acres,

The water tank site would require approximately 4.50-acre easement to install up to a 1,000,000-gallon steel distribution tank and water chlorination treatment and pumphouse building, within an approximately 1-acre fenced area located on Navajo Fee Land, which BIA, NRO has no jurisdiction over.

The project would also include installation of 1.3 miles of power lines with up to a 30-foot ROW (4.7 acres) to provide power to the wells and treatment and pumphouse building on Navajo Tribal Trust Land totals. The power lines would be constructed, owned, and operated by Continental Divide Electric Cooperative (CDEC) as extensions to existing CDEC power line distribution networks in the Vanderwagen area.

The total area of disturbance would be approximately 15.5 acres for the water supply wells, additional waterlines, power line extensions, and associated infrastructure in addition to the 99 acres for the original water distribution pipeline proposed action, totaling about 119 acres. The completed water supply wells, waterlines, and powerline would be a part of the Chichiltah-Vanderwagen Community Water System that would initially be constructed by the Navajo Nation but transferred to Navajo Tribal Utility Authority (NTUA) for operation and maintenance. The table that is provided by BRIC Environmental indicates the total acreage for the project is **20.0 acres** (EA, Table 2: Alternatives). The BIA, NRO does not have jurisdiction over Navajo Tribal Fee Land. The BIA is not approving 4.5 Acres of an easement for the Water Storage Tank and Water Pump House. The impacted area under the jurisdiction of the BIA, NRO would be 15.5±acres.

This determination is supported by the following findings:

1. **Beneficial and adverse environmental impacts:** The EA demonstrates that there will be no significant adverse or beneficial impacts on the quality of the human environment, including: General Topography/Surface Geology; Air Resources; Water Quality – Surface & Groundwater; Soils; Hazardous & Solid Waste Materials; Land Tenure & Use; Vegetation &

Forestry; Invasive, Non-Native Species; Wildlife; Threatened, Endangered, and Special Status Species; Visual Resources; Cultural Resources; Public Health & Safety; and Noise.

2. **Public health and safety:** There will be no impact to public health and safety. Construction will take place outside of the highway ROW and it will not impede traffic. The open cut trenches and burying of them would occur concurrently to minimize impacts to health and safety of the residents and public. Direct and indirect effects to public health and safety would be minor and short term with adherence to Occupational Safety and Health Administration regulations and implementing best management practices. (EA Section 4.8.3 Public Health and Safety). Overall, the effects on public health and safety of the community will improve with the installation of water lines and will bring much needed water to local communities. The project will also include installation of on-site wastewater facilities (septic systems) which are within a 200-foot radius of each homesite. The septic systems will be installed and covered on the same day eliminating any safety concerns for open pits resulting in falls.
3. **Clean Water Act (CWA) Compliance:** When a project spans, crosses or results in work in a river bed, stream bed or wetland, permits from the U.S. Army Corps of Engineers and/or the Navajo Nation Environmental Protection Agency (NNEPA), Water Quality Program may be required, including: Section 401, Water Quality Certification; Section 402(p), Storm Water Pollution Prevention Plan, if the project activity will disturb surfaces of ½ acre or more; and Section 404, Permit for Discharge of Dredge or Fill Material into Waters of the US. The applicant shall submit and obtain approval for all required applications prior to construction. The applicant shall adhere to all mitigation measures and strategies developed with the U.S. Army Corps of Engineers and the NNEPA: Grading, excavating, and trenching of the soils and bedrock are part of the proposed action. In disturbed areas, storm water run-off from a non-stabilized construction site can pick up trash, debris, sediments, loose soils, and pollutants such as oil, grease, and other toxins, from the construction site and deposit them into nearby washes. Under Section 402 of the CWA, the proposed project requires coverage under an NPDES permit to prevent impacts to water quality. With this mitigation measure, the impact to water resources will be negligible to minor, and short-term. NNDWR and NTUA will identify best management practices to prevent construction site surface runoff from depositing into washes, develop a Stormwater Pollution Prevention Plan (SWPPP), and obtain coverage under a NPDES permit from USEPA (EA Section 4.2 Water Resources). The NNDWR and the NTUA will consult with the ACOE and the Navajo Nation EPA for consultation to ensure the proper permits are obtained prior to construction.
4. **Unique characteristics of the geographic area:** The project area is not unique within its geographical setting and is like other areas in the region. There are no prime farmlands, wild and scenic rivers, wilderness areas, refuges, park lands, unique ecological areas, or other unique or rare characteristics of the land and aquatic environs that will be significantly affected.
5. **Degree to which the effects on the quality of the human environment are likely to be highly controversial:** The project activities will be limited to the inner boundaries of the ROW and there are no public health and safety facilities or wilderness areas adjacent to the project site. Therefore, there will be no effect on these resources.

6. **Degree to which the effects are highly uncertain or involve unique or unknown risks:** There are no known effects on the human environment that are highly uncertain or involve unique or unknown risks.
7. **Degree to which this action will establish a precedent for future actions with significant effects:** This project will not set a precedent for similar projects that may be implemented by the BIA or other agencies.
8. **Relationship to other actions with cumulatively significant impacts:** There are no known incremental effects of the action that become significant when added to other past, present, or reasonably foreseeable future actions that have affected, or will affect, the project area.
9. **Degree to which the action may affect districts, sites, objects, or structures listed on, or eligible for, the National Register of Historic Places, or may cause loss of significant cultural resources:** The Navajo Nation Historic Preservation Department (NNHPD) issued a Cultural Resources Compliance Form (CRCF) with NNHPD No. HPD-18-131 on September 19, 2018, approving the project with no conditions of compliance.

EFFECT/CONDITIONS OF COMPLIANCE: No Adverse effect on historic properties provided that the following conditions are adhered to:

Sites NM-Q-50-50, NM-Q-50-51, NM-Q-50-53, NM-Q-50-56, NM-Q-50-57, NM-Q-51-3, NM-Q-51-4, NM-Q-51-5, NM-Q-51-7, NM-Q-51-9, NM-Q-47-58/, NM-Q-50-59, NM-Q-50-60, NM-Q-50-64, NM-Q-50-67, NM-Q-50-70

1. SITE PROTECTION & EMPLOYEE EDUCATION:

All employees of the project, including the project sponsor and its contractors/sub-contractors will be informed that cultural sites are to be avoided by all personnel, vehicles & company equipment. They will also be notified that it is illegal to collect, damage, or disturb cultural resources and that such activities are punishable by criminal and/or administrative penalties under the provision of the Archaeological Resource Protection Act and the Navajo Nation Cultural Resources Protection Act.

2. AVOIDANCE:

- The waterline ROW were redesigned to avoid the sites
- The original right-of-way will be abandoned
- All ground disturbing activities & waterline installation will be conducted within the new right-of-way

Sites NM-Q-50-52, NM-Q-50-4, NM-Q-51-6, NM-Q-46-20, NM-Q-50-65, NM-Q-50-4, NM-Q-50-68, NM-Q-50-69, NM-Q-50-71:

1. SITE PROTECTION & EMPLOYEE EDUCATION:

All employees of the project, including the project sponsor and its contractors/sub-contractors will be informed that cultural sites are to be avoided by all personnel, vehicles & company equipment. They will also be notified that it is illegal to collect, damage, or disturb cultural resources and that such activities are punishable by criminal and/or administrative penalties under the provision of the Archaeological Resource Protection Act and the Navajo Nation Cultural Resources Protection Act.

2. SITE PROTECTION BARRIER:

- Temporary site protection barriers will be erected prior to construction. Barriers will remain in place throughout construction and shall be promptly removed after the project is completed.
- The barrier will be placed as directed by a qualified archaeologist.
- There will be no surface-disturbing activities or vehicle traffic past the barrier.

3. ARCHAEOLOGICAL MONITORING IS REQUIRED:

A copy of these stipulations will be supplied to the archaeological monitor prior to the start of construction activities. No construction, including vegetation removal may begin before the arrival of the monitor.

The monitor will:

- Ensure that site protection barriers are located as indicated on the site maps in the vicinity of all the sites listed above.
- Observe all surface disturbing activities within 50-ft of the sites.
- Submit a report of the monitoring activities within 30-days of completing monitoring activities unless other arrangements are made with NNHPD.

Sites NM-Q-50-55, NM-Q-50-58, NM-Q-51-8, NM-Q-50-61, NM-Q-50-62, NM-Q-50-63, NM-Q-47-3:

There are no stipulations for these sites. Project may proceed in these areas.

NNHPD issued a CRCF with NNHPD No. HPD-20-1004 on May 03, 2021, approving the project with no conditions of compliance.

1. SITE PROTECTION & EMPLOYEE EDUCATION:

All employees of the project, including the project sponsor and its contractors/sub-contractors will be informed that cultural sites are to be avoided by all personnel, vehicles & company equipment. They will also be notified that it is illegal to collect, damage, or disturb cultural resources and that such activities are punishable by criminal and/or administrative penalties under the provision of the Archaeological Resource Protection Act and the Navajo Nation Cultural Resources Protection Act.

EFFECT/CONDITIONS OF COMPLIANCE: No Adverse effect on historic properties provided that the following conditions are adhered to:

Sites NM-Q-51-10, NM-Q-51-11;

1. Site Protection Barrier:

- A qualified archaeologist will erect temporary site protection barriers before construction delineating site boundaries. The barrier will consist of flagging spaced no more than 10-ft apart.
- Barriers will remain in place throughout construction & removed after project completion, as directed by a qualified archaeologist.
- There will be no surface-disturbing activities or vehicle traffic past the barrier.

2. Restricted Access:

- All vehicular traffic will remain on pre-established roads. There will be no improvement to the existing roads.
- There will be no mechanical blading or construction of new roads within site boundaries.
- All construction/ground-disturbing activities will avoid the sites by a minimum of 50-ft from the site boundaries.

3. Conditional Stipulations:

- The site will be avoided by a minimum of 50-ft from the established site boundaries.
- There will be no ground disturbance within the site boundaries.
- SMA Engineers designed revised the waterline route to avoid the sites.

4. Archaeological Monitoring is Required:

- The sponsor will provide a copy of these stipulations to the archaeological monitor before the start of construction activities. No construction, including vegetation removal may begin before the arrival of the monitor.

The monitor will:

- Obtain a Class C Permit before monitoring activities begin.
- Ensure the site protection barriers are visible.
- Observe disturbing surface activities within 50-ft of the site.
- Submit a report of the monitoring activities within 30-days of completing monitoring activities unless other arrangements are made with NNHPD.

5. Future maintenance:

- All maintenance activities will be avoiding the site.
- All maintenance activities will follow the stipulations outlined in this document.

Site NM-Q-51-12

1. Site Protection Barrier:

- A qualified archaeologist will erect temporary site protection barriers before construction delineating site boundaries. The barrier will consist of flagging spaced no more than 10-ft apart.
- Barriers will remain in place throughout construction & removed after project completion.
- There will be no surface-disturbing activities or vehicle traffic past the barrier.

2. Restricted Access:

- All vehicular traffic will remain on pre-established roads. There will be no improvement to the existing roads.
- There will be no mechanical blading or construction of new roads within site boundaries.
- All construction/ground-disturbing activities will avoid the sites by a minimum of 50-ft from the site boundaries.

3. Conditional Stipulations:

- The site will be avoided by a minimum of 50-ft from the established site boundaries.
- There will be no ground disturbance within the site boundaries.

4. Archaeological Monitoring is Required:

- The sponsor will provide a copy of these stipulations to the archaeological monitor before the start of construction activities. No construction, including vegetation removal may begin before the arrival of the monitor.

The monitor will:

- Obtain a Class C Permit before monitoring activities begin.
- Ensure the site protection barriers are visible.
- Observe disturbing surface activities within 50-ft of the site.
- Submit a report of the monitoring activities within 30-days of completing monitoring activities unless other arrangements are made with NNHPD.

5. Site Testing:

If site is to be impacted, NNHPD will be consulted, and a site testing plan designed to determine site eligibility.

6. Future maintenance:

- All maintenance activities will be avoiding the site.
- All maintenance activities will follow the stipulations outlined in this document.

Sites NM-G-46-27

No further work is required at this site.

In the event of a discovery [“discovery” means any previously unidentified or incorrectly identified cultural resources including but not limited to archaeological deposits, human remains, or locations reportedly associated with Native American religious/traditional beliefs or practices], all operations in the immediate vicinity of the discovery must cease, and the NNHPD must be notified at (928)871-7198.

- 10. Degree to which the action may affect threatened, endangered, or sensitive species or their habitat:** A Biological Resources Compliance Form (BRCF) with NNDFW Review No. 17em106, was issued by the Navajo Nation Department of Fish and Wildlife (NNDFW) on September 18, 2018, approving the proposed action with no avoidance/mitigation measures and conditions of compliance.

A Biological Resources Compliance Form (BRCF) with NNDFW Review No. 21bric101, was issued by the NNDFW on November 9, 2021, approving the proposed action with no avoidance/mitigation measures and conditions of compliance.

AVOIDANCE/MITIGATION MEASURES:

1. All construction activities should avoid the migratory bird breeding season (March1-August15, of any year). A pre-construction survey of migratory bird nest could be performed if work occurs during this period.
2. All areas disturbed by the construction of the project shall be revegetated with a locally appropriate (i.e., native) seed mix that is free of invasive, noxious, and undesirable plant species. Revegetation of the disturbed areas shall also include proper watering, mulching/straw, and erosion controls so that the post construction areas is restored to suitable wildlife habitat.
3. All above ground utility poles shall conform to a design standard(s) that comply with the Raptor Electrocution Prevention Regulations, RCS-43-08, September 10, 2008, to avoid unintentional electrocution of raptors that may perch on the utility pole.

Waterline construction and vegetation removal shall be scheduled outside the Migratory Bird breeding season of 01 APR-15 AUG. If the breeding season cannot be avoided, surveys will precede construction and vegetation removal. The NNDFW recommends a survey buffer of 50 meters outside the edge of disturbance for non-endangered migratory birds. Removal or disturbing of nesting habitat (i.e., trees & shrubs) shall not be allowed within 50 meters of an active nest during incubation to fledging.

- 11. Whether the action violates Federal or local laws or requirements imposed for the protection of the environment:** The proposed project will not violate any Federal or Tribal environmental laws or requirements.
- 12. Indian Trust Assets:** The Navajo Nation Woodland Inventory Analysis Report (1986-1991 measurement) estimates there is 521.14 cubic feet of woodland forest products per acre within the Chichiltah Chapter area. These woodlands are comprised of Gambel Oak (*Quercus gambelii*), juniper (*Juniperus* spp.) and pinyon pine (*Pinus edulis*) trees. In addition,

ponderosa pine (*Pinus ponderosa*) and other timber species may be present within the project area. The site produces approximately 6.80 cubic feet of woodland forest products per acre per year. Timber forest products are estimated to be 69.90 board feet per acre.

If juniper, or pinyon pine, or any other forest product is identified within the ROW of the proposed waterline project area will be inventoried and appraised in accordance to the Navajo Nation Forest and Woodland Regulations (RCMA-48-01), Part 53 Indian Affairs Manual Chapter 3 - Harvest of Forest Products, and 25 Code of Federal Regulation Part 163. It is anticipated the stumpage (appraised fair market value minus the cost to harvest/transport/implement mitigation requirements) to be less than \$25,000.00 due to the small size of the proposed project area.

A forest harvesting permit and/or contract will be issued on Tribal Trust Land and Indian Allotments. Forest products will be harvested in accordance with all applicable Tribal and Federal laws and regulations regarding forest product harvesting (e.g., RCMA-48-01, 25 CFR Part 163).

The approval of the requested use area would have no effect on the resource use patterns in the project area.

13. **Climate Change, its effects on the proposed action and its environmental impacts:** The lack of scientific tools designed to predict climate change on regional or local scales limited the ability to quantify potential future impacts on proposed project.

CONCLUSION

The BIA has determined that approving this lease will not result in significant environmental impacts on the human environment that would merit preparation of an environmental impact statement.

GREGORY
MEHOJAH

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Gregory C. Mehojah
Regional Director, Navajo
Bureau of Indian Affairs
U.S. Department of the Interior

Date

**Navajo Department of Agriculture
Re-seeding Requirements**

Navajo Department of Agriculture Re-seeding Requirements

Prepared by: Judy R. Willetto, Range Conservationist
Navajo Department of Agriculture - Ft. Defiance A.O.
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Telephone (602) 871-7076
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Revision Date: December 6, 1994

NAVAJO TRIBAL UTILITY AUTHORITY VEGETATIVE RECLAMATION FOR PIPELINE AND POWERLINE R.O.W.

PIPELINE (GAS, WATER, SEWAGE, ETC.)

Site Description #1

Grasses and Grasslike: Blue Gramma, Western Wheatgrass, Needle and Thread,
Bottlebrush Squirreltail, etc.
Shrubs and Trees: Pinyon Pine, Juniper, Sagebrush, Rabbitbrush
Soils: Loam, Clay Loam, Sandy Loam, Sandy Clay Loam

Preparation of Site

Prior to excavation of the pipeline trench, the top 6 inches of topsoil in right of way will be removed and saved for further use to reclaim pipeline right of way. The saved topsoil will be stockpiled far enough away from the trench and line of work so, as not be damaged. After the topsoil has been stockpiled, trenching, ripping, etc. can begin.

Restoration

Pipeline trench will be filled with excavated material, the impacted of affected area within the right of way will be smoothed evenly with the topography of the land. The saved topsoil will then be placed over smoothed right of way. Right of way will then be reseeded with the following seed mixture; TABLE A-1

TABLE A-1

Species	Cultivar	Lbs PLS/Acre
Western Wheatgrass	Arriba	3.0
Streambank Wheatgrass		2.0
Intermediate Wheatgrass	Oahe	3.0
Indian Rice Grass	Paloma	2.0
Blue Grama		2.0
Sideoats Grama		2.0
Little Bluestem		2.0
Rocky Mountain Penstemon		1.0
TOTAL POUNDS PLS PER ACRE		16.0

* PLS - Pure Live Seed

Site Description #2

Grasses and Grasslike: Western Wheatgrass, Blue Grama
Shrubs and Trees: Ponderosa Pine, Douglas fir, Blue Spruce
Soils: Loam, Clay, Clay Loam

Preparation of Site

Prior to excavation of the pipeline trench, the top 6 inches of topsoil in in right of way will be removed and saved for further use to reclaim pipeline right of way. The saved topsoil will be stockpiled far enough away from the trench and line of work so, as not be be damaged. After the topsoil has been stockpiled, trenching, ripping, etc. can begin.

Restoration

Pipeline trench will be filled with excavated material, right of way will be smoothed evenly with the topography of the land. The saved topsoil will then be placed over smoothed right of way. Right of way will then be reseeded with the following seed mixture; TABLE A-2

TABLE A-2

Species	Cultivar	Lbs PLS/Acre
Western Wheatgrass	Arriba	3.0
Streambank Wheatgrass		2.0
Intermediate Wheatgrass	Oahe	3.0
Indian Rice Grass	Paloma	2.0
Blue Grama		2.0
Sideoats Grama		2.0
Little Bluestem		2.0
Rocky Mountain Penstemon		1.0
TOTAL POUNDS PLS PER ACRE		16.0

Description #3 (ND-1)

Grasses and Grasslike: Alkali Sacaton, Galleta, Sand Dropseed, Threeawn
Shrubs and Trees: Fourwing Saltbush, Shadscale, Greasewood
Soils: Sand, Sandy Loam

Preparation of Site

Prior to excavation of the pipeline trench, top 6 inches of topsoil in in right of way will be removed and saved for further use to reclaim pipeline right of way. The topsoil will be stockpiled far enough away from the trench and line of work so, as not be be damaged. After the topsoil has been stockpiled, trenching, ripping, etc. can begin.

Restoration

Pipeline trench will be filled with excavated material, right of way will be smoothed evenly with the topography of the land. Topsoil will then be placed

over smoothed right of way. Right of way will then be reseeded with the following seed mixture; TABLE A-3

TABLE A-3

Species	Cultivar	Lbs PLS/Acre
Alkali Sacaton		1.5
Indian Rice Grass	Paloma	2.0
Galleta	Viva	1.5
Sand Dropseed		2.0
Fourwing Saltbush		2.0
Shadscale		2.0
Western Wheatgrass	Arriba	3.0
Penstemon	Bandera	1.0
TOTAL POUNDS PLS PER ACRE		15.0

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Powerline (Electical)

Site Description #1

Grasses and Grasslike: Blue Gramma, Western Wheatgrass, Needle and Thread, Bottlebrush Squirraltail, etc.

Shrubs and Trees: Pinyon Pine, Juniper, Sagebrush, Rabbitbrush

Soils: Loam, Clay Loam, Sandy Loam, Sandy Clay Loam

Preparation of Site (Extensive Impact)

Prior to excavation to install overhead powerlines with utility poles, the top six 6 inches of topsoil in the right of way will be removed and saved for further use to reclaim area. The saved topsoil will be stockpiled at an adequate distance away from worksite, to prevent usage until initial reclamation begins. Stockpiled topsoil will be specifically used for reclamation purposes, at no time will the topsoil be used as fill material to stabilize utility posts/poles.

Restoration

Utility poles with overhead powerlines have been installed, poles have been stabilized securely, area will be smooth to match the surrounding topography. After area has been smoothed, topsoil will be replaced and evenly spread over the right of way. The right of way will then be mechanically drilled seeded or under close supervision an (ATV) All Terrain Vehicles with seeding mount will be used. The right of way will be reseeded with the following seed mixture; TABLE B-1

TABLE B-1

Species		Lbs PLS/1000 sq.ft.
Western Wheatgrass	Arriba	1.0
Streambank Wheatgrass		1.0
Intermediate Wheatgrass	Oahe	1.0
Indian Rice Grass	Paloma	1.0
Blue Grama		1.0
TOTAL POUNDS PLS PER 1000 SQUARE FEET		5.0

Preparation of Site (Minimal Impact)

Prior to excavation and installation of utility posts/poles with overhead powerlines, the top (6) six inches of topsoil around post/pole location will be removed and stockpiled for later use to reclaim area. Stockpiled topsoil will be kept away from worksite, at a distance where it will not be damaged or mixed in with fill material to stabilize utility post/pole. Since reclamation will focus 10 to 30 feet in diameter around the utility post/pole this plan will be used only for minimal impacts, where a the entire right of way is not affected by construction. -

Restoration

Upon installation of of the utility post/poles and overhead powerlines the affected area will be smoothed evenly to match the topography of the field. After smoothing the stockpiled topsoil will be placed evenly over affected or impacted area. The area will then hand seeded (Broadcasted) and manually raked into the soil. Do not leave seed without raking into soil, it will blow away, birds will feed on seed, etc. Specify to field staff the importance of manually raking to secure seed into the ground. Do not over rake and deep bury seed, this will result in low or no germination of the seed. Seed needs to be placed in the top one (1) inch of the soil. The following broadcast seed mixture will be used on this area; TABLE B-1

TABLE B-1

Species		Lbs PLS/100 sq.ft.
Western Wheatgrass	Arriba	1.0
Streambank Wheatgrass		1.0
Intermediate Wheatgrass	Oahe	1.0
Indian Rice Grass	Paloma	1.0
Blue Grama		1.0
TOTAL POUNDS PLS PER 1000 SQUARE FEET		5.0

Site Description #2

Grasses and Grasslike: Western Wheatgrass, Blue Grama
Shrubs and Trees: Ponderosa Pine, Douglas fir, Blue Spruce
Soils: Loam, Clay, Clay Loam

Preparation of Site (Extensive Impact)

Prior to excavation to install overhead powerlines with utility poles, the top six (6) inches of topsoil in the right of way will be removed and stockpiled for further use to reclaim area. The topsoil will be stockpiled at an adequate distance away from worksite, to prevent usage until initial reclamation begins. Stockpiled topsoil will be specifically used for reclamation purposes, at no time will the topsoil be used as fill material to stabilize utility posts/poles.

Restoration

Utility poles with overhead powerlines have been installed, poles have been stabilized securely, area will be smoothed to match the surrounding topography. After area has been smoothed, topsoil will be replaced and evenly spread over the right of way. The right of way will then be mechanically drilled seeded or under close supervision an (ATV) All Terrain Vehicles with seeding mount will be used. The right of way will be reseeded with the following seed mixture; TABLE B-1

TABLE B-1

Species		Lbs PLS/1000 sq.ft.
Western Wheatgrass	Arriba	1.0
Streambank Wheatgrass		1.0
Intermediate Wheatgrass	Oahe	1.0
Indian Rice Grass	Paloma	1.0
Blue Grama		1.0
TOTAL POUNDS PLS PER 1000 SQUARE FEET		5.0

Preparation of Site (Minimal Impact)

Prior to excavation and installation of utility posts/poles with overhead powerlines, the top (6) six inches of topsoil around post/pole location will be removed and stockpiled for later use to reclaim area. Stockpiled topsoil will be kept away from worksite, at a distance where it will not be damaged or mixed in with fill material to stabilize utility post/pole. Since reclamation will focus 10 to 30 feet in diameter around the utility post/pole this plan will be used only for minimal impacts, where a the entire right of way is not affected by construction.

Restoration

Upon installation of of the utility post/poles and overhead powerlines the affected area will be smoothed evenly to match the topography of the field. After smoothing the stockpiled topsoil will be placed evenly over affected or impacted area. The area will then hand seeded (Broadcasted) and manually raked

into the soil. Do not leave seed without raking into soil, it will blow way, birds will feed on seed, etc. Specify to field staff the importance of manually raking to secure seed into the ground. Do not over rake and bury seed, this will result in low or no germination of the seed. Seed needs to be placed in the top inch of the soil. The following broadcast seed mixture will be used on this area; TABLE B-1

TABLE B-1

Species		Lbs PLS/1000 sq.ft.
Western Wheatgrass	Arriba	1.0
Streambank Wheatgrass	Sodar	1.0
Intermediate Wheatgrass	Oahe	1.0
Indian Rice Grass	Paloma	1.0
Blue Grama		1.0
TOTAL POUNDS PLS PER 1000 SQUARE FEET		5.0

Description #3

Grasses and Grasslike: Alkali Sacaton, Galleta, Sand Dropseed, Threeawn
 Shrubs and Trees: Fourwing Saltbush, Shadscale, Greasewood
 Soils: Sand, Sandy Loam

Preparation of Site (Extensive Impact)

Prior to excavation to install overhead powerlines with utility poles, the top six (6) inches of topsoil in the right of way will be removed and stockpiled for further use to reclaim area. The topsoil will be stockpiled at an adequate distance away from worksite, to prevent usage, until initial reclamation begins. Stockpiled topsoil will be specifically used for reclamation purposes, at no time will the topsoil be used as fill material to stabilize utility posts/poles.

Restoration

Utility poles with overhead powerlines have been installed, poles have been stabilized securely, area will be smooth to match the surrounding topography. After area has been smoothed, topsoil will be replaced and evenly spread over the right of way. The right of way will then be mechanically drilled seeded or under close supervision an (ATV) All Terrain Vehicles with seeding mount will be used. The right of way will be reseeded with the following seed mixture; TABLE B-2

TABLE B-2

Species		Lbs PLS/1000 sq.ft.
Alkali Sacaton		1.0
Indian Rice Grass	Paloma	1.0
Galleta	Viva	1.0
Western Wheatgrass	Arriba	2.0
TOTAL POUNDS PLS PER 1000 SQUARE FEET		5.0

Preparation of Site (Minimal Impact)

Prior to excavation and installation of utility posts/poles with overhead powerlines, the top (6) six inches of topsoil around post/pole location will be removed and stockpiled for later use to reclaim area. Stockpiled topsoil will be kept away from worksite, at a distance where it will not be damaged or mixed in with fill material to stabilize utility post/pole. Since reclamation will focus 10 to 30 feet in diameter around the utility post/pole this plan will be used only for minimal impacts, where a the entire right of way is not affected by construction.

Restoration

Upon installation of of the utility post/poles and overhead powerlines the affected area will be smoothed evenly to match the topography of the field. After smoothing the stockpiled topsoil will be placed evenly over affected or imapcted area. The area will then hand seeded (Broadcasted) and manually raked into the soil. Do not leave seed without raking into soil, it will blow way, birds will feed on seed, etc. Specify to field staff the importance of manually raking to secure seed into the ground. Do not over rake and bury seed, this will result in low or no germination of the seed. Seed needs to be placed in the top inch of the soil. The following broadcast seed mixture will be used on this area; TABLE B-2

TABLE B-2

Species		Lbs PLS/1000 sq.ft.
Alkali Sacaton		1.0
Indian Rice Grass	Paloma	1.0
Galleta	Viva	1.0
Western Wheatgrass	Arriba	3.0
TOTAL POUNDS PLS PER 1000 SQUARE FEET		5.0

Special/Other Requirements

Seed

All seed must be certified to ensure viability. Start with quality seed, to achieve quality plantings.

Seeding Dates

Seeding dates in Site Description #1 (WP-1) and Site Description #2 (AN-1) will begin June 15 to August 15. The Navajo Nation in these two sites receives high levels of precipitation after August 15. Our intention is to plant before our monsoon season so, planted seed will receive moisture for proper germination and growth.

Seeding dates for Site Description #3 (ND) will begin November 1 through December 15. Dormant seedings from November to mid December are recommended for Northern Desert, due to the extreme hot temperatures and low precipitation during the summer months. Northern Desert receives most of it's precipitation during the winter in the form of snow.

Mulch

Mulch not recommended, due to the high levels of grazing by livestock. Mulch would attract livestock to the area and possibly cause damage to the reseeding. Mulch is not quality feed for horses and sheep and could also cause them to become ill and die. To avoid livestock fatalities we advise not to mulch.

EXHIBIT A

Submittal Cover Sheet and Submittals Checklist

CONTRACTOR SUBMITTAL FORM

Project Name: Chichiltah-Vanderwagen Water Supply Project	<input type="checkbox"/> M (Materials) <input type="checkbox"/> T (Testing) <input type="checkbox"/> A (Administrative)	Submittal No.
SMA Project No: 6924837		
Date:		
Contractor:	No. of Copies:	

Supplier:	Manufacturer:
Specification No.:	Drawing No.:
Bid Item No(s):	
Submittal Checklist No(s):	
Product Description:	
Are there any deviations from the Contract Documents? <input type="checkbox"/> No <input type="checkbox"/> Yes Explain:	
Contractor's certification that product meets requirements of Contract Documents: <input type="checkbox"/> Certified <input type="checkbox"/> Certified with variations as noted on shop drawings and/or attached sheets.	
Signed:	Date:

Engineer's Comments: <input type="checkbox"/> No Exception Taken <input type="checkbox"/> Approved as Corrected <input type="checkbox"/> Exceptions as Noted <input type="checkbox"/> Submittal Rejected <input type="checkbox"/> Revise and Resubmit to Engineer <input type="checkbox"/> Contractor to Submit Specified Information	<p>Review is limited to check for compliance with design concept. No changes from provisions of Contract Documents are intended and Contractor remains responsible for compliance with revisions therein.</p> <p>The Contractor is solely responsible for quantities; correctness of dimensions; verification of physical interrelation of elements of the work as required by the drawings and specifications and by field determination; fabrication procedures, construction methods, techniques and sequences. This review does not relieve the Contractor from these responsibilities.</p> <p>Non-conformities and errors detected have been noted but such markings, or lack thereof, shall not relieve the Contractor from compliance with all requirements of the contract drawings and specifications.</p>
Signed:	Date:



SUBMITTALS CHECKLIST

Project Name:
Chichiltah-Vanderwagen Water Supply
Project

Project Number: 6924837

Type	No.	Item	Date Received	Date Reviewed	Review Status	Comments
Basic Requirements 01 00 00						
A	1	All required permits not obtained by Owner, incl. 402 flushing permit and State of NM building permits				
A	2	Gas company encroachment agreements				
A	3	Water import permit (if required)				
A	4	Water use permit				
M	5	Line flushing plan, incl. gpm, gpd, hours and dates for flushing, water source, etc.				
A	6	Work Schedule (monthly)				
A	7	Record drawings (monthly)				
A	8	Notification of plan to work within ROW of BIA road				
A	9	Notification of working 100 ft of culturally sensitive area				
A	10	Safety plan				
M	11	Stormwater pollution prevention plan (SWPPP), including plan, permits, BMPs				
A	12	Schedule for manufacturer's start-up and operator training dates				
A	13	NTUA Permission To Tap existing waterline				
A	14	Requests for additional time or extra work (if necessary)				
Basic Concrete Materials and Methods 03 05 00						
M	15	Notification of placing concrete				
M	16	Concrete Form Materials				
M	17	Concrete Form release Agent				
M	18	Concrete Reinforcement				
M	19	Reinforcing Steel Placing Drawings				
M	20	Concrete mix design and batch plant report				
T	21	Concrete delivery tickets				
M	22	Reinforcement inspection report (where needed)				
T	23	Concrete field tests results				
M	24	Cement material				
M	25	Grout Mix Design				
Rough Carpentry 06 10 00						
A	26	Shop Drawings				
M	27	Manufacturer's catalog showing rough hardware				
M	28	Lumber Materials				
M	29	Sheathing Materials				
M	30	Shop Fabricated Trusses				
Bullet Resistant Steel Doors and Frames 08 11 14						
M	31	Shop Drawings				
M	32	Bullet resistant man door, with safety devices, hinges, sight glass, and hardware				
M	33	Components (exterior doors, frames, core, end closure, thermal insulation)				
M	34	Heavy duty hinges				
M	35	Door closers				
M	36	Heavy duty cane bolt and gate stop assembly				
M	37	Finishes				
M	38	Manufacturer's warranty, product data, glazing information, and installation instructions				
Door Hardware 08 71 00						
A	39	Shop Drawings				
A	40	Manufacturer's part list				
A	41	Record actual locations of installed cylinder and master key code				
A	42	Data on operating hardware, lubrication and inspection related to preventative maintenance				
M	43	Hardware (lock, closer, kickplate, gasket, floor stop)				
Protective Anti-Graffiti Coatings 09 92 00						
A	44	Material List				
A	45	Manufacturer's specific application instructions				
A	46	Painter's qualification				
M	47	Anti -Graffiti Coating and Primer				
Water Storage Tank Painting 09 97 14						
A	48	Contractor, Welder, Personnel qualifications				
T	49	Dry Film Thickness Test				
A	50	Color Chart				
M	51	Tank Interior Primer				
M	52	Tank Interior Finish				
M	53	Tank Exterior Primer				
M	54	Tank Exterior Finish				
M	55	Exterior Tank Floor (Underside)				
M	56	Interior Roof Laps				
M	57	Above-Ground Pipes				
M	58	Buried Pipes and Fittings				
T	59	VOC Tests				

Chlorination Facility Plumbing 22 11 05						
A	60	Manufacturers installation instructions				
A	61	Manufacturers certificates				
A	62	Project record documents				
A	63	Operation and Mainatenance data				
M	64	Resilient wedge gate valves				
M	65	Piping - steel, DI, PVC				
M	66	Flanges and fittings - steel, DI, PVC				
M	67	Ball valves - stainless steel				
M	68	Ball valves - ductile iron				
M	69	Ball valves - PVC				
M	70	Check valves				
M	71	Pipe hangers and supports				
M	72	Sleeves				
M	73	Water pressure gauges				
M	74	Electronic Control Valve and valve controller				
M	75	Combination Air valves				
M	76	Pressure relief valves				
M	77	Hose bibs and sample cocks				
M	78	Booster pump - chemical room				
M	80	Hydropneumatic pressure tank				
M	80	Tapping saddles/ sleeves				
M	81	Paint - steel pipe and uncoated ferrous appurtenances				
General Electrical Provisions 26 01 00						
M	82	Materials list				
M	83	Shop drawings				
M	84	Electrical identification				
M	85	Signage				
M	86	Record Drawings				
Control Voltage Electrical Wire and Cables 26 05 23						
M	87	Product data for each type of product indicated				
M	88	Source quality - control report				
M	89	Field quality - control report				
M	90	Communication Cable				
M	88	Paired Cable				
M	91	Control Wire				
T	92	Test Reports				
A	93	Maintenance Data				
Raceways 26 11 00						
M	94	Metal Conduit and Tubing				
M	96	Plastic-coated metal conduit (for chemical room of chlorinator bldg)				
M	96	Fittings				
M	97	Wireways				
M	98	Warning Tape				
Wires and Cables 26 12 00						
M	99	Wires and cables				
M	100	Vertical cable supports				
M	101	Connectors and lugs				
M	102	Tape				
M	103	Circuits				
M	104	Tests and procedures				
Transformers 26 12 16						
M	105	Transformer shop drawings				
M	106	Dry type transformer				
T	107	Field test report				
M	108	Handholes and UG Boxes				
Outlet Boxes 26 13 00						
M	109	Outlet Boxes				
M	110	Pullboxes				
M	111	Wet Area Equipment				
Cabinets 26 13 30						
M	112	Cabinets with locks and ground bar				
Wiring Devices 26 14 00						
M	113	Switches & Occupancy Sensors				
M	114	Receptacles				
M	115	Plug caps				
M	116	Device plates				
M	117	Enclosures				
T	118	Test Reports				
Panelboards 26 16 00						
M	119	Shop drawings				
M	120	Control Panels and Panelboards				
M	121	Cabinets				
M	122	Breakers				
T	123	Test reports				
M	124	Load Center Product Data				
M	125	Protective Device Product Data				

M	126	TVSS Product Data				
M	127	Load Center Shop Drawings				
M	128	Panel Schedules				
Motor and Circuit Disconnects 26 17 00						
M	129	Safety Switches				
M	130	Separately Enclosed Motor Snap Switches				
M	131	Safety Type Disconnecting Switches				
Fuses 26 18 10						
M	132	Product Data for Fuses				
Relays and Contractors 26 19 00						
M	133	Relays and contractors				
M	134	Enclosures				
Chlorinator Instrumentation and Controls 26 27 33.1						
A	135	Cl2 Building Electrical Shop Drawings / Electrical Diagram				
A	136	Catalog data and details				
A	137	Material List/Schedule/Equipment list				
A	138	Maintenance and operating instruction/data				
A	139	Project record documents				
A	140	Manufacturer's installation, calibration and test procedures				
M	141	Magnetic flow meter and pulse transmitter module				
M	142	Pressure transmitter				
M	143	Well pressure transducer				
M	144	Thermostat				
M	145	Intrusion switch				
M	146	Limit switch				
M	147	Pilot lights				
M	148	Control stations				
M	149	Control relays				
M	150	Control power transformers				
M	151	Overcurrent protection				
M	152	Smoke detectors				
T	153	Wiring continuity field test results				
M	154	Spare parts list				
M	155	Warranties and software licenses				
M	156	Antenna Mounting Supports				
A	157	Instrument calibration records				
Impressed Current Cathodic Protection 26 42 10						
M	158	Detailed calculations, drawings and data sizing of cathodic protection system components				
A	159	Minor variation to proposed system for engineer and owner approval				
A	160	Record actual locations of all system component				
A	161	Periodic test procedures				
M	162	Qualifications of company performing work				
M	163	NACE Cathodic Protection Specialist, certified and licensed				
A	164	Certified Operations Report				
M	165	Tank-to-Water Potential Control Devices				
M	166	Monitoring Reference Cells				
M	167	Potential Measurement Openings				
M	168	Elapsed Time Meter				
M	169	Impressed Current Anod Segments				
M	170	Electrical Cable				
M	171	Conduit				
M	172	Reference Cells				
M	173	Cable Connectors				
M	174	Anode Suspension Ropes				
M	175	Anode Cable Routing				
A	176	Cathodic Protection System Service Agreement				
Grounding 26 45 00						
M	177	Grounding Electrodes				
M	178	Grounding Conductors				
M	179	Ground Connections				
T	180	Field QC test reports				
Exterior Lighting 26 56 00						
M	181	Exterior Light Fixtures				
T	182	Test Reports				
A	183	Operation and Maintenance Data				
A	184	Warranty				
Lightning Protection System 26 60 10						
M	185	Shop drawings and plans				
M	186	Air terminal rods				
M	187	Connectors				
M	188	Conductors				
M	189	Ground rods				
M	190	Underwriters Laboratories, Inc. certification				
SCADA Radio Telemetry System 27 43 30						
M	191	Shop drawings				
M	192	Equipment list				
T	193	Source / Field QC test reports				
A	194	O&M data				

M	195	Remote telemetry radios				
M	196	Remote antennas				
M	197	Transmission lines				
M	198	Coaxial transient surge protector				
M	199	SCADA PLC control panel, incl. PLC, HMI, processor, back plane, input module, relay output				
M	200	I/O List				
M	201	PLC/Radio control cabinet				
T	202	Field operational test reports				
Site Clearing 31 10 00						
A	203	Notification to work within 100 ft of designated restricted area (as necessary)				
Rough Grading 31 22 13						
A	204	Samples of each type of fill				
A	205	Material Sources				
A	206	Manufacturers certificates				
A	207	Notification to work within 100 ft of designated restricted area (as necessary)				
Trenching 31 23 17						
A	208	Material Source				
A	209	Manufacturer's Certificate				
A	210	Notification to work within 100 ft of designated restricted area (as necessary)				
Rock Removal 31 23 18						
A	211	Notification of rock to be removed				
M	212	Type of equipment to be used				
M	213	Sieve analyses and geotechnical data (as necessary)				
Backfill 31 23 23						
T	214	Compaction test results				
M	215	Native backfill material				
M	216	Engineered Fill Material				
M	217	Imported backfill material				
T	218	Classification of materials reports/records				
A	219	Manufacturer's Certificate				
Rip Rap and Rock Lining 31 37 00						
M	220	Verification of final quantities, dimensions and locations of riprap				
M	221	Samples of riprap material for inspection				
T	222	Samples of riprap material testing results				
M	223	Rock for wire enclosed riprap (incl. gradation)				
M	224	Rock for uncaged riprap (incl. gradation)				
M	225	Cage materials, incl. wire mesh, selvages, stakes, tie wire, geotextile fabric				
Aggregate Base Course and Gravel 32 11 23						
M	226	Aggregate base course				
M	227	Clean gravel (Class I crushed stone)				
A	228	Material Source				
A	229	Manufacturer's Certificate				
T	230	Field testing of density and moisture content				
Chain Link Fences and Gates 32 31 13						
M	231	Shop drawings (installation plan)				
M	232	Fabric, Posts, Accessories, Fittings and Hardware				
M	233	Fencing Materials				
A	234	Manufacturer and Installer qualifications				
M	235	Swing gates with center stop				
M	236	Finishes				
Farm Style Fencing 32 33 10						
M	237	Posts				
M	238	Wire				
M	239	Concrete				
Seeding 32 92 19						
M	240	Documentation of coordination with NNDA				
M	241	Seed mixtures with certifications				
M	242	Coordination of seeding locations and dates				
M	243	Seeding procedure and dates				
M	244	Fertilizer				
M	245	Protection of seeded areas plan				
Trenchless Utility Installation 33 05 23.16						
M	246	Equipment technical data (sizing, capacity, capabilities, drill bit, and other equipment)				
A	247	Installation plan, incl. proposed construction plan, dewatering plan and plan to establish and maintain horizontal and vertical alignments, pit plans, pipe lay-down and fusion areas, dewatering plans, sequence of operations, method of spoils removal, method of monitoring line and grade, method of detecting surface movement				
A	248	Applicable agency permit for installation (if not obtained by engineer)				
A	249	Contingency plan for unforeseen subsurface conditions, damage to existing utilities, soil heaving or settlement, and other contingencies				
A	250	Manufacturer's Certificate				
A	251	Record actual locations of casing or tunnel liner, carrier pipe, and invert elevations				
A	252	Records of any unexpected subsurface conditions or uncharted utilities discovered				
A	253	Company's work experience and references				
M	254	Casing and Jacking pipe				
M	255	Carrier pipe				
M	256	Cover				

Water Utility Distribution Piping 33 11 00						
M	257	Data on pipe material, fitting, accessories and testing equipment				
A	258	Manufacturer's certificate				
A	259	Testing plan				
M	260	Coating				
A	261	As-built drawings and any Contractor-provided survey data				
A	262	Project record documents				
A	263	Identify and describe unexpected variations or discovery of uncharted utilities				
A	264	Pipe restraint plan				
A	265	Pre-construction site photos/ videos				
M	266	Gasketed PVC pipe. Include factory test results.				
M	267	Petroleum-resistant pipe gaskets				
M	268	Ductile iron pipe, MJ fittings, mechanical joints, TR Flex joints and lockers, MJ restraints, flanged				
M	269	Steel pipe, fittings, and flanges/ gaskets				
M	270	Liquid epoxy coatings for ductile iron pipe and fittings (specify where used)				
M	271	Bituminous coatings for ductile iron pipe and fittings (specify where used)				
M	272	Cement mortar linings for ductile iron pipe and fittings (specify where used)				
M	273	Tapping sleeves and saddles				
M	274	Detectable warning tape				
M	275	Tracer wire				
M	276	Carsonite marker posts				
M	277	Casing (steel & PVC)				
M	278	Casing spacers				
M	279	Casing end seals				
M	280	Petroleum-resistant end seals				
T	281	Hydrostatic pressure testing results				
T	282	Tracer wire testing results				
M	283	Proposed & actual pipe lines and grades (if different from those shown on Plans)				
Water Utility Valves 33 12 16						
A	284	Design data				
A	285	Manufacturer's certificates				
A	286	Project record documents				
A	287	Manufacturer qualifications				
M	301	Resilient wedge gate valve				
M	302	Ball Valves				
M	303	Stainless steel ball valve for combination air valves assemblies				
M	288	Isolation valves for flush valve				
M	289	Valve Actuators				
M	291	1/2" air release valve (pressure transducer vault)				
M	292	Combination air valves				
M	293	Inflow preventer				
M	294	Dismantling joints				
M	295	Valve boxes				
M	296	Meter cans & pits				
M	297	Pre-cast concrete vault				
M	298	Pipe hangers & supports				
M	299	Valve vaults				
M	300	Vault insulation				
M	301	Vault hatch - shallow well				
M	302	Vault hatch				
M	303	Two-way Draft damper				
M	304	Warning Placard for Valve Box Lids - include proof				
M	305	Valve ID placards - include proof				
M	306	Warning placards (gate valve box lids) - include proof				
M	307	Valve ID placards and tags (for air valves) - include proof				
M	308	Blue paint - galvanized steel air vents / surface visible appurtenances				
M	309	Valve coatings				
T	310	Fusion bonded/liquid epoxy coating cure testing				
T	311	Holiday testing results				
T	312	Touch up and repair of fusion bonded epoxy coatings material				
A	313	O&M data				
M	314	Open/shut-off valve tool				
A	315	All valves be manually actuated through full cycle				
A	316	Pressure test results				
A	317	Tracer wire testing results				
Disinfection of Water Utility Transmission Systems 33 13 00						
M	318	Disinfection procedures				
M	319	Disinfection chemicals				
M	320	Proposed number of and location of sampling sites				
T	321	Disinfection testing (Cl2 residual) reports				
T	322	Bacteriological testing results				
A	323	Notification to flush, circulate and clean using domestic water				
A	324	Permission To Tap (must be signed by NTUA prior to connecting to existing system)				
A	325	Testing plan- proposed testing procedures specific to project				
A	326	Test reports				
A	327	Certify cleanliness of water transmission system				
A	328	Disinfection report				
A	329	Notarized affidavit disinfection been completed according to the reference AWWA standard				

A	330	Water Quality Certificate				
A	331	Bacteriologist's signature and authority associated with testing				
Water Storage Tank Disinfection 33 13 13						
M	332	Disinfection procedures				
M	333	Disinfection chemicals				
T	334	Disinfection testing (CI2 residual) reports				
T	335	Bacteriological testing results				
A	336	Manufacturer's certificates				
Welded Steel Water Storage Tank 33 16 19						
A	337	Tank Shop Drawings (PE sealed)				
A	338	Tank Foundation Shop Drawings (PE sealed)				
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Important Note: The items listed on this form require submittal data. However, this list should not be considered all inclusive. If Technical Specifications or the Drawings include other submittal requirements, those must be met as well. Also, the Engineer may require additional submittals beyond those identified above and/or in the Specifications and Drawings.

EXHIBIT B

Geotechnical Investigation Report

Note: The following clarification is made within the Standard General Conditions and Navajo Nation Supplemental Conditions of the Construction Contract (Article 5.03.B) in regard to the “technical data” that may be provided in this Exhibit.

- B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Project Manual [*including as identified in Technical Specifications Section 01 00 00*] with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
1. the completeness of such reports and drawings for Contractor’s purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

TY TSINNIJINNIE

Souder, Miller & Associates

Highway 264 and Window Rock Loop Road

Window Rock, AZ 86515-0519



**SUBSURFACE EXPLORATION AND
GEOTECHNICAL ENGINEERING REPORT**

**CHICHILTAH VANDERWAGEN CWS
GALLUP, NEW MEXICO**

April 12, 2024

INBERG-MILLER ENGINEERS

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23315-ZX



INBERG-MILLER ENGINEERS

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April 12, 2024

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PDF REPORT EMAILED: Ty.Tsinnijinnie@soudermiller.com
THIS CONSTITUTES THE ORIGINAL

Ty Tsinnijinnie
Souder Miller & Associates
Highway 264 and Window Rock Loop Road
Window Rock, Arizona 86515-0519

RE: SUBSURFACE EXPLORATION AND GEOTECHNICAL ENGINEERING REPORT
CHICHILTAH-VANDERWAGEN CWS PROJECT
CHICHILTAH, NEW MEXICO

Dear Ty:

This letter transmits our Subsurface Exploration and Geotechnical Engineering report for the above-referenced project. The work described in this report has been completed in accordance with our Service Agreement dated April 6, 2023.

It has been a pleasure participating in this project. Additional services we could provide include:

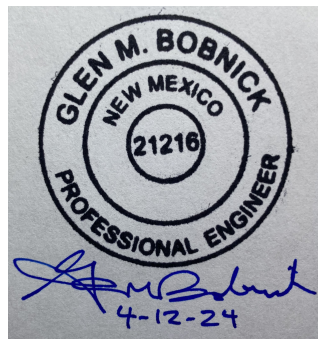
- environmental assessment
- civil engineering
- plan and specification review
- surveying
- construction materials testing
- observation of excavations and earthwork

If you have any questions or comments, please contact us at (307) 875-4394.

Sincerely,

INBERG-MILLER ENGINEERS

Joe Iliya, E.I.T.
Geotechnical Engineer



REVIEWED BY

Glen Bobnick, P.E.
Senior Geotechnical Engineer

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Appendix A - FIELD EXPLORATION

- Sample and Data Collection Information
- Site and Exploration Location Map
- Test Boring Logs

Appendix B - LABORATORY TESTING

- Laboratory Testing Program
- Laboratory Test Reports

Appendix C – TERMINOLOGY, CONVENTIONS AND REPORT INFORMATION

- Glossary
- General Notes
- Classification of Soils for Engineering Purposes
- Important Information about your Geotechnical Engineering Report

1.0 INTRODUCTION

1.1 EXECUTIVE SUMMARY

Based on information obtained from our subsurface exploration and laboratory testing of recovered samples, it is our opinion that the site is suitable for construction of the proposed Chichiltah-Vanderwagen CWS project. In general, our subsurface exploration encountered the following strata and conditions:

A total of 10 test borings were completed for the Chichiltah-Vanderwagen CWS project. 7 test borings were located along the proposed water pipeline route, (B-1 through B-6 and HDD-1). Boring HDD-1 represents the test boring at the horizontal directional drilling location. Additionally, 3 test borings were completed at the proposed water tank and treatment building locations. Borings T1 and T2 represent the tank locations and TB-1 represents the treatment building.

The majority of subsurface soils were classified as sandy lean clay, silty sand, and clayey sand with variable density and consistency. Bedrock was identified at three boring locations. Weathered sandy claystone was encountered at the test boring location B-6 at a depth of 6.5 feet below ground surface (bgs) and extended the depth of termination at 7.5 feet. Hard sandstone was encountered at test boring HDD-1 at a depth of 26 feet bgs and extended to the depth of termination at 30.1 feet. Weathered claystone was encountered at test boring T-1 at a depth of 24 feet and extended to the depth of termination at 26.5 feet.

Groundwater was not encountered.

Specific geotechnical issues that were identified during the course of our subsurface exploration included the following:

1. A consolidation-swell test was performed at the T-1 boring location within the silty sand layer at a depth of 10 feet bgs. Test results indicated a collapse of 0.9% when the sample was saturated under a pressure of 1,000 psf. This may be partly due to disturbance caused by sampling, however tank foundation soil may also be sensitive to moisture and subject to additional consolidation when wetted.
2. Loose to medium dense sandy overburden soils and medium hard sandstone was encountered at the HDD-1 boring location. We anticipate possible soil cave-in situations in the drill hole/trench within the overburden and expect the bedrock formation could present difficulties with respect to relatively hard drilling conditions.

In summary, key geotechnical recommendations that apply to this project include:

1. The chlorinator building can be founded on a mat or raft foundation bearing over 18 inches of properly compacted NM DOT type I or II fill material. The water tank can be placed on a conventional ring-wall foundation bearing over 3 feet of properly compacted NM DOT type I or II fill material.
2. To reduce the potential for settlement greater than what is estimated in this report, we recommend implementing a clay cap for the water tank per section (3.5) of this report.

This will improve drainage and help protect potentially moisture sensitive foundation soils. If clay for this purpose is not available or feasible to use, on-site clayey sand is suitable provided it is properly compacted.

1.2 [PURPOSE AND SCOPE OF SERVICE](#)

Inberg-Miller Engineers was requested by Souder Miller & Associates to perform a subsurface exploration and prepare this geotechnical engineering report for the purpose of providing recommendations for the design of the Chichiltah-Vanderwagen CWS project. Our specific scope of service is described by our April 6, 2023 Proposal and subsequent Amendments, as applicable.

2.0 [CONDITIONS](#)

2.1 [SITE DESCRIPTION](#)

The project site is located approximately 20 miles south of Gallup, New Mexico. The area is sparsely populated and is covered with a moderate to dense growth of various grasses shrubs and trees. The topography consists of rolling hills with variable drainage.

2.2 [PROJECT CONDITIONS](#)

Project conditions were either provided by Souder Miller & Associates or were assumed based on our experience with similar types of construction. These conditions are tabulated below and form the basis for recommendations provided within this report. Please contact Inberg-Miller Engineers if conditions differ from those stated.

Tank Design Capacity (gal)	250,000
Tank Design Dimensions (ft)	31' diameter 45' tall
Tank Design Bearing Capacity (psf)	3,000
Chlorinator Building Dimensions (ft, LWH)	14' x 8' x 8'
Total Settlement Tolerance (inches)	2.0
Differential Settlement Tolerance (inches per 50 feet)	1.0/50

2.3 SOIL/ROCK CONDITIONS

A summary of the major soil or rock conditions that were encountered and recorded on the logs is provided below. For a more detailed description of conditions refer to the test boring logs presented in Appendix A.

	Sandy Lean CLAY	Silty SAND	Clayey SAND	Sedimentary Bedrock
USCS Classification	CL	SM	SC	-
Boring Occurrence	B-1, B-2, B-5, B-6	B-1, B-2, B-3, B-4, B-6, HDD-1, T-1, T-2, TB-1	B-4, T-1, T-2, TB-1	B-6, HDD-1, T-1
Strength	Low to Moderate	Low to Moderate	Low to Moderate	Moderate to High
Compressibility	Moderate	Moderate	Moderate	Low
Permeability	Low	Moderate	Low to Moderate	Low
Moisture Sensitivity	Moderate to high	Moderate to High	Moderate to High	Low
Frost Susceptibility	Moderate	Moderate to Low	Moderate to Low	Low
Shrink-Swell Potential	Moderate	Low	Low	Low
Collapse Potential	Moderate to low	Moderate to low	Moderate to low	Low

2.4 GROUNDWATER CONDITIONS

At the time of our subsurface exploration, no groundwater was observed in the test borings before they were backfilled. Groundwater may be present at the site within the range of exploration depth but may not have been observable for numerous reasons such as low soil permeability or impeded drainage.

Groundwater conditions could change with seasonal or long-term changes in climatic conditions and post-construction changes in irrigation and surface water runoff. Generally, developed sites have a significantly greater volume of water available to percolate into the ground due to irrigation and storm water runoff from hard surfaces. Localized, perched groundwater tables may develop above clay layers or bedrock, or within the foundation backfill zone.

3.0 RECOMMENDATIONS

3.1 SITE PREPARATION AND EARTHWORK

Site Preparation Water Tank

Stripping Depth	Remove existing soil to a depth of 3.0-feet below bearing elevation and within 3.0-feet of tank perimeter. Recondition existing native subgrade to a minimum depth of 1.0-foot meeting 95% ASTM D698
Proof-Rolling	Tank floor subgrade and fill base

Site Preparation Chlorinator Building

Stripping Depth	Remove existing soil to a depth of 1.5-feet below bearing elevation and 1.5-feet outside foundation footprint. Recondition existing native subgrade to a minimum depth of 1.0-foot meeting 95% ASTM D698
-----------------	--

1. After stripping and excavating to the design subgrade elevation, proof-rolling should be performed with a wheeled vehicle exerting relatively high soil-contact pressure for the subject area, considering space constraints and access. Examples of suitable equipment include loaded dump trucks or end-loaders carrying a full bucket of soil.
2. Subgrades to receive structures, pavement, or fill material should respond uniformly to loading, and be free of organic materials, protruding rocks, debris, old fill, buried structures, or otherwise soft and compressible soil or material.
3. Weak or yielding subgrades should be repaired as recommended by the geotechnical engineer. Repairs may include soil excavation and replacement, possibly including proper geotextile fabric, depending on circumstances.

Fill and Backfill Materials

Classification	Suitable Materials	Source
Structural Fill	NM DOT Type I/II	Imported
Below Tank Floor	NM DOT Type I/II	Imported
Below Foundations	NM DOT Type I/II	Imported
Site Fill	Site Soil	On-site

1. Specification for recommended graded materials are as follows:

NM DOT Type I Base Course			NM DOT Type II Base Course		
Sieve	Percent Finer		Sieve	Percent Finer	
1.0 inch	100		1.0 inch	100	
¾ inch	80-100		¾ inch	85-95	
#4	30-60		#4	40-70	
#10	20-45		#10	30-55	
#200	3-10		#200	6-15	
Liquid Limit < 25, PI < 6			Liquid Limit < 25, PI < 6		

Compaction

Below Foundations	6-inch layers, 95% ASTM D698
Below Tank Floor	8-inch layers, 95% ASTM D698
Below Slabs	6-inch layers, 95% ASTM D698
Clay Cap	8-inch layers, 90% ASTM D698
General, Non-Structural Fill	12-inch layers, 95% ASTM D698
Compaction Moisture Content	Moisture conditioned between -4 and +2 percentage points of the optimum moisture content

1. The contractor's equipment and procedures should produce a horizontal, uniformly mixed, and compacted lift. In-place density and water content of each lift of fill materials should be tested and approved, or as otherwise recommended by the geotechnical engineer.
2. If construction takes place during cold weather, care should be taken to prevent construction on frozen soils. In addition, fill materials should not contain snow and/or ice and should not be placed in a frozen condition.

Temporary and Permanent Slopes

Temporary Fill Slope	1.5 H: 1.0 V
Temporary Cut Slope	1.5 H: 1.0 V
Permanent Fill Slope	2.0 H: 1.0 V
Permanent Cut Slope	3.0 H: 1.0 V

1. Slopes, whether temporary (during construction) or permanent, will require careful management of surface water through design and maintenance to protect slopes from saturation.
2. Some slope conditions, especially when supporting structures or pavement loads, may have marginal safety factors against stability. Permanent and temporary slopes should be evaluated for stability when circumstances are better defined. Recommended values are provided for preliminary planning purposes only.
3. Slopes should be protected from erosion with vegetation, matting, or other measures.

3.2 GROUND IMPROVEMENTS

Water Tank

Location	Below tank base and ring wall foundation
Overexcavation Depth and Width	3.0-feet below bearing elevation and 3.0-feet outside ring wall perimeter
Recondition Native Subgrade	Recondition existing subgrade to a minimum depth of 1.0-foot meeting 95% ASTM D698
Backfill	Properly compacted NM DOT Type I/II Base Course
Clay Cap	Suitable imported or onsite clay material meeting specifications, should be used to form a 16-inch-thick clay cap (per Section 3.5) that prevents surface runoff from percolating downward and collecting within the granular structural fill material below the foundations.
Compaction	See Compaction Table, Section 3.1
Geosynthetic Reinforcement	If soft or yielding subgrades are encountered

Chlorinator Building

Location	Below Foundation
Overexcavation Depth and Width	1.5 feet below bearing elevation, 1.5 feet outside foundation footprint
Backfill	NM DOT Type I/II Base Course
Recondition Native Subgrade	Recondition existing subgrade to a minimum depth of 1.0-foot meeting 95% ASTM D698
Clay Cap	Not required
Compaction	See Compaction Table, Section 3.1
Geosynthetic Reinforcement	If soft or yielding subgrades are encountered

Geosynthetic reinforcement may be necessary if soft or yielding conditions develop during construction. The geotechnical engineer should be notified if these conditions develop to further refine recommendations for geosynthetic use.

1. Geosynthetic should be placed completely across the exposed excavation bottom and sides (if applicable), with sufficient overlap to allow for settlement and stretching. However, fabric should be placed in tension with as few wrinkles and folds as practical. We recommend a minimum of 2 feet overlap, or as recommended by the manufacturer.
2. Geosynthetic seams should be placed transverse to the trench or traffic direction as applicable.
3. Geosynthetic should extend up the sides of the trench and a minimum of 12 inches above the foundation bearing elevation where used below footings. Fabric edges should lap over the top of structural fill where used below footings.

3.3 SHALLOW FOUNDATIONS

Water Tank Ringwall Foundation

Suitable Bearing Strata	Structural Fill per section (3.1)
Allowable Net Bearing Pressure	3,000 psf
Pressure Increase for Transient Loading	1/3
Clay Cap	Per Section 3.5
Minimum Footing Width	
Continuous	12 inches
Isolated Pad	N/A
Maximum Footing Width	
Continuous	N/A
Isolated Pad	N/A
Total Settlement	2.0 inches
Differential Settlement (inches/feet horizontal distance)	1.0 inches / 50 feet
Potential Heave Conditions	Low
Potential Collapse Conditions	Low
Embedment for frost protection	18 inches

1. As applicable, excavation to the footing subgrade in bedrock should be performed carefully to avoid excavation beneath the proposed foundation elevation. All loose soil and rock fragments should be removed from the foundation subgrade, which may require some hand work. If the footing subgrades require leveling (less than 6-inches), portland cement concrete should be used as the leveling course. Deeper fills beneath the foundations can be completed using structural fill or lean concrete, or all footings can be extended to the excavation depth and be placed on well-prepared bedrock.
2. Steel should be placed and the foundation poured the same day of excavation. The bearing surface should be excavated with a slight slope to create an internal sump for runoff water collection and removal. If water in excess of one (1) inch accumulates at the bottom of the excavation, it should be pumped out prior to concrete placement. Under no circumstances should water be allowed to adversely affect the quality of the bearing surface.
3. Footing subgrades should be observed by the Geotechnical Engineer prior to concrete placement to identify suitable bearing materials and to observe whether the foundation soils have been properly prepared prior to foundation construction. All loose or soft soils in the footing excavation should be removed from the foundation excavation prior to concrete placement. Footings should not be placed on either uncompacted on-site soil or uncompacted fill.

3.4 [MATS AND RAFTS](#)

Chlorinator Building

Maximum Mat Width (ft)	20 feet
Minimum Mat Depth Below Final Grade (ft)	No requirements
Recommended Bearing Strata	1.5 feet of properly compacted imported fill, over 1.0 feet of reconditioned native subgrade per section 3
Maximum Allowable Bearing Pressure (psf)	1,000 psf
Modulus of Vertical Subgrade Reaction (pci)	100 pci
Estimated Settlement	
Total (in)	2.0 inches
Differential/Span (in/ft)	1.0 inches / 50 Feet

3.5 [SITE DRAINAGE: AND CLAY CAP](#)

Consistent with the International Building Code (IBC), the ground surface adjacent to the structures should be sloped a minimum of 5% away from foundations within 10 feet of the building. If the slope adjacent to the structure is paved with asphalt or concrete, the slope can be reduced by 2%. Slope the ground surface beyond 10 feet of the structures at least 2% away to pavement, ditch, or other positive drainage system. Negative drainage and improper management of near-surface water by not providing an effective grading and drainage design, can result in moisture entering subgrade soils. Sources of near surface water may include water supply lines, rainwater, snowmelt, and roof drains. Downspouts and roof drains should discharge at least 5 feet away from the structures when the ground surface beneath such drains is not protected by exterior slabs or paving. Landscape irrigation within 10 feet of the structure perimeter should be minimized or eliminated where positive drainage away from the building cannot be assured. Backfill against the footings and exterior walls and in utility trenches should be well compacted to reduce the potential for moisture infiltration.

If water is permitted to accumulate or pond next to the structure and penetrate the subgrade soils, larger soil movements may be experienced than those discussed in this report. These increased movements can result in undesirable differential settlements and floor slab/wall cracking. The estimated settlement values described in this report are dependent on positive drainage throughout the life of the structure and cannot be relied upon if effective drainage is not maintained.

Excavation and replacement with granular structural fill below foundations may cause water to collect within the granular material as water is confined by the less permeable cohesive soils found at the bottom and walls of the excavation. The result of this collected water is commonly referred to as a "bathtub" condition. This collected water can cause the expansion or softening of the clay subgrade soils, which often results in foundation distress. Use of a *clay cap* to cover areas with granular fill should be used to reduce the potential for a bathtub condition. The clay cap should extend a minimum of 3 feet beyond granular fill areas and at least 5 feet beyond the perimeter of the building foundations with a minimum thickness of 16

inches. Imported clay or onsite clayey material that meets the below requirements is suitable for the clay cap and should be placed and compacted according to Section 3.1 and 3.2. The clay cap should preferably consist of a cohesive clay with a plasticity index (PI) between 18 and 25 percent with at least 70 percent by weight passing the No. 200 Sieve and no more than 15 percent by weight retained on the No. 4 Sieve. Concrete flatwork or pavement extending past the edge of the building foundation backfill may be used in lieu of the clay cap.

3.6 [HORIZONTAL DIRECTIONAL DRILLING](#)

Subsoil Conditions

The test boring logs should be referenced for specific subsoil and groundwater conditions. Conditions we encountered during our field investigation that are pertinent to HDD drilling operations are noted below. However, it is the HDD contractor's responsibility to review the attached test boring logs to identify all directional drilling risks.

1. VERY LOOSE TO MEDIUM DENSE SAND OVERBURDEN – This soil may tend to collapse or flow during drilling or trenching operations, particularly below the static groundwater elevation.
2. HARD SANDSTONE BEDROCK – Sandstone bedrock was encountered at the HDD-1 boring location at a depth of 26 feet bgs. We anticipate this formation could present difficulties with respect to relatively hard drilling conditions.

Construction Considerations

1. We anticipate possible soil cave-in situations in the drill hole/trench will typically be encountered within the sand and sandy layers indicated on the logs. Additionally, shoring or sloping trench walls will be required. The sandy overburden material discussed in the Subsoil Conditions section is classified according to OSHA as Soil Type C. Slopes or other support for excavations extending through this layer should be based on OSHA Soil Type C conditions.
2. Depending on the depth of excavation, dewatering or other appropriate methods may be required to control water in the excavations. We anticipate that groundwater seepage rates and volume will be high at depths below the static groundwater surface elevation, particularly in sandy strata.
3. Backfill for drilling pits may consist of native soil where it will not support roads or structures, and which should be placed in horizontal lifts not exceeding 8 inches in loose thickness and compacted at moisture contents ranging from 4 percent below to 2 percent above the optimum moisture content. The contractor's equipment and procedures should produce a uniformly mixed and compacted lift. In-place density and water content of each lift of fill materials should be tested and approved where settlement may be intolerable. Backfill should be compacted to a minimum of 90 percent of the Standard Proctor maximum dry density (ASTM D698). Consult the geotechnical engineer for proper backfill materials, compaction, and other geotechnical considerations where support of roads and structures is required.

4. Inberg-Miller Engineers did not perform Annular Pressure (AP) analysis. We recommend AP analysis of the proposed HDD location so that pressure sensors may be utilized to ensure drilling pressure does not exceed the estimated limiting pressure, especially within the loose sandy layers.

3.7 GENERAL

Cement Type	Type I/II
International Building Code Seismic Site Class	Class D
Site Surface Drainage	See Section 3.12 – Site Drainage
Landscaping and Irrigation	Minimized or eliminated within 10 feet of the structure.

Inberg-Miller Engineers should review final plans and specifications in order to determine whether the intent of our recommendations has been properly implemented. In addition, we should be retained as the geotechnical engineer and construction materials testing agency to provide the following services:

- a. Observe excavations to determine if subsurface conditions revealed are consistent with those discovered in the exploration.
- b. Identify if the proper bearing stratum is exposed at proposed foundation excavation depths.
- c. Observe that foundation excavations are properly prepared, cleaned, and dewatered prior to concrete placement.
- d. Test compaction of subgrades and fills.
- e. Perform field and laboratory testing of concrete and other materials as required by project specification and/or building code.

3.8 CONSTRUCTION

Excavation Difficulty	Difficult excavation is not expected
Dewatering Requirements	Under no circumstances is standing water allowed to accumulate in excavations prior to fill or concrete placement.
Soil Sensitivity	Soil conditioning may be time and resource intensive.
OSHA Soil Type	Type C
Protection of Existing Structures	N/A
Onsite Borrow Soil	USCS- CL,SM,SC

Excavations should be sloped, benched, shored, or made safe for entry by the use of trench boxes, as required by the standards of 29 CFR Part 1926. As a safety measure, it is recommended that all vehicles and soil piles be kept a minimum lateral distance equal to the slope height, from the crest of the slope. The contractor is solely responsible for designing and constructing stable excavations, the geometry of the excavation slopes, and the protective equipment and procedures employed by his forces. For the sole purpose of project planning,

we recommend that clay and sand soils are considered OSHA Type C soil. Excavations, including utility trenches, extending to depths of greater than 20 feet are required to have side slopes, trench boxes, or shoring designed by a professional engineer licensed in the state of New Mexico.

4.0 TECHNICAL DATA

Our Sample and Data Collection Information, Site and Boring Location Map, and Test Boring Logs are included in Appendix A.

5.0 STANDARD REPORT INFORMATION

Our Field and Laboratory Testing Program and Testing Data (laboratory reports), are included in Appendix B.

Our Standard Report Information, including Terms and Definitions, Limitations, and Comments Form are included in Appendix C.

6.0 CLOSURE

This report has been prepared for the exclusive use of our client, Souder Miller and Associates, for evaluation of the site, design, and construction planning purposes of the described project. All information referenced in the Table of Contents, as well as any future written documents that address comments or questions regarding this report, constitute the “entire report.” Inberg-Miller Engineers’ conclusions, opinions, and recommendations are based on the entire report. This report may contain insufficient information for applications other than those herein described. Our scope of services was specifically designed for and limited to the specific purpose of providing geotechnical recommendations for the design of the proposed Chichiltah-Vanderwagen CWS project. Consequently, this report may contain insufficient information for applications other than those herein described.

The readers of this geotechnical engineering report should realize that subsurface variations and anomalies can and will exist across the site and between the test borings. The readers should also realize that site conditions will change due to the modifying effects of seasonal, climatic and construction conditions.

The scope of services for this project does not include any environmental or biological assessment of the site. If requested, we would be pleased to assist you with developing a scope of services for environmental assessment for the subject site. Wherever structures are in contact with soil, there is potential that soil moisture may penetrate the building and provide an opportunity for mold growth. While this report identifies soil moisture/groundwater conditions and may provide geotechnical recommendations for drainage and construction, the design of drains, water proof/resistant building elements, equipment to remove moisture from the building, or additional measures to prevent the growth of mold are beyond the scope of our geotechnical services. Implementation of the recommendations conveyed in this report will not of itself be sufficient to prevent the growth of mold in or on the proposed building.

We caution that this report was not written as a construction contract document, and therefore should either not be incorporated in contract documents or be accompanied by a statement similar to the following:

This report was used during the planning and design of the subject project and is provided in the contract documents for informational purposes only. This report may contain recommendations that were not implemented and terms that conflict with the contract documents, therefore the project plans and technical specifications and not this report should be followed for construction requirements.

We appreciate participating in your project. We can offer services under a separate contract to provide civil or environmental engineering services, review final plans and specifications, perform construction surveying, field and laboratory construction materials testing, and observe excavations, as may be required. Please call us at 307-875-4394 if you have any questions regarding this report.

Appendix A

SAMPLE AND DATA COLLECTION INFORMATION

Field-sampling techniques were employed in this exploration to obtain the data presented in the Final Logs and Report generally in accordance with ASTM D420, D1452, D1586 (where applicable), and D1587 (where applicable).

The drilling method utilized in most test borings is a dry-process, machine rotary auger type that advances hollow steel pipe surrounded by attached steel auger flights in 5-foot lengths. This method creates a continuously cased test hole that prevents the boring from caving in above each level of substrata to be tested. Sampling tools were lowered inside the hollow shaft for testing in the undisturbed soils below the lead auger. In some test borings, as appropriate to advance to the desired depth, air or wash rotary drilling methods were utilized. Air or wash rotary drilling methods allow for the extraction of rock core samples.

Samples were brought to the surface, examined by an IME field representative, and sealed in containers (or sealed in the tubes) to prevent a significant loss of moisture. They were returned to our laboratory for final classification per ASTM D2487 methods. Some samples were subjected to field or laboratory tests as described in the text of this report.

Groundwater observations were made in the open drill holes by IME field personnel at the times and dates stated on the Final Logs. Recorded groundwater levels may not reflect equilibrium groundwater conditions due to relatively low permeability of some soils. It must also be noted that fluctuations may occur in the groundwater level due to variations in precipitation, temperature, nearby site improvements, nearby drainage features, underdrainage, wells, severity of winter frosts, overburden weights, and the permeability of the subsoil. Because variations may be expected, final designs and construction planning should allow for the need to temporarily or permanently dewater excavations or subsoil.

A Final Log of each test pit or boring was prepared by IME. Each Final Log contains IME's interpretation of field conditions or changes in substrata between recovered samples based on the field data received, along with the laboratory test data obtained following the field work or on subsequent site observations. The final logs were prepared by assembling and analyzing field and laboratory data. Therefore, the Final Logs contain both factual and interpretive information. IME's opinions are based on the Final Logs.

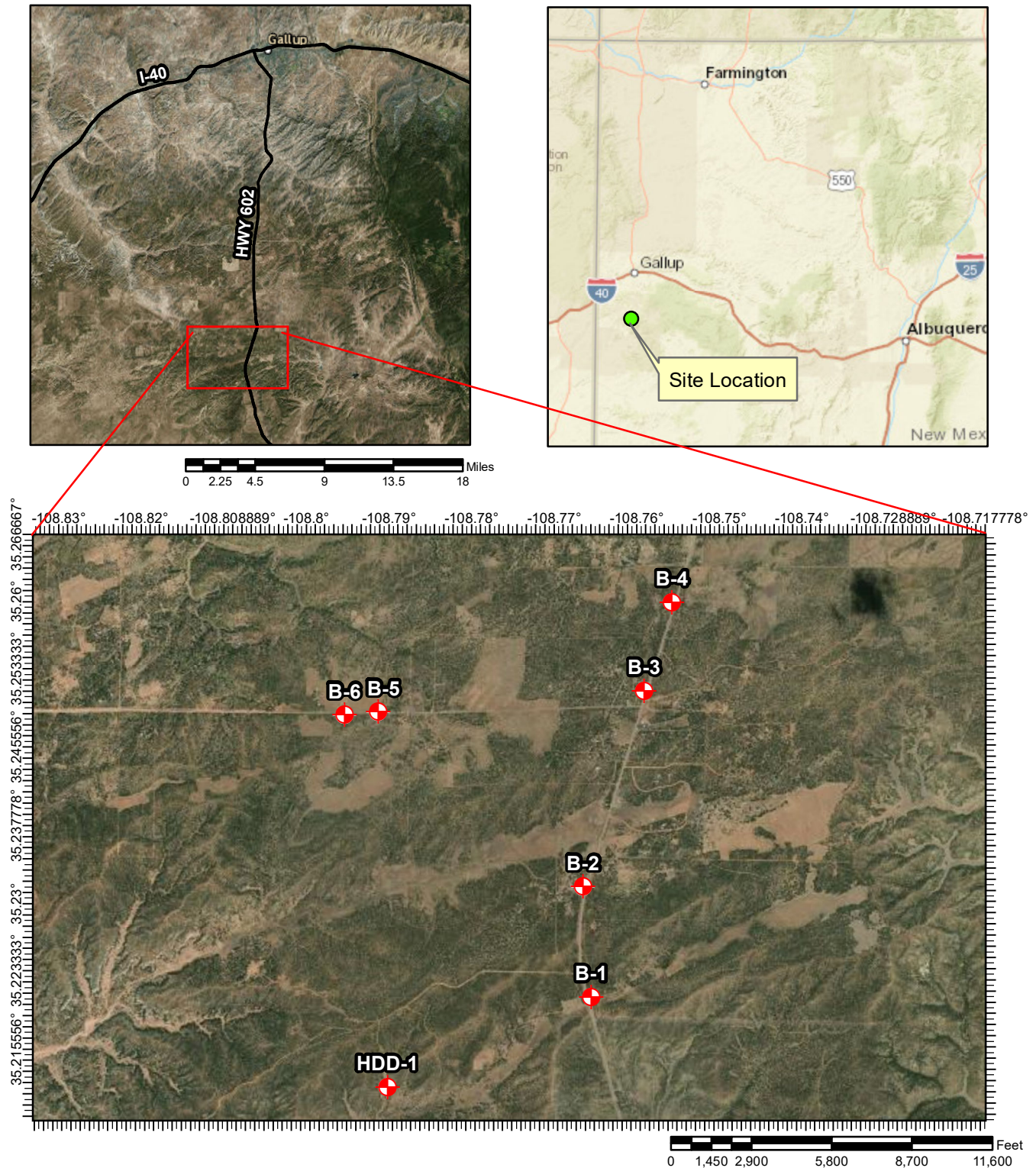
The Final Logs list boring methods, sampling methods, approximate depths sampled, amounts of recovery in sampling tools (where applicable), indications of the presence of subsoil types, and groundwater observations and measurements. Results of some laboratory tests are arrayed on the Final Logs at the appropriate depths below grade. The horizontal lines on the Final Logs designate the interface between successive layers (strata) and represent approximate boundaries. The transition between strata may be gradual.

We caution that the Final Logs alone do not constitute the report, and as such they should not be excerpted from the other appendix exhibits or from any of the written text. Without the written report, it is possible to misinterpret the meaning of the information reported on the Final Logs. If the report is

reproduced for reference purposes, the entire numbered report and appendix exhibits should be bound together as a separate document, or as a section of a specification booklet, including all drawings, maps, etc.

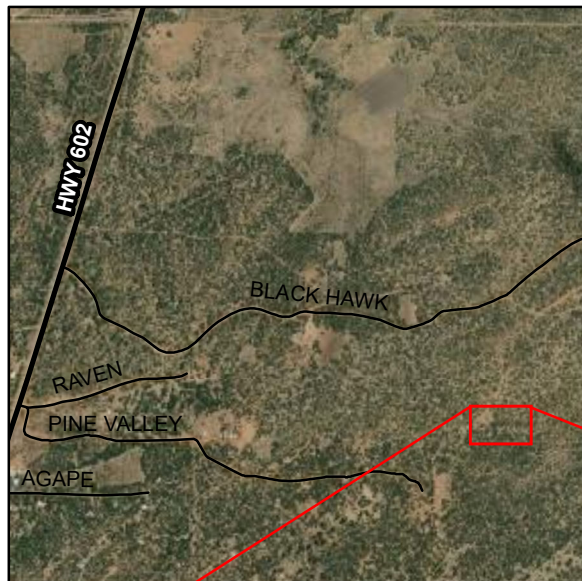
Pocket penetration tests taken in the field, or on samples examined in the laboratory are listed on the Final Logs in a column marked "qp." These tests were performed only to approximate unconfined strength and consistency when making comparisons between successive layers of cohesive soil. It is not recommended that the listed values be used to determine allowable bearing capacities. Bearing capacities of soil is determined by IME using test methods as described in the text of the report.

Chichiltah-Vanderwagen CWS - Site Location Map

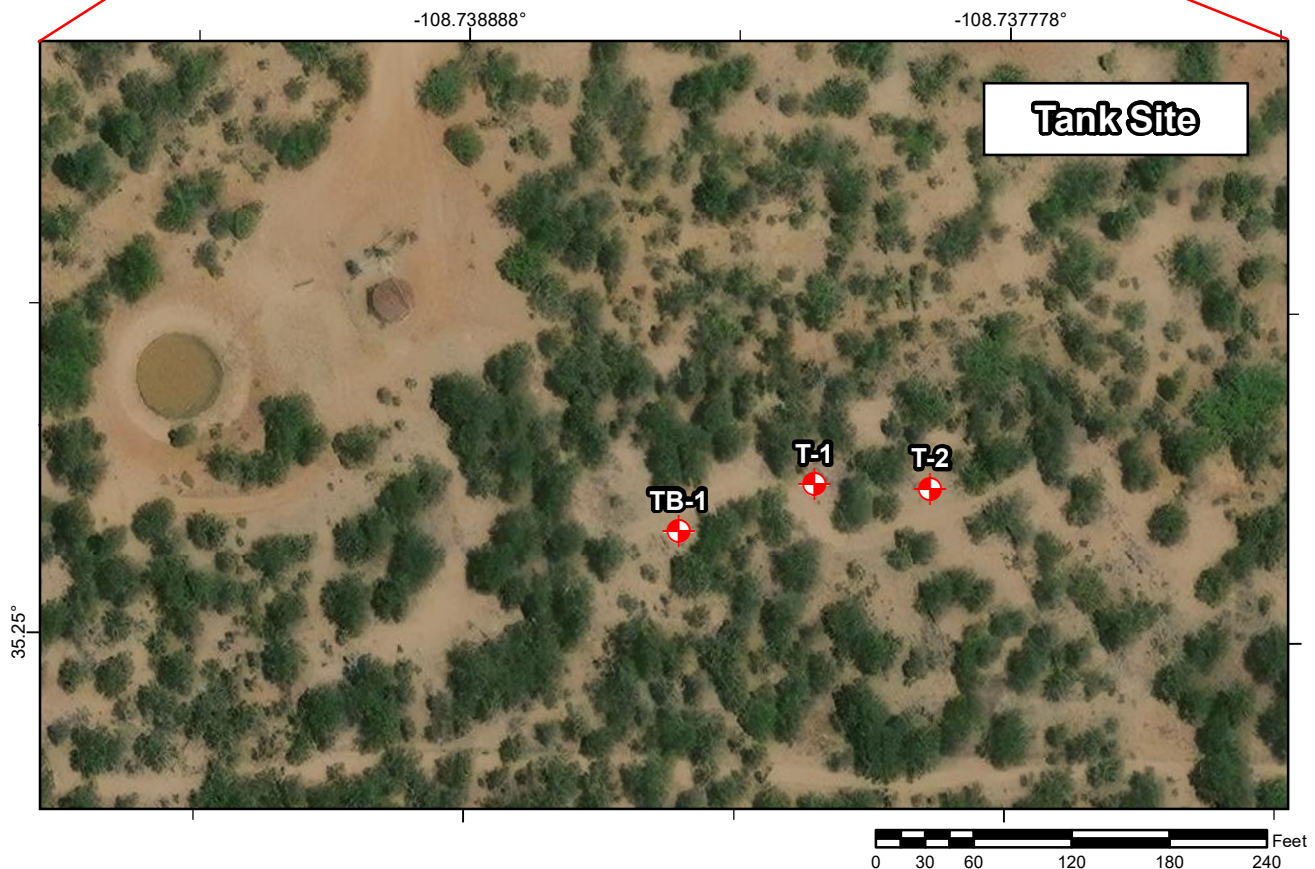
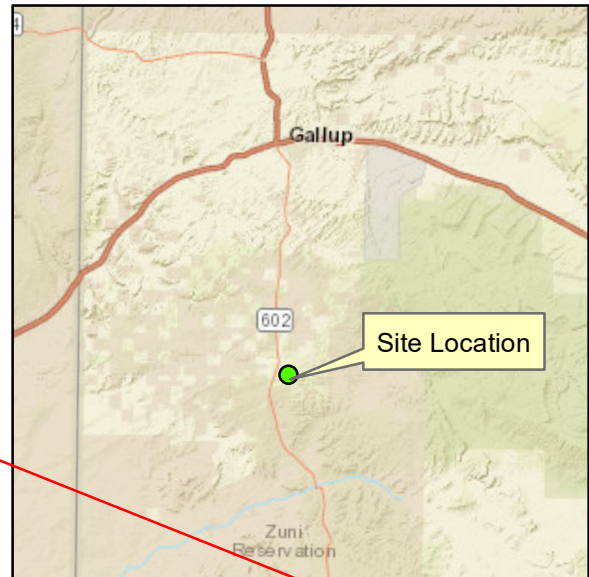


Service Layer Credits: Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community
 Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community
 Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community

Chichiltah-Vanderwagen CWS - Site Location Map



0 0.1 0.2 0.4 0.6 0.8 Miles



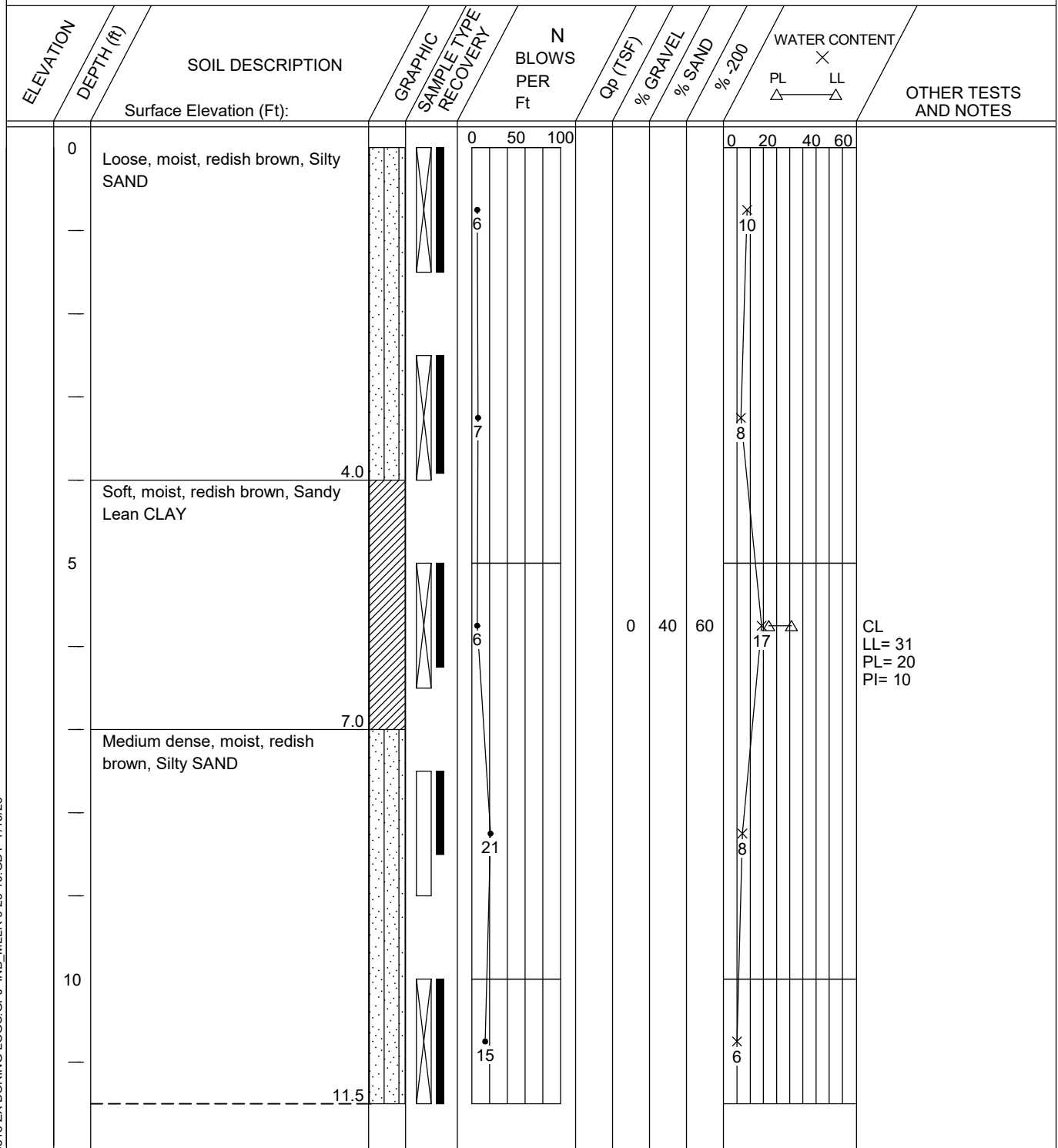
Service Layer Credits: Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community
Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community



TEST BORING B-1

Page 1 of 1

Project: Chichiltah-Vanderwagen CWS Project **Job No.:** 23315-ZX
Location: Gallup, NM **Client:** SMA



Remarks:

Date Begun: 4/6/23
 Date Completed: 4/6/23
 Termination Depth (ft): 11.5
 Crew: DAP, CP, JEI
 Rig: Mobile B-57
 Method:
 Benchmark/Datum (Ft):

SAMPLE TYPES

- ☒ Split Spoon
- ☐ Drive Sampler, 2.41-I.D.

WATER LEVEL OBSERVATIONS

- ≡ While Drilling (ft) N/A
- ≡ End of Drilling (ft) N/A

Depth to Cave In (Ft): 7.8'

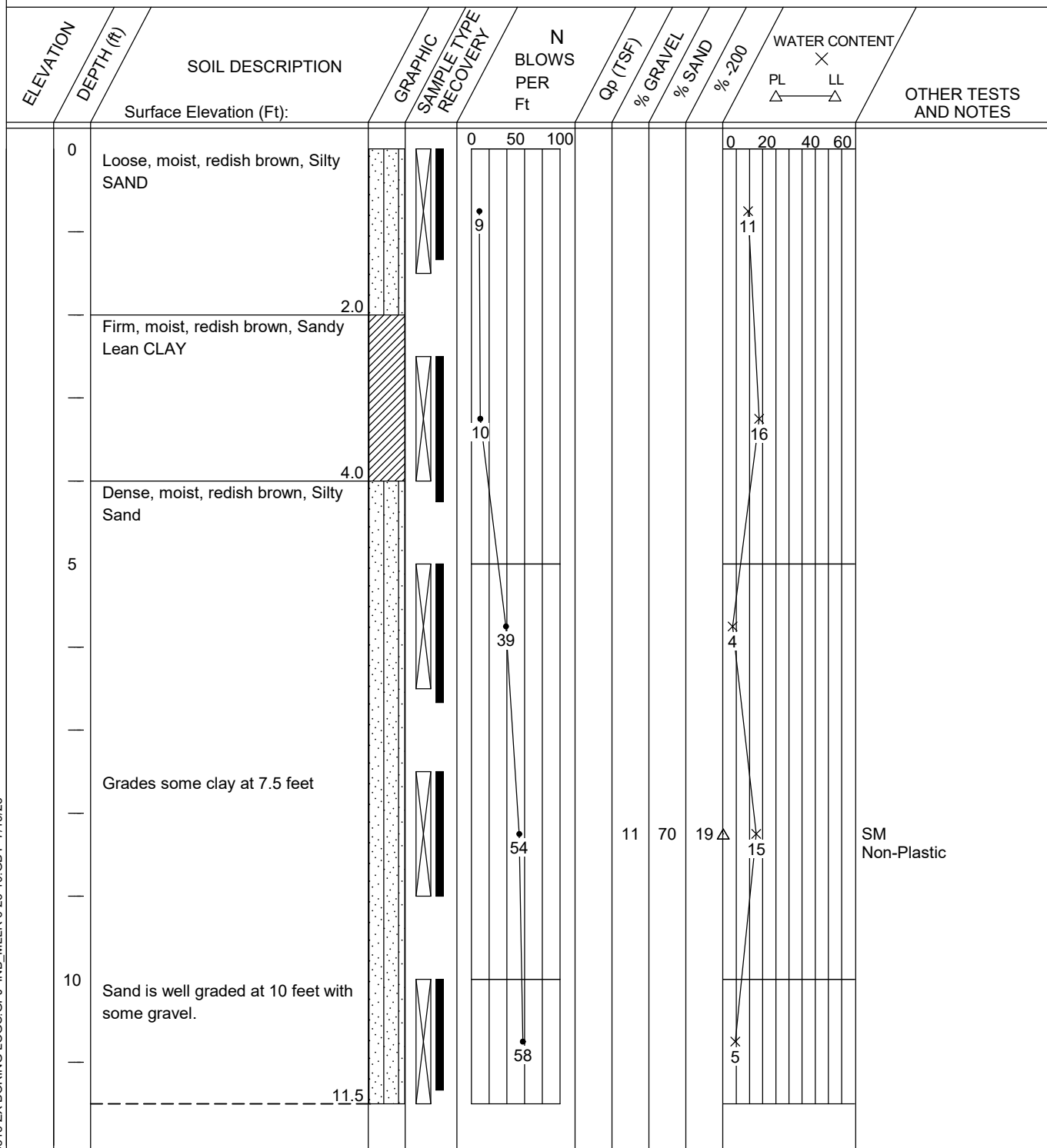
LOG OF TEST BORING OR TEST PIT 23315-ZX BORING LOGS.GPJ INB_MLLR 6-23-10.GDT 7/19/23



TEST BORING B-2

Page 1 of 1

Project: Chichiltah-Vanderwagen CWS Project **Job No.:** 23315-ZX
Location: Gallup, NM **Client:** SMA



Remarks:

Date Begun: 4/6/23
 Date Completed: 4/6/23
 Termination Depth (ft): 11.5
 Crew: DAP, CP, JEI
 Rig: Mobile B-57
 Method:
 Benchmark/Datum (Ft):

SAMPLE TYPES

Split Spoon

WATER LEVEL OBSERVATIONS

≡ While Drilling (ft) N/A
 ≡ End of Drilling(ft) N/A

Depth to Cave In (Ft): 8'

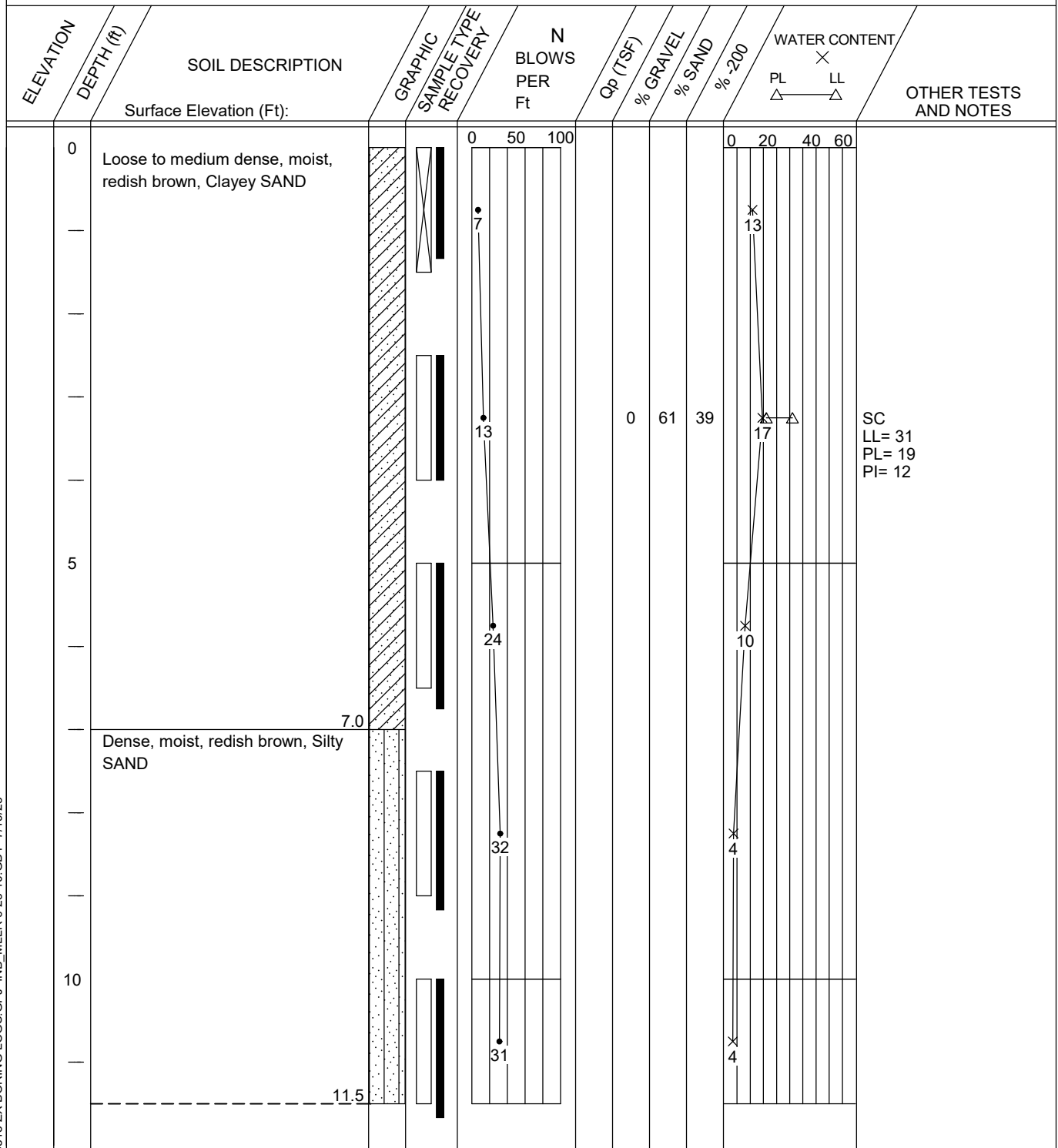
LOG OF TEST BORING OR TEST PIT 23315-ZX BORING LOGS.GPJ INB_MLLR 6-23-10.GDT 7/19/23



TEST BORING B-4

Page 1 of 1

Project: Chichiltah-Vanderwagen CWS Project **Job No.:** 23315-ZX
Location: Gallup, NM **Client:** SMA



Remarks:

Date Begun: 4/6/23
 Date Completed: 4/6/23
 Termination Depth (ft): 11.5
 Crew: DAP, CP, JEI
 Rig: Mobile B-57
 Method:
 Benchmark/Datum (Ft):

SAMPLE TYPES

☒ Split Spoon

WATER LEVEL OBSERVATIONS

☐ While Drilling (ft) N/A
 ☐ End of Drilling(ft) N/A

Depth to Cave In (Ft): 8'

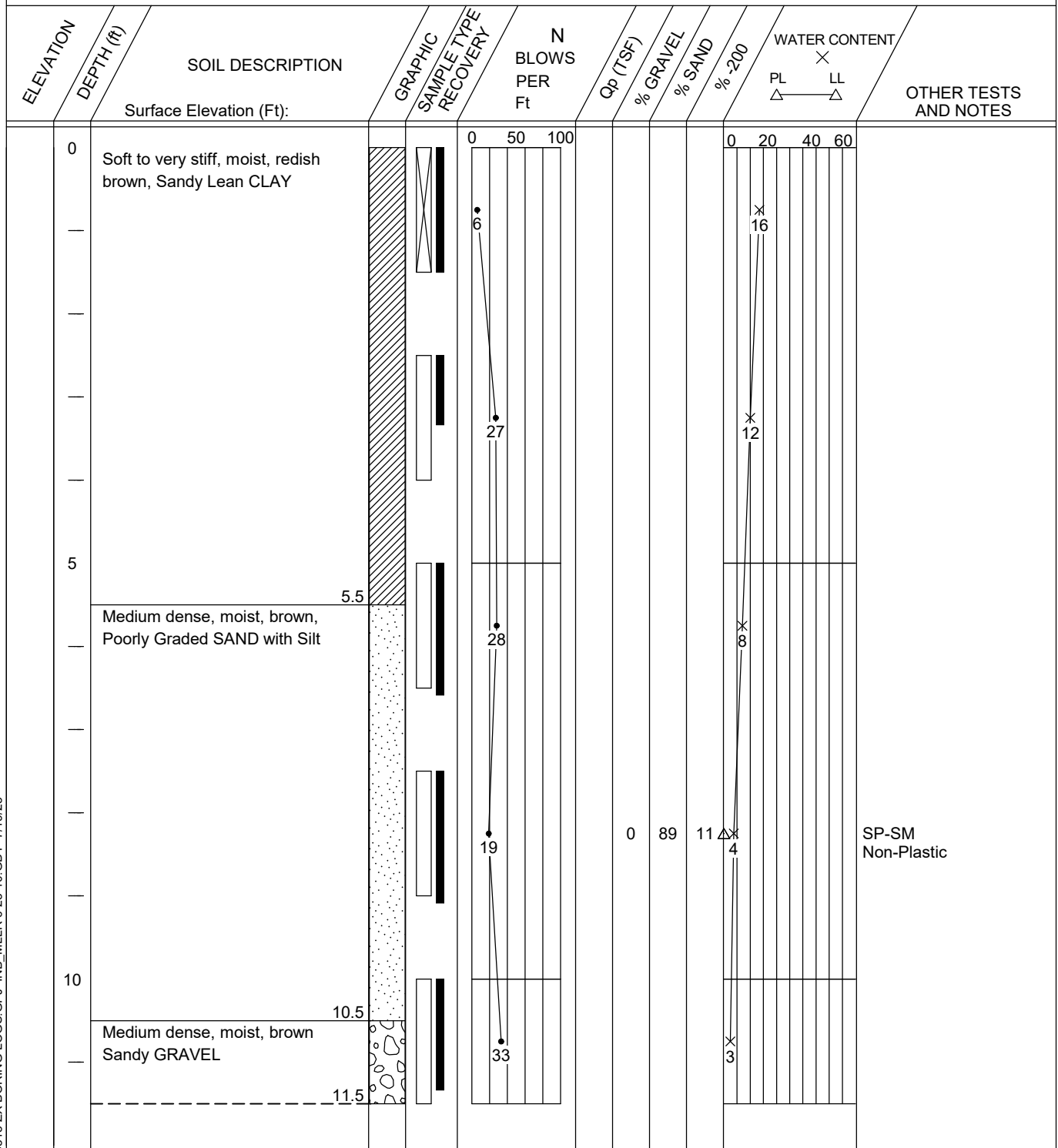
LOG OF TEST BORING OR TEST PIT 23315-ZX BORING LOGS.GPJ INB_MLLR 6-23-10.GDT 7/19/23



TEST BORING B-5

Page 1 of 1

Project: Chichiltah-Vanderwagen CWS Project **Job No.:** 23315-ZX
Location: Gallup, NM **Client:** SMA



Remarks:

Date Begun: 4/6/23
 Date Completed: 4/6/23
 Termination Depth (ft): 11.5
 Crew: DAP, CP, JEI
 Rig: Mobile B-57
 Method:
 Benchmark/Datum (Ft):

SAMPLE TYPES

Split Spoon

WATER LEVEL OBSERVATIONS

≡ While Drilling (ft) N/A
 ▼ End of Drilling(ft)

Depth to Cave In (Ft): 8'



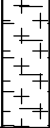
LOG OF TEST BORING OR TEST PIT 23315-ZX BORING LOGS.GPJ INB_MLLR 6-23-10.GDT 7/19/23



TEST BORING B-6

Page 1 of 1

Project: Chichiltah-Vanderwagen CWS Project **Job No.:** 23315-ZX
Location: Gallup, NM **Client:** SMA

ELEVATION	DEPTH (ft)	SOIL DESCRIPTION	GRAPHIC SAMPLE TYPE RECOVERY	N BLOWS PER Ft	Qp (TSF)	% GRAVEL	% SAND	% <200	WATER CONTENT PL — LL △ — △	OTHER TESTS AND NOTES
		Surface Elevation (Ft):								
	0	Moist, redish brown, Sandy Lean CLAY		0 50 100					0 20 40 60	Hand Auger
									18	
	2.0	Moist, redish brown, Silty SAND							12	
									22	
	5									
	6.5	Weathered, redish brown, Sandy CLAYSTONE								
	7.5								18	

Remarks:

Date Begun: 4/6/23
Date Completed: 4/6/23
Termination Depth (ft): 7.5
Crew: DAP, CP, JEI
Rig: Hand Auger
Method:
Benchmark/Datum (Ft):

SAMPLE TYPES

WATER LEVEL OBSERVATIONS

☐ While Drilling (ft) N/A
☒ End of Drilling(ft) N/A

Depth to Cave In (Ft): 7.5'

LOG OF TEST BORING OR TEST PIT 23315-ZX BORING LOGS.GPJ INB_MLLR 6-23-10.GDT 7/19/23



TEST BORING HDD-1

Page 1 of 1

Project: Chichiltah-Vanderwagen CWS Project **Job No.:** 23315-ZX
Location: Gallup, NM **Client:** SMA

ELEVATION	DEPTH (ft)	SOIL DESCRIPTION	GRAPHIC SAMPLE TYPE RECOVERY	N BLOWS PER Ft	Qp (TSF)	% GRAVEL	% SAND	% -200	WATER CONTENT PL ——— LL X	OTHER TESTS AND NOTES
		Surface Elevation (Ft):								
0	0	Very loose to loose, moist, redish brown, Silty SAND		2					X 8	
	5			8					X 7	
	9.0									
	10	Medium dense, dry, brown, Well Graded SAND		18					X 3	
	14.0									
	15	Medium dense, dry, redish brown, Silty SAND		19					X 3	
	20			32					X 5	Phi: 36 degrees 115 pcf
	25									
	26.0									
		Weathered to medium hard, dry, gray, SANDSTONE		34					X 3	Phi: 37 degrees 117 pcf
	30									No sample recovered at 30 feet
	30.1									
				50/1"					5	

Remarks:

Date Begun: 4/6/23
Date Completed: 4/6/23
Termination Depth (ft): 30.1
Crew: DAP, CP, JEI
Rig: Mobile B-57
Method:
Benchmark/Datum (Ft):

SAMPLE TYPES

- Split Spoon
- Drive Sampler, 2.41-I.D.

WATER LEVEL OBSERVATIONS

- ≡ While Drilling (ft) N/A
- ≡ End of Drilling(ft) N/A

Depth to Cave In (Ft): 20.5'

LOG OF TEST BORING OR TEST PIT 23315-ZX BORING LOGS.GPJ INB_MLLR 6-23-10.GDT 7/19/23



TEST BORING T-1

Page 1 of 1

Project: Chichiltah-Vanderwagen CWS Project **Job No.:** 23315-ZX
Location: Gallup, NM **Client:** SMA

ELEVATION	DEPTH (ft)	SOIL DESCRIPTION	GRAPHIC SAMPLE TYPE RECOVERY	N BLOWS PER Ft	Qp (TSF)	% GRAVEL	% SAND	% <200	WATER CONTENT PL X LL Δ	OTHER TESTS AND NOTES
		Surface Elevation (Ft):								
0	0	Very loose, moist, brown, Silty SAND		2					X 12	WSS: 0-50 ppm
	2.0	Loose to dense, moist to dry, redish brown, Clayey SAND		7					X 8	
5				24					X 7	
	9.0	Medium dense, dry, redish brown, Silty SAND		35	0	63	37		X Δ 15	SC LL= 28 PL= 20 PI= 7
10				30					X 6	
15				28	0	70	30	Δ X 10		SM Non-Plastic
20				28					X 2	
	24.0	Weathered, dry, red, Silty CLAYSTONE		28					X 13	
25	26.5									

Remarks:

Date Begun: 4/7/23
Date Completed: 4/7/23
Termination Depth (ft): 26.5
Crew: DAP, CP, JEI
Rig: Mobile B-57
Method:
Benchmark/Datum (Ft):

SAMPLE TYPES

- Split Spoon
- Drive Sampler, 2.41-I.D.

WATER LEVEL OBSERVATIONS

- ≡ While Drilling (ft) N/A
- ≡ End of Drilling(ft) N/A

Depth to Cave In (Ft): 18.5'

LOG OF TEST BORING OR TEST PIT 23315-ZX BORING LOGS.GPJ INB_MLLR 6-23-10.GDT 7/19/23



TEST BORING T-2

Page 1 of 1

Project: Chichiltah-Vanderwagen CWS Project **Job No.:** 23315-ZX
Location: Gallup, NM **Client:** SMA

ELEVATION	DEPTH (ft)	SOIL DESCRIPTION	GRAPHIC SAMPLE TYPE RECOVERY	N BLOWS PER Ft	Qp (TSF)	% GRAVEL	% SAND	% -200	WATER CONTENT PL — LL	OTHER TESTS AND NOTES
		Surface Elevation (Ft):								
0	0	Very loose, moist, brown, Silty SAND		2					X 12	
	2.0	Medium dense, moist, reddish brown, Clayey SAND		13					X 11	
	5			43					X 10	
	7.0	Medium dense, dry, reddish brown, Silty SAND		28					X 11	
	10			25					X 13	
	15			30					X 10	
	20			29					X 15	
	25	Lense of gravel at 25 feet		31					X 13	
	26.5									

Remarks:

Date Begun: 4/7/23
Date Completed: 4/7/23
Termination Depth (ft): 26.5
Crew: DAP, CP, JEI
Rig: Mobile B-57
Method:
Benchmark/Datum (Ft):

SAMPLE TYPES

Split Spoon

WATER LEVEL OBSERVATIONS

≡ While Drilling (ft) N/A

≡ End of Drilling(ft) N/A

Depth to Cave In (Ft): 18.5'

LOG OF TEST BORING OR TEST PIT 23315-ZX BORING LOGS.GPJ INB_MLLR 6-23-10.GDT 7/19/23



TEST BORING TB-1

Page 1 of 1

Project: Chichiltah-Vanderwagen CWS Project **Job No.:** 23315-ZX
Location: Gallup, NM **Client:** SMA

ELEVATION	DEPTH (ft)	SOIL DESCRIPTION	GRAPHIC SAMPLE TYPE RECOVERY	N BLOWS PER Ft	Qp (TSF)	% GRAVEL	% SAND	% <200	WATER CONTENT PL — LL	OTHER TESTS AND NOTES
		Surface Elevation (Ft):								
0	0	Very loose, moist, brown, Silty SAND		0 50 100				0 20 40 60		
	2.0			3				15		
		Medium dense, moist, redish brown, Clayey SAND		10				24		
5				13				17		
	8.5			32				22		
10		Medium dense, dry, redish brown, Silty SAND		40				12		
				32				11		
15				28				2		
20				26				7		
25										
	26.5									

Remarks:

Date Begun: 4/7/23
Date Completed: 4/7/23
Termination Depth (ft): 26.5
Crew: DAP, CP, JEI
Rig: Mobile B-57
Method:
Benchmark/Datum (Ft):

SAMPLE TYPES

☒ Split Spoon

WATER LEVEL OBSERVATIONS

☐ While Drilling (ft) N/A
☐ End of Drilling(ft) N/A

Depth to Cave In (Ft): 18'

LOG OF TEST BORING OR TEST PIT 23315-ZX BORING LOGS.GPJ INB_MLLR 6-23-10.GDT 7/19/23

Appendix B

LABORATORY TESTING **PROGRAM**

Soil samples were transported to our laboratory where they were subject to further evaluation, which may include visual classification according to ASTM D2488 or other analysis to determine certain engineering properties. Tests were performed in accordance with the test methods listed below.

Laboratory Test	Test Method
Moisture Content	ASTM D2216
Liquid Limit, Plastic Limit and Plasticity Index	ASTM D4318
Sieve Analysis	ASTM C117
Sieve Analysis with Hydrometer	ASTM D422
Sieve Analysis (200 Sieve only)	ASTM D1140
Water Soluble Sulfate	Comparative
Unconfined Compressive Strength	ASTM D2166
Moisture-Density Relationship (Standard Proctor)	ASTM D698
Moisture-Density Relationship (Modified Proctor)	ASTM D1557
California Bearing Ratio (CBR)	ASTM D1883
Hydraulic Conductivity	ASTM D5084
Minimum Resistivity	AASHTO T288
pH	AASHTO T288
Tube Density	ASTM D2937
Direct Shear	ASTM D3080
Consolidation-Swell	ASTM D2435

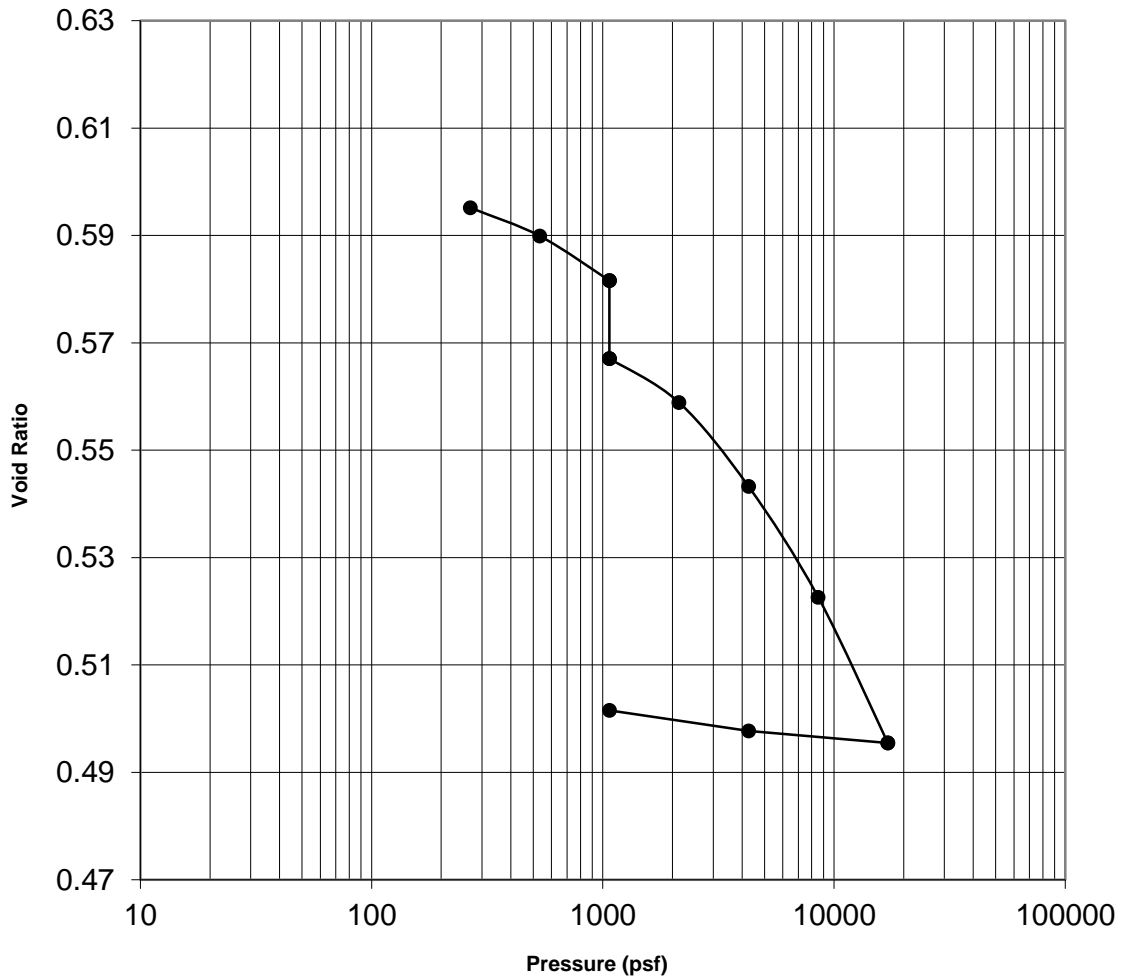
Test results that are not displayed on the test boring logs are presented in Appendix B of this report.

CONSOLIDATION-SWELL TEST

INBERG-MILLER ENGINEERS

CLIENT: Souder Miller & Associates
PROJECT: Chichiltah-Vanderwagen CWS Project
JOB NO.: 23315RM
TEST METHOD: D2345

TEST DATE: 5/2/2023
TESTED BY: JPM
SAMPLE NO.: T-1
DEPTH (ft): 10'

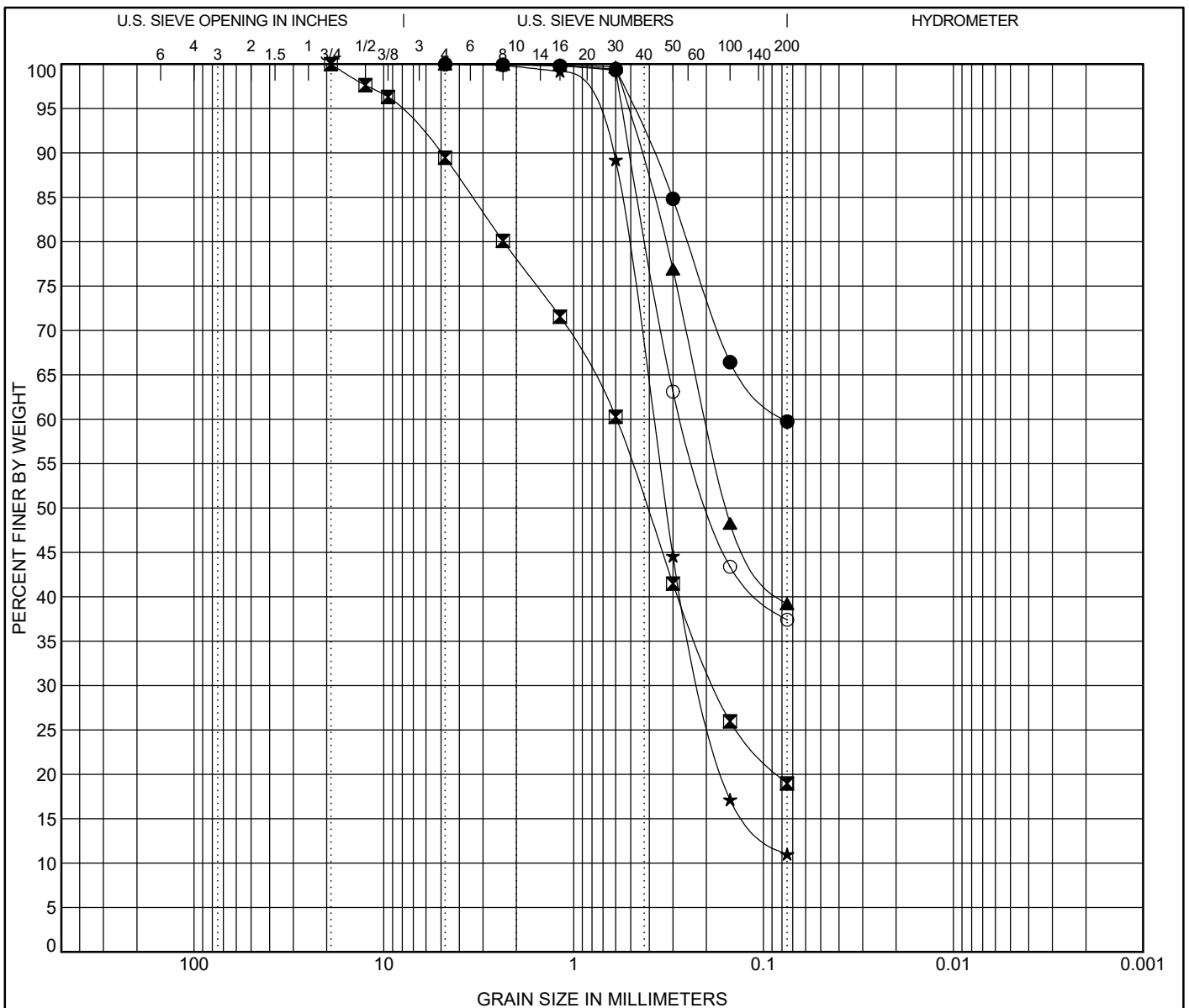


Swell Pressure(psf): 0

Percent Consolidation: 0.9

Overburden Pres.(psf):	1150	Moisture Content(%):	Initial	Final
Preconsol. Pres.(psf):	-	Dry Density(pcf):	106.0	105.5
Comp. Index(Cc):	0.090	Void Ratio:	0.598	0.495
Rebound Index(Cr):	0.005	Saturation(%):	33.8	FALSE

Soil Description: Redish Brown Silty Sand



COBBLES	GRAVEL		SAND			SILT OR CLAY
	coarse	fine	coarse	medium	fine	

Specimen Identification			Classification			LL	PL	PI	Cc	Cu
●	B-1	5.0	SANDY LEAN CLAY(CL)			31	20	11		
☒	B-2	7.5	SILTY SAND(SM)			NP	NP	NP		
▲	B-4	2.5	CLAYEY SAND(SC)			31	19	12		
★	B-5	7.5	POORLY GRADED SAND with SILT(SP-SM)			NP	NP	NP	1.69	5.69
○	T-1	7.5	CLAYEY SAND(SC)			28	20	8		
Specimen Identification			D100	D60	D30	D10	%Gravel	%Sand	%Silt	%Clay
●	B-1	5.0	4.75	0.077			0.0	40.3	59.7	
☒	B-2	7.5	19	0.594	0.18		10.5	70.5	19.0	
▲	B-4	2.5	4.75	0.199			0.0	60.8	39.2	
★	B-5	7.5	4.75	0.381	0.207		0.0	89.0	11.0	
○	T-1	7.5	4.75	0.269			0.0	62.6	37.4	

PROJECT: Chichiltah-Vanderwagen CWS Project
 JOB NO.: 23315-ZX
 CLIENT: SMA
 TEST METHOD: ASTM D422

PARTICLE SIZE ANALYSES



Appendix C

GLOSSARY

Definition of certain words, terms or phrases that are used in this report are provided below, to help the reader to interpret the intent of Inberg Miller Engineers. These definitions:

- 1. May differ from other published versions*
- 2. Have not been vetted by any organization outside of Inberg-Miller Engineers*
- 3. May not present a complete understanding of the term*

The reader is encouraged to seek additional interpretation of important terms and consult with Inberg- Miller Engineers as necessary where discrepancies may be discovered, or a definition has not been provided.

Active Lateral Soil Pressure – Horizontal pressure applied by soil to a wall that sufficiently yields or rotates about its base to allow the full soil shear strength to be mobilized

Allowable End Bearing Pressure – Recommended maximum pressure on soil or rock expressed as load per unit area that can be applied across the full bottom bearing surface of a pier or pile deep foundation within a given settlement tolerance

Allowable Skin Friction – Recommended maximum frictional resistance of soil or rock as load per unit area that can be applied over the vertical side surface of a pier or pile deep foundation within a given settlement tolerance.

Alluvium – Soil that has been transported and deposited in a moving water environment

At-Rest Lateral Soil Pressure - Horizontal pressure applied by soil to a wall or the vertical face of a structure that is restrained from movement and soil is not allowed to deform

Backfill – Soil that is used to replace some or all of soil that was excavated, and is usually subject to material specifications and density requirements

Base – Either 1: the bottom surface of a structure or excavation, or 2: soil or aggregate that is placed immediately below a structure or pavement

Bearing Elevation – A subsurface level where the base of foundations rest and transmit applied load to the soil or rock

Bearing Stratum – A specific soil layer defined by soil description and depth below ground surface, or elevation, to which foundations transmit applied load

Claystone – Consolidated sedimentary bedrock comprised chiefly of clay sized particles

Collapse – Loss of inter-particle soil friction, usually as a result of the effects of excessive moisture or water, and often leading to large subsidence or settlement of supported structures

Colluvium – Soil that has accumulated as a result of gravitational transport, commonly found near the base of slopes

Compaction/Compacted – Process or the result of a process where soil density is increased, soil voids are decreased, and usually resulting in an increased strength and reduced settlement potential

Compressibility – Relative term applied to soil or soil layer to describe how much it may yield to expected applied load or pressure

Conglomerate – A mixture of clay through gravel-size particles, commonly cemented with calcium carbonate

Consistency – Term applied to cohesive soils to describe relative stiffness, often defined by either ASTM D1586 Standard Test Method for Standard Penetration Test (SPT) and Split-Barrel Sampling of Soils or as indicated by unconfined compressive strength

Continuous Footing – A long narrow footing usually supporting a linear structure such as a wall. Length to width ratio may vary but is commonly taken as 10.

Contraction Joints – Formed or sawn joints in concrete slabs or pavements used to control crack patterns that result from thermal contraction or shrinkage

Crushed Aggregate Base – Processed gravel at a specified grading and quantity of fractured faces, and sometimes certain durability requirements, that is used below slabs or pavements

Cut – Term applied to the volume or depth of soil that has been excavated to a certain design grade

Cut Slope – Soil or rock slope that results from cut or excavation

Density – The weight of soil for a unit volume, which may be stated in a dry condition, or a moist to saturated condition with weight of water included

Dewatering – Process of removing water from an excavation or lowering the groundwater elevation usually via drains or pumps

Differential Settlement – The difference in subsidence of a soil surface, or structure resting on soil, between two points spaced a certain distance apart

Disturbed Soil – Soil that has been loosened usually as a result of excavation activity, traffic, vibration

Embedment – The portion of a structure buried within a specific stratum, usually measured as a vertical distance

Engineered Fill – Soil that meets a specific gradation criteria and/or other quality requirements and that is placed at a specified thickness and moisture content and compacted to meet certain minimum density requirements, for the purpose of consistently obtaining certain minimum engineering properties for design

Envelope A – Specified gradation criteria that describes reasonably well graded sand and gravel mixtures, with less than 20 percent silt and clay.

ESAL – Criteria that describes traffic loading equivalent to a certain number of passes from an 18 kip single axle

Excavation Subgrade – The bottom of an excavation

Expansion Joints – Joints that are formed in a concrete pavement or slab that allow for thermal expansion of the concrete. Joints are usually filled with an elastic material to prevent entry of foreign particles

Factor of Safety – A multiplier for recommended allowable values that provides a margin for safety against failure, considering uncertainty and risk

Fill – Soil or rock that has been placed to raise the ground surface elevation

Footing/Foundation Subgrade – The surface of soil or rock to receive a structure which is usually a reinforced cast-in-place concrete

Friction Angle – A measure of physical resistance against sliding between soil or rock particles, usually ranging between 0 and 45 degrees

Frost Heave – A phenomenon that occurs in certain soil types where soil-moisture may concentrate and freeze as ice layers, causing upward swelling of the soil

Frost Protection – Any measure used to prevent frost-heave from affecting a structure

Frost Susceptibility – Soil types that are prone to frost heave

Geotechnical Engineer – An engineer trained through education and experience in soil mechanics and earth-structure systems

Grade Beam – A horizontal structural element that spans between foundations which may carry a portion of load from a structure above, but usually doesn't rely upon support from the soil below

Heave – The upward swelling of soil or rock, usually as a result of freezing or moisture adsorption

Helical Screw Pile/Pier – A foundation type that consists of a steel shaft with steel helices welded to the shaft, so that the system will pull itself into the ground when torque is applied

Hydraulic Conductivity – The rate at which water passes through soil under a certain pressure, usually expressed in the units of centimeters per second

Hydrostatic Pressure – The hydraulic pressure at a certain depth below the surface of a water body or water in saturated soil equivalent to the weight of water multiplied by the depth

Isolated Pad Footing – A single footing for the support of a leg, column, stanchion or other vertical structural element

Lifts – Layers of material that are placed as fill, backfill or pavement

Mat Foundation – A large, shallow spread footing that may support any combination of multiple point or area loads

Maximum Allowable Bearing Pressure – The recommended maximum pressure that may be applied to soil or rock, including a factor of safety, within estimated settlement tolerances

Maximum Dry Density – The peak soil density that is determined in a laboratory using a drop-hammer and mold over a range of varying moisture contents, expressed in terms of dry weight per unit volume

Moisture Sensitivity – A characteristic of soil that describes how the strength or compressibility is affected by increasing moisture content

Moisture Vapor Control – A design measure to limit the upward movement of soil moisture, usually through a concrete floor slab resting on the soil

Native Soil – Soil that is present naturally at a subject site

On-Site Fill – Soil used as fill or backfill that originates from a source located at the subject site

Optimum Moisture Content – The moisture content at which the maximum dry density is achieved in laboratory testing

Organic Materials – Matter contained in soil that is subject to decomposition

Overburden – Soil or rock that is present above an ore body, sedimentary bedrock or certain deposit such as gravel

Overexcavation – A process by which usually unsuitable or unwanted soil or rock is removed or excavated below the bottom of a structure or minimum required excavation limits

Passive Lateral Soil Pressure – Available resisting soil pressure when a structure is forced against the soil

Pavement Subbase – A specified soil type, often described by gradation that is placed below base, which in turn supports flexible or rigid pavement

Perched Groundwater – A subsurface condition where water collects above a relatively low permeability stratum

Permeability – The rate at which a liquid or gas may pass through soil, rock or other material

Pile/Pier Cap – A reinforced concrete block designed to distribute load from a structure to multiple deep foundation elements

Proof-Rolling – A process by which a subgrade is subjected to wheel loading to locate relative soft or yielding areas that might be repaired before covering with structures, soil, pavement etc.

Raft Foundation – See Mat Foundation

Residual Soil – Soil that has resulted from the in-place weathering of rock

Rigid Pavement – Usually reinforced or unreinforced Portland cement concrete, which when cured exhibits high compressive strength but is relatively inflexible

Sandstone - Sedimentary bedrock comprised chiefly of sand sized particles

Saturation – A condition where the pores of soil or rock are completely filled with water

Sedimentary Bedrock – Consolidated sediments of clay, silt or sand

Shrink-Swell Potential – Likelihood that soil or rock may increase or decrease in volume, usually as result of water adsorption and indicated by high plasticity index and/or measured response to inundation

Siltstone - Sedimentary bedrock comprised chiefly of silt sized particles

Site Fill – Soil used to raise the grade of all or a portion of a site to a design elevation, exclusive of structures or buildings

Slab Fill – Soil used to fill above the foundation bearing elevation to the bottom of any special subbase or base soil/aggregate that supports a concrete slab-on-grade

Slab Subbase – Soil that meets a specified gradation requirement or other criteria for placement below a base aggregate

Spread Footing/Foundations – A foundation type that usually consists of a reinforced, cast-in-place concrete that is formed in a round, square, rectangle or continuous strip shape for transferring structural loads to the soil and is placed at certain minimum depths for frost protection or confinement

Stripping Depth – The depth below ground surface that unsatisfactory soil or other materials should be removed before placement of engineered fill or structures

Structural Fill – Soil that meets a specified gradation or other quality or strength criteria for the purpose of raising the ground surface elevation or improving bearing conditions to receive a structure

Subgrade – Soil surface or substrate that will receive pavement, structure, engineered fill, backfill etc.

Synthetic Reinforcement – Specially manufactured fabric, usually as a woven or extruded plastic, used for the purpose of forming a composite with soil or aggregate and adding strength

Synthetic Separation - Specially manufactured fabric, usually as a woven plastic or non-woven fibrous plastic, used for the purpose creating a barrier for the migration of fine-grained soil

Topsoil – Soil that contains organic matter, usually as decayed vegetation and roots, in sufficient quantity that it is compressible, moisture sensitive, or subject to settlement with continued decay

Total Settlement – An estimate of the amount of settlement that may occur over the life of a structure as a result of compression of underlying soil due to the pressure imposed by the structure

Transient Loading – Short term loads applied to a structure, such as from seismic force or wind pressure.

Ultimate Bearing Capacity – An estimate of the bearing pressure applied to a soil stratum that would induce shear failure, without consideration of a factor of safety or limiting settlement

Undisturbed Soil – Soil that is allowed to remain in its natural state without changing moisture content or density

Void Form – A concrete form material for casting a structure which provides support long enough for the concrete to complete curing and gain sufficient strength for the structure to support itself, leaving a void when the form disintegrates with weathering and moisture.

Water Table – The surface of groundwater within saturated soil or rock layers

Weathered Bedrock – Native rock formation that has become delaminated or shows evidence of disintegration as determined and defined by the geotechnical engineer to distinguish a certain stratum for the purposes of the report

GENERAL NOTES - LOG OF TEST BORING/TEST PIT

DESCRIPTIVE SOIL CLASSIFICATION

Grain Size Terminology

Soil Fraction	Particle Size	U.S. Standard Sieve Size
Boulders	Larger than 12"	Larger than 12"
Cobbles	3" to 12"	3" to 12"
Gravel: Coarse	3/4" to 3"	3/4" to 3"
Fine	4.76mm to 3/4"	#4 to 3/4"
Sand: Coarse	2.00mm to 4.76mm	#10 to #4
Medium	0.42mm to 2.00mm	#40 to #10
Fine	0.074mm to 0.42mm	#200 to #40
Silt	0.005mm to 0.074mm	Smaller than #200
Clay	Smaller than 0.005mm	Smaller than #200

Plasticity characteristics differentiate between silt and clay

Relative Density		Consistency	
Term	"N" Value*	Term	q _u -tons/sq. ft.
Very Loose	0-4	Very Soft	0.0 to 0.25
Loose	4-10	Soft	0.25 to 0.5
Medium Dense	10-30	Firm	0.5 to 1.0
Dense	30-50	Stiff	1.0 to 2.0
Very Dense	Over 50	Very Stiff	2.0 to 4.0
		Hard	Over 4.0

*Note: The penetration number, N, is the summation of blows required to effect two successive 6" penetrations of the 2" split-barrel sampler. The sampler is driven with a 140-pound weight falling 30", and is seated to a depth of 6" before commencing the standard penetration test.

DESCRIPTIVE ROCK CLASSIFICATION

Engineering Hardness Description of Rock

(not to be confused with MOH's scale for minerals)

Very Soft	Can be carved with a knife. Can be excavated readily with point of pick. Pieces one inch or more in thickness can be broken with finger pressure. Can be scratched readily by fingernail.
Soft	Can be gouged or grooved readily with knife or pick point. Can be excavated in chips to pieces several inches in size by moderate blows of a pick point. Small thin pieces can be broken by finger pressure.
Medium Soft	Can be grooved or gouged 1/16-inch deep by firm pressure on knife or pick point. Can be excavated in small chips to pieces about 1-inch-maximum size by hard blows of the point of a geologist's pick.
Medium Hard	Can be scratched with knife or pick. Gouges or grooves to 1/4-inch deep. Can be excavated by hard blow of a geologist's pick. Hand specimens can be detached by moderate blow.
Hard	Can be scratched with knife or pick only with difficulty. Hard blow of hammer required to detach hand specimen.
Very Hard	Cannot be scratched with knife or sharp pick. Breaking of hand specimens requires several hard blows of geologist's pick.

NOMENCLATURE

Drilling and Sampling

SS	--	Split Barrel (spoon) Sampler
N	--	Standard Penetration Test Number, blows/foot*
ST	--	Thin-walled Tube (Shelby Tube) Sampler
DC	--	Thick-wall, ring lined, drive sampler
C	--	Coring
DP	--	Direct Push Sampler
CS	--	Continuous Sampler (used in conjunction with hollow stem auger drilling)
D	--	Disturbed Sample (auger cuttings, air/wash rotary cuttings, backhoe, shovel, etc.)

Laboratory Tests

USCS	--	Unified Soil Classification System (soil type)
W	--	Water Content (%)
LL	--	Liquid Limit (%)
PL	--	Plastic Limit (%)
PI	--	Plasticity Index (LL-PL) (%)
q _u	--	Unconfined Strength, TSF
q _p	--	Penetrometer Reading (estimate of unconfined strength), TSF
Y _m	--	Moist Unit Weight, PCF
Y _d	--	Dry Unit Weight, PCF
WSS	--	Water Soluble Sulfate (%)
Φ	--	Angle of Internal Friction (degrees)
c	--	Soil Cohesion, TSF
SG	--	Specific gravity of soil solids
S	--	Degree of Saturation (%)
e	--	Void Ratio
n	--	Porosity
k	--	Permeability (cm/sec)

Water Level Measurement



--	Water Level at Time Shown
Note: Water level measurements shown on the boring logs represent conditions at the time indicated, and may not reflect static levels, especially in cohesive soils. The available water level information is given at the bottom of each log.	

CLASSIFICATION OF SOILS FOR ENGINEERING PURPOSES

ASTM Designation: D2487-69 and D2488-69 (Unified Soil Classification System)

Major Divisions			Group Symbols		Typical Names		Laboratory Classification Criteria			
Coarse-Grained Soils (More than half of material is larger than No. 200 sieve size)	Gravels (More than half of coarse fraction is larger than No. 4 sieve size)	Clean Gravels (Little or no fines)	GW		Well graded gravels, gravel-sand mixtures, little or no fines		Determine percentages of sand and gravel from grain-size curve. Depending on percentage of fines (fraction smaller than No. 200 sieve size), coarse-grained soils are classified as follows: GW, GP, SW, SP GM, GC, SM, SC	$C_u = \frac{D_{60}}{D_{10}}$ greater than 4; $C_c = \frac{(C_{30})^2}{D_{10} \times D_{60}}$ between 1 & 3		
			GP		Poorly Graded gravels, gravel-sand mixtures, little or no fines			Not meeting all gradation requirements for GW		
		Gravels w/ Fines (Appreciable amount of fines)	GM ^a	d	Silty gravels, gravel-sand-silt mixtures	Atterberg limits below "A" line or P.I. less than 4		Above "A" line with P.I. between 4 and 7 are borderline cases requiring use of dual symbols		
				u						
	Sands (More than half of coarse fraction is smaller than No. 4 sieve size)	Clean Sands (Little or no fines)	GC		Clayey gravels, gravel-sand-clay mixtures			$C_u = \frac{D_{60}}{D_{10}}$ greater than 6; $C_c = \frac{(D_{30})^2}{D_{10} \times D_{60}}$ between 1 & 3		
			SW		Well-graded sands, gravelly sands, little or no fines				Not meeting all gradation requirements for SW	
		Sands w/ Fines (Appreciable amount of fines)	SP	Poorly graded sands, gravelly sands, little or no fines		Atterberg limits above "A" line or P.I. less than 4		Limits plotting in hatched zone with P.I. between 4 and 7 are borderline cases requiring use of dual symbols		
				SM ^a	d				Silty sands, sand-silt mixtures	
			u							
			SC	Clayey sands, sand-clay mixtures					Atterberg limits above "A" line or P.I. greater than 7	
Fine-Grained Soils (More than half material is smaller than No. 200 sieve size)	Silts and Clays (Liquid limit less than 50)	ML		Inorganic silts and very fine sands, rock flour, silty or clayey fine sands, or clayey silts with slight plasticity		<div>Plasticity Chart</div>				
		CL		Inorganic clays of low to medium plasticity, gravelly, clays, sandy clays, silty clays, lean clays						
		OL		Organic silts and organic silty clays of low plasticity						
	Silts and Clays (Liquid limit greater than 50)	MH		Inorganic silts, micaceous or diatomaceous fine sandy or silty soils, elastic silts						
		CH		Inorganic clays of high plasticity, fat clays						
		OH		Organic clays of medium to high plasticity, organic silts						
	Highly Organic Soils	P _t		Peat and other highly organic soils						

^a Division of GM and SM groups into subdivision of d and u are for roads and airfields only. Subdivision is based on Atterberg limits; suffix d used when L.L. is 28 or less and the P.I. is 6 or less; the suffix u used when L.L. is greater than 28.

^b Borderline classifications, used for soils possessing characteristics of two groups, are designated by combinations of group symbols. For example: GW-GC, well-graded gravel-sand mixture with clay binder.

Important Information about Your Geotechnical-Engineering Report

Subsurface problems are a principal cause of construction delays, cost overruns, claims, and disputes.

While you cannot eliminate all such risks, you can manage them. The following information is provided to help.

Geotechnical Services Are Performed for Specific Purposes, Persons, and Projects

Geotechnical engineers structure their services to meet the specific needs of their clients. A geotechnical-engineering study conducted for a civil engineer may not fulfill the needs of a construction contractor or even another civil engineer. Because each geotechnical-engineering study is unique, each geotechnical-engineering report is unique, prepared *solely* for the client. No one except you should rely on your geotechnical engineering report without first conferring with the geotechnical engineer who prepared it. *And no one — not even you — should apply the report for any purpose or project except the one originally contemplated.*

Read the Full Report

Serious problems have occurred because those relying on a geotechnical-engineering report did not read it all. Do not rely on an executive summary. Do not read selected elements only.

A Geotechnical-Engineering Report Is Based on a Unique Set of Project-Specific Factors

Geotechnical engineers consider many unique, project-specific factors when establishing the scope of a study. Typical factors include: the client's goals, objectives, and risk-management preferences; the general nature of the structure involved, its size, and configuration; the location of the structure on the site; and other planned or existing site improvements, such as access roads, parking lots, and underground utilities. Unless the geotechnical engineer who conducted the study specifically indicates otherwise, do not rely on a geotechnical engineering report that was:

- not prepared for you,
- not prepared for your project,
- not prepared for the specific site explored, or
- completed before important project changes were made.

Typical changes that can erode the reliability of an existing geotechnical-engineering report include those that affect:

- the function of the proposed structure, as when it's changed from a parking garage to an office building, or from a light-industrial plant to a refrigerated warehouse,

- elevation, configuration, location, orientation, or weight of the proposed structure,
- composition of the design team, or
- project ownership.

As a general rule, *always* inform your geotechnical engineer of project changes—even minor ones—and request an assessment of their impact. *Geotechnical engineers cannot accept responsibility or liability for problems that occur because their reports do not consider developments of which they were not informed.*

Subsurface Conditions Can Change

A geotechnical-engineering report is based on conditions that existed at the time the study was performed. *Do not rely on a geotechnical-engineering report* whose adequacy may have been affected by: the passage of time; by man-made events, such as construction on or adjacent to the site; or by natural events, such as floods, droughts, earthquakes, or groundwater fluctuations. *Always* contact the geotechnical engineer before applying the report to determine if it is still reliable. A minor amount of additional testing or analysis could prevent major problems.

Most Geotechnical Findings Are Professional Opinions

Site exploration identifies subsurface conditions only at those points where subsurface tests are conducted or samples are taken. Geotechnical engineers review field and laboratory data and then apply their professional judgment to render an opinion about subsurface conditions throughout the site. Actual subsurface conditions may differ—sometimes significantly—from those indicated in your report. Retaining the geotechnical engineer who developed your report to provide construction observation is the most effective method of managing the risks associated with unanticipated conditions.

A Report's Recommendations Are *Not* Final

Do not overrely on the construction recommendations included in your report. *Those recommendations are not final*, because geotechnical engineers develop them principally from judgment and opinion. Geotechnical engineers can finalize their recommendations *only* by observing actual

subsurface conditions revealed during construction. *The geotechnical engineer who developed your report cannot assume responsibility or liability for the report's recommendations if that engineer does not perform construction observation.*

A Geotechnical Engineering Report Is Subject to Misinterpretation

Other design team members' misinterpretation of geotechnical-engineering reports has resulted in costly problems. Lower that risk by having your geotechnical engineer confer with appropriate members of the design team after submitting the report. Also retain your geotechnical engineer to review pertinent elements of the design team's plans and specifications. Contractors can also misinterpret a geotechnical-engineering report. Reduce that risk by having your geotechnical engineer participate in prebid and preconstruction conferences, and by providing construction observation.

Do Not Redraw the Engineer's Logs

Geotechnical engineers prepare final boring and testing logs based upon their interpretation of field logs and laboratory data. To prevent errors or omissions, the logs included in a geotechnical engineering report should *never* be redrawn for inclusion in architectural or other design drawings. Only photographic or electronic reproduction is acceptable, *but recognize that separating logs from the report can elevate risk.*

Give Contractors a Complete Report and Guidance

Some owners and design professionals mistakenly believe they can make contractors liable for unanticipated subsurface conditions by limiting what they provide for bid preparation. To help prevent costly problems, give contractors the complete geotechnical-engineering report, *but* preface it with a clearly written letter of transmittal. In that letter, advise contractors that the report was not prepared for purposes of bid development and that the report's accuracy is limited; encourage them to confer with the geotechnical engineer who prepared the report (a modest fee may be required) and/or to conduct additional study to obtain the specific types of information they need or prefer. A prebid conference can also be valuable. *Be sure contractors have sufficient time to perform additional study.* Only then might you be in a position to give contractors the best information available to you, while requiring them to at least share some of the financial responsibilities stemming from unanticipated conditions.

Read Responsibility Provisions Closely

Some clients, design professionals, and contractors do not recognize that geotechnical engineering is far less exact than other engineering disciplines. This lack of understanding has created unrealistic expectations that

have led to disappointments, claims, and disputes. To help reduce the risk of such outcomes, geotechnical engineers commonly include a variety of explanatory provisions in their reports. Sometimes labeled "limitations," many of these provisions indicate where geotechnical engineers' responsibilities begin and end, to help others recognize their own responsibilities and risks. *Read these provisions closely.* Ask questions. Your geotechnical engineer should respond fully and frankly.

Geoenvironmental Concerns Are Not Covered

The equipment, techniques, and personnel used to perform a *geoenvironmental* study differ significantly from those used to perform a *geotechnical* study. For that reason, a geotechnical-engineering report does not usually relate any geoenvironmental findings, conclusions, or recommendations; e.g., about the likelihood of encountering underground storage tanks or regulated contaminants. *Unanticipated environmental problems have led to numerous project failures.* If you have not yet obtained your own geoenvironmental information, ask your geotechnical consultant for risk management guidance. *Do not rely on an environmental report prepared for someone else.*

Obtain Professional Assistance To Deal with Mold

Diverse strategies can be applied during building design, construction, operation, and maintenance to prevent significant amounts of mold from growing on indoor surfaces. To be effective, all such strategies should be devised for the *express purpose* of mold prevention, integrated into a comprehensive plan, and executed with diligent oversight by a professional mold-prevention consultant. Because just a small amount of water or moisture can lead to the development of severe mold infestations, many mold-prevention strategies focus on keeping building surfaces dry. While groundwater, water infiltration, and similar issues may have been addressed as part of the geotechnical-engineering study whose findings are conveyed in this report, the geotechnical engineer in charge of this project is not a mold-prevention consultant; ***none of the services performed in connection with the geotechnical engineer's study were designed or conducted for the purpose of mold prevention. Proper implementation of the recommendations conveyed in this report will not of itself be sufficient to prevent mold from growing in or on the structure involved.***

Rely on Your GBA-Member Geotechnical Engineer for Additional Assistance

Membership in the GEOPROFESSIONAL BUSINESS ASSOCIATION exposes geotechnical engineers to a wide array of risk confrontation techniques that can be of genuine benefit for everyone involved with a construction project. Confer with your GBA-member geotechnical engineer for more information.



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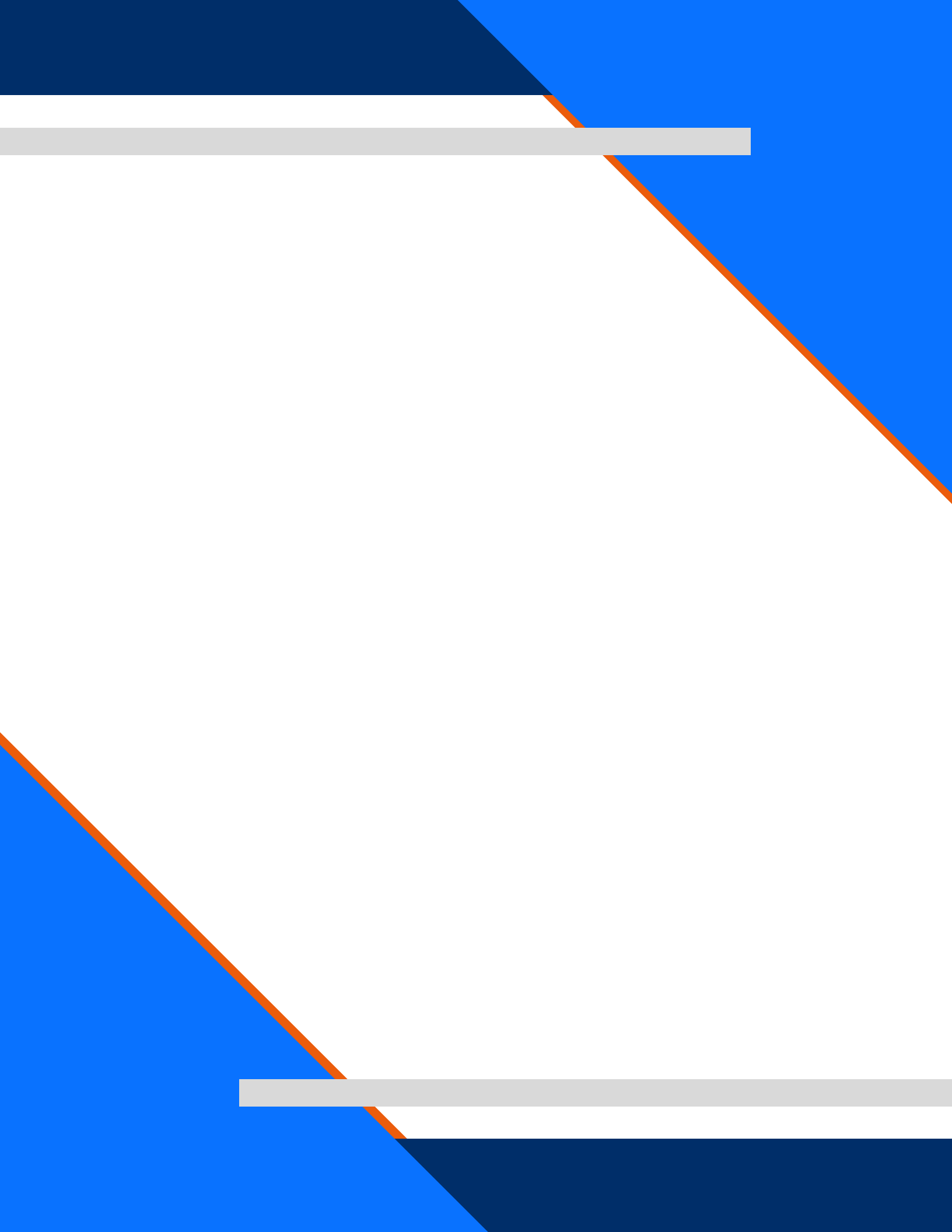


Exhibit C

Soil & Rock Potholing Data

NOTE: The following clarification is made within Section 01 00 00 of the Technical Specifications with regard to soil and rock potholing information.

Data in Exhibit C – Soil and Rock Potholing Information identifies the results of the ‘potholing’ that was performed at various locations along the waterline alignment. Contractor is advised that test potholes reveal information about only a very small area, and sub-surface conditions between the test holes may vary. The results of the potholing are provided for Contractor’s convenience only; they are not considered “Technical Data”, as defined in Article 5.03 of the General Conditions, upon which the Contractor is entitled to base his/ her bid. Contractor shall not make any claims due to differing sub-surface conditions based on the information provided in Exhibit C.

Chichiltah-Vanderwagen Water Supply Project "Pot-Holing" Information

Hole #	Line	Station	Latitude	Longitude	Subsurface Conditions	Depth to Rock
1	Line 3A	7+70.0	35.250071 N	108.750666 W	Sandy Loam at 5'	None at 5 Feet
2	Line 3A	20+40.0	35.248152 N	108.747584 W	Sandy Loam at 5'	None at 5 Feet
3	Line 3A	32+50.0	35.248341 N	108.743760 W	Loam at 5'	None at 5 Feet
4	Line 3A	45+30.0	35.249528 N	108.74099 W	Sandy Loam at 5'	None at 5 Feet
5	Line 3B	-0+29.0	35.249748 N	108.737284 W	Sandy Clay Loam at 6'	None at 6 Feet
6	Line 3B	11+62.0	35.249748 N	108.737284 W	Sandy Clay Loam at 6'	None at 6 Feet
7	Line 3B-1	0+20.0	35.244814 N	108.737516 W	Sandy Loam at 6'	None at 6 Feet
8	Line 3B-1	9+41.0	35.247399 N	108.737301 W	Sandy Loam at 6'	None at 6 Feet

Exhibit D

**Filling, Hydrostatic Testing, Flushing, and
Disinfection Plan and Hydrostatic Pressure and
Leakage Test Calculations**

Filling, Testing, Flushing, and Disinfection Plan

Chichiltah-Vanderwagen Water Supply Project

April 2024

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Acronyms and Abbreviations

ANSI	American National Standards Institute
ASTM	American Society for Testing and Materials
AWWA	American Water Works Association
NTUA	Navajo Tribal Utility Authority

Introduction

After construction of Chichiltah-Vanderwagen Water Supply Project is completed, the following procedures shall be performed: initial filling, hydrostatic pressure and leakage testing, predisinfection flushing, disinfection of all segments of the new pipeline, and bacteriological testing. These procedures shall be performed according to the industry standards referenced in each of the following plans for filling, testing, flushing, and disinfection.

Note: Coordination shall be made with the NTUA prior to filling, flushing or disinfecting the pipeline.

1. Initial Filling

As specified in AWWA C605 Sec. 10.1, "prior to filling, testing, and disinfecting the installed line, the constructor shall ensure that the line is clean in conformance with ANSI/AWWA C651. Initial filling shall be such that Chichiltah-Vanderwagen Water Supply Project is filled gradually to allow air to be vented through Air Valves. Flow velocity during filling should not exceed 1 foot per second (fps).

1. Notify NTUA 7 days before filling. Include initial filling on contractor's four-week look-ahead project schedule.
2. Water source for initial fill will be potable water from the proposed ground water well(s).

2. Hydrostatic Pressure and Leakage Testing

Chichiltah-Vanderwagen Water Supply Project shall undergo hydrostatic pressure and leakage testing prior to flushing and disinfection. Test pressure parameters and the maximum allowable leakage for each testing section of the project have been determined in the attached Hydrostatic Pressure and Leakage Test Calculations and are summarized briefly below.

For sections of PVC pipe, the minimum and maximum test pressure calculations are determined at the highest elevation point in the section. From section 10.3.5 of AWWA C605-13, the minimum allowable test pressure is the greater of: (1) 1.25-time the actual working pressure at the highest elevation in the section or (2) 1.5-times the actual working pressure at the lowest elevation in the section minus the static pressure difference between the highest and lowest elevations in the section. The maximum test pressure (at the lowest point in the test section) is the greater of: (1) the minimum allowable test pressure or (2) the minimum designed working pressure rating/load in the system, or 200 psi. 200 psi was chosen as the maximum test pressure due to the sizing of the thrust blocks which restrain the designed pressure load. The max allowable leakage for PVC pipe during pressure testing is determined by Equation 1 from Section 10.3.6 of AWWA C605-13. See the attached Test Hydrostatic Pressure and Leakage Calculations for more details.

See the following filling and testing plan and reference AWWA C605-13 (Underground Installation of PVC and PVC Pressure Pipe Fittings), AWWA M23-02 (PVC Pipe Design and Installation), AWWA M55-06 (PE Pipe Design and Installation), ASTM F2164 (Standard Practice Field Leak Testing of Polyethylene), and Chichiltah-Vanderwagen Water Supply Project technical specification 33 11 00 (Water Utility Distribution Piping).

1. Notify NTUA 7 days before hydrostatic pressure and leakage testing. Include pressure testing on contractor's four-week look-ahead project schedule.
2. Do not perform leak tests when water is ponded on ground surface from major rain or snow storms, unless approved by the engineer.
3. Vent all air from the pipeline prior to pressurization.
4. Exercise all isolation and air valves.
5. Fully restrain the pipeline, including permanently installed items and any temporary appurtenances used for testing, prior to pressurization.
6. Perform testing in accordance with applicable standards:
 - a. Test pressure: In accordance with the Chichiltah-Vanderwagen Water Supply Project Hydrostatic Pressure and Leakage Test Calculations.
 - b. PVC pipe: Simultaneous hydrostatic pressure and leakage test. The system shall be pressure tested in-ground in accordance with AWWA C605 and M23, with the exceptions noted below:
 - i. Prior to starting test, maintain water in pipe for 24 hours.
 - ii. Test duration: 2 hours.
 1. Engineer may require longer duration test if there is any doubt as to integrity of a particular section of pipe or appurtenances.
7. In no case shall the test pressure exceed the manufacturers' recommended maximum safe test pressure for the pipe, fittings or appurtenances.
8. No observable leakage is allowed. If leakage is detected, halt test. Measurable leakage must be within the maximum allowable limits set forth by applicable AWWA and ASTM standards including AWWA C605 Sec. 10.3.6 and as presented in the attached Chichiltah-Vanderwagen Distribution Waterline Hydrostatic Pressure and Leakage Test Calculations.
9. Any leaks detected during testing shall be repaired after pipe is depressurized. After repairs are completed, another full duration test shall be performed on the section of the pipeline to which the repairs were made.
10. All hydrostatic pressure and leakage tests will be witnessed by NTUA personnel.
11. Repeat test until acceptance criteria is achieved.

3. Predisinfection Flushing

To facilitate effective disinfection and minimize the chlorine dosage needed, predisinfection flushing will occur and continue until the discharge turbidity drops below 5 NTU, using measurement procedures described in AWWA Manual M12 (ANSI/AWWA C605-13, 2013). Predisinfection flushing shall be performed in accordance with AWWA C605 Sec. 10.2 and AWWA

C651 Sec. 4.4.2. A minimum flow velocity of 2.5 feet per second (fps) is required, or as otherwise approved by Engineer.

1. Notify NTUA 7 days before flushing. Include flushing on contractor's four-week look-ahead project schedule.
2. Flush by gravity from the Reach 14.8a Storage Tank.
3. Continue flushing until discharge turbidity drops below 5 NTU.

4. Pipeline Disinfection Plan

Disinfection of Chichiltah-Vanderwagen Water Supply Project shall be performed in accordance with the continuous-feed method of chlorination as set-forth in AWWA C651. Only properly designed and constructed equipment for this method shall be used.

1. The flushing water in the pipeline will be displaced with chlorinated water.
2. After disinfectant has been in system for 24 hours, chlorine will be neutralized, refer to AWWA C655 (Field Dechlorination) for the procedure.
3. The waterline will be flushed using potable water.
 - a. The neutralized water will be discharged from flush valves located along the waterline.
4. At least two sets of bacteriological samples shall be collected from every 1,200 LF of new waterline, plus two sets at each end of the line, unless otherwise approved by NTUA and the Engineer.
5. Two bacteriological tests will be taken 24 hours apart. After passing the tests, the system shall be online within 30 days.

The disinfection chemicals may be one of the following, with regard to the corresponding standard: Hypochlorites (AWWA B300-10), Liquid Chlorine (AWWA B301-10), and Sodium Chlorite (AWWA B303-10). All disinfection chemicals shall meet the requirements of NSF/ANSI 60.

See the following disinfection and post-disinfection flushing procedure and reference AWWA C651-14 (Disinfecting Water Mains), AWWA C605-13 (Underground Installation of PVC and PVCO Pressure Pipe Fittings), AWWA M12 (Simplified Procedure for Water Examination), AWWA C655-09 (Field Dechlorination), and Chichiltah-Vanderwagen Water Supply Project technical specification 33 13 00 (Disinfection of Water Utility Distribution).

Testing Plan: Contractor must submit schedule and proposed testing procedures specific to the project including laboratory name and contact information, testing/sampling locations, location where flushing water will be obtained for the pipeline flushing, disinfection, and final flushing, method for disposal of de-chlorinated water and equipment to be employed for disinfection for approval by Engineer.

1. Introduce treatment into piping system and perform disinfection in accordance with AWWA C651 Sec. 4.4.3 which states that at a point not more than 10 feet downstream from the beginning of the new main, water entering the new main shall receive a dose of chlorine fed at a constant rate such that the water will have not less than 25 mg/L (25 ppm) free chlorine.
 - a. Measure chlorine concentration at all sampling ports provided on the drawings including air valve vaults.
 - b. Per AWWA C651 Sec. 4.4.3, the free chlorine concentration shall be measured at regular time intervals in accordance with the procedures described in Standard Methods for the Examination of Water and Wastewater or AWWA Manual M12.
2. Maintain disinfectant in system for 24 hours, or 48 hours if the temperature is less than 41 degrees Fahrenheit.
 - a. During this period, valves and hydrants in the treated section shall be operated to ensure disinfection of the appurtenances.
 - i. Valves are to be operated at least twice.
 - ii. Operate the valves immediately after filling with chlorinated water.
 - iii. Second operation, shall be at least an hour later, but not at the end of the soak period.
 - b. At the end of this period, the treated water in all portions of the main shall have a residual of not less than 10 mg/L (10 ppm) of free chlorine.
 - c. Ensure that a disinfection report is generated and includes items listed below:
 - i. Type and form of disinfectant used.
 - ii. Date and time of disinfectant injection start and time of completion.
 - iii. Test locations.
 - iv. Name of person collecting samples.
 - v. Final disinfectant residuals in treated water in ppm for each outlet tested.
 - vi. Date and time of flushing start and completion.
 - vii. Disinfectant residual after flushing in ppm for each outlet tested.
3. Flush, circulate, and clean using potable water.
 - a. Neutralize residual chlorine to levels normally associated with potable water (below 4 ppm) prior to discharging water to the environment.
 - i. If dechlorination is required, refer to AWWA C655 (Field Dechlorination) for the procedure.
 - b. Flush pipeline until chlorine concentration in water leaving pipeline is no higher than that of the water used for flushing, or 0.4 ppm, whichever is greater.
4. After final flushing and before pipeline is placed in service, sample, test and certify that water quality is suitable for human consumption, in accordance with AWWA C651.
 - a. Two sets shall be taken at least 24 hours apart and pass before disinfection is acceptable.
 - b. Ensure that a bacteriological report is generated and includes items listed below:
 - i. Date issued, project name, and testing laboratory name, address, and telephone number.
 - ii. Time and date of water sample collection.

- iii. Name of person collecting samples.
- iv. Test locations.
- v. Final disinfectant residuals in ppm for each outlet tested.
- vi. Coliform bacteria test results for each outlet tested.
- vii. Certify water conforms, or fails to conform, to bacterial standards of authority having jurisdiction.
- c. Certify that the water conforms to the quality standards of the authority having jurisdiction and is suitable for human consumption.
- d. In the event that the performed water quality testing fails, the affected portions of the system will be flushed, disinfected again, and retested.
- e. The new pipeline shall not be put in service until all testing and disinfection is completed, and all bacteriological test results certifying that the water is free of coliform bacteria contamination.
- 5. Replace any permanent system devices removed for disinfection. Devices shall be spray-disinfected or swabbed with a minimum of 1–5 percent solution of chlorine just prior to being installed.

5. Storage Tank Flushing and Disinfection Plan

Disinfection of the proposed storage tank at the Chichiltah-Vanderwagen Tank 1 Site shall be performed in accordance with AWWA C652 (Disinfection of Water-Storage Facilities). Only properly designed and constructed equipment for this method shall be used.

The disinfection chemicals may be one of the following per AWWA C652 Section 4.2, with regard to the corresponding standard: Liquid Chlorine (AWWA B301), Sodium or Calcium Hypochlorite (AWWA B300). All disinfection chemicals shall meet the requirements of NSF/ANSI 60.

See the following flushing and disinfection plan and reference AWWA C652 (Disinfection of Water-Storage Facilities) and Chichiltah-Vanderwagen Water Supply Project technical specification 33 13 13 (Water Storage Tank Disinfection).

- 1. Conduct inspection of tank interior before beginning disinfection.
 - a. Verify tank is clean and free of polluting materials.
 - b. Verify tank pipe and vent connections are properly made and clear of obstructions.
- 2. Use Chlorination Method 2 from Section 4.3 of AWWA C652 that specifies to apply a solution of 200 mg/L available chlorine to the surfaces of all parts of the storage tank that will be in contact with water when the tank is full to the overflow elevation. The solution shall be applied to any separate drain piping such that it will have available chlorine of not less than 10 mg/L when filled with water. All surfaces to be treated shall be thoroughly coated with the solution. Overflow piping need not be disinfected.

3. Retain contact between the disinfected surfaces and the chlorine solution for at least 30 minutes, at which point the drain piping shall be purged of the 10-mg/L chlorinated water, and the storage tank shall be filled to its overflow level with potable water.
 - a. Protect aquatic life and vegetation from damage from disinfectant solution purged from tank.
 - b. Following this procedure and subject to satisfactory bacteriological testing and acceptable aesthetic quality, the water may be delivered into the system.
4. Collect samples of water from filled tank for bacteriological analysis in accordance with AWWA C652 Sec. 5.1; take inlet and outlet water samples.
5. Test water samples for bacterial contamination, residual chlorine, in accordance with State Health Standards for potable water.
 - a. Ensure that a disinfection report is generated and includes items listed below:
 - i. Type and form of disinfectant used.
 - ii. Date and time of disinfectant start and time of completion.
 - iii. Name of person collecting samples.
 - iv. Final disinfectant residuals in treated water in ppm for each outlet tested.
 - b. If water samples fail to meet State Health Standards for potable water, repeat sampling, if second sample fails, perform the following corrective measures until water quality conforms to State Health Standards:
 - i. Inlet and Outlet Water Sample Failure: Eliminate source of contamination in water supply, repeat disinfection, and retest water quality.
 - ii. Outlet Water Sample Failure: Repeat disinfection, and retest water quality.

References:

1. AWWA B300-10 – Hypochlorites
2. AWWA B301-10 – Liquid Chlorine
3. AWWA B303-10 – Sodium Chlorite
4. AWWA C605-13 – Underground Installation of PVC and PVCO Pressure Pipe Fittings
5. AWWA C651-14 – Disinfecting Water Mains
6. AWWA C655-09 – Field Dechlorination
7. AWWA M12 – Simplified Procedures for Water Examination
8. AWWA M23-02 – PVC Pipe Design and Installation
9. Chichiltah-Vanderwagen Water Supply Project technical specification 33 13 13 (Disinfection Storage Tank Distribution).

Attachments:

Chichiltah-Vanderwagen Water Supply Project Hydrostatic Pressure and Leakage Test Calculation

Chichiltah-Vanderwagen Water Supply Project - Hydrostatic Pressure Test Calculations

Vanderwagen Tank 1 Overflow Elev.	7,395.00	ft aMSL
Vanderwagen Tank 1 80% Full Elev.	7,386.00	ft aMSL
Vanderwagen Tank 1 Base Elev.	7,350.00	ft aMSL

Description	Testing Range						High Point / Testing ARV			Low Point			Static Pressure Difference Low to High ¹	Original Test Pressure at Low Point	Max Test Pressure ² at Low Point	Max Test Pressure ² (High Point / Testing ARV)
	Beginning Station	Ending Station	Distance Testing Range	Pipe Diameter	Pipe SDR and/or DR	Pressure Rating	Sta.	Elevation	Max WP	Sta.	Elevation	Max WP				
-	LF	LF	LF	in	-	psi	LF	ft-AMSL	psi	LF	ft-AMSL	psi	psi	psi	psi	psi
Line 3A	GV at Well 4 Site	20+85	2053	2 & 4	21 & 18	200	17+53	7333	27	01+80	7287	47	20	200	200	180
Line 3A-1 and 3A	GV at Well 3 Site	GV at Tank Site ³	3657	2 & 4	21 & 18	200	Tank Site	7345	22	26+60	7297	42	21	200	200	179
Line 3B	GV at Well 2 Site	11+62	1196	2 & 4	21 & 18	200	04+91	7348	20	GV at Well 2 Site	7335	26	6	200	200	194
Line 3B-1	GV at Well 5 Site	17+93	1782	2	21	200	17+86	7344	22	00+65	7287	47	25	200	200	175

Notes:

- ¹ Highlighted if static pressure difference is greater than 25 psi. *In the case of Chichiltah, the static pressure difference is less than 25 psi in all testing ranges.*
- ² Maximum test pressure at low point is based on the following criteria: (1) Use either pipe WP rating or 1.25 X actual maximum working pressure, whichever is greater; and (2) If using pipe WP rating, and if the static pressure difference between high and low point is greater than 25 psi, increase test pressure to maintain minimum test pressure at high point of 25 psi below WP rating. Cell highlighted if pressure greater than the pipe DR working pressure rating (original test pressure).
- ³ For the testing section of Line 3A-1 and 3A between the Well 3 Site the Chichiltah-Vangerwagen Tank 1 site, ensure that the GV at Sta. 20+85 on Line 3A, the Well Site 1 gate valve and the GV at Sta. 11+62 on Line 3B are all closed during testing.