



ALBUQUERQUE PUBLIC SCHOOLS

REQUEST FOR PROPOSALS FOR CONSTRUCTION

RFP NUMBER: 20-032 RRR

APS ECA CEC Modernization, Renovation and Addition

APS PROJECT NO. 507

NIGP Code: 90927; 90928; 909

CAPITAL OPERATIONS
FACILITIES, DESIGN & CONSTRUCTION
&
THE PROCUREMENT DEPARTMENT

6400 UPTOWN BLVD. NE, SUITE 500E
ALBUQUERQUE, NM 87110

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I. OVERVIEW OF RFP & PROJECT

A. PURPOSE OF THIS REQUEST FOR PROPOSALS

Albuquerque Public Schools (APS) is requesting competitive sealed proposals with the intent of entering into a contract with a general contractor for the purpose of providing the construction services for the project identified in this Request for Proposals (RFP). Any contract awarded as a result of this solicitation will be in effect from date of award until the completion of the project.

All potential Offerors are to read, understand and accept the requirements of this RFP, especially the **mandatory requirements**, shall visit the site of work, shall fully inform themselves as to all existing conditions and limitations, and shall include in the proposal the cost of all items required by the RFP. If the contractor observes that portions of the Contract Documents are at variance with applicable laws, building codes, rules, regulations, or contain obvious erroneous or uncoordinated information, the contractor shall promptly notify the appropriate contact listed herein and the necessary changes shall be accomplished by addendum.

This is a qualifications-based selection with cost as a consideration. The Offeror is required to provide, as part of the Technical Proposal, the qualifications and other documents requested in this RFP. The Price Proposal will be evaluated separately from the Technical Proposal.

The award of a contract for construction shall take into consideration certain contractor qualifications and performance factors that add value to a procurement contract. Factors such as contractor's past performance, technical expertise and experience, management capabilities and resources, subcontractor teams and craft personnel resources will form a basis for the criteria to be considered, in addition to the lump sum price to perform the scope of work. Award shall be made in accordance with the terms, conditions, and requirements stated herein.

B. BACKGROUND – ALBUQUERQUE PUBLIC SCHOOLS

APS is the nation's 28th largest school district covering a 1,200 square mile geographical area that encompasses all of the Albuquerque metro area in Bernalillo County and one location in Sandoval County, New Mexico. An elected board governs the district. APS maintains the largest collection of public buildings in the state with approximately 14 million square feet of traditional school buildings, portable classrooms, and administrative offices. The district strives to keep pace with Albuquerque's growth. The approximately 90,000 APS students plus 5,000 charter school students and 13,000 employees require a continuous building program that includes remodeling or refurbishing projects, new additions, and new schools.

C. PROJECT DESCRIPTION

The project is described as: **APS ECA CEC Modernization, Renovation and Addition is a complete renovation of the 1975 portion of the building, including mechanical upgrades, LED lighting, finishes, and ADA upgrades. Reconfiguration of spaces for the Secure Main Entry, Administration area, Cosmetology, Café, and various Shared Office Spaces. Complete reroof of the remaining exposed portion of the 1975 roof. A 13,860 SF second-floor addition. Minor site work is needed for footings, utilities, egress and mechanical yard extension.**

D. PROJECT FUNDING

APS has funds to administer this project and will be referred to throughout the contract documents as the "Owner".

E. PROJECT MANAGEMENT SOFTWARE

The successful Offeror shall purchase, at the Offeror's expense, one or more seat licenses for APS's Project Management Software, as needed for the General Contractor. Subcontractors are not required to purchase licenses. APS will provide training on the use of the project management software. Further, the successful Offeror is required to work with the APS Staff Architect and the Design Professional to ensure that all project communication, correspondence, submittals, change orders, pay requests, etc. are submitted, maintained, and managed through APS's web-based Project Management Software.

The current project management software APS utilizes is e-Builder.

F. NEW MEXICO PREVAILING WAGE RATES

All work covered by this RFP shall be in accordance with applicable state laws and, if price proposal amount is \$60,000 or greater, is subject to the minimum wage rate determination issued by the office of the NM Workforce Solutions Department and included in the project manual. This determination will become part of the contract by reference and must be posted, per State of New Mexico statutes, in a conspicuous place at the General Contractor's place of business. It is the General Contractor's responsibility to be aware of the applicable State of New Mexico statutes and responsibilities related thereto. Failure by the Owner to physically make such minimum wage rate determinations available to the General Contractor will not relieve the General Contractor from becoming aware of or complying with such determinations.

G. PERMITS, PLAN CHECKING FEES, OTHER CHARGES

Offerors shall include as part of the Price Proposal all costs incurred for permits relating to this scope of work, including any Plan Checking Fees as charged by the City of Albuquerque (or any other applicable entity or agency with jurisdiction over the project) for checking Contract Documents prior to obtaining a building permit. Additionally, the Owner will not pay for business licenses, professional affiliations, and similar costs of doing business which are the Offeror's obligation to secure and maintain. The cost of all bonding are to be included in the Offeror's price proposal.

H. APS BEHAVIORAL POLICIES APPLY TO CONTRACTOR'S PERSONNEL

All current behavioral policies of the APS Board of Education such as, but not limited to, "no smoking" and "no alcoholic beverages" on APS property, shall be deemed to be in force for the Contractor's work forces when they are on APS property, including the project work site.

II. CONDITIONS GOVERNING THE PROCUREMENT

This section lists the major events of the Selection Process and specifies general requirements.

A. SEQUENCE OF SELECTION PROCESS EVENTS

	Event	Responsible Party	Date	Location
1.	Publish RFP	APS Procurement & Design Professional	January 24 th , 2021	Public Advertisement; Web Advertisement; Academy Reprographics
2.	Mandatory Pre-Proposal Conference	FD&C, Design Professional, APS Procurement	February 10th, 2021 at 10:00am MST	Virtual pre-proposal via public link https://unm.zoom.us/j/91735594353 Meeting ID: 917 3559 4353
3.	Submission of Requests for Prior Approval of Product Substitutions	Potential Offerors	February 12 th , 2021, 5:00pm MST	Sent to Design Professional
4.	Submission of Written Questions	Potential Offerors	February 16 th , 2021, 5:00 pm MST	Sent to Design Professional or APS Procurement
5.	Release of Last Addendum	FD&C, Design Professional, APS Procurement	February 19 th , 2021, end of business day	Web Advertisement; Academy Reprographics
6.	Submission of Price Proposal – Volume I	Offerors	February 23rd, 2021 at 3:00pm MST	APS Procurement 6400 Uptown Blvd. NE Suite 500E Albuquerque, NM 87110
7.	Submission of Technical Proposal – Volume II	Offerors	February 24th, 2021 at 3:00pm MST	APS Procurement 6400 Uptown Blvd. NE Suite 500E Albuquerque, NM 87110
8.	Proposal Evaluation	APS Procurement, Evaluation Committee	TBD	TBD
9.	Professional Courtesy Letter	APS Procurement	TBD	APS
10.	Contract Negotiations	FD&C, APS Procurement	TBD	APS
11.	APS Board Approval	FD&C, APS Procurement	TBD	APS Board Meeting
12.	Notice of Award	FD&C, APS Procurement	TBD	APS

NOTICE: APS reserves the sole right, without incurring any liability, to change any aspect of the proposed procurement described above, including the right not to proceed with the procurement and/or the right to proceed in a different manner or on a different timeline than as described above.

B. EXPLANATION OF SELECTION PROCESS EVENTS

1. ISSUE RFP & CONSTRUCTION DOCUMENTS MADE AVAILABLE TO POTENTIAL OFFERORS

This RFP is issued by APS in accordance with the provisions of Sections 13-1-111 and 13-1-117 NMSA 1978.

The RFP documents consist of all the documents listed in the Table of Contents and all documents incorporated in this RFP by reference, including the complete Project Manual, Technical Specifications, and Construction Drawings.

Proposal Documents (RFP, construction drawings, specifications, etc.) may be obtained at Academy Reprographics upon payment of **\$200.00** for each complete set. CHECKS SHOULD BE MADE PAYABLE TO ALBUQUERQUE PUBLIC SCHOOLS. Incomplete sets will not be issued. A compact disc containing the RFP documents only is available for a fee of ten dollars (\$10) at Academy Reprographics. The successful Offeror will receive a refund of his deposit, and any unsuccessful Offeror who returns the Proposal Documents in good and complete condition within fifteen (15) days of the Proposal Opening will also receive a refund of this deposit. No deposits will be returned after the fifteen-day period.

RFP & Construction Documents may be reviewed at the following locations:

Design Professional of Record: **Cherry See Reames Architects, PC**
220 Gold Avenue SW
Albuquerque, NM 87102
Telephone: (505)-842-1278

1. Dodge Reports, Telephone: (505) 565-2440
2. Construction Reporter, 1609 2nd St. NW, Albuquerque, NM 87102, Telephone: (505) 243-9793
3. Academy Reprographics, website: www.academyplans.com, Telephone: (505) 821-6666

2. MANDATORY PRE-PROPOSAL CONFERENCE

Attendance at the virtual pre-proposal meeting is mandatory. The pre-proposal meeting will be conducted virtually at 10:00am MST on Wednesday, February 10th, 2021 via ZOOM.

Join Zoom Meeting: <https://unm.zoom.us/j/91735594353>

Meeting ID: 917 3559 4353

All prime contractors who intend to submit a proposal for this project, must attend this meeting. Potential Offerors must sign in the Chat Box with their Name, Company Name and email address. The meeting will be recorded and the list of potential Offerors will be included in the first Addendum.

Potential Offerors may make arrangements for a tour/walk-through of the project use. A sign-up procedure and schedule will be discussed at the pre-proposal meeting.

This meeting provides potential Offerors an opportunity to request clarification about the procurement process and discuss the intent of the project with FD&C and the user. A representative from each interested prime contractor is required to attend. Subcontractors and suppliers are invited to attend this meeting but it is not mandatory for them.

THE PRIME CONTRACTOR'S ABSENCE FROM THE MANDATORY PRE-PROPOSAL MEETING PRECLUDES PARTICIPATIONS AS AN OFFEROR ON THIS PROJECT.

During the meeting a presentation will be made to describe the overall scope of work and intended schedule. This meeting will NOT include a tour of the project site and existing facilities, but potential Offerors may sign up for a tour/walk-through. Details to be provided at pre-proposal meeting. In addition to attending the pre-proposal meeting, Prospective Offerors shall visit the site and understand the local conditions and restrictions under which the work will be performed.

To arrange for access to the project site, contact the APS Staff Architect/Engineer:

APS Facilities Design & Construction
Denise Hammer, APS Staff Architect
Phone: O: 505-842-3707, C: 505-975-6248
Email: denise.hammer@aps.edu

3. SUBMISSION REQUESTS FOR PRIOR APPROVAL OF PRODUCT SUBSTITUTIONS
Requests for prior approval of product substitutions shall follow the requirements of Project Manual Section 01 6300-1 Product Substitution Procedures, including submitting the Prior Approval Substitution Request Form 01 6310-1. The deadline for requests is set at least 10 calendar days prior to the Proposal Submission date to allow the Design Professional to evaluate the request and respond in an addendum.
4. SUBMISSION OF WRITTEN QUESTIONS
This deadline for the submission of written questions is set at least 7 calendar days prior to the Proposal Submission to allow the APS Procurement Contact and the Design Professional to respond in an addendum.

All questions, both those regarding the selection process and those regarding technical construction issues, shall be submitted in writing to the Design Professional, who will route them to the APS Procurement Contact or APS FD&C as required. Responses to all questions will be incorporated into an addendum issued subsequently by the Design Professional.

Design Professional:

**Project Architect: Tina Reames, FAIA,
Cherry/See/Reames Architects, PC
220 Gold Avenue SW, Albuquerque, NM 87102
Project Manager: Steve Mora, Associate Architect
Telephone: 505-842-1278
Email: smora@cherryseereames.com**

APS Procurement Contact:

**Robert Rodarte, CPPO, CPPB
APS City Center, Office of Procurement
6400 Uptown Blvd. NE, Suite 500E,
Albuquerque, NM 87110
Telephone: 505-878-6125
E-mail: robert.rodarte@aps.edu**

5. LAST ADDENDUM PRIOR TO SUBMISSION OF PROPOSALS
This is the deadline by which the Design Professional must issue all addenda for the project so that Offerors have time to finalize their proposals, and is set at least 4 calendar days prior to the

Proposal Submission. The only exception to this deadline is the issuance of an addendum that postpones the date for the Submission of Proposals.

By this deadline, the Design Professional (in consultation with APS Procurement and FD&C) shall have responded by addendum to all properly submitted Request for Prior Approval of Product Substitutions and all properly submitted written questions.

All addenda shall become part of the RFP and any information required shall be included in each Offeror's proposal.

6. SUBMISSION OF PRICE PROPOSALS, AND
7. SUBMISSION OF TECHNICAL PROPOSALS

Receipts of Proposals:

Each proposal will consist of Volume I – Price Proposal (one original) and Volume II – Technical Proposal (one original plus five copies). These two volumes shall be submitted in two separate sealed envelopes or packages. Clearly label each envelope or package with the RFP number, volume number & name, Offeror's name, address, and date of submittal.

Deliver Proposals to:

**Albuquerque Public Schools
Procurement Department
6400 Uptown Blvd. NE
Suite 500E
Albuquerque, NM 87110**

For US Postal Service:

**Albuquerque Public Schools
Procurement Department
P.O. Box 25704
Albuquerque, NM 87125-0704**

APS Procurement will time stamp proposals upon arrival at the Procurement Office and hold them until the evaluation. A public log will be kept of the names and submittal times of all proposals. **Proposals delivered after the deadline will be deemed non-responsive.** It is solely the Offeror's responsibility to ensure the proposals arrive at the appointed date, time, and location. Proposals may be delivered early to avoid any possible delay of the submissions.

Proposals may be hand carried/delivered or shipped/mailed by common carrier, courier of the US Postal Service. **No other method of delivery will be allowed (i.e., telephone, telegraphic, facsimile, e-mail, etc.). This project will NOT be participating electronically on the vendor registry. This submittal option is closed.**

8. PROPOSAL EVALUATION

The Evaluation Committee will meet and review all proposals.

9. PROFESSIONAL COURTESY LETTER

APS may send a Courtesy Letter to all Offerors stating which Offeror is being recommended to the Board of Education.

10. CONTRACT NEGOTIATIONS

The Owner reserves the right to enter into negotiations with apparent successful Offeror per 13-1-115 NMSA 1978.

11. APS BOARD APPROVAL

The successful Offeror shall be recommended to the Board of Education for their approval.

12. NOTICE OF AWARD

APS may send a Notice of Award to the selected Offeror.

C. STANDARD CONDITIONS GOVERNING THE PROCUREMENT

This section contains guidelines under which this RFP is issued, and conditions concerning how the project will be completed.

The Owner may evaluate the Proposals based on the anticipated completion of all or any portion of the project. The Owner reserves the right to divide the project into multiple parts, to reject any and all proposals and re-solicit for new proposals, or to reject any and all proposals and temporarily or permanently abandon the project, should the need arise. The Owner makes no representations, written or oral, that it will enter into any form of agreement with any Contractor.

1. PROTESTS

In accordance with Section 13-1-172 NMSA 1978, any Offeror who is aggrieved in connection with a solicitation or the award of a contract may protest to the Procurement Director. The protest must be submitted in writing within fifteen (15) calendar days after knowledge of the facts or occurrences that give rise to the protest. Protests must be submitted in written form to:

Rennette Apodaca, MPA, CPPO
Executive Director – Procurement
6400 Uptown Blvd. NE, Suite 500E
P.O. Box 25704
Albuquerque, NM 87125

The protest letter shall include the name and address of the protestant, the solicitation number, and a statement of the grounds for protest, including appropriate supporting exhibits.

2. INCURRING COST

Any cost incurred by the Offeror in preparation, transmittal, or presentation of any proposal or material in response to this RFP shall be borne solely by the Offeror.

3. THIRD-PARTY OR SUBCONTRACTING GC CONTRACT RESPONSIBILITIES

Direction of all work that may result from this procurement must be performed by the Offeror and payments will only be made to the Offeror. Use of consultants identified in the proposal is permitted, but since the award is made of a quality-based evaluation process, reassignment of GC duties and responsibilities to a third party is not acceptable.

4. AMENDMENTS OR MODIFICATIONS TO A PROPOSAL BY OFFEROR

An Offeror may submit an amended proposal prior to the deadline for receipt of proposals. Such an amended proposal must be a complete replacement for a previously submitted proposal and must be clearly identified as such in the transmittal letter. Owner personnel will not collate or assemble proposal materials for the Offeror.

5. OFFEROR'S RIGHTS TO WITHDRAW PROPOSAL

No Offeror may withdraw their proposal for **45 days** after the actual date of the receipt thereof (Proposal Due Date).

6. DISCLOSURE OF PROPOSAL CONTENTS

Proposal contents will be kept confidential until conclusion of successful contract negotiations. At that time, all proposals will be open to the public, except for the material which has clearly been noted and determined by the APS Procurement Department to be proprietary or confidential as noted by the Offeror.

7. CONFIDENTIAL DATA

Confidential data is normally restricted to confidential financial information concerning the Offeror's organization and data that qualifies as trade secret under the Uniform Trade Secrets Act, 57-3A-7 NMSA 1978. Any pages of a proposal on which the Offeror has stamped or imprinted "proprietary" or "confidential" must be readily separable from the proposal in order to facilitate public inspection for the non-confidential portion of the qualifications-based proposal.

8. TERMINATION OF RFP

This RFP may be canceled at any time and any and all proposals may be rejected in whole or in part when the Owner determines such action to be in the best interest of APS. The RFP process may be terminated at any time if sufficient appropriations or authorizations do not exist. Such termination will be effected by sending written notice to the Offeror. APS's decision as to whether sufficient appropriations and authorizations are available will be accepted by the Offeror as final.

9. SUFFICIENT APPROPRIATION

Any contract awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations do not exist. Such termination will be effected by sending written notice to the contractor. The Owner's decision as to whether sufficient appropriations and authorizations are available will be accepted by the contractor as final.

If the determination is made that there is insufficient funding to continue or finalize a project, the successful Offeror will be compensated to the level of effort performed, as authorized by the Owner prior to that determination.

10. OFFEROR QUALIFICATIONS

The Evaluation Committee may consider any relevant information or data, from any reliable source (references) relating to the RFP evaluation factors and the Offeror's ability to successfully perform the project. Such information may be obtained from the Offeror's prior customers, commercial and public databases, or other reliable sources. The Offeror shall furnish to the Owner all such information and data for this purpose as the Owner may request including but not limited to: proof of financial resources, production or service facilities, personnel and experience adequate to complete the project, etc. The Owner reserves the right to reject any Proposal if the evidence submitted by, or investigation of, such Offeror fails to satisfy the Owner that such Offeror is qualified to carry out the obligations of the Contract and to complete the work described therein.

The Evaluation Committee may reject the proposal of any Offeror who is not a responsible Offeror or fails to submit a responsive offer as defined in 13-1-83 and 13-1-85 NMSA 1978.

11. RIGHT TO WAIVE TECHNICAL IRREGULARITIES

APS reserves the right to waive technical irregularities, (see “Technical Irregularities” in the Definitions and Terminology section below). APS also reserves the right to waive mandatory requirements provided that all of the otherwise responsive proposals failed to meet the same mandatory requirements and the failure to do so does not otherwise materially affect the procurement.

12. POTENTIAL CIVIL AND CRIMINAL PENALTIES

The Procurement Code, 13-1-28 through 13-1-199 NMSA 1978, imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks.

13. RELEASE OF INFORMATION

Only the Owner and the Design Professional when acting as the Owner’s representative, are authorized to release information about the project(s) covered by this RFP. The Offeror must refer to the Owner any requests to release any information that pertains to the work or activities covered by any action or award related to this RFP.

14. CLARIFICATIONS FROM OFFERORS

The Evaluation Committee, after review of the proposals and/or interviews may request clarifications on information submitted by any and all Offerors in a written format, with a specified deadline for response.

15. LICENSING REQUIREMENTS

The Contractor and subcontractors shall comply with all licensing laws and regulations. The Contractor shall, as part of the proposal, provide copies of all the Contractor’s valid licenses necessary to perform the work in the State of New Mexico. Copies of the subcontractors’ licenses need by provided only if requested by the Owner.

16. SUBCONTRACTORS

The Subcontractors Fair Practices Act applies to this procurement. Therefore, any request for substitution on the part of the Owner or the Offeror shall comply with this section.

Since the award is made on a qualification-based evaluation process, replacement of subcontractors after award and prior to contract execution may cause the Offeror to be disqualified.

17. OBJECTION TO PRE-LISTED SUBCONTRACTORS

Prior to the award of the Contract, the Design Professional will notify the Offeror, in writing, if either the Owner or the Design Professional, after due investigation, has reasonable and substantial objection to any person or organization on such list, and refuses in writing to accept such person or organization, the Offer may, at their option, (1) withdraw their proposal, or (2) submit an acceptable substitute subcontractor with no increase in the proposal price. In the event of withdrawal under this paragraph, Bid Security will not be forfeited, notwithstanding anything to the contrary elsewhere in this RFP.

18. NON-CONFORMING PROPOSALS

Proposals will be reviewed, for completeness, format, and compliance with the requirements of the RFP. Incomplete proposals will be considered non-responsive and subject to rejection.

Proposals that are qualified with conditional clauses, alterations, items not called for in the RFP documents, or irregularities of any kind are subject to rejection by the Owner, at its option.

If any proposal is deemed non-responsive by the Evaluation Committee, the Offeror will be notified in writing of such determination.

D. DEFINITIONS AND TERMINOLOGY

This section contains definitions that are used throughout this RFP, including appropriate abbreviations.

“Albuquerque Public Schools”: Board of Education, Albuquerque Municipal School District Number 12, Bernalillo and Sandoval Counties, New Mexico (Also called **“APS”**).

“Architect”: shall mean a member of the project team who is a New Mexico licensed architect and is responsible for the architectural services.

“Award of Contract”: shall mean a formal written notice by APS that a firm has been selected to enter into negotiations for a contract for construction services.

“Construction Contractor”: shall mean the successful Offeror awarded the contract that holds a current State of New Mexico general contractor license designation of GB-98

“Contract”: shall mean an agreement between APS and a New Mexico licensed contractor for the work covered by this RFP.

“Contract Documents”: shall mean any one or combination of the following documents: RFP, Addenda, Agreement Between the Owner and the General Contractor for Construction, General Conditions of the Contract for Construction, and the drawings and specifications.

“Design Professional”: shall mean an architect or engineer

“Determination”: shall mean the written documentation of a decision made the APS Procurement Department including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.

“Engineer”: shall mean a member of the project design team who is a New Mexico licensed engineer and is responsible for the engineering services.

“Evaluation Committee”: shall mean a body constituted to evaluation proposals and make a selection recommendation.

“Facilities, Design & Construction”: shall mean a department of APS requesting proposals for the work covered by this RFP. (Also called **“FD&C”**)

“Firm”: shall mean the company or other business entity referenced for the purpose of identifying, individually or collectively, a general contractor, a prime contractor, or a subcontractor of any tier, whether basic trade subcontractor, subcontractor, or other.

“General Provisions”: shall mean the terms **“can”**, **“may”**, **“should”**, **“preferable”**, or **“prefers”** identifies a desirable or discretionary item of the RFP. Failure to comply with such an item will not result in the rejection of the Offeror’s proposal.

“LEED®” (Leadership in Energy and Environmental Design): shall mean the Green Building Rating System™ that is a voluntary, consensus-based national standard for developing high-performance, sustainable buildings, created and administered by the U.S. Green Building Council.

“Mandatory Requirements”: shall mean the terms **“must”, “shall”, “will”, “is required”, or “are required”** identify a mandatory requirement of this RFP. Failure to comply with such a mandatory factor may result in the rejection of the Offeror’s proposal. Rejection of the proposal will be subject to review by the APS Procurement Department and a final decision on rejection will be made by the APS Procurement Director.

“Offeror”: shall mean any person, corporation, or partnership who chooses to submit a proposal in response to this RFP, with the intent of providing construction services for this project.

“Owner”: shall mean APS

“Owner’s Project Team”: shall mean FD&C and others in the APS District, FD&C Construction Staff Architect, Construction Manager, representatives of the school or district facility, and the Design Professional’s design team.

“Pre-Listed Subcontractors”: shall mean subcontractors, of any tier, that the Offeror is required to list, at the time they submit their proposal in response to this RFP.

“Prime Contractor”: shall mean the New Mexico licensed contractor selected for this project.

“Project Design Team or Contract Architect or Engineer Design Team”: shall mean all members of the Design Professional’s firm, including its consultants who are responsible for the design of and who will be participating in the construction and completion of the project.

“Proposal”: shall mean the Offeror’s response to this RFP.

“Request for Proposals”: shall mean this document, any attachments incorporated by reference, and any addenda issued for use in soliciting proposals for construction of this project. (Also called **“RFP”**)

“Resident Business” or “Resident Contractor” or “Veteran Resident Contractor”: shall mean an entity that has applied for and received a valid resident preference certificate issued by the New Mexico Taxation and Revenue department pursuant to 13-1-21 or 13-1-22 NMSA 1978.

“RFP Documents”: shall mean any on or any combination of the following documents: RFP, technical proposal, price proposal, financial proposal, contractor’s qualifications statement, and subcontractor’s qualifications statement, contracts or agreements.

“Responsive Offer” or “Responsive Proposal”: shall mean an offer or proposal which conforms in all material respects to the requirements set forth in the RFP as determined by the APS Procurement Department. Material respects of an RFP include, but are not limited to, quality, quantity or delivery requirements.

“Responsible Offeror”: shall mean an Offeror who submits a responsive proposal 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 described in the proposal.

“Staff Architect” or “Construction Manager”: shall mean the person designated as the point of contact by FD&C to act on its behalf, concerning the scope of work and requirements of the contract documents for the project.

“Statement of Qualifications Forms”: shall mean the forms included as part of this RFP, which all Offerors shall complete, including the qualifications for the team member or partners and subcontractor proposed for the project.

“Technical Irregularities”: shall mean matters of form rather than of substance evident from the proposal document, or insignificant mistakes that can be waived or corrected without prejudice to other Offerors; that is, when there is no effect on price, quality, or quantity. APS Procurement may waive such irregularities, or allow an Offeror to correct them, if either is in the best interest of APS. Examples include the failure of an Offeror to:

- a) Submit the number of signed proposals required by the RFP
- b) Sign the proposal, but only if the unsigned proposal is accompanied by other material indicating the Offeror’s intent to be bound; or
- c) Acknowledge receipt of an addendum to the RFP, but only if:
 - a. It is clear from the proposal that the Offeror received the addendum and intended to be bound by its terms; or
 - b. The addendum involved had no effect on price, quality or quantity.

“User”: shall mean the school or district staff occupying the facility for which a project is being designed.

“User Contact”: shall mean the person designated by the district to speak on behalf of the staff concerning the scope of work and programming requirements for the project.

III. CONTRACTUAL AGREEMENT AND BONDS

1. FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR

The agreement for the work shall be the most current version of the APS Standard Form of Agreement between the Owner and Contractor and the most current version of the General Conditions with the basis of payment as a stipulated sum. The most current version of all aforementioned documents are printed in their entirety in the Project Manual and is also available on the APS FD&C website at <http://www.apsfacilities.org/facilities> under "Contracts".

2. COMPLETION TIME AND LIQUIDATED DAMAGES

The Project Proposal Documents contain a time for completion of the work and impose liquidated damages for failure to complete the work within the stated time period. These items are stated in Appendix D, Proposal for Lump Sum Contract.

3. TIME OF DELIVERY AND FORM OF BONDS

- a) The Offeror will, prior to award of contract/commencement of work, furnish 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. The amount of the Bonds shall be the proposal price exclusive of gross receipts tax.
- b) Refer to Document #00 6000-1 – Bonds and Insurance, included in the Project Manual.
- c) The bonds will be written on the AIA Document A312, Performance Bond and Labor and Materials Payment Bond.
- d) The AIA A312 1984 Labor and Materials Payment Bond shall be in effect, limit the time line Surety has to respond. Bond shall be modified as follows:

Paragraph 6 of this Payment Bond is deleted in its entirety and replaced with the following provision: Within 45 days (1) after the claimant has satisfied the conditions of Paragraph 4 and (2) after the Surety has received at its home office all supporting documentation it requested to substantiate the amount of the claim, the Surety shall pay or arrange for payment of any undisputed amounts. Failure of the Surety to satisfy the above requirements shall not be deemed a forfeiture or waiver of the Surety's or the Contractor's defenses under this Bond or their right to dispute such claim. However, in such event the claimant may bring suit against the surety as provided under this bond.

4. SUBCONTRACTOR BONDING

Each subcontractor shall provide a performance and payment bond on a public works construction 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.

IV. PROPOSAL RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF PROPOSALS

Each Offeror's proposal shall be submitted in two parts:

Volume I – Price Proposal

Volume II – Technical Proposal

Each volume has its own deadline for submission. Volume I on one day, and Volume II on the following day. Of course, the Offeror may choose to meet these deadlines by submitting both volumes at the same time by the deadline for Volume I. Only one (1) complete original proposal may be submitted by each Offeror for this project.

B. SUBMISSION OF PRICE PROPOSAL – VOLUME I

By the date and time of the Submission of Price Proposals, the Offeror shall submit one (1) original copy and one (1) digital copy on a flash drive (flash drive will be allowed to be delivered with Volume II) each of the following documents:

Original Price Proposal, sealed in a separate envelope, to include:

___ Item 1 **Price Proposal Form**

1. Price Proposals shall be presented in the form of a total Base Bid under a Lump Sum Contract (using the Price Proposal Form provided in the Project Manual) plus any additive or deductive alternates selected by the Owner per Allowances (Section 01 2100) and Alternates (Section 01 2300). A proposal must be submitted on all proposal items, allowances and alternates; segregated or partial proposals will not be accepted.
2. The proposal, bearing original signatures, must be typed or hand-written in ink on the Price Proposal Form.
3. Proposal price shall not include 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 the Owner.
4. If a joint proposal is being submitted, be sure to state the percentage of the work/services to be executed by each proposing firm, based on the dollar amount of the fee proposed in the Price Proposal, so that the resident contractor preference or veteran resident contractor preference can be applied in proportion to the value of the work being performed by each contractor.

___ Item 2 **Proposal Security (Bond or Cash), Agent's Affidavit**

Proposal security 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 price proposal, or the equivalent in cash by means of a cashier's check, or in a form satisfactory to the Owner must accompany the Offeror's price proposal.

___ Item 3 **Notarized Declaration Letter from Surety**

The Offeror will provide, with the price proposal, a notarized declaration letter from a bonding company licensed to do business in the State of New Mexico confirming the Offeror's ability to obtain a Performance Bond, and a Labor and Materials Payment Bond in an amount not less than 100% of the Price Proposal.

___ Item 4 **Certificate of Insurance**

Offeror shall provide a Certificate of Insurance that meets the requirements listed in Project Manual Section 00 6000 Bond and Insurance.

___ Item 5 **Subcontractors Listing Forms (including (1) Subcontractor Listing Requirements and Assignment of Antitrust Claims Form & (2) Form 00 4334)**

This RFP includes two Subcontractor Listing Forms, each with its own value threshold and separate meaning.

Subcontractor Listing Form 1:

The “Combined List of Subcontractors and Assignment of Anti-Trust Claims” is included as Appendix C and must be completed and included in both the Price Proposal & the Technical Proposal. The Offeror shall provide a list of all subcontractors that will perform work on the project above the threshold indicated on the List of Subcontractors. The Offeror and their subcontractors and suppliers, at the time the Agreement between the Owner and Contractor is signed, shall complete the Assignment of Antitrust Claims Form.

Subcontractor Listing Form 2:

The “Listing Form 00 4334 for Submission of Subcontractor Qualifications Questionnaires” is included as Appendix I and must be completed and included in both the Price Proposal & the Technical Proposal. For each subcontractor that meets one or both of the following criteria: (NOTE: Only the Form 00 4334 should be included in both proposals, the Statement of Subcontractor Qualifications and necessary attachments only need to be included in the Technical Proposal.)

1. Where the value of the subcontract is fifty thousand dollars (\$50,000) or five percent (5%) of the estimate, whichever is greater.
2. The subcontractor performing the trades listed below, regardless of the value of the subcontract (If the Offeror is to self-perform the work, then the Offeror is to complete the forms.):
 - Trade 1- HVAC
 - Trade 2- Electrical
 - Trade 3- Plumbing
 - Trade 4- Polished Concrete

NOTE: For both Subcontractor Listings, the Offeror may not change any of the firms listed without the Owner’s consent. The Owner will consider any request for a change in the listed firms in conformance with the New Mexico “Subcontractors Fair Practices Act” (13-4-31 through 13-4-43 NMSA 1978).

___ **Item 6 Resident Contractor (or Veteran Resident Contractor) Preference Certificate**

It will be the sole responsibility of any Potential Offeror claiming a Resident Contractor Preference or Veterans Resident Contractor Preference to apply to the State of New Mexico Taxation & Revenue Department for the proper certification and to receive approval, a certification number, and a certificate prior to the date and time for receipt of proposals. Requests for qualifications as a Resident Contractor or a Veteran Resident Contractor after receipt of proposals will not be considered.

1. To receive a resident business preference, a business or contractor shall submit with its bid or proposal a copy of a valid resident business certificate or valid resident contractor certificate issued by the NM Taxation & Revenue Department. When a public body awards a contract using a formal RFP process, a resident contractor shall be awarded the equivalent of five percent of the total possible points to be awarded based on the resident contractor possessing a valid resident contractor certificate.
2. To receive a veteran resident contractor preference, a contractor shall submit with its bid or proposal a copy of a valid veteran resident contractor certificate issued by the NM Taxation & Revenue Department. Through either an RFP process or an ITB process, the qualified veteran resident contractor shall receive 10% preference if their annual revenues are less than \$3,000,000. The preference is limited in any calendar year to an aggregate of \$10,000,000 in purchases by public bodies from all resident veteran businesses receiving preferences. In addition to the veteran resident preference certificate, the veteran resident contractor shall provide any additional documentation required to validate the percentage of preference to be awarded.
3. The preferences do not apply when the expenditure includes federal funds for a specific purchase.
4. If there is a joint bid or joint proposal by a combination of resident veteran, resident, or nonresident businesses, the preference shall be calculated in proportion to the percentage of the contract, based on the dollar amount of the goods or services provided under the contract, that will be performed by each business as specified in the joint bid or proposal.

___ **Item 7 Campaign Contribution Disclosure Form**

The blank form is included in an Appendix of this RFP. This form must be filed by a prospective contractor whether or not they, their family member, or their representative has made any contributions subject to disclosure.

___ **Item 8 Conflict of Interest and Debarment/Suspension Certification Form**

Each Offeror shall complete this form (which is provided in the Appendix of this RFP) and include it in their proposal.

___ **Item 9 Contractor's State of New Mexico W-9 Form**

Each Offeror shall complete and provide a State of New Mexico W-9 Form.

___ **Item 10 Offeror's Contractor's License(s)**

Each Offeror shall provide a photocopy of their Contractor's License(s).

C. SUBMISSION OF TECHNICAL PROPOSALS – VOLUME II

Proposals shall be submitted in a spiral or three-ring binder. Page format shall be 8-1/2” x 11” with foldout sheets (if any) allowed up to 11” x 17” in size. Foldout pages shall be counted as two pages **and shall be numbered as such**. Text size will be no small than 10 point. **No information shall be submitted on electronic media that is not also printed as part of the technical proposal.**

Proposals shall not exceed 30 pages total for all of the tabbed sections listed below. Each sheet face that is printed with text or graphics counts as one page. Tab Dividers do not count as pages provided the only text or graphics on the dividers are the tab numbers and section titles:

Tab 1 – Letter of Submittal

Tab 4 – Past Performance

Tab 5 – Project Staffing

Tab 6 – Management Plan

Tab 7 – Health and Safety

Tab 8 – New Mexico Produced Work

Any response that exceed the referenced page limitation shall be considered non-responsive and will not be considered for evaluation. If there are any questions regarding format requirements, please contact the APS Procurement Contact prior to submission of documents.

All sections shall be separated by numbered tabs that correspond to the Submission Requirements and Evaluation Categories, 1 through 8, as shown below. Within Tab 3, provide sub-tabs to separate and label each Subcontractor’s Statement of Qualifications. Pages within each tab shall be numbered consecutively.

By the date and time of Submission of Technical Proposals, Offeror shall submit one (1) original, plus six (6) photocopies, and one (1) digital copy on a flash drive each of the following documents:

___ Tab 1 **Letter of Submittal**

Each proposal must be accompanied by a submittal letter. **Any submittal letter that omits any of the following information may be deemed non-responsive.** The submittal letter shall include acknowledgement and, where appropriate, certification of the following:

1. Identify the name(s), title(s), telephone number(s), fax number(s), and e-mail address(es) of the person(s) who have authority to contractually obligate the Offeror for the purposes of this RFP and who has sufficient knowledge to fully address all matters and respond to all inquiries included in the RFP submittal. The Letter of Submittal shall be signed by one of the persons so identified.
2. If a joint proposal is being submitted, identify the firms, and disclose the percentage of the work/services to be executed by each firm, based on the dollar amount of the fee proposed in the Price Proposal, so that the resident contractor preference or veteran resident contractor preference can be applied in proportion to the work done by each contractor.
3. Acknowledge acceptance of all conditions that govern this procurement. Acknowledge that the information provided in the proposal is truthful, accurate, complete, and that the firm is bound by all information, data, certifications, disclosures, and attachments submitted.
4. Acknowledge that the omission of any material fact concerning requested information, or the submission of any material false or misleading statement, or misrepresentation of a material fact concerning any requested or submitted information, may lead to the disqualification of the proposal as non-responsive.
5. Acknowledge that the Owner has a right to obtain relevant information from other sources (references) to determine that the Offeror is “responsible”.
6. Acknowledge that if awarded the contract, the RFP documents, and all terms and conditions stated therein, and all information, data, certifications, disclosures, and addendum shall be incorporated as part of the contract.
7. Acknowledge the receipt of all addenda to this RFP and list them by number.
8. Provide certification and/or documentation that the firm possesses the necessary equipment, financial resources, technical resources, management, professional and craft personnel resources and other required capabilities to successfully perform the contract, or will achieve same through its prelisted subcontractors.

___ Tab 2 **General Contractor Statement of Qualifications and Attachments**

Completely fill out the attached General Contractor Statement of Qualifications form and its associated attachments, providing all required information.

NOTE: Offeror should submit only one (1) copy of Attachment F – Firm’s Written Safety Plan, bound separately from the rest of the Technical Proposal.

- ___ Tab 3 **Subcontractors Listing Forms (including (1) Subcontractor Listing Requirements and Assignment of Antitrust Claims Form & (2) Form 00 4334) & Subcontractor Statement of Qualifications**
See Section IV. Proposal Response Format, B. Submission of Price Proposal, Item 5. A duplicate of those forms should be provided here in the Technical Proposal.

Additionally, completely fill out the Subcontractor Statement of Qualifications form (See Appendix for form) and its associate attachments, providing all requested information for each subcontractor that is listed on Form 00 4334.

___ Tab 4 **Past Performance**

Provide the following information:

- a. Past performance summary and past capability to meet schedules, meet budgets and meet project administration requirements for comparable projects.
Specifically, in the last five (5) projects you have completed for APS (or similar organizations), please answer the following:
 1. Was the project completed early? If yes, how was that accomplished?
 2. Was the project completed late? If yes, how many days and why?
 3. How many days after Substantial Completion were required to complete the punch list items?
 4. Were you or your subcontractors called back to the job for any reason during the warranty period? After the warranty period?
 5. Were there any outstanding issues remaining after the warranty inspection?
 6. Did your firm refuse to do any additional work requested by the owner? If yes, why?
 7. What was your company's process for vetting the pricing from your subcontractors and suppliers on change orders in order to ensure fair pricing to the owner?
 8. What was the dollar threshold below which your firm absorbed additional cost changes in order to avoid disproportionate administrative costs for all parties? Give examples of the changes on this project for which your firm absorbed the costs.
- b. Describe the role of each teaming partner on the contract.
- c. Evidence of past performance quality and overall customer satisfaction
- d. Record of compliance with applicable laws and regulations on past projects.
- e. Past record of achievement of health and safety targets.
- f. Firm's experience in delivering LEED-rated or equivalent green/sustainable buildings.

Offerors are cautioned that the Evaluation Committee will use data provided by teaming partners as well as data obtained from other sources (such as references) in the evaluation of past performance.

___ Tab 5 **Project Staffing**

Provide the following:

- a. Brief resume (to include: education, professional certification(s), years with firm, total years of experience, and a brief description of experience supporting the proposed role) for each key project personnel.
- b. Address the extent to which key personnel have worked together as a team on projects of similar or greater magnitude and on projects of the same nature. To this end, provide a matrix that lists key staff members' names across the top of the matrix and lists past projects down the side of the matrix. The project list should begin with all of the projects that appear in item 3a. Of the General Contractor's Statement of Qualifications. The project list may also include up to five (5) additional projects that demonstrate how the key personnel have worked together as a team. At each intersection within the field of the matrix, list the role that the person filled on that particular project (such as Project Manager, Site Superintendent, Safety Manager, QA/QC Manager, Estimator, etc.)
- c. Describe Contractor's and subcontractors' participation in skill training.
- d. Address reliable staffing sources/project staffing.

___ Tab 6 **Management Plan**

Provide the following:

- a. Management Team: provide an organizational chart of the Management Team and address how critical subcontractors were selected and will be managed.
- b. Describe how the construction will be organized, managed, and administered to meet the project requirements, including security and safety controls, staging areas, delivery routes, crane locations, and interfaces required at the site with the using agency.
- c. Describe the technical approach to the project that is intended to ensure that tasks are executed within cost, schedule, and quality goals.
- d. Address protocol to support optimization of sustainability principles and achievement of LEED certification.
- e. Provide proposed project schedule. Indicate critical dates and other information in sufficient detail for the Evaluation Committee to determine if time frames are reasonable.
- f. Describe the firm's ability to deliver the project within the construction time.

___ Tab 7 **Health and Safety**

Provide the following information:

- a. Provide a summary description of the General Contractor's Health and Safety management system. (One copy of the full General Contractor's written safety plan is required as Attachment F of the General Contractors Statement of Qualifications.)
- b. Identify the competent person responsible for, and capable of, implementing the safety and health program/plan.
- c. Address project specific health and safety risks that have been identified by the RFP and additional risks that the Offeror's team has identified. Describe processes to minimize risk and to ensure that health and safety issues are clearly communicated with the contractors, subcontractors, and the owner.

___ Tab 8 **New Mexico Produced Work**

One of APS's goals is to support New Mexico owned businesses and New Mexico based workers. Indicate the volume of work, by percentage, to be produced by New Mexico firms using New Mexico based employees on this project. Indicate the number of New Mexico based employees that will be part of the Project Team.

IMPORTANT NOTE ON THE TECHNICAL PROPOSAL'S CONTENTS

Regarding the apparent duplication of required information between certain Attachments of the General Contractor's Statement of Qualifications and the other sections of the Technical Proposal:

The intention of Tabs 4, 5, 6, 7, & 8 of the Technical Proposal is to provide a place for the proposer to make a concise presentation of the strength of the proposed team in the exact categories that the committee will be scoring, unencumbered by the format of the Statement of Qualifications Forms. If the proposer so chooses, other sections of the Technical Proposal may be referenced within these tabs without wholly duplicating that information. Also, information presented elsewhere may be summarized or condensed within these tab sections to make the proposer's presentation more clear.

V. PROPOSAL EVALUATION

A. EVALUATION CRITERIA

The rubric to be used by the Evaluation Committee for each criteria are as follows:

Volume 2 – Technical Proposal

Past Performance.....	17 points
Project Staffing.....	13 points
Management Plan.....	15 points
Health & Safety.....	12 points

Detailed Scoring Guidelines for “Health & Safety”:

a.1 Summary Description of Health & Safety Plan.....	0.6
a.2 One full copy of Written Safety Plan.....	0.6
b. Competent Person Responsible/Capable of Implementing.....	0.6
c.1 Project Specific Health/Safety Risks.....	2.4
c.2 Describe Processes to Clearly Communicate Issues.....	0.6

Statement of Qualifications for General Contractors

a. Copy of Written Safety Program Compliant.....	1.2
b. List of Key Safety Personnel/Safety Manage.....	0.6
c. Experience Modification Rate for Past 5 Years.....	1.2
d. Recordable Incident Rate (Calendar Yr.) OSHA 300 Log.....	1.2
e. Free from Committing Violations of Laws.....	1.2

Statement of Qualifications for Subcontractors

a. Copy of Written Safety Program Compliant.....	0.6
b. Experience Modification Rate Past 5 Years.....	0.48
c. Recordable Incident Rate (Calendar Yr.) OSHA 300 Log.....	0.48
d. Free from Committing Violations of Laws.....	0.24

Total Possible Points.....12.0

NM Produced Work.....	3 points
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Detailed Scoring Guidelines for “NM Produced Work”:

Based on the submitted Subcontractor Listing Form.

If all listed subcontractors are NM Firms.....	3 pts
If all accept one of the listed subcontractors are NM Firms.....	2 pts
If all accept two of the listed subcontractors are NM Firms.....	1 pts
If all accept three (or more) of the listed subs are NM Firms.....	0 pts

Subtotal.....60 points

Volume 1 – Price Proposal

Price Proposal.....	40 points
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TOTAL.....100 points

Interviews (if held).....	50 points
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TOTAL.....150 points

APS intends to award this project to the Offeror whose proposal receives the highest number of points. APS reserves the right to reject any and all proposals, to waive technical irregularities, and to award the contract to the Offeror whose proposal APS deems to be in the best interest of APS.

COMPLIANCE

(REQUIRED LEGAL FORMS)

All of the following forms must be signed and submitted with your proposal or your bid may be rejected.

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 or 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 and 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 federal, 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) _____

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)

Offeror Business Name



**CONFLICT OF INTEREST, NON-COLLUSION AND
DEBARMENT/SUSPENSION CERTIFICATION FORM**
CONFLICT OF INTEREST

As utilized herein, the term "Vendor" shall mean that entity submitting a proposal to Albuquerque Public Schools in response to the above referenced bids/request for proposals.

The authorized Person, Firm and/or Corporation states that to the best of his/her belief and knowledge: No employee or board member of Albuquerque Public Schools (or close relative), with the exception of the person(s) identified below, has a direct or indirect financial interest in the Vendor or in the proposed transaction. Vendor neither employs, nor is negotiating to employ, any Albuquerque Public Schools employee, board member or close relative, with the exception of the person(s) identified below. Vendor did not participate, directly or indirectly, in the preparation of specifications upon which the quote or offer is made. If the Vendor is a New Mexico State Legislator or if a New Mexico State Legislator holds a controlling interest in Vendor, please identify the legislator:

_____ List below the name(s) of any Albuquerque Public Schools employee, board member or close relative who now or within the preceding 12 months (1) works for the Vendor; (2) has an ownership interest in the Vendor (other than as an owner of less than 1% of Vendor's stock, if Vendor is a publicly traded corporation); (3) is a partner, officer, director, trustee or consultant to the Vendor; (4) has received grant, travel, honoraria or other similar support from Vendor; or (5) has a right to receive royalties from the vendor.

CERTIFICATION OF NON-COLLUSION STATEMENT

Vendor certifies under penalty of perjury that its response to this procurement solicitation is in all respects bona fide, fair, and made without collusion or fraud with any person, joint venture, partnership, corporation or other business or legal entity. Does vendor agree? **YES Initials of Authorized Representative of vendor**

DEBARMENT/SUSPENSION STATUS

The Vendor certifies that it is not suspended, debarred or ineligible from entering into contracts with the Federal Government, or any State agency or local public body, or in receipt of a notice or proposed debarment from any Federal or State agency or local public body. The vendor agrees to provide immediate notice to Albuquerque Public School's Purchasing Department in the event of being suspended, debarred or declared ineligible by any department or agency of the Federal government, or any agency of local public body of the State of New Mexico, or upon receipt of a notice of proposed debarment that is received after the submission of the quote or offer but prior to the award of the purchase order or contract.

CERTIFICATION

The undersigned hereby certifies that he/she has read the above CONFLICT OF INTEREST, NON-COLLUSION and DEBARMENT/SUSPENSION Status requirements and that he/she understands and will comply with these requirements. The undersigned further certifies that they have the authority to certify compliance for the vendor named **and that the information contained in this document is true and accurate to the best of their knowledge.**

Signature: _____ Date _____

Name of Person Signing (typed or printed): _____

Title: _____

Email: _____

Name of Company (typed or printed): _____

INITIA

SIGN
HERE

**ALBUQUERQUE PUBLIC SCHOOLS
TERMS AND CONDITIONS**

STATEMENT OF CONFIDENTIALITY

The undersigned employee of/Subcontractor to _____, hereinafter referred to as "Offeror" and/or "Contractor", agrees, during the RFP process, and during the term of the Contract between Contractor and the Albuquerque Public Schools (APS) and forever thereafter, to keep confidential all information and material provided by APS or otherwise acquired by the Employee/Subcontractor, excepting only such information as is already known to the public, and including any such information and material relating to Attachments of this RFP, and relating to any client, vendor, or other party transacting business with APS, and not to release, use or disclose the same except with the prior written permission of APS. This obligation shall survive the termination or cancellation of the Contract between Contractor and APS or of the undersigned's employment or affiliation with Contractor, even if occasioned by Contractor's breach or wrongful termination.

The undersigned recognizes that the disclosure of information may give rise to irreparable injury to APS, a client or customer of APS, or to the owner of such information, inadequately compensable in damages and that, accordingly, APS or such other party may seek and obtain injunctive relief against the breach or threatened breach of the within undertakings, in addition to any other legal remedies which may be available. The undersigned acknowledges that he or she may be personally subject to civil and/or criminal proceedings for such breach or threatened breach.



Signature

Title

Offeror Business Name

Date

PROPOSAL SUBMITTAL REQUIREMENTS AND CHECKLIST

Please submit your completed proposal, including the following items.

* Note that the requested information is mandatory and **failure to submit these items with your response may deem it non-responsive and may be disqualified.**

- Letter of Transmittal **SIGNED**
- Evaluation Criteria Documentation
- Price Proposal Form
- Contractor License
- Required Volume I
- Required Volume II
- Bid Bond-**
- Surety letter
- Certificate of Insurance
- Subcontractor Listing
- Completed Conflict of Interest and Debarment/Suspension Form, **SIGNED**
- Campaign Contributions Disclosure Form, **SIGNED**
- Statement of Confidentiality, **SIGNED**
- Resident Contractor (or Veteran Resident Contractor) Preference Certificate – if applicable

Obtain more information:

<http://tax.newmexico.gov/Businesses/in-state-veteran-preference-certification.aspx> and

<https://www.generalservices.state.nm.us/statepurchasing/vendorpreferencelist.aspx>

- Addendums (if applicable) – **before** submitting your proposal, please check for addendums here:
<http://www.aps.edu/procurement/current-bids-and-rfps>

Albuquerque Public Schools
REQUEST FOR PROPOSAL FOR CONSTRUCTION # 20-032 RRR

For the convenience of the contractors, an electronic version of this RFP may be issued for your use. Any changes to the document's questions or language that differs from the wording as issued in the Project Manual dated 01/2021 other than to fill in answers for the questions asked, will constitute a nonresponsive proposal.

STATEMENT OF QUALIFICATIONS FOR GENERAL CONTRACTORS

Project Name:

ECA @ CEC MODERNIZATION, RENOVATION AND ADDITION

1. OFFEROR INFORMATION

Name: _____

Address: _____

Principal Office: _____

Corporation Partnership Sole Proprietorship Joint Venture

Other _____

a. How many years has your organization been in business as a Contractor? _____

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

c. Under what other or former names has your organization operated?

2. LICENSING

a. Name of license holder (or qualifying party) exactly as on file with the State of New Mexico Construction Industries Division:

b. License Classification: _____

c. License Number: _____

d. Issue Date: _____ Expiration Date: _____

- e. Is the firm’s contractor’s license free of ever being suspended or revoked by the CID or by the appropriate licensing agency in any other state?

Yes - free of suspension or revocation No – Attached explanation

- f. Does your firm hold all applicable Business licenses required by State of New Mexico?

License Number: _____ Jurisdiction: _____

Fill in name of license holder, exactly as it appears on file with jurisdictional authorities:

(Name)

Issue Date: _____ Expiration Date: _____

License Number: _____ Jurisdiction: _____

Fill in name of license holder, exactly as it appears on file with jurisdictional authorities:

(Name)

Issue Date: _____ Expiration Date: _____

License Number: _____ Jurisdiction: _____

Fill in name of license holder, exactly as it appears on file with jurisdictional authorities:

(Name)

Issue Date: _____ Expiration Date: _____

- g. Is your firm free from formal debarment from public works, federal, state or local public works jurisdictions?

Yes No (Attach explanation)

3. EXPERIENCE

- a. Has your firm completed one (1) or more educational facility reroof project(s) of similar complexity totaling **50,000 square feet or more since 2013**, as the proposed project? Complete **Attachment A** for five (5) maximum projects listed:

Yes Number of Projects: _____ No

Project 1 Name: _____

Project 2 Name: _____

Project 3 Name: _____

Project 4 Name: _____

Project 5 Name: _____

- b. State the average annual amount of construction work performed during the past five years:

\$ _____

- c. Also, on **Attachment A**, list major construction project your organization has in progress, giving the name of the project, owner, architect, contract amount, percent of completion, and scheduled completion date.
- d. List the categories of work that your organization normally performs with its own forces.

4. KEY PERSONNEL EXPERIENCE

Please note that more consideration will be given to those meeting or exceeding the required qualifications below:

- a. Does your assigned Project Manager have the following minimum qualifications and experience? (Attach Resume at **Attachment B**)
- (1) At least ten (10) years' experience in the construction industry?
- Yes Number of Years: _____ No
- (2) Experience on at least one (1) construction type as identified in 3. EXPERIENCE item a
- Yes Number of Projects _____ No
- (3) Experience as a Project Manager on one (1) or more construction projects totaling **30,000 square feet or more?**
- Yes Number of Projects _____ No
- b. Does your assigned Project Foreman/Superintendent have the following minimum qualifications and experience? (Attach Resume at **Attachment B**)
- (1) At least ten (10) years' experience in the construction industry?
- Yes Number of Years: _____ No
- (2) Experience on at least one (1) construction type as identified in 3a.?
- Yes Number of Projects _____ No
- (3) Experience as a Project Foreman/Superintendent on one (1) or more construction projects totaling **30,000 square feet or more?**
- Yes Number of Projects _____ No
- c. Does your Safety Program Manager have the following minimum qualifications and experience? (Attach Resume to **Attachment B**)
- (1) At least five (5) years' experience in a safety management role?
- Yes Number of Years: _____ No

(2) Experience on at least one (1) construction type as identified in 3a.?

() Yes Number of Projects _____ () No

d. Does your Quality Assurance/Quality Control (QA/QC) Manager have the following minimum qualifications and experience? (Attach Resume to **Attachment B**)

(1) At least five (5) years' experience in a safety management role?

() Yes Number of Years: _____ () No

(2) Experience on at least one (1) construction type as identified in 3a.?

() Yes Number of Projects _____ () No
_____ Years with your firm: _____

Present Position/Job Title: _____ Years in position: _____

List other project(s) this person has had a similar role for the past five (5) years:

Is your QA/QC a Principal or Officer of the firm? () Yes () No

e. Please include an Organizational Chart (**Attachment C**) of the Management Team that will be assigned to this project. Identify relationships, duties and responsibilities and key roles of each individual.

5. CAPACITY AND CAPABILITY TO PERFORM THE WORK

a. Resources: Total number of current employees: Project Managers _____
Estimators _____
Superintendents _____
Foremen _____
Tradesmen _____
Administration _____
Other _____

b. Does your firm have the immediate capacity to perform the work required for this project:
() Yes () No

c. Please list all projects currently under contract totaling over **20,000** square feet with scheduled completion dates (**Attachment D**)

() See Attachment D () None

6. SURETY

a. Firm's current surety company:

Will this surety be used for the construction contract for this project?

Yes No (attach explanation)

Contact Agent Name: _____ Telephone: _____

Years utilizing this surety: _____ Maximum Capacity: _____

Aggregate Total of current surety in force: _____

b. Is the surety company to be used on this project licensed to do business in the State of New Mexico?

Yes No (attach explanation)c.

c. Is your firm free of having any construction contracts taken over by a surety for completion in the past five (5) years?

Yes No (attach explanation)

d. Has your firm used other surety companies since 2001? Yes (list) No

_____	_____
Surety Company	Contact
_____	_____
Surety Company	Contact
_____	_____
Surety Company	Contact

e. Is your firm able to obtain bonding in the amount required for the completion of this project? Provide a notarized declaration from the surety identified above, stating the amount of bonding capacity available to your firm for this project at **Attachment E**.

Yes No (attach explanation)

7. SAFETY

- a. Does your firm have a written safety program compliant with current State regulations? Provide one (1) copy of your firm’s written safety program at **Attachment F**.

Yes No (attach explanation)

- b. Provide a list of key safety personnel, including the designated safety manager who will be assigned to this project, and list specific duties.

Name and Title	Specific Duties
_____	_____

Name and Title	Specific Duties
_____	_____

Name and Title	Specific Duties
_____	_____

Name and Title	Specific Duties
_____	_____

- c. Provide the Experience Modification Rate for the past five (5) years:

_____ / _____ / _____ / _____ / _____ /

- d. Provide the Recordable Incident Rate for the past calendar year: _____

- e. Is your firm free of committing serious or willful violations of federal or state safety laws as determined by a final non-appealable decision of a court or government agency?

Yes No (attach explanation)

8. INSURANCE & CLAIMS HISTORY

- a. Is your firm free of any court judgments, pending litigation, arbitration and final agency decisions filed within the last five (5) years in a construction related matter in which the contractor, or any officer, is or was a party?

Yes No (attach explanation)

- b. Has your firm during the past five (5) years been free of a determination by a court of competent jurisdiction that is filed a false claim with any federal, state or local government entity?

Yes No (attach explanation)

- c. Does your firm have the ability to provide the required insurance in the limit stated in the project documents (General Liability and Comprehensive Auto at \$1 Million per occurrence and \$1 Million in the aggregate)?

Yes No (attach explanation)

- d. Please provide a notarized declaration from an insurance carrier stating that the firm is able to obtain insurance in the limits stated as **Attachment G**.

9. QUALITY ASSURANCE – ATTACHMENT H

- a. Does your firm have a written Quality Assurance Program?

Yes No

Provide one (1) copy of the written Assurance Program for **Attachment H**

10. PROJECT SCHEDULING

- a. Does your firm use computerized scheduling? Yes No

- b. If YES, which programs and versions are used? Please list:

- c. Has the firm been involved with a construction project within the past five (5) years, where the schedule was not met? Yes No

- d. If YES, please indicate the project (refer to **Attachment A**)

i. Project: _____

Reason for Delay: _____

ii. Project: _____

Reason for Delay: _____

iii. Project: _____

Reason for Delay: _____

e. Has the firm been assessed liquidated damages due to scheduling for any project in the past five (5) years?
(Refer to **Attachment A**) () Yes () No

If YES, please list projects

(1) Project: _____ Amount \$ _____

Reason for assessment _____

(2) Project: _____ Amount \$ _____

Reason for assessment _____

(3) Project: _____ Amount \$ _____

Reason for assessment _____

11. LABOR CODE VIOLATIONS

a. Has your firm during the past five (5) years, been free of any determinations by a court or an administrative agency of repeated or willful violations of laws and/or regulations pertaining to the payment of prevailing wages or employment of apprentices of public works projects? Refer to **Attachment I** () Yes () No

b. Is the firm free of all Subcontractor Fair Practices Act violations for the past five (5) years?
() Yes () No (explain)

12. JUDGEMENTS, BREACH OF CONTRACT, PROTESTS, MEDIATIONS AND ARBITRATIONS

a. List any judgments against the firm during the past 5 years; use **Attachment J**

b. List any breach of contract other than for cause

c. If applicable, list any formal bid protests and the outcome, whether denied or upheld

d. List all mediations/arbitrations in the last 5 years. Who initiated? What was the outcome?

**THE UNDERSIGNED CERTIFIES THAT ALL OF THE QUALIFICATION INFORMATION
SUBMITTED WITH THIS FORM IS TRUE AND CORRECT.**

NAME AND TITLE

FIRM NAME

SIGNATURE

ADDRESS OF FIRM

E-MAIL ADDRESS

CITY/STATE/ZIP

TELEPHONE NUMBER

FAX NUMBER _

END OF GENERAL CONTRACTOR STATEMENT OF QUALIFICATIONS

ATTACHMENT A

GENERAL CONTRACTOR'S STATEMENT OF QUALIFICATIONS

REFERENCE: 3.a. EXPERIENCE

COMPLETE ONE FORM FOR EACH PROJECT LISTED (MAXIMUM 5)

PROJECT DESCRIPTION

Project Type: _____ Contact Name: _____

Project Name: _____ Contact Title: _____

Owner: _____ Contact Phone No.: _____

DESIGN PROFESSIONAL

Name of Firm: _____ Contact Name: _____

Contact Phone No.: _____ Contact Title: _____

Gross Building Area (Sq. Ft.) _____ () New () Addition () Renovation

Project Start Date: _____ Completion Date: _____

Original Contract Amt.: \$ _____ Original No. of Days to Complete: _____

Final Contract Amount _____ Final Contract Days to Complete: _____

With all Change Orders: \$ _____ with all Time Extensions: _____

PROJECT EXECUTION

Were Liquidated Damages assessed on this Project? () No () Yes Days _____ \$ _____

Percentage of Work Subcontracted: _____ % Contract Type () Competitive Bid Lump Sum
() Negotiated Lump Sum

Major Subcontractors: () Guaranteed Maximum Price
() Other (Describe)

Mechanical: _____

Electrical: _____

Plumbing: _____

Roofing: _____

CUSTOMER SATISFACTION

ATTACHMENT B

GENERAL CONTRACTOR'S STATEMENT OF QUALIFICATIONS

How was this measured? Customer Survey Attached Yes No Other (Describe)

REFERENCE: 4 a., b, c, d RESUMES

ATTACH ONE (1) PAGE RESUMES OF THE PROPOSED
PROJECT MANAGER
PROJECT SUPERINTENDENT
SAFETY PROGRAM MANAGER
OTHER KEY PERSONNEL (OPTIONAL)

1. EDUCATION

High School, College, Trade Schools, Trade Seminars, Trade/Management Specialized Courses, Etc.

2. RELATED EXPERIENCE

Related experience should include the following: **a.**

Position Title

b. Duties and Responsibilities

c. Major accomplishments

d. Number of personnel supervised

3. PROJECT EXPERIENCE

Identify project experience requested in the Statement at 4.a. (2) (3), 4.b. (2) (3), and 4.c. (2). Include the project Title and Location.

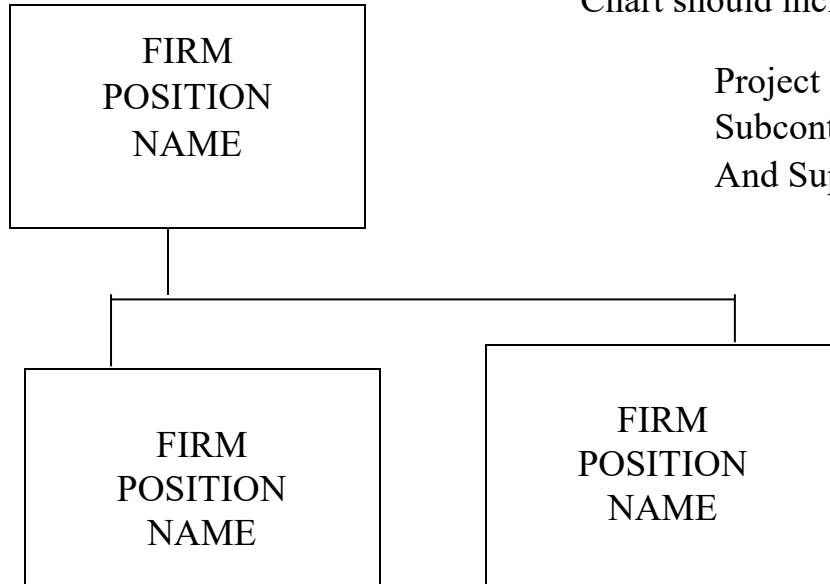
4. Other information that demonstrates the individual's strengths for this project.

5. Project Professionals and Project Owner Reference may be included.

ATTACHMENT C
GENERAL CONTRACTOR'S STATEMENT OF QUALIFICATIONS
REFERENCE: 4.e. ORGANIZATIONAL CHART OF PROJECT
MANAGEMENT TEAM

Chart should include the Entire

Project Team
Subcontractor Key Personnel
And Supervision



1. Indicate the relationship between PM/Supt. of the Subcontractors and the General Contractor's PM/SUPT.
2. Indicate the relationship of the Safety Manager of the Subcontractors and General Contractor, and the relationship of the Safety Manager with others on the job site.
3. Indicate the relationship between the QA/QC Manager with other personnel on the job site.

ATTACHMENT D

GENERAL CONTRACTOR'S STATEMENT OF QUALIFICATIONS

REFERENCE: 5.c. PROJECTS CURRENTLY UNDER CONTRACT

**PROJECT TITLE
AND LOCATION:**

**START
DATE:**

**PROJECTED
COMPLETION DATE:**

ATTACHMENT E
GENERAL CONTRACTOR'S STATEMENT OF QUALIFICATIONS

REFERENCE: 6.d. NOTARIZED DECLARATION OF SURETY

DOCUMENTATION FROM SURETY

ATTACHMENT F
GENERAL CONTRACTOR'S STATEMENT OF QUALIFICATIONS

REFERENCE: 7.a. COPY OF FIRM'S WRITTEN SAFETY PLAN

SUBMIT ONLY ONE (1) COPY OF SAFETY PLAN WITH SUBMITTAL PACKET

Include Work Loss Incidents and History

ATTACHMENT G

GENERAL CONTRACTOR'S STATEMENT OF QUALIFICATIONS

REFERENCE: 8.d. LETTER FROM INSURANCE CARRIER

DOCUMENTATION OF INSURABILITY

ATTACHMENT H

GENERAL CONTRACTOR'S STATEMENT OF QUALIFICATIONS

REFERENCE: 9.b. WRITTEN QUALITY ASSURANCE PROGRAM

SUBMIT ONLY ONE (1) COPY WITH SUBMITTAL PACKET

ATTACHMENT I
GENERAL CONTRACTOR'S STATEMENT OF QUALIFICATIONS

REFERENCE: 11.a. AFFIDAVIT OF NON-VIOLATION OF LABOR CODES

Name of Firm:

Address:

Project

Reference: (Name of Owner & Project)

Request for Proposal # _____
Affidavit of Non-violation of Labor Codes

To: The Board of Education
School District

The undersigned officer of _____ hereby states that
_____ has, during the past five (5) years, been free of any
determinations by a court or an administrative agency, of repeated or willful violations of laws and/or
regulations pertaining to the payment of prevailing wages or employment of apprentices of public works
projects.

_____ Name

_____ Title

_____ Signature

NOTARY

State of _____)

County of _____)

Signed or attested before me on _____ by _____

Seal

_____ My Commission Expires: _____

ATTACHMENT J

GENERAL CONTRACTOR'S STATEMENT OF QUALIFICATIONS

**REFERENCE: 12.a.b.c. JUDGMENTS, BREACH OF CONTRACT,
PROTESTS**

- a. List any judgments against the firm during the past 5 years.**
- b. List any breach of contract other than for cause.**
- c. If applicable, list any formal bid protests and the outcome, whether denied or upheld.**
- d. List all mediations/arbitrations in the last 5 years. Who initiated? What was the outcome?**

**ECA @ CEC MODERNIZATION,
 RENOVATION & ADDITION
 Albuquerque Public Schools**

REQUEST FOR PROPOSAL FOR CONSTRUCTION # 20-032RRR

For the convenience of the contractors, an electronic version of this RFP is issued for your use. Any changes to the document’s questions or language that differs from the wording as issued in the Project Manual dated 01/2021 other than to fill in answers for the questions asked, will constitute a nonresponsive proposal.

STATEMENT OF QUALIFICATIONS FOR SUBCONTRACTORS

Project Name: _____

1. OFFEROR INFORMATION

Firm Name: _____

Type of Firm:

Corporation Partnership Sole Proprietorship Joint Venture

Other _____

a. Year Firm was established: _____

b. Parent Company (if applicable) _____

c. All former names during the past 10 years your organization has operated?

2. LICENSING

Provide your team’s New Mexico contractor’s license, which is current and in good standing with the State of New Mexico Construction Industries Division (CID).

a. Name of license holder (or qualifying party) exactly as on file with the State of New Mexico Construction Industries Division:

b. License Classification: _____

c. License Number: _____

d. Issue Date: _____ Expiration Date: _____

e. Is the firm’s contractor’s license free of ever being suspended or revoked by the CID or by the appropriate licensing agency in any other state?

() Yes - free of suspension or revocation () No – Attach explanation

3. EXPERIENCE

a. Has your firm completed one (1) or more educational facility reroof project of similar complexity and of **50,000** square feet or more since **2013**, as the proposed project? Complete **Attachment A** for three (3) maximum projects listed:

() Yes Number of Projects: _____ () No

Project 1 Name: _____

Project 2 Name: _____

Project 3 Name: _____

Provide copies of Performance Evaluation Reports prepared in connection with projects described in Para. 3.a above.

b. State the average annual amount of construction work performed during the past five years:
\$ _____

c. Also, on **Attachment A**, list major construction project your organization has in progress, giving the name of the project, owner, architect, contract amount, percent of completion, and scheduled completion date.

4. KEY PERSONNEL EXPERIENCE

Please note that more consideration will be given to those meeting or exceeding the required qualifications below:

a. Does your assigned Project Manager have the following minimum qualifications and experience? (Attach Resume at **Attachment B**)

(1) At least ten (10) years’ experience in the construction industry?

() Yes Number of Years: _____ () No

(2) Experience on at least one (1) construction type as identified in 3a.?

() Yes Number of Projects _____ () No

(3) Experience as a Project Manager on one (1) or more construction projects totaling **30,000** square feet or more?

() Yes Number of Projects _____ () No

b. Does your assigned Project Foreman/Superintendent have the following minimum qualifications and experience? (Attach Resume at **Attachment B**)

(1) At least ten (10) years experience in the construction industry?

() Yes Number of Years: _____ () No

(2) Experience on at least one (1) construction type as identified in 3a.?

() Yes Number of Projects _____ () No

(3) Experience as a Project Foreman/Superintendent on one (1) or more construction projects totaling 30,000 square feet or more?

() Yes Number of Projects _____ () No

c. Does your Firm have a Quality Assurance/Quality Control (QA/QC) Manager? () Yes () No

Name: _____ Years with your firm: _____

Present Position/Job Title: _____ Years in position: _____

List other project(s) this person has had a similar role for the past five (5) years:

Is your QA/QC a Principal or Officer of the firm? () Yes () No

5. CAPACITY AND CAPABILITY TO PERFORM THE WORK

a. Resources

(1) Total number of current employees: Project Managers _____
Estimator's _____
Foremen _____
Tradesmen _____
Administration _____
Other _____

b. Please list all projects currently under contract at square footage listed in 3a. with scheduled completion dates (**Attachment C**)

() See Attachment C () None

6. SAFETY

a. Does your firm have a written safety program compliant with current State regulations? Provide one (1) copy of your firm's written safety program at **Attachment D**.

() Yes () No (attach explanation)

b. Provide your Experience Modification Rate for the past five (5) years:

_____ / _____ / _____ / _____ / _____ /

c. Provide the Recordable Incident Rate for the past calendar year: _____

d. Is your firm free of committing serious or willful violations of federal or state safety laws as determined by a final non-appealable decision of a court or government agency?

Yes No (attach explanation)

7. INSURANCE & CLAIMS HISTORY

a. Is your firm free of any court judgments, pending litigation, arbitration and final agency decisions filed within the last five (5) years in a construction related matter in which the contractor, or any officer, is or was a party? Yes No (attach explanation)

b. Has your firm during the past five (5) years been free of a determination by a court of competent jurisdiction that is filed a false claim with any federal, state or local government entity?

Yes No (attach explanation)

c. Does your firm have the ability to provide the required insurance in the limit stated in the project documents (General Liability and Comprehensive Auto at \$1 Million per occurrence and \$1 Million in the aggregate)?

Yes No (attach explanation)

8. QUALITY ASSURANCE

a. Does your firm have a written Quality Assurance Program? Yes No

Note: If you have a Quality Assurance Program, please provide one (1) copy of the written Assurance Program for **Attachment E**

9. LABOR CODE VIOLATIONS

a. **Has** your firm during the past five (5) years, been free of any determinations by a court or an administrative agency of repeated or willful violations of laws and/or regulations pertaining to the payment of prevailing wages or employment of apprentices of public works projects?

Refer to **Attachment F** Yes No

b. Is the firm free of all Subcontractor Fair Practices Act violations for the past five (5) years?

Yes No (explain)

**THE UNDERSIGNED CERTIFIES THAT ALL OF THE QUALIFICATION INFORMATION
SUBMITTED WITH THIS FORM IS TRUE AND CORRECT.**

Name and Title

Firm Name

Signature

Address of Firm

E-mail Address

City/State/Zip

Telephone Number

Fax Number

END OF SUBCONTRACTOR STATEMENT OF QUALIFICATIONS

ATTACHMENT A
 SUBCONTRACTOR'S STATEMENT OF QUALIFICATIONS
REFERENCE: 3.a. EXPERIENCE ON SIMILAR PROJECTS OVER
VALUATION STATED IN 3.a

COMPLETE ONE FORM FOR EACH PROJECT LISTED ON THE QUESTIONNAIRE (MAXIMUM 3)

PROJECT DESCRIPTION

Project Type: _____ Owner: _____

Project Name and
Location: _____

Gross Building Area (Sq. Ft.) _____ () New () Addition () Renovation

Original Contract Amt.: \$ _____ Completion Date/Percentage Complete:

DESIGN PROFESSIONAL

Name of Firm: _____ Contact Name: _____

GENERAL CONTRACTOR

Name of Firm: _____ Contact Name: _____

CUSTOMER SATISFACTION

How was this measured? () Customer Survey () Attached () Yes () No () Other
(Describe)

ATTACHMENT B
SUBCONTRACTOR'S STATEMENT OF QUALIFICATIONS
SSQ-1

REFERENCE: 4 a, b, c, d RESUMES

ATTACH ONE (1) PAGE RESUMES OF THE PROPOSED

- 1. PROJECT MANAGER**
- 2. PROJECT FOREMAN/SUPERINTENDENT**
- 3. OTHER KEY PERSONNEL (*OPTIONAL*)**

- 6. EDUCATION**
High School, College, Trade Schools, Trade Seminars, Trade/Management Specialized Courses, Etc.

- 7. RELATED EXPERIENCE**
Related experience should include the following:
 - a.** Position Title
 - b.** Duties and Responsibilities
 - c.** Major accomplishments
 - d.** Number of personnel supervised

- 8. PROJECT EXPERIENCE**
Identify project experience requested in the Statement at 4.a. (2) (3), 4.b. (2) (3), and 4.c. (2). Include the project Title and Location.

- 9. Other information that demonstrates the individual's strengths for this project.**

- 10. Project Professionals and Project Owner Reference may be included.**

ATTACHMENT C
SUBCONTRACTOR'S STATEMENT OF QUALIFICATIONS
SSQ-2

REFERENCE:
5.b. PROJECTS CURRENTLY UNDER CONTRACT

<u>PROJECT TITLE AND LOCATION</u>	<u>START DATE</u>	<u>PROJECTED COMPLETION</u>

ATTACHMENT D
SUBCONTRACTOR'S STATEMENT OF QUALIFICATIONS
SSQ-3

ATTACHMENT E
SUBCONTRACTOR'S STATEMENT OF QUALIFICATIONS
REFERENCE: 7.a. COPY OF FIRM'S WRITTEN SAFETY PLAN

SUBMIT ONLY **ONE (1) COPY** OF SAFETY PLAN WITH SUBMITTAL PACKET

Include Work Loss Incidents & History

ATTACHMENT F
SUBCONTRACTOR'S STATEMENT OF QUALIFICATIONS
SSQ-4

REFERENCE: 9.b. WRITTEN QUALITY ASSURANCE PROGRAM

SUBMIT ONLY ONE (1) COPY WITH SUBMITTAL PACKET

ATTACHMENT G
SUBCONTRACTOR’S STATEMENT OF QUALIFICATIONS
SSQ-5

REFERENCE: 11.B. AFFIDAVIT OF NON-VIOLATION OF LABOR
CODES

Name of Firm: _____

Address: _____

Project

Reference: (Name of Owner & Project)

Request for Proposal # _____
Affidavit of Non-violation of Labor Codes

To: The Board of Education
 (School District)

The undersigned officer of _____ hereby states that
_____ has, during the past five (5) years, been free of any
determinations by a court or an administrative agency, of repeated or willful violations of laws and/or regulations
pertaining to the payment of prevailing wages or employment of apprentices of public works projects.

Name

Title

Signature

NOTARY

State of _____)

County of _____)

Signed or attested before me on _____ by _____

Seal

My Commission Expires: _____

ATTACHMENT H
SUBCONTRACTOR'S STATEMENT OF QUALIFICATIONS
SSQ-6

**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 Cost Proposal as a condition of the Proposal 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: \$60,645.82

a. Subcontractor Listing shall be expanded after Proposal award, 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 Proposal award by apparent low Offeror 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 Offerors, Section 00 2113 Paragraph 4.5, Subcontractors, for rules regarding changes in this list after Proposal award.

2. **PROJECT NAME:** ECA @ CEC MODERNIZATION, RENOVATION AND ADDITION
REQUEST FOR PROPOSAL NUMBER: 20-032RRR:

The undersigned agrees that any and all claims which the firm may have or may incur 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.

Subcontractor Listing

And Assignment of Anti-Trust Claims

****SIGNATURE REQUIRED UPON NOTICE OF INTENT TO AWARD***

TYPE OF WORK	ENTITY NAME	CITY & STATE	Labor Enforcement Fund Registration # (if over \$60,000)	SIGNATURE *
SITE WORK				
CONCRETE				
FRAMING				
STEEL ERECTION				
ROOFING				
INSULATION				
DRYWALL				
GLAZING				
PLASTER				
FLOORING				
PAINTING				
FURNISHINGS				
HVAC				
CONTROLS				
PLUMBING				
ELECTRICAL				

TYPE OF WORK	ENTITY NAME	CITY & STATE	Labor Enforcement Fund Registration # (if over \$60,000)	SIGNATURE *

BID PROPOSAL FOR LUMP SUM CONTRACT

Date of Proposal: _____

New Mexico State Contractor's License No. _____

License Classifications: _____

Resident Contractor's Preference Certificate No. _____

Veteran Resident Contractor Preference Certificate No. _____

Percent of preference qualified for: _____ (10%).

NOTE: Attach a copy of the valid certificate and documentation to validate percent preference.

NM DOL (Workforce Solutions) Certificate No. _____

Contractor's New Mexico Gross Receipts Tax No. _____

Contractor's Federal Employee Identification No. _____

FD+C Project No. 507

Project Name: ECA @ CEC MODERNIZATION, RENOVATION AND ADDITION

Proposal of (company name): _____

(Hereinafter called the "Offeror") organized and existing under the laws of the State of New Mexico, doing business as a Corporation, Partnership or Individual. (Circle correct one).

To: Board of Education
Albuquerque Municipal School District Number 12
Bernalillo and Sandoval Counties, New Mexico (hereinafter called "APS") for:

The construction of ECA @ CEC MODERNIZATION, RENOVATION AND ADDITION

The undersigned, as an authorized representative for the Offeror named above, in compliance with the Request for Proposals for the construction of a ECA CEC Modernization, Renovation and Addition, FD+C Project No. 507, having examined the drawings and specifications, with related documents, and having examined the site of the proposed work, and being familiar with all of the conditions surrounding the construction of the proposed project, including the availability of labor, materials and supplies, hereby proposes to furnish all labor, materials and supplies, and to construct the project in accordance with the contract documents at the bids stated below. These bids are to cover all expenses incurred in performing the work required under the contract documents, of which this proposal is a part.

The undersigned Offeror's representative also acknowledges receipt of the following Addenda:

Addendum No: ____, dated _____, Addendum No: ____, dated _____

Addendum No: ____, dated _____, Addendum No: ____, dated _____

The following information is required for state reporting purposes only and will not be used in evaluating or awarding the contract. Is project material offered grown, produced or wholly manufactured in New Mexico? _____ (Yes/No) (Percentage; reference V-B-5 of the RFP)

BID PROPOSAL FOR LUMP SUM CONTRACT

BASE BID: The Offeror agrees to perform all work for the **ECA @ CEC Modernization, Renovation and Addition**, as described in the Project Manual and as shown on the Drawings for the following Base Bid. Also provide Bid Lot amounts as requested.

(Amounts to be shown in both words and figures. In case of a discrepancy, the amount shown in words will govern, **please print.**) **All sums will exclude NM Gross Receipts Tax.**

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 **426** calendar days after the date of written Notice to Proceed, except as hereafter extended by valid written Change Order by the Owner, for Base Bid, and Bid Lots.

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 One Thousand Five Hundred Dollars (\$1,500.00) per consecutive day, not as a penalty, but as liquidated damages for such breach of the Contract.

The price basis for this RFP is the bid proposed for the Base Bid, subject to the availability of funds. APS may award one or more Bid Lots at the sole discretion of APS, subject to availability of funds.

BASE BID:

- (1) Base Bid:

Total Base Bid Lump Sum: _____
_____ Dollars, (\$) _____)

BID LOTS

- (2) Bid Lot No. 1 - Nursing Headwall Mock Equipment (Typical of 8) in Nursing Lab 242. See Headwall Elevation on A-001

Total Bid Lot No. 1 Lump Sum: _____
_____ Dollars, (\$) _____)

Bid Lot No. 2 – Stucco Color Coat of Existing Building. If Bid Lot #2 is accepted, at areas of work, stucco must be patched and finished to match adjacent. Blend texture and color to minimize appearance of alteration.

Total Bid Lot No. 2 Lump Sum: _____
_____ Dollars, (\$) _____)

- Bid Lot No. 3 – ECA @ CEC Signage on East Façade (including all associated steel members)

Total Bid Lot No. 3 Lump Sum: _____
_____ Dollars, (\$) _____)

BID PROPOSAL FOR LUMP SUM CONTRACT

The Offeror understands that the contract will be awarded in accordance with the provisions of the Request for Proposals and that the Owner reserves the right to reject any or all proposals and to waive any technical irregularities.

The Offeror agrees that this bid will be good and may not be withdrawn for a period of forty- five (45) calendar days after the scheduled closing time for receiving bid proposals.

Upon receipt of written notice of acceptance of this Bid, Offeror will execute the final contract and deliver surety bonds as required by the Request for Proposals within seven calendar days.

The PROPOSAL SECURITY attached in the sum of 5% of the amount proposed is: _____

_____Dollars, (\$ _____)

And will become the property of the Owner in the event the contract and bonds are not executed within the time set forth herein, as liquidated damages for the delay and additional expenses to the Owner caused thereby.

Respectfully Submitted,

By :(Authorized Signature) _____ Date: _____

By: (Same Name Printed or Typed) _____

Title: _____

Company: _____

Address: _____ Phone: _____

_____ Zip: _____

Fax: _____ Email: _____

(Affix Corporate Seal if proposal is by Corporation)

BOND REVIEW AND APPROVAL FORM

THIS FORM MUST BE
ATTACHED TO BOND

REVIEW AND APPROVAL:

This Bond has been executed by a Surety 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.

APPROVED:

Date: _____

Owner's Representative or Governing Authority

AGENT'S AFFIDAVIT

THIS FORM MUST BE
USED BY SURETY

(To be filled in by Agent.)

STATE OF _____)

) ss.

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 given to indemnify the State of New Mexico in connection with the construction of _____ dated the _____ day of _____, 2012 executed by _____ Contractor, 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 this _____ day of _____, 2011,

Notary Public

My Commission expires: _____

AGENT'S ADDRESS:

Telephone: _____

PROJECT: ECA @ CEC MODERNIZATION, RENOVATION AND ADDITION

SUPPLEMENTAL INFORMATION

ASBESTOS CONSIDERATIONS

1. The Contractor, Subcontractors, and Materials Suppliers will to the best of their abilities, provide and install materials that are *ASBESTOS-FREE*. Any material violating AHERA regulations must be removed by a licensed asbestos abatement Contractor and replaced with non-asbestos containing equal(s) at no cost to Owner. The area where such work is conducted will be returned to its substantially complete condition. Such replacement action will be in effect for the period of construction and continue through the entire warranty year.
2. The Architect and the Contractor shall execute the attached asbestos document.
3. The following Considerations are made available as information for Bidders:

Letter dated December 4, 2020 from APS Environmental Department regarding Asbestos Inspection. It is the intent of APS to have all abatement complete prior to construction.

DOCUMENT FOLLOWS



Asbestos Consideration Letter Career Enrichment Center Location No. 592

AC No. 8402

December 4, 2020

PROJECT:

This report has been provided for the purposes of an asbestos consideration requested by APS-FD&C for the Career Enrichment Center.

Asbestos-Containing Materials (ACM), by definition, are any materials that contain greater than one percent (>1%) of any form of asbestos. Regulated Asbestos-Containing Material (RACM) is any ACM that is friable or may be made friable by the forces expected to be acted upon it during removal, transportation, or ultimate disposition.

Building 01 – Main School Building – Constructed in 1975

The following lists the asbestos-containing materials (>1%):

Table with 2 columns: Asbestos-Containing Material Description and Asbestos-Containing Material Location M&O Room No. Rows include Wallboard Ceiling Texture, Wallboard System w/ Sponge Texture, White 12" x 12" Floor Tile w/ assoc. Mastic, Black Mastic, Tan 12" x 12" Floor Tile w/ Brown Spots & assoc. Mastic, Light Pink 12" x 12" Floor Tile w/ assoc. Mastic, Brown 12" x 12" Floor Tile w/ assoc. Mastic, and Vermiculite - CMU Block Fill.





The following lists the materials containing trace asbestos (<1%):

Material Description	Material Location M&O Room No.
Wallboard System w/ Smooth Texture	U121, U125

The following lists the non-asbestos containing materials:

Material Description	Material Location M&O Room No.
2' X 4' Lay-in Ceiling Tiles w/ Pinholes & Vertical Wormed Fissures	A101, A103, A105, A107, A109, A119, A125S, A127S, A129S, H105, R103, R105, R107, R109, R111, R113, R115, R117, R123, R149, R151, R153, R157, R159S, R168, R169, R171, R175S, R179, R183, R185S, R195, U101, U107, U117, U119, U121, U127, U129
1' x 1' Ceiling Tiles w/ assoc. Mastic	R101, R161S
Plaster Ceiling System w/ Rough Texture	H113, R189, R189S, SW101, U123
Black Cove Base w/ assoc. Mastic	A101, A103, A105, A107, A109, A111S, A119, A125S, A127S, A129S, H101, H103, H105, H107, H111, H115, H117, R101, R103, R105, R107, R109, R111, R113, R115, R117, R119, R121, R123, R131, R141, R143, R145, R147, R149, R151, R153, R155, R157, R159S, R161S, R168, R169, R171, R181, R183, R185S, R195, U107, U117, U119, U121, U125, U127, U129
Plaster Wall System w/ Rough Texture	H113, R189, R189S, SW101, U123
Insulated Panel	U125
Mudded Fittings	A127S, H115, R159S, U117, U119, U127
Black Counter Tops	R153, R185
Exterior Stucco System	EW101
Roof Core	ER101
Roof Flashing	ER101
Silver Roof Sealant	ER101
Black Roof Sealant	ER101





The following lists the non-suspect materials and post 1988 replacement materials:

Table with 2 columns: Material Description, Material Location M&O Room No. Rows include Metal/Steel Deck, Ceiling Tiles, Plywood Panel, CMU Block, Wallboard System, Vinyl Cove Base, Ceramic Wall Tiles, Concrete, Carpet, Harvest Wheat Floor Tile, White Floor Tile, Gray Floor Tile, Ceramic Floor Tile, and Fiberglass Insulation.





Building 02 – Shop Building – Constructed in 1989

The following lists the non-asbestos containing materials:

Table with 2 columns: Material Description, Material Location M&O Room No. Rows include Wallboard Ceiling Texture and Wallboard System w/ Medium Texture.

The following lists the non-suspect materials:

Table with 2 columns: Material Description, Material Location M&O Room No. Rows include Metal/Steel Deck, Concrete, and Ceramic Floor Tile.

Building 03 – Classroom Block Addition – Constructed in 2016

This building was built after October 12, 1988, and therefore has been excluded from the inspection.

Precautions:

The contractor shall be aware that asbestos abatement or any other related asbestos work is not included in this contract. This is for informational purposes only.

Additional Asbestos Considerations are as follows:

- a) All Regulated Asbestos-Containing Material (RACM) will be handled through the APS-EMD.
b) As part of this report/inspection, you must be aware that there may be additional suspect friable materials not addressed in the initial inspection.
c) The Contractor is cautioned that the Inspector may not always be able to schedule the support work by APS or Contracted abatement qualified personnel as quickly as the Contractor would like to see it done.





JOHN DUFAY
DIRECTOR
MAINTENANCE & OPERATION

- d) All work that results in the release of **respirable crystalline silica** shall be in accordance with the OSHA Silica Regulation, 29 CFR 1926.1153.

Eddie Six

Asbestos Inspector
Albuquerque Public Schools
Environmental Management Department
Office: (505) 765-5950 ext. 67477
Email: edward.six@aps.edu

Enc.



ALBUQUERQUE PUBLIC SCHOOLS
DEPARTMENT OF FACILITIES PLANNING AND CONSTRUCTION
915 OAK STREET SE
PO BOX 25704
ALBUQUERQUE, NEW MEXICO 87125-0704
(505) 242-5865

RAQUEL REEDY
SUPERINTENDENT

KAREN ALARID
EXECUTIVE DIRECTOR



PROJECT NAME: _____
ADDRESS: _____
CITY: _____
STATE: _____

Project #: _____

In accordance with 40 CFR 763.99, this is to certify that the above referenced project drawings and specification have been reviewed and that to the best of our knowledge, no Asbestos Containing Building Materials (ACBM) were specified for the construction of this building.

Project Architect: _____ **Date:** _____
Firm: _____
Address: _____

This is to certify that for the above referenced project, to the best of our knowledge, no Asbestos-Containing Building Materials were used in the construction of this building.

Construction Contractor: _____ **Date:** _____
Firm: _____
Address: _____

AHERA/NIOSH Inspector: _____ **Date:** _____

PROJECT: ECA @ CEC MODERNIZATION, RENOVATION AND ADDITION

SUPPLEMENTAL INFORMATION
GEO-TECHNICAL INVESTIGATIONS

1. This report is included for information only. Neither Owner nor the Design Professional assumes responsibility for the accuracy of the investigation. The data is made available for interpretation by potential Bidders and is not intended as a warranty of continuity of conditions. Recommendations, if any, shall not be construed as contract requirements unless specifically stated or referenced in the contract documents.

2. The following Reports are made available as information for Bidders:

GeoTest GEOTECHNICAL ENGINEERING SERVICES REPORT NO. 1-81203
EARLY COLLEGE ACADEMY@ CEC BUILDING IMPROVEMENTS
ALBUQUERQUE, NEW MEXICO
Dated February 8, 2019
Prepare for APS

DOCUMENT FOLLOWS

**GEOTECHNICAL ENGINEERING
SERVICES REPORT
NO. 1-81203
EARLY COLLEGE ACADEMY@ CEC
BUILDING IMPROVEMENTS
ALBUQUERQUE, NEW MEXICO**

GEO-TEST, INC.
3204 RICHARDS LANE
SANTA FE,
NEW MEXICO
87507
(505) 471-1101
FAX (505) 471-2245

8528 CALLE ALAMEDA NE
ALBUQUERQUE,
NEW MEXICO
87113
(505) 857-0933
FAX (505) 857-0803

2805-A LAS VEGAS CT.
LAS CRUCES,
NEW MEXICO
88007
(575) 526-6260
FAX (575) 523-1660

**PREPARED FOR:
ALBUQUERQUE PUBLIC SCHOOLS**

February 8, 2019
Job No. 1-81203

**Albuquerque Public Schools
Facilities Design and Construction
915 Oak Street SE
Albuquerque, NM 87106**

ATTN: Faye Rogers

RE: Geotechnical Engineering Services Report
Early College Academy @ CEC
Building Improvements
Albuquerque, New Mexico

Dear Ms. Rogers:

Submitted herein is the Geotechnical Engineering Services Report for the above referenced project. The report contains the results of our field investigation, laboratory testing, and recommendations for foundation design, criteria for site grading, excavations and fill as well as seismic design data.

It has been a pleasure to serve you on this project. If you should have any questions, please contact this office.

Respectfully submitted:
GEO-TEST, INC.

Reviewed by:

Patrick R. Whorton, EI

Robert D Booth, P.E.

GEO-TEST, INC.
3204 RICHARDS LANE
SANTA FE,
NEW MEXICO
87507
(505) 471-1101
FAX (505) 471-2245

8528 CALLE ALAMEDA NE
ALBUQUERQUE,
NEW MEXICO
87113
(505) 857-0933
FAX (505) 857-0803

2805-A LAS VEGAS CT.
LAS CRUCES,
NEW MEXICO
88007
(575) 526-6260
FAX (575) 523-1660

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GEO-TEST, INC.
3204 RICHARDS LANE
SANTA FE,
NEW MEXICO
87507
(505) 471-1101
FAX (505) 471-2245

8528 CALLE ALAMEDA NE
ALBUQUERQUE,
NEW MEXICO
87113
(505) 857-0933
FAX (505) 857-0803

2805-A LAS VEGAS CT.
LAS CRUCES,
NEW MEXICO
88007
(575) 526-6260
FAX (575) 523-1660



INTRODUCTION

This report presents the results of our geotechnical engineering services investigation performed by this firm for the proposed new addition to the existing Early College Academy at the Career Enrichment Center in Albuquerque, New Mexico.

The objectives of this investigation were to:

- 1) Evaluate the nature and engineering properties of the subsurface soils underlying the site.
- 2) Provide recommendations for foundation design as well as criteria for excavations, fill and site grading as well as seismic data.

The investigation includes subsurface exploration, selected soil sampling, laboratory testing of the samples, performing an engineering analysis and preparation of this report.

PROPOSED CONSTRUCTION

It is understood that the project will include the construction of a new second story to the existing Early College Academy @ Career Enrichment Center. The existing school building consists of an older building constructed in 1975 and an addition constructed in 2014. A geotechnical investigation for the 2014 addition was completed by this firm (Report No. 1-31212 dated February 11, 2014). A geotechnical report pertaining to the 1975 portion is not available. The proposed second story will be constructed above the western portion of the 1975 era building. As the existing building was not designed to support a second story, the proposed addition will be supported by a new foundation system consisting of braced frames bearing on the soils located on the north and south exterior of the existing building as well as new columns passing through the interior of and bearing on soils beneath the existing building. Column loads are anticipated to be no greater than about 300 kips.

Data collected from the 2014 geotechnical investigation provided by this firm was utilized in our evaluation of the foundation design for the proposed second story addition in conjunction with data collected from this investigation. In addition, a shear wave velocity profile which was conducted as part of the 2014 investigation was utilized to provide seismic design criteria for this project as the method used remains applicable to IBC 2015 requirements. The boring logs and laboratory test data from the 2014 geotechnical investigation are presented in Appendix A of this report along with a Boring Location Map showing the approximate locations of the borings while the Shear Wave Velocity Profile report is presented in Appendix B.

Should structural loads or other project details vary significantly from those outlined above, this firm should be notified for review and possible revision of the recommendations contained herein.

GEO-TEST, INC.
3204 RICHARDS LANE
SANTA FE,
NEW MEXICO
87507
(505) 471-1101
FAX (505) 471-2245

8528 CALLE ALAMEDA NE
ALBUQUERQUE,
NEW MEXICO
87113
(505) 857-0933
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2805-A LAS VEGAS CT.
LAS CRUCES,
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88007
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FIELD EXPLORATION

Three (3) exploratory borings were drilled within the proposed building site. Two (2) borings were drilled to a depth of 50 feet below existing grades on the exterior of the building while one (1) hand auger boring was advanced to a depth of 18 inches below the existing interior floor slab. The locations of the borings are shown on the attached Boring Location Map, Figure 1. The soils encountered in the borings were continuously examined, visually classified and logged during the drilling operation. The boring logs are presented in a following section of this report. Drilling was accomplished using a truck mounted drill rig equipped with 5.5 inch diameter continuous flight hollow stem auger. Subsurface materials were sampled within the borings at five foot intervals or less utilizing an open tube split barrel sampler driven by a standard penetration test hammer.

LABORATORY TESTING

Selected samples were tested in the laboratory to determine certain engineering properties of the soils. Moisture contents were determined to evaluate the various soil deposits with depth. The results of these tests are shown on the boring logs.

Sieve analysis and Atterberg limits tests were performed to aid in soil classification. The results of these tests are presented in the Summary of Laboratory Results and on the individual test reports presented in a following section of this report.

SURFACE CONDITIONS

The Early College Academy @ the Career Enrichment Center is located on the northwest corner of Mountain Road and the south I-25 Frontage Road. The portions of the site which are not occupied by the existing building are landscaped with gravel, small trees and shrubs. An access road extends around the west, north and east sides of the building while Mountain Road is present on the south side. A parking lot is located to the east of the building. The majority of the site is relatively level, near the elevation of the north side of the site. The elevation drops just south of the building at a relatively steep slope down to Mountain Road. Based on a cursory examination, both the older portion of the building and the addition appear to be in good condition.

The site naturally slopes downward from the northeast corner of the site to the southwest. Both the original building and the addition that was constructed in 2014 are founded on shallow spread footings. According to the building plans for the original building, the site was not leveled prior to building construction in 1975. Instead, the building foundations were placed at the approximate natural grades such that the footings on the southwest side of the building are bearing approximately 7 feet lower in elevation than the footings on the northeast portion of the building.

GEO-TEST, INC.
3204 RICHARDS LANE
SANTA FE,
NEW MEXICO
87507
(505) 471-1101
FAX (505) 471-2245

8528 CALLE ALAMEDA NE
ALBUQUERQUE,
NEW MEXICO
87113
(505) 857-0933
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88007
(575) 526-6260
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SUBSURFACE SOIL CONDITIONS

As indicated by the exploratory borings, the subsurface soils vary throughout the site. Based on the borings performed for this investigation, as well as the borings from the 2014 investigation, the native soils consist of poorly graded non-plastic sand with various amounts of silt and gravel which extend to the full depths explored. Within boring 1, an approximately 3 foot thick layer of medium plasticity clay was encountered at a depth of 20 feet below existing grade. This clay was not encountered in any of the other borings. The surficial native soils are classified geologically as the Edith Formation deposited by the ancestral Rio Grande. These soils extend to depths of between 3 to 13 feet below existing site grades at the boring locations and are generally medium dense. Although the native subsurface materials below the surficial soils were logged as dense to very dense soils, most of these materials are believed to consist of weathered bedrock of the upper Santa Fe Group deposits. These materials are a sedimentary rock deposited approximately 1 to 5 million years ago and have the engineering properties of a very dense soil or weak rock.

The natural terrain of the area slopes downward from northeast to southwest with an approximate 10 foot natural elevation differential between the northeast corner of the site and the southwest corner and as such varying amounts of fill soils have been used to level the site. The near surface soils encountered during the 2014 investigation consisted of sands and gravels which were similar to the native soils and were likely imported from a nearby location such that they were generally indistinguishable from the native soils beyond having a lower relative density. Near surface fill soils encountered during this investigation were easily distinguishable from the native soils. Within boring 2 at the southwest corner of the existing building, approximately 9 feet of sand with gravel was encountered which was noticeably darker in color than all other soils encountered and between a depth of 7 and 10 feet, contained broken glass, charcoal and ash. It is believed that when the original building was constructed in 1975, this area was a non-structural area and as such was filled with non-structural 'trash' fill. Within the interior boring (boring 3), non-plastic poorly graded sand with imbedded 4 to 6 inch cobbles was encountered directly beneath the existing floor slab. These cobbles were not encountered in any of the exterior borings such that it is believed that this sand/cobble mixture is imported fill used to provide a level bearing surface for the building's floor slab.

No free groundwater was encountered in the borings and soil moisture contents were relatively low throughout the extent of the borings.

GEO-TEST, INC.
3204 RICHARDS LANE
SANTA FE,
NEW MEXICO
87507
(505) 471-1101
FAX (505) 471-2245

8528 CALLE ALAMEDA NE
ALBUQUERQUE,
NEW MEXICO
87113
(505) 857-0933
FAX (505) 857-0803

2805-A LAS VEGAS CT.
LAS CRUCES,
NEW MEXICO
88007
(575) 526-6260
FAX (575) 523-1660



CONCLUSIONS AND RECOMMENDATIONS

As indicated by the exploratory borings, man-made fill soils consisting of sand and gravel, as well as buried debris, were encountered on the south side exterior of the building and extended to a depth of about 9 feet below grade. Based on the interior boring, man-made fill consisting of sand imbedded with 4 to 6 inch diameter cobbles was used as fill beneath the slab. These soils are not considered suitable to provide reliable support of conventional shallow spread-type footings. In order for spread-type footings to be considered a suitable foundation system, the footings should either be extended to the contact with the underlying dense to very dense native soils or founded on structural fill (or flowable fill), extending to the underlying dense to very dense native soils. Either option would require a significant amount of earthwork. As this earthwork would need to be performed inside the building, as well as within the confined space on the south side of the building, supporting the structure on spread-type footings is not considered practical and is therefore not recommended.

To avoid complications arising from the use of traditional shallow spread-type footings, it is recommended that the proposed structure be founded on a deep foundation system extending into the underlying dense to very dense native soils. Although various types of deep foundation systems could be used, including drilled straight cast-in-place concrete piers or pressure grouted (augercast) piles, due to the confined working space on the south side of the structure, as well as throughout the interior of the building, the use of pressure grouted micropiles are considered the most practical deep foundation system.

Micropiles are small diameter piles, designed and installed by contractors who specialize in micropile technology. Micropiles can be installed within the interior of the building using low head-space equipment while minimizing demolition and disruption of the existing building. Also, it is anticipated that micropiles can be installed through the cobble fill beneath the floor slab and into the underlying dense to very dense native soils to a sufficient depth to support the design loads, although this will need to be confirmed by the specialty foundation design/install contractor.

Although the subsurface soils encountered on the north side of the building were found to be suitable to support shallow spread-type footings, it is not recommended that the structure be supported by two different foundation types due to the potential for excessive differential settlements.

Post-construction moisture increases in the supporting soils could cause some differential foundation movements. Therefore, moisture protection is considered an important design consideration and should be reflected in overall site grading and drainage details as recommended in the Moisture Protection section of this report.

GEO-TEST, INC.
3204 RICHARDS LANE
SANTA FE,
NEW MEXICO
87507
(505) 471-1101
FAX (505) 471-2245

8528 CALLE ALAMEDA NE
ALBUQUERQUE,
NEW MEXICO
87113
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LAS CRUCES,
NEW MEXICO
88007
(575) 526-6260
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FOUNDATIONS

The proposed structure may be supported by a pressure grouted micropile deep foundation system extending into the underlying dense to very dense soils underlying the site. These soils were encountered at depths ranging from about 3 feet to 13 feet at the boring locations. It is suggested that a single pressure grouted micropile having a grouted diameter of 200 millimeters (7.8 inches), a nominal grout-to-ground bond strength of 5,000 pounds per square foot and installed to a depth of 25 feet into the underlying dense to very dense soils should have an allowable axial capacity on the order of 85 kips. Therefore, it is likely that groups of micropiles bonded by a pile cap will be required to carry the full design loads. In order to avoid group effect reduction in capacity, it is suggested that micropiles be spaced no closer than 2.5 feet center to center.

The preceding suggested design parameters should be considered preliminary, used only for feasibility studies and should not be used in actual micropile design as these values are based on general knowledge and estimations which have not been confirmed by any load test data or practical experience by this firm.

As there are many micropile systems and installation techniques available, many of which utilize proprietary technology; the actual foundation design should be performed by a specialty contractor who is qualified to perform micropile design and construction. This report should be made available to the specialty contractor to aid in design. It is recommended that the final foundation design be verified by an onsite load test, however, the need for a load test should be left to the discretion of the specialty contractor.

Total settlements of foundations are anticipated not to exceed 0.5 inch for the soil moisture contents encountered during this investigation or moisture contents introduced during construction. However, as the foundation design will be conducted by a specialty contractor who is qualified to perform micropile design and construction, that firm should provide actual settlement estimates based on their design.

DESIGN AND CONSTRUCTION CONSIDERATIONS

Should it be determined that the use of pressure grouted micropiles for the support of the proposed building are too costly or can't be installed to the required depths without demolition of the existing structure, recommendations for the design of alternate foundation systems including spread-type footings, drilled cast-in-place concrete piers or augercast piles can be provided by this firm upon request.

GEO-TEST, INC.
3204 RICHARDS LANE
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NEW MEXICO
87507
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FAX (505) 471-2245

8528 CALLE ALAMEDA NE
ALBUQUERQUE,
NEW MEXICO
87113
(505) 857-0933
FAX (505) 857-0803

2805-A LAS VEGAS CT.
LAS CRUCES,
NEW MEXICO
88007
(575) 526-6260
FAX (575) 523-1660



SITE SEISMICITY

Shear wave velocity profiling was performed by Geolines, LLC. as part of the 2014 investigation, to determine the appropriate seismic site class. Based on the shear wave velocities indicated by that study, Site Class C is appropriate for structural design in accordance with IBC 2009/2015. The results of the Shear Wave Velocity Profiling are presented in Appendix B of this report.

The following design data is based on a Site Class C classification and data provided through the U.S. Geological Survey in accordance with IBC 2015.

Mapped Spectral Acceleration, S_s	0.454 g
Mapped Spectral Acceleration, S_1	0.136 g
Maximum Spectral Acceleration, S_{MS}	0.544 g
Maximum Spectral Acceleration, S_{M1}	0.226 g
Design Spectral Acceleration, S_{DS}	0.363 g
Design Spectral Acceleration, S_{D1}	0.151 g
Site Coefficient, F_A	1.200
Site Coefficient, F_V	1.664
Seismic Design Category	C

SOIL CORROSIVITY

Soluble sulfate, chloride, pH, and resistivity tests were performed on a composite soil sample to evaluate soil corrosivity, the results of which are presented in Appendix C. Composite samples composed of soils sampled from between 15 and 30 feet below existing grades were tested. Although we are not aware of any corrosivity issues in the general area of the site, it is recommended that a corrosion engineer be consulted to provide a more detailed analysis.

SITE-GRADING

The following general guidelines should be included in the project construction specifications to provide a basis for quality control during any required site grading or earthwork. It is recommended that all fill be placed and compacted under engineering observation and in accordance with the following:

- 1) After site clearing and stripping, the demolition of all existing construction to be removed and any required excavations, the exposed native soils at the base of the excavations should be densified prior to placement of fill or backfill.
- 2) Densification of the exposed native soils should consist of scarifying, moisture conditioning to near the optimum moisture content, and compacting the area to a minimum of 95 percent of maximum dry density as determined in accordance with ASTM D-1557.

GEO-TEST, INC.
3204 RICHARDS LANE
SANTA FE,
NEW MEXICO
87507
(505) 471-1101
FAX (505) 471-2245

8528 CALLE ALAMEDA NE
ALBUQUERQUE,
NEW MEXICO
87113
(505) 857-0933
FAX (505) 857-0803

2805-A LAS VEGAS CT.
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- 3) The results of this investigation indicate that most of the on-site soils will meet the criteria for fill or backfill, however, some blending may be required.
- 4) All fill or backfill material should be free of vegetation and debris and contain no rocks larger than 1 inch. Gradation of the backfill material, as determined in accordance with ASTM D-422, should be as follows:

Sieve Size	Percent Passing by Dry Weight
1 Inch	100
No. 4	60 - 100
No. 200	10 - 35

- 5) The plasticity index of the fill or backfill should be no greater than 15 when tested in accordance with ASTM D-4318.
- 6) All fill or backfill, should be placed in 8-inch loose lifts and compacted with approved compaction equipment. Lifts should be reduced to 4-inches if hand held compaction equipment is used. Each lift should be firm and non-yielding. All compaction of structural fill or backfill should be accomplished to a minimum of 95 percent of the maximum dry density, and within 1 percent below to 2 percent above the optimum moisture content, as determined in accordance with ASTM D-1557.
- 7) Tests for degree of compaction should be determined by the ASTM D-1556 method or ASTM D-6938. Observation and field tests should be carried on during fill and backfill placement by the geotechnical engineer to assist the contractor in obtaining the required degree of compaction. If less than 95 percent is indicated, additional compaction effort should be made with adjustment of the moisture content as necessary until 95 percent compaction is obtained.

MOISTURE PROTECTION

Precautions should be taken during and after construction to minimize moisture increase of foundation soils. Accumulations of excessive moisture could be harmful to some types of interior flooring, to HVAC ductwork beneath the slabs, and can weaken or cause other changes in the soils supporting the foundations and slabs. This can cause differential movement of the foundations and can result in cosmetic or structural damage to the structure.

Positive drainage should be established away from the exterior walls of the structure. A typical adequate slope is 6 inches in the first 5 feet with positive drainage being provided from those points to streets, pavement or natural water courses. If necessary to provide positive drainage, the building areas should be raised above adjacent grades with structural fill.

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NEW MEXICO
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8528 CALLE ALAMEDA NE
ALBUQUERQUE,
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Roof runoff from the structure should be collected by gutters and downspouts or roof canals and discharged to splash blocks which carry water rapidly away from the structure's foundation. Should lot size or other factors impede positive drainage away from the structure to less than 5 feet from foundations, a non-perforated drain system should be installed to carry water to a minimum of five feet away from foundations or to streets or natural water courses.

Utility backfill should be well compacted and should meet the specifications outlined in the Site Grading section of this report. Special care should be taken during installation of the subfloor sewer and water lines to reduce the possibility of future subsurface saturation.

Irrigation within 10 feet of foundations is discouraged or at the very least should be carefully controlled. Proper landscaping and drainage maintenance are required to preclude accumulation of excessive moisture in the soils below the structure and throughout the site. This should include but is not limited to routine maintenance checks of irrigation system to ensure no leakage and proper functionality and that irrigation is adjusted and maintained seasonally so that over watering does not occur. Native drought resistant plants are recommended for use in landscaping. Landscape features should not impede positive drainage away from foundations as recommended above.

Retention/detention ponds or any other drainage/landscaping feature which allows for surface waters to infiltrate the subsurface soils should not be placed within 20 feet of building foundations.

The foregoing recommendations should only be considered minimum requirements for overall site development. It is recommended that a civil/drainage engineer be consulted for more detailed grading and drainage recommendations.

FOUNDATION REVIEW AND INSPECTION

This report has been prepared to aid in the evaluation of this site and to assist in the design of this project. It is recommended that the geotechnical engineer be provided the opportunity to review the final design drawings and specifications in order to determine whether the recommendations in this report are applicable to the final design. Review of the final design drawings and specifications should be noted in writing by the geotechnical engineer.

In order to permit correlation between the conditions encountered during construction and to confirm recommendations presented herein, it is recommended that the geotechnical engineer be retained to perform continuous observations and testing during the earthwork portion of this project. Observation and testing should be performed during construction to confirm that suitable fill soils are placed upon competent materials and properly compacted and foundation elements penetrate the recommended soils.

GEO-TEST, INC.
3204 RICHARDS LANE
SANTA FE,
NEW MEXICO
87507
(505) 471-1101
FAX (505) 471-2245

8528 CALLE ALAMEDA NE
ALBUQUERQUE,
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87113
(505) 857-0933
FAX (505) 857-0803

2805-A LAS VEGAS CT.
LAS CRUCES,
NEW MEXICO
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CLOSURE

Our conclusions, recommendations and opinions presented herein are:

- 1) Based upon our evaluation and interpretation of the findings of the field and laboratory program.
- 2) Based upon an interpolation of soil conditions between and beyond the explorations.
- 3) Subject to confirmation of the conditions encountered during construction.
- 4) Based upon the assumption that sufficient observation will be provided during construction.
- 5) Prepared in accordance with generally accepted professional geotechnical engineering principles and practice.

This report has been prepared for the sole use of Albuquerque Public Schools, specifically to aid in the design of the proposed new building improvements to the Early College Academy @ Career Enrichment Center in Albuquerque, New Mexico, and not for use by any third parties without consent.

We make no other warranty, either expressed or implied. Any person using this report for bidding or construction purposes should perform such independent investigation as they deem necessary to satisfy themselves as to the surface and subsurface conditions to be encountered and the procedures to be used in the performance of work on this project. If conditions encountered during construction appear to be different than indicated by this report, this office should be notified.

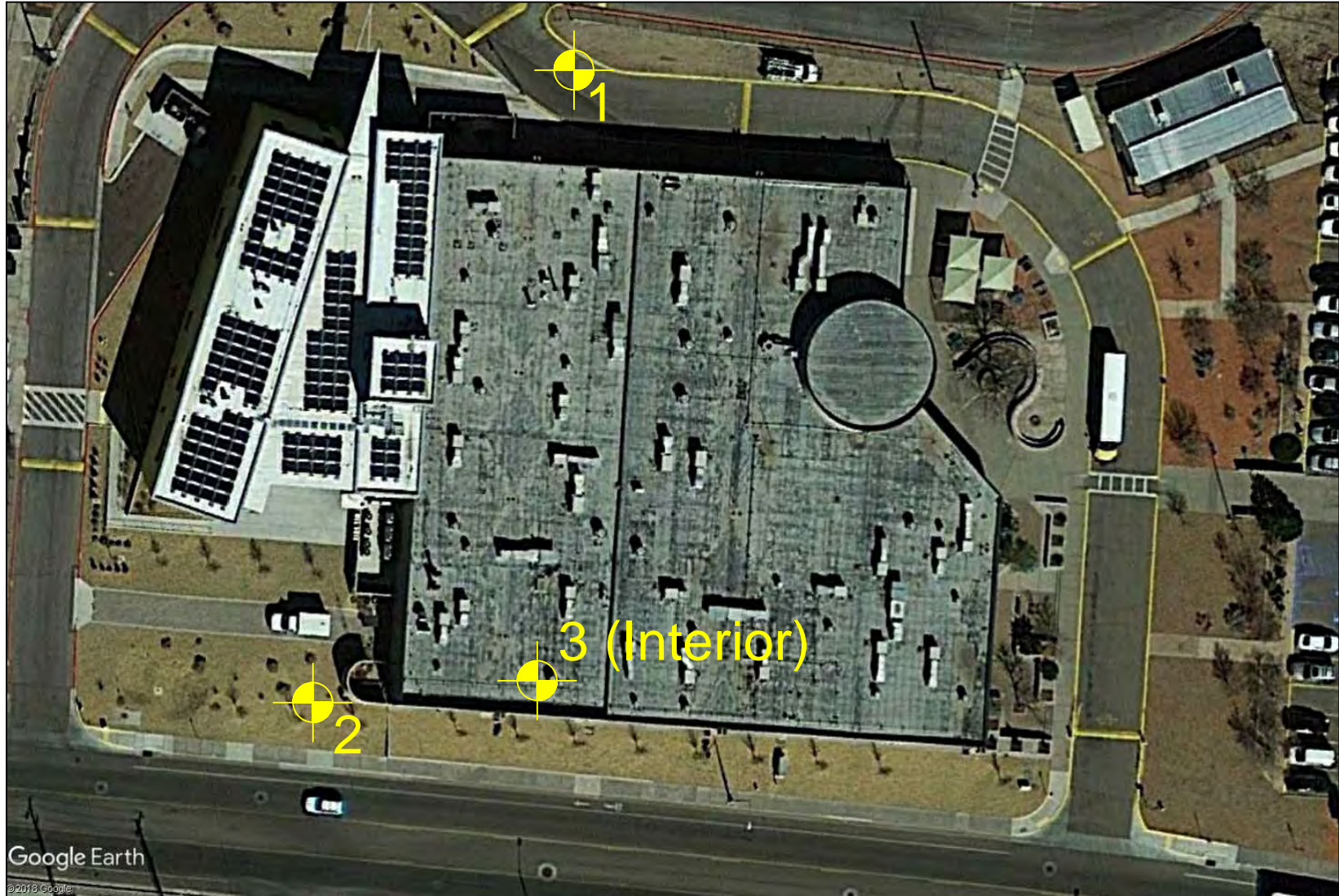
All soil samples will be discarded 60 days after the date of this report unless we receive a specific request to retain the samples for a longer period of time.

GEO-TEST, INC.
3204 RICHARDS LANE
SANTA FE,
NEW MEXICO
87507
(505) 471-1101
FAX (505) 471-2245

8528 CALLE ALAMEDA NE
ALBUQUERQUE,
NEW MEXICO
87113
(505) 857-0933
FAX (505) 857-0803

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NEW MEXICO
88007
(575) 526-6260
FAX (575) 523-1660

BORING LOCATION MAP



Early College Academy @ CEC Improvements
Albuquerque, New Mexico
Job No. 1-81203

Figure 1



GEO-TEST
GEOTECHNICAL ENGINEERING
AND MATERIAL TESTING



Project: Early College Academy @ CEC Improvements
 Date: 01/21/2019 Project No: 1-81203
 Elevation: Type: 5.5" OD HSA

LOG OF TEST BORINGS

GROUNDWATER DEPTH

NO: 1

During Drilling: none

After 24 Hours:

DEPTH (Ft)	LOG	SAMPLE					SUBSURFACE PROFILE		N blows/ft
		SAMPLE INTERVAL	TYPE	N. BLOWS/FT	MOISTURE %	DRY DENSITY (pcf)	USC	DESCRIPTION	
							AC	4 inches ASPHALT	
5			SS	3-9-14 23	7				23
			SS	14-17-23 40	6				40
10			SS	6-19-25 44	10		SP-SM	POORLY GRADED SAND with SILT, non-plastic, medium dense to dense, slightly moist, brown	44
15			SS	9-17-18 35	5				35
20			SS	9-14-20 34	26		CL	CLAY, medium plasticity, very firm, moist, greenish brown	34
25			SS	20-50/4" 50/4"	10				
30			SS	24-37-40 77	6		SP-SM	POORLY GRADED SAND with SILT, non-plastic, very dense, slightly moist, brown	77
35			SS	24-32-50 82	7				82
40			SS	19-29-40 69	7				69
45			SS	17-19-29 48	13		SM	SILTY SAND, non-plastic, dense, moist, brown	48
50			SS	13-29-25 54	6		SP-SM	POORLY GRADED SAND with SILT, non-plastic, very dense, slightly moist, brown	54
55								Stopped Auger @ 49 feet Stopped Sampler @ 50.5 feet	

LEGEND

- SS - Split Spoon
- AC - Auger Cuttings
- UD/SL - Undisturbed Sleeve
- AMSL - Above Mean Sea Level
- CS - Continuous Sampler
- UD - Undisturbed
- ST - Shelby Tube

Stratification lines represent approximate boundaries between soil types. Transitions may be gradual. Water level readings have been made at times and under conditions stated. Fluctuations of groundwater may occur due to factors other than those present at the time measurements were made.



Project: Early College Academy @ CEC Improvements
 Date: 01/21/2019 Project No: 1-81203
 Elevation: Type: 5.5" OD HSA

LOG OF TEST BORINGS

GROUNDWATER DEPTH

NO: 2

During Drilling: none

After 24 Hours:

DEPTH (Ft)	LOG	SAMPLE					SUBSURFACE PROFILE		N blows/ft
		SAMPLE INTERVAL	TYPE	N. BLOWS/FT	MOISTURE %	DRY DENSITY (pcf)	USC	DESCRIPTION	
5	[Patterned area representing man-made fill]	5-11-21	SS	32	4	FILL	MAN-MADE FILL consisting of SILTY SAND with GRAVEL as well as GLASS and ASH between 7 and 10 feet, non-plastic, dense to medium dense, slightly moist, dark brown/black	32	
		9-11-8	SS	19	7			19	
10		10-35-30	SS	65	7			65	
15		31-50	SS	81	7			81	
20		9-23-25	SS	48	8			48	
25		19-31-35	SS	66	4			66	
30		11-23-25	SS	48	5			48	
35		31-50	SS	81	5			81	
40		16-28-36	SS	64	6			64	
45		19-31-42	SS	73	7			73	
50	50/4"	SS		4					
						SM	SILTY SAND, non-plastic, very dense, slightly moist, brown		
						SP	POORLY GRADED SAND with SILT, non-plastic, very dense, dry, brown		
							Stopped Auger @ 49 feet Sampler REFUSAL @ 49.33 feet		

LEGEND

- SS - Split Spoon
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Stratification lines represent approximate boundaries between soil types. Transitions may be gradual. Water level readings have been made at times and under conditions stated. Fluctuations of groundwater may occur due to factors other than those present at the time measurements were made.



Project: Early College Academy @ CEC Improvements
 Date: 01/21/2019 Project No: 1-81203
 Elevation: Type: Hand Auger

LOG OF TEST BORINGS

GROUNDWATER DEPTH

NO: 3

During Drilling: none

After 24 Hours:

DEPTH (Ft)	LOG	SAMPLE						SUBSURFACE PROFILE				
		SAMPLE INTERVAL	TYPE	N. BLOWS/FT	MOISTURE %	DRY DENSITY (pcf)	USC	DESCRIPTION	N blows/ft			
									20	40	60	80
							CONCRETE	4.75 inches CONCRETE				
							SP	POORLY GRADED SAND with COBBLES, non-plastic, slightly moist, brown				
								Hand Auger REFUSAL @ 18 inches				
5												

LOG OF TEST BORING 1-81203 ECA@CEC IMPROVEMENTS.GPJ GEO TEST.GDT 1/29/19

LEGEND

- SS - Split Spoon
- AMSL - Above Mean Sea Level
- AC - Auger Cuttings
- CS - Continuous Sampler
- UD/SL - Undisturbed Sleeve
- UD - Undisturbed
- ST - Shelby Tube

Stratification lines represent approximate boundaries between soil types. Transitions may be gradual. Water level readings have been made at times and under conditions stated. Fluctuations of groundwater may occur due to factors other than those present at the time measurements were made.



Project: Early College Academy @ CEC

1-81203

Location: Cobbles Removed from Boring 3

Photo 1

GEO-TEST



Project: Early College Academy @ CEC

1-81203

Location: Within Boring 3

Photo 2

GEO-TEST

SUMMARY OF LABORATORY RESULTS

TEST HOLE	DEPTH (FEET)	UNIFIED CLASS	(% MOIST)	LL	PI	SIEVE ANALYSIS PERCENT PASSING											
						NO 200	NO 100	NO 40	NO 10	NO 4	3/8"	1/2"	3/4"	1"	1 1/2"	2"	4"
1	3.0	SP-SM	6.5	NP	NP	6	15	72	98	99	100						
1	5.0		6.4														
1	10.0		10.4														
1	15.0		5.3														
1	20.0	CL	25.6	32	16	88	97	99	100								
1	25.0		10.0														
1	30.0		6.5														
1	35.0	SP-SM	6.9	NP	NP	8	22	66	95	97	98	98	100				
1	40.0		6.6														
1	45.0		13.3														
1	50.0	SP-SM	6.5	NP	NP	11	25	79	99	100							
2	3.0		4.5														
2	5.0	SM	7.4	NP	NP	20	29	56	77	83	87	89	95	100			
2	10.0		6.9														
2	15.0	SP	6.9	NP	NP	3	8	46	96	99	99	100					
2	20.0		7.9														
2	25.0		4.4														
2	30.0		5.1														
2	35.0		5.1														

SUMMARY OF LABORATORY RESULTS: 1-81203 ECA@CEC IMPROVEMENTS.GPJ GEO TEST.GDT 1/29/19



LL = LIQUID LIMIT
PI = PLASTICITY INDEX
NP = NON PLASTIC or NO VALUE

Project: Early College Academy @ CEC Improvements
Location: Albuquerque, NM
Number: 1-81203

SUMMARY OF LABORATORY RESULTS

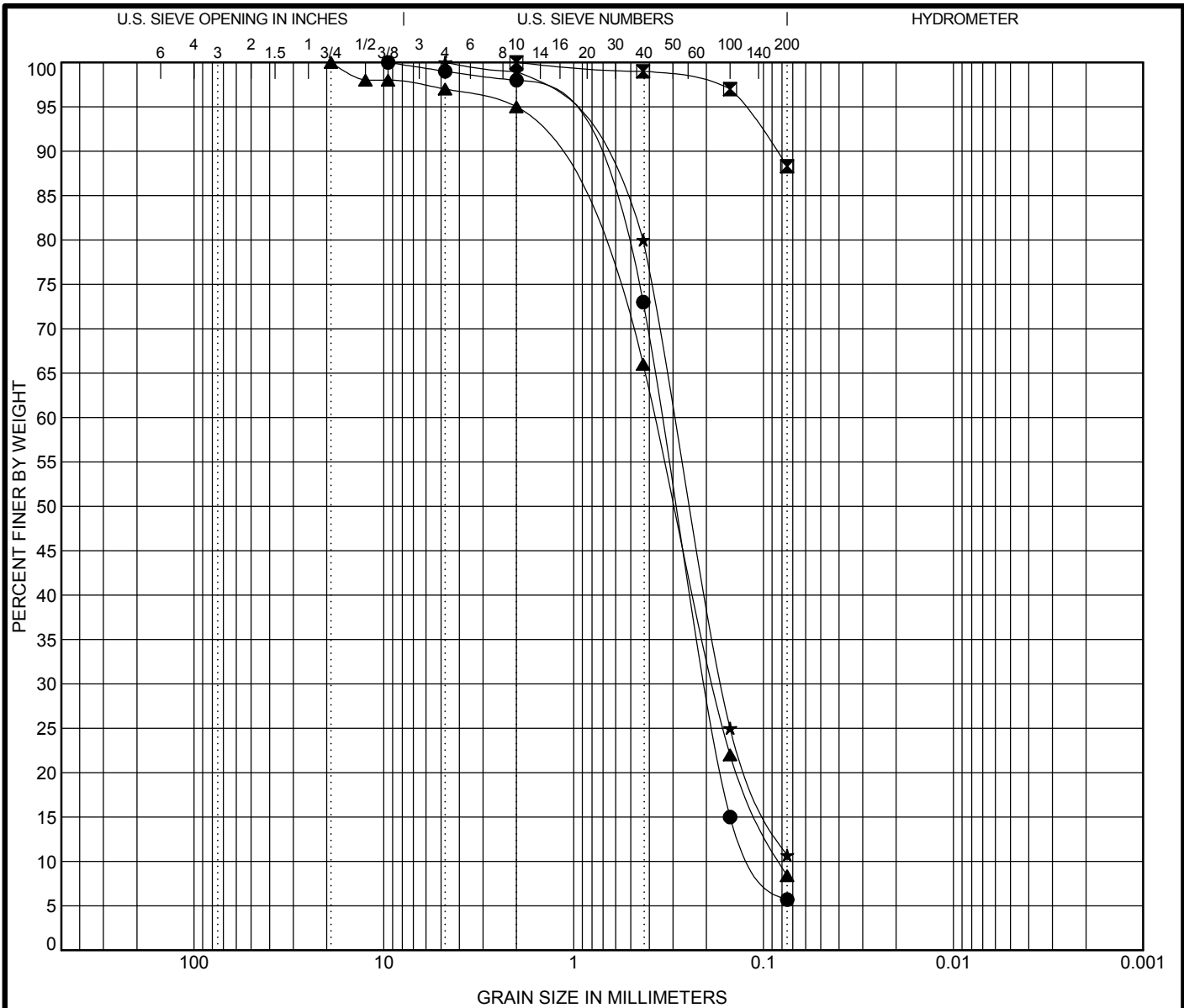
						SIEVE ANALYSIS PERCENT PASSING											
TEST HOLE	DEPTH (FEET)	UNIFIED CLASS	(%) MOIST	LL	PI	NO 200	NO 100	NO 40	NO 10	NO 4	3/8"	1/2"	3/4"	1"	1 1/2"	2"	4"
2	40.0		5.8														
2	45.0	SM	6.7	NP	NP	13	30	65	96	98	99	99	100				
2	50.0		4.2														

SUMMARY OF LABORATORY RESULTS 1-81203 ECA@CEC IMPROVEMENTS.GPJ GEO TEST.GDT 1/29/19



LL = LIQUID LIMIT
PI = PLASTICITY INDEX
NP = NON PLASTIC or NO VALUE

Project: Early College Academy @ CEC Improvements
Location: Albuquerque, NM
Number: 1-81203



COBBLES	GRAVEL		SAND			SILT OR CLAY
	coarse	fine	coarse	medium	fine	

Specimen Identification	Classification	LL	PL	PI	Cc	Cu
● 1 3.0	POORLY GRADED SAND with SILT(SP-SM)	NP	NP	NP	1.11	3.29
☒ 1 20.0	LEAN CLAY(CL)	32	16	16		
▲ 1 35.0	POORLY GRADED SAND with SILT(SP-SM)	NP	NP	NP	1.09	4.58
★ 1 50.0	POORLY GRADED SAND with SILT(SP-SM)	NP	NP	NP	1.28	4.04

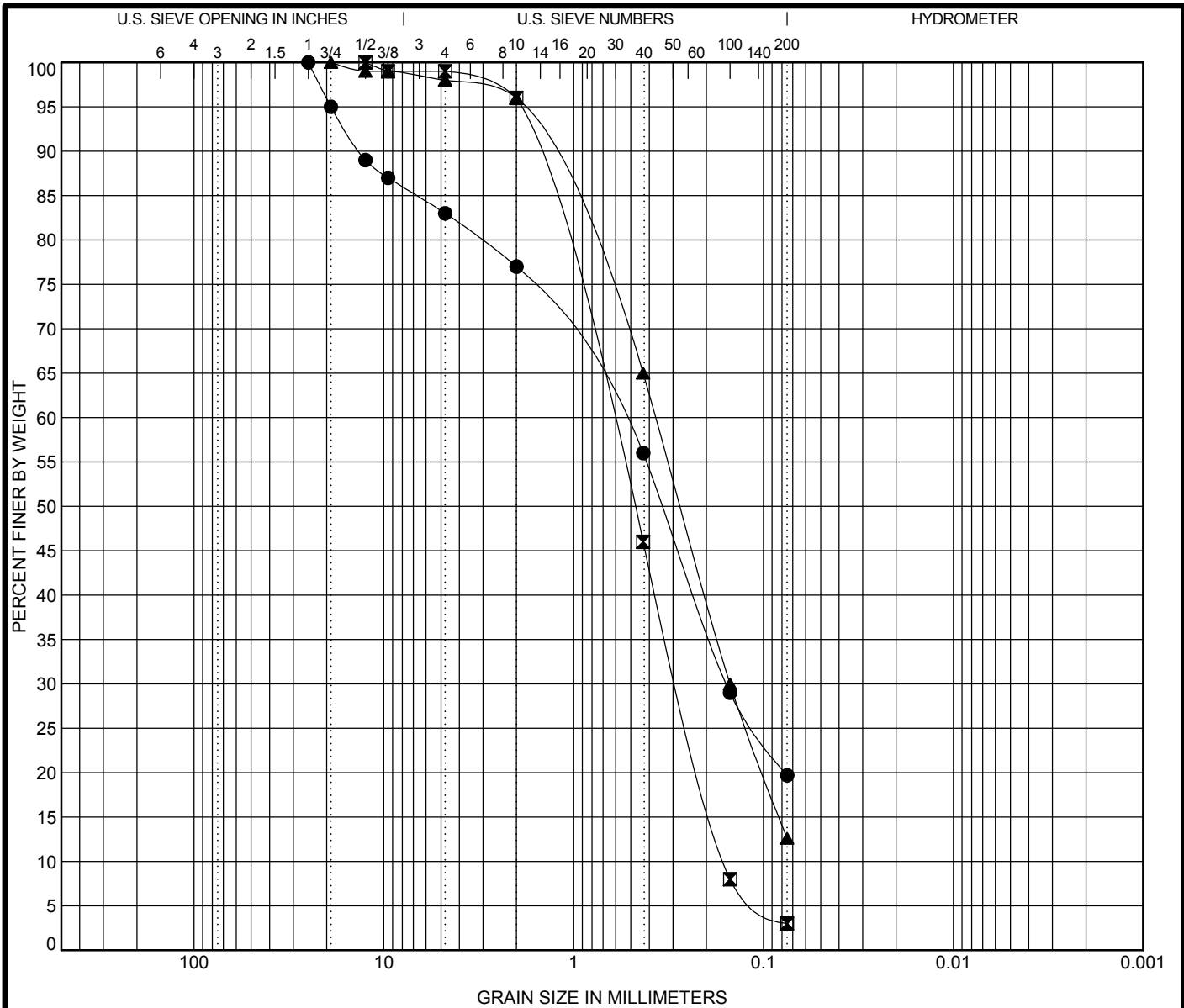
Specimen Identification	D100	D60	D30	D10	%Gravel	%Sand	%Silt	%Clay
● 1 3.0	9.5	0.34	0.197	0.103	1.0	93.3	5.7	
☒ 1 20.0	2				0.0	11.7	88.3	
▲ 1 35.0	19	0.372	0.182	0.081	3.0	88.6	8.4	
★ 1 50.0	4.75	0.293	0.165		0.0	89.3	10.7	



GRAIN SIZE DISTRIBUTION

Project: Early College Academy @ CEC Improvements
 Location: Albuquerque, NM
 Number: 1-81203

US GRAIN SIZE 1-81203 ECA@CEC IMPROVEMENTS.GPJ GEO TEST.GDT 1/29/19



COBBLES	GRAVEL		SAND			SILT OR CLAY
	coarse	fine	coarse	medium	fine	

Specimen Identification	Classification	LL	PL	PI	Cc	Cu
● 2 5.0	SILTY SAND with GRAVEL(SM)	NP	NP	NP		
☒ 2 15.0	POORLY GRADED SAND(SP)	NP	NP	NP	0.73	4.17
▲ 2 45.0	SILTY SAND(SM)	NP	NP	NP		

Specimen Identification	D100	D60	D30	D10	%Gravel	%Sand	%Silt	%Clay
● 2 5.0	25	0.576	0.156		17.0	63.3	19.7	
☒ 2 15.0	12.5	0.661	0.276	0.159	1.0	96.0	3.0	
▲ 2 45.0	19	0.37	0.15		2.0	85.4	12.6	

U.S. GRAIN SIZE 1-81203 ECA@CEC IMPROVEMENTS.GPJ GEO TEST.GDT 1/29/19



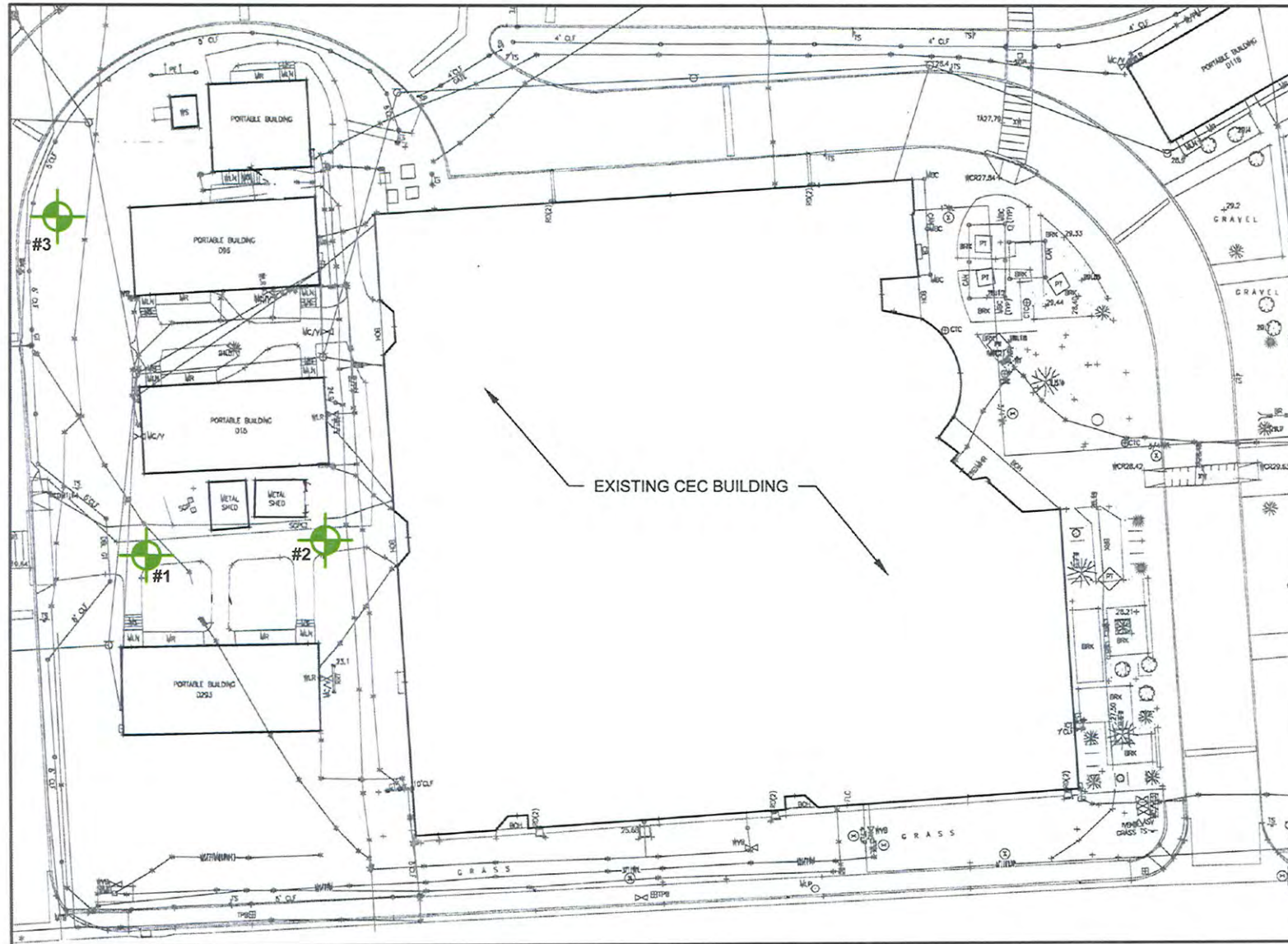
GRAIN SIZE DISTRIBUTION

Project: Early College Academy @ CEC Improvements
 Location: Albuquerque, NM
 Number: 1-81203

Appendix A

2014 Borings Logs

BORING LOCATION MAP



CAREER ENRICHMENT CENTER ADDITION
ALBUQUERQUE, NEW MEXICO
JOB NO. 1-31212

Figure 1

GEO-TEST
GEOTECHNICAL ENGINEERING
AND MATERIAL TESTING
SANTA FE - ALBUQUERQUE - LAS CRUCES



Project: Career Enrichment Center Addition
 Date: 01/20/2014 Project No: 1-31212
 Elevation: Type: 5.5" OD HSA

LOG OF TEST BORINGS

GROUNDWATER DEPTH

NO: 1

During Drilling: None

After 24 Hours:

DEPTH (Ft)	LOG	SAMPLE						SUBSURFACE PROFILE		
		SAMPLE INTERVAL	TYPE	N. BLOWS/FT	MOISTURE %	DRY DENSITY (pcf)	USC	DESCRIPTION	N blows/ft	
									20 40 60 80	
5		5-7-5	SS	5	5	GP-GM	SAND AND GRAVEL, poorly graded, non-plastic, medium dense, slightly moist, gray/brown	12		
		7-7-6	SS	3	3			13		
10		2-4-9	SS	5	5			13		
15		16-19-25	SS	7	7			44		
20		6-25-42	SS	8	8			67		
25		6-23-35	SS	4	4			SM	SILTY SAND, fine to medium grained, non-plastic, dense to very dense, moist, gray/brown NOTE: Occasional layers of clean to slightly silty sands	58
30		15-26-32	SS	5	5					58
35		14-23-40	SS	10	10					63
40					5					

LEGEND

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- UD/SL - Undisturbed Sleeve
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- CS - Continuous Sampler
- UD - Undisturbed
- ST - Shelby Tube

Stratification lines represent approximate boundaries between soil types. Transitions may be gradual. Water level readings have been made at times and under conditions stated. Fluctuations of groundwater may occur due to factors other than those present at the time measurements were made.



Project: Career Enrichment Center Addition
 Date: 01/20/2014 Project No: 1-31212
 Elevation: Type: 5.5" OD HSA

LOG OF TEST BORINGS

GROUNDWATER DEPTH

NO: 1

During Drilling: None

After 24 Hours:

DEPTH (Ft)	LOG	SAMPLE INTERVAL	TYPE	SAMPLE				USC	SUBSURFACE PROFILE	N blows/ft
				N. BLOWS/FT	MOISTURE %	DRY DENSITY (pcf)	DESCRIPTION			
45		19-40-50	SS	90				SM		
		19-32-36	SS	68	3					
50		19-26-26	SS	52	17			ML		
55										
60										
65										
70										
75										
80										

LOG OF TEST BORING 1-31212 CAREER ENRICHMENT CENTER.GPJ GEO TEST.GDT 2/13/14

LEGEND

- SS - Split Spoon
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- UD/SL - Undisturbed Sleeve
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Project: Career Enrichment Center Addition
 Date: 01/20/2014 Project No: 1-31212
 Elevation: Type: 5.5" OD HSA

LOG OF TEST BORINGS

GROUNDWATER DEPTH

NO: 2

During Drilling: None

After 24 Hours:

DEPTH (Ft)	LOG	SAMPLE						SUBSURFACE PROFILE	
		SAMPLE INTERVAL	TYPE	N. BLOWS/FT	MOISTURE %	DRY DENSITY (pcf)	USC	DESCRIPTION	N blows/ft
									20 40 60 80
5			SS	4-5-6	5		SP-SM	SAND, fine to medium grained, trace silt and gravel, non-plastic, loose to medium dense, slightly moist, gray/brown	11
			SS	11	5				10
10			SS	3-4-6	10				
10			SS	13-15-20	8				35
15			UD	18-43	9				61
20			SS	61	9		SM	SILTY SAND, fine to medium grained, non-plastic, dense to very dense, moist, gray/brown	
20			SS	11-26-28	9				54
25			SS	54	9				
25			SS	18-32-41	73				73
30			SS	73	6				
30			SS	21-26-38	6			64	
35			SS	64	6				
35			SS	12-27-36	63				63
40									
STOPPED AUGER AT 34.5' STOPPED SAMPLER AT 26'									

LOG OF TEST BORING 1-31212 CAREER ENRICHMENT CENTER.GPJ GEO TEST.GDT 2/12/14

LEGEND

- SS - Split Spoon
- AMSL - Above Mean Sea Level
- AC - Auger Cuttings
- CS - Continuous Sampler
- UD/SL - Undisturbed Sleeve
- UD - Undisturbed
- ST - Shelby Tube

Stratification lines represent approximate boundaries between soil types. Transitions may be gradual. Water level readings have been made at times and under conditions stated. Fluctuations of groundwater may occur due to factors other than those present at the time measurements were made.



Project: Career Enrichment Center Addition
 Date: 01/20/2014 Project No: 1-31212
 Elevation: Type: 5.5" OD HSA

LOG OF TEST BORINGS

GROUNDWATER DEPTH

NO: 3

During Drilling: None

After 24 Hours:

LOG OF TEST BORING 1-31212 CAREER ENRICHMENT CENTER.GPJ GEO TEST.GDT 2/12/14

DEPTH (Ft)	LOG	SAMPLE INTERVAL	TYPE	SAMPLE				USC	SUBSURFACE PROFILE	N blows/ft
				N. BLOWS/FT	MOISTURE %	DRY DENSITY (pcf)	DESCRIPTION			
5			SS	8-12-14 26	8		SP-SM	SAND, fine to medium grained, trace silt and gravel, non-plastic, medium dense to dense, slightly moist, gray/brown	26	
			SS	6-12-18 30	6				30	
10			SS	10-15-22 37	14		SM	SILTY SAND, some gravel, non-plastic, very dense, moist, gray/brown	37	
15			SS	11-28-41 69	9				69	
20			SS	29-38-50/3" 50/3"	9				76	
25			SS	19-32-44 76	9				83	
30			SS	23-35-48 83	9					
35							STOPPED AUGER AT 29.5' STOPPED SAMPLER AT 31'			
40										

LEGEND

- SS - Split Spoon
- AC - Auger Cuttings
- UD/SL - Undisturbed Sleeve
- AMSL - Above Mean Sea Level
- CS - Continuous Sampler
- UD - Undisturbed
- ST - Shelby Tube

Stratification lines represent approximate boundaries between soil types. Transitions may be gradual. Water level readings have been made at times and under conditions stated. Fluctuations of groundwater may occur due to factors other than those present at the time measurements were made.

SUMMARY OF LABORATORY RESULTS

SUMMARY OF LABORATORY RESULTS 1-31212 CAREER ENRICHMENT CENTER.GPJ GEO TEST.GDT 2/12/14

TEST HOLE	DEPTH (FEET)	UNIFIED CLASS	(% MOIST	LL	PI	SIEVE ANALYSIS PERCENT PASSING											
						NO 200	NO 100	NO 40	NO 10	NO 4	3/8"	1/2"	3/4"	1"	1 1/2"	2"	4"
1	2.5		5.1														
1	4.5	GP-GM	3.1	NP	NP	10	16	30	42	46	48	50	50	50	100		
1	9.5		4.8														
1	14.5	SW-SM	6.9	NP	NP	11	19	55	94	97	98	99	100				
1	19.5		7.9														
1	24.5	SP	3.5	NP	NP	4	8	39	89	94	99	100					
1	29.5		4.9														
1	34.5	SM	9.6	NP	NP	19	49	92	99	100							
1	39.5		4.8														
1	44.5	SP	3.3	NP	NP	3	7	46	98	99	100						
1	49.5	ML	16.9	NP	NP	55	80	98	100								
2	2.5		4.6														
2	4.5		5.4														
2	9.5		8.0														
2	14.5	SM	8.7	17	3	30	48	73	91	96	98	100					
2	19.5		8.8														
2	29.5		5.8														
3	2.5		7.6														
3	4.5	SP-SM	6.1	NP	NP	6	15	48	88	94	97	98	100				



LL = LIQUID LIMIT
PI = PLASTICITY INDEX
NP = NON PLASTIC or NO VALUE

Project: Career Enrichment Center Addition
Location: Albuquerque New Mexico
Number: 1-31212

SUMMARY OF LABORATORY RESULTS

TEST HOLE	DEPTH (FEET)	UNIFIED CLASS	(% MOIST)	LL	PI	SIEVE ANALYSIS PERCENT PASSING											
						NO 200	NO 100	NO 40	NO 10	NO 4	3/8"	1/2"	3/4"	1"	1 1/2"	2"	4"
3	9.5		14.1														
3	14.5	SM	8.9	NP	NP	16	32	76	95	97	97	97	100				
3	19.5		9.2														
3	24.5	SM	8.6	NP	NP	18	40	68	95	98	100						
3	29.5		8.7														

SUMMARY OF LABORATORY RESULTS 1-31212 CAREER ENRICHMENT CENTER.GPJ GEO TEST.GDT 2/12/14

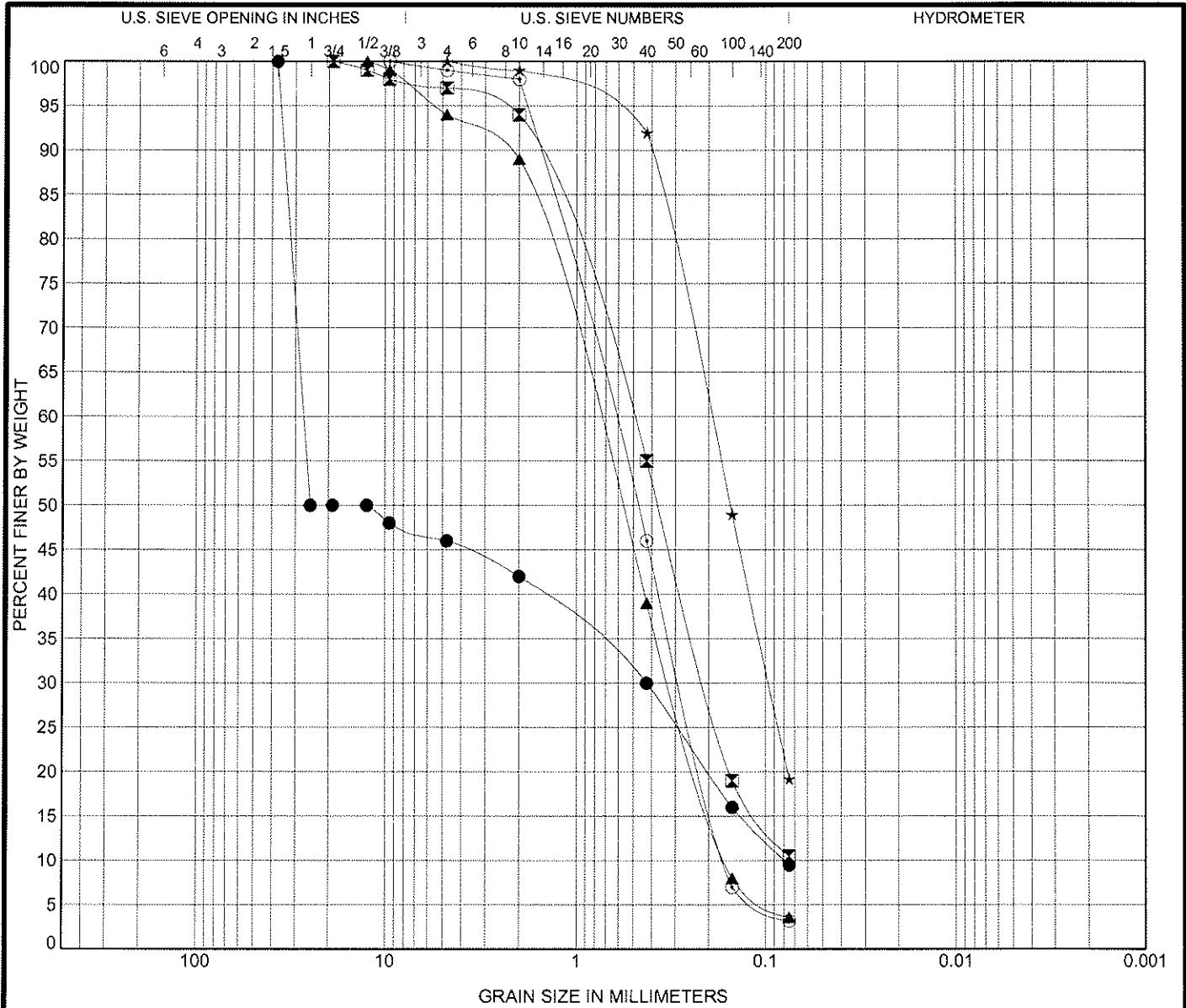


LL = LIQUID LIMIT
 PI = PLASTICITY INDEX
 NP = NON PLASTIC or NO VALUE

Project: Career Enrichment Center Addition

Location: Albuquerque New Mexico

Number: 1-31212



COBBLES	GRAVEL		SAND			SILT OR CLAY
	coarse	fine	coarse	medium	fine	

Specimen Identification	Classification	LL	PL	PI	Cc	Cu
● 1	4.5 POORLY GRADED GRAVEL with SILT and SAND(GP-GMP)	NP	NP	NP	0.08	342.72
⊠ 1	14.5 WELL-GRADED SAND with SILT(SW-SM)	NP	NP	NP	1.14	7.20
▲ 1	24.5 POORLY GRADED SAND(SP)	NP	NP	NP	0.76	5.08
★ 1	34.5 SILTY SAND(SM)	NP	NP	NP		
⊙ 1	44.5 POORLY GRADED SAND(SP)	NP	NP	NP	0.73	3.97

Specimen Identification	D100	D60	D30	D10	%Gravel	%Sand	%Silt	%Clay
● 1	4.5	37.5	27.112	0.425	0.079	54.0	36.5	9.5
⊠ 1	14.5	19	0.518	0.206		3.0	86.5	10.5
▲ 1	24.5	12.5	0.815	0.314	0.16	6.0	90.4	3.6
★ 1	34.5	4.75	0.196	0.096		0.0	80.8	19.2
⊙ 1	44.5	9.5	0.645	0.277	0.163	1.0	95.8	3.2

GRAIN SIZE DISTRIBUTION

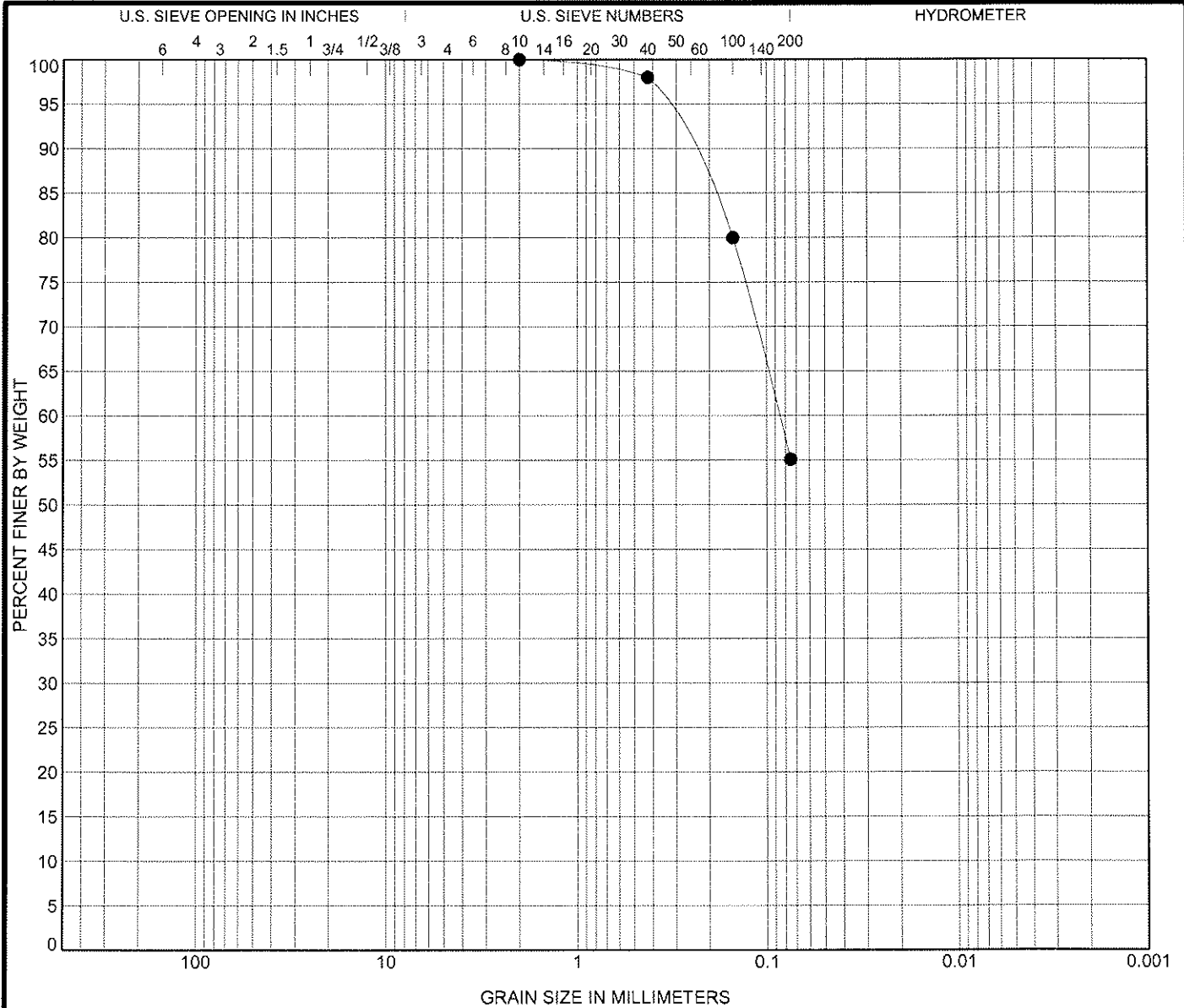


Project: Career Enrichment Center Addition

Location: Albuquerque New Mexico

Number: 1-31212

U.S. GRAIN SIZE 1-31212 CAREER ENRICHMENT CENTER.GPJ.GEO TEST.GDT. 1/28/14



COBBLES	GRAVEL		SAND			SILT OR CLAY
	coarse	fine	coarse	medium	fine	

Specimen Identification	Classification	LL	PL	PI	Cc	Cu
● 1 49.5	SANDY SILT (ML)	NP	NP	NP		

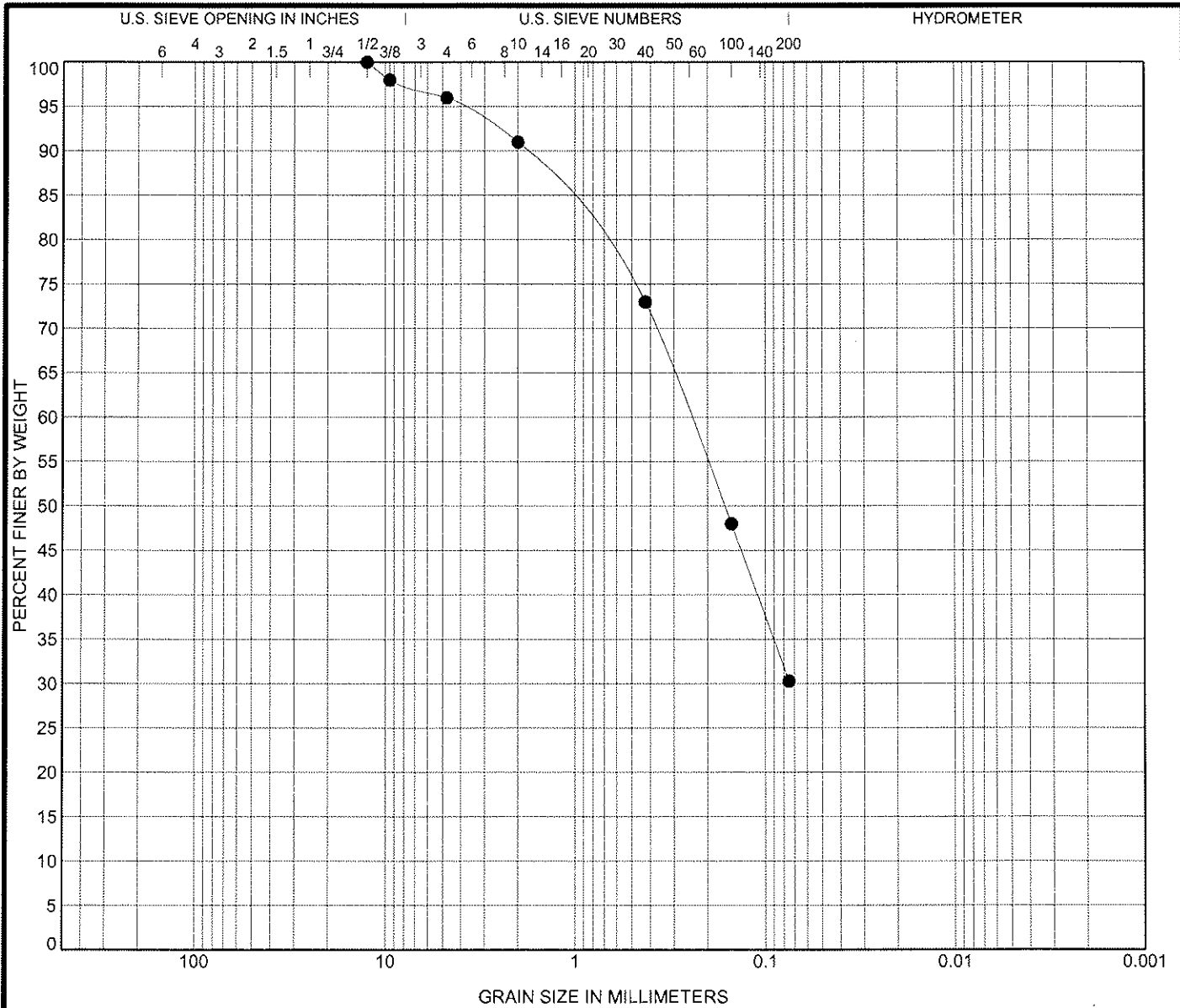
Specimen Identification	D100	D60	D30	D10	%Gravel	%Sand	%Silt	%Clay
● 1 49.5	2	0.086			0.0	44.9	55.1	



GRAIN SIZE DISTRIBUTION

Project: Career Enrichment Center Addition
 Location: Albuquerque New Mexico
 Number: 1-31212

US GRAIN SIZE 1-31212 CAREER ENRICHMENT CENTER.GPJ GEO TEST.GDT 1/28/14



COBBLES	GRAVEL		SAND			SILT OR CLAY
	coarse	fine	coarse	medium	fine	

Specimen Identification	Classification	LL	PL	PI	Cc	Cu
● 2 14.5	SILTY SAND(SM)	17	14	3		

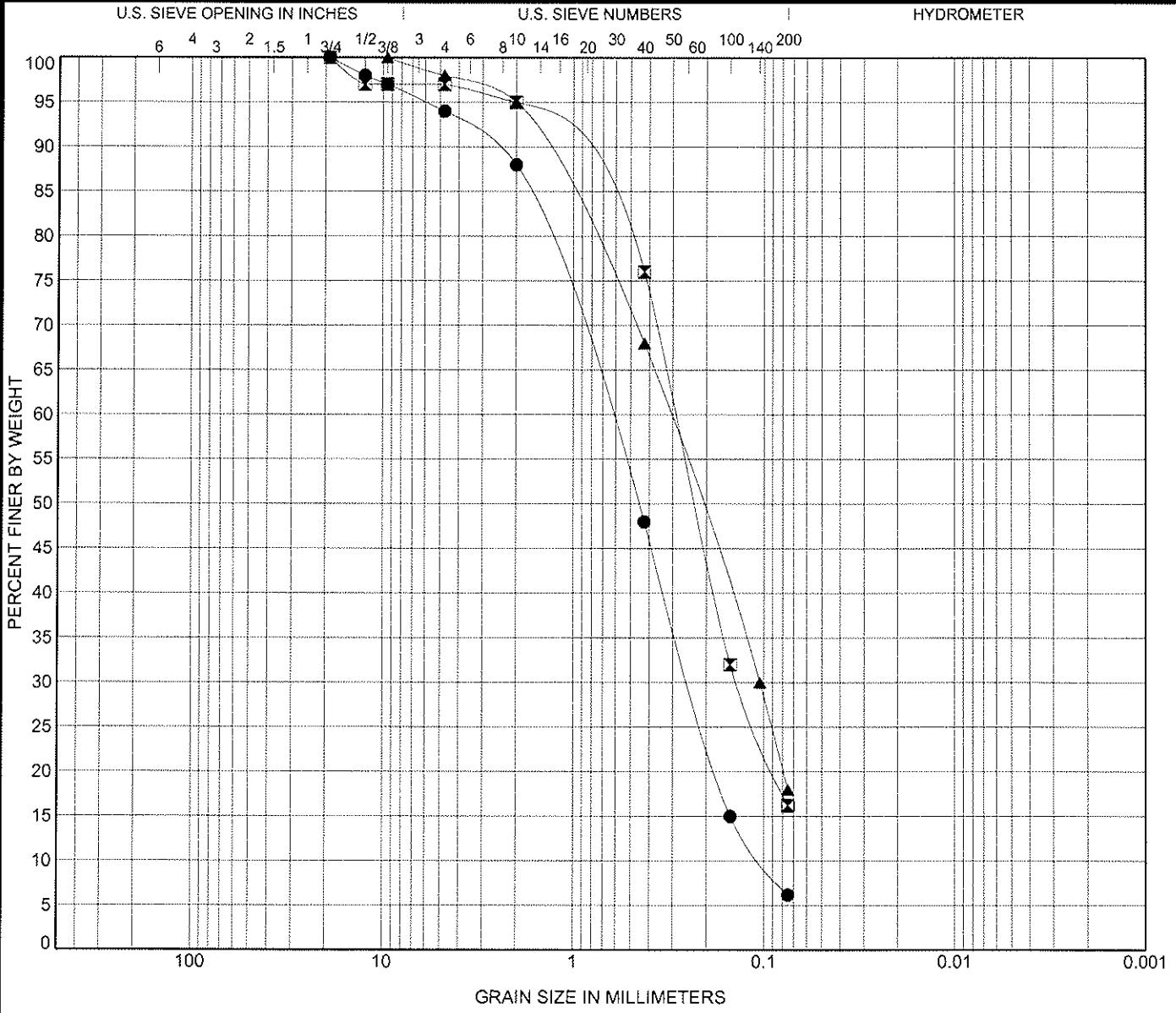
Specimen Identification	D100	D60	D30	D10	%Gravel	%Sand	%Silt	%Clay
● 2 14.5	12.5	0.247			4.0	65.7	30.3	

GRAIN SIZE DISTRIBUTION



Project: Career Enrichment Center Addition
 Location: Albuquerque New Mexico
 Number: 1-31212

U.S. GRAIN SIZE 1-31212 CAREER ENRICHMENT CENTER.GPJ GEO TEST.GDT 1/28/14



COBBLES	GRAVEL		SAND			SILT OR CLAY
	coarse	fine	coarse	medium	fine	

Specimen Identification	Classification	LL	PL	PI	Cc	Cu			
● 3	4.5	POORLY GRADED SAND with SILT(SP-SM)			NP	NP	NP	0.85	6.69
■ 3	14.5	SILTY SAND(SM)			NP	NP	NP		
▲ 3	24.5	SILTY SAND(SM)			NP	NP	NP		

Specimen Identification	D100	D60	D30	D10	%Gravel	%Sand	%Silt	%Clay
● 3	4.5	19	0.676	0.241	0.101	6.0	87.8	6.2
■ 3	14.5	19	0.291	0.137		3.0	80.8	16.2
▲ 3	24.5	9.5	0.317	0.105		2.0	80.0	18.0

GRAIN SIZE DISTRIBUTION



Project: Career Enrichment Center Addition
 Location: Albuquerque New Mexico
 Number: 1-31212

U.S. GRAIN SIZE 1-31212 CAREER ENRICHMENT CENTER.GPJ GEO TEST.GDT 1/28/14

Appendix B

Shear Wave Velocity Report



February 4, 2014

GeoTest, Inc.
8528 Cale Alameda NE
Albuquerque, NM 87113

Attention: Charles Miller, PE

RE: Shear Wave Velocity Profile

**Addition to APS Career Enrichment Center
807 Mountain Road NE
Albuquerque, NM
Project No. NM-140002**

Dear Mr. Miller:

This letter report presents the results of our refraction microtremor measurements and analysis for the referenced project. The purpose of our services was to provide a calculated average shear wave velocity of subsurface materials at the development to a depth of 30 meters (100 feet). This information was used to establish a recommended Site Class in accordance with the 2009 International Building Code (IBC).

FIELD WORK

The scope of our services for this project included measurement of surface waves on January 30, 2014 with one (1) geophone array using standard p-wave geophones. Ambient noise/refraction microtremor data was recorded using a geophone spacing of eight meters (26.25 feet) with 11 channels. Sampling was performed at a two millisecond rate for 30 second periods.

The approximate location of the array is shown on Plate 1, Site Map. The array was located in the field by measuring from existing natural and cultural features. The location of the array is accurate only to the degree implied by the methods used.

DATA REDUCTION AND RESULTS

The one-dimensional shear wave velocity profile and average shear wave velocity to 100 feet depth were modeled for each array data set using Optim Software's SeisOpt® ReMi™v3.0 software. The field data were reduced and processed by the software to produce a velocity spectrum by slowness-frequency (p-f) transformation of the records.

GEOLINES, LLC

P.O. BOX 52065 • ALBUQUERQUE, NM • 87181-2065

PHONE: (505)332-2114

Using the processed data, the software produces a p-f image and the normal-mode dispersion trend is identified. Frequency-velocity pairs comprising the dispersion curve are picked at the lower bounds of the trend of the high spectral ratio band identified in the p-f image. The p-f image and dispersion modeling picks for the array measurements are shown on Plate 2, Dispersion Curve and p-f Image. The dispersion curve modeling picks obtained from the p-f image were then used to develop a calculated dispersion curve and a one-dimensional shear wave velocity model for the site. Frequency-velocity picks and calculated dispersion curve fits are shown on Plate 2, Dispersion Curve and p-f Image. The shear wave velocity profile for the array is presented in Plate 3, Shear Wave Velocity Model.

RECOMMENDATIONS

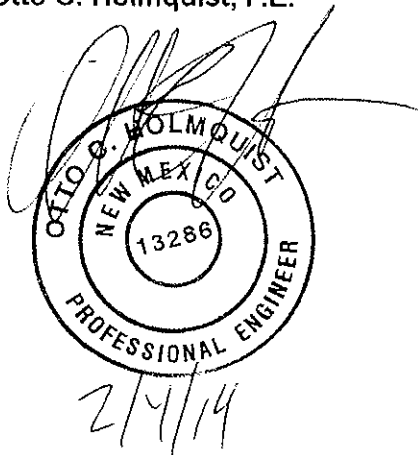
The calculated average shear wave velocity for 100 feet depth at the geophone array is 2116 feet per second (f/s). Based on these findings, a Site Class C as presented in Table 1613.5.2 in the IBC is appropriate.

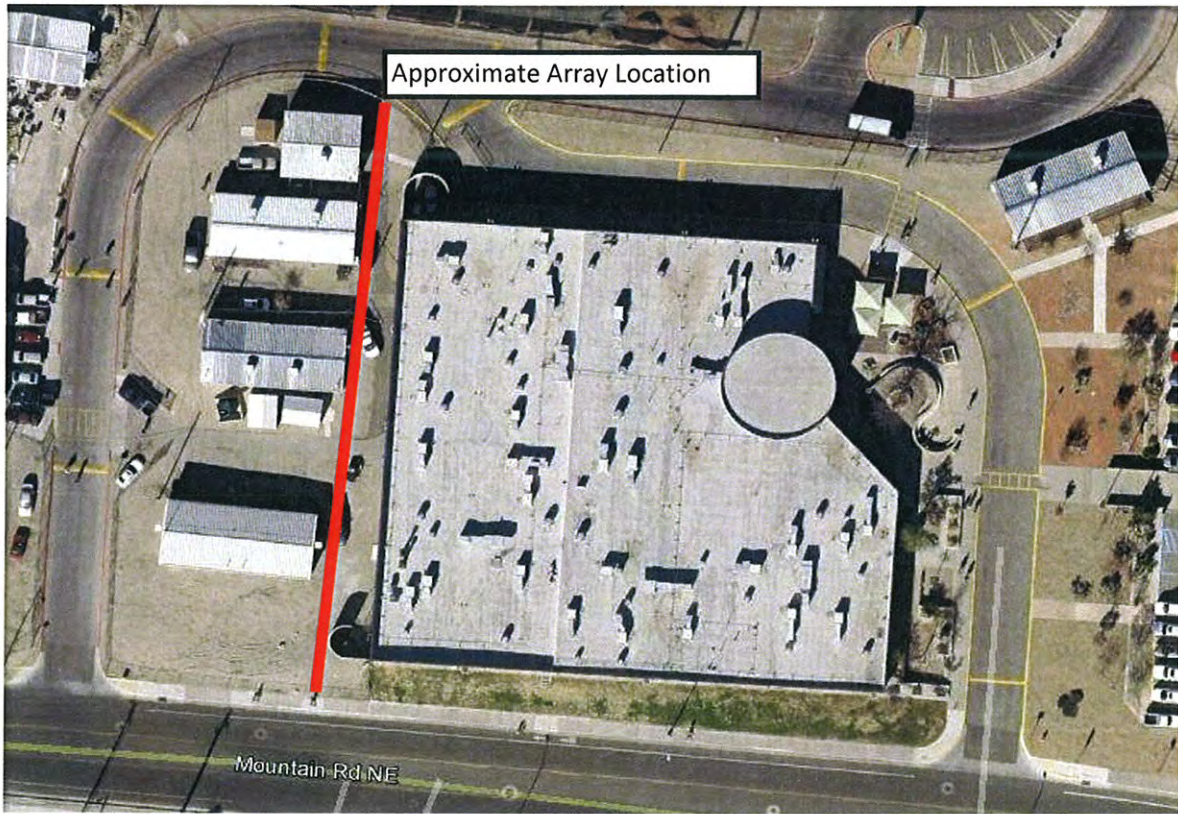
CLOSURE

Professional services for this project were performed using that degree of care and skill ordinarily exercised under similar circumstances by reputable geotechnical engineers practicing in this or similar localities. No warranties, express or implied, are intended or made.

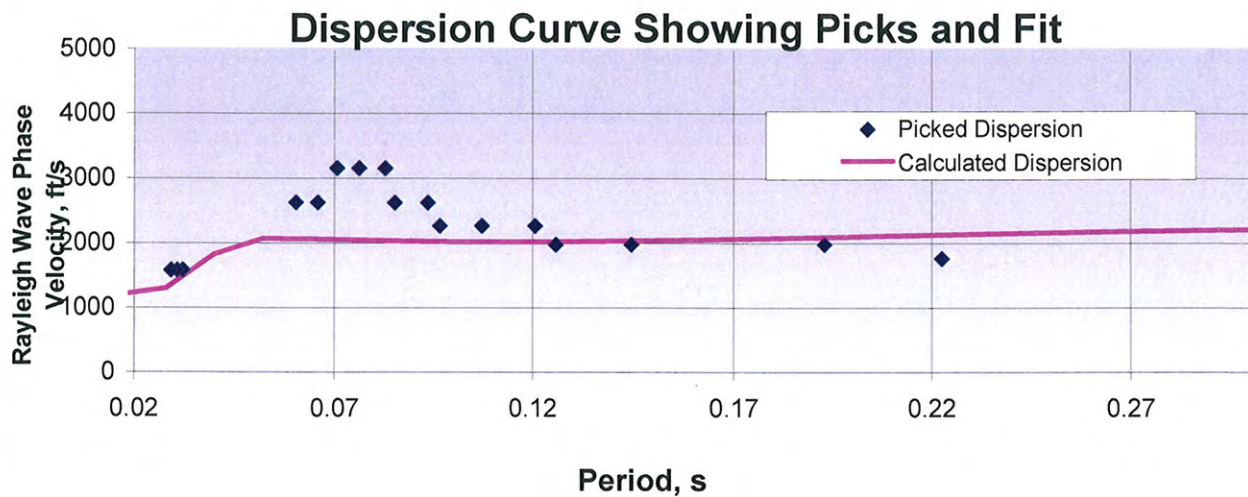
Respectfully submitted,

Otto C. Holmquist, P.E.

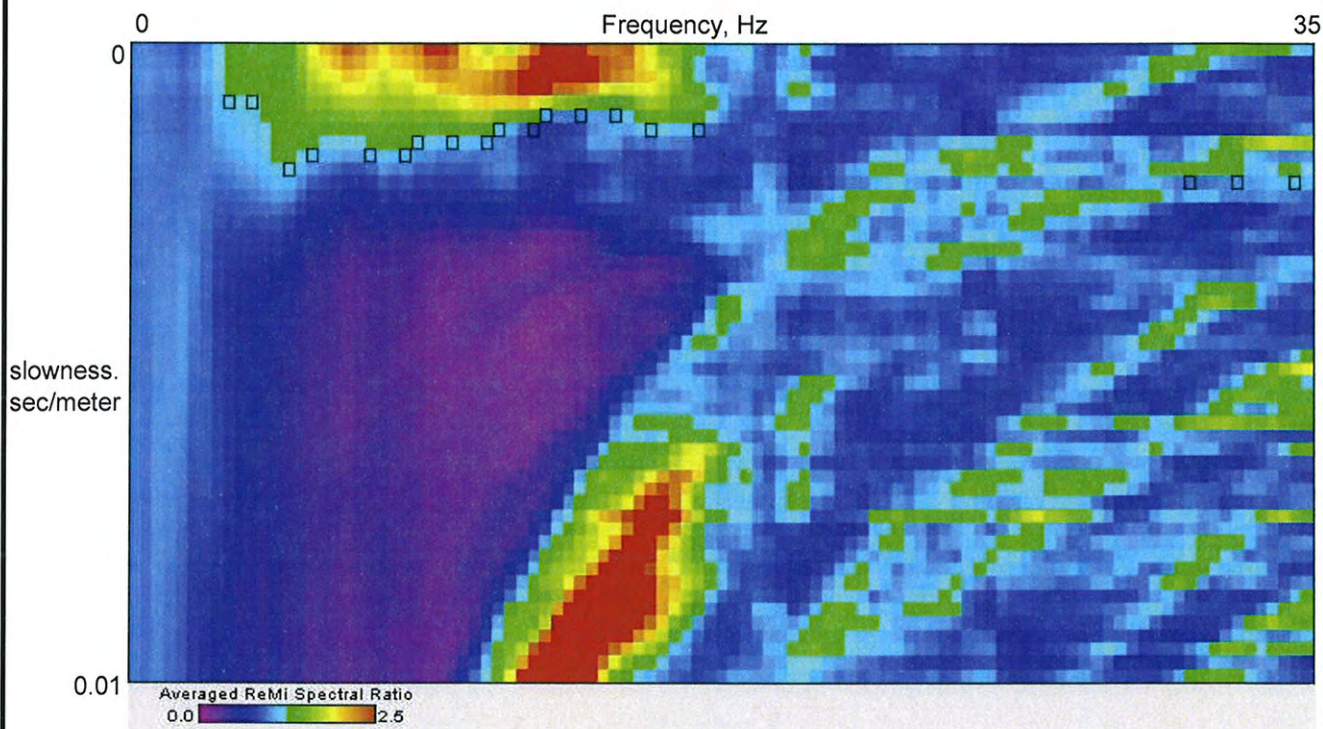




GEOLINES	GeoTest, Inc.	SITE MAP	
	Addition to APS Career Enrichment Center 807 Mountain Road NE Albuquerque, NM	PROJECT NO.: NM-140002	PLATE NO. 1



p-f Image and Dispersion Picks



GeoTest, Inc.

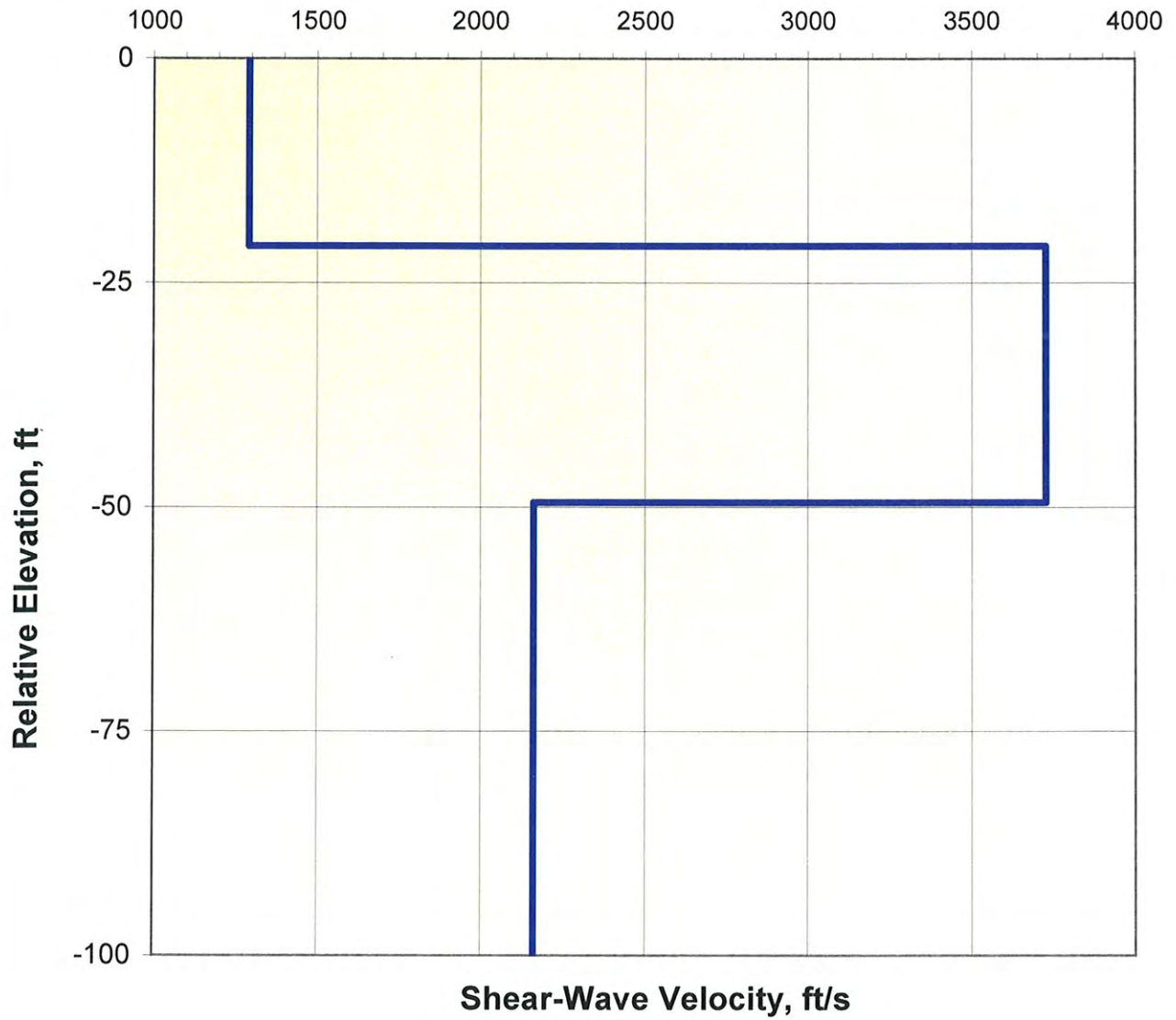
Addition to APS Career Enrichment Center
807 Mountain Road NE
Albuquerque, NM

**Dispersion Curve
and p-f Image**

PROJECT NO.:
NM-140002

PLATE NO.
2

1-D Shear-Wave Velocity Profile



GeoTest, Inc.

Addition to APS Career Enrichment Center
807 Mountain Road NE
Albuquerque, NM

**SHEAR WAVE
VELOCITY MODEL**

PROJECT NO.:

NM-140002

PLATE NO.

3

Appendix C

Corrosivity Testing Results

Corrosion Data

Project: ECA@CEC
Report # 1-81203

Soil Resistivity (ASTM G-57)

Sample Location: 15-30 feet composite

Wet Weight:	138.2 grams
Dry Weight:	128.6 grams
Water Content	6.80 %

<u>As-Received Condition</u>	
Potential Change	14.0 volts
Current:	0.002 amps
Resistivity:	7000 ohm-cm

<u>Saturated Condition</u>	
Potential Change:	18.0 volts
Current:	0.004 amps
Resistivity:	4500 ohm-cm

pH of Soil (ASTM G-51 & D-4972)

Sample Location: 15-30 feet composite

Distilled Water Solution:	pH = 7.51
Calcium Chloride Solution:	pH = 6.47



Hall Environmental Analysis Laboratory
4901 Hawkins NE
Albuquerque, NM 87109
TEL: 505-345-3975 FAX: 505-345-4107
Website: www.hallenvironmental.com

February 05, 2019

Patrick Whorton

Geo-Test

8528 Calle Alameda NE

Albuquerque, NM 87113

TEL: (505) 857-0933

FAX (505) 857-0803

RE: ECA at CEL

OrderNo.: 1902049

Dear Patrick Whorton:

Hall Environmental Analysis Laboratory received 1 sample(s) on 2/1/2019 for the analyses presented in the following report.

These were analyzed according to EPA procedures or equivalent. To access our accredited tests please go to www.hallenvironmental.com or the state specific web sites. In order to properly interpret your results, it is imperative that you review this report in its entirety. See the sample checklist and/or the Chain of Custody for information regarding the sample receipt temperature and preservation. Data qualifiers or a narrative will be provided if the sample analysis or analytical quality control parameters require a flag. When necessary, data qualifiers are provided on both the sample analysis report and the QC summary report, both sections should be reviewed. All samples are reported, as received, unless otherwise indicated. Lab measurement of analytes considered field parameters that require analysis within 15 minutes of sampling such as pH and residual chlorine are qualified as being analyzed outside of the recommended holding time.

Please don't hesitate to contact HEAL for any additional information or clarifications.

ADHS Cert #AZ0682 -- NMED-DWB Cert #NM9425 -- NMED-Micro Cert #NM0901

Sincerely,

A handwritten signature in black ink, appearing to read 'Andy Freeman', is written over a white background.

Andy Freeman

Laboratory Manager

4901 Hawkins NE

Albuquerque, NM 87109

Hall Environmental Analysis Laboratory, Inc.

Analytical Report

Lab Order 1902049

Date Reported: 2/5/2019

CLIENT: Geo-Test

Client Sample ID: 1-81203

Project: ECA at CEL

Collection Date: 2/1/2019

Lab ID: 1902049-001

Matrix: SOIL

Received Date: 2/1/2019 4:05:00 PM

Analyses	Result	PQL	Qual	Units	DF	Date Analyzed	Batch
EPA METHOD 300.0: ANIONS							Analyst: MRA
Chloride	ND	1.5		mg/Kg	1	2/4/2019 4:08:46 PM	42945
Sulfate	95	1.5		mg/Kg	1	2/4/2019 4:08:46 PM	42945

Refer to the QC Summary report and sample login checklist for flagged QC data and preservation information.

Qualifiers:	*	Value exceeds Maximum Contaminant Level.	B	Analyte detected in the associated Method Blank
	D	Sample Diluted Due to Matrix	E	Value above quantitation range
	H	Holding times for preparation or analysis exceeded	J	Analyte detected below quantitation limits
	ND	Not Detected at the Reporting Limit	P	Sample pH Not In Range
	PQL	Practical Quantitative Limit	RL	Reporting Detection Limit
	S	% Recovery outside of range due to dilution or matrix	W	Sample container temperature is out of limit as specified

QC SUMMARY REPORT

Hall Environmental Analysis Laboratory, Inc.

WO#: 1902049

05-Feb-19

Client: Geo-Test
Project: ECA at CEL

Sample ID MB-42945	SampType: mblk		TestCode: EPA Method 300.0: Anions							
Client ID: PBS	Batch ID: 42945		RunNo: 57445							
Prep Date: 2/4/2019	Analysis Date: 2/4/2019		SeqNo: 1922413		Units: mg/Kg					
Analyte	Result	PQL	SPK value	SPK Ref Val	%REC	LowLimit	HighLimit	%RPD	RPDLimit	Qual
Chloride	ND	1.5								
Sulfate	ND	1.5								

Sample ID LCS-42945	SampType: lcs		TestCode: EPA Method 300.0: Anions							
Client ID: LCSS	Batch ID: 42945		RunNo: 57445							
Prep Date: 2/4/2019	Analysis Date: 2/4/2019		SeqNo: 1922414		Units: mg/Kg					
Analyte	Result	PQL	SPK value	SPK Ref Val	%REC	LowLimit	HighLimit	%RPD	RPDLimit	Qual
Chloride	14	1.5	15.00	0	94.3	90	110			
Sulfate	29	1.5	30.00	0	97.6	90	110			

Qualifiers:

- * Value exceeds Maximum Contaminant Level.
- D Sample Diluted Due to Matrix
- H Holding times for preparation or analysis exceeded
- ND Not Detected at the Reporting Limit
- PQL Practical Quantitative Limit
- S % Recovery outside of range due to dilution or matrix
- B Analyte detected in the associated Method Blank
- E Value above quantitation range
- J Analyte detected below quantitation limits
- P Sample pH Not In Range
- RL Reporting Detection Limit
- W Sample container temperature is out of limit as specified

ENUMERATION OF THE CONTRACT DOCUMENTS

PROJECT: ECA @ CEC MODERNIZATION, RENOVATION AND ADDITION

The Contract Documents will consist of the Agreement between the Owner and the Contractor and General Conditions, plus all attachments, exhibits, project specifications, schedules, the construction drawings, the Project Manual, the Request for Proposal (including the RFP Legal Notice and all Attachments), the Price Proposal Form and Proposal Bond Form, the Subcontractor Listing Requirements, any Bond/Insurance Certificate/Insurance Endorsement Forms, **Minimum Wage Information**, Contractor's Price Proposal and relevant Addenda or portions thereof, which shall be deemed to be so modified and amended as set out in the balance of the Contract Documents), all other documents identified in Article 7.22 of the Agreement between the Owner and the Contractor, and any modifications, Change Orders, Addenda, or amendments to any of those documents executed after the effective date of the agreement.

- A. The Drawings are identified as follows: As listed in Section 00 8100 – List of Drawings
- B. The Specifications are identified as follows: As listed in Section 00 8200 – Index to Technical Specifications
- C. All addenda to the Drawings/Specifications as issued during the RFP process.

OWNER/CONTRACTOR AGREEMENT

The form of Owner/Contractor Agreement to be executed is the standard [*Insert “APS Construction Agreement and General Conditions” if project is funded solely by APS; insert “PSFA Construction Agreement and General Conditions” if project is jointly funded by APS and PSFA.*]

A sample Agreement follows. [*Insert sample Owner/Contractor Agreement as following pages.*]

DOCUMENT FOLLOWS

Agreement between the Owner and the Contractor

2008 Edition, APS

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

Project (short title): Invitation to Bid No.: _____

Location: APS Contract No.: _____

Distribution to: Owner (2) Contractor Design Professional

This Agreement entered into this day of , 20____, by and between the parties
as follows:

THE OWNER:

THE BOARD OF EDUCATION
ALBUQUERQUE MUNICIPAL
SCHOOL DISTRICT NO. 12
("ALBUQUERQUE PUBLIC
SCHOOLS")
6400 UPTOWN BLVD, NE
ALBUQUERQUE, NM 87110
Telephone: (505) (880-3700)

THE CONTRACTOR:

Telephone: _____
Fax: _____

and, hereinafter "Owner".

APS CONSTRUCTION MANAGEMENT:

ALBUQUERQUE PUBLIC SCHOOLS
FACILITIES DESIGN & CONSTRUCTION
915 OAK STREET, SE
ALBUQUERQUE, NM 87106
Telephone: (505) 848-8810
Fax: (505) 246-9020

DESIGN PROFESSIONAL OF RECORD:

Telephone: _____
Fax: _____

RECITALS

WHEREAS, Contractor has represented to APS that it is specifically qualified to perform construction services of the nature contemplated by this Agreement; and

WHEREAS, Albuquerque Public Schools (APS) desires to engage the construction services of Contractor and Contractor desires to perform such services for APS.

The OWNER and the CONTRACTOR agree as set forth below.

ARTICLE 1

THE CONTRACT DOCUMENTS

The Contract Documents consist of the following:

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

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:

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, by lump sum or by monthly payments if required by the Owner, the amount of _____ Dollars (\$ _____) per consecutive calendar day, not as a penalty, but as liquidated damages for such breach of this Contract.

Phased Construction: If the project contains multiple phases of construction, each phase shall be subject to the amount of liquidated damages per consecutive calendar day indicated in the paragraph above, if so noted below:

Phase 1:	calendar days. Liquidated Damages	apply this phase.
Phase 2:	calendar days. Liquidated Damages	apply this phase.
Phase 3:	calendar days. Liquidated Damages	apply this phase.

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:

Base Bid Amount.....	\$	_____
Bid Lot 1 - HVAC warranty/maintenance...	\$	_____
Bid Lot 2 - PV System.....	\$	_____
Bid Lot 3 - _____.....	\$	_____
Alternates (if any).....	\$	_____
Award Amount	\$	_____
Gross Receipts Tax* @ _____ %.....	\$	_____
Contract Sum	\$	_____

* Gross receipts tax (GRT) shall be added as a line item to 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 approved MCR.

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 four (4) counterparts, each of which shall be deemed an original.

7.2 **Owner Provided 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 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. The Contractor and his agents and employees shall not accrue leave, retirement, insurance, bonding, use of Owner vehicles, or any other benefits afforded to employees of the Owner 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 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 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: ALBUQUERQUE PUBLIC SCHOOLS
FACILITIES DESIGN &
CONSTRUCTION
ATTN: KAREN ALARID, DIRECTOR
915 OAK STREET, SE
ALBUQUERQUE, NM 87106

CONTRACTOR:

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 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.

7.15 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.

7.16 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 thereof.

7.17 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.

7.18 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.

7.19 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.

7.20 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.

7.21 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.

7.22 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 7.22.

7.22.1 The following documents bound in the Project Manual dated:

- 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 Intent to Award
- Notice of Award
- Notice to Proceed
- General Conditions

Supplementary Conditions
Addenda and Modifications

7.22.2 Specifications

Specifications: Refer to **Exhibit A**, attached to this Agreement

7.22.3 Drawings

Drawings, dated _____ ; refer to **Exhibit B**, attached to this Agreement.

7.22.5 Addenda

No. _____	Description _____	Date _____
No. _____	Description _____	Date _____
No. _____	Description _____	Date _____
No. _____	Description _____	Date _____
No. _____	Description _____	Date _____
No. _____	Description _____	Date _____

7.22.6 Exhibits

- Exhibit A – Index to Technical Specifications
- Exhibit B – List of Drawings
- Exhibit C – Estimated Monthly Draw-down Schedule
- Exhibit D-1 – Modification/Change Request
- Exhibit D-2 – Change Order
- Exhibit E – Certificate of Substantial Completion
- Exhibit F – Certificate of Final Completion
- Exhibit G – APS Project Management System

END OF ARTICLE 7

Invitation to Bid No.: _____

APS Contract No.: _____

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: Karen Alarid

Title: Director, Facilities Design & Construction Date: _____



BONDS AND INSURANCE

BONDS:

1. Proposal Security: Must be submitted with Price Proposal using AIA Document 310, or similar standard form acceptable to Owner.
2. Performance and Labor and Material Payment Bonds: Contractor shall furnish in connection with the performance of the Work, in a form acceptable to Owner (AIA Documents A 312, or similar standard form acceptable to Owner) and executed by a surety company satisfactory to Owner, a payment bond for the protection of persons furnishing labor and materials and a performance bond for the protection of Owner. The penal sum of each bond shall be equal to the Contract Sum. Bonds shall be dated as of the Effective Date of this agreement and shall be furnished promptly by Contractor to Owner, accompanied by a certified copy of the "Power of Attorney" document issued by the surety company. Contractor shall notify the surety of any changes affecting the general scope of the Work or change in the Contract Sum and the amount of the applicable bonds shall be adjusted accordingly. Contractor shall furnish proof of such adjustment to Owner upon request. The performance bond shall remain in effect until satisfactory completion of all of Contractor's obligations under this Agreement (including performance of warranty obligations). The labor and material payment bond shall remain in effect until final payment is made to all tiers of subcontractors, suppliers and others furnishing labor or materials.
3. Modification to Bonds: Paragraph 6 of this Payment Bond is deleted in its entirety and replaced with the following provision: "Within 45 days (1) after the claimant has satisfied the conditions of Paragraph 4 and (2) after the Surety has received at its home office all supporting documentation it requested to substantiate the amount of the claim, the Surety shall pay or arrange for payment of any undisputed amounts. Failure of the Surety to satisfy the above requirements shall not be deemed a forfeiture or waiver of the Surety's or the Contractor's defenses under this Bond or their right to dispute such claim. However in such event the claimant may bring suit against the Surety as provided under this Bond.

INSURANCE:

Contractor's insurance requirements are as set forth in these documents. Four (4) signed copies of all required certificates, endorsements, or other evidence of insurance must be delivered to Owner. The forms of any required insurance certificates or insurance endorsements are attached as part of this Section 00 6000, or are as described herein.

Insurers must (1) be authorized to do business in New Mexico; (2) maintain an address for service of process in New Mexico; and (3) either (a) have an "A" policyholder's rating and a financial rating of at least Class XI in accordance with the most current A.M. Best's Rating; or (b) be acceptable to Owner as evidenced by Owner's written approval of such insurer.

If mandatory deductibles should be required under the terms of any insurance to be provided for this project, or if Contractor should elect to increase the mandatory deductible amounts or purchase insurance with voluntary deductible amounts, the Contractor shall not be entitled to any reimbursement from Owner for payment of the amount of the deductible in the event of a paid claim. Owner must approve any changes in deductible amounts in writing.

Certificates of insurance and endorsements must be on forms acceptable to Owner and delivered to Owner prior to commencement of the work. The Contractor shall furnish a Certificate of Insurance under current form of ACORD 25 (2010/05).

In addition, if requested by Owner, Contractor shall deliver to Owner a certified copy of any policies called for in these documents including any endorsements, addenda or amendments to such policies within 10 days. If Owner is damaged by Contractor's failure to obtain and maintain the required insurance, then Contractor shall be liable to Owner for all costs, expenses and damages which may result, including reasonable attorney's fees. All insurance policies to be furnished by Contractor for purposes of this project shall be subject to approval by Owner. All policies shall be on an occurrence as opposed to claims made basis.

To the extent Contractor or any Subcontractor would be reimbursed by Owner for any loss covered by the insurance provided, the Contractor or Subcontractor shall waive any claim they may have for such reimbursement to the extent covered by the insurance.

The types of insurance the Contractor shall obtain and maintain are as follows:

Workers' Compensation Insurance and Employers' Liability:

Workers' Compensation Insurance and Employers' Liability insurance shall be maintained in full force and effect for the full warranty period provided for in the contract documents. Contractor shall comply with all applicable provisions of the New Mexico Workers' Compensation Act, and the New Mexico Occupational Disease Disablement Law. Workers' and Employer's Liability insurance will be procured and maintained in accordance with New Mexico laws and regulations.

Contractor shall require each Subcontractor to provide the same Workers' Compensation and Employers' Liability coverage for all the Subcontractor's employees working on the project. Neither Owner nor the Design Professional, their directors, officers, board members, representatives, agents or employees will be responsible for any claims or actions occasioned by the failure of the Contractor to comply with this obligation.

At the time of the Contractor's execution of the contract, Contractor shall deliver to Owner a certificate(s) of insurance testifying that he has obtained full Workers' Compensation and Employer's Liability insurance coverage, for all persons whom he employs or may employ during the course of the project. Such coverage shall be maintained for the duration of the contract and the warranty period and shall meet the most current requirements.

Liability Insurance:

General Liability Insurance shall be provided with the following limits.

- \$1,000,000 General Aggregate
- \$1,000,000 Products/Completed Operations Aggregate
- \$1,000,000 Personal Injury and Advertising Injury
- \$1,000,000 Each Occurrence
- \$50,000 Fire Damage (any one fire)
- \$5,000 Medical Expense (any one person)

The policy shall include coverage for bodily injury liability, broad form property damage liability, blanket contractual liability, Contractor's protective liability, products liability and completed operations. Where applicable, the policy shall include coverage for the hazards commonly referred to as "XCU."

Business Automobile Liability Insurance with a minimum limit of not less than Two Million Dollars (\$2,000,000) per accident with respect to Contractor's vehicles whether owned, hired, or non-owned, assigned to or used in the performance of any Work required to be performed by Contractor pursuant to the Contract Documents. Excess insurance or umbrella liability insurance will be acceptable in attaining the required limits.

Builder's Risk Insurance:

Contractor shall obtain and maintain Builder's Risk "Special Form" insurance coverage for full insurable value to replace or repair up to the contract sum, with provision for endorsements to increase coverage if the contract sum is increased. Such insurance coverage shall include the interests of Owner, Contractor, Subcontractor and Sub-subcontractors in the work and shall insure without limitation against the perils of fire

with extended coverage and shall include "Special Form" insurance for the physical loss or damage including, without duplication of coverage, theft, vandalism, and malicious mischief. Such coverage shall include work in progress and completed work. If not covered by the "Special Form" insurance, Contractor shall also obtain similar property insurance coverage on portions of the work stored off the site or in transit when such portions of the work are to be included in an application for payment. Such insurance shall include as additional insured Owner, Owner's representative(s) and each of their respective directors, officers, board members, employees and agents. The form of coverage and policy called for herein must be accepted and approved by Owner.

Such insurance may have a deductible clause but not to exceed \$5000 per occurrence. Contractor shall be liable for the deductible on any loss to which the deductible applies.

Any loss insured under this section shall be adjusted with Owner and made payable to Owner. Upon receipt of the insurance proceeds Owner shall reimburse Contractor or his Subcontractors for any insured losses less any deductible charged to Owner.

Contractor shall deliver to Owner such endorsements to the coverage provided herein to insure coverage of the entire work even if Owner should take partial occupancy of part of the work before substantial completion is reached on all the work. The policy shall contain a "Permission to Occupy" endorsement acceptable to Owner.

MINIMUM WAGE RATE INFORMATION

The New Mexico State Minimum Wage Rates applicable for this Contract, as evidenced by the attached determination by the New Mexico Labor and Industrial Commission, shall be paid to all workers employed in the performance of the Work. See Request for Proposals and General Conditions to the Owner/Contractor Agreement.

(Wage Rate Schedules Attached)

NM DECISION NO. BE-21-0038-B, dated 01/08/2021

DOCUMENTS FOLLOW



LABOR RELATIONS DIVISION

401 Broadway NE
Albuquerque, NM 87102
Phone: 505-841-4400
Fax: 505-841-4424

226 South Alameda Blvd
Las Cruces, NM 88005
Phone: 575-524-6195
Fax: 575-524-6194

WWW.DWS.STATE.NM.US

1596 Pacheco St, Suite 103
Santa Fe, NM 87505
Phone: 505-827-6817
Fax: 505-827-9676

Wage Decision Approval Summary

1) Project Title: Early College Academy at CEC Building Improvements
Requested Date: 01/05/2021
Approved Date: 01/08/2021
Approved Wage Decision Number: BE-21-0038-B

Wage Decision Expiration Date for Bids: 05/08/2021

2) Physical Location of Jobsite for Project:
Job Site Address: 807 Mountain Rd NE
Job Site City: Albuquerque
Job Site County: Bernalillo

3) Contracting Agency Name (Department or Bureau): Albuquerque Public Schools
Contracting Agency Contact's Name: Ryan Parks
Contracting Agency Contact's Phone: (505) 848-8835 Ext.

4) Estimated Contract Award Date: 03/01/2021

5) Estimated total project cost: \$12,000,000.00
a. Are any federal funds involved?: No
b. Does this project involve a building?: Yes - Renovation and addition to the existing school facility. Work includes new interior walls, flooring ceilings and finishes. Upgrades to electrical, low voltage, and mechanical system.
c. Is this part of a larger plan for construction on or appurtenant to the property that is subject to this project?: No
d. Are there any other Public Works Wage Decisions related to this project?: No
e. What is the ultimate purpose or functional use of the construction once it is completed?: Public school facility

6) Classifications of Construction:

Classification Type and Cost Total	Description
General Building (B) Cost: \$12,000,000.00	Renovation and addition to the existing school facility. Work includes new interior walls, flooring ceilings and finishes. Upgrades to electrical, low voltage, and mechanical system.

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 defined by statute or regulation to each project stakeholder.

Contracting Agency

- Ensure that all contractors wishing to bid on a Public Works project when the project is \$60,000 or more are actively registered with the Public Works and Apprenticeship Application (PWAA) website: <http://www.dws.state.nm.us/pwaa> (Contractor Registration) prior to bidding.
- Please submit Notice of Award (NOA) and Subcontractor List(s) to the PWAA website promptly after the project is awarded.
- Please update the Subcontractor List(s) on the PWAA website whenever changes occur.
- All sub-contractors and tiers (excluding professional services) regardless of contract amount must be listed on the Subcontractor List and must adhere to the Public Works Minimum Wage Act.
- Ninety days after project completion please go into the PWAA system and close the project. Only contracting agencies are allowed to close the project. Agents or contractors are not allowed to close projects.

General Contractor

- Provide a complete Subcontractor List and Statements of Intent (SOI) to Pay Prevailing Wages for all contractors, regardless of amount of work, to the contracting agency within 3 (three) days of award.
- Ensure that all subcontractors wishing to bid on a Public Works project have an active Contractor Registration with the Public Works and Apprenticeship Application (PWAA) website: <http://www.dws.state.nm.us/pwaa> prior to bidding when their bid will exceed \$60,000.
- Make certain the Public Works Apprentice and Training Act contributions are paid either to an approved Apprenticeship Program or to the Public Works Apprentice and Training Fund.
- Confirm the Wage Rate poster, provided in PWAA, is displayed at the job site in an easily accessible place.
- When the project has been completed, make sure the Affidavits of Wages Paid (AWP) are sent to the contracting agency.
- All subcontractors and tiers (excluding professional services) regardless of contract amount must pay prevailing wages, be listed on the Subcontractor List, and adhere to the Public Works Minimum Wage Act.



LABOR RELATIONS DIVISION
121 Tijeras Ave NE, Suite 3000
Albuquerque, NM 87102
Phone: 505-841-4400
Fax: 505-841-4424

WWW.DWS.STATE.NM.US

Subcontractor

- Ensure that all subcontractors wishing to bid on a Public Works project have an active Contractor Registration with the Public Works and Apprenticeship Application (PWAA) website: <http://www.dws.state.nm.us/pwaa> prior to bidding when their bid will exceed \$60,000.
- Make certain the Public Works Apprentice and Training Act contributions are paid either to an approved Apprenticeship Program or to the Public Works Apprentice and Training Fund.
- All subcontractors and tiers (excluding professional services) regardless of contract amount must pay prevailing wages, be listed on the Subcontractor List, and adhere to the Public Works Minimum Wage Act.

Additional Information

Reference material and forms may be found in the New Mexico Department of Workforce Solutions Public Works web pages at: <https://www.dws.state.nm.us/Labor-Relations/Labor-Information/Public-Works>.

CONTACT INFORMATION

Contact the Labor Relations Division for any questions relating to Public Works projects by email at public.works@state.nm.us or call (505) 841-4400.



TYPE “B” – GENERAL BUILDING

Effective January 1, 2021

Trade Classification	Base Rate	Fringe Rate	Apprenticeship
Asbestos Workers/Heat and Frost insulators	33.01	12.06	0.60
Asbestos Workers/Heat and Frost insulators-Los Alamos County	35.44	12.06	0.60
Boilermaker/ blacksmith	34.97	28.85	0.60
Bricklayer/Block layer/Stonemason	24.97	9.50	0.60
Carpenter/Lather	25.63	11.74	0.60
Carpenter-Los Alamos County	28.37	13.44	0.60
Millwright/ pile driver	33.16	27.24	0.60
Cement Mason	21.07	10.33	0.60
Electricians-Outside Classifications-Zone 1			
Ground man	23.74	13.16	0.60
Equipment Operator	34.06	15.94	0.60
Lineman/Tech	40.07	17.57	0.60
Cable Splicer	44.08	18.65	0.60
Electricians-Outside Classification: Zone 2			
Ground man	23.74	13.16	0.60
Equipment Operator	34.06	15.94	0.60
Lineman/ technician	40.07	17.57	0.60
Cable Splicer	44.08	18.65	0.60



Electricians-Outside Classifications: Los Alamos			
Ground man	24.42	13.34	0.60
Equipment Operator	35.04	16.21	0.60
Lineman/ Technician	41.22	17.88	0.60
Cable Splicer	45.34	18.99	0.60
Electricians-Inside Classifications: Zone 1			
Wireman/ low voltage technician	33.65	12.01	0.60
Cable Splicer	37.02	12.11	0.60
Electricians-Inside Classification: Zone 2			
Wireman/ low voltage technician	36.68	12.10	0.60
Cable Splicer	40.04	12.20	0.60
Electricians-Inside Classification: Zone 3			
Wireman/ low voltage technician	38.70	12.16	0.60
Cable Splicer	42.06	12.26	0.60
Electricians-Inside Classification: Zone 4			
Wireman/ low voltage technician	42.40	12.27	0.60
Cable Splicer	45.75	12.37	0.60
Electricians-Inside Classification: Los Alamos			
Wireman/ low voltage technician	38.70	14.09	0.60
Cable Splicer	42.06	14.36	0.60
Elevator Constructor	43.25	36.37	0.60
Elevator Constructor Helper	36.19	36.37	0.60
Glazier			
Journeyman/ Fabricator	20.50	6.20	0.60



Delivery Driver	9.00	5.35	0.60
Ironworker	27.35	17.49	0.60
Painter (Brush/Roller/Spray)	17.25	7.75	0.60
Paper Hanger	17.25	7.75	0.60
Drywall- Light Commercial & Residential			
Ames tool operator	25.63	7.60	0.60
Hand finisher/machine texture	24.63	7.60	0.60
Plasterer	23.56	9.39	0.60
Plumber/Pipefitter	31.52	12.90	0.60
Roofer	25.74	7.97	0.60
Sheet metal worker			
Zone 1	33.38	17.64	0.60
Zone 2 – Industrial	34.38	17.64	0.60
Zone 3 – Los Alamos	35.38	17.64	0.60
Soft Floor Layer	20.30	8.10	0.60
Sprinkler Fitter	31.57	23.46	0.60
Tile Setter	24.46	8.81	0.60
Tile Setter Helper/Finisher	16.53	8.81	0.60
Laborers			
Group I- Unskilled and semi-skilled	18.25	7.12	0.60
Group II- Skilled	19.25	7.12	0.60
Group III- Specialty	21.50	7.12	0.60
Masonry Laborers			
Group I- Unskilled and Semi-Skilled	18.75	7.34	0.60
Group II- Skilled	20.50	7.34	0.60
Group III- Specialty	21.00	7.34	0.60
Reinforcing iron workers and post tension	24.75	7.12	0.60



Operators			
Group I	21.96	7.47	0.60
Group II	24.12	7.47	0.60
Group III	24.58	7.47	0.60
Group IV	25.02	7.47	0.60
Group V	25.21	7.47	0.60
Group VI	25.42	7.47	0.60
Group VII	25.53	7.47	0.60
Group VIII	28.58	7.47	0.60
Group IX	30.96	7.47	0.60
Group X	34.36	7.47	0.60
Truck Drivers			
Group I-VII	16.65	8.27	0.60
Group VIII	16.71	8.27	0.60
Group IX	18.65	8.27	0.60

NOTE: All contractors are required to pay SUBSISTENCE, ZONE AND INCENTIVE PAY according to the particular trade. Details are located in a PDF attachment at WWW.DWS.STATE.NM.US. Search Labor Relations/Labor Information/Public Works/Prevailing Wage Rates.

For more information about the Subsistence, Zone, and Incentive Pay rates, or to file a wage claim, contact the Labor Relations Division at (505) 841-4400 or visit us online at www.dws.state.nm.us.

GENERAL CONDITIONS

The General Conditions of this Contract are incorporated in the standard *[Insert "APS General Conditions of the Contract for Construction" if project is funded solely by APS; insert "PSFA General Conditions of the Contract for Construction" if project is jointly funded by APS and PSFA.]*

A sample Agreement is previously attached (see 00 5000).

DOCUMENT FOLLOWS

[Insert General Conditions on following pages]

ALBUQUERQUE PUBLIC SCHOOLS

General Conditions of the Contract for Construction

2008 Edition rev. 1

TABLE OF ARTICLES

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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.

1.1.2.2 Counterparts: This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument. Owner may retain a duplicate copy (e.g. electronic image, photocopy, facsimile) of this Agreement which shall be considered an equivalent to this original.

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 Agreement, 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,
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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.

1.7 Risk of Cost Increase: Contractor understands and agrees that its bid took into account the possibility that prices for construction materials, labor, and other goods and services needed or used in completion of this project may increase or decrease during the course of performance of the contract. Contractor shall bear the risk of any such cost increases, and no increase or other adjustment in payment shall be made on account of such cost increases.

ARTICLE 2 OWNER

2.1 GENERAL

2.1.1 The Owner 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 Owner shall designate in writing a



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.

2.2 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.

3.1.1.1 Independent Contractor: In performing the Work, Contractor is acting and shall be deemed for all purposes to be an independent contractor. Owner and Contractor are not partners, agents or joint venturers with each other, and this Agreement is not intended to nor shall it be construed to create a partnership, joint venture, or agency relationship between Owner and Contractor. Contractor shall complete the Work according to Contractor's own means and methods of work, which shall be in the exclusive charge and control of Contractor, and which shall not be subject to the control and supervision of Owner, except as to the results of the Work. Contractor shall be entirely and solely responsible for its acts and the acts of its employees, subcontractors and agents while engaged in the performance of the Work. Contractor, its employees, subcontractors and agents shall not hold themselves out as employees or agents of Owner. Contractor and its employees are hereby expressly precluded from and not entitled to any employee benefits from Owner.

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 Owner 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 Owner, but only to the extent that such overcharges are passed on to the Owner. The Contractor further agrees to require each of its Subcontractors and suppliers to assign any and all such claims for overcharges to the Owner by executing an assignment on the form provided by the Owner for such purpose. The executed forms (see Section 00 4000 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 Owner, 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

Contractor agrees to the requirements of Sections 13-4-21 through 13-4-24, NMSA 1978, whereby a public works contract with a nonresident person or partnership or foreign corporation not authorized to do business in the State shall contain a specific provision designating an agent resident within the State, and his address, upon whom process and writs in any action or proceeding against such business may be served in any action arising out of such contract.

3.1.9 Project Management Software: Contractor shall purchase one or more seat licenses, as needed for contractor and each participating subcontractor, of APS's project management software, as needed to manage information and communicate with the project team. APS will provide training in the use of the project management software.

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.

3.4.4 Drug and Alcohol Policy: During the term of the Agreement, Contractor is required to have in place and comply with a Drug and Alcohol policy that meets or exceeds the requirements and procedures contained in all applicable laws. Contractor shall provide a work environment that is free from the use, consumption, possession, sale or distribution of illegal drugs and alcohol and from the misuse of legal drugs on this project. Employees must be fit for duty and not be under the influence of illegal drugs, alcohol or controlled substances (without a valid prescription for the controlled substances) when employees are present for duty and at all times while performing the Work on this project. At a minimum, Contractor's policy shall include: reasonable testing procedures, full compliance with all Department of Transportation requirements for covered functions, including FMCSA (CDL) employees, where applicable, and compliance with all other applicable laws, regulations and decrees. Further, Contractor is responsible for testing and other related costs, and for providing all required reports to any government agency. Contractor shall require that all of its subcontractors adhere to and comply with the Drug and Alcohol Policy.

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.

3.6.1.4 If any person who performs services for the Owner is not registered to pay the gross receipt tax, the Owner shall withhold payment of the amount due until the person has presented evidence of registration with the Revenue Division to pay the GRT.

3.6.1.5 Taxes. Contractor shall pay all taxes and contributions for unemployment insurance, old age retirement benefits, pensions, annuities, and similar benefits, which may now or thereafter be employed by Contractor for performance of the Work. Contractor shall be liable for and shall pay and shall indemnify, defend, and hold Owner harmless from all such taxes and contributions and any interest accrued and penalties imposed, and reasonable attorney fees and all taxes (including but not limited to, income, withholding, gross receipts, compensating, use and all other taxes of whatsoever kind and whatsoever nature), excises, assessments, and other charges levied by any governmental agency or authority on or because of the Work, or on any materials, equipment, services, or supplies furnished in the performance of the Work. On all invoices or progress payment invoices, Contractor shall separately show all New Mexico gross receipts, compensating, sales, and other similar taxes charged to Owner, provided that in no event shall interest or penalties on such taxes be reimbursable by Owner. Contractor shall utilize appropriate New Mexico Nontaxable Transaction Certificates, or similar certificates from other states, where applicable, to minimize such gross receipts, compensating, sales and other similar taxes.

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 GRT to be paid under the contract multiplied by the applicable rate of the GRT imposed by Section 7-9-4, NMSA 1978 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, Building Permit Planchecking Fees, Fugitive Dust Control Construction Permit, Storm Water Pollution Prevention Plan, 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 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 Document. 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 of 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 3.8.2.11; and,
 - b) changes in Contractor's 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 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 communication 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 Bi-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 bi-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 meeting'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 3.13.6.



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.

3.13.16 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.

3.13.17 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.

3.13.18 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.

3.13.19 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.

3.13.20 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.

3.13.21 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.

This Agreement to indemnify shall not extend to liability, claims, damages, losses or expenses, including attorney fees, arising out of the:

1. preparation or approval of maps drawings, opinions, reports, surveys, change orders, designs, or specifications by the parties indemnified hereunder, or the agents or employees of the parties indemnified hereunder; or,



2. giving or failure to give directions or instructions by the parties indemnified or their agents or employees, where such giving or failure to give directions or instructions is the primary cause of bodily injury to persons or damage to property.

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 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 Except as otherwise provided in the contract document, project team information and communications shall be conducted electronically using the APS project management software. See also 3.1.9.

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, or (6) Owner's suspension, 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) recommend approval of 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 arbitration.

4.4.6 A written decision of the Design Professional shall state that (1) the decision is final, but subject to 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 (NOT USED)

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 informally.

4.6.2 Claims not resolved by other means 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 within Bernalillo County, New Mexico, 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.

- .1 Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Owner's employees.

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 (Exhibit D-1) 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 bonds 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), a fixed amount 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:

Subtotal before applying overhead and profit	Under \$2000	\$2000 to \$10,000	\$10,001 to \$50,000	Over \$50,001
Contractor - For work performed by own forces	18%	16%	14%	12%
Contractor - For subcontracted work.	11%	9%	6%	5%
For work performed by 1 st tier Subcontractor	18%	15%	12%	9%
For work performed by 2 nd tier Subcontractor	10%	8%	5%	4%
Subcontractor - Maximum aggregate O&P allowed over cost regardless of number of tiers.	29%	24%	18%	14%
Exception: In extraordinary circumstances, the Owner may allow adjustment to the above maximums.				

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.

7.2.5.1.1 Reimbursement for Utility and Impact Fees: Owner may require Contractor to pay local government impact fees and/or fees to utilities as necessary for the project. Such fees shall be reimbursed to Contractor at cost plus two percent (2%).

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 (13-1-16, NMSA 1978).

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 (Exhibit D-2) 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.

7.3.3 Individuals Authorized to Make Changes: All Change Orders must be approved and signed on behalf of Owner by the Director, Facilities Design and Construction or Director's designee.

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.

8.4.2 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.

8.4.3 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 included as a separate line item of the Schedule of Values. In the event of a GRT rate change, the Contractor shall submit an MCR requesting an adjusted amount on balance to complete the Contract.

9.2.2 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 9.10. The value of the Documentation and Close-Out line item shall not be less than the following:

For a total Contract amount excluding tax of:	Documentation and Close-Out amount
--	---------------------------------------



less than \$20,000	\$0
20,001 - 75,000	6,000
75,001 - 100,000	8,000
100,001 - 200,000	10,000
200,001 - 350,000	15,000
350,001 - 500,000	25,000
501,001 - 1,000,000	50,000
1,000,001 - 1,500,000	70,000
1,500,001 - 2,000,000	90,000
2,000,001 - 3,000,000	120,000
for each additional million	add 30,000

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, 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.

9.2.3 Progress Payment Draw-down Schedule: To facilitate Owner's financial planning, Contractor shall complete **Exhibit C**, Estimated Monthly Draw-down Schedule, to provide an estimate of cash draws for each individual month during the life of the project.

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.

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.

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 retained, , if any, from payments to the Contractor on account of such Subcontractor's portion of the Work. 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.

9.7.2 Incomplete or Disputed Invoices: If Owner, through its project representative or through the Design Professional, determines that an invoice is improperly completed, then within seven (7) business days after receipt, Owner will notify Contractor of the way in which the invoice is improperly completed. Following such notice, Owner shall have no further duty to pay the improperly completed invoice until it is resubmitted in properly completed form.

9.7.3 In the event Owner pays an invoice and the Work for that invoice is subsequently determined by the Design Professional or Owner to be not in compliance with the Contract Documents, then the next invoice shall be adjusted to account for the non-complying work. Payment by Owner shall not constitute acceptance of Work subsequently determined to be not in compliance with the Contract Documents.

9.7.4 Prompt Payment of Complete, Undisputed Invoices: If Owner does not dispute or question the invoice, then Owner shall pay Contractor the full amount of the invoice within twenty-one (21) days of receipt of the undisputed Progress Payment invoice, and if Owner fails to do so, then Owner shall pay Contractor interest, as required by the Prompt Payment Act, from the twenty-second (22nd) calendar day after said receipt at the rate set forth from time-to-time in the Prompt Payment Act until the payment is issued. Nothing in this Agreement shall be construed as requiring Owner to pay interest on disputed amounts or on Contractor claims.

9.7.5 Set-Offs: Owner shall have the right to set off any amounts which may become payable to Contractor under this Agreement, against any amounts which Contractor may owe Owner, whether under this Agreement or otherwise.

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 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.

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 (Exhibit E), 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.
6. Refer to the roofing specifications for additional roofing warranty requirements.

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 a 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 9.8.6 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, if provided by Contractor;
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. two hard copy sets and one electronic copy in .pdf format of final approved Operation and Maintenance Manuals with directory of contents submitted to Owner;
7. As-Built drawings provided for conversion 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 have been correctly and adequately accounted for and closed-out.

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.

9.10.4 The Contractor shall be responsible for cost of excessive Design Professional time and effort related to failure of Contractor to achieve Closeout Schedule provided in accordance with Subparagraph 9.8.3, as determined by Owner.

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 (Exhibit F) 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** prior written notice has been given 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 Contract 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.

10.2.8 Accident Reporting. In case of an accident involving Contractor, its subcontractors, or the Work, an investigative report shall be prepared by Contractor and one copy thereof given to Owner within twenty-four (24) hours of the occurrence of the accident. Verbal notification of any serious injury that may require overnight hospitalization or fatal injuries shall be provided within one (1) hour of the injury.

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.

10.7 Liability for Property Damage: Contractor shall continuously maintain adequate protection of Work from damage and shall at all times protect Owner's property, including materials furnished by Owner, from injury or loss. Contractor shall make good at its own expense any such damage, injury, or loss that may result from its effort in connection with the Work. Contractor shall provide all facilities for protection required by authorities having jurisdiction. Contractor shall be liable to Owner and its affiliates for any loss of or damage to the property of Owner and its affiliates resulting from Contractor's performance of the Work.



10.8 Trespass: Contractor shall be solely responsible for any act of trespass or any injury to adjacent property resulting from or in connection with Contractor's performance of the Work. Contractor shall be liable for any claims that may arise from the deposit of debris of any kind on adjacent property.

10.9 Underground Utility Facilities: Contractor shall be familiar with the requirements of the respective underground facility laws of the State of New Mexico. It shall be the Contractor's responsibility to locate all underground utility facilities in the Work site area including, but not limited to, tunnels and vaults for gas, electric, telephone, water, sanitary sewer lines, storm sewer lines, and the like, as well as to repair or pay for damage to these utility facilities. Contractor shall take the necessary steps to safeguard these underground utility facilities.

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 (*the name of the Owner whose name appears 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 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 (NOT USED)

11.4 PROPERTY INSURANCE

11.4.1 The Contractor shall provide insurance ("builder's risk") 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.

Attach bonds as Exhibit G - Payment and Performance Bonds.

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 (\$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.

12.2.2.2 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.

12.2.2.3 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 indication 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.

Refer to the roofing specifications for additional post-construction inspections.

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.

.1 Owner's Disclaimer: Owner assumes no responsibility for any understanding or representations made by any of its officers or agents during or prior to the negotiation and execution of the Contract Documents, including but not limited to representations concerning site conditions, unless such understandings or representations are expressly stated in a Contract Document signed by Owner that expressly provides therein that responsibility for such expressly stated understanding or representation is assumed by Owner. Representations made but not so expressly stated and for which liability is not expressly assumed by Owner in the Contract Documents shall be deemed only for the information of Contractor, and Owner will not be liable or responsible therefor.



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
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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 9.8.5, 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 (formerly the Office of the Labor Commissioner) 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.

13.8.5.2 Reservation of Rights and Background Checks: Notwithstanding any other provisions to the contrary, Contractor shall provide workers skilled and specialized in the Work to which they are assigned. Owner reserves the right to require random drug testing and individual background checks of any employee of Contractor and subcontractors as necessary for the life, health and safety of school children. Owner will pay for such testing. **Contractor, by executing this Agreement, represents that no employee of Contractor, or subcontractors, is a convicted sex offender.**

Contractor and its subcontractors and agents shall perform security and background checks (including criminal history and sexual offender status), as well as drug and alcohol tests, for the purpose of determining a worker's suitability for the assignment. Such background checks and tests shall be at Contactor's expense. **Absolutely no worker with a sexual offender history shall be allowed to work on the subject project.**

13.8.5.3 Owner reserves all rights to deny placement of any of Contractor's workers, or any worker employed by any subcontractor or agent of the Contractor, on Owner's premises, property, equipment or projects at its sole discretion; however, Owner is not responsible for the conduct of Contractor's workers, which is the sole responsibility of the Contractor. Such denial of placement of subject workers shall be conveyed subject to the provisions of notices , and/or in a manner consistent with the normal custom between Owner and Contractor.

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.

13.9.2 Records and Audits: Contractor shall maintain complete and accurate records concerning the Work and all related transactions for at least three (3) years from the date of Final Acceptance. This includes all records relating to compliance with applicable laws, compliance with a reasonable drug and alcohol policy, financial records related to the Work, employee qualifications and, to the extent applicable, U. S. Department of Transportation requirements. At any time but not later than three (3) years after final payment under this Agreement, Owner may make such audit of the records, invoices and substantiating material (including time records) as deemed necessary by Owner. Each payment made shall be subject to reduction and refund to Owner, or offset on future payments due Contractor, to the extent of amounts which are found by Owner not to have been properly payable or to have been overpaid, and shall also be subject to increase and payment to Contractor for underpayments to the extent of any amounts which are found by Owner to have been underpaid. Upon request by Owner, Contractor shall insert a clause containing all the provisions of this Article xxx, Records and Audits, in all subcontractors to permit Owner to make identical audits and inspections of the records of all subcontractors involved in performance of the Work.

13.10 Gratuities: Contractor shall not, under any circumstances, extend any gratuity or special favor to employees of Owner that might be reasonably construed as an attempt to influence the recipients in the conduct of their official duties.

13.11 No Third-party Beneficiaries: There are no third-party beneficiaries to this Agreement and no third person or entity shall claim that any portion of this agreement creates a duty running to that third person or entity.

13.12 Fair Labor Standards Act. Contractor warrants that any products purchased pursuant to this Agreement have been produced, and that all Work and all wages, hours and other forms or compensation have been provided, in compliance with the requirements of the Fair Labor Standards

Act of 1938, as amended, and regulations and orders pursuant thereto issued by the U.S. Department of Labor.

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. refuses 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.

14.5 Survival of Obligations: Contractor's warranty obligations, compliance representations, indemnity obligations, and all performance obligations and guarantees, and indemnity obligations in the Contract Documents shall survive any termination of the Agreement, and the suspension, completion and acceptance of the Work, or any part thereof, or final payment to Contractor, it being agreed that said obligations and rights are and shall be of a continuing nature. The terms of Article 4.3, Claims and Disputes, shall also survive termination, suspension and completion of this Agreement.

14.6 Entire Agreement: The Contract Documents represent the entire agreement and understanding between Owner and Contractor with respect to the subject matter hereof and performance of the Work, and supercede any prior understandings, representations or agreements, whether verbal or written, prior to execution of this Agreement. If any Work was performed by Contractor under verbal agreement or under a limited notice to proceed prior to the execution of this Agreement, then this Agreement shall apply thereto in the same manner as if made before such Work was performed.



LIST OF DRAWINGS

Sheet No.	Sheet Title
G-001	COVER
G-002	GENERAL INFO & SHEET INDEX
G-100	CODE ANALYSIS
G-101	CODE ANALYSIS PLAN - LEVEL 1
G-102	CODE ANALYSIS PLAN - LEVEL 2
FIRE1	FIRE 1
FIRE2	FIRE 2
VF-101	PARTIAL TOPOGRAPHIC AND UTILITY SURVEY
CS-101	GRADING AND SANITARY RELOCATION PLAN
AS-011	ENLARGED DEMOLITION SITE PLAN
AS-101	SITE PLAN
AS-102	ENLARGED SITE PLAN
AS-501	SITE DETAILS
AS-502	SITE DETAILS
LI-011	ENLARGED DEMOLITION IRRIGATION PLAN
S-001	GENERAL STRUCTURAL NOTES
S-002	STRUCTURAL 3D VIEW FROM SOUTHEAST
S-003	STRUCTURAL 3D VIEW FROM SOUTHEAST
S-004	STRUCTURAL 3D VIEW FROM NORTHEAST
S-100	FOUNDATION PLAN – OVERALL
S-101	FOUNDATION PLAN - AREA 1
S-102	FOUNDATION PLAN - AREA 2
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