

**Red Rocks/Rodeo Grounds LED Upgrade Project**

FROM: Conti Energy Control LLC  
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Rio Rancho New Mexico 87124  
Scott Stevens  
(505) 890-2888

NAME: City of Gallup  
ATTN: Mr. John Wheeler  
PHONE: 505-863-1285  
PROJECT: Red Rocks/Rodeo Grounds LED Upgrade Project

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**EXECUTIVE SUMMARY:**

Conti Energy Control LLC is pleased to provide the following proposal to provide and install LED lights for the Rodeo Grounds and areas around the Rodeo Grounds that include the outdoor stage area, walkways, animal pens, parking lot areas and backlot arena. Multiple site visits were conducted to identify optimal positioning of new LED lights to properly light these spaces. Existing light poles will be utilized, there will not be a need to add any additional poles. Light fixtures were chosen for their lighting characteristics and the LED lights chosen for the Rodeo Arena were designed to meet the minimum light levels for a Pro-Rodeo facility. These fixtures and their characteristics for light distribution were selected to eliminate any shadowing, while keeping the overall fixture quantity to a minimum.

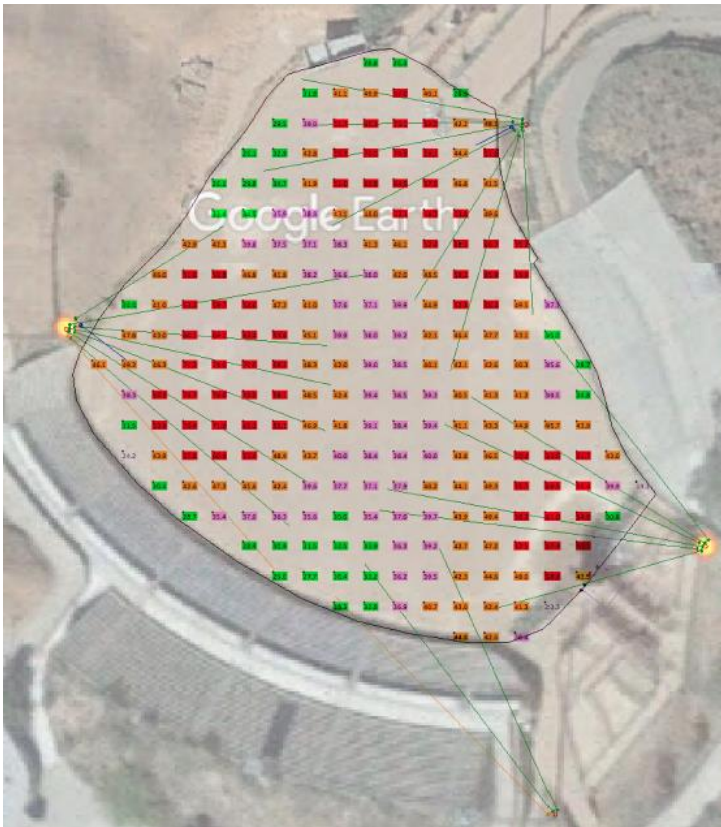
**1. TERM:** The term of the Contract shall be for the period necessary to complete the Scope of Work followed by a twelve (12) month warranty period (warranty shall start at Substantial Completion).

**2. SCOPE OF WORK:**

Mobilization to site with personnel and equipment to perform work  
Record information of light systems to GPS coordinates as requested by customer  
Replace current light fixture with new LED Fixtures  
Removal current fixtures and discard  
New Fixtures will run on current time clock or master photocell  
Nighttime positioning of LED fixtures at Rodeo Arena with City of Gallup staff


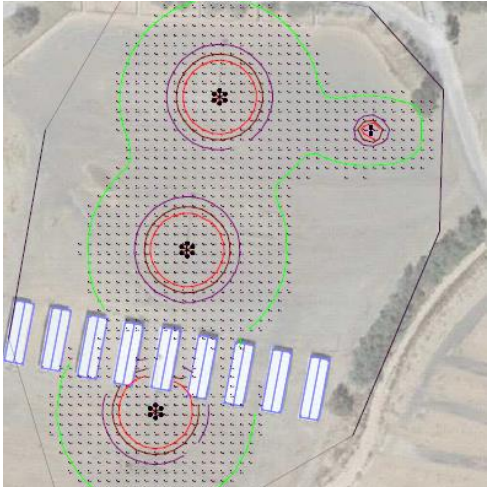
**Rodeo Arena:**

- (26) LED Sport Lights (1200 watt)
- (3) Area and sight lighting (150 watt)
- Diagram of proposed below

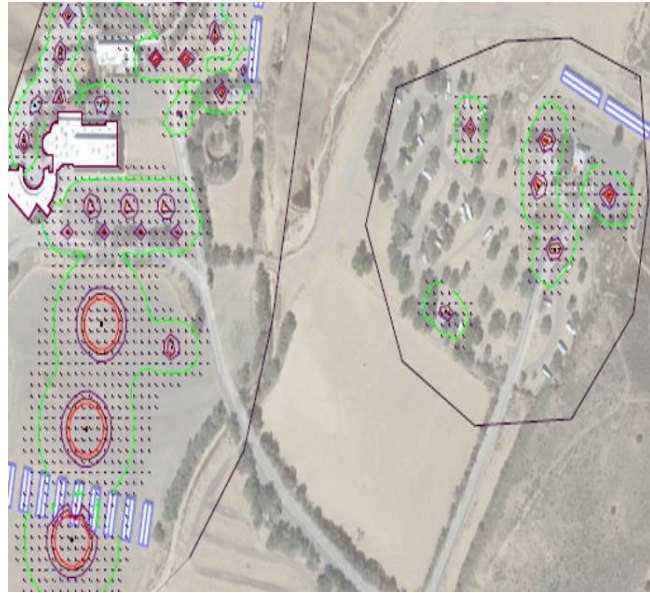


**Campground and South Lot:**

- (10) Area and sight lighting (150 watt)
- (4) Area and sight lighting (150 watt)
- (18) Flood Light High Bay (600 watt)

<p><b>Campgrounds</b></p>	
<p><b>South Lot</b></p>	

## Area Map



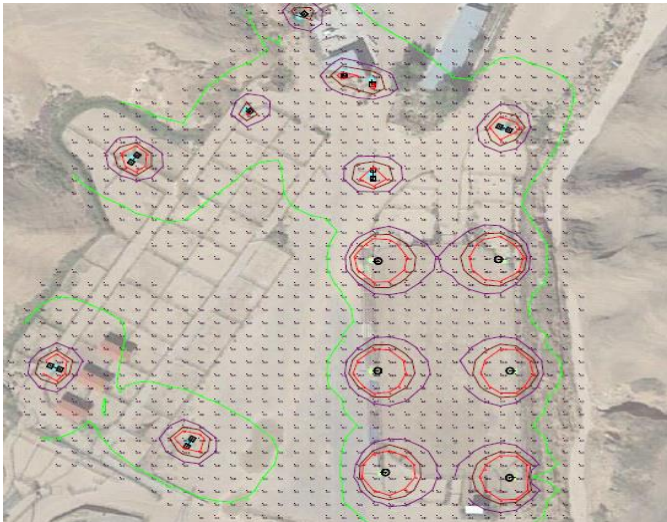
### Stage, parking and back lot:

- (20) double pole lights (100 watt)
- (1) single pole lights (100 watt)
- (39) Area and sight lighting (150 watt)
- (6) Large Open Animal Yard (300 watt)

### Stage and parking areas



**Back lot, animal pens and auxiliary arena**



**Exclusions to Scope:**

- Upgrades to any sub panels or electrical system
- Upgrades to existing electrical panels or distribution are
- Any repair or replacement to existing reutilized components
- Overtime or shift differential Labor
- Upgrades to existing master time clock or photocells not covered by this proposal
- Repairs to existing poles or mounting structures

**3. LIMITED WARRANTY**

- ENGIE Services U.S. covers labor for 1 year following installation
- Manufacturer’s product warranty extends to materials installed and is included in this proposal

<b>Total Base Cost (Labor and Material) Excluding Tax and Bond</b>	<b>\$240,126.48</b>
<b>Bond 2% on Projects &gt; \$25,000</b>	<b>\$4,802.53</b>
<b>Sub Total</b>	<b>\$244,929.01</b>
<b>NMGRT (8.3125%)</b>	<b>\$18,828.92</b>
<b>Total</b>	<b>\$263,757.93</b>

*\*CES pricing used per 19-10B-C101-ALL – details below*

**AGREEMENT DOCUMENTS:** *This project can be procured using the following CES Contract.*

19-10B-C101-ALL Facility, Building, or System Replacements, Upgrades and Retrofits

Dated: \_\_\_\_\_, 2022

**City of Gallup**

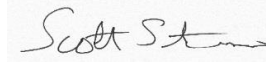
Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ENGIE Services U.S.**

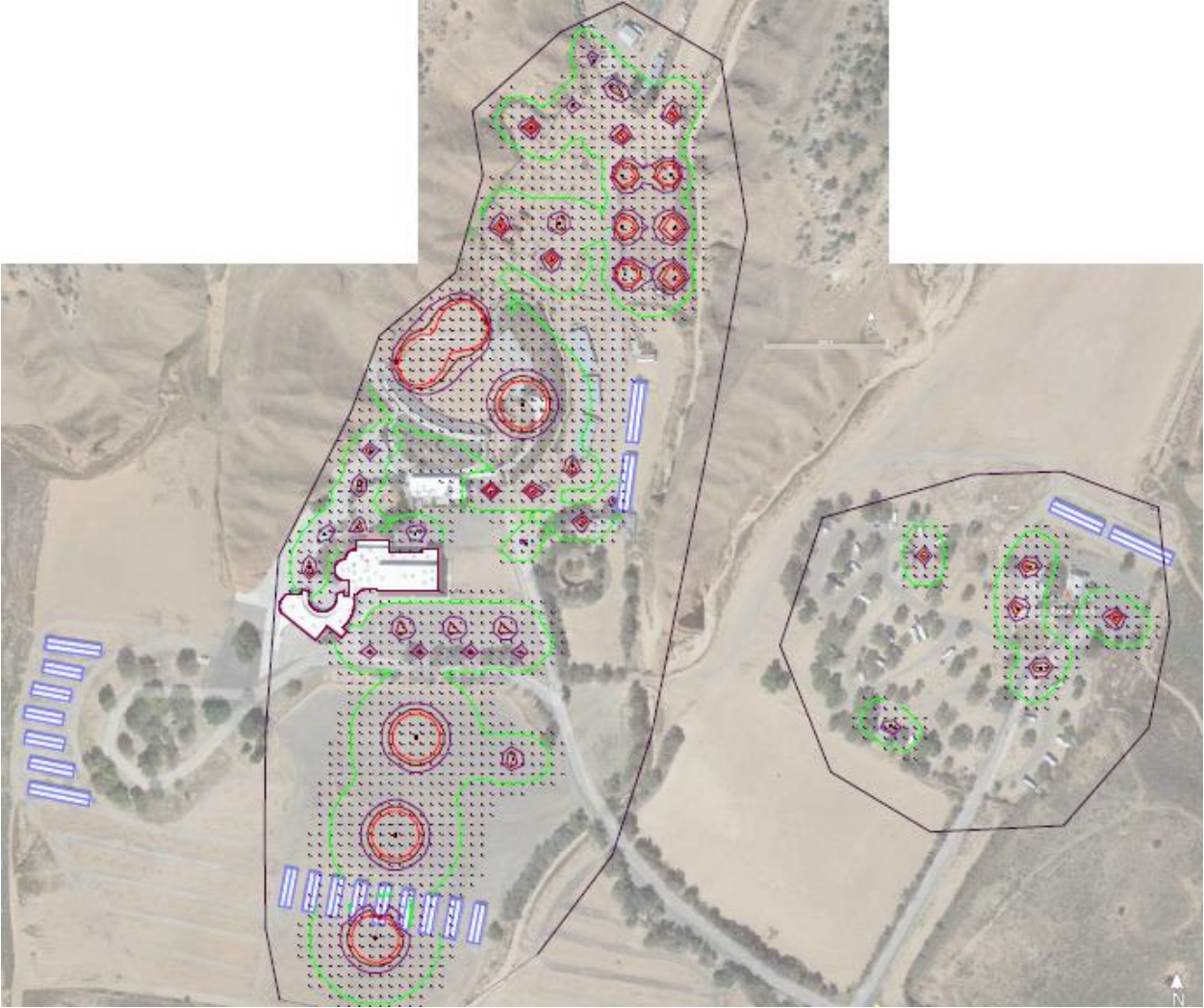
Signature: 

Date: March 24, 2022

Printed Name: Scott Stevens

Title: Business Development Manager

*Exhibit A – Entire area covered by this proposal*



*This above photometric map shows the areas covered by this proposal*

## **Conti Corporation Terms and Conditions**

Conti Corporation ("Conti") and Customer hereby agree to the following Terms and Conditions which are hereby incorporated into the Agreement between Conti and Customer. Customer and Conti are each a "Party", together the "Parties". When duly executed by the Parties, the Agreement, along with its exhibits and attachments, and these Terms and Conditions, shall constitute the complete, exclusive, and binding agreement between the Parties (the "Agreement"). The Parties hereto agree as follows:

### **ARTICLE A. SCOPE OF WORK**

1. Upon the execution of this Agreement, Conti will perform the Scope of Work set forth herein.
2. If Conti determines, during the first thirty (30) days of this Agreement or upon seasonal start-up that any equipment covered under this Agreement is in need of repair and/or replacement, Conti shall inform Customer of the equipment condition and remedy. Conti shall not be responsible for the present or future repair and/or replacement or operability of any specific equipment, until such time as the equipment is brought up to an acceptable condition or the Customer removes the unacceptable system(s), component(s), or part(s) from this Agreement.
3. Conti reserves the right to engage others in a subcontractor status to perform the work hereunder.
4. Customer agrees to provide Conti with required utilities (water, electricity, etc.) and special tools and equipment normally used for such services unless restricted specifically in the Agreement. Customer agrees to ensure that sufficient service access space is provided. Conti shall not be held liable for failure or damage to any Customer equipment caused by power interruptions, single phasing, phase reversal, low voltage, or other deficiencies beyond the control of Conti.
5. This Agreement does not include responsibility for design of the system, obsolescence, electrical power failures, low voltage, burned out main or branch fuses, low water pressure, vandalism, misuse or abuse of the system(s) by others (including the Customer), negligence of the system by others (including the Customer), failure of the Customer to properly operate the system(s), or other Force Majeure events beyond the control of Conti.
6. In the event that Conti is required to make any repairs and/or replacements or emergency calls occasioned by the improper operation of the equipment covered hereby, or any cause beyond Conti's control, Customer shall pay Conti for the charges Incurred In making such repairs and/or replacements or emergency calls in accordance with current Conti service rates for performing such services.

### **ARTICLE B. TOTAL ANNUAL FEE**

1. The total fee for the Scope of Work is detailed in the Agreement at Section 6 ("Total Annual Fee").
2. The Customer agrees to compensate Conti in the form of progress payments as specifically set forth herein, which are payable thirty (30) days after receipt of invoice.
3. Customer shall pay Conti, in addition to the Total Annual Fee, the amount of all excise, sales, use, privilege, occupation or other similar taxes imposed by the United States Government or any other national, state or local government authority, which Conti is required to pay in connection with the Scope of Work, services or materials furnished hereunder.
4. Conti reserves the right to add to any account outstanding more than 30 days interest at 1% per month or the highest rate allowed by law. Customer agrees to pay all costs of collection incurred by Conti including, but not limited to, collection agency fees, attorneys' fees and court costs. Additional services may be performed upon request at a price to be determined, subject to these Terms and Conditions.
5. The Total Annual Fee is subject to adjustment once each calendar year, effective on the Effective Date, for changes in labor and material costs. The Customer shall receive prior written notice of such adjustment.

### **ARTICLE C. WARRANTY**

Conti warrants its workmanship provided hereunder shall be free of material defects for a period of one (1) year from the date of Substantial Completion ("Conti Warranty"). All warranties hereunder, including without limitation those for defects, whether latent or patent, in design, engineering or construction, shall terminate one (1) year from Substantial Completion; and thereafter, Conti will have no liability for breach of any warranty or for any latent or patent defect of any kind. Equipment and material warranties that exceed the one (1) year Conti Warranty period shall be provided directly by the equipment and/or material manufacturers and such warranties shall be assigned directly to the Customer, after the one (1) year period. During the one (1) year Conti Warranty period, Conti shall be the Customer's agent in working with the equipment and material manufacturers in resolving any equipment or material warranty issues. Other than for lamps and ballasts, any material defects that are discovered within the one (1) year Conti Warranty period, Conti, or Conti subcontractors, will correct its defects, and/or Conti will work with the equipment or material manufacturer as the Customer's agent to facilitate the manufacturer's correction of the equipment or material defect. Such warranty services shall be performed in a timely manner and at the reasonable convenience of the Customer. This warranty expressly excludes any remedy for damage or defect caused by improper use, improper or inadequate maintenance, operations of the installed equipment by users other than Conti or its subcontractors, corrosion, erosion, deterioration, abuse, modifications or



repairs not performed by an authorized Conti subcontractor, improper operation, or normal wear and tear under normal usage. If a warranty issue arises on any equipment or material installed after the one (1) year Conti Warranty period, and the equipment or material has a warranty period that exceeds one (1) year, the Customer shall contact the manufacturer directly to resolve such warranty issues and Customer acknowledges that the manufacturer shall have sole responsibility for such issues.

Except for the Warranty provided in Article C herein, Customer expressly agrees that Conti makes no other warranties and assumes no other liabilities, whether in contract or in negligence, in connection with the sale and installation of equipment and materials provided hereunder, whether express or implied, in law or in communication between Conti and Customer. Conti specifically disclaims any implied warranties of merchantability or fitness for a particular purpose. Customer shall have no remedies against Conti for any defective work installed except for the repair or replacement of such equipment in accordance with the Warranty indicated above. Specifically, Conti shall not be liable to Customer for loss of profits or for any special, indirect, incidental, consequential or punitive damages, however caused and on any theory of liability.

#### ARTICLE D. WASTE DISPOSAL/HAZARDOUS MATERIALS

The Conti agrees to legally dispose of all removed fixtures, lamps and ballasts. Removed fixtures and non-PCB ballasts shall be disposed of in Conti's designated waste container. The Conti shall dispose of hazardous waste such as PCB ballasts, MH lamps and fluorescent lamps by recycling through a State certified recycler. Documents of such disposal will be provided to the Customer. Conti shall also dispose of any hazardous waste that it brings to the Project site.

Customer recognizes that in connection with the installation of the Scope of Work at Customer's Project site(s), Conti may encounter, but is not responsible for, any work relating to (i) asbestos, materials containing asbestos, or the existence, use, detection, removal, containment or treatment thereof, (ii) fungus (any type of fungi, including mold or mildew, and myotoxins, spores, scents or by-products produced or released by fungi), (iii) incomplete or damaged work or systems or code violations that may be discovered during or prior to the work of this Agreement, or (iv) pollutants, hazardous wastes, hazardous materials, contaminants other than those described in this Section above (collectively "Hazardous Materials"), or the storage, handling, use, transportation, treatment, or the disposal, discharge, leakage, detection, removal, or containment thereof. The materials and activities listed in the foregoing sentence are referred to as "Excluded Materials and Activities". Customer agrees that if during the performance of the Scope of Work Conti encounters any Excluded Materials and Activities, Customer will perform or arrange for the performance of such remediation work and shall bear the sole risk, cost and responsibility therefore. In the event Conti discovers Hazardous or Excluded Materials, Conti shall immediately cease work, remove all Conti personnel or subcontractors from the affected area(s), and notify the Customer. The Customer shall be responsible to handle/remediate such Materials at its expense.

#### ARTICLE E. INDEMNIFICATION

To the full extent permitted by law, each Party shall indemnify, hold harmless, release and defend the other Party, its officers, employees, and agents from and against any and all actions, claims, demands, damages, disability, losses, expenses including attorney's fees and other defense costs and liabilities of any nature that may be asserted by any person or entity in whole or in part, arising out of that Party's activities hereunder, including the activities of other persons employed or utilized by that Party in the performance of this Agreement, excepting liabilities due to the negligence or willful misconduct of the indemnified Party. This indemnification obligation is not limited in any way by any limitations of any insurance held or provided by Conti and shall continue to bind the parties after termination/completion of this Agreement.

Under no circumstances will either Party be liable to the other Party for any special, indirect, incidental, consequential or punitive damages, however caused and on any theory of liability. "Consequential damages" includes, but is not limited to, operational losses in the performance of business including lost revenues and any increase in operating expense, and any lost profits. It is expressly understood and agreed to by both Parties that each Party's liability to the other shall be limited to reimbursement of only those Losses arising solely from a Party's breach of this Agreement, negligence or willful misconduct. "Losses" means claims, actions, direct damages, liabilities, costs and/or expenses (including reasonable attorneys' fees).

#### ARTICLE F. TERMINATION/DEFAULT

This Agreement may be terminated (i) by either Party upon the anniversary date hereof, provided, however, that written notice of such termination must be received by the non-terminating Party at least thirty (30) days prior to the anniversary date; or (ii) by either Party upon an Event of Default.

Each of the following events or conditions shall constitute an "Event of Default" by the Parties:

- (i) any failure by either Party to perform or comply with the terms and conditions of this Agreement, including breach of any covenant contained herein, and such failure continues for three (3) business days after written notice to the defaulting Party demanding that such failure to perform be cured; provided that (i) such failure to perform shall not be deemed a default hereunder if it is due to causes beyond the Party's control of pursuant to Article H; and (ii) if such cure cannot be effected in three (3) business days, the Party shall be deemed to have cured the default upon the commencement of a cure within three (3) business days and diligent subsequent completion thereof; or
- (ii) any representation or warranty furnished by either Party in this Agreement which was false or misleading in any material respect when made; or
- (iii) any failure by Customer to pay any amount to Conti which is not paid within ten (10) calendar days of written notice from Conti that the amount is past due.

If an Event of Default occurs, the non-defaulting Party will be entitled to obtain any available legal or equitable remedies through arbitration proceedings instituted pursuant to Article I below including, without limitation, terminating this Agreement and recovering amounts due and unpaid by Customer, and/or damages which shall include reasonable, actual, direct out-of-pocket losses

incurred by reason of such Event of Default; legal fees and arbitration costs; and losses and costs incurred as a result of terminating this Agreement, and all costs and expenses reasonably incurred in exercising the foregoing remedies. Additionally, Conti may stop the performance of its work or services herein in the event of non-payment by Customer and will resume such work or services when Customer has made full payment.

#### ARTICLE G. INSURANCE

Conti will maintain, or cause to be maintained, for the duration of this Agreement, the insurance coverage outlined in (a) through (f) below, and all such other insurance as required by applicable law. Evidence of coverage will be provided to Customer via an insurance certificate.

(i) Workers' Compensation/Employers Liability for states in which Conti is not a qualified self-insured. Limits as follows:

- \* Workers' Compensation: Statutory
- \* Employers Liability: Bodily Injury by accident \$1,000,000 each accident  
Bodily Injury by disease \$1,000,000 each employee  
Bodily Injury by disease \$1,000,000 policy limit

(ii) Commercial General Liability insurance with limits of:

- \* \$2,000,000 each occurrence for Bodily Injury and Property Damage
- \* \$4,000,000 General Aggregate - other than Products/Completed Operations
- \* \$4,000,000 Products/Completed Operations Aggregate
- \* \$2,000,000 Personal and Advertising Injury
- \* \$100,000 Damage to premises rented to Conti

Coverage to be written on an occurrence form. Coverage to be at least as broad as ISO form CG 0001 (04/13) or its equivalent forms, without endorsements that limit the policy terms with respect to: (1) provisions for severability of interest or (2) explosion, collapse, underground hazard.

(iii) Auto Liability insurance for owned, hired and non-owned vehicles with limits of \$1,000,000 per accident.

Coverage to be written on an occurrence form.

(iv) Professional Liability insurance with limits of:

- \* \$1,000,000 per occurrence
- \* \$1,000,000 aggregate

Coverage to be written on a claims-made form.

(v) Umbrella/Excess Liability Insurance. Limits as follows:

- \* \$1,000,000 each occurrence
- \* \$1,000,000 aggregate

Coverage terms and limits to apply excess of the per occurrence and/or aggregate limits provided for Commercial General Liability and Professional Liability written on a claims made form. Coverage terms and limits also to apply in excess of those required for Employers Liability and Auto Liability written on an occurrence form.

(vi) Policy Endorsements.

\* The insurance provided for Workers' Compensation and Employers' Liability above will contain waivers of subrogation rights against Customer, but only to the extent of the indemnity obligations contained in this Agreement.

\* The insurance provided for Commercial General Liability and Auto Liability above will:

(a) include Customer as an additional insured with respect to Work performed under this Agreement, but only to the extent of the indemnity obligations contained in this Agreement, and

(b) provide that the insurance is primary coverage with respect to all insureds, but only to the extent of the indemnity obligations contained in this Agreement.

#### ARTICLE H. FORCE MAJEURE

If a Party shall be unable to reasonably perform any of its obligations under this Agreement due to a Force Majeure event (other than the obligation to make payments hereunder), this Agreement shall, at the other Party's option, (i) remain in effect but said Party's obligations shall be suspended until the said events shall have ended; or, (ii) be terminated upon ten (10) days written notice to the Party, in which event neither Party shall have any further liability to the other, except that Customer shall pay Conti for all work completed up to the date of termination of this Agreement. "Force Majeure" shall mean those events caused beyond the control of the affected Party and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which it has been unable to overcome, including acts of God and the public enemy; relocation or construction of transmission facilities or the shutdown of such facilities for the purpose of necessary repairs; work by local Utility; flood, earthquake, tornado, storm, fire; civil disobedience, labor disputes, strikes, labor or material shortages, delay in manufacturing and deliveries of equipment; sabotage; restraint by court order or public authority (whether valid or invalid), and/or inability to obtain or keep in force the necessary governmental authorizations, permits, licenses, certificates or approvals if not caused by the fault of the Party asserting the Force Majeure.

#### ARTICLE I. DISPUTE RESOLUTION

In the event of a dispute, claim, or controversy arising out of or in connection with this Agreement, the Parties through their designated representatives/program managers agree to confer and attempt to resolve the matter informally. If the matter cannot be resolved, the matter shall be arbitrated and either Party may file a written demand for arbitration with the American Arbitration Association ("AAA") and shall send a copy of such demand to the other Party. The arbitration shall be conducted pursuant to the appropriate AAA Arbitration Rules in effect at the time the arbitration is commenced. The award rendered by the arbitrator shall be final and binding on the Parties and shall be deemed enforceable in any court having jurisdiction thereof and of the Parties. The arbitration shall be heard by one arbitrator, who shall have experience in the general subject matter to which the dispute relates. The arbitration shall take place at the AAA office in Albuquerque, NM. The arbitrator does not have the power to award,

and may not award, any punitive, indirect or consequential damages (however denominated). All arbitration fees and costs are to be shared equally by the Parties, regardless of which Party prevails. Each Party will pay its own costs of legal representation and witness expenses.

#### ARTICLE J. ENTIRE AGREEMENT

This Agreement, when executed, together with all Schedules attached hereto or to be attached hereto, as provided for by this Agreement shall constitute the entire Agreement between both Parties and this Agreement may not be amended, modified, or terminated except by a written consent, signed by the Parties.

#### ARTICLE K. ASSIGNMENT

This Agreement may be assigned by either Party upon written notice to the other Party. This Agreement will be binding on, enforceable by, and inure to the benefit of, the parties hereto and their respective successors and permitted assigns.

#### ARTICLE L. GOVERNING LAW

This Agreement and the construction and enforceability thereof shall be interpreted under the laws of the State of New Mexico, without regard to conflicts of laws principles.

#### ARTICLE M. INDEPENDENT CONTRACTOR

The Parties hereto agree that Conti, and any agents and employees of Conti, its subcontractors and/or consultants, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees, or agents of Customer.