QUESTA CITIZENS DITCH ASSOCIATION

FLUME REPLACEMENT PROJECT

QUESTA, TAOS COUNTY, NEW MEXICO

BIDDING INFORMATION AND INSTRUCTIONS

PREPARED BY:

AGUA FRIA ENGINEERS LLC
3937 AGUA FRIA STREET
SANTA FE, NEW MEXICO 87507

APRIL 30, 2026

AGUA FRIA
ENGINEERING LLC

QUESTA CITIZENS DITCH ASSOCIATION

FLUME REPLACEMENT PROJECT

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BIDDING INFORMATION AND INSTRUCTIONS

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BIDDING INFORMATION AND INSTRUCTIONS

1. PROJECT SCOPE
   1.1 The Questa Citizens Ditch Association, henceforth Owner, is requesting bids from qualified contractors for the construction of a replacement of a overshot flume on it's open irrigation ditch as shown on the Construction Drawings dated April 30, 2026.

2. PROJECT SCHEDULE
   2.1 The Contractor shall perform the work in accordance with the following contract times:
      1. Mobilization: On or before January 15, 2027
      2. Substantial Completion: On or before April 1, 2027
      3. Final Completion: On or before April 15, 2027

3. CONSTRUCTION DOCUMENTS
   3.1 Electronic copies of the construction documents, including bidding information and instructions, construction drawings, and the draft construction contract can be requested by emailing construction@aguafriaengineering.com.

4. PRE-BID MEETING
   4.1 Prospective bidders will be required to attend a mandatory pre-bid meeting. Prospective bidders should meet at the Project site near 24 Embargo Road, Questa, NM 87556, on November 10, 2026, beginning at 10:00 a.m.

5. SUBMISSION OF BIDS
   5.1 Bid must be received by Agua Fria Engineering LLC, henceforth, Engineer, no Later than 10:30 a.m on November 20, 2026. Bids may be submitted electronically via email to construction@aguafriaengineering.com as a single PDF attachment or hand delivered in a sealed envelope between the times of 10:00 a.m. and 10:30 a.m. to the Engineer at the following address:

      Santa Fe Public Library – Southside Branch
      Café Conference Room
      6599 Jaguar Dr,
      Santa Fe, NM 87507

   5.2 Bids must include the following documents to be considered complete:
      1. Fully completed Bid Item Costs and Project Total Form (Attachment A)
      2. Contractor information Form (Attachment B)
      3. Bid bond (5% of the total bid amount **excluding** NMGRT)
      4. Copies of any addenda issued by Agua Fria Engineering LLC. signed by the contractor or authorized representative.

6. PREVAILING WAGES

6.1 The Contractor shall comply with all applicable provisions of the New Mexico Department of Workforce Solutions (NMDWS) *Public Works Minimum Wage Act* (NMSA 1978, Sections 13-4-10 through 13-4-17) and shall pay all persons employed on the project not less than the prevailing wage rates and fringe benefits determined by NMDWS. The applicable Wage Rate Determination number is TA-26-3744-A.

7. ADDENDA

7.1 Any questions regarding the bidding documents shall be submitted in writing via email to the Engineer no later than five (5) calendar days prior to the bid deadline. Responses and addenda will be distributed electronically to all known plan holders. Verbal interpretations will not be binding. No Addenda will be issued within forty-eight (48) hours of the designate bid opening time, except an addendum postponing or withdrawing the date or time of the bid opening.

8. BID SECURITY

8.1 Each bid shall be accompanied by a Bid Bond in an amount equal to five percent (5%) of the total base bid. The bid security shall be in the form of one of the following:

- A certified check, treasurer's check, or cashier's check drawn on a reputable bank; or
- A bid bond issued by a responsible surety company authorized to conduct business in the State of New Mexico.

8.2 The bid security shall be made payable to the Questa Citizens Ditch Association and shall serve as a guarantee that, if awarded the Contract, the bidder will execute the Agreement and furnish the required Performance and Payment Bonds within the time specified in the Notice of Award.

8.3 The Owner shall have the right to retain the bid bond until one of the following conditions has been met:

1. A Contract has been awarded and fully executed;
2. All bids have been rejected; or
3. Sixty (60) calendar days have elapsed from the date of bid opening.

8.4 Failure of the bidder to execute the Contract or to furnish the required Performance and Payment Bonds within a reasonable timeframe after issuance of the Notice of Award shall constitute cause for forfeiture of the bid bond or bid security, as liquidated damages, and not as a penalty. In such event, the Owner may retain the bid bond or proceeds thereof and award the Contract to the next lowest responsive and responsible bidder or otherwise act in the Owner's best interest.

9. BIDDERS REPRESENTATION

9.1 By submitting a bid, each bidder represents that they have carefully examined and fully understand all Bidding Documents, including the drawings, specifications, general and special provisions, and any addenda issued prior to bid submission.

9.2 The bidder further acknowledges that they have:

1. Familiarized themselves with the nature and location of the work, existing conditions, access constraints, and all other factors that may affect performance or cost;
2. Reviewed all requirements of the Contract Documents and verified that their bid is complete, accurate, and sufficient to perform all work required; and
3. Accepted responsibility for the correctness and validity of their bid and all prices stated therein.

9.3 Submission of a bid shall constitute a binding representation that the bidder has made all necessary investigations and is fully informed as to the character, quality, and quantity of work to be performed, and that the bid is based solely on their own judgment and evaluation of the work and conditions.

10. WITHDRAWAL OR MODIFICATION OF BIDS

10.1 Bids may be withdrawn or modified by written request prior to the bid submission deadline. No bid may be withdrawn after the bid opening without the consent of the Owner.

11. BID OPENING

11.1 All bids received on or before the deadline will be opened and read aloud at the Santa Fe Public Library – Southside Branch, Café conference room at 11:00am, November 20, 2026 and streamed live via web video conference. A link to the video conference will be made available to all plan holders or interested parties within 48 hours of the bid opening. The Owner reserves the right to postpone the opening for its convenience, provided all bids remain unopened until the scheduled opening time.

11.2 Following the public reading, all bids will be reviewed in detail by the Owner and Engineer for accuracy, completeness, and compliance with the bidding requirements. The review will include verification of bid amounts, arithmetic correctness, inclusion of required documentation, and confirmation of any bid alternates or unit prices.

11.3 Once the review has been completed, a tabulation of bids will be prepared and made available to all bidders. The tabulation will summarize each bidder's total base bid and alternates and will be distributed electronically or made available through the same channel where the bid documents were obtained.

12. REJECTION/ACCEPTANCE OF BIDS

12.1 The OWNER shall have the right to accept or reject any and all bids. The Owner may reject individual bids that are incomplete or that are not accompanied by the required bid security.

13. BID EVALUATION AND CONTRACT AWARD

13.1 The contract will be awarded to the responsive and responsible bidder that meets all project specifications and requirements, satisfies the qualification criteria in these bid documents, and submits the lowest total base bid, including any selected alternatives.

13.2 Bidders are required to have a valid New Mexico State Contractors License relative to scope of work for the Project. The contractor's license number and classification(s) shall be included in the provided contractor's information form.

13.3 The Owner reserves the right to consider the bidder's experience, references, reputation, and responsiveness in making the final award decision. The Owner shall have the right to waive any informality or irregularity in any bid(s) received and to accept or reject the bid(s) which in its judgment is in its own best interest.

13.4 In accordance with the standard terms and conditions and New Mexico Administrative Code, no bids will be considered from officers or members, or immediate family members of officers or members of the Questa Citizens Ditch Association.

13.5 The Owner will issue a Notice of Award to the low bidder determined to have submitted the lowest responsive and responsible bid. Upon receipt of the Notice of Award, the Contractor shall:

1. Execute the Construction Contract with the Owner; and
2. Provide the required Performance and Payment Bonds in the amounts specified in the Contract Documents.

ATTACHMENT A - BID COSTS AND PROJECT TOTAL SHEET
QUESTA CITIZENS DITCH - FLUME REPLACEMENT PROJECT

ITEM NO.	ITEM DESCRIPTION	SPEC	UNITS	QTY	UNIT COST	ITEM TOTAL
1	MOBILIZATION & DEMOBILIZATION	SP-01	LUMP SUM	1		
2	CONSTRUCTION SURVEYS	SP-04	LUMP SUM	1		
3	REMOVE AND DISPOSE OF EXISTING FLUME AND SUPPORTS	SP-05	LUMP SUM	1		
4	FURNISH AND INSTALL 16" DIAMETER SCHEUDLE 40 STEEL PIPE	SP-08	LINEAR FOOT	160		
5	FURNISH AND INSTALL ELEVATED PIPE SUPPORTS (EXCLUDING W8X36 PILES)	SP-06,08	EACH	2		
6	FURISH AND DRIVE W8X36 FOUNDATION PILES (APPROX 15 FOOT EACH (4))	SP-08, NMDOT 501	LINEAR FOOT	60		
7	FURNSIH AND INSTALL AT GRADE PIPE SUPPORTS	SP-06, 08	EACH	2		
8	FURNISH AND INSTALL 16" DIAMETER 150 SOCKET WELD FLANGE CONNECTION (2 FLANGES) W/CONNECTION BOLTS (16)	SP-08	EACH	3		
9	FURNISH AND INSTALL CAST-IN-PLACE CONCRETE END SECTION	SP-06	CY	2		
10	FURNISH AND INSTALL END SECTION TRASH RACK	SP-08	EACH	1		
11	FURNISH AND INSTALL CLASS B RIPRAP	SP-07	CUBIC YARD	27		
12	FURNISH AND INSTALL 6" DITCH ROCK	SP-07	CUBIC YARD	14		
13	EARTHWORK: EXCAVATION AND COMPACTED BACKFILL (BALANCED ONSITE)	SP-06	CUBIC YARD	110		
14	EARTHWORK: COMPACTED BACKFILL (IMPORTED)	SP-06	CUBIC YARD	100		
					PROJECT TOTAL:	
					NMGRT (8.5625%):	
					GRAND TOTAL:	

Contractor Name

Contractors Signature **Date**

New Mexico Contractor License Number

New Mexico Contractors License Classification(s)

ATTACHMENT B - CONTRACTOR INFORMATION FORM

QUESTA CITIZENS DITCH- FLUME REPLACEMENT PROJECT

CONTRACTOR INFORMATION			
Company Name:			
Physical Address:		Mailing Address:	
Office Phone Number:		Email Address:	
Company Website:			
New Mexico Contractors License Number:		License Classification(s):	
Project Forman Name:			
Project Forman Cell Phone Number:		Project Forman Years of Experience:	
REFERENCE PROJECT 1			
Project Name:			
Project Location:		Month/Year Completed:	
Project Scope/type:			
Final Contract Amount:			
Owner name:			
Owner Phone Number:			
REFERENCE PROJECT 2			
Project Name:			
Project Location:		Month/Year Completed:	
Project Scope/type:			
Final Contract Amount:			
Owner name:			
Owner Phone Number:			
REFERENCE PROJECT 3			
Project Name:			
Project Location:		Month/Year Completed:	
Project Scope/type:			
Final Contract Amount:			
Owner name:			
Owner Phone Number:			

DRAFT CONTRACT DOCUMENTS

For

QUESTA CITIZENS DITCH ASSOCIATION

FLUME REPLACEMENT PROJECT

Notice Regarding Draft Contract Documents

The following Draft Construction Contract and Exhibits are provided for informational purposes only. These documents are intended to provide the general terms, conditions, and forms that will be used for the Project.

Bidders are **not** required to complete, sign, or include these documents in their bid submission. Final versions of the Contract and Exhibits will be executed only with the successful bidder following the issuance of the Notice of Award.

CONTENTS:

FORM OF AGREEMENT

EXHIBIT A- SCHEDULE OF UNIT COSTS

EXHIBIT B – STANDARD TERMS AND CONDITIONS

EXHIBIT C- PERFORMANCE BOND

EXHIBIT D- PAYMENT BOND

FORM OF AGREEMENT

INVOLVED PARTIES:
This Agreement is hereby made and entered into by and between:

OWNER:		**CONTRACTOR:**
Questa Citizens Ditch Association		[ORGANIZATION NAME]
Attn: Mr. Bobby Ortega, President	AND	[PRIMARY POC]
Po Box 1313		[ADDRESS]
Questa, New Mexico 87556		[CITY, STATE, ZIP]

PROJECT NAME: Questa Citizens Ditch Association - Flume Replacement Project

SCOPE OF WORK:
Replacement of an existing flume crossing an arroyo and ditch return channel, including removal and disposal of the existing overhead flume and supports, installation of 160 linear feet of elevated 16" schedule 40 steel pipe, pipe supports, and grading of the existing ditch.

CONTRACT TIMES:
Work shall commence on or before: **January 15, 2027** Substantial completion on or before: **April 1, 2027**
Final completion on or before: **April 15, 2027**

CONTRACT PRICE:
The Owner shall pay the Contractor for the services described in the Scope of Work and further described in the Contract Documents at the unit prices listed in Exhibit A - Schedule of Unit Prices. The total contract amount is **[contract price]**, including NM gross receipts tax.

CONTRACT DOCUEMNTS
The Contract Documents Consist of the following documents:

1. Form of Agreement
2. Exhibit A - Schedule of Unit Prices
3. Exhibit B - Standard Terms and Conditions
4. Exhibit C - Performance Bond
5. Exhibit D - Payment Bonds
6. Addenda
7. Change Orders
8. Construction Drawings and Specifications

The Owner and Contractor has read and agrees to the terms of the Contract Documents which are incorporated herein and made part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed, by their duly authorized official, this Agreement on the respective dates indicated below. The effective date of this Agreement is the date of the last signature. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one instrument.

CONTRACTOR:

Signature	Printed name	Title	Date

(if the Contractor is a corporation, a partnership, or a joint venture, attache devidence of authority to sign)

OWNER:

Signature	Printed name	Title	Date
Signature	Printed name	Title	Date
Signature	Printed name	Title	Date

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Exhibit A - Schedule of Unit Costs

QUESTA CITIZENS DITCH - FLUME REPLACEMENT PROJECT

ITEM NO.	ITEM DESCRIPTION	SPEC	UNITS	QTY	UNIT COST	ITEM TOTAL
1	MOBILIZATION & DEMOBILIZATION	SP-01	LUMP SUM	1		
2	CONSTRUCTION SURVEYS	SP-04	LUMP SUM	1		
3	REMOVE AND DISPOSE OF EXISTING FLUME AND SUPPORTS	SP-05	LUMP SUM	1		
4	FURNISH AND INSTALL 16" DIAMETER SCHEUDLE 40 STEEL PIPE	SP-08	LINEAR FOOT	160		
5	FURNISH AND INSTALL ELEVATED PIPE SUPPORTS (EXCLUDING W8X36 PILES)	SP-06,08	EACH	2		
6	FURISH AND DRIVE W8X36 FOUNDATION PILES (APPROX 15 FOOT EACH (4))	SP-08, NMDOT 501	LINEAR FOOT	60		
7	FURNSIH AND INSTALL AT GRADE PIPE SUPPORTS	SP-06, 08	EACH	2		
8	FURNISH AND INSTALL 16" DIAMETER 150 SOCKET WELD FLANGE CONNECTION (2 FLANGES) W/CONNECTION BOLTS (16)	SP-08	EACH	3		
9	FURNISH AND INSTALL CAST-IN-PLACE CONCRETE END SECTION	SP-06	CY	2		
10	FURNISH AND INSTALL END SECTION TRASH RACK	SP-08	EACH	1		
11	FURNISH AND INSTALL CLASS B RIPRAP	SP-07	CUBIC YARD	27		
12	FURNISH AND INSTALL 6" DITCH ROCK	SP-07	CUBIC YARD	14		
13	EARTHWORK: EXCAVATION AND COMPACTED BACKFILL (BALANCED ONSITE)	SP-06	CUBIC YARD	110		
14	EARTHWORK: COMPACTED BACKFILL (IMPORTED)	SP-06	CUBIC YARD	100		
					PROJECT TOTAL:	
					NMGRT (8.5625%):	
					GRAND TOTAL:	

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Exhibit B – Standard Terms and Conditions
Questa Citizens Ditch – Flume Replacement Project

ARTICLE 1 - SCOPE OF WORK

1.01 Work includes all labor, materials, equipment, services, and documentation necessary to construct the Project defined in the Contract Documents. The Work may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

ARTICLE 2 - CONTRACT DOCUMENTS

2.01 The Contract Documents consist of the following documents:

1. Form of Agreement
2. Exhibit A – Schedule of Unit Costs
3. Exhibit B – Standard Terms and Conditions
4. Exhibit C – Performance Bond
5. Exhibit D – Payment Bonds
6. Addenda
7. Change Orders (may be delivered or issued on or after the Effective Date of the Contract
8. Construction Drawings and Specifications

ARTICLE 3 - CONTRACT TIMES

3.01 Contract Times

A. The Work will be substantially completed and ready for final payment on the dates or completion times listed on the Form of Agreement.

3.02 Liquidated Damages

A. Contractor and Owner recognize that time is of the essence in the performance of the Contract, and that Owner will incur damages if Contractor does not complete the Work according to the requirements of Paragraph 3.01. Because such damages for delay would be difficult and costly to determine, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner $150.00 for each day that expires after the Contract Time for substantial completion.

3.03 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 and Contract Price. 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.

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 or their subcontractors or suppliers.

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.

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ARTICLE 4 - CONTRACT PRICE AND PAYMENT PROCEDURES

4.01 Payment

A. The Owner agrees to pay the Contractor the total Contract Price as stated in the Form of Agreement, subject to adjustments made in accordance with the terms of this Contract.

B. Payment shall be made for work satisfactorily performed for the items and quantities listed in Exhibit A – Schedule of Unit Costs and shall be subject to retention, deductions, or setoffs as provided herein or required by law.

4.02 Invoicing Procedures

A. The Contractor shall submit itemized invoices on a monthly basis unless otherwise agreed in writing.

B. Each invoice shall include the quantity of items listed in Exhibit A – Schedule of Unit Costs completed during the billing period, along with supporting documentation as reasonably requested by the Owner. The Contractor may request a partial payment of items with "Lump Sum" units by listing a percentage as the item quantity.

C. The Owner, Engineer, or Owners designated representative shall review and either approve or object to the invoice within ten (10) business days of receipt. Approved invoice amounts shall be paid within thirty (30) calendar days of receipt, subject to any applicable retainage provisions.

4.03 Change Order Price Determination

A. Adjustments to the Contract Price for approved changes in the scope of work shall be documented through a written Change Order executed by both parties. The price of a Change Order shall be determined by the unit prices listed in Exhibit A – Schedule of Unit Prices one or more of the following methods, as agreed upon in writing:
   (a) a mutually accepted lump sum;
   (b) time and materials, including a reasonable markup for overhead and profit; or
   (c) any other method mutually acceptable to the parties.

B. The Engineer shall be responsible for drafting the Change Order, which will include a description of the proposed change, any associated adjustments to the Contract Price or Contract Time, and the justification for the modification. The draft Change Order shall be submitted to the Contractor for review and approval. Upon the Contractor's written approval, the Change Order shall be forwarded to the Owner for final authorization. No work under a proposed Change Order shall proceed until it has been fully executed by all parties.

C. No additional compensation shall be due to the Contractor for extra work or changes unless authorized in writing by the Owner in the form of a fully executed Change Order.

4.04 Waiver of Claims

A. The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor.

B. 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.

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ARTICLE 5 - BONDS AND INSURANCE

5.01 Bonds

A. Before starting Work, Contractor shall furnish a performance bond and a payment bond from surety companies that are duly licensed or authorized to issue bonds in the required amounts in the jurisdiction in which the Project is located. Each bond shall be in an amount equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. These bonds shall remain in effect until the completion of the correction period specified in Paragraph 6.12 but, in any case, not less than one year after the date when final payment becomes due.

B. The Contractor may utilize the forms provided in Exhibit C – Performance Bond and Exhibit D – Payment Bond or a form provided by a surety Company.

5.02 Insurance

A. Before starting Work, Contractor shall furnish evidence of insurance from companies that are duly licensed or authorized in the jurisdiction in which the Project is located with a minimum AM Best rating of A-VII or better. The Contractor shall provide insurance in accordance with the following:

Coverage	**Limits**	
A. Worker's Compensation & Disability Requirements	Each Occurrence	Aggregate
State	Statutory	
Employer's Liability	$1,000,000	$1,000,000
B. Commercial General Liability	Each Occurrence	Aggregate
Bodily Injury	$1,000,000	$1,000,000
Property Damage	$1,000,000	$1,000,000
C. Automobile Liability	Each Person	Each Occurrence
Bodily Injury	$1,000,000	$1,000,000
Property Damage	$1,000,000	$1,000,000

B. All insurance policies required to be purchased and maintained will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days prior written notice has been given to the insured and additional insured.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.01 Supervision and Superintendence

A. Contractor shall supervise 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, safety, and procedures of construction.

B. Contractor shall assign a competent resident superintendent who is to be present at all times during the execution of the Work. This resident superintendent shall not be replaced without written notice to and approval by the Owner and Engineer except under extraordinary circumstances.

C. Contractor shall at all times maintain good discipline and order at the Site.

D. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, Monday through Friday.

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6.02 Other Work at the Site

A. In addition to and apart from the Work of the Contractor, other work may occur at or adjacent to the Site. 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.

6.03 Services, Materials, and Equipment

A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all 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 materials and equipment incorporated into the Work shall be new, of good quality and shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable supplier, except as otherwise may be provided in the Contract Documents.

6.04 Subcontractors and Suppliers

A. Contractor may retain subcontractors and suppliers for the performance of parts of the Work. Such subcontractors and suppliers must be acceptable to Owner.

6.05 Quality Management

A. Contractor is fully responsible for the managing quality to ensure Work is completed in accordance with the Contract Documents.

6.06 Licenses, Fees and Permits

A. Contractor shall pay all license fees and royalties and assume all costs incident to performing 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.

B. Contractor shall obtain and pay for all construction permits and licenses unless otherwise provided in the Contract Documents.

6.07 Laws and Regulations; Taxes

A. Contractor shall give all notices required by and shall comply with all local, state, and federal Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

B. Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages if Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations.

C. Contractor shall pay all applicable sales, consumer, use, and other similar taxes Contractor is required to pay in accordance with Laws and Regulations.

6.08 Prevailing Wage Requirements

A. The Contractor shall comply with all applicable provisions of the New Mexico Department of Workforce Solutions (NMDWS) *Public Works Minimum Wage Act* (NMSA 1978, Sections 13-4-10 through 13-4-17) and shall pay all persons employed on the project not less than the prevailing wage rates and fringe benefits determined by NMDWS. The applicable **Wage Rate Determination No. TA-26-3744-A** shall be incorporated into and made part of the Contract Documents

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6.09 Record Documents

A. Contractor shall maintain one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved shop drawings in a safe place at the Site. Contractor shall annotate them to show changes made during construction. Contractor shall deliver these record documents to Engineer upon completion of the Work.

6.10 Safety and Protection

A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work.

B. 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; and

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.

C. All damage, injury, or loss to any property caused, directly or indirectly, in whole or in part, by Contractor, or anyone for whose acts the Contractor may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Contract Documents or to the acts or omissions of Owner or Engineer and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor).

D. 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.

E. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor shall act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby 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, a Work Change Directive or Change Order will be issued.

6.11 Shop Drawings, Samples, and Other Submittals

A. Shop drawing, samples, and other submittals, when requested are intended to provide verification to the Owner and Engineer that the Contractor understands the intent of the Contract Documents and intends to furnish and install items that meet the project specifications.

B. Contractor shall review and coordinate the shop drawing and samples with the requirements of the Work and the Contract Documents and shall verify all related field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information.

C. Engineer will provide timely review of shop drawings and samples.

6.12 Warranties and Guarantees

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.

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6.13 Correction Period

A. If within one year after the date of substantial completion, 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 and without cost to Owner, correct such defective Work.

6.14 Indemnification

A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) 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 they may be liable.

ARTICLE 7 - OWNER'S RESPONSIBILITIES

7.01 Owner's Responsibilities

A. Except as otherwise provided in the Contract Documents, Owner shall issue all communications to Contractor through Engineer.

B. Owner shall make payments to Contractor as provided in this Contract.

C. Owner shall provide Site and easements required to construct the Project.

D. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, unless stated elsewhere in the Contract Documents, Owner shall have sole authority and responsibility for such coordination.

E. The Owner, Engineer, or Owners Designated Representative shall be responsible for performing inspections and tests required by applicable codes.

F. 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, 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.

G. 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.

ARTICLE 8 - ENGINEER'S STATUS DURING CONSTRUCTION

8.01 Engineer's Status

A. Engineer will be Owner's representative during construction. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in this Contract.

B. Neither Engineer's authority or responsibility under this Article 9 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.

C. Engineer will make visits to the Site at intervals appropriate to the various stages of construction. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work.

D. Engineer has the authority to reject Work if Contractor fails to perform Work in accordance with the Contract Documents.

E. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work.

F. 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, 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.

ARTICLE 9 - CHANGES IN THE WORK

9.01 Authority to Change the Work

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.

9.02 Change Orders

A. Owner and Contractor shall execute 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 the Work which are: (a) ordered by Owner or (b) agreed to by the parties or (c) resulting from the Engineer's decision, 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

3. Changes in the Contract Price or Contract Times or other changes which embody the substance of any final binding results under Article 12.

B. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), 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 10 - DIFFERING SUBSURFACE OR PHYSICAL CONDITIONS

10.01 Differing Conditions Process

A. If Contractor believes that any subsurface or physical condition including but not limited to utilities or other underground facilities that are uncovered or revealed at the Site either differs materially from that shown or indicated in the Contract Documents or 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), 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. After receipt of written notice, Engineer will promptly:

1. Review the subsurface or physical condition in question;
2. Determine necessity for Owner obtaining additional exploration or tests with respect to the condition;
3. Determine whether the condition falls within the differing site condition as stated herein;
4. Obtain any pertinent cost or schedule information from Contractor;
5. 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
6. Advise Owner in writing of Engineer's findings, conclusions, and recommendations.

C. After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor 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.

ARTICLE 11 - CLAIMS AND DISPUTE RESOLUTION

11.01 Claims Process

A. The party submitting a claim shall deliver it directly to the other party to the Contract and the Engineer promptly (but in no event later than 10 days) after the start of the event giving rise thereto.

B. The party receiving a claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the claim through the exchange of information and direct negotiations. All actions taken on a claim shall be stated in writing and submitted to the other party.

C. If efforts to resolve a claim are not successful, the party receiving the claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the claim within 45 days, the claim is deemed denied.

D. If the dispute is not resolved to the satisfaction of the parties, Owner or Contractor shall give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction unless the Owner and Contractor both agree to an alternative dispute resolution process.

ARTICLE 12 - TESTS AND INSPECTIONS; CORRECTION OF DEFECTIVE WORK

12.01 Tests and Inspections

A. Owner and Engineer 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.

B. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.

C. If any Work 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.

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12.02 Defective Work

A. Contractor shall ensure that the Work is not defective.

B. Engineer has the authority to determine whether Work is defective, and to reject defective Work.

C. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.

D. The Contractor shall promptly correct all such defective Work.

E. 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. 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.

ARTICLE 13 - SUSPENSION OF WORK AND TERMINATION

13.01 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 60 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.

13.02 Owner May Terminate for Cause

A. Contractor's failure to perform the Work in accordance with the Contract Documents or other failure to comply with a material term of the Contract Documents will constitute a default by Contractor and justify termination for cause.

B. If Contractor defaults in its obligations, 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. Owner may not proceed with termination of the Contract under Paragraph 15.02.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.

D. 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.

E. In the case of a termination for cause, if the cost to complete the Work, including related claims, costs, losses, and damages, exceeds the unpaid contract balance, Contractor shall pay the difference to Owner.

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13.03 Owner May Terminate for Convenience

A. Upon seven days written notice to Contractor, 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.

13.04 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) 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 provided Owner does not remedy such suspension or failure within that time, either stop the Work until payment is received, or terminate the Contract and recover payment from the Owner.

ARTICLE 14 - CONTRACTOR'S REPRESENTATIONS

14.01 Contractor Representations

A. Contractor makes the following representations when entering into this Contract:

1. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.

2. Contractor has visited the Site, conducted a thorough 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.

3. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.

4. 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:

a. The cost, progress, and performance of the Work;

b. The means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and

c. Contractor's safety precautions and programs.

5. 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.

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6. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
7. 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.
8. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
9. 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 15 - NON- APPROPRIATIONS CLAUSE

15.01 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 Contractor written notice of such termination. The Owners 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, The New Mexico Interstate Stream Commission, The Department of Finance and Administration, Local Government Division (DFA/LGD), or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the Owner or State of New Mexico.

ARTICLE 16 - TERMINATION CLAUSE

16.01 This contract is funded in whole or in part by funds made available through a New Mexico Interstate Stream Commission Grant Agreement. Should the New Mexico Interstate Stream Commission early terminate the grant agreement, Questa Citizens Ditch Association may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the grantee's only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date

ARTICLE 17 - CONFLICT OF INTEREST CLAUSE

17.01 This contract is funded in whole or in part by funds made available under a NMISC Grant Agreement. The Owner and Contractor shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Owner and Contractor specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant.

17.02 The Grantee certifies that no funds have been paid or will be paid to spouses, children, parents, brothers and sisters of members of the governing body otherwise defined as "immediate family members" under the New Mexico Procurement Code

ARTICLE 18 - MISCELLANEOUS

18.01 Cumulative Remedies

A. The duties and obligations imposed by this Contract and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will

be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

18.02 Limitation of Damages

A. Neither Owner, Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

18.03 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.

18.04 Survival of Obligations

A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

18.05 Contractor's Certifications

A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract.

18.06 Controlling Law

A. This Contract is to be governed by the law of the state in which the Project is located.

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PERFORMANCE BOND

Contractor	**Surety**
Name: **[Full formal name of Contractor]**	Name: **[Full formal name of Surety]**
Address *(principal place of business)*:	Address *(principal place of business)*: **[Address of Surety's principal place of business]**
Owner	**Contract**
Name:	Description *(name and location)*:
Mailing address *(principal place of business)*:	Contract Price: **[Amount from Contract]**
	Effective Date of Contract: **[Date from Contract]**

Bond

Bond Amount: **[Amount]**

Date of Bond: **[Date]**

(Date of Bond cannot be earlier than Effective Date of Contract)

Modifications to this Bond form:

☐ None ☐ See Paragraph 16

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

Contractor as Principal	Surety
_____	_____
(Full formal name of Contractor)	*(Full formal name of Surety) (corporate seal)*
By: _____	By: _____
(Signature)	*(Signature)(Attach Power of Attorney)*
Name: _____	Name: _____
(Printed or typed)	*(Printed or typed)*
Title: _____	Title: _____
Attest: _____	Attest: _____
(Signature)	*(Signature)*
Name: _____	Name: _____
(Printed or typed)	*(Printed or typed)*
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 is considered plural where applicable.

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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 will 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 may 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 will 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 does 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 does 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:

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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 will not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety will 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 will not be reduced or set off on account of any such unrelated obligations. No right of action will 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 must be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and must 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 will be applicable.

12. Notice to the Surety, the Owner, or the Contractor must 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 will be deemed deleted therefrom and provisions conforming to such statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.

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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 will be deemed to be Subcontractor and the term Owner will be deemed to be Contractor.

16. Modifications to this Bond are as follows:

    _____

    _____

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PAYMENT BOND

Contractor	**Surety**
Name: **[Full formal name of Contractor]** Address *(principal place of business)*: **[Address of Contractor's principal place of business]**	Name: **[Full formal name of Surety]** Address *(principal place of business)*: **[Address of Surety's principal place of business]**
Owner	**Contract**
Name: Mailing address *(principal place of business)*:	Description *(name and location)*: Contract Price: Effective Date of Contract:

Bond

Bond Amount: **[Amount]**

Date of Bond: **[Date]**

(Date of Bond cannot be earlier than Effective Date of Contract)

Modifications to this Bond form:

☐ None ☐ See Paragraph 18

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

Contractor as Principal	Surety
_____ *(Full formal name of Contractor)*	_____ *(Full formal name of Surety) (corporate seal)*
By: _____ *(Signature)*	By: _____ *(Signature)(Attach Power of Attorney)*
Name: _____ *(Printed or typed)*	Name: _____ *(Printed or typed)*
Title: _____	Title: _____
Attest: _____ *(Signature)*	Attest: _____ *(Signature)*
Name: _____ *(Printed or typed)*	Name: _____ *(Printed or typed)*
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 is considered plural where applicable.

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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 will 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 will 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 will 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.

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8. The Surety's total obligation will 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 will 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 will 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 satisfying 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 will 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 will be applicable.

13. Notice and Claims to the Surety, the Owner, or the Contractor must be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, will 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 will be deemed deleted here from and provisions conforming to such statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will 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:

        16.1.1. The name of the Claimant;

        16.1.2. The name of the person for whom the labor was done, or materials or equipment furnished;

        16.1.3. 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;

        16.1.4. A brief description of the labor, materials, or equipment furnished;

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16.1.5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;

16.1.6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;

16.1.7. The total amount of previous payments received by the Claimant; and

16.1.8. 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 is 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 will be deemed to be Subcontractor and the term Owner will be deemed to be Contractor.

18. Modifications to this Bond are as follows: **[Describe modification or enter "None"]**

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