INVITATION TO BID
CONSTRUCTION CONTRACT

OWNER:
RIO RANCHO PUBLIC SCHOOLS

Rio Rancho Public Schools
500 Laser Road NE
Rio Rancho, NM 87124
505-896-0667

DATE:  Tuesday Sept. 22, 2015

Contact Name: Al Sena, 505-896-0667

PROJECT: RRPS DISTRICT OFFICES MODIFICATIONS, PHASE ONE
DISTRICT PROJ. NO. 083000-15-001
PSFA FUNDING:  [ ] YES  [X] NO

DESIGN PROFESSIONAL OF RECORD:
John Barton, AIA, 1925 Aspen Dr. # 200-B,
Santa Fe, NM  87505

BID OPENING ADDRESS:
Rio Rancho Public Schools,
Purchasing, Room 120
500 Laser Road NE
Rio Rancho, NM  87124
505-896-0667

IMPORTANT: BIDS MUST BE SUBMITTED IN A SEALED ENVELOPE WITH THE BID NUMBER AND OPENING DATE CLEARLY INDICATED ON THE BOTTOM LEFT HAND SIDE OF THE FRONT OF THE ENVELOPE.

SEALED BIDS WILL BE RECEIVED AT THE ABOVE SPECIFIED DATE, LOCAL TIME AND ADDRESS THEN PUBLICLY OPENED AT THE ABOVE SPECIFIED ADDRESS AND READ ALOUD. BIDS NOT RECEIVED BY THE ABOVE SPECIFIED DATE, LOCAL TIME AND AT THE LISTED ADDRESS PRIOR TO BID TIME, WILL NOT BE OPENED OR CONSIDERED. DELIVERY IS SOLELY THE RESPONSIBILITY OF THE BIDDER.

THIS BID IS SUBJECT TO THE REQUIREMENTS OF THE BIDDING DOCUMENTS AS DEFINED IN THE "INSTRUCTIONS TO BIDDERS," SECTION 00100.

THE BID PROPOSAL FORM MUST BE ACCOMPANIED BY A SURETY BOND, SUBCONTRACTOR LISTING FORM, AND DOCUMENTS SPECIFIED IN THE "INSTRUCTIONS TO BIDDERS."

This mailing contains three pages
Bidding Documents may be obtained upon payment of $60 for each complete set. CHECKS SHOULD BE MADE PAYABLE TO “OWNER” as listed on page 1 of this Invitation to Bid. Incomplete sets will not be issued. The successful Bidder will receive refund of his deposit, and any unsuccessful Bidder who returns the Bidding Documents in good and complete condition within fifteen (15) days of the Bid Opening will also receive refund of this deposit. No deposits will be returned after the fifteen-day period.

BIDDING DOCUMENTS MAY BE REVIEWED AT THE FOLLOWING LOCATION:

Albuquerque Reprographics (ARI)
4716 McLeod Road Northeast
Albuquerque, NM 87109
(505) 884-0862

Bidders may also purchase CDs with the Bid Documents from ARI.

Bids shall be presented in the form of a total Base Bid proposal under a Lump Sum Contract plus any additive or deductive alternates that are selected by the Owner. A bid must be submitted on all bid items and alternates; segregated bids will not be accepted. Plans and specifications are available from the Design Professional of record.

NOTE: Base Bid price shall not include state gross receipts or local options taxes. Taxes will be included in the Contracted Amount at prevailing rates as a separate item to be paid by Owner.

In submitting this bid, each Bidder must satisfy all terms and conditions of the Bidding Documents. All work covered by this Invitation to Bid shall be in accordance with applicable state laws and, if bid amount is $60,000 or more, is subject to the minimum wage rate determination issued by the office of the Labor Commissioner for this project. If the bid amount of the contractor or any subcontractor exceeds $50,000, the contractor and/or subcontractor must comply with the registration requirements pursuant to the Public Works Minimum Wage Act.

Bid Security, if bid greater than $25,000, in the form of a surety bond executed by a surety company authorized to do business in the State of New Mexico in the amount of 5% of the total bid, or the equivalent in cash by means of a cashier's check or in a form satisfactory to the Owner, must accompany each bid in accordance with the Instructions to Bidders.
A 100% Performance Bond and a 100% Payment and Materials Bond executed by a surety company authorized to do business in the State of New Mexico shall be required from the successful Bidder prior to award of contract.

A completed Subcontractor Listing Form must accompany each bid.

Each subcontractor shall provide a performance and payment bond on a public works building project if the subcontractor’s contract (to the Contractor) for work to be performed on a project is one hundred twenty-five thousand dollars ($125,000) or more. Failure of a Subcontractor to provide required bond shall not subject the Owner to any increase in cost due to approved substitution of Subcontractor.

The Bidding Documents contain a time for completion of the work and further impose liquidated damages for failure to complete the work within that time period.

No Bidder may withdraw his bid for 60 days after the actual date of the opening thereof.

The Owner intends to award this Project to the lowest responsible Bidder. The Owner reserves the right to reject any and all bids, to waive technical irregularities, and to award the contract to the Bidder whose bid it deems to be in the best interest of the Owner.

Attention of the Bidder is particularly directed to the current requirements as to Resident Contractor's Preference per Section 13-4-3 NMSA 1978. The provisions of Sections 13-4-1 through 13-4-4 NMSA 1978 are not applicable to projects receiving Federal aid or when the expenditure of Federal funds designated for a specific contract is involved.

Requests for approval of substitutions for “or equal” material or equipment, if allowed by the contract documents, must includes a detailed itemized comparison of the proposed substitution with the specified product and be submitted at least 10 days prior to the bid date in accordance with Paragraph 3.3 of the Instructions to Bidders.

A pre-bid meeting is scheduled, prior to the bid date, at:

Facilities Department
Rio Rancho Public Schools
500 Laser Road NE.
Rio Rancho, NM  87124

DATE: Thursday, Sept. 10, 2015         TIME:  10:00 AM

END OF INVITATION TO BID
INSTRUCTIONS TO BIDDERS
Section 00 2113

1.0 DEFINITIONS AND TERMS
1.1 Terms used in these Bidding Documents which are defined in the Instructions to Bidders and in the Conditions of the Contract for Construction (General, Supplementary, and Other Conditions) have the meanings assigned to them in those documents.

A. ADDENDUM: A written or graphic instrument issued prior to the opening of Bids which clarifies, corrects, or changes the Bidding Documents or Contract Documents. Plural: addenda.

B. ALTERNATE BID: If requested by the Bidding Documents, the amount to be added to the Base Bid if the corresponding change in the project scope, materials, and/or methods of construction is awarded by the Owner.

C. BASE BID: Amount stated in the Bid as the sum for which the Bidder offers to perform the work, excluding alternate Bids.

D. BID: The offer of the bidder submitted on the prescribed form setting forth the prices for the work to be performed in conformance with the Bidding Documents.

E. BID LOT: A major item of work for which a separate quotation or proposal is requested.

F. BIDDER: One who submits a Bid directly to the Owner, as distinct from a subcontractor who submits a bid to a contractor.

G. BIDDING DOCUMENTS: The Bidding Requirements and the Contract Documents.

H. BID FORM: A form which includes a specific space in which the bid price shall be inserted and which the Bidder shall sign and submit along with all other necessary submissions. A Bidder may submit a reasonable facsimile of the Bid Form. Bids received by facsimile or in electronic format will not be accepted.

I. BIDDING REQUIREMENTS: Notice of Invitation to Bid, Pre-bid Information, Instructions to Bidders, Information Available for Bidders, the Bid Form, Supplements to the Bid Form, and portions of Addenda relating to any of these.

J. DAY: Day shall mean calendar day unless defined otherwise.

K. INVITATION FOR BID: All documents including those attached or incorporated by reference or utilized for soliciting sealed bids.

L. RESPONSIBLE BIDDER: A Bidder who is properly licensed in accordance with the Construction Industries Licensing Act and submits a Responsive Bid and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation, and experience are adequate to make satisfactory delivery of the services, construction, or items of tangible personal property described in the Invitation for Bid.

M. RESPONSIVE BID: A bid which conforms in all material respects to the requirements set forth in the Invitation for Bid.

N. SUCCESSFUL BIDDER: The lowest Responsible Bidder to whom the Owner, on the basis of the Owner's evaluation, makes an award. A Successful Bidder does not become the contractor until an agreement with the Owner is signed.

2.0 EXAMINATION OF BIDDING DOCUMENTS AND SITE
2.1 Before submitting a Bid, each Bidder must, in accordance with the General Conditions with special attention to Article’s 1 and 3.: 
   A. Examine the Bidding Documents thoroughly;
   B. Visit the site to familiarize himself with local conditions that may in any manner affects cost, progress, or performance;
C. Familiarize himself with Federal, State, and local laws, ordinances, rules, and regulations that may in any manner affect cost, progress, or performance of the Work; and
D. Study and carefully correlate the Bidder’s observations with the Bidding Documents.

2.2 On request, the Owner will provide each Bidder access to the site to conduct such investigations and tests as each Bidder deems necessary for submission of his Bid.

2.3 The lands upon which the Work is to be performed, rights-of-way for access thereto, and other lands designated for use by the Contractor in performing the work are identified in the Bidding Documents.

2.4 The submission of a Bid will constitute an incontrovertible representation by the Bidder that he has complied with every requirement of this Section and that the Bidding Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the Work.

3.0 BIDDING DOCUMENTS
3.1 COPIES OF BIDDING DOCUMENTS
3.1.1 Complete sets of the Bidding Documents in the number and for the deposit sum, if any, stated in the Invitation may be obtained from the Design Professional (unless another issuing office is designated in the Invitation for Bid). The deposit will be refunded to Bidders who submit a bona-fide bid and return the bidding Documents in good and complete condition within fifteen (15) calendar days after opening of Bids.

3.1.2 Complete sets of Bidding Documents shall be used in preparing bids; neither the Owner nor the Design Professional assumes responsibility for errors or misinterpretations resulting from the use of incomplete or partial Bidding Documents.

3.1.3 The Owner and Design Professional, in making copies of Bidding Documents available on the above terms, do so only for the purpose of obtaining Bids on the Work and do not confer a license or grant for any other use.

3.2 INTERPRETATIONS
3.2.1 All questions about the meaning or intent of the Bidding Documents shall be submitted to the Design Professional in writing. Replies will be issued by Addenda and mailed or delivered to all parties recorded by the Design Professional as having received the Bidding Documents. Questions received less than seven (7) days prior to the date for opening of Bids will not be formally answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

3.2.2 Bidders and Subcontractors shall promptly notify the Design Professional of any ambiguity, inconsistency, or error which they may discover upon examination of the Bidding Documents or of the site and local conditions.

3.3 SUBSTITUTE MATERIAL AND EQUIPMENT
The contract, if awarded, will be on the basis of material and equipment described in the Drawings or specified in the Specifications without consideration of possible substitute or "or-equal" items. Whenever it is indicated in the Drawings or specified in the Specifications that a substitute or "or-equal" item of material or
equipment may be furnished or used by the contractor if acceptable to the Design Professional, application for such acceptance will not be considered by the Design Professional unless submitted to the Design Professional with a detailed itemized comparison of the proposed substitution against the specified product at least ten (10) days prior to the date for opening Bids. Any product with a 5 (five) year or greater extended warranty must be submitted no less than forty-five (45) days prior to the opening of Bids, along with the same itemized comparison, to be considered by the Design Professional. Any allowance of substitutions will be published to all prospective Bidders via addendum. The procedure for submittal of any such application by the Contractor and consideration by the Design Professional is set forth in the Contract Documents.

3.4 ADDENDA
3.4.1 Addenda will be mailed or delivered to all who are known by the Design Professional to have received a complete set of Bidding Documents.

3.4.2 Copies of Addenda will be made available for inspection wherever Bidding Documents are on file for that purpose.

3.4.3 Addenda will be issued no later than four (4) days prior to the date for receipt of Bids, except an addendum withdrawing the request for bids or one which includes postponement of the date for receipt of Bids.

4.0 BIDDING PROCEDURES
4.1 FORM AND STYLE OF BIDS
4.1.1 Bids shall be submitted on forms identical to the form included with the Bidding Documents.

4.1.2 All blanks on the Bid Form shall be filled in by typewriter or manually in ink.

4.1.3 Where so indicated by the makeup of the Bid Form, sums shall be expressed in both words and figures, and, in case of discrepancy between the two, the amount written in words shall govern.

4.1.4 Any interlineation, alteration, or erasure must be initialed by the signer of the bid.

4.1.5 All requested Additive Alternate Bids shall be bid. If no change in the Base Bid is required, enter "No Change." Deductive Alternates shall not be used.

4.1.6 Where there are two or more major items of work (identified as "Bid Lots") for which separate quotations are requested, the Bidder may, at his discretion, submit quotations for any or all items, unless otherwise specified. Additionally, the Bidder may submit a lump sum price for all lots for which the Bidder has submitted separate quotations.

4.1.7 Each copy of the bid shall include the complete name of the Bidder and a statement that the Bidder is a sole proprietor, a partnership, a corporation, or some other legal entity. Each copy shall be signed by the person or persons legally authorized to bind the Bidder to a contract. A Bid by a corporation shall further give the State of incorporation and have the applicable New Mexico Certificate of Incorporation number or Certificate of Authority number. The Bid shall include the current contractor's license number and type, Department of Workforce Solutions Minimum Wage Act registration number (DWS#), and the current Contractor's preference number. A bid submitted by an agent shall have a current Power of Attorney attached certifying the agent's authority to bind the Bidder.
4.1.8 The Bid shall contain an acknowledgment of receipt of all Addenda (the numbers of which shall be filled in on the Bid Form).

4.1.9 The address to which communications regarding the Bid are to be directed must be shown.

4.1.10 The Project Name and Number, as well as the Invitation to Bid Number, shall be clearly shown on the outside of the envelope in which the sealed Bid is submitted.

4.2 BID SECURITY
4.2.1 Bid security in an amount equal to at least five percent (5%) of the amount of the Bid shall be a bond provided by a surety company authorized to do business in this State, or the equivalent in cash, a cashier's check, or otherwise supplied in a form satisfactory to the Owner (Section 13-1-146, NMSA 1978) and approved in writing by the Owner in advance. All General Contractor, or Primary Contractor, or Construction Manager at Risk Bonds shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, United States Treasury Department.

4.2.2 The bid security shall be in the amount of five percent (5%) of the highest Bid amount submitted, unless otherwise stipulated, pledging that the Bidder will enter into a Contract with the Owner on the terms stated herein and will furnish bonds covering the faithful performance of the Contract and payment of all obligations arising there under. Should the Bidder refuse to enter into such Contract or fail to furnish such bonds, the amount of the bid security shall be forfeited to the Owner as liquidated damages, not as a penalty.

4.2.3 The Owner will have the right to retain the bid security of Bidders to whom an award is being considered until:
   A. the Contract has been executed and bonds have been furnished,
   B. the specified time has elapsed so that Bids may be withdrawn, or
   C. all Bids have been rejected.

4.2.4 When the Bidding Documents require bid security, noncompliance by the Bidder requires that the Bid be rejected (13-1-147A, NMSA 1978).

4.2.5 If a Bidder is permitted to withdraw his Bid before award, no action shall take place against the Bidder or the bid security (13-1-147B, NMSA 1978).

4.2.6 The Owner may reduce bid security requirements authorized by the Procurement Code (13-1-28 to 13-1-199, NMSA 1978) to encourage procurement from small businesses. Reduction, if any, and the manner thereof will be stipulated in Paragraph 7. Reduction of the amount of bid security, if any, shall in no way reduce requirements for Performance, Payment, or other Bonds referenced in the Bidding Documents.

4.3 PRE-BID CONFERENCE
4.3.1 The Design Professional of Record shall conduct a Pre-bid Conference approximately fifteen (15), but not less than ten (10) days prior to the bid opening date stated in the Invitation to Bid.

4.3.2 The Design Professional of Record and his consultants, as applicable, shall be represented. Prospective Bidders, Prospective Subcontractors, and Prospective Vendors are encouraged to attend and should be prepared to ask questions regarding substitutions and to request clarification of the Bidding
Documents. The failure of a Bidder, Subcontractor, or Vendor to attend shall be interpreted to mean that the Bidding Documents are clear and acceptable to all non-participants at the Prebid Conference. Such clarity and acceptability shall be presumed with respect to all Bidders.

4.3.3 Questions and requests for clarification presented in written form will receive written response, and if warranted, issued as Addenda. No verbal response shall be binding.

4.4 RESIDENT CONTRACTOR'S PREFERENCE

4.4.1 When Bids are received from nonresident contractors and resident contractors and the lowest responsible Bid is from a nonresident contractor, the contract shall be awarded to the resident contractor whose Bid is nearest to the bid price of the otherwise low nonresident contractor if the Bid price of the resident contractor is made lower than the Bid price of the nonresident contractor when multiplied by a factor of ninety-five one-hundredths.

4.4.2 No contractor shall be treated as a resident contractor in the awarding of public works contracts by the Owner unless the contractor has qualified with the State Purchasing Agent as a resident contractor pursuant to this section by making application to the State Purchasing Agent and receiving from him a certification number. For convenience, and without warranty that the process is current, the procedure for application and certification is as follows:

A. The contractor seeking to qualify as a resident contractor shall complete the application form and submit it to the State Purchasing Agent prior to the submission of a Bid on which the contractor desires to be given a preference (see Pages 00000-2 thru 00000-6);

B. The State Purchasing Agent shall examine the application and, if necessary, may seek additional information or proof so as to be assured that the Prospective Contractor is indeed entitled to certification as a resident contractor. If the application is in proper form, the State Purchasing Agent shall issue the contractor a distinctive certification number, which is valid until revoked and which, when used on Bids and other purchasing documents for State agencies or local public bodies, entitles the contractor to treatment as a resident contractor under Subparagraph 4.4.1 of this section; and

C. The certification number issued pursuant to Subparagraph B of this section may be revoked by the State Purchasing Agent by making a determination that the contractor no longer meets the requirements of a resident contractor as defined in Section 13-4-2, NMSA 1978.

4.5 SUBCONTRACTORS

4.5.1 The bidder shall list the Subcontractors he proposes to use for all trades or items on the Subcontractor Listing Form attached to the Bidding Documents. This requirement does not apply to second tier subcontractors, material suppliers, or subcontractors whose contract is for an amount no greater than the listing threshold described by Subsection A of 13-4-34 below. Requirements for Subcontractors pursuant to Chapter 18, Laws of 1988, 2nd Session; are as follows:

AN ACT
RELATING TO CONSTRUCTION INDUSTRIES; ENACTING THE SUBCONTRACTOR FAIR PRACTICES ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

13-4-31 SHORT TITLE
Section 1 through 12 of this act may be cited as the "Subcontractors Fair Practices Act".
LEGISLATIVE FINDINGS
The legislature finds that the practices of bid shopping and bid peddling in connection with the construction, alteration and repair of public works projects often result in poor quality of material and workmanship to the detriment of the public, deprive the public of the full benefits of fair competition among contractors and subcontractors and lead to insolvencies and loss of wages to employees.

DEFINITIONS
As used in the Subcontractors Fair Practices Act:
A. "contractor" means the prime contractor on a public works construction project who contracts directly with the using agency;
B. "subcontractor" means a contractor who contracts directly with the contractor;
C. "listing threshold" means the dollar amount, stipulated in the bidding documents, above which subcontractors must be listed;
D. "notice" means information, advice or a written warning intended to apprise a contractor, subcontractor or using agency of some proceeding in which the contractor’s, subcontractor’s or using agency’s interests are involved or to inform him of some fact that is his right to know. Notice may be sent to a contractor, subcontractor or using agency by certified or registered mail and shall be deemed to be completed upon date of mailing; and
E. "using agency" means any state agency or local public body requiring services or construction.

LISTING OF SUBCONTRACTORS; REQUIREMENTS
A. Any using agency taking bids for any public works construction project shall provide in the bidding documents prepared for that project a listing threshold which shall be five thousand dollars ($5,000) or one-half of one percent of the architect's or engineer's estimate of the total project cost, not including alternates, whichever is greater. If the bidding documents do not include a listing threshold, then the using agency shall supply the listing threshold. If the listing threshold has not been included, the bid opening shall be postponed until the using agency has complied with this section. Any contractor or subcontractor interested in bidding may apply to the district court in the county in which the project will be located for an injunction preventing the bid opening until the using agency has complied with this section. Any person submitting a bid shall in his bid set forth:
(1) the name and the city or county of the place of business of each subcontractor under subcontract to the contractor who will perform work or labor or render service to the contractor in or about the construction of the public works construction project in an amount in excess of the listing threshold; and
(2) the category of the work that will be done by each subcontractor. The contractor shall list only one subcontractor for each category as defined by the contractor in his bid.
B. A bid submitted by a contractor who fails to comply with the provisions of Subsection A of this section is a non-responsive bid which shall not be accepted by a using agency.

EXEMPTION
With the exclusion of that portion of work covering street lighting and traffic signals, the Subcontractors Fair Practices Act shall not apply to contracts for the construction, improvement or repair of streets or highways, including bridges, underground utilities within easements including but not limited to water lines, sewer lines and storm sewer lines.
13-4-35.1 APPLICATION OF ACT
The Subcontractors Fair Practices Act shall not apply to any transaction occurring after the contractor and the listed subcontractor have executed a subcontract unless subsequent action on the subcontract relates to subcontractor listing requirements.

13-4-36 SUBSTITUTION OF SUBCONTRACTOR
A. No contractor whose bid is accepted shall substitute any person as subcontractor in place of the subcontractor listed in the original bid, except that the using agency shall consent to the substitution of another person as a subcontractor:
   (1) when the subcontractor listed in the bid, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract, when such written contract, based upon the general terms, conditions, plans and specifications for the project involved and the terms of such subcontractor's written bid, is presented to him by the contractor;
   (2) when the subcontractor listed in the original bid becomes bankrupt or insolvent prior to execution of a subcontract;
   (3) when the using agency refuses to approve the subcontractor listed in the original bid, provided such approval has been reserved in the bidding documents;
   (4) when the subcontractor listed in the original bid fails or refuses to perform his subcontract;
   (5) when the contractor demonstrates to the using agency or its duly authorized officer that the name of the subcontractor was listed as the result of an inadvertent clerical error;
   (6) when a bid alternate accepted by the using agency causes the listed subcontractor’s bid not to be low;
   (7) when the contractor can substantiate to the using agency that a listed subcontractor’s bid is incomplete;
   (8) when the listed subcontractor fails or refuses to meet the bond requirements of the contractor; and,
   (9) when it is determined that the listed subcontractor does not have a proper license to perform the work and the contractor has submitted the name of the subcontractor along with proof that the subcontractor bid work for which he was not licensed by the Construction Industries Division of the Regulation and Licensing Department.
   (10) when it determined by the using agency, the prime contractor or the director of the labor and industrial division of the labor department that a listed subcontractor is not a registered subcontractor on the date bids are unconditionally accepted for consideration.

B. Prior to approval of the contractor's request for substitution of a subcontractor, the using agency shall give notice in writing to the listed subcontractor of the contractor's request to substitute and of the reasons for the request. The notice shall be served by certified or registered mail to the last known address of the subcontractor. The listed subcontractor who has been so notified has five (5) working days within which to submit written objections to the substitution to the using agency. Failure to file written objections shall constitute the listed subcontractor's consent to the substitution. If written objections are filed, the using agency shall give at least five (5) working days' notice in writing to the listed subcontractor of a hearing by the using agency on the contractor's request for substitution.

C. No contractor whose bid is accepted shall permit any subcontract to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original subcontractor listed in the original bid without the consent of the using agency.

D. No contractor whose bid is accepted, other than in the performance of change orders causing changes or deviations from the original contract, shall sublet or subcontract any portion of the work in excess of the listing threshold as to which his original bid did not designate a subcontractor unless:
(1) the contractor fails to receive a bid for a category of work. Under such circumstances, the contractor may subcontract. The contractor shall designate on the listing form that no bid was received; or

(2) the contractor fails to receive more than one bid for a category of work. Under such circumstances, the contractor may subcontract. The contractor shall state on the listing form that only one subcontractor’s bid was received, together with the name of the subcontractor. This designation shall not occur more than one time on the subcontractor list.

13-4-37 BOND REQUIREMENTS (This requirement may be modified by Invitation to Bid – Section 00 1116- Page 3)

A. It is the responsibility of each subcontractor submitting a bid to a contractor to be prepared to submit a faithful performance and payment bond if so requested by the contractor.

B. In the event any subcontractor submitting a bid to a contractor does not, upon the request of the contractor and at the expense of the contractor at the established charge or premium therefore, furnish to the contractor a bond issued by a corporate surety authorized to do business in New Mexico in accordance with the New Mexico Insurance Code (59A-1-1 to 59A-1-18, NMSA 1978) and listed in the United States treasury department circular 570 wherein the contractor is named the obligee, guaranteeing prompt and faithful performance of the subcontract and the payment of all claims for labor and materials furnished or used in and about the work to be done and performed under the subcontract, the contractor may reject the bid and make a substitution of another subcontractor subject to the provisions of Section 13-4-36, NMSA 1978. Such bond may be required at the expense of the subcontractor only if the contractor in his written or published request for subcontract bids: (1) specifies that the expense for the bond shall be borne by the subcontractor; and

(2) clearly specifies the amount and requirements of the bond.

13-4-38. FAILURE TO SPECIFY SUBCONTRACTOR

If a contractor fails to list a subcontractor in excess of the listing threshold and he does not state that no bid was received or that only one bid was received, he represents that he is fully qualified to perform that portion of the work himself and that he shall perform that portion of the work himself. If after the award of the contract the contractor subcontracts any portion of the work, except as provided in the Subcontractors Fair Practices Act, the contractor shall be guilty of violation of the Subcontractors Fair Practices Act and subject to the penalties provided in Section 13-4-41 NMSA 1978.

13-4-39. INADVERTENT CLERICAL ERROR

A. The contractor, as a condition to assert a claim of inadvertent clerical error in the listing of a subcontractor, shall within four working days after the time of the prime bid opening by the using agency, give written notice to the using agency and to both the subcontractor he claims to have listed in error and the subcontractor who had bid to the contractor prior to bid opening.

B. Any listed subcontractor who has been notified by the contractor in accordance with the provisions of this section as to an inadvertent clerical error shall be allowed twelve working days from the time of the prime bid opening within which to submit to the using agency and to the contractor written objection to the contractor's claim of inadvertent clerical error. Failure of the listed subcontractor to file written notice within the twelve working days shall be primary evidence of his agreement that an inadvertent clerical error was made.

C. The using agency shall, in the absence of an objection to the contrary by the listed subcontractor in the original bid, consent to the substitution of the intended subcontractor if:

(1) the contractor, the listed subcontractor listed in error and the intended subcontractor each submit an affidavit to the using agency, along with such additional evidence as the parties may wish to submit, that an inadvertent clerical error was in fact made, provided that the affidavits
from each of the three parties are filed within twelve working days from the time of the prime bid opening; or
(2) affidavits are filed by both the contractor and the intended subcontractor within the specified
time but the subcontractor whom the contractor claims to have listed in error does not submit,
within twelve working days from the time of prime bid opening, to the using agency and to the
contractor written objection to the contractor's claim of inadvertent clerical error as provided in
this section.

D. If affidavits are filed by both the contractor and the intended subcontractor but the listed
subcontractor has, within twelve working days from the time of the prime bid opening, submitted to
the using agency and to the contractor written objection to the contractor's claim of inadvertent
clerical error, the using agency shall investigate the claims of the parties and hold a hearing to
determine the validity of the claims, within thirty days after the receipt of the contractor's written
objection. Any determination made shall be based on facts contained in the affidavits submitted by
all three parties and supported by testimony under oath and subject to cross-examination. The using
agency may, on its motion or that of any other party, admit testimony of other contractors, any bid
registries or depositories or any other party in possession of facts that may have a bearing on the
decision of the using agency.

13-4-40. EMERGENCY SUBCONTRACTING
Subcontracting any portion of the work in excess of the listing threshold as to which no subcontractor was
designated in the original bid shall be permitted only in the case of public emergency or necessity and then
only upon a written finding by the using agency setting forth the facts constituting the emergency or
necessity.

13-4-41. PENALTIES
A. When a contractor violates any provision of the Subcontractors Fair Practices Act except Section
13-4-34 NMSA 1978, the using agency shall:
(1) in the case of a contractor who substitutes another subcontractor in violation of Section 134-
36 NMSA 1978, for the subcontractor originally included in the bid, assess the contractor a
penalty in an amount equal to the greater of ten percent of the amount bid by the listed
subcontractor or the difference between the amount bid by the listed subcontractor and the
amount bid by the substituted subcontractor;
(2) in the case of a contractor substituting a listed subcontractor for another subcontractor, and
the substituted subcontractor knowingly participated in a violation of Section 13-4-36 NMSA
1978, assess the substituted subcontractor a penalty in an amount equal to the greater of ten
percent of the amount bid by the listed subcontractor and the difference between the amount bid
by the listed subcontractor and the substituted subcontractor; or
(3) in the case of a contractor who fails to list a subcontractor in excess of the listing threshold as
defined in Section 13-4-38 NMSA 1978, assess the contractor a penalty of eight percent of the
amount of the subcontract issued for the first violation and thirty percent of the amount of the
subcontract issued for any violation thereafter, on any one project.
B. Penalties assessed pursuant to the provisions of this section shall be deposited into the fund from
which the contract was awarded.
C. In a proceeding under this section, the contractor shall be entitled to a hearing after notice.
D. A violation of the provisions of the Subcontractors Fair Practices Act constitutes grounds for
disciplinary action against a contractor or a subcontractor, pursuant to regulations of the
construction industries division of the regulation and licensing department.
E. A contractor or a subcontractor who attempts to circumvent the provisions of the Subcontractors
Fair Practices Act shall be subject to the penalties established pursuant to this section.
F. Any listed subcontractor removed in violation of the Subcontractors Fair Practices Act may bring an action in the district court for damages, injunctive or other relief.

13-4-42. COVERAGE OF HOME RULE MUNICIPALITIES
Any home rule municipality or H class county chartered under the provisions of Article 10, Section 6 of the constitution of New Mexico is expressly denied authority to legislate regulation of the subject matter covered in the Subcontractors Fair Practices Act that conflicts with the provisions of that act.

13-4-43. DISPUTE RESOLUTION
Once the using agency has determined the existence of a valid claim under the provisions of the Subcontractors Fair Practices Act, the using agency or agent of the using agency may:

A. hold a public hearing for the purpose of providing an informal resolution of the dispute by preparing a "form of dispute" which shall be available to all parties. The form shall state concisely, in numbered paragraphs, the matter at issue or dispute which the complainant expects to be determined. The agent or the using agency shall evaluate the issues presented by both sides of the dispute and render a decision within ten days after the hearing, and provide the parties with a written copy of the decision by certified mail, return receipt requested; or

B. refer the matter in dispute to be resolved through arbitration.

4.5.2 The Bidder shall not list himself as the supplier or as the Subcontractor for any trade unless he has previously performed work of this type or can prove to the Design Professional and the Owner's satisfaction that he actually has, or will obtain, fully adequate ability to perform the work with his own forces.

4.5.3 Omission or non-compliance with the intent of the Subcontractor Listing (Section 00430) will be grounds for considering a bid as non-responsive.

4.5.4 Prior to the award of the Contract, the Design Professional will notify the Bidder in writing if either the Owner or the Design Professional, after due investigation and written findings of fact, has reasonable and substantial objection to any person or organization on such list. If the Owner or Design Professional has reasonable and substantial objection to any person or organization on such list and refuses in writing to accept such person or organization, the Bidder may, at his option: A. withdraw his Bid, or,

B. submit an acceptable substitute Subcontractor.

In the event of withdrawal under this paragraph, bid security will not be forfeited.

4.5.5 The Successful Bidder shall, within ten (10) days of Notice of Award of the Contract for the Work, submit to the Design Professional all of the requirements of Subparagraph 6.1.

4.5.6 The Successful Bidder will be required to establish to the satisfaction of the Design Professional and the Owner the reliability and responsibility of the persons or entities proposed to furnish and perform the work described in the Bidding Documents.

4.5.7 Persons and organizations proposed by the Bidder and to whom the Owner and the Design Professional have made no reasonable objection under the provisions of Paragraph 4.5.6 must be used on the work for which they were proposed and shall not be changed except with the written consent of the Owner and the Design Professional. In an effort to gain consent, provide, if possible, a written request from the person or organization wishing to be replaced by the Bidder explaining the need for the replacement.
4.5.8 No Successful Bidder shall be required to employ any Subcontractor, other person, or organization against whom he has reasonable objection.

4.6 SUBMISSION OF BIDS
4.6.1 Bid, bid security, Subcontractors Listing Form, and other required documents listed in the Bidding Documents shall be submitted in an opaque sealed envelope marked in accordance with Subparagraph 4.6.2 below.

4.6.2 The Bid envelope shall be addressed as required by Section 00_2114 – Instructions to Bidders – Part B.

4.6.3 Bids received after the date and time for receipt of bids will be returned unopened.

4.6.4 The Bidder shall assume full responsibility for timely delivery of bids to the Owner, including those Bids submitted by mail or otherwise. Bids hand delivered to the Bid Opening Address shall be received beginning one hour prior to the bid. Bids will be clocked in at the time received, which must be prior to the time specified. Bids will then be held for public opening.

4.6.5 Oral, telephonic, or telegraphic bids are invalid and will not receive consideration.

4.7 CORRECTION OR WITHDRAWAL OF BIDS
4.7.1 A bid containing a mistake discovered before Bid Opening may be withdrawn by a bidder prior to the time set for Bid Opening by delivering verbal, written or telegraphic notice to the location designated in the Invitation for Bid as the place where bids are to be received.

4.7.2 Bid security, if required, shall be in an amount sufficient for the bid in conformance with Section 4.2.

4.7.3 Withdrawn Bids may be resubmitted up to the time and date designated for the receipt of Bids, provided they are then fully in conformance with the Bidding Documents.

4.7.4 After Bid Opening time, no modifications in bid prices or other provisions of bids shall be permitted.

4.7.5 After Bid Opening, a low Bidder alleging a material mistake of fact which makes his Bid nonresponsive may be permitted to withdraw his Bid if the:

A. mistake is clearly evident on the face of the Bid Document; or

B. Bidder submits evidence which clearly and convincingly demonstrates that a mistake was made. Any decision by the Owner to permit or deny the withdrawal of a Bid on the basis of a mistake contained therein shall be supported by a written determination setting forth the grounds for the decision. If withdrawal is permitted, bid security will not be forfeited.

4.8 NOTICE OF CONTRACT REQUIREMENTS BINDING ON BIDDER
4.8.1 In submitting this bid, the Bidder represents that he has familiarized himself with the nature and extent of the following requirements and of the Conditions of the Construction Contract (General, Supplementary, Project and Other Conditions):

4.9 REJECTION OR CANCELLATION OF BIDS
An Invitation for Bid may be canceled, or any or all Bids may be rejected in whole or in part, when it is in the best interest of the Owner. A determination containing the reasons therefore shall be made part of the Project file. Bid security for rejected Bids shall be returned to the Bidder.
4.10 CONSIDERATION OF BIDS
4.10.1 RECEIPT, OPENING, AND RECORDING
Bids received on time will be opened publicly and will be read aloud, and an abstract of the amounts of the Base Bids and Alternates or bid items, if any, will be made available to the Bidders. Each Bid shall be open to public inspection (13-1-107, NMSA 1978).

4.10.2 BID EVALUATION AND AWARD
4.10.2.1 The Owner shall have the right to waive technical irregularities in the form of the Bid of the low Bidder which do not alter the price, quality, or quantity of the services, construction, or items of tangible personal property bid (13-1-132, NMSA 1978).

4.10.2.2 It is the intent of the Owner to award a contract to the lowest responsible bidder, provided the Bid has been submitted in accordance with the requirements of the Bidding Documents. The unreasonable failure of a Bidder to promptly supply information in connection with an inquiry with respect to responsibility is grounds for a determination that the Bidder is not a responsible Bidder (13-1-133, NMSA 1978). See Section 6 as to Post-Bid Information that may be required of a Contractor as to qualifications.

4.10.2.3 If the Base Bid is within the amount of funds available to finance the construction, contract award will be made to the responsible Bidder submitting the low Base Bid; except that, if sufficient funds are available to fund alternates, the Owner may award the contract to the responsible Bidder submitting the low combined Bid within the amount of funds available (Base Bid plus or minus alternates). If the award is based on alternates, the Owner shall accept them in the order in which they are listed on the Bid Form.

4.10.2.4 Discrepancies in the Bid Form between words and figures will be resolved in favor of words. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

4.10.2.5 Conditional Bids or Bids with additional terms will not be accepted.

4.11 NOTICE OF AWARD
A written Notice of Award shall be issued by the Owner after review and approval of the bid and related documents by the Owner with reasonable promptness (13-1-100 and 13-1-108, NMSA 1978).

4.12 CANCELLATION OF AWARD
When in the best interest of the public, the Owner may cancel the award of any contract at any time before the execution of said contract by all parties without any liability against the Owner.

5.0 PROTESTS
5.1 Any bidder, offerer, or contractor who is aggrieved in connection with this procurement (Bid) may protest to the Owner’s Central Purchasing Agent and the Owner in accordance with the requirements of General Services Department Rule 93-601. The protest should be made in writing within twenty-four (24) hours after the facts or occurrences giving rise thereto, but in no case later than fifteen (15) calendar days after the facts or occurrences giving rise thereto (13-1-172, NMSA 1978).

5.2 In the event of a timely protest under Subparagraph 4.10.1 (13-1-172, NMSA 1978 of the Procurement Code), the Owner’s Central Purchasing Agent and the Owner shall not proceed further with the procurement unless the Owner’s Purchasing Agent or the Owner makes a determination that the award of contract is necessary to protect substantial interests of the Owner (13-1-173, NMSA 1978).
5.3 The Owner’s Central Purchasing Agent or his designee shall have the authority to take any action reasonably necessary to resolve a protest of an aggrieved bidder, offerer, or contractor concerning a procurement.

5.4 The Owner’s Central Purchasing Agent or his designee shall promptly issue a determination relating to the protest. The determination shall:
   A. state the reasons for the action taken; and
   B. inform the protestant of the right to judicial review of the determination pursuant to Section 13-1-183, NMSA 1978 of the Procurement Code (13-1-175, NMSA 1978).

5.5 A copy of the determination issued under Section 13-1-175, NMSA 1978 of the Procurement Code shall immediately be mailed to the protestant and other bidders or offerers involved in the procurement (13-1-176, NMSA 1978).

6.0 POST-BID INFORMATION
6.1 SUBMITTALS TO DESIGN PROFESSIONAL
Within ten (10) days of Notice of Award and prior to construction, the following shall be submitted to the Design Professional:
   A. the Contractor required bonds and Certificates of Insurance;
   B. for the Owner’s consideration for approval, a resume and Statement of Qualification of proposed Superintendent(s) and assistants until acceptable individuals are selected in accordance with Subparagraph 3.9.2 of the General Conditions to the Construction Contract;
   C. signed Subcontractors List including contract amount of each, evidence of required bonds, costs of each bond, and beneficiary of each bond; evidence of DOL registration, evidence of CID licensure;
   D. Assignment of Antitrust Claims (required for the Contractor, all Subcontractors, and all Suppliers);
   E. Certificate of Insurance;
   F. State W-9;
   G. evidence of other bonds or documents as specified in the Bidding Documents; and
   H. Schedule of Values and required supporting data in accordance with Paragraph 9.2 of the General Conditions to the Construction Contract.

6.2 RETURN OF BID SECURITY
All Bid Security in the form of checks, except those of the two lowest Bidders, will be returned immediately following the opening and checking of the Bids. The retained bid security of the unsuccessful of the two lowest bidders, if in the form of a check, will be returned within fifteen (15) days following the award of contract. The retained bid security of the Successful Bidder, if in the form of a check, will be returned after a satisfactory contract bond has been furnished and the Contract has been executed. Bid Securities in the form of Bid Bonds will be returned only upon the request of the unsuccessful Bidder, but will be released by the Purchasing Agent for the District after the Notice of Award is sent by the Owner.

6.3 EXECUTION AND APPROVAL OF CONTRACT
The Contract shall be signed by the Successful Bidder and returned, together with both the Contract Bonds and Certificate of Insurance, within fifteen (15) days after the date of the Notice of Award. If the Contract is not executed by the Owner within forty-five (45) days following receipt from the Bidder of the signed Contract with Bonds and Certificate, the Bidder shall have the right to withdraw his proposal without penalty unless the Bidder has previously agreed to extend the date for acceptance by the Owner. No Contract shall be effective until it has been fully executed by all of the parties thereto.
6.4 NOTICE TO PROCEED
The Owner will issue a written Notice to Proceed to the Contractor stipulating the date from which Contract Time will be charged and the date Contract Time is to expire, subject to valid modifications of the Contract authorized by Change Order.

6.5 FAILURE TO EXECUTE CONTRACT
Failure to return the signed Contract with acceptable Contract Bonds and Certificate of Insurance within fifteen (15) days after the date of the Notice of Award shall be just cause for the cancellation of the award and the forfeiture of the Bid Security, which shall become the property of the Owner, not as a penalty, but in liquidation of damages sustained. Award may then be made to the next lowest responsible Bidder, or the Work may be re-advertised and constructed under contract or otherwise, as the Owner may decide.

6.6 CONTRACTOR'S QUALIFICATIONS STATEMENT
Bidders to whom award of a contract is under consideration shall submit, upon request, information and data to prove that their financial resources, production or service facilities, and service reputation and experience are adequate to make satisfactory delivery of the services, construction, or items of personal property described in the Bidding Documents (13-1-82, NMSA 1978). The Contractor shall always submit the requirements of Subparagraph 3.9.2 of the General Conditions to the Construction Contract and also in accordance with Paragraph 6.1-B above.

7.0 OTHER INSTRUCTIONS TO BIDDERS
7.1 The bid will be awarded in accordance with Subparagraph 4.10.2.3. The Owner may accept from the apparent low bidder prior to the Award, a reduction to the bid cost or time and, may discuss with the apparent low bidder for potential deductive modifications to the Work prior to the Award however, the Award shall be made on the un-modified Construction Documents with alternates accepted in accordance with this Paragraph 7.0.

7.2 If the lowest responsible bid has otherwise qualified, and if there is no change in the original project scope, terms or conditions, the lowest bidder may negotiate with the purchaser for a lower total bid in order to avoid rejection of all bids for the reason that the lowest bid was up to ten percent higher than budgeted project funds. Such negotiation shall not be allowed if the lowest bid was more than ten percent over budgeted project funds.
INSTRUCTIONS TO BIDDERS – PART B
Section 00 2114

1.0 BID ENVELOPE

The Bid envelope shall be addressed at the front center of the envelope to:

RIO RANCHO PUBLIC SCHOOLS
PURCHASING ROOM 120
500 LASER ROAD NE
RIO RANCHO, NM 87124

Also on the front of the envelope the Bidder shall mark: the name and address of the Bidder shall in the upper left corner; the name of project, Invitation to Bid Number, date of opening and, time of opening in the lower left corner; and, "SEALED BIDS ENCLOSED" in the lower right corner or otherwise on the face thereof.

2.0 RRPS BACKGROUND CHECKS

2.1 Background Checks Required: Rio Rancho Public Schools (RRPS) requires that any employee (including contractors and sub-contractors), working on Rio Rancho Public School project(s) have a background check. As per Section 28-2 NMSA 1978, Criminal Offender Employment Act, RRPS has the right to refuse public employment for any one or any combination of the following causes:

A. Misdemeanor conviction or felony of moral turpitude and the misdemeanor or felony involves our business (protection of students and adults on our premises).
B. However, RRPS can allow employment if felony or misdemeanor involves moral turpitude and does not directly relate to the employment only, if after investigation, we determine that the person convicted has not been sufficiently rehabilitated to warrant the public trust.
C. Sufficient rehabilitation equals the following:
   2.2 Completion of probation or parole supervision.
   2.3 Expiration of a period of three years after final charge with no repeated charges, or
   2.4 Three years after release from imprisonment without any subsequent conviction.
   2.5 Regardless of rehabilitation, RRPS will not employ an individual if a conviction is discovered for any of the following offenses:
      A. Trafficking in a controlled substance.
      B. Criminal sexual penetration.
      C. Related sexual offense.
      D. Child abuse
      E. RRPS cannot bar anyone from employment for the following:
         a. Records of arrest not followed by a valid conviction and;
         b. Misdemeanor convictions not involving moral turpitude.

2.6 Background Check Process: After receipt of the Notice to Proceed, the contractor shall proceed as follows:
See attached RRPS Fingerprint procedure form.
New Mexico Applicant Processing Service (NMAPS)
Process Overview for Electronic Fingerprinting

Registration:

All applicants must register prior to being fingerprinted. You must be fingerprinted within 90 days of registration. **(Must use Internet Explorer, Google Chrome will not access site properly).**

- The applicant must register with 3M Cogent at www.cogentid.com.
- Choose New Mexico and then click Register Online for a Background Check.
- Click on ORI LOOK UP, find RIO RANCHO PUBLIC SCHOOLS ORI# NM930071Z and double click on it. It will automatically populate the ORI# in the required section. Finish filling out the online registration completely. **Check to ensure you see ORI# NM930071Z.**

- After registration is complete, the applicant will receive a Registration ID Number. **PLEASE RETAIN THIS NUMBER; IT IS NEEDED IN ORDER TO BE FINGERPRINTED.**
- While online registration (www.cogentid.com) is the preferred registration method, telephone registration is also available: 1-877-99NMAPS (1-877-996-6277).

**Fees & Payment:**

Electronic fingerprint and background check fees are **$44.00.**

**Payment Methods**

<table>
<thead>
<tr>
<th>Online</th>
<th>Credit/Debit Card</th>
</tr>
</thead>
<tbody>
<tr>
<td>At the Fingerprint Site</td>
<td>Money order/cashier’s check made out to 3M Cogent</td>
</tr>
<tr>
<td></td>
<td>NO cash</td>
</tr>
<tr>
<td></td>
<td>NO checks</td>
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</tbody>
</table>

**Fingerprinting:**

- Proceed to one of the authorized fingerprinting sites listed at www.cogentid.com > New Mexico > under User Information section > Fingerprint Location Map.
- Applicants may visit any fingerprinting location during any of the site’s scheduled fingerprinting hours. Check the website for hours. **Once you have completed the online registration.** Bring your Registration ID Number and a valid photo ID.
- If you are paying by money order, bring a money order made out to 3M Cogent.

**Results:**

- Background check results will be sent directly to RRPS.
- 3M Cogent does not have access to background check results, or make employment determinations.
- RRPS will contact the applicant when background check results are received and additional information is needed.
This Bid is submitted to Owner:

Rio Rancho Public Schools
Purchasing Department
500 Laser Road NE
Rio Rancho, NM 87124
Phone (505) 896-0667

1. The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an agreement with the Owner in the form included in the Bidding Documents to perform and furnish all Work as specified or indicated in the Bidding Documents for the Contract Price and within the Contract Time indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.

2. The Bidder accepts all of the terms and conditions of the Invitation for Bid and Instructions to Bidders, including without limitation those dealing with the disposition of bid security and other Bidding Documents. This Bid will remain subject to acceptance for forty-five (45) days after the day of Bid opening. The Bidder shall sign and submit the Agreement between Owner and Contractor (hereinafter called Agreement) with the Bonds and other documents required by the Bidding Requirements within fifteen (15) days after the date of the Owner's Notice of Award.

3. The Contractor shall include the following cash allowances in his Bid:

   N.A.

4. In submitting this Bid, the Bidder represents, as more fully set forth in the Agreement, that:

   A. the Bidder has examined copies of all the Bidding Documents and of the following Addenda (receipt of all of which is hereby acknowledged):

   No.  Title: ___________________________ Date: ________________
   No.  Title: ___________________________ Date: ________________
   No.  Title: ___________________________ Date: ________________
BID FORM (LUMP SUM OR UNIT PRICE)

BIDDER: [Company Name]

ITB #: 2016-004-FAC

No. Title: __________________________ Date: ______________

No. Title: __________________________ Date: ______________

No. Title: __________________________ Date: ______________

B. the Bidder has familiarized himself with the nature and extent of the Bidding Documents, Work, site, locality, and all local conditions, laws, and regulations that in any manner may affect cost, progress, performance, or furnishing of the Work;

C. the Bidder has carefully studied all reports and drawings of subsurface conditions which are identified in the Information Available to Bidders and accepts the determination set forth in the Information Available to Bidders of the extent of the technical data contained in such reports and drawings upon which the Bidder is entitled to rely;

D. the Bidder has correlated the results of all such observations, examinations, investigations, explorations, tests, reports, and studies with the terms and conditions of the Bidding Documents;

E. the Bidder has given the Design Professional written notice of all conflicts, errors, and discrepancies that he has discovered in the Bidding Documents, and the written resolution thereof by the Design Professional is acceptable to the Bidder;

F. this Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm, or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization, or corporation; the Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; the Bidder has not solicited or induced any person, firm, or corporation to refrain from bidding; and the Bidder has not sought by collusion to obtain for himself any advantage over any other Bidder or over the Owner;

G. the Bidder acknowledges that he has attended any mandatory pre-bid conference scheduled by the Owner or the Design Professional pertaining to this project;

H. the Bidder agrees to show clearly on the envelope in which the Bid is submitted the Project Name and Number, and Invitation to Bid Number; and,

I. the Bidder will complete the Work for the following price(s) (do not include any gross receipts tax in the price(s).)

5. Bids shall be presented in the form of a total Base Bid proposal under a Lump Sum Contract plus additive alternates that are selected by the Owner. A bid must be submitted on all bid items and alternates; segregated bids will not be selected by the Owner.

A. LUMP SUM PRICE (please use typewriter or print legibly in ink) Base Bid (use words):
Furnish and install all work as indicated in the Bid Documents with the exception of Additive Alt. # One:

________________________________________

________________________________________

($ )

B. ADDITIVE ALTERNATE NO. ONE:
Furnish and install all work as indicated in the Bid Documents for Additive Alt. # One, Restroom Area Alterations:

________________________________________

($ )

BID FORM (LUMP SUM OR UNIT PRICE) 00 4113 - 2
ITB #: 2016-004-FAC
All specific cash allowances are included in the price(s) set forth above.

C. **UNIT PRICES:** N.A.

6. The Bidder agrees that:

   A. The Work to be performed under this Contract shall be commenced not later than ten (10) consecutive days after the date of written Notice to Proceed, and that Substantial Completion shall be achieved not later than **SIXTY (60)** days after the date of written Notice to Proceed, except as hereafter extended by valid written Change Order by the Owner.

   B. Should the Contractor neglect, refuse, or otherwise fail to complete the Work within the time specified, the Contractor agrees to pay to the Owner in partial consideration for the award of this Contract the amount of Two Hundred Fifty Dollars ($250) per consecutive day, not as a penalty, but as liquidated damages for such breach of the Contract.

   C. The above prices shall include all labor, materials, removal, overhead, profit, insurance, taxes (not including gross receipts tax), etc., to cover the finished work of the several kinds called for. Changes shall be processed in accordance with the Contract Documents.

   D. It is understood that the Owner reserves the right to reject any or all Bids and to waive any technical irregularities in the bidding.

7. The following documents are attached to and made a condition of this Bid:

   A. **Bid Security with Agent's Affidavit;**
   B. **Subcontractors Listing;** and,
   C. **Any Resident Preference Forms**
   D. **Campaign Contribution Disclosure Form**
   E. **Fingerprint & Background Procedure**

8. The terms used in this Bid and the Bidding and Contract Documents which are defined in the Conditions of the Construction Contract (General, Supplementary, and Other Conditions), included as part of the Bidding Documents, have the meanings assigned to them in those Conditions.

9. The Bidder is a(n):

   A. **INDIVIDUAL;**

      By: __________________________________________________________
      (Individual's Signature)
      Doing business as: _____________________________________________
      Business address: _____________________________________________
      ____________________________________________________________
      _________________________________
      Telephone: (____) ______________________

      FAX: (____) ______________________
B. PARTNERSHIP:

By: 
(Firm Name)
(General Partner's Signature)
Business address:

Telephone: ( )
FAX: ( )

C. CORPORATION:

Corporation Name: _____________________________________________________________
State of Incorporation: __________________________________________________________
By _______________________________ Title: _________________________________
(Print Name of Person Authorized to Sign)
* __________________________________________________________
Signature of Authorized Person

If a New Mexico Corporation: ________________________________
NM Certificate of Incorporation Number

If a Foreign Corporation: ________________________________
NM Certificate of Authority Number

Attest (Secretary): ____________________________________________________________
Business address ______________________________________________________________

Telephone: ( )
FAX: ( )
or.

D.  JOINT VENTURE:

By __________________________________________

(Name)

Address: ______________________________________

________________________________________________

Telephone: (____) __________________________

FAX: (____) _________________________________

By __________________________________________

(Name)

Address: ______________________________________

________________________________________________

Telephone: (____) __________________________

FAX: (____) _________________________________

By __________________________________________

(Name)

Address: ______________________________________

________________________________________________

Telephone: (____) __________________________

FAX: (____) _________________________________

Each Joint Venturer must sign. The manner of signing for each individual, partnership, and corporation that is a party to the joint venture should be in the manner indicated in the appropriate category.

BIDDER MUST FILL IN THE FOLLOWING (if none, write none)

NM License Number ___________________ License Classification: ____________________

Dept. of Workforce Solutions Minimum Wage Act Registration Number

(DWS#)_______________________________

Resident Contractor's Preference Number: ________________________________

BIDDER MUST FILL IN THE FOLLOWING (if none, write none)

**NOTE: Bidder is to fill out and sign the following Resident Veterans Preference Certification (page 00 4113 - 6)
Resident Veterans Preference Certification – ITB#2016-004-FAC
(please attach copy of certificate and return this page with your offer)

_________________________________ (Name of Contractor) hereby certifies the following in regard to application of the resident veterans preference to this procurement:

Please check one box only

__ I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is less than $1M allowing me the 10% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

__ I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than $1M but less than $5M allowing me the 8% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

__ I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than $5M allowing me the 7% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

“I agree to submit a report, or reports, to the State Purchasing Division of the General Services Department declaring under penalty of perjury that during the last calendar year starting January 1 and ending on December 31, the following to be true and accurate.”

“In conjunction with this procurement and the requirements of this business’ application for a Resident Veteran Business Preference / Resident Veteran Contractor Preference under Sections 13-1-21 or 13-1-22 NMSA 1978, when awarded a contract, which was on the basis of having such veterans preference, I agree to report to the State Purchasing Division of the General Services Department the awarded amount involved. I will indicate in the report the award amount as a purchase from a public body or as a public works contract from a public body as the case may be.”

“I understand that knowingly giving false or misleading information on this report constitutes a crime.”

I declare under penalty of perjury that his statement is true to the best of my knowledge. I understand that giving false or misleading statements about material fact regarding this matter constitutes a crime.

_____________________________________
Signature of Business Representative* Date

*Must be an authorized signatory for the Business.

The representations made in checking the boxes constitutes a material representation by the Business that is subject to protest, and may result in denial of an award or un-award of the procurement involved, if the statements are proven to be incorrect.

BID FORM (LUMP SUM OR UNIT PRICE) 00 4113 - 6
ITB #: 2016-004-FAC
AGENT’S AFFIDAVIT

(To be filled in by Agent)

STATE OF ____________________________

COUNTY OF ____________________________

__________________________, being first duly sworn, deposes and says that he / she is the duly appointed agent for and is licensed in the State of New Mexico.

Deponent further states that a certain bond was given to indemnify the State of New Mexico in connection with the construction of ____________________________, dated the day of __________, 20__, executed by _________________ , as principal, and _________________ , as surety, signed by this Deponent; and Deponent further states that said bond was written, signed, and delivered by him/her; that the premium on the same has been or will be collected by him/her; and that the full commission thereon has been or will be retained by him/her.

________________________________________

Subscribed and sworn to before me, a notary public in and for the County of, ________________, this _______ day of ____________________________, 20__. Notary Public

My Commission Expires:

AGENT’S ADDRESS:

Telephone
COMBINED
LIST OF SUBCONTRACTORS
and
ASSIGNMENT OF ANTITRUST CLAIMS
by
CONTRACTOR, SUBCONTRACTORS,
SUBSUBCONTRACTORS, and SUPPLIERS

EXAMPLE TRADES AND SUPPLIERS: SITE WORK, CONCRETE, MASONRY, FRAMING, LUMBER, STEEL,
STEEL FABRICATION, ROOFING, EXTERIOR INSULATION AND FINISH, DRYWALL, DOORS, GLASS AND
GLAZING, PLASTER, PAINTING, CARPET, RESILIENT, CONVEYING SYSTEMS, HVAC, CONTROLS,
PLUMBING, SHEET METAL, ELECTRICAL

1. Subcontractor Listing shall be included with Bid as a condition of the Bid and be fully
complete with regards to all Subcontractors providing services valued at $5,000.00 or more, or
one-half of one percent of the architect's or engineer's estimate of the total project cost, not including
alternates, whichever is greater pursuant to Section 13-4-34, NMSA 1978.

Listing Threshold for this Project:  $ 5,000.00

a. Subcontractor Listing shall be expanded after Bid by apparent low bidder if Awarded,
and before Contract, to include major Suppliers and, each entity listed shall be signed by individual
empowered to obligate Supplier, Subcontractor, or Subsubcontractor.

b. Subcontractor Listing shall also be expanded after Bid by apparent low bidder if
Awarded, and before Contract, to include the Department of Workforce Solutions labor enforcement
fund registration number. See the Department of Workforce Solutions web site at
www.dws.state.nm.us under “Public Works” for registration form, listings and information.

c. See Instructions to Bidders, Section 00 2113 Paragraph 4.5, Subcontractors, for rules
regarding changes in this list after bidding.

2. PROJECT NAME: RRPS District Office’s Modifications, Phase One
INVITATION TO BID NUMBER: ITB#2016-004-FAC

The undersigned agrees that any and all claims which the firm may have or may inure to it for
overcharges resulting from antitrust violations as to goods, services, and materials purchased in
connection with the above-referenced project are hereby assigned to the Owner, but only to the
extent that such overcharges are passed on to the Owner. It is agreed that the firm retains all rights to
any such antitrust claims to the extent of any overcharges not passed on to the District, including the
right to any treble damages attributable thereto.
INVITATION TO BID NUMBER: ITB#2016-004-FAC

Subcontractor Listing
*Signature not required until after Bid but, before Award

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<tr>
<th>TYPE OF WORK</th>
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PREQUALIFICATION

GENERAL
The Contractor represents to the Owner that the Contractor:

1. is financially solvent, able to pay debts, and has sufficient working capital to complete the Work;
2. is able to furnish the plant, tools, materials, supplies, equipment, skilled labor and sufficient experience and competence required to complete the Work equal to or exceeding industry standards;
3. shall, prior to bid, be properly licensed according to the requirements of the Construction Industries Licensing Act, Chapter 60, Article 13 NMSA 1978 and ensures to the Owner that such license shall remain in effect for the duration of the Work and warranty periods that the Contractor is authorized and properly licensed to do business in the State of New Mexico and in the locale where the Work is located;
4. execution of the agreement and performance thereof is within the Contractor's duly authorized powers; and
5. or assigns have visited the site of Work and has become familiar with the conditions under which the Work is to be performed, obtained all available information and have correlated observations and acquired information with the requirements of the Contract Documents including conditions:
   a) bearing upon access to the site, accommodations required, transportation, disposal, handling and storage;
   b) affecting availability of labor, materials, equipment, water, electricity, utilities and roads;
   c) such as weather, river stages, flooding;
   d) related to the apparent form and nature of the Work site, including the surface and sub-surface conditions; and,
   e) that in general would be deemed by a prudent contractor to be material to the Work as to assess risk, contingencies and other circumstances;
6. has completed prior contracts with diligent and continuous effort and has been responsive to post-occupancy corrections.

PREQUALIFICATION FORMS
Not required.

DEBARRED OR SUSPENDED CONTRACTORS
A business (contractor, subcontractor, or supplier) that has either been debarred or suspended pursuant to the requirements of Sections 13-1-177 through 13-1-180 and 13-4-11 through 13-4-17, NMSA 1978 as amended, shall not be permitted to do business with the State and shall not be considered for award of contract during the period for which it is debarred or suspended.
EXHIBIT E

RESIDENT VETERANS PREFERENCE CERTIFICATION

(NAME OF CONTRACTOR) hereby certifies the following in regard to application of the resident veterans' preference to this procurement:

PLEASE CHECK ONLY ONE STATEMENT FROM THE FOUR (4) STATEMENTS LISTED BELOW:

I declare that my firm is ineligible to receive New Mexico Resident Veterans Preference.

The following three (3) checkboxes are applicable to ONLY those vendors eligible to receive New Mexico Resident Veterans Preference AND who have included a valid New Mexico Resident Veterans Preference certificate with their sealed response. No preference will be extended unless a valid certificate is included in your sealed response. Submitted certificates shall be validated by the Rio Rancho Public Schools District with New Mexico Tax & Revenue.

I declare under penalty of perjury that my business prior year revenue, starting January 1 ending December 31, is less than $1 Million allowing me the 10% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

I declare under penalty of perjury that my business prior year revenue, starting January 1 ending December 31, is more than $1 Million but less than $5 Million allowing me the 8% preference discount on this bid or proposal. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

I declare under penalty of perjury that my business prior year revenue, starting January 1 ending December 31, is more than $5 Million allowing me the 7% preference discount on this bid or proposal. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

I agree to submit a report, or reports, to the State Purchasing Division of the General Services Department declaring under penalty of perjury that during the last calendar year starting January 1 and ending on December 31, the following to be true and accurate:

"In conjunction with this procurement and the requirements of this business' application for a Resident Veteran Business Preference/Resident Veteran Contractor Preference under §13-1-21 or § 13-1-22 NMSA 1978, when awarded a contract which was on the basis of having such veterans preference, I agree to report to the State Purchasing Division of the General Services Department the awarded amount involved. I will indicate in the report the award amount as a purchase from a public body or as a public works contract from a public body as the case may be.

"I understand that knowingly giving false or misleading information on this report constitutes a crime."

I declare under penalty of perjury that this statement is true to the best of my knowledge. I understand that giving false or misleading statements about material fact regarding this matter constitutes a crime.

(Signature of Business Representative) * (Date)

*Must be an authorized signatory for the Business.

The representations made in checking the boxes constitutes a material representation by the business that is subject to protest and may result in denial of an award or termination of an award if the statements are proven to be incorrect.
STATE OF NEW MEXICO
Taxation and Revenue Department

APPLICATION FOR PREFERENCE

GENERAL INSTRUCTIONS PLEASE READ BEFORE COMPLETING

Sections 13-1-21 and 13-1-22 NMSA 1978 authorize and set forth the criteria required for a business to qualify as a Resident Business or Resident Contractor. It is important to note, a resident preference is applicable to contracts, which typically call for, but are not limited to, the furnishing of tangible personal property, i.e., goods, supplies, materials, equipment, printed materials and certain services.

A “resident preference” is applicable only to procurements made pursuant to a formal bid process or formal Request For Proposals (RFP) process in accordance with Sections 13-1-21 and 13-4-2 NMSA 1978. Additionally, any person, firm, corporation, or other legal entity must have all required licenses at the time the application for preference is submitted to the Taxation and Revenue Department for consideration.

Please note: All certifications are subject to revocation in accordance with applicable rules. A certification merely establishes that the Taxation and Revenue Department has determined based upon the information provided in the application, as of the date of issuance, that the holder was entitled to treatment as a resident business and/or contractor by state agencies and local public bodies.

The attached application for preference is required by Section 13-1-22 NMSA 1978 as amended during the First Special Legislative Session of 2011. The application includes an affidavit from a certified public accountant setting forth certain eligibility criteria for businesses or contractors, as required by Section 13-1-22 NMSA 1978. The completed application along with payment of Thirty Five ($35) dollars must be submitted to the Taxation and Revenue Department prior to issuance of a resident business preference or a resident contractor preference certificate.

In addition to the application, the Taxation and Revenue Department may require submission of additional information to ensure eligibility.

A certificate is valid for three (3) years from the date of its issuance; provided that if there is a change of ownership of more than fifty percent, a resident business or resident contractor shall reapply.

For questions concerning the application process please call (505) 827-0951. The application along with payment should be sent to:

New Mexico Taxation and Revenue Department
Santa Fe District Office
PO Box 5374
Santa Fe, NM 87502-5374

APPplication FOR RESIDENT PREFERENCE 00 4556 - 1

DBB_v.3.1.5.3.12
STATE OF NEW MEXICO
Taxation and Revenue Department

APPLICATION FOR RESIDENT CONTRACTOR CERTIFICATION

General Information

Name of Business: ____________________________
Doing Business As (DBA): _______________________

Mailing Address: _____________________________

City: __________________________ State: ________ Zip: ________

New Mexico Combined Reporting system (CRS) Identification Number: ________

VIN of vehicle registered in New Mexico: __________________________

Name of vehicle owner: _________________________

For questions please call (505) 827-0961

Existing Contractor

☐ The contractor is currently licensed as a contractor in New Mexico.

☐ The contractor has paid property taxes on real property in New Mexico in each of the last five years.

☐ The contractor has paid rent on real property in New Mexico in each of the last five years.

☐ The contractor has paid another New Mexico State tax in each of the last five years.

☐ The contractor has paid unemployment insurance on at least three full-time New Mexico resident employees in each of the last five years or the contractor has been licensed as a contractor in New Mexico for ten consecutive years.

New Contractor

☐ The contractor is currently licensed as a contractor in New Mexico.

☐ Property Taxes on real property in New Mexico have been paid in each of the last five years by the owner or the majority of owners.

☐ The owner has paid another New Mexico State tax in each of the last five years.

☐ This business has not applied for a Resident Business Certificate or Resident Contractors Certificate in each of the last five years.

Relocated Business

☐ The contractor is currently licensed as a contractor in New Mexico.

☐ The business has leased real property in New Mexico for the last ten years.

☐ The business has purchased real property in New Mexico valued at over $100,000.

☐ Eighty percent or more of the business employees in the prior year were residents of New Mexico.

Previously Certified Business or Purchased, Reorganized, Name changed Business

☐ The contractor is currently licensed, or was eligible for certification as a contractor in New Mexico.

☐ The business has reorganized into one or more different legal entities.

☐ The business was purchased by another legal entity but operates in the same commercial enterprise.

☐ The business has merged with another legal entity but operates in substantially the same commercial enterprise.

STATE OF NEW MEXICO
COUNTY OF

I hereby swear, under oath that statements in the application for Resident Contractor Certification are true and complete to the best of my knowledge.

Name: ____________________________

Signature: ____________________________

CR License #: __________________________

State: __________________________

Phone #: __________________________

Subscribed and sworn to before me this ______ day of __________, 20___

My Commission Expires: __________________________

Notarized

Signature of Applicant: __________________________

Date: __________________________

Send completed application to Taxation and Revenue Department

Office of New Mexico, PO Box 5774, Santa Fe, NM 87504-5774.

APPLICATION FOR RESIDENT PREFERENCE

00 4556-2

DBB_v.3.1_5.3.12
**APPLICATION FOR RESIDENT VETERAN CONTRACTOR CERTIFICATION**

### SECTION I General Information

<table>
<thead>
<tr>
<th>Name of Licensed Contractor</th>
<th>Doing Business As (DBA) if applicable</th>
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<th>Mailing Address - City, State, Zip Code</th>
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<th>Physical Address - City, State, Zip Code</th>
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<tr>
<th>Name of Business Owner or Officer</th>
<th>Phone Number of Business Owner or Officer</th>
<th>E-mail of Business Owner or Officer</th>
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<th>NM(CRS) Number:</th>
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### SECTION II Resident Veteran Contractor Status Information

Please choose the relevant business status category below and place a checkmark next to all statements that apply to the applicant’s business under the relevant category. If any statement under the relevant category is not appropriate to or does not otherwise describe the applicant’s business, it may not qualify for certification.

**Existing Contractor**

- The contractor has been in existence for at least five years; **and**
- The contractor is licensed as a contractor in New Mexico; **and**
- The contractor has paid property taxes or rent on real property in New Mexico in **each** of the preceding five years; **and**
- The contractor has paid at least one other tax administered by the State of New Mexico in **each** of the preceding five years; **and**
- The contractor has paid unemployment insurance on at least three full-time New Mexico resident employees in **each** of the preceding five years or the contractor has been licensed as a contractor in New Mexico for ten consecutive years.

**New Contractor**

- The contractor did not exist as a business in any form and has been in existence for less than five years; **and**
- The contractor is currently licensed as a contractor in New Mexico; **and**
- The owner or majority of owners of the business have paid property taxes or rent on real property in New Mexico in **each** of the preceding five years; **and**
- The owner or majority of owners of the business have paid at least one other tax administered by the State of New Mexico in **each** of the preceding five years; **and**
- This contractor has not applied for a Resident Business Certificate or Resident Contractor Certificate during the preceding five years.

**Relocated Contractor**

- The contractor moved at least eighty (80%) percent of its total domestic personnel from another state to New Mexico in the past five years; **and**
- The contractor is currently licensed as a contractor in New Mexico; **and**
- Eighty (80%) percent or more of the total personnel of the business in the prior year were residents of New Mexico; **and**
- The business has leased real property in New Mexico for ten years; or
  - The business has purchased real property in New Mexico valued in excess of $100,000.
Previously Certified Contractor or a Contractor Previously Eligible for Certification

☒ The contractor is licensed as a contractor in New Mexico; and

☒ After January 1, 2012, but less than three years ago, the contractor obtained and was eligible for resident contractor certification. However, the contractor has since: (1) changed its name; (2) reorganized into one or more different legal entities; or (3) been purchased by or merged with another legal entity, but now operates in New Mexico as substantially the same commercial enterprise;

OR

After January 1, 2012, but less than three years ago, the contractor applied and was eligible for resident contractor certification. However, before the Department was able to issue certification, the business: (1) changed its name; (2) reorganized into one or more different legal entities; or (3) was purchased by or merged with another legal entity, but now operates in New Mexico as substantially the same commercial enterprise.

SECTION III  Annual Revenue and Documentation

Please provide the business’s previous year’s annual revenues below and attach the required documents. If the required documents are attached, please place a checkmark next to the second statement below. An application submitted without the required information and documentation will be incomplete.

☒ The previous year’s annual revenues of the resident veteran business are $_____; and

☒ Attached to this application is verification by the Federal Dept. of Veterans Affairs that the business is either a veteran-owned small business or a service-disabled veteran-owned small business;

OR

Attached to this application is proof that a veteran or veterans own a majority of the business and verification of either (1) veteran status as indicated by the U.S. Dept. of Defense DD Form 214 of release or discharge from active duty with an honorable discharge or (2) service disabled-veteran status by the Dept. of Veterans Affairs.

AND

☒ Any applicant provided a certificate of Resident Veterans Preference by the Taxation and Revenue Department as either a business or a contractor under the provisions of Sections 15-1-21 or 15-1-22 NMSA 1978, agrees that when awarded a contract involving a Veterans Preference during the last calendar year beginning on January 1 and ending on December 31, to report the award amount involved to the State Purchasing Division of the General Services Department. The report will be given under the penalty of perjury and indicate whether the awarded amount was as a purchase from a public body, or as a public works contract from a public body, as the case may be.

SECTION IV  Affidavit

AFFIDAVIT FROM CERTIFIED PUBLIC ACCOUNTANT

STATE OF ____________________________
COUNTY OF ____________________________

I hereby swear, under oath that it is my professional opinion that the applicant meets the required criteria set forth in NMSA 1978, Section 13-1-22 (2012) for Resident Veteran Business Certification and that ALL information provided and ALL checkmarked statements in the foregoing application are true and complete to the best of my knowledge.

Name ____________________________________________________________________________ CPA License # __________ State __________ Date __________

Signature _______________________________________________________________________

NOTARY

Subscribed and sworn to before me this _________ day of __________, 20________.

Notary Public ____________________________ My Commission Expires ____________________________

(NOTARY SEAL)

I am authorized to sign this application on behalf of the applicant and attest to the truthfulness of the information provided herein.

Signature of Applicant ____________________________ Date __________

Please see last of instructions: APPLICATION AND FEE SUBMISSION for correct mailing address and fee.
APPLICATION FOR RESIDENT VETERAN CONTRACTOR CERTIFICATE

INSTRUCTIONS

Beginning January 1, 2012, but not after June 30, 2022, New Mexico veteran contractors who wish to obtain a resident veteran contractor preference must first apply for and obtain a resident veteran contractor certificate issued by the New Mexico Taxation and Revenue Department (TRD). The preference may be used by the holder to obtain a bidding advantage when participating in a formal bid process or formal request for proposal process for the sale of goods or services to a New Mexico state or local public body. The contractor must submit with its bid or proposal a copy of a valid resident veteran contractor certificate.

So long as the contractor initially meets and continues to meet the necessary requirements, the certificate is valid for three years from the date of issuance. The contractor must submit a new application if the contractor’s status has changed or if there is a change in ownership of more than fifty percent.

The purchasing agent for a public body may verify that a resident veteran contractor certificate is issued by TRD by accessing the TRD web site at https://secure.mvd.newmexico.gov/residentcertificate/default.aspx, or by calling (505) 827-0951.

RESIDENT VETERAN CONTRACTOR CERTIFICATE APPLICATION

TRD has prescribed form ASD-22244 that must be completed in order to obtain a resident veteran contractor certificate. The required contents of the form are summarized below.

SECTION I General Information

This section requires provision of the applicant’s general business information, including basic contact information. The contact information provided must be that of the contractor or the contractor’s authorized representative.

SECTION II Resident Veteran Contractor Status Information

To complete the application, the CPA must select the contractor status category that applies to the contractor: existing contractor, new contractor, relocated contractor, or previously certified contractor or contractor previously eligible for certification. The CPA must select only the contractor status category that pertains to the applicant and indicate which statements included in the applicable category accurately describe the contractor. If any statement is not appropriate to or does not otherwise describe the applicant’s business, it may not qualify for certification.

NOTE: When a contractor is an existing contractor, the application must indicate whether, during the previous five years, the contractor paid unemployment insurance on at least three full-time employees who are residents of New Mexico. When a contractor is a relocated contractor, the application must indicate whether at least 80% of the total personnel of the contractor in the prior year were New Mexico residents. For the purposes of this application, a New Mexico “resident” is considered to be a person who is domiciled in this state during any part of the calendar year or a person who is physically present in this state for at least 185 days during the calendar year.

SECTION III Annual Revenue and Documentation

Complete Section III by entering the previous year’s annual revenues of the resident veteran contractor and attaching the documentation required. An application submitted without the required information and documentation will be incomplete.
SECTION IV

Affidavit

This portion of the form is a sworn statement by the CPA indicating that the statements selected in Section II are accurate descriptions of the contractor, and that all other information provided in the form is true and correct to the best of the CPA's knowledge. The affidavit also provides a sworn statement that it is the CPA's professional opinion that the contractor meets the required criteria for resident veteran contractor certification.

The contractor, officer of the contractor business or the contractor's authorized representative must also sign the application, affirming that the statements made and information provided in the application are true and correct.

APPROVALS AND PENALTIES

TRD will examine the application and affidavit. If necessary, TRD may seek additional information to ensure the contractor's eligibility. If TRD determines that the contractor is eligible, it will issue a certificate to the contractor. If TRD determines that the contractor is not eligible, it will issue notification within 30 days. If such notification is not provided by the Department, the application is deemed approved.

A certificate is valid for three years from the date of issuance; provided that if there is a change of ownership of more than 50%, the applicant must reapply. A contractor must also reapply if it has changed its name, reorganized into one or more different legal entities or was purchased by or merged with another legal entity, but now operates in New Mexico as substantially the same commercial enterprise. In such a case, the certification of the contractor in its previous form will apply three years from the date of the previous certification, but only to the extent the contractor was eligible for certification in its previous form.

If an application is denied, the business has 15 days from the date of the denial to file an objection with TRD, submitting evidence to support the objection. TRD must review the evidence and issue a response to the objection within 15 days of the filing of the objection.

If following a hearing and an opportunity to be heard, TRD finds that a contractor provided false information to TRD in order to obtain a certificate or that a contractor used a certificate to obtain a preference and the contractor did not perform the percentage of the contract specified in the bid or proposal, the business:

1. Is not eligible to receive a certificate or preference for a period of five years from the date on which TRD became aware of the submission of the false information or the failure to perform the contract as specified in the bid or proposal; and
2. Is subject to an administrative penalty of up to $50,000 for each violation.

REVOCATIONS

TRD will contemplate revoking an issued certificate if information is revealed that the holder's situation has changed and/or the business does not qualify as a resident veteran contractor. If TRD contemplates revocation, it will issue a Notice of Contemplated Action to the contractor. The contractor will be provided with an opportunity to request an administrative hearing on the matter.

APPLICATION AND FEE SUBMISSION

Submit the application along with $35 application fee to:

New Mexico Taxation and Revenue Department
Santa Fe District Office
PO Box 5374
Santa Fe, NM 87502-5374

For questions concerning the application process please call (505) 827-0951.
Agreement between the Owner and the Contractor
2010 Edition, Version 3.1

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION

Project (short title): RRPS District Offices
Location: Rio Rancho, NM

Contract No.: ITB#2016-004-FAC
Project No.: 083000-15-001

Distribution to:
- District Representative (original)
- Contractor (original)
- Purchasing Manager (original)
- Design Professional (copy)
- Project Manager (copy)
- Contracts Specialist (copy)

This Agreement entered into this __________ day of __________, 2015, by and between the parties as follows:

THE OWNER:
RIO RANCHO PUBLIC SCHOOLS
500 LASER DR., NE
RIO RANCHO, NM 87124
Telephone: (505) 896-0667
FAX: (505) 896-4276

THE CONTRACTOR:
(NAME OF FIRM)
(ADDRESS 1)
(ADDRESS 2)
(CITY/TOWN), NM (ZIP CODE)
Telephone: (505) (PHONE)
Fax: (505) (FAX NUMBER)

and, hereinafter “Owner” and,
PSFA ☐ IS ☒ IS NOT a Co-Owner in this Agreement.

DESIGN PROFESSIONAL OF RECORD:
JOHN BARTON, AIA
JOHN BARTON ARCHITECT, LLC
1925 ASPEN DR. # 200-B
SANTA FE, NM 87505
Telephone: (505) 474-8855
RECITALS

WHEREAS, the Owner may also oversee and manage the work and make direct payment of Owner-approved expenses;

WHEREAS the Owner, through its School Board, is authorized to enter into a construction contract for the Project pursuant to Sections 13-1-100 and 22-5-4, NMSA 1978; and

WHEREAS the Owner has let this contract according to the established State purchasing procedures for contracts of the type and amount let.

The OWNER and the CONTRACTOR agree as set forth below.

ARTICLE 1

THE CONTRACT DOCUMENTS

The Contract Documents consist of the following:

- Bid Form
- Agreement Between Owner and Contractor
- Performance Bond
- Labor and Material Payment Bond
- Agent's Affidavit
- Certificate of Insurance
- Assignment of Antitrust Claims
- Notice of Award
- Notice to Proceed
- Conditions of the Contract (General, Supplementary, and Other Conditions)
- Drawings
- Specifications
- All Addenda Issued Prior to and All Modifications Issued after Execution of This Agreement

These documents form the Contract, and all are as fully a part of the Contract as if attached to this Agreement or repeated herein. An enumeration of the Contract Documents appears in Article 7.

ARTICLE 2

THE WORK

The Contractor shall perform all the Work required by the Contract Documents for the following:

Modifications to RRPS District Offices, Phase One work.
ARTICLE 3

TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

The Work to be performed under this Contract shall commence not later than ten (10) consecutive calendar days after the date of written Notice to Proceed. Substantial Completion shall be achieved not later than __________ calendar days after the date of written Notice to Proceed, except as hereafter extended by valid written Change Order by the Owner.

Should the Contractor neglect, refuse, or otherwise fail to complete the Work within the time specified for Substantial Completion, the Contractor agrees, in partial consideration for the award of this Contract, to pay to the Owner the amount of __________ Dollars ($ __________ ) per consecutive calendar day, not as a penalty, but as liquidated damages for such breach of this Contract.

ARTICLE 4

CONTRACT SUM

The Owner shall pay the Contractor in current funds for the performance of the Work, subject to additions and deductions by Change Order as provided in the Contract Documents, the Contract Sum of __________ Dollars ($ __________ ).

The Contract sum is determined as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Base Bid Amount</td>
<td>$ __________</td>
</tr>
<tr>
<td>Alternates (if any)</td>
<td>$ __________</td>
</tr>
<tr>
<td>Award Amount</td>
<td>$ __________</td>
</tr>
<tr>
<td>Gross Receipts Tax* @ % .............</td>
<td>$ __________</td>
</tr>
<tr>
<td>Contract Sum</td>
<td>$ __________</td>
</tr>
</tbody>
</table>

Breakdown of required labor, material and performance and payment bond costs:

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total cost of Contractor bond**</td>
<td>$ __________</td>
</tr>
<tr>
<td>Total cost of all Subcontractor bonds</td>
<td>$ __________</td>
</tr>
<tr>
<td>Total cost of all project bonds</td>
<td>$ __________</td>
</tr>
</tbody>
</table>

*Gross receipts tax (GRT) shall be incorporated in each line item of the Schedule of Values and in each approved Modification / Change Request (MCR) amount for change in the Work. During the course of the Project, any change in GRT rate will be applied to the remaining balance of Contract Sum by separate approved MCR.

**Contractor labor, material and performance and payment bond costs shall be calculated on Award Amount exclusive of GRT.
ARTICLE 5  
PROGRESS PAYMENTS  

Based upon Applications for Payment submitted to the Design Professional by the Contractor and Certificates for Payment issued by the Design Professional, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided in the Contract Documents for the period ending the last day of the month as follows:

Not later than twenty-one (21) days following the end of the period covered by the Application for Payment of the portion of the Contract Sum properly allocable to labor, materials, and equipment incorporated in the Work and the portion of the Contract Sum properly allocable to materials and equipment suitably stored at the site or some other location agreed upon in writing for the period covered by the Application for Payment, less the aggregate of previous payments made by the Owner; less such amounts as the Design Professional shall determine for all incomplete Work and unsettled claims as provided in the Contract Documents.

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate provided by State statute regulating prompt payment.

ARTICLE 6  
FINAL PAYMENT  

Final payment, constituting the entire unpaid balance of the Contract Sum, shall be paid by the Owner to the Contractor within thirty (30) calendar days after notification of the Owner by the Design Professional that all incomplete and unacceptable work that was noted during the Substantial Completion Inspection and listed on the attachment to the Certificate of Substantial Completion has been corrected, and provided the Contract has been fully performed, a Certificate for Final Completion and final Certificate for Payment has been issued by the Design Professional; and the Contractor has provided to the Owner a certified statement of Release of Liens (AIA Document G706A or approved form) and Consent of Surety and such other documents required by the General Conditions.

ARTICLE 7  
GENERAL AND SPECIAL PROVISIONS  

7.1 This document shall be executed in no less than three (3) counterparts, each of which shall be deemed an original.

7.2 Contractor to provide Insurance> [See General Conditions for the Contract for Construction]

7.3 This Agreement shall be governed exclusively by the provisions hereof and by the laws of the State of New Mexico as the same from time to time exist.
7.4 Terms used in this Agreement which are defined in the Conditions of the Contract shall have the meanings designated in those Conditions.

7.5 As between the parties to this Agreement: As to all acts or failures to act by either party to this Agreement, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the relevant Date of Substantial Completion of the Work; and as to any acts or failures to act occurring after the relevant Date of Substantial Completion, not later than the date of the Owner's approval of the Final Certificate of Payment.

7.6 The Contractor shall hold harmless and indemnify the Owner against any and all injury, loss, or damage, including cost of defense - including but not limited to court costs and attorneys' fees - arising out of the negligent acts, errors, or omissions of the Contractor.

7.7 This Agreement shall not become effective until:
   A. approved by the Public School Facilities Authority; and,
   B. signed by all parties required to sign this Agreement.

7.8 The Contractor and his agents and employees are independent contractors and are not employees of the Owner or the State of New Mexico. The Contractor and his agents and employees shall not accrue leave, retirement, insurance, bonding, use of State vehicles, or any other benefits afforded to employees of the Owner or the State of New Mexico as a result of this Agreement.

7.9 The Contractor, upon Final Payment of the amounts due under this Agreement, releases the Owner, his officers and employees, and the State of New Mexico from his liabilities and obligations arising from or under this Agreement, including but not limited to all damages, losses, costs, liability, and expenses, including but not limited to attorneys' fees and costs of litigation that the Contractor may incur.

7.10 The Contractor agrees not to purport to bind the Owner or the State of New Mexico to any obligation not assumed herein by the Owner or the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

7.11 Notices. All notices herein provided to be given, or which may be given, by either party to the other shall be deemed to have been fully given when made in writing and deposited in the United States mail postage prepaid, in the instance of Notice of Termination of Work, Certified Mail, Federal Express, or similar verifiable delivery method addressed as follows:

   OWNER: RIO RANCHO PUBLIC SCHOOLS
           ALFRED SENA
           500 LASER DR., NE
           RIO RANCHO, NM 87124

   CONTRACTOR: (NAME OF COMPANY)
                 (ADDRESS 1)
                 (ADDRESS 2)
                 (CITY/TOWN), NM (ZIP CODE)
Nothing herein contained shall preclude the giving of any such written notice by personal service. The address to which notices shall be mailed to either party may be changed by written notice given by such party to the other as herein above provided.

7.12 **Gender, Singular/Plural.** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context requires otherwise.

7.13 **Captions and Section Headings.** The captions and section headings contained in this Agreement are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope, and conditions of this Agreement.

7.14 This document shall be executed in no less than five (5) counterparts, each of which shall be deemed an original.

7.15 **Certificates and Documents Incorporated.** All certificates and documentation required of the Contractor by the provisions of this Agreement shall be attached to this Agreement at the time of execution and are hereby incorporated by reference as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

7.16 **Separability.** If any clause or provision of this Agreement is illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, then and in that event it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby.

7.17 **Waiver.** No provision of this Agreement shall be deemed to have been waived by either party unless such waiver be in writing signed by the party making the waiver and addressed to the other party; nor shall any custom or practice which may evolve between the parties in the administration of the terms hereof be construed to waive or lessen the right of either party to insist upon performance by the other party in strict accordance with the terms hereof. Further, the waiver by any party of a breach by the other party of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition hereof.

7.18 **Entire Agreement.** This Agreement represents the entire contract between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto. This Agreement incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this Agreement, and all such conditions, understandings, and agreements have been merged into this written Agreement. No prior condition, agreement, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this written Agreement.

7.19 **Interchangeable Terms.** For purposes of all provisions within this Agreement and all attachments hereto, the terms "Agreement" and "Contract" shall have the same meaning and shall be interchangeable.

7.20 **Words and Phrases.** Words, phrases, and abbreviations which have well-known technical or trade meanings used in the Contract Documents shall be used according to such recognized meanings. In the event of a conflict, the more stringent meaning shall govern.

7.21 **Relationship of Contract Documents.** The Contract Documents are complementary, and any requirement of one contract document shall be as binding as if required by all.
7.22 Pursuant to Section 13-1-191, NMSA 1978, reference is hereby made to the Criminal Laws of New Mexico (including Sections 30-14-1, 30-24-2, and 30-41-1 through 3, NMSA 1978) which prohibit bribes, kickbacks, and gratuities, violation of which constitutes a felony. Further, the Procurement Code (Sections 13-1-28 through 13-1-199, NMSA 1978) imposes civil and criminal penalties for its violation.

7.23 The Contract Documents, which constitute the entire Agreement between the Owner and the Contractor, are listed in Article 1 and, except for Modifications issued after execution of this Agreement, are enumerated in this Paragraph 7.21.

7.24.1 The following documents bound in the Project Manual dated: **Aug. 25, 2015**

**DOCUMENTS**

Division 00 – Procurement and Contracting Requirements

[00 4113] [00 4166] Bid Form
00 4336 Combined Subcontractor Listing and Assignment of Antitrust Claims
00 5101 Notice of Intent to Award
00 5102 Notice of Award
00 5213 Agreement between Owner and Contractor
00 5501 Notice to Proceed
00 6113 Performance Bond
00 6114 Labor and Material Payment Bond
00 6129 Agent’s Affidavit – Construction Contract Bonds
00 6131 Bond Review Form – Construction Contract Bonds
00 6216 Certificate of Insurance

00 7200 General Conditions of the Contract
00 7300 Supplementary Conditions
  Additional Supplementary General Conditions
  --------- Addenda and Modifications

**SPECIFICATIONS**

Division 01 - General Requirements

01 1000 Summary
01 3100 Project Management and Coordination
01 3300 Submittal Procedures
01 3301 Submittal Transmittal Form
01 4000 Quality Requirements
01 5000 Temporary Facilities and Controls
01 5001 Project Sign
01 6300 Product Substitution Procedures
01 6301 Prior Approval Substitution Form
01 6302 Contractor Substitution Request form
01 7000 Execution Requirements
01 7500 Starting and Adjusting
01 7700 Closeout Procedures
01 7800 Closeout Submittals
Division 02- Demolition
02200 Demolition

Divisions 3-4 - Not Used

Division 05- Metals
05400 Light Gage Metal Framing
05500 Metal Fabrications

Division 06 - Not Used

Division 07- Thermal and Moisture Protection
07210 Insulation
07500 TPO Roofing & Patching
07620 Sheet Metal Flashing
07920 Caulking and Sealants

Division 08- Doors and Windows
08100 Hollow Metal Work
08411 Aluminum Entrance & Storefront
08625 Tubular Day lighting Devices
08700 Finish Hardware
08810 Glass & Glazing

Division 09- Finishes
09250 Gypsum Drywall Systems
09500 Acoustical Tile Ceiling
09650 Resilient Flooring
09685 Carpet
09900 Painting

Divisions 10-20 - Not Used

Division 21-23 Plumbing & Mechanical
210500 Common Work Results for Fire Suppression
211300 Fire Suppression Sprinklers
220500 Basic Plumbing Materials & Methods
220719 Plumbing Piping Insulation
221005 Plumbing Piping
221006 Plumbing Piping Specialties
230500 Basic Mechanical Materials and Methods
230501 Mechanical Demolition & Remodeling
230593 Testing Adjusting and Balancing for HVAC
230713 Duct Insulation
233100 HVAC Ducts & Casings
233700 Air Outlets and Inlets
237413 Packaged Rooftop Units

Divisions 24-25 - Not Used
Division 26- Electrical
260500  Basic Electrical Requirements
260510  Wiring Methods
262416  Panel Boards
262726  Wiring Devices
262818  Enclosed Switches
7.24.3 The following Drawings, dated 08.25.15

Title Sheet T-1
Architectural A-1 thru A-9
Mechanical M-0 thru M-2.1
Plumbing P-0 thru P-2.0
Electrical E-0 thru E 5.0
Other (list) FP-0 thru FP-2

7.24.3 Addenda

No._____ Description ________________ Date __________
No._____ Description ________________ Date __________
No._____ Description ________________ Date __________
No._____ Description ________________ Date __________
No._____ Description ________________ Date __________

END OF ARTICLE 7
AGREEMENT BETWEEN THE OWNER AND THE CONTRACTOR

Contract No.: ITB#2016-004-FAC
Project No.: 083000-15-001

AGREED: This Agreement is entered into as of the day and year first written above.

CONTRACTOR
By: __________________________
Printed Name: __________________________
Title: __________________________
Date: __________

Federal Identification Number: __________________________
NM CRS Identification Number: __________________________

OWNER:
By: __________________________
Printed Name: __________________________
Title: District Representative
Date: __________

By: __________________________
Printed Name: __________________________
Title: Executive Director of Finance
Date: __________

By: __________________________
Printed Name: __________________________
Title: Superintendent
Date: __________

APPROVED: This Agreement is entered into as of the day and year first written above.
# General Conditions of the Contract for Construction

2010 Edition, Version 3.1

## TABLE OF ARTICLES

1. GENERAL PROVISIONS
2. OWNER
3. CONTRACTOR
4. ADMINISTRATION OF THE CONTRACT
5. SUBCONTRACTS
6. CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
7. CHANGES IN THE WORK
8. TIME
9. PAYMENTS AND COMPLETION
10. PROTECTION OF PERSONS AND PROPERTY
11. INSURANCE AND BONDS
12. UNCOVERING AND CORRECTION OF WORK
13. MISCELLANEOUS PROVISIONS
14. TERMINATION OR SUSPENSION OF THE CONTRACT
## INDEX

**Acceptance of Nonconforming Work**  
9.6.6, 9.9.3, 12.3

**Acceptance of Work**  
9.6.6, 9.8.2, 9.9.3, 9.10, 12.3

**Access to Work**  
3.16, 6.2.1, 12.1

**Accident Prevention**  
3.3, 4.2.3, 10

**Acts and Omissions**  
3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 4.3.8, 4.4.1, 8.3.1, 9.5.1, 10.2.5, 13.4.2, 13.7, 14.1

**Addenda**  
1.1.1, 3.11

**Additional Costs, Claims for**  
4.3.4, 4.3.5, 4.3.6, 6.1.1, 10.3

**Additional Inspections and Testing**  
9.8.3, 12.2.1, 13.5

**Additional Time, Claims for**  
4.3.4, 4.3.6, 4.3.7, 7.2, 7.3, 8.3.2, 8.3.3

**Administration of the Contract**  
3.1.3, 4, 9.4, 9.5

**Advertisement or invitation to Bid**  
1.1.1

**Aesthetic Effect**  
4.2.13, 4.5.1

**Allowable Costs and Fees (Change Orders)**  
7.2.5

**Allowances**  
3.8

**Antitrust Claims, Assignment of**  
3.1.7

**Applications for Payment**  
4.2.5, 7.3.8, 9.2, 9.3, 9.4, 9.5, 9.6.3, 9.7.1, 9.8.5, 9.10, 11.1.3, 14.2.4, 14.4.3

**Approvals**  
2.4, 3.1.3, 3.5, 3.10.2, 3.12, 4.2.7, 9.3.2, 9.8.4, 11.1, 13.4.2, 13.5

**Arbitration**  
4.4.1, 4.4.5, 4.4.6, 4.4.8, 4.5.1, 4.5.2, 4.6, 8.3.1, 11.4.9

**Asbestos**  
10.3.1

**As-Builts (see also Record Drawings)**  
3.8.4, 9.3.3, 9.4.2, 9.10.1.6, 9.10.1.7

**Attorneys' Fees**  
3.18.1, 9.10.2, 10.3.3

**Audit**  
7.2.5.1

**Award of Separate Contracts**  
6.1.1, 6.1.2

**Award of Subcontracts and Other Contracts for Portions of the Work**  
5.2

**Basic Definitions**  
1.1

**Bid Clarification of Construction Documents**  
1.2.1

**Bidding Requirements**  
1.1.1, 1.1.7, 5.2.1, 11.5.1

**Boiler and Machinery Insurance**  
11.4.2

**Bonds, Performance and Payment**  
9.6.7, 9.10.3, 9.11.2.6, 11.4.9, 11.5

**Bribes, Gratuities and Kickbacks**  
3.1.6

**Building Permit**  
3.7.1, 3.7.2

**Capitalization**  
1.3

**Certificate of Substantial Completion**  
9.8.3, 9.8.4, 9.8.5

**Certificates for Payment**  
4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7.1, 9.10.1, 9.10.3, 13.7, 14.1.1.3, 14.2.4

**Certificates for Payment, Owner Cut-Off Time**  
9.4.1

**Certificates of Inspection, Testing or Approval**  
13.5.4

**Certificates of Insurance**  
9.10.2, 11.1.3

**Change Orders (see Modification / Change Request)**  
1.1.1, 2.4.1, 3.4.2, 3.8.2.3, 3.11.1, 3.12.8, 4.2.8, 4.3.4, 4.3.9, 5.2.3, 7.1, 7.2.11, 7.3, 8.3.1, 9.3.11, 9.10.3, 11.4.1.211.4.4, 11.4.9, 12.1.2

**Change Orders, Definition of**  
7.3

**Changes in the Work**  
3.11, 4.2.8, 7, 8.3.1, 9.2.1.1, 11.4.9

**Changes, Modification / Change Request**  
7.2

**Changes, Allowable Costs**  
7.2.5, 7.2.5.1, 7.2.6

**CIMS, PSFA**  
4.2.4.3

**Claim, Definition of**  
4.3.1

**Claims and Disputes**  
3.2.3, 4.3, 4.4, 4.5, 4.6, 6.1.1, 6.3.7, 7.3.8, 9.3.3, 9.10.4, 10.3.3

**Claims, Time limits on**  
4.3.2, 4.3.4

**Claims and timely Assertion of Claims**  
4.3.2, 4.6.4
Claims for Additional Cost
3.2.3, 4.3.4, 4.3.5, 4.3.6, 6.1.1, 7.3.8, 10.3.2
Claims or Additional Time
3.2.3, 4.3.4, 4.3.7, 6.1.1, 8.3.2, 8.3.3, 10.3.2
Claims for Concealed or Unknown Conditions
4.3.4
Claims for Damages
3.2.3, 3.18, 4.3.10, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.4.5, 11.4.7, 14.1.3, 14.2.4
Claims Subject to Arbitration
4.4.1, 4.5.1, 4.6.1
Cleaning Up
3.13.17, 3.15, 6.3
Close-Out
1.1.8, 2.4.2, 3.11.2, 9.2.2, 9.8.2, 9.10
Commencement of Statutory Limitation Period
13.7
Commencement of the Work, Conditions Relating to
2.2.1, 3.2.1, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 4.3.5, 5.2.1, 5.2.3, 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.4.1, 11.4.6, 11.5.1
Commencement of the Work, Definition of
8.1.2
Communications Facilitating Contract Administration
3.9.1, 4.2.4
Communications, Language
4.2.4.2
Completions, Conditions Relating to
1.6.1, 3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 13.7, 14.1.2
Completion, payments and
9
Completion, Substantial
4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9, 9.10, 9.11.3, 12.2, 13.7, 14.7
Compliance with Laws
1.6.1, 3.1, 3.2.2, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 4.4.4.8, 4.6.4, 4.6.6, 9.6.4, 10.2.2, 11.1, 11.4, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14.1.1, 14.2.1.3
Concealed or Unknown Conditions
4.3.4, 8.3.1, 10.3
Condition of the Contract
1.1.1, 1.1.7, 6.1.1, 6.1.4
Consent Written
1.6, 6.4.2, 3.12.8, 3.14.2, 4.1.2, 4.3.4, 4.6.4, 9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.4.1, 13.2, 13.4.2
Construction by Owner or by Separate Contractors
1.1.4, 6
Construction Change Directive, definition of
7.2.4
Construction Information Management System
4.2.4.3
Change directives, MCR
7.2.4
Construction schedules, Contractor’s
3.10, 3.12.1, 3.12.2, 4.3.7.2, 6.1.3, 9.8.6
Contingent Assignment of Subcontracts
5.4, 14.2.2.2
Continuing Assignment of Subcontracts
5.4
Contract, definition of
1.1.2
Contract, Termination or suspension of the
5.4.1.1, 11.4.9, 14
Contract Administration
3.1.3, 4, 9.5
Contract Award and Execution, Conditions Relating to
3.7.1, 3.10, 5.2, 6.1, 11.1.3, 11.4.6, 11.5.1
Contract documents, The
1.1, 1.2
Contract Documents, Copies Furnished and use of
1.6, 2.2.5, 5.3
Contract documents, definition of
1.1.1
Contract documents, Intent of
1.2
Contract Sum
3.8, 4.3.4, 4.3.5, 4.4.5, 5.2.3, 7.2, 7.3, 7.4, 9.1, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.4.1, 14.2.4, 14.3.2
Contract Sum, Definition of
9.1
Contract Time
4.3.4, 4.3.7, 4.4.5, 5.2.3, 7.2.1.3, 7.3.7.4, 8.1.1, 8.2, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 14.3.2
Contract Time, Definition of
8.1.1
Contractor
3
Contractor, definition of
3.1, 6.1.2
Contractor’s Construction Schedules
2.4.3, 3.7.2, 3.10, 3.12, 4.2.4.3, 4.3.7.2, 6.1.3
Contractor’s Construction Schedule – Accelerated
6.1.3
Contractor’s Employees
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.1.1, 11.4.7, 13.8, 14.1, 14.2.1.1
Contractor’s Liability Insurance
11.1
Contractor Licensing
3.1.4, 3.19.1.3
Contractor Logs and Reports
3.10, 4.2.4.1
Contractor’s Relationship with Separate Contractors and Owner’s forces
3.12.5, 3.14.2, 4.2.4, 6, 11.4.7, 12.1.2, 12.2.4
Contractor’s Relationship with Subcontractors
1.2.2, 3.3.2, 3.18.2, 5, 9.6.2, 9.6.7, 9.10.2, 11.4.1.2, 11.4.7, 11.4.8

**Contractor’s Relationship, Bound Conditions**

3.12.5, 3.14.2, 4.2.4, 6, 11.4.7, 12.1.2, 12.2.4

**Contractor’s Relationship with Subcontractors**

1.2.2, 3.3.2, 3.18.2, 5, 9.6.2, 9.6.7, 9.10.2, 11.4.1.2, 11.4.7, 11.4.8

**Contractor’s Representation**

1.5.2, 3.5.1, 3.12.6, 3.19, 6.2.2, 8.2.1, 9.3.3, 9.8.2

**Contractor’s Responsibility for Those Performing the Work**

3.3.2, 3.18, 4.2.3, 4.3.8, 5.3.1, 6.1.3, 6.2, 6.3, 9.5.1, 10

**Contractor’s Review of Contract Documents**

1.5.2, 3.2, 3.7.3, 3.19

**Contractor’s Right to Stop the Work**

9.7, 13.4.3

**Contractor’s Right to Terminate the Contract**

4.3.10, 14.1

**Contractor’s Submittals**

3.10, 3.11, 3.12, 4.2.4.3, 4.2.7, 5.2.1, 7.3.6, 9.2, 9.3, 9.6.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3, 11.1.3, 11.5.2

**Contractor’s Superintendent**

3.9, 10.2.6

**Contractor’s Supervision and Construction Procedures**

1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 4.3.3, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 7.3.6, 8.2, 10, 12, 14

**Contractual Liability Insurance**

11.1.1.8, 11.2, 11.3

**Coordination and Correlation**

1.2, 1.5.2, 3.3.1, 3.10, 3.12.3, 6.1.3, 6.2.1

**Copies Furnished of Drawings and Specifications**

1.6, 2.2.5, 3.11

**Copyrights**

1.6, 3.17

**Correction Period, 11th month inspection**

12.2.6

**Correction of Work**

2.3, 2.4, 3.7.4, 4.2.1, 9.4.2, 9.8.2, 9.9.1, 12.1.2, 12.2, 13.7.1.3

**Correlation and Intent of the Contract Documents**

1.2

**Cost, Definition of**

7.3.6

**Costs**

2.4, 3.2.3, 3.7.4, 3.8.2, 3.15.2, 4.3, 5.4.2, 6.1.1, 6.2.3, 7.3.3, 7.3.6, 7.3.7, 7.3.8, 9.10.2, 10.3.2, 10.5, 11.3, 11.4, 12.1, 12.2.1, 12.2.1, 13.5, 14

**Cutting and Patching**

6.2.5, 3.14

**Damage to Construction of Owner or Separate Contractors**

3.1.2, 6.2.4, 9.2.1.5, 10.2.1.2, 10.2.5, 10.6, 11.1, 11.4, 12.2.1

**Damage to the Work**

3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.6, 11.4, 12.2.4

**Damas, Claims for**

3.2.3, 3.18, 4.3.10, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1.1, 11.4.5, 11.4.7, 14.1.3, 14.2.4

**Damages for delay**

6.1.1, 8.3.3, 9.5.1.6, 9.7, 10.3.2

**Date of Commencement of the Work, Definition of**

8.1.2

**Date of Substantial Completion, Definition of**

8.1.3

**Day, Definition of**

8.1.4

**Debarred or Suspended Contractors**

3.1.5

**Decisions of the Design Professional**

4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.3.4, 4.4.1, 4.4.5, 4.4.6, 4.5, 6.3, 7.3.6, 7.3.8, 8.1.3, 8.3.4, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.5.2, 14.2.2, 14.2.4

**Decisions to Withhold Certification**

9.4.1, 9.5, 9.7, 14.1.1.3

**Defective or Nonconforming Work, Acceptance, Rejection and Correction of**

2.3, 2.4, 3.5.1, 4.2.6, 6.2.5, 9.5.1, 9.5.2, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1, 13.7.1.3

**Defective Work, Definition of**

3.5.1

**Definitions**

1.1, 2.1.1, 3.1, 3.5.1, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 4.3.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 7.3.6, 8.1, 9.1, 9.8.1

**Delays and Extensions of Time**

3.2.3, 4.3.1, 4.3.4, 4.3.7, 4.4.5, 5.2.3, 7.2.1, 7.3.1, 7.4.1, 7.5.1, 8.3, 9.5.1.9.7.1, 10.3.2, 10.6.1, 14.3.2

**Design Performance**

3.12.11

**Design Professional**

4.1

**Design Professional, Definition of**

4.1.1

**Design Professional, Extent of Authority**

2.4, 3.12.7, 4.2, 4.3.6, 4.4, 5.2, 6.3, 7.1.2, 7.3.6, 7.4, 4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.12, 4.2.13, 4.4, 5.2.1, 7.4, 9.4.2, 9.6.4, 9.6.6
Design Professional’s Additional Services and Expenses
  2.4, 11.4.1.1, 12.2.1, 13.5.2, 13.5.3, 14.2.4

Design Professional’s Administration of the Contract
  3.1.3, 4.2, 4.3.4, 4.4, 9.4, 9.5

Design Professional’s Approvals
  2.4, 3.1.3, 3.5.1, 3.10.2, 4.2.7

Design Professional’s Authority to Reject Work
  3.5.1, 4.2.6, 12.1.2, 12.2.1

Design Professional’s Decisions
  4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.3.4, 4.4.1,
  4.4.5, 4.4.6, 4.5, 6.3, 7.3.6, 7.3.8, 8.1.3, 8.3.1,
  9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.5.2, 14.2.2,
  14.2.4

Design Professional’s Inspections
  4.2.2, 4.2.9, 4.3.4, 9.4.2, 9.9.2, 9.10.1,
  13.5

Design Professional’s Instructions
  3.2.3, 3.3.1, 4.2.6, 4.2.7, 4.2.8, 7.4.1, 12.1,
  13.5.2

Design Professional’s Interpretations
  4.2.11, 4.12.2, 4.3.6

Design Professional’s Project Representative
  4.2.10

Design Professional’s Relationship with Contractor
  1.1.2, 1.6, 3.1.3, 3.2.1, 3.2.2, 3.2.3, 3.3.1,
  3.4.2, 3.5.1, 3.7.3, 3.10, 3.11, 3.12, 3.16, 3.18,
  4.1.2, 4.1.3, 4.2, 4.3.4, 4.4.1, 4.4.7, 5.2, 6.2.2,
  7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6,
  10.3, 11.3, 11.4.7, 12, 13.4.2, 13.5

Design Professional’s Relationship with Subcontractors
  1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.4.7

Design Professional’s Representations
  9.4.2, 9.5.1, 9.10.1

Design Professional’s Site visits
  4.2.2, 4.2.5, 4.2.9, 4.3.4, 9.4.2, 9.5.1, 9.9.2,
  9.10.1, 13.5

Disputes
  4.1.4, 4.3, 4.4, 4.5, 4.6, 6.3, 7.2.8, 7.2.9, 7.3.1,
  13.4.3

Documents and Samples at the Site
  3.11

Drawings, Definition of
  1.1.5

Drawings and Specifications, Use and Ownership of
  1.1.1, 1.2.5, 1.3, 2.2.5, 3.11, 5.3

Effective date of Insurance
  8.2.2, 11.1.2

Emergencies
  3.10.4, 4.3.5, 10.6, 14.1.1.2

Employees, Contractor’s
  3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6,
  10.2, 10.3, 11.1.1, 11.4.7, 13.8, 14.1, 14.2.1.1

Equipment, Labor, Materials, and
  1.1.3, 1.1.6, 3.4, 3.5.1, 3.8.2, 3.8.3, 3.12, 3.13,
  3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.6, 9.3.2,
  9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.2

Existing Work, Protection and Repairing
  3.13.19, 10

Execution and Progress of the Work
  1.1.3, 1.2.1, 1.2.2, 2.2.3, 2.2.5, 3.1, 3.3, 3.4,
  3.5, 3.7, 3.10, 3.12, 3.14, 4.2.2, 4.2.3, 4.3.3,
  6.2.2, 7.1.3, 7.3.4, 8.2, 9.5, 9.9.1, 10.2, 10.3,
  12.2, 14.2, 14.3

Extension of Time
  4.2.3, 4.3.1, 4.3.4, 4.3.7, 4.4.5, 5.2.3, 7.2.1,
  7.3, 7.4.1, 9.5.1, 9.7.1, 10.3.2, 10.6.1, 14.3.2

Failure of Payment
  4.3.6, 9.5.1.3, 9.7, 9.10.2, 14.1.1.3, 14.2.1.2,
  13.6

Faulty Work
  (See Defective or Nonconforming Work)

Field Office
  3.11, 3.13.7, 3.13.8, 4.2.4.3

Final Completion and Final Payment
  4.2.1, 4.2.9, 4.3.2, 9.8.2, 9.10, 11.1.2, 11.1.3,
  11.4.1, 11.4.5, 12.3.1, 13.7, 14.2.4, 14.3

Financial Arrangements, Owner’s
  2.2.1, 13.2.2

Fire and Extended Coverage Insurance
  11.4

General Provisions
  1

Governing Law
  13.1

Gross Receipts Tax, Nonresident Contractor’s Surety

Bond Requirement
  3.1.7

Gross Receipts Tax Registration
  3.6.2

Guarantees (See Warranty)

Hazardous Materials
  10.2.4, 10.3, 10.5

Inconsistencies
  1.2.5, 3.2.1, 3.2.3

Identification of Subcontractors and suppliers
  5.2.1

Indemnification
  3.18, 9.11.2, 10.3.2, 11.4.1.2, 11.4.7

Information and services Required of the Owner
  2.1.2, 2.2, 2.2.1, 3.12, 3.12.10, 4.2.7, 4.3.3,
  6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.9.2, 9.10.3,
  10.3.3, 1.2, 11.4, 13.5.1, 13.5.2, 14.1.1.4,
  14.1.4

Injury or Damage to Person or Property
  4.3.8, 10.2, 10.6

Inspections
  3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2,

GENERAL CONDITIONS

DBB_v.3.1_10.6.10
<table>
<thead>
<tr>
<th>Section</th>
<th>Page References</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Instructions to Bidders</strong></td>
<td>1.1</td>
</tr>
<tr>
<td><strong>Instructions to the Contractor</strong></td>
<td>3.2.3, 3.3.1, 3.8.1, 5.2.1, 7, 12, 7.2.2, 13.5.2</td>
</tr>
<tr>
<td><strong>Insurance</strong></td>
<td>3.18.1, 6.1.1, 7.3.6, 8.2.1, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 3.10.5, 11</td>
</tr>
<tr>
<td><strong>Insurance, Boiler and Machinery</strong></td>
<td>11.4.2</td>
</tr>
<tr>
<td><strong>Insurance, Contractor’s Liability</strong></td>
<td>11.1</td>
</tr>
<tr>
<td><strong>Insurance, Effective Date of</strong></td>
<td>8.2.2, 11.1.2</td>
</tr>
<tr>
<td><strong>Insurance Loss of Use</strong></td>
<td>11.4.3</td>
</tr>
<tr>
<td><strong>Insurance, Owner’s Liability</strong></td>
<td>11.2</td>
</tr>
<tr>
<td><strong>Insurance, Project management Protective Liability</strong></td>
<td>11.3</td>
</tr>
<tr>
<td><strong>Insurance Property</strong></td>
<td>10.2.5, 11.4</td>
</tr>
<tr>
<td><strong>Insurance, Stored Materials</strong></td>
<td>9.3.2, 11.4.1.2</td>
</tr>
<tr>
<td><strong>Insurance and Bonds</strong></td>
<td>11</td>
</tr>
<tr>
<td><strong>Insurance Companies, Consent to Partial Occupancy</strong></td>
<td>9.9.1, 11.4.1.5</td>
</tr>
<tr>
<td><strong>Insurance Companies, Settlement with</strong></td>
<td>11.4.10</td>
</tr>
<tr>
<td><strong>Intent of the Contract Documents</strong></td>
<td>1.2, 4.2.7, 4.2.12, 4.2.13, 7.4, 12.2.6</td>
</tr>
<tr>
<td><strong>Interest</strong></td>
<td>13.6</td>
</tr>
<tr>
<td><strong>Interpretation</strong></td>
<td>1.2.3, 1.4, 4.1.1, 4.3.1, 5.1, 6.1.2, 8.1.4</td>
</tr>
<tr>
<td><strong>Interpretation, Written</strong></td>
<td>4.2.11, 4.2.12, 4.3.6</td>
</tr>
<tr>
<td><strong>Joiner and Consolidation of Claims Required</strong></td>
<td>4.6.4</td>
</tr>
<tr>
<td><strong>Judgment on Final Award</strong></td>
<td>4.6.6</td>
</tr>
<tr>
<td><strong>Labor and Materials, Equipment</strong></td>
<td>1.1.3, 3.4, 3.5.1, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.6, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.2</td>
</tr>
<tr>
<td><strong>Labor Disputes</strong></td>
<td>8.3.1</td>
</tr>
<tr>
<td><strong>Laws and Regulations</strong></td>
<td>1.6, 3.2.2, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 4.4.8, 4.6, 9.6.4, 9.9.9, 10.2.2, 11.1, 11.4, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14</td>
</tr>
<tr>
<td><strong>Limitations on Consolidation or Joiner</strong></td>
<td>4.6.4</td>
</tr>
<tr>
<td><strong>Limitations, statutes of</strong></td>
<td>4.6.3, 12.2.6, 13.7</td>
</tr>
<tr>
<td><strong>Limitations of Liability</strong></td>
<td>2.3, 3.2.1, 3.5.1, 3.7.3, 3.12.8, 3.12.10, 3.17, 3.18, 4.2.6, 4.2.7, 4.2.12, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 9.10.4, 10.3.3, 10.2.5, 11.1.2, 11.2.1, 11.4.7, 12.2.5, 13.4.2</td>
</tr>
<tr>
<td><strong>Limitations of Time</strong></td>
<td>2.1.2, 2.2, 2.4, 3.2.1, 3.7.3, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7, 4.3, 4.4, 4.5, 4.6, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.3, 9.3.3, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 11.4.1.5, 11.4.6, 11.4.10, 12.2, 13.5, 13.7, 14</td>
</tr>
<tr>
<td><strong>Liquidated Damages</strong></td>
<td>4.3.10, 8.3, 8.4, 9.5.1, 9.8.7</td>
</tr>
<tr>
<td><strong>Loss of Use Insurance</strong></td>
<td>11.4.3</td>
</tr>
<tr>
<td><strong>Material suppliers</strong></td>
<td>1.6, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.6, 9.10.5</td>
</tr>
<tr>
<td><strong>Materials Hazardous</strong></td>
<td>10.2.4, 10.3, 10.5</td>
</tr>
<tr>
<td><strong>Materials, Labor, and Equipment</strong></td>
<td>1.1.3, 1.1.6, 1.6.1, 3.4, 3.5.1, 3.8.2, 3.8.2.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.6, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.1, 14.2</td>
</tr>
<tr>
<td><strong>MCR, Allowable Costs</strong></td>
<td>7.2.5</td>
</tr>
<tr>
<td><strong>Means Methods, Techniques, Sequences and Procedures of Construction</strong></td>
<td>3.3.1, 3.12.10, 4.2.2, 4.2.7,</td>
</tr>
<tr>
<td><strong>Mediation</strong></td>
<td>4.4.4, 4.4.5, 4.4.6, 4.4.8, 4.5, 4.6.1, 4.6.2, 8.3.1, 10.5</td>
</tr>
<tr>
<td><strong>Meetings, Weekly</strong></td>
<td>3.10.3, 3.10.3.1, 4.2.4.3</td>
</tr>
<tr>
<td><strong>Minor Changes in the Work</strong></td>
<td>1.1.1, 3.12.8, 4.2.8, 4.3.6, 7.14, 7.4</td>
</tr>
<tr>
<td><strong>Miscellaneous Provisions</strong></td>
<td>13</td>
</tr>
<tr>
<td><strong>Modification / Change Request (MCR)</strong></td>
<td>1.1.1, 3.4.2, 4.2.4.3, 7.2, 7.3.1, 9.8.6</td>
</tr>
<tr>
<td><strong>Modifications, Definition of</strong></td>
<td>1.1.1</td>
</tr>
<tr>
<td><strong>Modifications to the Contract</strong></td>
<td>1.1.1, 1.1.2, 3.7.3, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7, 10.3.2, 11.4.1</td>
</tr>
<tr>
<td><strong>Mutual Responsibility</strong></td>
<td>6.2</td>
</tr>
<tr>
<td><strong>Nonconforming Work, Acceptance of</strong></td>
<td>9.6.6, 9.9.3, 12.3</td>
</tr>
<tr>
<td><strong>Nonconforming Work, Rejection and Correction of</strong></td>
<td>2.3, 2.4, 3.5.1, 4.2.6, 6.2.5, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2.1, 13.7.1.3</td>
</tr>
</tbody>
</table>
Nonresident Contractor's Requirement for Gross Receipts Tax Surety Bond
3.6.5, 3.6.5.1, 3.6.5.2

Nonresident Persons, Partnerships or Un-admitted Foreign Corporations, Contracts with and Agent for Service of Process
3.1.8

Notice
2.2.1, 2.3, 2.4, 3.2.3, 3.3.1, 3.7.2, 3.7.4, 3.12.9, 4.3, 4.4.8, 4.6.5, 5.2.1, 8.2.2.9.7, 9.10, 10.2.2, 11.1.3, 11.4.6, 12.2.2, 12.2.4, 13.3, 13.5.1, 13.5.2, 14.1, 14.2

Notice, Written
2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 4.3, 4.4.8, 4.6.5, 5.2.1, 8.2.2, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 11.4.6, 12.2.2, 12.2.4, 13.3, 14

Notice of Testing and Inspections
13.5.1, 13.5.2

Notice to Proceed
8.2.2

Notices, Permits, Fees and
2.2.2, 3.7, 3.13, 7.3.6.4, 10.2.2

Observations, Contractor's
1.5.2, 3.2, 3.7.3, 4.3.4

Occupancy
2.2.2, 9.6.6, 9.8, 11.4.1.5

Orders, Written
1.1.1, 2.3, 3.9, 4.3.6, 7.8.2.2, 11.4.9, 12.1, 12.2, 13.5.2, 14.3.1

Owner
2

Owner, Definition of
2.1, 2.1.1, 2.1.2

Owner, Information and Services Required of the
2.1.2, 2.2, 3.2.1, 3.12.4, 3.12.10, 4.2.7, 4.3.3, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.4, 13.5.1, 13.5.2, 14.1.1, 14.1.4

Owner's Authority
1.6, 2.1.1, 2.3, 2.4, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.1.3, 4.2.4, 4.2.9, 4.3.6, 4.4.7, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.1, 9.3.2, 9.5.1, 9.9.1, 9.10.2, 10.3.2, 11.1.3, 11.3.1, 11.4.3, 11.4.10, 12.2.2, 12.3.1, 13.2.2, 14.3, 14.4

Owner's Financial Capability
2.2.1, 13.2.2, 14.1.1.5

Owner's Liability Insurance
11.2

Owner's Loss of Use Insurance
11.4.3

Owner's Relationship with Subcontractors
1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2

Owner's Right to Carry Out the Work
2.4, 12.2.4, 14.2.2.2

Owner’s Right to Clean Up
6.3

Owner’s Right to Perform Construction and to Award Separate Contracts
6.1

Owner’s right to Stop the Work
2.3

Owner’s Right to Suspend the Work
14.3

Owner’s Right to Terminate the Contract
14.2

Ownership and Use of Drawings, Specifications and Other Instruments of Service
1.1.1, 1.6, 2.2.6, 3.2.1, 3.11.1, 3.17.1, 4.2.12, 5.3

Partial Occupancy or Use
9.6.6, 9.9, 11.4.1.5

Patching, Cutting and
3.14, 6.2.5

Patents
3.17

Payment, Application for
4.2.5, 7.3.8, 9.2, 9.3, 9.4, 9.5.1, 9.6.3, 9.7.1, 9.8.5, 9.10.1, 9.10.3, 9.10.5, 11.1.3, 14.2.4, 14.4.3

Payment, Certificates for
4.2.5, 4.2.9, 9.3.3, 9.4, 9.5.1, 9.6.1, 9.6.6, 9.7.1, 9.10.1, 9.10.3, 13.7, 14.1.1.3, 14.2.4

Payment, Failure of
4.3.6, 9.5.1.3, 9.7, 9.10.2, 14.1.1.3, 14.2.1.2, 13.6

Payment Final
4.2.1, 4.2.9, 4.3.2, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.4.1, 11.4.5, 12.3.1, 13.7, 14.2.4, 14.4.3

Payment Bond, Performance Bond and
7.3.6.4, 9.6.7, 9.10.3, 11.4.9, 11.5

Payments, Progress
4.3.3, 9.3, 9.6, 9.8.5, 9.10.3, 13.6, 14.2.3

Payments and Completion
9

Payments to Subcontractors
5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 11.4.8, 14.2.1.2

Performance Bond and Payment Bond
7.3.6.4, 9.6.7, 9.10.3, 11.4.9, 11.5

Permits, Fees and Notices
2.2.2, 3.7, 3.13, 10.2.2

Persons and Property, Protection of
10

Polychlorinated Biphenyl
10.3.1

Product Data, Definition of
3.12.2

Product Data and Samples, Shop Drawings
3.11, 3.12, 4.2.7
Progress and Completion  
4.2.2, 4.3.3, 8.2, 9.8, 9.9.1, 14.1.4

Progress Payments  
4.3.3, 9.3, 9.6, 9.8.5, 9.10.3, 13.6, 14.2.3

Progress Report (Three-Week-Look-Ahead)  
3.10.3.1

Project, Definition of the  
1.1.4

Project Management Protective Liability Insurance  
11.3

Project Manual, Definition of the  
1.1.7

Project Manuals  
2.2.5

Project Representatives  
4.2.10

Project Schedule  
3.10

Property Insurance  
10.2.5, 11.4

Protection of Persons and Property  
10

Punch List  
1.1.8, 2.4.2, 4.2.4.3, 9.8, 9.10,

Record Drawings  
3.8.4, 9.3.3 9.4.2, 9.10.1.7, 9.10.1.7

Reasonably Inferable Work  
1.1.3, 1.2.1, 1.2.2, 4.2.12

Regulations and laws  
1.6, 3.2.2, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 4.4.8, 4.6, 9.6.4, 9.9.1, 10.2.2, 11.1, 11.4, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14

Rejection of Work  
3.5.1, 4.2.6, 12.2.1

Releases and Waivers of claims  
9.11.2.5

Representations  
1.5.2, 3.5.1, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.8.2, 9.10.1

Representatives  
2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.1, 4.2.10, 5.1.1, 5.1.2, 13.2.1

Resolution of Claims and Disputes  
4.4, 4.5, 4.6

Request for Interpretation (RFI)  
3.2.4, 3.10.3

Request for Interpretation, Response time  
3.2.4.2

Responsibility for Those Performing the Work  
3.3.2, 3.18, 4.2.3, 4.3.8, 5.3.1, 6.1.3, 6.2, 6.3, 9.5.1, 10

Review of Contract Documents and Field Conditions by Contractor  
1.5.2, 3.2, 3.7.3, 3.12.7, 6.1.3

Review of Contractor’s Submittals by Owner and Design Professional  
3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2

Review of Shop Drawings, Product Data and Samples by Contractor  
3.12

RFI (see Request for Interpretation)

Rights and Remedies  
1.1.2, 2.3, 2.4, 3.5.1, 3.15.2, 4.2.6, 4.3.4, 4.5, 4.6, 5.3, 5.4, 6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.2, 12.2.4, 13.4, 14

Royalties, Patents and Copyrights  
3.17

Rules and Notices for Arbitration  
4.6.2, 4.6.5

Safety of Persons and Property  
10.2, 10.6

Safety Precautions and Programs  
3.3.1, 4.2.2, 4.2.7, 5.3.1, 10.1, 10.2, 10.3

Samples, Definitions of  
3.12.3

Samples, Shop Drawings, Product Data and Samples  
3.11, 3.12, 4.2.7

Samples at the Site, Documents and  
3.11

Schedule of Values  
9.2, 9.3.1

Schedules, Construction  
3.10, 3.12.1, 3.12.2, 4.3.7.2, 6.1.3

Separate Contracts and Contractors  
1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 4.6.4, 6, 8.3.1, 11.4.7, 12.1.2, 12.2.5

Separate Contracts and Contractors  
1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 4.6.4, 6, 8.3.1, 11.4.7, 12.1.2, 12.2.5

Shop Drawings, Definition of  
3.12.1

Shop Drawings, Product Data and Samples  
3.11, 3.12, 4.2.7

Shop Drawings, Time for Review  
3.10.2

Site, Use of  
3.13, 6.1.1, 6.2.1

Site, Utility Shut Downs  
3.13.3

Site Inspections  
1.2.2, 3.2.1, 3.3.3, 3.7.1, 4.2, 4.3.4, 9.4.2, 9.10.1, 13.5

Site Visits, Design Professional’s  
4.2.2, 4.2.9, 4.3.4, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5

Special Inspections and Testing  
4.2.6, 12.2.1, 13.5
Specification, Definition of the
1.1.6
Specifications, The
1.1.1, 1.1.6, 1.1.7, 1.2.2, 1.6, 3.11, 3.12.10, 3.17
Statute of Limitations
4.6.3, 12.2.6, 13.7
Stopping the Work
2.3, 4.3.6, 9.7, 10.3, 14.1
Stored Materials
6.2.1, 9.3.2, 10.2.1.2, 10.2.4, 11.4.1.2
Subcontractor, Definition of
5.1.1
Subcontractors

Subcontractors, Work by
1.2.2, 3.3.2, 3.12.1, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2, 11.4.1.2
Subcontractual Relations
5.3, 5.4, 9.3.1.2, 9.6, 9.10.10.2.1, 11.4.7, 11.4.8, 14.1, 14.2.1, 14.3.2
Submittals
1.6, 3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.6, 9.2, 9.3, 9.8, 9.9.1, 9.10.2, 9.10.3, 11.1.3
Submittals, "Piece Meal" delivery of
3.12.4.1
Submittals, Time for review
3.10.2
Subrogation, Waivers of
6.1.1, 11.4.5, 11.4.7
Substantial Completion
1.8.1, 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 9.10.4.2, 12.2, 13.7
Substantial Completion, Definition of
9.8.1
Substitution of Subcontractors
5.2.3, 5.2.4
Substitution of Design Professional
4.1.3
Substitution of Materials
3.4.2, 3.5.1, 3.12.8, 7.2.7
Subsurface Conditions
4.3.4
Successors and Assigns
13.2
Superintendent
3.9, 10.2.6
Supervision and Construction Procedures
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 4.3.3, 6.1.3, 6.2.4, 7.1.3, 7.3.6, 8.2, 8.3.1, 9.4.2, 10, 12, 14
Surety
4.4.7, 5.4.1.2, 9.8.5, 9.10.2, 9.10.3, 14.2.2
Surety, Consent of
9.10.2, 9.10.3
Surveys
2.2.3
Suspension by the Owner for Convenience
14.4
Suspension of the Work
5.4.2, 14.3
Suspension or Termination of the Contract
4.3.6, 5.4.11, 11.4.9, 14
Taxes
3.6, 3.8.2.1, 7.2.5, 7.3.6.4, 9.2.2
Taxes, NBAT or TERO
3.6.3
Temporary Utilities
Temporary Lighting
3.6.3
Termination by the Contractor
3.13.16
Termination by the Owner for Cause
4.3.10, 5.4.1.1, 14.2
Termination of the Design Professional
4.1.3
Termination of the Contractor
14.2.2
Termination or Suspension of the Contract
14
Tests and Inspections
2.2.4, 3.1.3, 3.3.3, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 11.4.1.1, 12.2.1, 13.5
Time
8
Time, Delays and Extensions of
3.2.3, 4.3.1, 4.4.3, 4.3.7, 4.4.5, 5.2.3, 7.2.1, 7.3.1, 7.4.1, 7.5.1, 8.3, 9.5.1, 9.7.1, 10.3.2, 10.6.1, 14.3.2
Time Limits
2.1.2, 2.2, 2.4, 3.2.1, 3.7.3, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 4.3, 4.4, 4.5, 4.6, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 11.4.1.5, 11.4.6, 11.4.10, 12.2, 13.5, 13.7, 14
Time Limits on Claims
4.3.2, 4.3.4, 4.3.8, 4.5, 4.6
Uncovering and Correction of Work
12
Uncovering of Work
12.1
Unforeseen Conditions
4.3.4, 8.3.1, 10.3
Unit Prices
4.3.9, 7.2.3
Use of Documents
1.1.1, 1.6, 2.2.5, 3.12.6, 5.3
Use of Site
3.13, 6.1.1.1, 6.2.1
Utilities, Use of
3.13.2, 3.13.3, 3.13.4
Utilities, Removal of temporary
3.13.4

Utility Shutdowns
3.13.6,
Values, Schedule of
9.2, 9.3.1
Waiver of Claims by the Design Professional
13.4.2
Waiver of Claims by the Contractor
4.3.10, 9.10.5, 11.4.7, 13.4.2
Waiver of Claims by the Owner
4.3.10, 9.9.3, 9.10.3, 9.10.4, 11.4.3, 11.4.5, 11.4.7, 12.2.2.1, 13.4.2, 14.2.4
Waiver of Consequential Damages
4.3.10, 11.4.3,
Waiver of Claims
9.11.2.5
Waivers of Subrogation
6.1.1, 11.4.5, 11.4.7

Warranty
3.5, 4.2.9, 4.3, 5.3, 9.3.3, 9.8.5, 9.9.1, 9.10.4, 12.2.2, 12.2.6, 13.7.1.3
Warranty, Extended
9.8.5
Warranty (see also Correction Period)
Weather Delays
3.10.5.2, 3.19.1.5, 4.3.7.2
Work, Definition of
1.1.3
Work, Hours of
3.13.13
Written Consent
1.6, 3.4.2, 3.12.8, 3.14.2, 4.1.2, 4.3.4, 4.6.4, 9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.4.1, 13.2, 13.4.2
Written Interpretations
4.2.11, 4.2.12, 4.3.6
Written Notice
2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 4.3, 4.4.8, 4.6.5, 5.2.1, 8.2.2, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 11.4.6, 12.2.2, 12.2.4, 13.3, 14
Written Orders
1.1.1, 2.3, 3.9, 4.3.6.7, 8.2.2, 11.4.9, 12.1, 12.2, 13.5.2, 14.3.1
ARTICLE 1 GENERAL PROVISIONS
1.1 BASIC DEFINITIONS
1.1.1 THE CONTRACT DOCUMENTS
The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications and Addenda issued prior to execution of the Contract, and Modifications. Modifications are (1) a written amendment to the Contract signed by Owner and Contractor, (2) Modification / Change Request hereinafter referred to as MCR approved by Owner, Contractor and Design Professional, (3) Change Order, or (4) a written order for a minor change in the Work, hereinafter referred to as Supplemental Instruction issued by the Design Professional. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement or Invitation to Bid, Instructions to Bidders, sample forms, the Contractor's bid or portions of Addenda relating to bidding requirements).

1.1.2 THE CONTRACT
The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Design Professional and Contractor, (2) between the Owner and a Subcontractor, Material Supplier and Equipment Supplier, (3) between the Owner and Design Professional or (4) between any persons or entities other than the Owner and Contractor. The Design Professional shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Design Professional's duties.

1.1.2.1 Each and every provision of law and clause required by law to be inserted in this Contract shall be read and enforced as though it were included herein; and if through error or otherwise any such provision is not inserted, or is not correctly inserted, then upon the written application of either party the Contract shall be amended without cost to make such insertion or correction and that the remainder of this Contract shall remain in effect and not be affected thereby.

1.1.3 THE WORK
The term "Work" means the construction and services required by or reasonably inferable from the Contract Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the results indicated by the Contract Documents in a safe, expeditious, orderly and workmanlike manner in keeping with current standards of the industry. The Work may constitute the whole or a part of the Project.

1.1.4 THE PROJECT
The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.

1.1.5 THE DRAWINGS
The Drawings are the graphic and pictorial portions of the Contract Documents showing, the
design, location and dimensions of the Work, generally including plans, elevations, sections,
details, schedules and diagrams.

1.1.6 THE SPECIFICATIONS
The Specifications are the written requirements of the Contract Documents for products, materials,
workmanship, and performance of related services.

1.1.7 THE PROJECT MANUAL
The Project Manual is the volume of written Construction Documents typically containing Bidding
Requirements, contract forms, Conditions of the Contract and Specifications.

1.1.8 PUNCH LIST
A punch list is a comprehensive list of incomplete, defective or incorrect Work prepared by the
Contractor, Design Professional or Owner to indicate Work required to be completed. Specific punch
lists required by the Contract Documents include the Substantial Completion Punch List created by
the Contractor prior to application for Substantial Completion in accordance with Paragraph 9.8, and
that includes the Close-Out Punch List as required by Paragraph 9.10, and any other punch list
created by the Owner or Design Professional for the purposes of this Paragraph and otherwise
successful completion of the Work.

1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS
1.2.1 The intent of the Contract Documents is to include all items necessary for the proper
execution and completion of the Work by the Contractor. The Contract Documents are
complementary, and what is required by one shall be as binding as if required by all; performance by
the Contractor shall be required only to the extent consistent with the Contract Documents and
reasonably inferable from them as being necessary to produce the indicated results.

1.2.2 Reasonably Inferable, as used in this Contract, shall mean information or knowledge that is
derivable or evident by prudent and diligent examination of the Contract Documents and other
information reasonably available by the Contractor or Subcontractor knowledgeable in their field and
includes items:

1. specified in the Contract Documents required to complete the Work, but not graphically
indicated. Contractor shall provide the minimum product or work necessary to fulfill the
specifications or otherwise the requirements of any industry standards, such as, but not limited to,
final function of Work such as strength, profile, or use as indicated by the Contract Documents;
and,

2. shown or graphically indicated as required to complete the Work but not specified.
Contractor shall provide the minimum product or work necessary to complete the depicted Work,
such as, but not limited to, final function of Work such as strength, profile, or use as indicated by
the Contract Documents.

1.2.3 Organization of the Specifications into divisions, sections and articles, and arrangement of
Drawings are for convenience of reference only and shall not control the Contractor in dividing the
Work among Subcontractors or in establishing the extent of Work to be performed by any trade.
Such separation will not operate to make the Owner or Design Professional an arbiter of labor disputes or work agreements.

1.2.4 Words shall be first interpreted within the context they are used and by definition, if any, provided by the Contract Documents themselves. Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in accordance with such recognized meanings. If the meaning of a word is not clear from the Contract Documents or have a well-known technical or construction industry meaning, the Webster's Collegiate Dictionary, current at time of contract, meaning shall apply.

1.2.5 INCONSISTENCIES
In the event of conflicts in the Contract Documents, the most restrictive or otherwise most beneficial to the Owner shall apply to all similar conditions. Other rules for conflicts in the Contract Documents shall be that:

1. Addenda shall govern over all other Contract Documents and subsequent Addenda shall govern over prior Addenda only to the extent modified;
2. between drawings and specifications, the specifications shall govern;
3. within the drawings:
   a) schedule, when identified as such, shall govern over notes or other directions included within the drawings.
   b) specific note shall govern over general note.
   c) note evidently intended to be used as a general or typical note, shall be used as such throughout.
   d) dimensions provided shall take precedence over scaled measurements.
   e) large scale drawings shall take precedence over smaller scale drawings; and
4. General Conditions shall govern over all sections of the Contract Documents, except as modified by Supplementary General Conditions or Addenda.
5. The Contractor shall comply with the provisions of Article 3.2 in providing notification of conflict within the Contract Documents, regardless of rules governing such conflicts and contained in this subparagraph.

1.3 CAPITALIZATION
1.3.1 Within the General Conditions, these terms are capitalized when they are used specifically in relations to the Agreement: Owner and Contractor who are parties to this Agreement, Design Professional who performs services under agreement with the Owner, Subcontractors who perform work under subcontract at any tier with the Contractor, the various Bidding and Contract Documents, Project, Work, titles of numbered Articles and Paragraphs within the Contract Documents, and names used to identify parts of the Project. When these terms are used generically and not specifically associated with the Project, they are not capitalized.

1.4 INTERPRETATION
1.4.1 In the interest of brevity, the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent
from one statement and appears in another is not intended to affect the interpretation of either statement.

1.5 EXECUTION OF CONTRACT DOCUMENTS
1.5.1 The Contract Documents shall be signed by the Owner and Contractor. If either the Owner or Contractor does not sign all the required documents of the Contract Documents, the Design Professional shall identify such unsigned documents.

1.5.2 Execution of the Contract by the Contractor is representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

1.6 OWNERSHIP AND USE OF DRAWINGS AND SPECIFICATIONS
1.6.1 Drawings, specifications and copies thereof shall remain the Owner's property. They are not to be used on another project. Neither the Contractor nor any Subcontractor, material supplier or equipment supplier or any person or entity shall own or claim a copyright to any Drawings, Specifications or any other documents prepared or developed for definition of the Work. The Owner will retain all common law, statutory and other reserved rights, in addition to the copyrights. The Contractor, Subcontractors, material suppliers and equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents for use in the execution of their Work under the Contract Documents. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's copyrights or other reserved rights.

2.1 GLOSSARY OF COMMONLY-USED TERMINOLOGY
2.1.1 These General Conditions utilize specific terms which relate to the Owner's organization, systems, and standard forms and documents. Examples of such terms are listed and defined as follows:

   1. "Modification Change Request (MCR)" is a written document required by the Owner on matters involving changes in the Work, and as defined by Paragraph 7.2.
   2. "PSFA-CIMS" is the PSFA internet-based project communications system required for use on the Project, as defined in Subparagraph 4.2.4.3.
   3. "Public School Capital Outlay Council (PSCOC)" is the body with responsibility to approve allocations for public school capital outlay assistance.
   4. "Public School Facilities Authority (PSFA)" is the agency, under the Public School Capital Outlay Council (PSCOC) charged with the responsibility for overseeing projects.
representative who shall have express authority to bind the Owner with respect to all matters
requiring the Owner's approval or authorization. Except as otherwise provided in Subparagraph
4.2.1, the Design Professional does not have such authority. The term "Owner" means the Owner or
the Owner's authorized representative.

2.1.2 If Project includes PSCOC funding then:
1. the Owner, referred to throughout the Contract Documents, shall be interpreted to be both the
   School District and the Public School Facilities Authority (PSFA) as if singular in number; and,
2. there shall be two (2) Owner representatives - ONE REPRESENTING School District and
   one representing PSFA. Agreement by both representatives shall be required in all instances
   where the Contract Documents require Owner approval; and,
3. provisions of Subparagraph 4.2.4.3 requiring use of the PSFA CIMS system shall apply; and,
4. Work shall be fully in accordance with the Contract Documents, including all contractual and
   implied responsibilities; and,
5. after Final Completion in accordance with Paragraph 9.11 the Contract requirements shall
   recognize only the School District as the Owner.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER
2.2.1 The Owner shall, at the written request of the Contractor, prior to commencement of the
   Work and thereafter, furnish to the Contractor reasonable evidence that financial arrangements have
   been made to fulfill the Owner's obligations under the Contract. Furnishing of such evidence shall be
   a condition precedent to commencement or continuation of the Work. After such evidence has been
   furnished, the Owner shall not materially vary such financial arrangements without prior notice to the
   Contractor.

2.2.2 Except for permits and fees, including those required under Subparagraph 3.7.1, which are
   the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay
   for necessary approvals, easements, assessments and charges required for construction, use or
   occupancy of permanent structures or for permanent changes in existing facilities that shall include
   utility expansion charges but, not tapping fees.

2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and
   utility locations for the site of the Project, and a legal description of the site. The Contractor shall be
   entitled to rely on the accuracy of information furnished by the Owner, but shall exercise proper
   precautions relating to the safe performance of the Work.

2.2.4 Unless stated otherwise in the Contract Documents, the Owner shall furnish in accordance
   with Article 6 specific testing, adjusting and compliance monitoring and explicitly:
   1. geotechnical testing and analysis including soil testing and compaction, but excluding load
      testing for caissons and piers; and,
   2. concrete testing including slump analysis and compression testing with, at the Owner's
      request, the Contractor responsible for forming test cylinders or similar; and
   3. testing and balancing of heating and air-conditioning systems with the Contractor responsible
      for timely, diligent and coordinated corrections to Work required until performance is compliant
      with the Contract Documents.
The Contractor shall be responsible for testing and costs as defined by Paragraph 13.5 and Subparagraph 12.2.1.1.

2.2.5  Information or services required of the Owner by the Contract Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Contractor's performance of the Work, under the Owner's control, shall be furnished by the Owner after receipt from the Contractor of a written request for such information or services.

2.2.6  Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, five (5) copies of Drawings and Project Manuals; however, the Contractor may have more copies free of charge if they are available without additional cost to the Owner.

2.3  OWNER'S RIGHT TO STOP THE WORK

2.3.1  If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2 or persistently fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Subparagraph 6.1.3.

2.4  OWNER'S RIGHT TO CARRY OUT THE WORK

2.4.1  If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven (7) day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven (7) day period, without prejudice to other remedies that the Owner may have, correct such deficiencies. In such case, an appropriate Modification in accordance with Article 7 shall be issued deducting from payments then or thereafter due the Contractor for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Design Professional's additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

2.4.2  If in the event that the Contractor defaults or neglects to carry out the Work to final completion in keeping with the Substantial Completion Schedule provided in accordance with Subparagraph 9.8.2 and, fails within a seven (7) day period after receipt of written notice from the Owner to correct such default with diligence and promptness, the Owner may after such seven (7) day period, without prejudice to other remedies, correct Punch List and Close-Out deficiencies to achieve project completion without further notice to the Contractor or its surety. In such case, an appropriate Modification in accordance with Article 7 shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Design Professional's additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.
2.4.3 In carrying out the Owner's right to complete the Work in accordance with Paragraph 2.4, the Owner shall have the right to exercise the Owner's sole discretion as to the manner, methods and reasonableness of costs of completing the Work.

ARTICLE 3 CONTRACTOR
3.1 GENERAL
3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Design Professional in the Design Professional's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than Contractor.

3.1.4 The Contractor shall, prior to bid, be properly licensed according to the requirements of the Construction Industries Licensing Act, Chapter 60, and Article 13 NMSA 1978 and shall ensure to the Owner that such license shall remain in effect for the duration of the Work and warranty periods.

3.1.5 Debarred or Suspended Contractors: A business (Contractor, Subcontractor, or supplier) that has either been debarred or suspended pursuant to the requirements of Sections 13-1-177 through 13-1-180, and 13-4-11 through 13-4-17, NMSA 1978, shall not be permitted to do business with the State and shall not be considered for award of contract during the period for which it is debarred or suspended.

3.1.6 Bribes, Gratuities and Kickbacks
3.1.6.1 It is illegal in the State of New Mexico for any public employee to solicit or accept anything of value in connection with award of contract for this Bid and for any person to offer or pay anything of value to any such public employee (30-24-1 and 30-24-2, NMSA 1978).

3.1.6.2 Pursuant to Section 13-1-191, NMSA 1978, reference is hereby made to the Criminal Laws of New Mexico (including 30-24-1, 30-24-2, and 30-41-1 through 30-41-3, NMSA 1978), which prohibit bribes, kickbacks, and gratuities, and violation of which constitutes a felony. Further, the Procurement code (13-1-28 through 13-1-199, NMSA 1978) imposes civil and criminal penalties for its violation.

3.1.7 Assignment of Antitrust Claims
3.1.7.1 The Contractor agrees that any and all claims that the Contractor may have or that may inure to the Contractor for overcharges resulting from antitrust violations as to goods, services, and materials purchased in connection with this Bid are hereby assigned to the State of New Mexico, but
only to the extent that such overcharges are passed on to the State. The Contractor further agrees to require each of its Subcontractors and suppliers to assign any and all such claims for overcharges to the State by executing an assignment on the form provided by the Owner for such purpose. The executed forms (see Section 00 4336 of the Bid Documents) shall be submitted prior to the commencement of the Work or the supplying of any materials by the supplier or Subcontractor. The submission of this executed form may be waived by the Owner upon a showing of a good-faith effort by the Contractor to obtain agreement in writing from its supplier or Subcontractor. Waiver by the Owner will not unreasonably be denied.

3.1.7.2 It is agreed that the Contractor retains all rights to any such antitrust claims to the extent of any overcharges not passed on to the State, including the right to any treble damages attributable thereto.

3.1.8 Contracts with Nonresident Persons or Partnerships or Un-admitted Foreign Corporations; Agent for Service of Process

If Contractor is a non-resident person or partnership or a foreign corporation not admitted to do business in the State, Contractor will comply with all requirements of NMSA 1978 §§ 13-4-21 through 13-4-24 for designation of an agent for service of process.

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

3.2.1 Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Subparagraph 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating construction by the Contractor and for the purpose of discovering errors, omissions in the Contract Documents; any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly in writing to the Design Professional as a Request for Interpretation in accordance with Subparagraph 3.2.4.

3.2.1.1 Before ordering any materials or proceeding with Work, the Contractor and Subcontractors shall verify measurements at the Work site and shall be responsible for the correctness of such measurements.

3.2.2 Any design errors or omissions noted by the Contractor during this review shall be reported promptly in writing to the Owner and to the Design Professional, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed Design Professional, unless otherwise specifically provided in the Contract Documents. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any suspected non conformity discovered by or made known to the Contractor shall be reported promptly in writing to the Owner and to the Design Professional. If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Design Professional and Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.
3.2.3 If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Design Professional in response to the Request for Interpretation pursuant to Subparagraphs 3.2.1 and 3.2.1.1, the Contractor shall make Claims as provided in Subparagraphs 4.3.6 and 4.3.7. If the Contractor fails to perform the obligations of Subparagraphs 3.2.1 and 3.2.1.1, the Contractor shall pay such costs and damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents as would have been avoided if the Contractor had performed such obligations.

3.2.4 REQUEST FOR INTERPRETATION
3.2.4.1 Any question concerning a variation or deviation from the Contract Documents, including a minor change in the Work found necessary due to actual field conditions, shall be submitted to the Design Professional as a Request for Interpretation (RFI) for review and resolution before proceeding with the Work. When submitting an RFI, the Contractor must provide all information necessary for the Design Professional to promptly process, including detailed:
   1. reference(s) to Specification number, Drawing page and detail, and the like;
   2. description of issue;
   3. drawings, photos or sketches of conditions, if necessary; and,
   4. submittals or other information as necessary to facilitate resolution.

3.2.4.2 Request for Interpretation may be initiated only by the Contractor and shall be answered by Design Professional within ten (10) days, or other reasonable time agreed upon between the parties. All Subcontractor RFI's must be initiated through the Contractor. All answers to RFI's by the Design Professional's consultants or Owner must be initiated through the Design Professional.

3.2.4.3 If substitutions are allowed after the contract award, RFI shall not be used for any substitution request (see Subparagraph 3.4.2).

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES
3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Design Professional and shall not proceed with that portion of the Work without further written instructions from the Design Professional with concurrence from the Owner. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any resulting loss or damage not due to negligence of the Contractor, its employees, subcontractors or their agents or employees. This paragraph shall not be deemed to create a duty on the part of the Design Professional or the Owner to the Contractor, Subcontractor or their employees to monitor for jobsite safety.
3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

3.4 LABOR AND MATERIALS

3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.4.2 The Contractor may request substitution of material only if:
   1. allowed after the contract award;
   2. all supporting information has been evaluated and approved by the Contractor;
   3. includes a detailed itemized comparison of the proposed substitution with the specified product;
   4. acceptance does not include substantial revision of Contract Documents, unless Contractor agrees to reimburse the Owner for those costs; and,
   5. substitution request is submitted as a formal MCR with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order.

3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

3.5 WARRANTY

3.5.1 The Contractor warrants to the Owner and Design Professional that materials and equipment furnished under the Contract will be of good quality and new, unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance and improper operation, or normal wear and tear and normal usage. If required by the Design Professional, the Contractor shall furnish satisfactory evidence as to kind and quality of materials and equipment.

3.6 TAXES

3.6.1 Gross Receipts Tax (GRT)

3.6.1.1 Section 7-10-4, NMSA 1978 provides that any person (as defined in Section 7-10-3, NMSA 1978) performing services for the State, as those terms are used in the Gross Receipts Tax
Registration Act (Chapter 7, Article 10, NMSA 1978), must be registered and be issued an identification number with the Taxation and Revenue Department to pay the GRT.

3.6.1.2 The identification number is needed to properly complete the approval process of the Contract; therefore, so as to cause no delay in the processing, the Contractor must register with the Department. For information:
- Taxation and Revenue Department
- P.O. Box 630
- Santa Fe, New Mexico 87504-0630
- TELEPHONE: (505) 827-0700
- TRD Website: www.state.nm.us/tax/
or, TRD District Office in Albuquerque, Farmington, Las Cruces, Santa Fe or Roswell.

3.6.1.3 The Contractor shall pay New Mexico Gross Receipts and other applicable taxes specific for the Work provided by the Contractor which are legally enacted when bids are received or negotiations concluded. Exception: Contractor shall not be responsible for any Tribal Employment taxes, such as, NBAT or TERO taxes.

3.6.1.4 Failure of the Contractor to be registered with TRD for payment of Gross Receipts Tax will result in all payment to Contractor to be withheld until Contractor provides adequate evidence of registration with TRD.

3.6.2 Nonresident Contractor's Requirements for Gross Receipts Tax Surety Bond
3.6.2.1 Section 7-1-55A, NMSA 1978 provides that any person (as defined in Section 7-1-3, NMSA 1978) engaged in the construction business who does not have his principal place of business in New Mexico and enters into a prime construction contract to be performed in this State shall, at the time such contract is entered into, furnish the Taxation and Revenue Department with a surety bond or other acceptable security in a sum equivalent to the gross receipts to be paid under the contract multiplied by the applicable rate of the GRT to secure payment of the tax imposed on the gross receipts from the Contract. He shall obtain a certificate from the Taxation and Revenue Department that the requirements of this paragraph have been met.

3.6.2.2 If the total sum to be paid under the Contract is changed by ten percent (10%) or more after the date the surety bond or other acceptable security is furnished to the Director or his delegate, such person shall increase or decrease, as the case may be, the amount of the bond or security within fourteen (14) days after the change (7-1-55B, NMSA 1978).

3.6.2.3 In addition to the above requirements, the Contractor will be subject to all the requirements of Section 7-1-55, NMSA 1978.

3.7 PERMITS, FEES AND NOTICES
3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the Building Permit and other permits and governmental fees, licenses and inspections and Certificate of Occupancy necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids are
received, negotiations concluded, and facilities occupied. Changes or modifications to the work shall include all requirements of this paragraph.

3.7.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work. Certificates of Inspection, use and occupancy will be delivered to the Owner upon completion of the Work in sufficient time for occupation of the facility in accordance with the approved schedule for the Work. Contractor shall deliver a photocopy of the Building Permit will be delivered to the Design Professional and Owner as soon as it is obtained.

3.8 ALLOWANCES
3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

3.8.2 Unless otherwise provided in the Contract Documents:
1. allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts.
2. Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances;
3. whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by appropriate Modification in accordance with Article 7. The amount of the Change Order shall reflect:
   a) the difference between actual costs and the allowances under Clause 3.8.2.1; and,
   b) changes in Contractor's costs under Clause 3.8.2.2.

3.8.3 Materials and equipment under an allowance shall be selected by the Owner in sufficient time to avoid delay in the Work.

3.9 SUPERINTENDENT
3.9.1 The Contractor shall employ a competent Superintendent, who is acceptable to the Owner, and necessary assistants who shall be in attendance at the Project site during performance of the Work. The Superintendent shall represent the Contractor, and communications given to the Superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

3.9.2 Within ten (10) days after Notice of Award and commencement of the Work, the Contractor shall submit to the Design Professional, for the Owner's consideration for approval, a resume and Statement of Qualification of proposed Superintendent(s) and assistants. During construction, the Contractor shall replace individuals who are no longer acceptable to the Owner and shall submit a resume and Statement of Qualification for proposed replacements.
3.10 CONTRACTOR'S SCHEDULES, LOGS, MEETINGS AND REPORTS

3.10.1 The Contractor, promptly after being awarded the Contract and before the first payment application, shall prepare and submit for the Owner's and Design Professional's information a Critical Path Construction Schedule for the Work that indicates the intended start and completion of the various construction activities, which shall be implemented and adhered to by the Contractor, Subcontractors, material suppliers and equipment suppliers. At a minimum, the schedule shall be a GANTT type schedule and shall not exceed time limits allowed by the Contract Documents with no fewer work breakdown events than line items of the Schedule of Values. The Schedule will incorporate and make provisions for significant known Owner activities, holidays and other special occasions. The Contractor will acknowledge that a reduction in activity may be necessary during the time prior to and during periods of special Owner events or occasions. The schedule shall be revised to indicate Work complete before each payment application and at appropriate intervals as required by the conditions of the Work and progress of the Work. The revised schedule shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work including, but not limited to time recovery strategies and Recovery Plan, if progress of the Work is behind schedule.

3.10.1.1 The Contractor shall perform the Work in general accordance with the most recent schedule submitted to the Owner and Design Professional.

3.10.2 The Contractor shall prepare before the second payment application and keep current, for the Design Professional's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Design Professional fourteen (14) days, or as otherwise agreed between the parties, to review submittals. A Submittal Log shall be maintained by the Contractor indicating for each scheduled submittal, the appropriate specification number, the date of submission, the date of approval and any re-submittals.

3.10.3 Weekly Meeting: Prior to the start of Work on the site and in no event later than the first payment application, the Contractor shall establish a weekly meeting time with the Owner and Design Professional and shall establish an agenda for the meeting. Contractor shall host the weekly job site meeting and shall maintain meeting minutes and distribute such notes to all parties in attendance and to those requested at the next meeting within three (3) days of the meeting. The meetings shall include but not be limited to:

1. adoption of previous week's meeting notes that include list of attendees;
2. new business;
3. old business;
4. items requiring action with those assigned to action and expected action date;
5. outstanding RFI's;
6. outstanding submittals; and,
7. other business including review of Progress Report or Payment Application if appropriate.

Meetings shall be open forum, chaired by the Contractor and shall include any Subcontractors doing work or anticipating work in the near future or for any other reason, Owner, any entities that the Owner would like to attend, including User Representative or users of completed project, Design Professional, any consultant(s) to the Design Professional who have or will have any work under way associated with the consultant’s specialty. The Contractor shall alert the Owner and Design Professional as to which consultants are requested to attend the next meeting and include request in
the meeting minutes. Phone or web conferencing may be used if effective in the opinion of the Owner.

3.10.3.1 Progress Report: Each month, at the regularly scheduled weekly meeting that is just prior to the Contractor submitting the Payment Application for that month; the Contractor shall present a Progress Report. The Contractor prepared Progress Report shall review the Project Schedule, review the Schedule Recovery Plan if necessary, and review the Three-Week-Look-Ahead Schedule.

3.10.3.2 The Contractor prepared Three-Week-Look-Ahead Schedule shall include specific details of Work expected to be accomplished three weeks into the future, identify critical path Work to be completed, and identify potential obstacles including RFIs, submittals, material deliveries, utility hook-ups or any other event or task that might hinder the progress of the Work.

3.10.4 Emergency Contact List: The Contractor shall at the first weekly meeting, deliver to the Owner and the Design Professional an Emergency Contact List that will include emergency contacts for every company that has worked or will do work on the Project. List shall include company, main office number, after hours office number(s); and, both a primary and secondary contact name, cell number and home number. The Contractor shall keep the Emergency Contact List current and distribute the most current version to Owner and Design Professional.

3.10.5 Daily Report: The Contractor shall prepare a Daily Report each day that Contractor, Subcontractors or any other entity are on the Project. The Daily Reports shall be maintained at the site, be well organized and include:

1. report date and who prepared the report;
2. weather conditions - low temp, high temp, visibility, humidity, wind, wind direction, cloud conditions, precipitation amount, other notes;
3. companies present by name and their - number of workers, work location, total man hours that day for each company;
4. equipment - type, source, units of work done, location of work, hour meter reading;
5. material brought to site - description, units, quantity, quality, location, time;
6. visitors to site - name, company, time;
7. safety concerns - company, contact, noticed by, work activity, safety issue, requirement, outcome; and,
8. quality assurance and control - company, description of issue, specification section, issued by.

3.11 DOCUMENTS AND SAMPLES AT THE SITE

3.11.1 The Contractor shall maintain at the site for the Owner, one record copy of the As-Built Drawings, Specifications, Addenda, Modification / Change Requests, and other Modifications, in good order and marked currently to record field changes and selections made during construction, as well as, one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals, and Meeting Notes and Daily Job Reports. These shall be available to the Design Professional and the Owner and shall be delivered to the Design Professional for submittal to the Owner upon completion of the Work. Information maintained in PSFA-CIMS in accordance with Subparagraph 4.2.4.1 with web access at the site shall be considered "at the site".
3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor for a Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

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

3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Design Professional is subject to the limitations of Subparagraph 4.2.7. Informational submittals upon which the Design Professional is not expected to take responsive action may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned without action.

3.12.4.1 Shop Drawings, Product Data, Samples and similar shall not be submitted on a "piece meal" basis and shall be submitted in packages, in accordance with the Construction Documents, so that like or interrelated submittals, that must be compared or correlated one to another, are submitted together. Submittals not submitted as a package so that they may be compared one to another for approval or other action shall be returned to the Contractor without review but, with explanation by the Design Professional as why and what is required when re-submitted. For example, finish materials such as tile, carpet, wall covering and paint shall be submitted as a package.

3.12.4.2 If substitutions are allowed after the contract award, a submittal shall not be used for any substitution request (see Subparagraph 3.4.2).

3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Design Professional Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Design Professional without action.

3.12.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.
3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Design Professional and, if required, by the Jurisdiction Having Authority.

3.12.8 The Work shall be in accordance with approved submittals, except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Design Professional's approval of Shop Drawings, Product Data, Samples or similar submittals, unless the Contractor has substitution approved in accordance with Subparagraph 3.4.2, or unless the Contractor informed the Design Professional in writing of such deviation at the time of submittal and the Design Professional has given written approval to the specific deviation as a minor change as a Supplemental Instruction. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Design Professional's approval thereof.

3.12.9 The Contractor shall direct specific attention, in writing on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Design Professional on previous submittals. In the absence of such written notice the Design Professional’s approval of a resubmission shall not apply to such revisions.

3.12.10 The Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a Design Professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Design Professional will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed Design Professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. The Owner and the Design Professional shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such Design Professionals, provided the Owner and Design Professional have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Subparagraph 3.12.10, the Design Professional will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

3.12.11 The Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

3.13 USE OF SITE
3.13.1 The Owner assumes no responsibility or liability for the physical conditions or safety of the Work site or for any improvements located on the Work site. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be
required to make any adjustment to either the Contract Sum or Contract Time concerning any failure by the Contractor or Subcontractor to comply with the requirements of this Paragraph 3.13.

3.13.2 The Contractor will bear the cost and make the necessary arrangements and provisions for all construction water required during the entire construction period through the Owner or otherwise.

3.13.3 The Contractor will bear the cost and make the necessary arrangements and provisions for all construction electricity including distribution required during the entire construction period through the Owner or otherwise.

3.13.4 The Contractor will bear the cost and be responsible for temporary lighting, heating and cooling for the entire project.

Exception: If available and at no premium cost to the Owner, the Owner will at no cost to the Contractor, allow the Contractor to utilize the Owner’s existing lighting, heating and cooling providing Contractor will return systems to like or better condition that shall include, but not be limited to, new lamping, new filters, and the like.

3.13.5 Any temporary utility or other work done by the Contractor to accommodate Work requirements shall be removed at the conclusion of the Work and all finishes shall be repaired to match the existing, or in the areas of new construction, equal to or exceeding the requirements of the Contract Documents.

3.13.6 The Contractor shall request in writing any utility shut downs well in advance of necessity of any shut down and shall not proceed with any shut down without prior Owner approval. The Owner shall not be required to make any adjustment to either the Contract Sum or Contract Time concerning any failure by the Contractor or Subcontractor to comply with the requirements of this Subparagraph 3.13.3.

3.13.7 The Contractor shall provide and maintain a suitable temporary main field office at the Project site. The Office may be in, or a part of, the existing facility, provided that prior approval is obtained from the Owner. The Contractor will move or remove their office from the existing facility at the request of the Owner.

3.13.8 The Contractor may, if space is available, allow Subcontractors, material suppliers and equipment suppliers to provide and maintain field offices or storage trailers on the Project site for their own use. Locations and size of any office or storage trailers shall be as approved by the Contractor and Owner prior to their placement on site. The Owner or Contractor may at any time require any temporary building or trailer to be moved or removed.

3.13.9 The Contractor shall conduct and confine operations at the site to areas as permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

3.13.10 All project related vehicles either company or personal vehicles may park on-site only in areas designated by the Owner and Design Professional. Parking will only be provided to the extent space on site will allow. All Contractors’ parking must be well removed from normal facility traffic, and especially away from any pedestrian crossings, walkways, or drop off or loading areas.
3.13.11 All Contractor access to the Project site shall be by a designated construction entrance as directed by the contract documents, the Design Professional and the Owner, and shall be enforced by the Contractor.

3.13.12 Access to existing facility work areas, either occupied or not occupied, shall be controlled by the Owner. Every effort will be made by the Contractor to cooperate with the Owner’s security requirements and policies. Access to a work area must be in accordance with the times and conditions scheduled and agreed to by all parties. Any access, other than at normally scheduled work times, must be coordinated with the Owner or Owner’s appointee at least 48 hours in advance. The Owner has the right to restrict or limit access as necessary to meet their needs, especially in regard to security and safety. Each Contractor, Subcontractor, or supplier’s full cooperation is required.

3.13.13 The Project working hours shall be those established by the Contract Documents and as agreed by the Owner. Any changes in project working hours such as adding shift work, extending work day hours or other similar changes must be submitted least forty-eight (48) hours in advance to the Owner for consideration.

3.13.14 Contractor shall make every effort to minimize disruptions such as noise or dust and shall provide safe access and egress to the Owner’s operations, facility, portion of facility, or surrounding areas, including, but not limited to neighborhood or community, and shall, to inform and gain approval from the Owner of planned work, prepare and present to the Owner and Design Professional for Owner approval prior to beginning construction or using the site a:

1. schedule for the work, to include phasing plans, proposed hours of operations, and activities to take place on weekends, school holidays and/or other special access requirements;
2. site logistics plan, showing proposed secure and fenced areas, locations and types of temporary barricades, material storage and staging areas, school property entrances used for material deliveries, and special material or equipment storage requirements. This plan will include a description and proposed location for the Contractor’s temporary office, storage trailers, Subcontractor’s trailers, sanitary facilities, employee parking areas, etc.;
3. detailed construction and phasing plan, to include locations of proposed temporary dust or noise partitions, alternate emergency egress routes, temporary facilities, means and path of moving materials and equipment into the facility, and provisions for maintaining and supplying required utility services; and,
4. routing plan to maintain safe ingress and egress to all areas at all times for students, staff and public either nearby or within the Project site that shall include re-routing pedestrian ways, re-routing traffic, erect routing signs, building of bridges, barricades, pedestrian tunnels, or whatever effort that will best accommodate Owner operations and provide required protection while work is in progress ensuring that no entrances or exits are blocked, closed off, or restricted in any way unless prior approval is granted by the Owner and the Fire Marshall or other jurisdiction having authority.

3.13.15 Contractor shall ensure that any and all of the Contractor’s flammable liquids are stored outside of the building, and transported in approved containers. Paint, paint thinners, gasoline, oil, roofing materials or other flammable materials shall be stored fifty (50) feet, or more, outside of all buildings, marked as to contents and properly protected. The Contractor shall not pour flammable or toxic solvents, thinners, etc., into drains and sewers.
Whenever electric light for illumination purposes is found necessary for the safe progress of the work, the Contractor shall provide such lights as may be required to properly execute the work. This temporary lighting shall be constructed and arranged as not to interfere with the progress of other trades or Contractors working in the facility. This system of temporary lighting shall be erected and maintained strictly in accordance with the controlling codes and OSHA standards. The Contractor shall furnish all bulbs and temporary lighting devices required to carry on the work for all Trades under their Contract.

In accordance with Paragraphs 3.15, 6.3, 10.2 and others of the General Conditions, the Contractor shall be responsible for the daily removal and disposal of all rubbish, debris and trash from the site and building which results from Work. The Contractor shall provide a dumpster, or other trash removal facility, for use by their Subcontractors and all rubbish, debris and trash shall be deposited in Contractor provided containers located at an approved location on the site. There shall be no burning of trash or other open fires on the site. If in the opinion of the Owner neatness is not maintained, the Owner may following appropriate notice to the Contractor, have the area cleaned and withhold cost from any amounts owing to Contractor.

The Contractor shall, at the completion of Work in a given area, expeditiously remove all surplus material, equipment, and debris of every nature resulting from their operations, and put the areas in a neat, clean, and orderly condition. At Final Completion of the Project or an area of the Project, the Contractor shall final clean from top to bottom inside and out everything to the Owner’s satisfaction that including plumbing fixtures, equipment, windows, floors, walls, light fixtures and the like in accordance with Paragraph 3.15 of the General Conditions.

The Contractor shall in accordance with Article 10, afford protection to all adjacent areas, buildings, roads, walks, and all other property adjacent to their work. Any portion of a building or other property damaged during construction operations shall be promptly, properly and thoroughly repaired and replaced without cost to the Owner.

Contractor shall maintain a safety plan that includes how the Contractor proposes to meet all OSHA and related requirements, details on safety equipment to be utilized, how the potential for fire and other potential hazards will be addressed, welding and cutting procedures and, how the Contractor will maintain safety related systems such as fire alarms, intercoms, and sprinklers while the Work is proceeding in accordance with Paragraph 3.3 and other parts of the General Conditions.

Jobsite Requirements Pertaining to Personnel:
1. All personnel on site, directly or indirectly in the employ of Contractor, are restricted from any interaction with any Owner Staff, Students, or other members of the public while on, or adjacent to Owner property except through jobsite meetings in accordance with Subparagraph 3.10.3 or as otherwise determined by the Owner;
2. shall remain in their designated work areas. Communications with any non-project related persons on or near the site shall be through project Superintendent;
3. no firearms or any other types of weapons, of any sort will be allowed on site. If any person is found to be in possession of any Firearm, of any kind, they will be directed to leave immediately and will not be allowed to return. This includes any firearms found in Company or Private vehicles, tool boxes or brought on site in any other manner;
4. it is the policy of the Owner to prohibit smoking on any occupied school campus and on a new, un-occupied, site to limit smoking to designated areas;
5. it is the policy of the Owner to prohibit use, possession, sale, and distribution of alcohol, drugs, or other controlled substances on its premises and to prohibit the presence of an individual with such substances in their body from the workplace, the Contractor shall enforce this policy; and,

6. Contractor agrees that any employee who is found in violation of requirements of this Paragraph, or of the Contract Documents, or who refuses to permit inspection shall be barred from the Project site at the discretion of the Owner in accordance with Subparagraph 13.8.4.1.

3.14 CUTTING AND PATCHING

3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

3.14.1.1 Cutting and patching shall be done by individuals skilled in working the materials involved so to prevent a reduction of visual qualities or resulting in substantial evidence of the cut-and-patch work.

3.14.2 The Contractor shall not damage or endanger a portion of the Work, fully or partially completed, or existing construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor will not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

3.15 CLEANING UP

3.15.1 The Contractor on a daily basis shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials and shall then thoroughly clean the premises and the site to the Owner's satisfaction.

3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor in accordance with Paragraph 6.3.

3.16 ACCESS TO WORK

3.16.1 The Contractor shall provide the Owner and Design Professional access to the Work in preparation and progress wherever located.

3.17 ROYALTIES, PATENTS AND COPYRIGHTS

3.17.1 The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Design Professional harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Design Professional. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a
copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished in writing to the Design Professional.

3.18 INDEMNIFICATION

3.18.1 To the fullest extent permitted by law and to the extent claims, damages, losses or expenses are not covered by Project Management Protective Liability insurance purchased by the Contractor in accordance with Paragraph 11.3, the Contractor shall indemnify and hold harmless the Owner, Design Professional, Design Professional's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph 3.18.

3.18.2 In claims against any person or entity indemnified under this Paragraph 3.18 by an employee of the Contractor, a Subcontractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Subparagraph 3.18.1 shall not be limited by a limitation on amount or type of damages compensation or benefits payable by or for the Contractor, Subcontractor under any Liability Insurance, Workers' Compensation Acts, Disability Benefit Acts or other employee benefit acts.

3.19 REPRESENTATIONS AND ASSURANCES

3.19.1 The Contractor, in addition to the requirements of the Contract Documents, represents to the Owner, as an inducement to the Owner to execute the Owner-Contractor Agreement, which representations will survive the execution and delivery of the Agreement and the completion of the Work that Contractor:

1. is financially solvent, able to pay debts, and has sufficient working capital to complete the Work;
2. is able to furnish the plant, tools, materials, supplies, equipment, skilled labor and sufficient experience and competence required to complete the Work equal to or exceeding industry standards;
3. in accordance with Subparagraph 3.1.4, is authorized and properly licensed to do business in the State of New Mexico and in the locale where the Work is located;
4. in execution of the Agreement and performance thereof is within the Contractor's duly authorized powers; and,
5. Subcontractors, material suppliers and equipment suppliers have visited the site of Work and have become familiar with the conditions under which the Work is to be performed, obtained all available information and have correlated observations and acquired information with the requirements of the Contract Documents including conditions:
   a) bearing upon access to the site, accommodations required, transportation, disposal, handling and storage;
   b) affecting availability of labor, materials, equipment, water, electricity, utilities and roads;
c) such as weather, river stages, flooding;
d) related to the apparent form and nature of the Work site, including the surface and sub-
surface conditions; and,
e) that in general would be deemed by a prudent contractor to be material to the Work as to
assess risk, contingencies and other circumstances.

ARTICLE 4    ADMINISTRATION OF THE CONTRACT

4.1    DESIGN PROFESSIONAL

4.1.1 The term "Design Professional" means the Architect, Engineer or other professional person
lawfully licensed to practice the profession within the State of New Mexico and can fulfill the
requirements of the Contract Documents within that person's licensed authority. If lawfully allowed,
the Design Professional shall also mean the Design Professional's authorized representative unless the
Owner has a reasonable objection.

4.1.2 Duties, responsibilities and limitations of authority of the Design Professional as set forth in
the Contract Documents shall not be restricted, modified or extended without written consent of the
Owner, Contractor and Design Professional. Consent shall not be unreasonably withheld.

4.1.3 If the employment of the Design Professional is terminated, the Owner shall employ a new
Design Professional against whom the Contractor has no reasonable objection and whose status under
the Contract Documents shall be that of the former Design Professional.

4.1.4 If there is no Design Professional, the Owner shall assume the responsibilities for
Administration of the Contract Documents.

4.2    DESIGN PROFESSIONAL'S ADMINISTRATION OF THE CONTRACT

4.2.1 The Design Professional will provide administration of the Contract as described in the
Contract Documents, and will be an Owner's representative (1) during construction, (2) until final
payment is due and (3) with the Owner's concurrence, from time to time during the one-year period
for correction of Work described in Paragraph 12.2. The Design Professional will have authority to
act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise
modified in writing in accordance with other provisions of the Contract.

4.2.2 The Design Professional, as a representative of the Owner, will visit the site at intervals
appropriate to the stage of the Contractor's operations (1) to become familiar with and to keep the
Owner informed about the progress and quality of the Work completed, (2) to use all reasonable
efforts to guard the Owner against defects and deficiencies in the Work, and (3) to determine in
general if the Work is being performed in a manner indicating that the Work, when fully completed,
will be in accordance with the Contract Documents. The Design Professional will not be required to
make exhaustive or continuous on-site inspections to check the quality or quantity of the Work that is
the responsibility of the Contractor to provide. The Design Professional will neither have control
over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or
procedures, or for the safety precautions and programs in connection with the Work, since these are
solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Subparagraph 3.3.1. However, if the Design Professional becomes aware of the failure of the Contractor, Subcontractors or any other person or entity performing any of the Work to use proper construction means, methods, techniques, sequences, procedures, safety precautions and programs or failure of any of the foregoing parties to carry out the Work in accordance with the Contract Document, the Design Professional shall promptly notify the Contractor and the Owner of the deficiency.

4.2.3. The Design Professional will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Design Professional will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

4.2.4.1 Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized or requested by the Owner, the Owner and Contractor shall endeavor to communicate with each other through the Design Professional about matters arising out of or relating to the Contract. Communications by and with the Design Professional's consultants shall be through the Design Professional. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with Owner's separate contractors shall be through the Owner.

4.2.4.2 English is the language that will be used on site to issue all directions, used in all project related meetings, and used in all project related correspondence. Contractor, Subcontractors, material suppliers and equipment suppliers’ foremen and supervisory staff, must be able to read and converse in English, and be able to receive and understand all directions issued by the Owner and Design Professional.

4.2.4.3 In accordance with Subparagraph 2.1.2, with the Contract Documents, or otherwise required by Owner, the Contractor, Design Professional and Owner shall utilize PSFA-CIMS for project communications and shall:

1. create and respond to all contractual communications through the PSFA-CIMS including, but not limited to, Daily Reports, RFI's, MCR's, Meeting Minutes, Submittal Log and Punch Lists;
2. provide an adequate number of users to properly manage the Project in accordance with the Contract Documents and the Project Schedule;
3. have access to the Internet and an Internet e-mail address, of their own choice, and provide to the PSFA the names, positions, and e-mail addresses of all individuals who will have access to the PSFA-CIMS;
4. contract directly with a PSFA authorized training vendor if the limited PSFA training is not deemed sufficient to correctly and consistently use the PSFA-CIMS;
5. have adequate computing hardware and software (listed below) to run PSFA-CIMS; and,

   a) Browser – Internet Explorer 6.0 SP2 or 7.0
   b) Operating system - Windows® XP SP2
c) Display – 1024x768

d) CPU – 1.4 GHz or greater

e) Connection – ISDN, T1, broadband, or DSL

f) RAM – 1024 MB/1 GB or higher

6. agree that use of this PSFA-CIMS software will not replace or change any contractual responsibilities of the Contract Documents; and,

7. have installed Adobe Acrobat 7.0, or higher .pdf converter or equal; and,

8. optionally have, but not required to have, as a benefit to sending images to Design Professional and Owner as an attachment to an RFI or other CIMS document instead of faxing or mailing, an attached scanner minimum 800 x 600 pixels and a digital camera minimum resolution of one (1) mega pixels.

For PSFA-CIMS information on installation and use of the PSFA-CIMS or for scheduling training contact the PSFA-CIMS administrator at (505)843-6272 or e-mail question to training_support@nmfpsfa.org and include PSFA-CIMS support in subject line.

4.2.5 Based on the Design Professional's evaluations of the progress and quality of the Work, Contractor's Application for Payment and all other information available to the Design Professional, the Design Professional shall within five (5) days of receipt of a properly completed Application for Payment certify to the Owner the undisputed amount recommended for payment to the Contractor and shall provide specific reasoning for denial of disputed amounts.

4.2.6 The Design Professional will have authority to reject Work that does not conform to the Contract Documents, and shall do so unless, after consultation with the Owner, Owner instructs otherwise. Whenever the Design Professional considers it necessary or advisable, the Design Professional will have authority, subject to the Owner's approval, to require inspection or testing of the Work in accordance with Subparagraphs 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Design Professional nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Design Professional to the Contractor, Subcontractors, material and equipment suppliers, their agents or employee, or other persons or entities performing portions of the Work.

4.2.7 Unless rejected in accordance with Subparagraph 3.12.4.1 or is otherwise not in compliance with Section 3 of this Agreement, the Design Professional, shall within a reasonable time not to exceed fourteen (14) days, or other reasonable time agreed upon by the parties, review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, for the purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is conducted solely in the interest of the Owner, and shall not relieve the Contractor of responsibility for determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Design Professional's review of the Contractor's submittals shall not relieve the Contractor of any obligations of these General Conditions. The Design Professional's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Design Professional, of any construction...
means, methods, techniques, sequences or procedures. The Design Professional's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

4.2.7.1 The Contractor shall be responsible for cost of inordinate re-reviews, exceeding two, by Design Professional due to non-compliance with Subparagraph 3.12.6.

4.2.7.2 Rejection of any submittal due to non-compliance with Subparagraph 3.12.6 shall not be the basis for claim for a project delay.

4.2.8 The Design Professional may prepare for Owner consideration, Modification / Change Requests and Change Orders. The Design Professional shall review Contractor proposals for adjustment to the Contract Sum or Contract Time relative to a Modification / Change Request and shall either approve, reject or suggest compromise to such proposals.

4.2.8.1 The Design Professional may authorize Supplemental Instructions for minor changes in the Work as provided in Paragraph 7.4, provided there is no material change to the time, cost, specification or scope of the Work.

4.2.9 The Design Professional will conduct inspections to make recommendations to the Owner of the date or dates of Substantial Completion and the date of Final Completion, will receive, approve and forward to the Owner, for the Owner's records, written warranties, Certificates of Insurance and related documents required by the Contract and assembled by the Contractor and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

4.2.10 If the Owner and Design Professional agree, the Design Professional will provide one or more project representatives to assist in carrying out the Design Professional's responsibilities at the site.

4.2.11 Subject to the claims procedures set forth in Paragraph 4.3, the Design Professional will, in the first instance, interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Design Professional's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Design Professional shall be furnished in compliance with this Paragraph 4.2, then delay shall not be recognized on account of failure by the Design Professional to furnish such interpretations until ten (10) days after written request is made for them.

4.2.12 Interpretations and decisions of the Design Professional will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and initial decisions, the Design Professional will make all reasonable efforts to secure faithful performance by both the Owner and the Contractor and will not show partiality to either, and will not be liable for results or interpretations or decisions so rendered in good faith.
4.2.13 The Design Professional's decisions on matters relating to aesthetic effect will, with the Owner's consent, be final if consistent with the intent expressed in the Contract Documents.

4.3 CLAIMS AND DISPUTES

4.3.1 Definition. A Claim is a demand or assertion by one of the parties seeking as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

4.3.2 Time Limits on Claims. Claims by either party must be initiated within twenty-one (21) days after occurrence of the event giving rise to such Claim or within five (5) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the Design Professional and the other party.

4.3.3 Continuing Contract Performance. Pending final resolution of a Claim except as otherwise agreed in writing or as provided in Subparagraph 9.7.1 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

4.3.4 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than twenty-one (21) days after first observance of the conditions. The Design Professional will promptly investigate such conditions and if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Design Professional determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Design Professional shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within twenty-one (21) days after the Design Professional has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Design Professional for initial determination, subject to further proceedings pursuant to Paragraph 4.4.

4.3.5 Claims for Additional Cost. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 10.6.
4.3.6 If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Design Professional, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Design Professional, (4) unjustified failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with this Paragraph 4.3.

4.3.7 CLAIMS FOR ADDITIONAL TIME

4.3.7.1 If the Contractor wishes to make Claim for an increase in the Contract Time, it shall be submitted as a Modification / Change Request in accordance with Article 7. In the case of a continuing delay only one Claim is necessary.

4.3.7.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction. Substantiation must include supporting evidence from the U.S. Weather Bureau or similar for the previous ten (10) year averages for the locale of the Project, as well as, evidence supported by original project schedule and daily job logs that specific Work events falling on the critical path were delayed.

4.3.8 Injury or Damage to Person or Property. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding five (5) days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

4.3.8.1 The Contractor shall promptly notify the Owner and Design Professional in writing of any claims received by the Contractor for personal injury or property damage related to the Work.

4.3.9 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are changed in a proposed Modification / Change Request by more than fifteen percent (15%), the applicable unit prices shall be equitably adjusted in accordance with Article 7.

4.3.10 Claims for Consequential Damages. The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes damages incurred by the:

1. Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

2. Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, loss of profit except anticipated profit arising directly from the Work performed.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Subparagraph 4.3.10 shall be
deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

4.4 RESOLUTION OF CLAIMS AND DISPUTES

4.4.1 Decision of Design Professional. Claims, including those alleging an error or omission by the Design Professional, but excluding those arising under Paragraphs 10.3 through 10.5, shall be referred initially to the Design Professional for decision. An initial decision by the Design Professional shall be required as a condition precedent to mediation, arbitration or litigation of all Claims between the Contractor and Owner arising prior to the date final payment is due, unless thirty (30) days have passed after the Claim has been referred to the Design Professional with no decision having been rendered by the Design Professional. The Design Professional will not decide disputes between the Contractor and persons or entities other than the Owner.

4.4.2 The Design Professional will review Claims and within ten (10) days of the receipt of the Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Design Professional is unable to resolve the Claim if the Design Professional concludes that, in the Design Professional's sole discretion, it would be inappropriate for the Design Professional to resolve the Claim.

4.4.3 In evaluating Claims, the Design Professional may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Design Professional in rendering a decision. The Design Professional may request the Owner to authorize retention of such persons at the Owner's expense.

4.4.4 If the Design Professional requests a third party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten (10) days after receipt of such request, and shall either provide a response on the requested supporting data, advise the Design Professional when the response or supporting data will be furnished or advise the Design Professional that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Design Professional will either reject or approve the Claim in whole or in part.

4.4.5 The Design Professional will approve or reject Claims by written decision, which shall state the reasons therefore and which shall notify the parties of any change in the Contract Sum or Contract Time or both. The approval or rejection of a Claim by the Design Professional shall be final and binding on the parties but subject to mediation and arbitration.

4.4.6 A written decision of the Design Professional shall state that (1) the decision is final, but subject to mediation and arbitration and (2) a demand for arbitration of a Claim covered by such decision must be made within thirty (30) days after the date on which the party making the demand receives the final written decision, then failure to demand arbitration within said thirty (30) days period shall result in the Design Professional's decision becoming final and binding upon the Owner and Contractor. If the Design Professional renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence, but shall not supersede arbitration proceedings unless the decision is acceptable to all parties concerned.
4.4.7 Upon receipt of a Claim against the Contractor or at any time thereafter, the Design Professional or the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Design Professional or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

4.5 MEDIATION

4.5.1 Any Claim arising out of or related to the Contract, except those waived as provided for in Subparagraph's 4.3.10, 6.2.3, 9.11.4, and 9.11.5 shall, after initial decision by the Design Professional or thirty (30) days after initial decision by the Design Professional or thirty (30) days after submission of the Claim to the Design Professional, be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.

4.5.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the procedures of the New Mexico Public Works Mediation Act (NMSA §13-4C-1 et seq.) except that before any party may select a mediator it must confer in good faith with the other party concerning the selection of a mutually acceptable mediator. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of notice of mediation session, unless stayed for a longer period by agreement of the parties or court order.

4.5.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Settlement Agreements reached in mediation and signed by all parties involved in the dispute shall be enforceable in any court having jurisdiction thereof.

4.6 ARBITRATION

4.6.1 Any Claim arising out of or related to the Contract, except those waived as provided for in Subparagraphs 4.3.10, 6.2.3, 9.11.4 and 9.11.5, shall after decision by the Design Professional or thirty (30) days after submission of the Claim to the Design Professional, be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions under Paragraph 4.5.

4.6.2 Claims not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The Demand for Arbitration shall be filed in writing with the other party to the Contract and with the American Arbitration Association, and a copy shall be filed with the Design Professional.

4.6.3 A Demand for Arbitration shall be made within the time limits specified in Subparagraphs 4.4.6 and 4.6.1 as applicable, and in other cases within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to Paragraph 13.7.
4.6.4 Claims and Timely Assertion of Claims. The party filing a Notice of Demand for Arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

4.6.5 Arbitration proceedings under this Agreement may be consolidated or joined with arbitration proceedings pending between other parties if the arbitration proceedings arise out of the same transaction or relate to the same subject matter. Consolidation will be by order of the arbitrator, in any of the pending cases, or if the arbitrator fails to make such an order, the parties may apply to any court of competent jurisdiction for such an order. Inclusive to this Subparagraph are the Owner, the Design Professional, the Contractor, all subcontractors, material suppliers, equipment suppliers, engineers, designers, lenders, sureties, and all other parties concerned with the construction of the Project are bound, each to each other, by this Subparagraph, provided such party has signed this Agreement or has signed an agreement which incorporates this Agreement by reference or signs any other agreement to be bound by this arbitration clause.

4.6.6 Judgment on Final Award. The award rendered by the arbitrator or arbitrators shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE 5 SUBCONTRACTS

5.1 DEFINITIONS

5.1.1 A Subcontractor is a person or entity who has a direct or indirect contract with the Contractor to perform a portion of the Work regardless of contractual tiers below the prime contract between the Owner and Contractor. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after Notice of Intent to Award, shall furnish in writing to the Owner through the Design Professional the names of entities and key personnel (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Design Professional will promptly reply to the Contractor in writing stating whether or not the Owner or the Design Professional, after due investigation, has reasonable objection to any such proposed entity or person. Failure of the Owner or Design Professional to reply promptly shall constitute notice of no reasonable objection. The requirements of this Subparagraph 5.2.1 shall supplement Subcontractor listing at bid as required by §13-4-34 NMSA 1978.

5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Design Professional has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.
5.2.3 If the Owner or Design Professional has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Design Professional has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by the change, and an appropriate Modification in accordance with Article 7 shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

5.2.4 The Contractor shall not change a Subcontractor, person or entity previously selected if the Owner or Design Professional makes reasonable objection to such substitute. Any substitutions of a Subcontractor will comply with the New Mexico Subcontractor Fair Practices Act to the extent that the Subcontractors Fair Practices Act is applicable.

5.3 SUBCONTRACTUAL AND SUPPLIER RELATIONS

5.3.1 By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including performance of Work, responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Design Professional. Each subcontract and supplier agreement shall preserve and protect the rights of the Owner and Design Professional under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with suppliers. The Contractor shall make available to each proposed Subcontractor and supplier, prior to execution of the Agreement, copies of the Contract Documents to which the Subcontractor and suppliers where appropriate will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents.

5.3.2 Nothing contained in Subparagraph 5.3.1 or elsewhere in the Contract Documents shall create any contractual relationship with or cause of action in favor of a third party against the Owner.

5.3.3 Each entity intending to do work on the Project shall, prior to bid, be properly licensed according to the requirements of the Construction Industries Licensing Act, Chapter 60, Article 13 NMSA 1978 and shall ensure to the Contractor and to the Owner that such license shall remain in effect for the duration of the Work and warranty periods.

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS AND SUPPLIER AGREEMENTS

5.4.1 Each subcontract or supplier agreement for a portion of the Work may be assigned by the Contractor to the Owner provided that assignment is:
1. effective only after termination of the Contract by the Owner for cause pursuant to Paragraph 14.2 and only for those subcontract or supplier agreements which the Owner accepts by notifying the Subcontractor, supplier and the Contractor in writing: and
2. subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

5.4.2 Upon such assignment, if the Work has been suspended for more than thirty (30) days, the Subcontractor's or supplier's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

ARTICLE 6  CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these, including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Paragraph 4.3.

6.1.2 When separate contracts are awarded for different portions of the Project or other Construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor and Subcontractors shall participate with other separate contractors, the Owner's own forces and the Owner in reviewing and coordinating their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised. The Contractor and Subcontractors shall not delay or cause additional expense to another contractor by neglecting to perform correctly or to an agreed schedule. In the absence of a schedule mutually agreed upon by all parties, the Owner may create a binding schedule for all parties or take other appropriate action to avoid unnecessary delay and damages.

6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11, and 12.

6.1.5 Unless otherwise provided in the Contract Documents, the Owner's separate contractor shall test, adjust, and balance (TAB) the HVAC system to design requirements in coordination with the
Contractor's or Subcontractors own forces. The TAB work shall integrate with the Contractor's or Subcontractor's installation of the Work, equipment start-up and operational testing as required by the Contract Documents. Coordination and cooperation for this work and other similar Owner contractor work shall be in accordance with Paragraph 6.2.

6.2 MUTUAL RESPONSIBILITY
6.2.1 The Contractor shall afford the Owner and separate contractors’ reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

6.2.2 If part of the Contractor's Work depends on proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Design Professional and Owner apparent discrepancies or defects in such other construction that would render it unsuitable for proper execution and results. Failure of the Contractor to report shall constitute an acknowledgment that the Owner's or separate contractor’s completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

6.2.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities and damage to the Work or defective construction of the Owner or a separate Owner contractor. Should the Contractor sustain any personal injury or damage to property through any act or omission of any other Contractor having a contract with the Owner, the Contractor sustaining damage will have no claim or cause of action against the Owner for such damage and hereby waives any such claim.

6.2.4 The Contractor shall promptly remedy damage caused by the Contractor to completed or partially completed or existing construction or to property of the Owner or separate contractors as provided in Subparagraph 10.2.5.

6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Subparagraph 3.14.

6.3 OWNER'S RIGHT TO CLEAN UP
6.3.1 If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Design Professional will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK
7.1 GENERAL
7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Modification / Change Request, or by Supplemental Instruction for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

7.1.2 Any material change in the Work require a Modification / Change Request (MCR) that has been finalized by agreement by the Owner and based on proposal from the Contractor and recommendation of the Design Professional. A Change Order, required to modify the Purchase Order, shall accumulate approved MCRs, and must be approved by the Owner, Contractor and Design Professional. Supplemental Instruction for a minor change in the Work, will not create cost or time effect on the Project in accordance with Subparagraph 7.4.1, and may be issued only by the Design Professional.

7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Modification / Change Request or Supplemental Instruction.

7.2 MODIFICATON / CHANGE REQUEST

7.2.1 A Modification / Change Request or MCR is a written document that may be initiated by the Contractor, Design Professional or Owner that identifies why there is a potential change in the Work that may require an adjustment, to the Contract Sum or Contract Time, or both, and suggests how that the change should take place. Following the initiation of a MCR by one of the parties, the Owner:

1. must agree to MCR's content and feasibility and if in agreement may authorize the MCR to; proceed with estimates of costs only; or proceed with the Work with estimates of costs to follow in accordance with Subparagraph 7.2.4;

2. will consider proposal(s) from the Contractor in accordance with Article 7 for adjustment to Contract Sum or Contract Time, if any; and,

3. shall authorize the Work to proceed if not previously authorized in accordance with Subparagraph 7.2.4 and authorize adjustment to Contract Sum in accordance with Paragraph 7.2 or, shall reject the MCR and replace with another or, stop all action on the MCR.

7.2.1.1 A MCR is required for any modification or change in the Work that:

1. may affect the Contract Sum or Time;

2. alters the Work by substitution or any other way not considered minor as defined by Paragraph 7.4; or,

3. otherwise materially affect the Work or intended function of the Project including a change to aesthetics.

7.2.1.2 A MCR when finalized by Owner approval, may modify the Contract without invalidating the Contract and may order changes in the Work within the general scope of the Contract with Contract Sum and Contract Time. Owner approval of a MCR:

1. shall adjust the Contract Sum accordingly; and,

2. will begin Owner consideration of related adjustment to Contract Time, if any;

3. and shall be included into a Change Order upon approval of the parties in accordance with Paragraph 7.3.
7.2.2 A MCR shall be used to:
1. approve a modification or change to the Work;
2. accumulate data such as cost and time impacts before authorizing a modification or change to the Work;
3. direct Work to be done with cost, time, etc. to follow in the absence of total agreement on the terms of a modification or change to the Work or to prevent delay of the Work; and,
4. stop all action on a proposed modification or change to the Work.

7.2.3 If Work defined by a MCR requires an adjustment to Contract Sum or Contract Time, the Contractor shall, within ten (10) days of the date of Owner issuance of MCR or delivery of MCR to Contractor if that date is later, prepare and deliver to the Design Professional a proposal for such adjustment based on:
1. unit prices or lump sum allowances stated in the Contract Documents;
2. unit price or lump sum determined in accordance with Subparagraph 7.2.5;
3. provision in the MCR as determined by the Owner and in accordance with Subparagraph 7.2.5; or,
4. a manner agreed upon by the parties and consistent with Subparagraph 7.2.5 and these General Conditions.

7.2.4 Upon receipt of a Modification / Change Request authorized by the Owner to "Proceed with the Work with costs to follow", the Contractor shall consider the MCR a directive and promptly proceed with the change in the Work involved and, provide a proposal for adjustment to Contract in accordance with Subparagraph 7.2.3.

7.2.5 Allowable Costs and Fees: If a proposal to adjust the Contract Sum exceeds $200 and if not otherwise provided in the MCR or Contract Documents, the Contractor, shall provide an itemized accounting* together with appropriate supporting data that include:
1. quantities and unit costs of materials, including cost of transportation, whether incorporated or consumed;
2. quantities and unit costs of labor, including labor burdens such as social security and unemployment insurance, fringe benefits such as health insurance required by agreement or custom (Labor Burdens shall not include retirement plans qualified by minimum employment time, organizational fees or dues, legal or related expenses, information technology training and the like);
3. quantities and unit utilization or rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
4. quantities and unit costs of on-site supervision and field office personnel directly attributable to the change;
5. quantities and unit costs of and insurance, use tax or similar related to the Work;
6. Overhead and Profit**;
7. quantities and unit premiums for all bond costs and permit fees on items 1 through above; and,
8. State Gross Receipts Tax (GRT); and,
* If pricing compounds, the compounding order shall be the same as listed items 1 - 8 of this Sub-paragraph.

** Overhead and Profit (O&P), that may include, but is not limited to, project management, main office expenses, computers, minor tools and incidentals, may be added on top of items 1 through 5 above, provided that combined they do not exceed the following:

<table>
<thead>
<tr>
<th>Subtotal before applying overhead and profit</th>
<th>Under $2000</th>
<th>$2000 to $10,000</th>
<th>$10,001 to $50,000</th>
<th>Over $50,001</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contractor - For work performed by own forces</td>
<td>18%</td>
<td>16%</td>
<td>14%</td>
<td>12%</td>
</tr>
<tr>
<td>Contractor - For subcontracted work.</td>
<td>11%</td>
<td>9%</td>
<td>6%</td>
<td>5%</td>
</tr>
<tr>
<td>For work performed by 1st tier Subcontractor</td>
<td>18%</td>
<td>15%</td>
<td>12%</td>
<td>9%</td>
</tr>
<tr>
<td>For work performed by 2nd tier Subcontractor</td>
<td>10%</td>
<td>8%</td>
<td>5%</td>
<td>4%</td>
</tr>
<tr>
<td>Subcontractor - Maximum aggregate O&amp;P allowed over cost regardless of number of tiers.</td>
<td>29%</td>
<td>24%</td>
<td>18%</td>
<td>14%</td>
</tr>
</tbody>
</table>

*Exception*: In extraordinary circumstances, the Owner may allow adjustment to the above maximums provided net profit does not exceed 2% of the cost of MCR before bonds or tax.

7.2.5.1 *Time-and-Material*: If for the purpose of authorizing Work to proceed upon issuance on an MCR prior to the Owner receiving proposal of costs, so that labor or material costs are to be accumulated for later inclusion into a proposal to adjust the contract sum, the MCR must clearly state conditions and limitations of time-and-material work to proceed under the change in Work with costs to follow provision of the MCR. At a minimum, the MCR shall state the maximum allowable cost. In addition, the Daily Job Report must reflect all appropriate detail on related Work, such as work performed that day, number of workers, materials received and similar. A separate daily worker log must also be maintained that will be included in the proposed cost of the MCR. The daily worker log for each MCR, must list each worker, the type of work performed and the hours worked, and must be signed-off daily by an individual, agreed upon in the MCR, that may be the Project Superintendent. In accordance with this Paragraph 7.2, proposal of costs shall be delivered by the Contractor within Ten (10) days of issuance of MCR.

7.2.5.2 *Audit*: The Owner shall be entitled to audit the books and records of a Contractor or any Subcontractor for any time-and-material or negotiated cost, such as those associated with a change in the Work, to the extent that such books and records relate to the proposal or performance of such Work. Such books and records shall be maintained by the Contractor for a period of three years from the date of final payment under the prime Contract and by the Subcontractor for a period of three years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.
7.2.6 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Design Professional. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

7.2.7 A proposed adjustment to Contract Sum and Contract Time submitted by Contractor for a MCR indicates agreement of the Contractor therewith for the proposed Modification. The Design Professional shall make recommendation to the Owner on the appropriateness of the proposed adjustment. The Owner may, after evaluation of the proposal and review of the Design Professional's recommendation, accept the Contractor's proposed adjustment to Contract Sum and finalize the MCR. If Owner approves MCR, it shall be recorded for inclusion into a Change Order.

7.2.8 If the Contractor does not respond promptly with a proposal for adjustment to Contract Sum and Contract Time relative to an MCR or disagrees with the method for adjustment, or; if there are amounts or terms in dispute for such changes in the Work; the Design Professional on the basis of reasonable expenditures or savings of those performing the Work attributable to the change in the Work shall make a determination for purpose of settlement of dispute. That determination of adjustment to the Contract Sum and Contract Time shall be presented to the Owner and the Contractor for consideration. If the Owner or the Contractor do not agree with the Design Professional's determination, the provisions of Subparagraph 7.2.9 shall apply. When the Owner and Contractor agree with the determination made by the Design Professional concerning the adjustments in the Contract Sum, such agreement shall be effective immediately upon Contractor's acceptance in writing and Owner's approval of MCR.

7.2.9 The Owner shall, within fifteen (15) days of the determination made by the Design Professional regarding adjustment to Contract Sum or Contract Time in accordance with Subparagraph 7.2.8, either:

1. accept the Design Professional's determination and, approve the MCR with the adjustment recommended by the Design Professional and record the MCR as approved by the Owner to be included into a Change Order; or
2. approve the MCR with an adjustment the Owner determines to be appropriate based on available information and record the MCR as approved by the Owner to be included into a Change Order.

Adjustment to Contract Sum in accordance with this Subparagraph 7.2.9 shall be subject to the right of Contractor to disagree and assert a claim in accordance with Paragraph 4.3.

7.2.10 Partial agreement of an adjustment to Contract Sum or Contract Time relative to a MCR may be allowed by the Owner only if adjustment to Work, requested by the MCR, can be subdivided into independent parts. In the event of such subdivision; MCR shall be broken into separate parts with alpha suffixes such as MCR 2A, MCR 2B and so on.

7.2.11 Periodically, approved MCR's shall be accumulated by the Owner or Design Professional into a Change Order in accordance with Paragraph 7.3.

7.3 CHANGE ORDERS
7.3.1 A Change Order is a written instrument prepared by the Design Professional and signed by the Owner, Contractor and Design Professional, stating their agreement upon:
   1. change in the work as made by finalized Modification / Change Request(s) that has been previously approved by the Owner or authorized in accordance with Sub-paragraphs 7.2.8 or 7.2.9;
   2. amount of the adjustment, if any in the Contract Sum resultant of approved MCR(s);
   3. extent of the adjustment, if any, in the Contract Time related to approved MCR(s); or,
   4. if disagreement on adjustment in the Contract Time, parties agree to postponement of inclusion of any adjustment to Contract Time into a Change Order; however, all Contractor proposed or Owner offered adjustment(s) to time shall be incorporated into a Change Order prior to Substantial Completion in accordance with Subparagraph 9.8.6.

    POSTPONEMENT OF ADJUSTMENT TO CONTRACT TIME LANGUAGE:
    "At the time of this Change Order, there is no agreement on adjustment to the Contract Time related to MCR(s) XX, XX, XX and XX. The Contractor, without prejudice and without waiving any rights to such claim for adjustment to Contract Time in relation to these MCR(s), agrees to postpone claim in accordance with Paragraph 7.3 of the General Conditions."

7.3.2 Methods used in determining adjustments to the Contract Sum include those listed in Paragraph 7.2. Proposals submitted that do not follow the requirements under Paragraph 7.2 will be returned to be resubmitted prior to processing.

7.4 MINOR CHANGES IN THE WORK
7.4.1 The Design Professional will have authority to order Supplemental Instructions for minor changes in the work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

ARTICLE 8 TIME
8.1 DEFINITIONS
8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

8.1.2 The date of commencement of the Work is the date established in the Agreement.

8.1.3 The date of Substantial Completion is the date certified by the Design Professional in accordance with Paragraph 9.8.

8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

8.2 PROGRESS AND COMPLETION
8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By
executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for
performing the Work.

8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in
writing, prematurely commence operations on the site or elsewhere prior to the effective date of
insurance required by Article 11 to be furnished by the Contractor and Owner. The date of
commencement of the Work shall not be changed by the effective date of such insurance. Unless the
date of commencement is established by the Contract Documents, a Notice to Proceed shall be given
by the Owner that shall establish the commencement of the Contract Time as provided by the
Contract Documents.

8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial
Completion within the Contract Time.

8.2.4 The Owner shall not be liable to the Contractor for additional time or money if the Contractor
submits a progress report or construction schedule expressing an intention to achieve completion of
the Work prior to the Contract Time and then is not able to achieve intended accelerated schedule
regardless of the reason.

8.3 DELAYS AND EXTENSIONS OF TIME
8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an
act or neglect of the Owner or Design Professional, or of a separate contractor employed by the
Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries,
unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the
Owner pending mediation and arbitration, or by other causes which the Design Professional and the
Owner determine may justify delay, then the Contract Time shall be extended by Modification in
accordance with Article 7 for such reasonable time as the Design Professional in concurrence with the
Owner may determine.

8.3.2 Extensions of time not associated with modifications or changes to the Work shall not be
allowed to increase the Contract amount for overhead or for any other reason and shall strictly apply
toward liquidated damages.

8.3.3 Claims relating to time shall be made in accordance with applicable provisions under
Paragraph 4.3.

8.4 CONTRACT TIME AND LIQUIDATED DAMAGES
8.4.1 The Contractor agrees that the Work will be prosecuted regularly, diligently and without
interruption at such rate of progress as will ensure completion within the Contract Time. It is
expressly understood and agreed, by and between the Contractor and the Owner, that the Contract
Time is a reasonable time for completion of the Work, taking into consideration the average climate
range and usual industrial conditions prevailing in the locality of the Project. If the Contractor
neglects, fails or refuses to complete the Work within the Contract Time, or any proper extension
granted by the Owner, then the Contractor agrees to pay the Owner the amount specified in the
Contract Documents, not as a penalty, but as liquidated damages.
The parties agree that the amount of the likely damage to the Owner for such delay is difficult to ascertain at the time of execution of this Agreement, but that a reasonable estimate of such damages for delay is set forth in the contract Documents. Liquidated damages may be deducted from any monthly progress payments due to the Contractor or from other monies being withheld from the Contractor when a reasonable estimate of expected Substantial Completion can be determined by the Owner.

Final accounting of Liquidated Damages shall be determined at Substantial Completion and the Contractor and Surety are liable for any liquidated damages over and above unpaid balance held by the Owner.

ARTICLE 9    PAYMENTS AND COMPLETION

9.1    CONTRACT SUM

9.1.1    The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

9.2    SCHEDULE OF VALUES

9.2.1    Before the first Application for Payment, the Contractor shall submit to the Design Professional a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Design Professional may require. Support data shall include accounting of all Project costs distributed to Level 2 UniFormat™ convention. The schedule of values, upon acceptance by the Design Professional with the Owner's prior approval, shall be used as a basis for reviewing the Contractor's Application for Payment.

9.2.1.1    Gross Receipts Tax shall be indicated for the total amount of all items included in the Schedule of Values. Allowance items, such as Documentation and Close-Out amount, do not include GRT as listed in Subparagraph 9.2.2 and shall be included as Schedule of Values line items. In the event of a GRT rate change, the Contractor shall submit an MCR requesting an adjusted amount on balance to complete the Contract.

9.2.1.2    If Public Schools Capital Outlay Public School Facilities Authority (PSFA) funding is provided to the Project, individual line items of the Schedule of Values shall be allocated to the various portions of the PSFA Work, prepared in such form and supported by such data to substantiate its accuracy as the Design Professional and the PSFA may require.

9.2.2    To protect the Owner from the significant liability and arduous accounting efforts required by lingering documentation and close-out work, the Schedule of Values shall provide a separate line item titled "Documentation and Close-Out" to provide a value consistent with and appropriate to required documentation provisions throughout the Contract including those required by Subparagraph 4.2.4.3 and Paragraph 9.10. The value of the Documentation and Close-Out line item shall not be less than the following:

GENERAL CONDITIONS

DBB_v.3.1_10.6.10

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For a total Contract amount excluding tax of:

<table>
<thead>
<tr>
<th>Amount Range</th>
<th>Documentation and Close-Out amount</th>
</tr>
</thead>
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<tr>
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<td>$0</td>
</tr>
<tr>
<td>20,001 - 75,000</td>
<td>6,000</td>
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<tr>
<td>75,001 - 100,000</td>
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<tr>
<td>2,000,001 - 3,000,000</td>
<td>120,000</td>
</tr>
<tr>
<td>for each additional million</td>
<td>add 30,000</td>
</tr>
</tbody>
</table>

9.2.2.1 If requested in writing by the Contractor, and in the sole opinion of the Owner, the Contractor is in full compliance with the documentation requirements of the Contract including the provisions of Subparagraph 4.2.4.3, the Documentation and Close-Out Schedule of Value line item may be reduced each month prior to Substantial Completion up to five percent (5%) of the originally scheduled amount or one thousand dollars ($1,000), whichever is greater, providing that the Documentation and Close-Out line item is not reduced to less than fifty percent (50%) of the original amount required until which time that Close-Out is complete as required by Paragraph 9.10.

9.3 APPLICATIONS FOR PAYMENT

9.3.1 No later than the 25th of each month, the Contractor shall submit to the Design Professional an itemized Application for Payment for operations completed in accordance with the Schedule of Values for that month. Such application shall be supported by such data substantiating the Contractor's right to payment as the Owner or Design Professional may require such copies of requisitions from Subcontractors and material suppliers. No Applications for Payment will be processed until the initial Schedule of Values is received and approved by Design Professional with concurrence from the Owner and for subsequent payment applications; the Project Schedule has been updated in accordance with Subparagraph 3.10.1.

9.3.1.1 No Application for Payment may include more than:

1. ninety-five percent (95%) of the scheduled value of any work requiring testing prior to testing and verification of testing by the Design Professional to meeting requirements of the Contract Documents;

2. ninety percent (90%) of the scheduled value for systems that require, as a part of acceptance of the Work, testing or balancing including, but not limited to, mechanical heating, air-conditioning and electrical distribution until testing, balancing or other verification required by the Contract Documents has been completed and verified as acceptable by the Design Professional.
9.3.1.2 Such applications may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation into the Work. Any payments for such materials or equipment shall be conditioned upon the Contractor’s demonstration that they are adequately protected from weather, damage, vandalism and theft and that such materials or equipment have been inventoried and stored in accordance with procedures established by or approved by the Owner. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing and with sufficient Contractor provided insurance against loss, and with Owner named as co-insured, to cover the value of stored materials and their transport to the Project.

9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall be free and clear of claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, material suppliers and equipment relating to the Work. The Contractor additionally warrants that all As-Built drawings accurately depict completed Work covered by an Application for Payment, inclusive of all trades and inclusive of, but not be limited to, actual locations and installed types, brand, model number and similar of all Work including ducts, pipes, conduit, equipment, walls and site utilities.

9.4 CERTIFICATES FOR PAYMENT
9.4.1 Application for Payment must be submitted to the Design Professional no later than the 25th of the month for which the application is being made. The Design Professional will review with the Owner the accuracy and appropriateness of the application and, within five (5) days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Design Professional determines is properly due, or notify the Contractor and Owner in writing of the Design Professional's reasons for withholding certification in whole or in part as provided in Subparagraph 9.5.1. In no event will the Owner accept or process a Certification for Payment received after the 10th of the month following the month for which the application is being made. Certifications for Payment received after the 10th of the month "owner-cut-off-date" will be processed along with the following month's applications and will not be considered in default of the provisions of Subparagraph 9.4.3,

9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Design Professional to the Owner, based on the Design Professional's evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Design Professional's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents and that As-Built drawings are current to actual Work completed. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Design Professional. The issuance of a Certificate for
Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified.

9.4.3 The Owner will issue payment to the Contractor in the amount certified in the approved Certificate for Payment within twenty-one (21) days from the end of the progress payment period which shall be the end of the month for which the Certificate of Payment is made. The five (5) days allowed the Design Professional for review in Subparagraphs 4.2.5 and 9.4.1 are partially included in the twenty-one (21) day period.

9.5 DECISIONS TO WITHHOLD CERTIFICATION

9.5.1 The Design Professional may withhold a Certificate for Payment and may assess Liquidated Damages in accordance with Paragraph 8.4, in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Design Professional's opinion the representations to the Owner required by Subparagraph 9.4.2 cannot be made. If the Design Professional is unable to certify payment in the amount of the Application, the Design Professional will notify the Contractor and Owner as provided in Subparagraph 9.4.1. If the Contractor and Design Professional cannot agree on a revised amount, the Design Professional will promptly issue a Certificate for Payment for the amount for which the Design Professional is able to make such representations to the Owner. The Design Professional may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Design Professional's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Subparagraph 3.3.2, because of:

1. defective Work not remedied;
2. third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
3. failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
4. reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
5. damage to the Owner or another contractor;
6. reasonable evidence that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
7. persistent failure to carry out the Work in accordance with the Contract Documents.

9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

9.6 PROGRESS PAYMENTS

9.6.1 After the Design Professional has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents.

9.6.2 The Contractor shall promptly pay each Subcontractor and supplier, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually
The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments in a similar manner. It is the Contractor's responsibility to comply with § 57-28-5(C) of the New Mexico Retainage Act, requiring Contractors to make prompt payment to Subcontractors for work performed within seven (7) days after receipt of payment from the Owner or pay interest for failing to make prompt payment.

9.6.3 The Design Professional will on request, furnish to a Subcontractor information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Design Professional and Owner on account of portions of the Work done by such Subcontractor.

9.6.4 Neither the Owner nor Design Professional shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Subparagraphs 9.6.2, 9.6.3 and 9.6.4.

9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

9.6.7 Payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, or create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

9.7 FAILURE OF PAYMENT
9.7.1 If the Owner does not pay the Contractor the amount approved by the Design Professional or the Design Professional does not approve the application for payment then, within forty-five (45) days from the end of the progress payment period, Contractor may, upon seven (7) additional days written notice to the Owner and Design Professional, stop the Work until payment of the amount owing has been received. Unless Contractor's action was improper or if the amount claimed is shown not to have been due, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents. In the event of a wrongful Stop-Work, the Contractor shall remain responsible to the Owner for delivering the Project in accordance with the Contract Documents.

9.8 SUBSTANTIAL COMPLETION
9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is complete and in compliance with the Contract Documents except for minor items so that the Owner can completely occupy or fully utilize the Work for its intended use. Owner's Occupancy under conditional approval by public authorities having jurisdiction over the Work, or
occupancy of a facility or otherwise utilizing the Work under duress, shall not be considered Substantial Completion.

9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall promptly prepare and submit to the Design Professional a comprehensive Contractor's Punch List inclusive and all incomplete and non-compliant Work to be completed or corrected prior to final payment, as well as, the requirements of Subparagraph 9.10.2.

9.8.3 The Contractor shall submit along with the punch list a separate and detailed Closeout Schedule indicating the date of Final Completion and all work to be completed before Final Completion including Close-Out requirements as provided in Paragraph 9.10. Failure to include any item on punch list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Include in the Closeout Schedule an allowance of thirty (30) days to prepare Record Drawings from Contractor As-Builts to meet requirement of Subparagraph 9.10.1.7.

9.8.4 Upon receipt of the Contractor's Punch List and Closeout Schedule, the Design Professional will within ten (10) days make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Design Professional's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof, as it is fully intended and designed to be used, the Contractor shall complete or correct such item upon inspection by the Design Professional to determine Substantial Completion. In the event the Work does appear Substantially Complete, the Design Professional will review the Contractor's Punch List for completeness required for issuance of Substantial Completion. The Contractor shall be responsible for cost of excessive Design Professional time and effort in completing list of incomplete and non-compliant Work not included in Contractor's Punch List or otherwise due to Contractor's neglect of responsibilities of Subparagraph 9.8.2.

9.8.5 When the Work or designated portion thereof is substantially complete, the Design Professional will prepare a Certificate of Substantial Completion, with the Owner's prior approval, which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate in accordance with Subparagraph 9.8.2.

9.8.6 Warranties shall be in accordance with this Subparagraph 9.8.6 and Paragraph 12.2 and shall include all components and equipment required by the Contract Documents. All Work shall be warranted for the greater of:

1. a minimum of one (1) year from the date of Substantial Completion;
2. one (1) year from the date of first installation in accordance with Subparagraph 12.2.2.2;
3. one (1) year from the date of replacement due to failure such that; each component of the Work must not fail for a one (1) year period regardless of the date of Substantial Completion;
4. that required by the Contract Documents; or,
5. that provided in the Certificate of Substantial Completion that will become an addendum to the Contract.

Owner and Contractor may, by mutual agreement, amend the Contract at Substantial Completion to include Performance Bonding, extended warranty, on-site maintenance, subsequent testing, scheduled replacement or other mutually agreeable terms.

9.8.7 Any postponement(s) of inclusion(s) of adjustment(s) to Contract Time in accordance with Subparagraph 7.3.1.4 shall be included into a MCR for agreement and then into a Change Order prior to Certificate of Substantial Completion. If the Contractor and the Owner do not agree on Contractor proposal, the Design Professional on the basis of evidence that critical path of work flow was reduced or expanded attributable to the change(s) in the Work with evidence being differences in Contractor's initial and current schedules and other evidence, shall make an determination for purpose of settlement of dispute. That determination of adjustment to the Contract Time shall be presented to the Owner and the Contractor for consideration. When the Owner and Contractor agree with the determination made by the Design Professional concerning the adjustments in the Contract Time such agreement shall be effective immediately, upon Contractor's written approval, and shall be recorded by preparation and execution of an appropriate MCR that shall be approved by the Owner. If after five (5) days the Owner or Contractor cannot agree with the determination made by the Design Professional regarding adjustment to Contract Time, then the Design Professional may order the preparation and execution of an appropriate MCR and:

1. if the Contractor is in disagreement, the MCR shall be recorded as approved by the Owner to be included in a Change Order;
2. if the Owner is in disagreement, the MCR shall be recorded as "approved by dispute resolution authority of the Design Professional" in accordance with this Subparagraph 9.8.7 to be included into a Change Order; and,
3. either approval shall be subject to the right of either party to disagree and assert a claim in accordance with Article 4.

9.8.8 Liquidated Damages shall be determined in accordance with Paragraph 8.4.

9.8.9 The Certificate of Substantial Completion shall be submitted to the Contractor and Contractor shall submit for consent of surety, if required, for written acceptance and following acceptance, the Owner shall make payment to Substantial Completion. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

9.9 PARTIAL OCCUPANCY OR USE

9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage provided such occupancy or use is consented to by the insurer as required under Clause 11.4.1.3 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have communicated in writing the responsibilities for payments, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties, if different from the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Design Professional as provided under Subparagraph
9.8.2. The stage or the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, then by decision of the Design Professional.

9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Design Professional shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of work not complying with the requirements of the Contract Documents.

9.10 CLOSE-OUT REQUIREMENTS

9.10.1 Before final completion in accordance with Paragraph 9.11 can be achieved all Work must be complete and accepted including the requirements under Paragraph 9.10 including:

1. Work associated with Punch List(s);
2. testing, balance or performance operations complete and in agreement that associated work is in compliance with the Contract Documents and verified as such by the Design Professional;
3. one hard copy and one electronic copy in .pdf format of final approved test, balance or performance report(s) complete with directory of contents submitted to Owner;
4. Operation and Maintenance Manuals complete and verified as such by the Design Professional;
5. Owner sign-off of receipt of O&M Training on proper use, care and operation of all systems or components as required by the Contract Documents;
6. one hard copy set and one electronic copy in .pdf format of final approved Operation and Maintenance Manuals with directory of contents submitted to Owner and uploaded by Contractor into CIMS;
7. As-Built drawings converted to accurate Record Drawings and verified as such by the Design Professional using information provided by the Contractor and by other knowledge the Design Professional may possess;
8. written certification signed by Owner of delivery and stocking of extra material, equipment or components required by the Contract Documents at a location established by the Owner;
9. delivery of all warranties required by the Contract Documents;
10. all keys, passes, codes, software or other methods or components of control or security which have been correctly and adequately accounted for and closed-out; and,
11. up-loading of all Close-Out documents into CIMS including scans of Building Code Approvals and other code certifications, Substantial Completion documents, Punch Lists, Warranties, O&M Manuals, Training Sign-off, Extra Stock Sign-off, Record Drawings, Final Completion documents, Equipment inventory information as required in Division 01, Correction of Work Period documents and 11th month inspection.

Exception: Up-loading of Final Completion, Correction of Work Period and 11th month inspection documents shall be loaded into CIMS within seven (7) days of availability.

9.10.2 The Contractor shall prepare a separate Close-Out Punch List listing all requirements of Subparagraph 9.10.1 and the status of each, whether completed or not and the expected completed date of each component of the list. The Close-Out Punch List shall be a separate part and a subset of
the Contractor's Punch List required for Substantial Completion in accordance with Subparagraph 9.8.2. At completion of the List, the Contractor shall state in writing to the Design Professional that the Close-Out Punch List has been completed and request a Close-Out Meeting with the Design Professional and the Owner. The Design Professional shall schedule such meeting within ten (10) days of the request, or otherwise reply in writing to the Contractor why the request is pre-mature. At the Close-Out Meeting, all requirements to achieve close-out will be verified, and if Work is found to be complete, the Design Professional, with concurrence from the Owner, shall provide written approval of Contractor's completion of close-out requirements within five (5) days of the conclusion of the meeting.

9.10.3 The balance at Substantial Completion of the Schedule of Values line item for Documents and Close-Out in accordance with Subparagraph 9.2.2 shall only be approved for payment when all requirements under Paragraph 9.10 are complete. No partial payment of the Close-Out balance will be considered. Contractor agrees that Close-Out Requirements, in accordance with Paragraph 9.10, are part of the value of Work defined by the Contract Documents and shall not be construed to mean retainage. Any variation or deviation from this Paragraph 9.10 shall be made through an appropriate Modification in accordance with Article 7.

9.11 FINAL COMPLETION AND FINAL PAYMENT

9.11.1 Following completion of close-out requirements in accordance with Paragraph 9.10, and upon receipt of a written notice from the Contractor that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Design Professional will promptly make such inspection and, when the Design Professional finds the Work acceptable under the Contract Documents and the Contract fully performed, the Design Professional will promptly, with the Owner's prior approval, issue a Certificate of Final Completion and following approval by all parties, a final Certificate for Payment each stating that to the best of the Design Professional's knowledge, information and belief and on the basis of the Design Professional's or Design Professional's Project Representative’s on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Design Professional's issuance of Certificate of Final Completion and final Certificate for Payment will constitute a further representation that conditions listed in Subparagraphs 9.10 and 9.11.2 have been fulfilled as precedent to the Contractor's being entitled to final payment.

9.11.2 Final payment shall not become due until the Contractor submits to the Design Professional:

1. an affidavit that payrolls, bills for subcontracts, materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied;
2. a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least forty-five (45) days following written notice to the Owner;
3. a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents;
4. consent of surety, if any, to final payment;
5. releases and waivers of claims of all Subcontractors, and suppliers; and,
6. if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor or other entity refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify and protect the Owner.

If any claim remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such claim, including all costs and reasonable attorney's fees.

9.11.3 If, after Substantial Completion of the Work, Final Completion thereof is materially delayed through no fault of the Contractor or by issuance of changes in the Work affecting Final Completion, and the Design Professional so confirms, the Owner shall, upon application by the Contractor and certification by the Design Professional, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Design Professional prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

9.11.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:
   1. Claims, security interests or encumbrances arising out of the Contract and unsettled;
   2. failure of the Work to comply with the requirements of the Contract Documents; or
   3. terms of special warranties required by the Contract Documents.

9.11.5 Acceptance of final payment by the Contractor, a Subcontractor or supplier shall constitute a waiver of Claims by that payee, except those previously made in writing and identified by the payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Owner may, but is under no obligation, point out unsafe conditions or operations.

10.1.2 The Contractor shall at all times conduct operations and take precautions under this Contract in a manner to avoid risk or bodily harm to persons on or around the Work site and to avoid risk of damage to any property. The Contractor shall continuously inspect the construction operations and shall cause Subcontractors and all other entities on or around the Project to be aware of dangers or risks and to comply with applicable health or safety laws, codes, standards and regulations applicable to the locale where the Project is located.
10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

1. employees on the Work and other persons who may be affected thereby and shall include clean work site, well maintained equipment, barricades, safety awareness programs or whatever effort that will best accomplish required protection;
2. students, staff and public either nearby or within the Project site that shall include re-routing pedestrian ways, re-routing traffic, providing signage, building of bridges, barricades, pedestrian tunnels, or whatever effort that will best accomplish required protection;
3. Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors; and
4. other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

10.2.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contractor Documents) to property referred to in Subparagraphs 10.2.1.3 and 10.2.1.4 caused in whole or in part by the Contractor, a Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible, except damage or loss attributable to acts or omissions of the Owner or Design Professional or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations stated throughout the Contract Documents.

10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent, unless otherwise designated by the Contractor in writing to the Owner and Design Professional.
10.2.7 The Contractor shall report in writing to the Owner and the Design Professional within five (5) days of an accident arising out of or in connection with the Work which caused lost time injury, personal injury, death or property damage, giving full details and statements of any witnesses. In cases of serious bodily injury, death or serious property damage, Contractor shall immediately contact the proper authorities, as well as, Owner and Design Professional by the most expeditious means.

10.3 HAZARDOUS MATERIALS
10.3.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and immediately report the condition to the Owner and Design Professional in writing.

10.3.2 The Owner shall obtain the services of a properly licensed testing laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to obtain the services of a remediation contractor to remove the hazard and to verify that it has been rendered harmless. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contract Time adjusted as provided in Article 7. "Rendered Harmless" shall mean that the levels of such materials are less than any applicable exposure levels, including but not limited to EPA regulations.

10.4 The Owner shall not be responsible under Paragraph 10.3 for materials and substances brought to the site by the Contractor.

10.5 If, without negligence on the part of the Contractor, the Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Contract shall be equitably adjusted in accordance with Article 7.

10.6 EMERGENCIES
10.6.1 In an emergency affecting safety of persons or property, the Contractor shall use its best efforts to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Paragraph 4.3 and Article 7.

ARTICLE 11 INSURANCE AND BONDS
11.1 LIABILITY INSURANCE
11.1.1 The Contractor and Subcontractors shall purchase from and maintain in a company or companies lawfully authorized to transact insurance in New Mexico, insurance that shall protect the Contractor and Subcontractors from claims set forth below, which may arise out of or result from operations under the Contract and for which the Contractor and Subcontractors may be legally liable, whether such operations be by the Contractor and Subcontractors or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:
1. claims under Workers' Compensation, Disability Benefit and other similar Employee Benefit Acts, which are applicable to the Work to be performed;
2. claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
4. claims for damage for personal injury;
5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting there from;
6. claims for damages because of bodily injury, death of a person property damage arising out of ownership, maintenance or use of a motor vehicle;
7. claims for bodily injury or property damage arising out of completed operations; and
8. claims involving contractual liability insurance applicable to the Contractor's obligations under Paragraph 3.18.

Provision of insurance does not limit the liability of the Contractor under 3.18.1 herein.

11.1.2 The Contractor shall ensure that liability insurance is maintained in accordance with Article 11 and may, at Contractor's option, either insure the activities of Subcontractors or require them to maintain insurance to cover all claims in Article 11. If the Owner is damaged by the failure or neglect of the Contractor to maintain insurance as described above, then the Contractor shall be liable for all costs and damages properly attributable thereto.

11.1.3 The insurance required by Subparagraph 11.1.1 shall be written for not less than limits of liability specified herein or required by law, whichever coverage is greater. Coverage, shall be written on an occurrence basis and shall be maintained without interruption from the date of commencement of the Work until date of Final Payment and termination of any coverage required to be maintained after final payment.

11.1.4 Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Paragraph 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least forty-five (45) days prior written notice has been given to the Owner. If any of the foregoing insurance coverages are requested to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Subparagraph 9.10.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both shall be furnished by the Contractor with reasonable promptness.

11.1.4.1 The Certificates of Insurance shall clearly state the coverages, limits of liability, covered operations, effective dates and dates of expiration of policies of Insurance. The Contractor will promptly notify and furnish to the Owner copies of any endorsements that are subsequently issued amending coverage or limits. The Certificates of Insurance shall be in the appropriate ACORD form, or similar format acceptable to the Owner and shall include the following statements:

1. "The State of New Mexico, the (the name(s) of the Owner whose name(s) appear on the Agreement), its agents, servants and employees are recognized as Additionally Insured."
2. "The insurance coverage certified herein will not be canceled or materially changed, except after forty-five (45) days written notice has been provided to the Owner"
3. "The insured will not violate, or permit to be violated, any conditions of this policy, and will at all times satisfy the requirements of the insurance company transacting the policy."
4. "The coverage provided by this certificate is primary."
5. "Nothing in this certificate of coverage will be construed to affect the State of New Mexico or owner, agents, servants and employees defenses, immunities or limitations of liability under the New Mexico Tort Claims Act."

11.1.5 Minimum Required Coverages:
11.1.5.1 Worker's Compensation Insurance shall be provided as required by applicable State law for all employees engaged at the site of the Project under this Contract, including Subcontractor employees. In case any class of employee engaged in work on the Project under this Contract is not protected under the Worker's Compensation Statute, the Contractor shall provide, and cause each Subcontractor to provide Employer's Liability Insurance in an amount not less than five hundred thousand ($500,000). Failure to comply with the conditions of this Subparagraph 11.1.5.1 will subject this Contract to termination.

11.1.5.2 Public Liability Insurance shall not be less than the liability amounts set forth in the New Mexico Tort Claims Act, §41-4-1 et seq. NMSA 1978, as it now exists or may be amended.

11.1.5.3 Comprehensive Vehicle Liability Insurance, for both owned and non-owned vehicles, shall be one million dollars ($1,000,000) per occurrence combined single limit for both personal injury and property damage.

11.2 Owner's Liability Insurance
11.2.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

11.3 Project Management Protective Liability Insurance
11.3.1 Optionally, the Owner may provide Project Management Protective Liability Insurance, otherwise known as Project Insurance, as primary coverage for the Owner's, Contractor's and Design Professional's vicarious liability for construction operations under the Contract. The minimum limits of liability purchased with such coverage shall be equal to the limits required for Contractor's Liability Insurance under Clauses 11.1.1.2 through 11.1.1.5.

11.3.2 To the extent damages are covered by Project Management Protective Liability insurance, the Owner, Contractor and Design Professional waive all rights against each other for damages, except such rights as they may have to the proceeds of such insurance. The policy shall provide for such waivers of subrogation by endorsement or otherwise.

11.4 Property Insurance
11.4.1 Unless Builder's Risk coverage is furnished by the Owner as indicated in Paragraph 7.2 of the Agreement between the Owner and the Contractor, the Contractor shall provide insurance which will protect the interests of the Contractor and Subcontractors in the Work. Such property insurance shall
be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until Final Payment has been made as provided in Paragraph 9.11 or until no person or entity other than the Owner has an insurable interest in the property required by this Paragraph 11.4 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, and Subcontractors in the Project.

11.4.1.2 This property insurance may not cover portions of the Work stored off the site or any portions of the Work in transit. Insurance covering Work or materials stored off site shall be in accordance with sub-paragraph 9.3.2.

11.4.1.3 Partial occupancy or use in accordance with Paragraph 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

11.4.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain Equipment Breakdown Coverage if required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner, this insurance shall include interests of the Owner, Contractor and Subcontractors in the Work.

11.4.3 Loss of Use Insurance. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

11.4.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Modification / Change Request Change Order.

11.4.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site, by property insurance under policies separate from those insuring through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive rights in accordance with the terms of Subparagraph 11.4.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

11.4.6 Before an exposure to loss may occur, the Contractor may review any Owner provided insurance required by this Paragraph 11.4. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least thirty (30) days prior written notice has been given to the Contractor.

11.4.7 Waivers of Subrogation. The Owner and Contractor waive all rights against each other and any of their subcontractors, agents and employees, for damages caused by fire or other causes of loss.
to the extent covered by property insurance obtained pursuant to this Paragraph 11.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner. The Owner or Contractor, as appropriate, shall require of the Design Professional, Design Professional's consultants, separate contractors described in Article 6, if any, and the subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity that would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. The provisions of this paragraph shall not include claims with respect to damages to non-work buildings or properties

11.4.7.1 The provisions of Paragraph 11.4.7 shall not be effective as to a person or entity whose acts or failures to act cause the harm and rise to a level beyond mere negligence.

11.4.8 A loss insured under Owner's property insurance shall be adjusted by the Owner and made payable to the Owner for the insured's, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Subparagraph 11.4.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity.

11.4.9 The Owner shall distribute in accordance with such agreement as the parties in interest may agree, or in accordance with an arbitration award in which case the procedure shall be as provided in Paragraph 4.6. If after such loss, no other special agreement is made, and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

11.4.10 The Owner shall have power to adjust and settle a loss with insurers.

11.5 PERFORMANCE BOND AND PAYMENT BOND

11.5.1 If the contract price exceeds $25,000, the Contractor shall furnish Labor, Material and Performance surety bonds covering faithful performance of the Contract in amounts not less than 100 percent of the Contract amount, exclusive of GRT, unless Owner or the Contract Documents require a lesser percentage, for payment of obligations arising there under. These Labor, Material and Performance bonds shall be delivered to the Owner within seven (7) days of the Notice of Award or evidence satisfactory to the Owner that such bonds are forthcoming. Said bonds must comply with the requirements of §13-4-18, NMSA 1978. If the amount of the Sum of the Work is increased, the amounts of the bonds shall be increased accordingly.

11.5.1.1 A Subcontractor shall provide a performance and payment bond on a public works building project if the subcontractor’s contract (to the Contractor) for work to be performed on a project is one hundred and twenty-five thousand dollars ($125,000) or more. Failure of a Subcontractor to provide required bond shall not subject the Owner to any increase in cost due to any substitution of an approved Subcontractor.
11.5.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK

12.1.1 If a portion of the Work is covered contrary to the Design Professional's or Owner's request or to requirements specifically expressed in the Contract Documents, it must be uncovered for the Design Professional's and Owner's examination and be replaced at the Contractor's expense without change in the Contract Time.

12.1.2 If a portion of the Work has been covered, which the Design Professional has not specifically requested to examine prior to its being covered, the Design Professional may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Modification in accordance with Article 7, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

12.2 CORRECTION OF WORK

12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

12.2.1.1 The Contractor shall promptly correct Work rejected by the Owner or Design Professional or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such defective Work, including additional testing and inspections and compensation for the Design Professional's services and expenses made necessary thereby, shall be at the Contractor's expense.

12.2.2 AFTER SUBSTANTIAL COMPLETION

12.2.2.1 In addition to the Contractor's obligations under Paragraph 3.5, if within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Subparagraph 9.8.6, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one year period for correction of the Work, if the Owner fails to notify the Contractor and gives the Contractor an opportunity to make the correction, the Owner waives the rights to require the correction by Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within reasonable time during that period after receipt of notice from the Owner or Design Professional, the Owner may correct it in accordance with Paragraph 2.4.
12.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work and in accordance with all other requirements of Subparagraph 9.8.6.

12.2.3 The one-year period for correction of Work shall be extended by corrective Work performed by the Contractor pursuant to this Paragraph 12.2 and Sub-paragraph 9.8.6.

12.2.3 The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

12.2.5 Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents or law. Establishment of the one-year period for correction of Work as described in Subparagraph 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

12.2.6 Eleven (11) months after Substantial Completion, the Design Professional shall coordinate, with the Owner and the Contractor, an 11-Month Correction Period Inspection of all portions of the Work. Any Work found defective or needing adjustment or other correction in order to function and operate in accordance with the indications of the Contract Documents shall be promptly completed by the Contractor within twenty (20) days, or as otherwise agreed between the parties. The Owner may make such corrections or adjustments in accordance with Paragraph 2.4.

12.3 ACCEPTANCE OF NONCONFORMING WORK

12.3.1 If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

13.1 LAW

13.1.1 The Contract shall be governed by the laws of the State of New Mexico and parties agree that the State of New Mexico District Court of the County, where the Project is located, shall have
exclusive jurisdiction to resolve all Claims, issues and disputes not otherwise resolved in accordance with the Contract Documents.

13.1.2 The Owner's total liability to Contractor or any other entity claiming by, through, or under Contractor for any Claim, cost, loss, expense or damage caused in part by the fault of the Owner and in part by the fault of the contractor or any other entity or individual shall not exceed the percentage share that Owner's fault bears to the total fault of Owner, Contractor and all other entities and individuals as determined on the basis of comparative fault principles.

13.1.3 All Work shall be completed in accordance with and shall be inspected within requirements of the Construction Industries Licensing Act, Chapter 60, Article 13 NMSA 1978.

13.2 SUCCESSORS AND ASSIGNS
13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, that party shall nevertheless remain legally responsible for all obligations under the Contract.

13.2.2 The Owner may, without consent of the Contractor, assign the Contract to an institutional lender providing construction financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

13.2.3 The Contractor shall not assign the Contract or proceeds hereof without written consent of the Owner. If contractor attempts to make such an assignment without such consent, it shall be void and confer no rights to third parties; the Contractor shall nevertheless remain legally responsible for all obligations under the Contract. Any consent of the Owner to such assignment shall be written and include "it is agreed that the funds to be paid to the assignee under this assignment are subject to performance by the Contractor and to claims for services rendered or materials supplied for the performance and of the Work and other obligations of the Contract Documents in favor of any entity rendering such services or providing such materials".

13.3 WRITTEN NOTICE
13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by Registered or Certified Mail, Federal Express, or similar service with proof of delivery to the last business address known to the party giving notice.

13.4 RIGHTS AND REMEDIES
13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available there under, shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

13.4.2 No action or failure to act by the Owner, Design Professional or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act
constitute approval or acquiescence in a breach there under, except as may be specifically agreed in writing.

13.4.3 Contractor shall carry out the Work without delay in accordance with the Contract Documents during any and all disputes or disagreements, unless otherwise agreed to by the Owner in writing.

13.5 TEST AND INSPECTIONS

13.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided by Subparagraph 2.2.4 or elsewhere in the Contract Documents, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, provided by the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals unless otherwise provided in the Contract Documents. The Contractor shall give the Owner and Design Professional timely notice of when and where tests and inspections and approvals are to be made so that the Design Professional may be present for such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

13.5.2 If the Design Professional, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph 13.5.1, the Design Professional will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Design Professional of when and where tests and inspections are to be made so that the Design Professional may be present for such procedures. Such costs, except as provided in Subparagraph 13.5.3, shall be at the Owner's expense.

13.5.3 If such procedures for testing, inspection, or approval under Subparagraphs 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Design Professional's services and expenses shall be at the Contractor's expense.

13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Design Professional and to the Owner.

13.5.5 If the Design Professional is to observe tests, inspections or approvals required by the Contract Documents, the Design Professional will do so promptly and, where practicable, at the normal place of testing.

13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

13.6 INTEREST
13.6.1 Payments due and unpaid undisputed amounts, under the Contract Documents, shall bear interest from the date payment is due in accordance with State statute regulating prompt payment.

13.7 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

13.7.1 As between the Owner and Contractor:

1. before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;

2. between Substantial Completion and Final Certificate for Payment. As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certificate for Payment; and

3. after Final Certificate for Payment. As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act of failure to act by the Contractor pursuant to any Warranty provided under Subparagraph 9.8.6, Paragraph 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

13.8 EMPLOYMENT

13.8.1 Equal Employment Opportunity

13.8.1.1 The Contractor agrees not to discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or other in accordance with U.S. Executive Order 11246, as amended, and NM Executive Order 85-15. The Contractor and Subcontractors agree to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of nondiscrimination, and shall in all solicitation or advertisement for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin.

13.8.1.2 If the Contract constitutes a federally assisted construction contract within the meaning of 41 CFR 60-1.3 (1987), then the equal opportunity clause of 41 CFR 60-1.4(b) is incorporated herein by reference.

13.8.2 Wage Rates

13.8.2.1 For Contracts in excess of $60,000, minimum wages will be paid as determined by the Department of Workforce Solutions in accordance with §50-4-20 to 50-4-30 NMSA 1978, entitled "Minimum Wage Act". The Contractor and Subcontractors shall deliver or mail copies of the certified weekly payrolls, prepared in accordance with regulations, to the Labor Commission and to the Design Professional.

13.8.2.2 The scale of wages to be paid will be posted by the Contractor in a prominent and easily accessible place on the job site.

13.8.3 Apprentices
13.8.3.1 Except as otherwise required by law, the number of apprentices in each trade or occupation employed by the Contractor and Subcontractors, material suppliers and equipment suppliers shall not exceed the number permitted by the applicable standards of the United States Department of Labor, or, New Mexico Construction Industries Division.

13.8.4 On-the-Job Relations with Contractor

13.8.4.1 The Contractor shall at all times have competent superintendent(s) or foremen on the job in immediate charge of the Work who shall receive communications from Design Professional or Owner in the prosecution of the Work, in accordance with the Contract Documents. Any person executing the Work, who in the opinion of the Design Professional or the Owner, appears to be incompetent or act in a disorderly or intemperate manner or violating provisions of the Contract Documents, shall upon written request, be immediately removed from the Project and not again be employed on any part of the Work. Failure to comply with this Subparagraph 13.8.4.1, shall upon the Owner's decision, be cause to immediately stop the Work in accordance with Paragraph 14.2.

13.8.5 Employee Background Checks

13.8.5.1 The Contractor shall be responsible for complying with the provisions of §22-10.3.3.B NMSA 1978, regarding employees' having unsupervised access to students. In the event that §22-10.3.3.B NMSA 1978 applies, and upon prior approval by the Owner, reasonable costs for background checks shall be reimbursed without mark-up or fee.

13.9 Records

13.9.1 In the even of a dispute between Owner and Contractor, the Owner shall have right to discovery and access to and the right to examine any accounting or other records of the Contractor involving transactions and Work related to this Contract for three (3) years after Final Payment or after final resolution of any disputes, whichever is later. The conditions of this paragraph apply equally to Subcontractors and suppliers.

Article 14 TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 Termination by the Contractor

14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of thirty (30) consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or any other persons or entities performing portions of the Work under the contract with the Contractor, for any of the following reasons:

1. issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;

2. an act of government, such as a declaration or national emergency which requires all Work to be stopped;

3. because the Design Professional has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Subparagraph 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
4. the owner has failed to furnish to the Contractor promptly, upon the Contractor's written request, reasonable evidence as required by Subparagraph 2.2.1.

14.1.2 The Contractor may terminate the Contract if, through no act or no fault of the Contractor or a Subcontractor or their agents or employees or any other persons or entities performing portions of the Work under contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Paragraph 14.3 constitute in the aggregate more than one hundred percent (100%) of the total number of days scheduled for completion, or one hundred twenty (120) days in any 365-day period, whichever is less.

14.1.3 If one of the reasons described in Subparagraph 14.1.1 or 14.1.2 exists, the Contractor may, upon seven (7) days written notice to the Owner and Design Professional, terminate the Contract and recover from the Owner payment for Work executed, including overhead and profit in accordance with Article 7 for Work performed, and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery excluding, overhead and profit.

14.1.4 If the Work is stopped for a period of sixty (60) consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portion of the Work under contract with the Contractor because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven (7) additional days written notice to the Owner and the Design Professional, terminate the Contract and recover from the Owner as provided in Subparagraph 14.1.3.

14.2 TERMINATION BY THE OWNER FOR CAUSE
14.2.1 The Owner may terminate the Contract if the Contractor:
   1. refutes or fails to supply enough properly skilled workers or proper materials;
   2. fails to make payment to Subcontractors for material or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
   3. disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
   4. disregards the authority of the Owner or Design Professional;
   5. fails after commencement of the Work to proceed day-to-day continuously with the construction and completion of the Work for more than ten (10) days, except as permitted under the Contract Documents;
   6. fails to maintain owner approved schedule or owner approved recovery schedule; and,
   7. otherwise is guilty of substantial breach of a provision of the Contract Documents.

14.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety notice, as required by the surety bonds, if any, seven (7) days written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:
   1. take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
   2. accept assignment of subcontracts pursuant to Paragraph 5.4; and
3. finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

14.2.3 When the Owner terminates the Contract for one of the reasons stated in Subparagraph 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Design Professional's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owners as the case may be, shall be certified by the Design Professional, upon application, and this obligation for payment shall survive termination of the Contract.

14.2.5 In carrying out the Owner's right to complete the Work in accordance with Paragraph 14.2, the Owner shall have the right to exercise the Owner's sole discretion as to the manner, methods and reasonableness of costs of completing the Work.

14.3 SUSPENSION BY THE OWNER BY CONVENIENCE

14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Subparagraph 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

1. that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
2. that an equitable adjustment is made or denied under another provision of the Contract.

14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:

1. cease operation as directed by the Owner in the notice;
2. take action necessary, or that the Owner may direct, for the protection and the preservation of the Work; and
3. except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Subcontracts and Purchase Orders.

14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work completed.
SUPPLEMENTARY CONDITIONS

MODIFICATION TO GENERAL CONDITIONS
1.0 None (add any modifications to the General Conditions here):

ADDITIONAL CONDITIONS
2.0 Stated Allowances
2.1 The Contractor shall include the cash allowances listed in Section 00 4113 or Section 00 4166 – BID FORM in his Bid.
2.2 The Contractor shall purchase the "Allowed Materials" as directed by the Owner through the Architect/Engineer on the basis of the lowest and best bid of at least three competitive bids. Unless specified by the Construction Documents otherwise, if the actual price for purchasing the "Allowed Materials" is more or less than the "Cash Allowance," the Contract Price shall be adjusted accordingly (see Subparagraph 3.8.4). The adjustment in Contract Price shall be made on the basis of the purchase price without additional charges for overhead, profit, insurance, or any other incidental expenses. The total cost of installation of the "Allowed Materials" shall be included in the Base Bid or Alternates as appropriate.

*****Delete the following paragraphs if this Project is not designed to qualify for ENERGY STAR.*****

3.0 ENERGY STAR®
3.1 This Project is designed to achieve an EPA ENERGY STAR rating of 75 or higher. The Design Professional has filed a Statement of Energy Design Intent, generated from Target Finder, with the U.S. EPA. The Contractor shall cooperate with the Design Professional and Owner in matters related to verifying the energy performance of the completed Project.
INSTRUCTIONS:
The State Minimum Wage Rate Determination and related documents issued for this specific project shall be inserted on this page.

NOTE: Not required if project is less than $60,000 (effective June 17, 2005)

Insert Wage Rate Determination here
PUBLIC WORKS PROJECT REQUIREMENTS

As a participant in a Public Works project valued at more than $60,000 in the State of New Mexico, the following list addresses many of the responsibilities that are assigned by statute to each project stakeholder.

Contracting Agency
- Ensure that all contractors wishing to bid on a Public Works project valued at more than $60,000 are registered with the Labor Relations Division, Labor Enforcement Fund (LEF) prior to bidding.
- Provide completed Notice of Award (NOA) to Labor Relations Division within 3 (Three) days of this project being awarded.

General Contractor
- Provide to Labor Relations Division within 3 (Three) days a complete sub-contractor list and Statements of Intent (SOI) to pay Prevailing Wages.
- Ensure that all sub-contractors wishing to bid on a Public Works project valued at more than $60,000 are registered with the Labor Relations Division prior to bidding.
- Submit weekly certified payrolls to the owner/contracting agency.
- NM Apprenticeship and Training Fund payments are to be paid to either an approved Apprenticeship program or to the Labor Relations Division.
- The Wage Rate poster must be displayed at the job site in an easily accessible place.
- When a project has been completed, Affidavits of Wages Paid (AWP) need to be sent to the Labor Relations Division.

Sub-Contractor
- Ensure that all sub-contractors wishing to bid on a Public Works project valued at more than $60,000 are registered with the Labor Relations Division prior to bidding.
- Submit weekly certified payrolls to the General Contractors.
- NM Apprenticeship and Training Fund payments must be paid to either an approved Apprenticeship program or the Labor Relations Division.
Additional Information

Reference material and forms for these requirements are available through the following New Mexico Workforce Solutions Web Link.

www.dws.state.nm.us/new/Labor_Relations/publicworks.html.

Additional Information

Additional information, requirements, and documents on these topics can be found through the Public Works web pages.

- Labor Enforcement Fund (LEF)
- Weekly Certified Payroll
- Public Works Apprenticeship and Training Fund (PWAT)
- Forms: Statement of Intent (SOI), Affidavit of Wages Paid (AWP)
- Prevailing Wage Rates (Base Rates, Fringe, and Apprenticeship Contributions)

CONTACT INFORMATION

Contact us for any questions relating to Public Works Projects.

Kim Kew at kim.kew@state.nm.us or 505-841-4405
Patricia Barela particia.barlea@state.nm.us or 505-841-4409
Otis Caddy LynnO.Caddy@state.nm.us 505-841-4406
NOTICE TO ALL PUBLIC WORKS CONTRACTORS
PERTINENT INFORMATION IN ACCORDANCE WITH THE NM PUBLIC WORKS MINIMUM WAGE ACT

The Public Works Bureau insures compliance of the Public Works Minimum Wage Act (13-4-11 through 13-4-17, NMSA 78). This office issues prevailing wage rates for each project for inclusion in the bid documents. After a project contract is signed, the Notification of Award (NOA) and Subcontractor List must be completed and sent to the Public Works Bureau by the Contracting Agency or its agent. The Statement of Intent to Pay Prevailing Wages must be completed by the contractors performing work on the project and sent through the General Contractor to the Public Works Bureau. A Statement of Intent to Pay Prevailing Wages is required from each construction contractor before they start work on a state or locally funded construction project costing a total of $50,000 or more. Every contractor (general, sub, second tier, etc.) must pay those rates through weekly payment and payroll.

Wage rates include a base rate and a fringe rate of pay. In many cases, an additional cost to the contractor is an apprenticeship contribution rate per hour for both journeyman and apprentices. A monthly apprenticeship contribution compliance form and check for payment (when applicable) is required and should be sent to NMDWS, Public Works Bureau, PO Box 27428, Albuquerque, NM 87125-7428. After a contractor completes work on a project, but before his final payment, an Affidavit of Wages Paid must be completed and sent to the Public Works Bureau — through the General Contractor.

Each employee must receive the full base and fringe rate per hour for all hours worked in their job classification, regardless of the qualifications or license held. The only exception is for workers with a current certification in approved apprenticeship programs. The apprentice must also receive the full benefit of the fringe rate. Fringe benefits may also be paid into approved health benefit programs, pension programs, life insurance programs, company holiday and vacation programs and/or training programs that are not apprenticeship programs (i.e.: an OSHA 10 safety program). If fringe benefits are paid to a third-party account, the employee must have quarterly statements provided to them. The third way of paying fringe benefits, is to pay as a combination of cash and into approved programs. This office will sometimes ask for complete breakdowns of all payment to insure total compliance.

The minimum wage, or greater, as shown on individual wage decisions must be paid. “In addition, the contractor, subcontractor employer or any person acting as a contractor shall be liable to any affected employee for liquidated damages in the sum of one hundred dollars ($100.00) for each calendar day on which a contractor, subcontractor, employer or any person acting as a contractor has willfully required or permitted an individual laborer or mechanic to work in violation of the provisions of the Public Works Minimum Wage Act” (13-4-14.C, NMSA 78). When questions arise about the requirements of the Act or the Public Works Minimum Wage Act Policy Manual they must be resolved as soon as possible. If you have questions, please call (505) 841-4405.

"AN EQUAL OPPORTUNITY EMPLOYER"
CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to NMSA 1978, § 13-1-191.1 (2006), any person seeking to enter into a contract with any state agency or local public body for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources must file this form with that state agency of local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred fifty dollars ($250) over the two year period.

Furthermore, the state agency or local public body shall void an executed contract or cancel a solicitation or proposed award for a proposed contract if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

“Applicable public official” means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

“Campaign Contribution” means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect, or expend contributions on that official’s behalf for the purpose of electing the official to either statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

“Family Member” means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

“Pendency of the procurement process” means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

“Person” means any corporation, partnership, individual, joint venture, association or any other private legal entity.

“Prospective contractor” means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract.
“Representative of a prospective contractor” means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: __________________________________________

Relation to Prospective Contractor: __________________________________________

Name of Applicable Public Official: __________________________________________

Date Contribution(s) Made: __________________________________________

Amount(s) of Contribution(s): __________________________________________

Nature of Contribution(s): __________________________________________

Purpose of Contribution(s): __________________________________________

(Attach extra pages if necessary)

Signature __________________________________________ Date

Title (position) __________________________________________

—OR—

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS ($250) WERE MADE to an applicable public official by me, a family member or representative.

Signature __________________________________________ Date

Title (position) __________________________________________