

**PORTALES MUNICIPAL SCHOOLS  
501 South Abilene  
Portales, NM 88130**

**RFP 17-18-0005**

**GENERAL CONSTRUCTION JOB ORDER CONTRACT**

**DATE: March 4, 2018**

The Board of Education for the Portales Municipal Schools is requesting proposals from companies interested in providing general construction services to the school district.

Enclosed please find:

1. Notice To Proposers
2. General Proposal Conditions
3. RFP 17-18-0005
4. Submittal Sheet
5. Proposal Form
6. Personnel Qualifications Form
7. Past Projects and Performance Form
8. Campaign Contribution Disclosure Form
9. Non-Collusion Statement
10. Proposal Security Form
11. Price Proposal Form
12. General Conditions
13. Form of Agreement
14. Form of Performance Bond
15. Form of Payment Bond
16. Form of Insurance
17. Wage Determinations

Johnnie S. Cain  
Superintendent

Sarah M. Stubbs  
Chief Procurement Officer/Finance Director

## NOTICE

The Board of Education of the Portales Municipal Schools hereby invites the submission of sealed proposals for

### **JOB ORDER CONTRACTING**

for use in the Portales Municipal Schools.

Proposals shall be received until 4:00 p.m. MST on the 3rd day of April, 2018. Sealed proposals must be delivered to:

*Portales Municipal Schools  
Sarah M. Stubbs, Chief Procurement Officer/Finance Director  
LC Cozzens Administrative Office  
Chief Procurement Office  
501 South Abilene  
Portales, NM 88130  
Phone No: (575) 356-7000*

Specifications and submittal forms may be obtained at the same office or online at [http://www.portaleschools.com/district/departments/business\\_and\\_finance/r\\_f\\_p](http://www.portaleschools.com/district/departments/business_and_finance/r_f_p)

A mandatory pre-proposal conference shall be conducted at 1:00 p.m. MST on the 19th day of March, 2018 at the Portales Municipal Schools, LC Cozzens Administrative Office, Chief Procurement Office, 501 South Abilene, Portales, NM 88130. The purpose of the pre-proposal conference will be to discuss JOC in general, the specifics of the PMSD JOC program, provide proposers with general guidance and to answer questions. The Board of Education reserves the right to reject any or all proposals and to waive formalities.

Board of Education  
Portales Municipal Schools  
/s/ Antonio R. Sanchez, Jr., President

RFP NUMBER: 17-18-0005

PUBLICATION DATE: March 4, 2018

## GENERAL PROPOSAL CONDITIONS

### RECEIPT

All proposals must be sealed and adequately identified on the face of the envelope. All proposals must be delivered to:

*Portales Municipal Schools  
Sarah M. Stubbs, Chief Procurement Officer/Finance Director  
LC Cozzens Administrative Office  
Chief Procurement Office  
501 South Abilene  
Portales, NM 88130  
Phone No: (575) 356-7000*

on/or before the time and date specified in the Notice to Proposers. All Proposals require a minimum of one (1) original and five (5) electronic copies (CD's).

Award will be made as soon as possible, but Portales Municipal Schools (PMSD) reserves the right to withhold a decision for up to ninety (90) days after opening.

PMSD reserves the right to accept or reject any or all proposals and to waive any formalities.

### OPENING

Proposals shall not be opened publicly but shall be opened in the presence of the Chief Procurement Officer (CPO), Sarah Stubbs and one other District employee chosen by the CPO. Proposals and modifications shall be date stamped upon receipt and held in a secure place until the established due date. Proposals received late shall not be considered and shall be returned unopened. Proposals are shown only to the Evaluation Committee and to PMSD personnel having a legitimate interest, until selection of a successful offeror is made.

Unsigned proposals will not be accepted. Non-responsive proposals will not be considered.

### QUESTIONS AND REQUESTS FOR INFORMATION

Oral and other interpretations or clarifications will be without legal effect. All questions about the meaning or intent of the Contract Documents are to be directed to PMSD in writing. Interpretations or clarifications considered necessary by PMSD in response to such questions will be issued by means of Addenda posted to the PMSD website or delivered via email to all parties recorded by PMSD as having received the Request for Proposal Documents. Written questions should be received by 4:00 p.m. MST local time on March 27, 2018. There shall be no obligation on the part of PMSD to respond to questions received after 4:00 p.m MST local time on March 27, 2018. Only questions answered by written Addenda will be binding. Final responses or Addendas (if needed) will be distributed by March 29, 2018.

Questions and Requests for Information must be submitted to Sarah Stubbs, Director of Finance, or by email to [sstubbs@portaleschools.com](mailto:sstubbs@portaleschools.com).

## MODIFICATION OR WITHDRAWAL

Proposals may be modified or withdrawn prior to the established due date for receipt of proposals in accordance with the Procurement Code.

## STATUS OF OFFERORS

The contractor, his agents and employees, are independent contractors performing professional services for the Agency and are not employees of the Portales Municipal Schools. The contractor, and his agents and employees, shall not accrue leave, retirement, insurance, bonding, use of school vehicles, or any other benefits afforded employees of Portales Municipal Schools as a result of this Agreement, and shall not be covered by Workman's Compensation of the Board.

## NEGOTIATIONS

The Board reserves the right to negotiate with any or all offerors who submit proposals determined to be acceptable or potentially acceptable, but is not required to do so. Portales Municipal Schools reserves the right to award the contract based only on the written proposals received by the due date and time. Portales Municipal Schools further reserves the right to conduct negotiations with selected offerors only. If Portales Municipal Schools exercises its option to conduct negotiations, the Chief Procurement Officer will establish procedures and schedules for conducting these discussions. This is a qualifications based proposal and will be ranked as such with negotiations starting with highest ranking and proceeding on until agreement can be reached.

The contents of any proposals will not be disclosed so as to be available to competing offerors during any negotiation.

Negotiations may be held to:

1. Promote understanding of the Board's requirements and the offeror's proposals.
2. Facilitate arriving at a contract that will be most advantageous to the Board taking into consideration the evaluation factors set forth in the Request for Proposals.

## EVALUATION

The evaluation shall be based on the evaluation factors and the relative weights set forth in the Request for Proposals and any other pertinent factors.

PMSD may make such investigations as necessary to determine the ability of the offeror to perform. PMSD reserves the right to reject any proposal if the evidence submitted by, or investigation of, such offeror fails to satisfy PMSD that the proposer is qualified and able to carry out the obligations of the contract and complete the work described.

## AWARD

Award shall be made to the responsible offeror whose proposal is most advantageous to the Portales Municipal Schools, taking into consideration the evaluation factors set forth in the Request for Proposal and any other pertinent factors.

The CPO, Sarah Stubbs, shall provide a written determination showing the basis for the award that shall become a part of the procurement file.

The contents of any proposal shall not be available to competing offerors or any other person without a lawful interest during the negotiation process and until contract is awarded. Upon award, unless exempted under the confidentiality provision, all materials are then open for public inspection.

## CONFIDENTIALITY PROVISION

Offerors may request, in writing, non-disclosure of confidential data. Such data shall accompany the proposal and shall be readily separable from the proposal, and clearly identified, in order to facilitate eventual public inspection of the non-confidential portion of the proposal.

## SUBCONTRACTING AND ASSIGNMENT

All personnel engaged in the work shall be fully qualified and authorized to perform such services. No work may be subcontracted nor may the offeror assign any interest in the agreement without prior written consent of PMSD. No assignment or transfer shall relieve the offeror from his/her obligations and liabilities.

## RECORDS

Records shall be maintained by the successful contractor as required in compliance with applicable federal, state, or municipal laws, ordinances, codes, and PMSD requirements. At any time during normal business hours and as PMSD may deem necessary, there shall be made available to PMSD for examination all of contractor's records with respect to all matters covered by this proposal and any subsequent agreements. PMSD may audit, examine and/or make excerpts or transcripts from such records including but not limited to invoices, materials, payrolls, records of personnel, conditions of employment or any other data as may be pertinent.

## WARRANTIES AND INDEMNIFICATION

Materials, supplies or services furnished as a result of this solicitation shall be covered by the most favorable commercial warranties the contractor gives to any customer for the same or substantially similar materials, supplies or services. The rights and remedies provided herein shall extend to PMSD and are in addition to and do not limit any rights afforded to PMSD by any other clause of this contract. Contractor agrees not to disclaim warranties of fitness for a particular purpose or merchantability.

In the event that any third party shall claim the manufacture, use and/or sale of goods covered hereby to be an infringement of any distributorship agreement, copyright, trademark or patent, contractor shall indemnify and/or hold PMSD harmless from any cost, expense, damage or loss incurred in any manner by PMSD because of any such alleged infringement.

## GRIEVANCE PROCEDURE

Any offeror who is aggrieved in connection with an award or any other procurement action may protest to the Portales Municipal Schools Chief Procurement Officer, Sarah Stubbs. The protest shall be submitted in writing within fifteen (15) calendar days after the facts or occurrences giving rise thereto (13.1.172 NMSA). The protest shall include the following information: Name and address of Protestor or aggrieved, RFB or RFP number, statement of grounds for protest, including all documents, evidence or information to substantiate any claim, and specify ruling requested from the Central Purchasing Office.

## BACKGROUND CHECKS

Contractors whose employees are in direct contact with students shall be responsible for providing background checks to the district prior to performing any work.

## INSURANCE

All service providers shall be insured for automotive liability and for professional liability up to the limits of the Torts Claims Act, and insured for Workers' Compensation if applicable. The Contractor agrees to comply with state laws and rules applicable to workers' compensation benefits for its employees. If the Contractor fails to comply with the Workers' Compensation Act and applicable rules when required to do so, this agreement may be terminated by the contracting agency.

A potential contractor or the Contractor agrees to comply with state laws and rules pertaining to workers' compensation insurance coverage for its employees. If contractor fails to comply with the Workers' Compensation Act and applicable rules when required to do so, the contract may be canceled effective immediately.

## CONTRACT

The terms of any contract resulting from this solicitation will be in effect for a period of one (1) year following award. Contingent upon funding and mutual agreement of the parties, contract may be extended for a maximum of two (2) additional years, one year at a time. The total duration of this contract, including the exercise of any renewal options shall not exceed three (3) years.

This contract shall be available to other governmental entities, such as City, County, State, Universities and Schools. Each entity will make that decision independently as to whether to participate in this contract, and each entity that elects to purchase under this price agreement will be responsible for issuing authorization and payment.

PMSD reserves the right to establish agreements with any contractors and/or employees of any contracting firm to provide services of any type, including those services specified in this proposal. Such agreements may be to provide extended services, additional services, or other supplemental services as determined necessary to PMSD.

Upon award, or renewal, of this contract, PMSD will issue a Job Order Contract with the successful proposer(s). Individual purchase orders will be issued for each Job Order issued under the Contract and the PO number must appear on all invoices, regardless of the amount, for the duration of the contract. All information necessary to identify services and process the invoice for payment must be provided by the offeror. **Work shall not begin until such time as a purchase order is issued.**

Contractors shall submit invoices for payment after services are provided. Invoices are to be verified by the using agency.

## CONTRACT SCOPE

This RFP and the response of accepted offeror is the full expression of the agreement between the parties. There shall be no separate contracts, alterations, changes or amendments except as may be signed to formally reference this document.

This proposal and subsequent contract or modifications are to be governed by the laws and statutes of the State of New Mexico.

Any provisions required to be included in a contract of this type by an applicable and valid executive order, federal, state, or local law, ordinance, rule or regulation shall be deemed to be incorporated herein.

## CONTRACTOR LICENSE FEE

PMSD selected The Gordian Group's (Gordian) Job Order Contracting (JOC) Solution (Gordian JOC Solution™) for their JOC program. The Gordian JOC Solution includes Gordian's proprietary eGordian®

and Bid Safe® JOC Applications and Construction Task Catalog® <https://goo.gl/jdZYao> , which shall be used by the Contractor to prepare and submit Job Order Proposals, subcontractor lists, and other requirements specified by PMSD. **The Contractor shall be required to execute Gordian's JOC System License and Fee Agreement, and pay a 1% JOC System License Fee to obtain access to the Gordian JOC Solution.**

#### EQUAL OPPORTUNITY

Portales Municipal Schools is an Equal Opportunity Employer in accordance with Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Sections 503 and 504 of the Vocational Rehabilitation Act, Americans with Disabilities Act, and other federal and state laws and executive orders affective employment and equal opportunity.

The Portales Municipal Schools does not discriminate on the basis of race, color, national origin, sex, age or disability in its programs and activities. The following department has been designated to handle inquiries regarding the nondiscrimination policies: Portales Municipal Schools, 501 South Abilene, Portales, NM 88130, (575)-356-7000.

#### TERMINATION

PMSD may by written notice terminate the contract in whole or in part at any time a contractor refuses or fails to comply with the provisions of the contract, or fails to make progress as to endanger performance and does not cure such failure within a reasonable period of time.

Either party with thirty (30) days written notice may cancel contracts. This provision shall not affect nor limit the rights of PMSD under standard default provisions.

Regardless of any termination date, any services still in progress will be carried to successful conclusion without undue delay. PMSD also reserves the right to extend any contract on a short term basis if negotiations for a new contract are still in progress.

#### TAXES

The contract amount shall exclude any applicable state gross receipts tax or applicable local option tax, but the contracting agency shall be required to pay the applicable tax including any increase in the applicable tax becoming effective after the date the contract is entered into.

Gross receipts tax or applicable local option tax, shall be shown as a separate amount on each Job Order Price Proposal, billing and request for payment made under the contract.

Successful offeror shall complete Internal Revenue Service form W-9, Payer's Request for Taxpayer Identification Number.

The school district shall not be responsible for any service performed without its purchase order or contract, signed by the authorized procurement officer.

The successful offeror shall comply with all Federal, State and local laws, statutes, ordinances and regulations pertaining to work under his charge and shall bear all expenses associated with such compliance.

#### MILEAGE

No mileage shall be reimbursed on this contract unless specified otherwise.

## WORK ASSIGNMENT

PMSD reserves the right to assign any service provider to any school or other location based upon needs as determined by PMSD. Contractor will not enter into PMSD administrative decisions. Acceptance by PMSD of a contractor's proposal in any category does not guarantee a specified quantity of work nor a specified number of hours. Time or project estimates are included to provide the proposer with some idea of possible activity and are not a commitment to purchase services.

## CONFIDENTIAL INFORMATION

Any confidential information provided to or developed by a contractor in the performance of her/his assigned duties shall be kept confidential and shall not be made available to any individual or organization or used by the contractor without the written consent of PMSD. Nothing produced in whole or in part by a contractor shall be the subject for an application for copyright by or on behalf of the contractor.

## CONFLICT OF INTEREST

In signing this proposal, the offeror warrants that it has no interest, and shall acquire no interest that would directly or indirectly conflict in any manner or degree with the performance of this proposal.

The offeror certifies that he/she has neither directly nor indirectly entered into action in restraint of the free competitive process in connection with this solicitation.

The following criminal laws of the state of New Mexico specifically prohibit bribes, gratuities and kickbacks: 30-24-1 to 30-24-3 NMSA 1978 and 30-24-2 NMSA 1978.

## COMPLIANCE

The signed Submittal Sheet certifies that the offeror has read and understands the above general conditions and submits the attached proposal in full compliance with the general conditions and the applicable specifications.

## FUNDING SOURCES

Funding sources may vary by Job Order. Portales Municipal Schools, Federal and/or Public School Capital Outlay funds may or may not be used on one or more Job Orders.

## ADDITIONAL INFORMATION

If further information is needed, you may contact Sarah Stubbs, CPO/Director of Finance, at 575-356-7000 or by email at [sstubbs@portalesschools.com](mailto:sstubbs@portalesschools.com).



**PORTALES MUNICIPAL SCHOOLS  
RFP 17-18-0005**

**GENERAL CONSTRUCTION JOB ORDER CONTRACT**

The Board of Education for Portales Municipal Schools (PMSD) is requesting proposals from Companies interested in providing services to the school district for the GENERAL CONSTRUCTION Job Order Contract as described below.

**INSURANCE**

The successful contractor or contractors shall provide Public Liability Insurance which 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.

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.

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.

**SAFETY REQUIREMENTS**

It shall be the contractor's responsibility to provide for the safety of workers, students, staff and the public in compliance with the requirements of insurance and public health and safety.

The contractor hereby agrees to protect, defend, indemnify and hold PMSD and its employees, agents, officers and servants free and harmless from any and all losses, claims and liens, demands and causes of actions of every kind and character including, but not limited to, the amounts of judgments, penalties, interest, court costs, legal fees, and all other expenses incurred by PMSD arising in favor of any party, including claims, liens, debts, personal injuries, including employees of PMSD, death or damages to property (including property of PMSD) without limitations by enumeration, all other claims or demands of every character occurring or in any ways incident to, in connection with or arising directly or indirectly out of this contract. Contractor agrees to investigate, handle, respond to, provide defense for and defend any such claims, demand, or suit at the sole expense of the contractor. Contractor also agrees to bear all costs and expenses related thereto, even if the claim or claims alleged are groundless, false or fraudulent. This provision is not intended to create any cause of action in favor of any third party against contractor or PMSD or to enlarge in any way the contractors' liability for damages or inquiries to third persons on property arising from contractors' performance hereunder.

**GENERAL**

- The contractor must have a current State of New Mexico GB98 License.
- All work performed shall comply with local, state or national codes as necessary.
- The contractor shall use quality materials suited for the work being performed.
- In regards to utilities, the removal and/or relocation of such will be coordinated by the contractor and Utility Company.

- The contractor is responsible for obtaining all necessary permits, cost is reimbursable.
- All materials at the job site shall be cleaned up at the end of each day and the job site left in a neat appearance.
- The term of this contract will be for one year after board approval. At the end of that time and for a period of three more years PMSD shall have the yearly option of renewal or soliciting proposals for new firms.
- The rate may be negotiated for each additional year of the contract.

## SCOPE

Portales Municipal Schools is located on the eastern part of New Mexico approximately 20 miles from Clovis, New Mexico in Roosevelt County. The Portales Municipal School District includes six schools located throughout the City of Portales. Each PMSD school is nationally accredited by AdvancEd, the largest community of education professionals in the world.

A Job Order Contract is an indefinite quantity contract pursuant to which the Contractor will perform an ongoing series of individual projects at different PMSD schools, administrative office(s), or any other location or facility under the jurisdiction of PMSD. The Contract Documents include a Construction Task Catalog® containing construction tasks with preset unit prices. All unit prices are based on local labor, material and equipment prices and are for the direct cost of construction. <https://goo.gl/jdZYao>

The Contractor will propose a series of Adjustment Factors to be applied to the unit prices in the Construction Task Catalog® and one Adjustment Factor to be applied to required tasks not included in the Construction Task Catalog®. <https://goo.gl/jdZYao>

Award shall be made to the responsible offeror whose proposal is most advantageous to the Portales Municipal Schools, taking into consideration the evaluation factors set forth in the Request for Proposal and any other pertinent factors.

Thereafter, as projects are identified the Contractor will jointly scope the work with the PMSD Project Manager. The PMSD Project Manager will prepare a Detailed Scope of Work and issue a Job Order Request for Proposal to the Contractor. The Contractor will then prepare a Proposal Package for the project including a Job Order Price Proposal, Schedule, Sketches or Drawings, a list of subcontractors, and other requested documentation. If the Proposal Package is found to be reasonable, a Job Order may be issued.

A Job Order will reference the Detailed Scope of Work and set forth the Job Order Completion Time, and the Job Order Price. The Job Order Price is determined by multiplying the preset unit prices by the appropriate quantities and by the appropriate Adjustment Factor. The Job Order Price shall be a lump sum, fixed price for the completion of the Detailed Scope of Work. A separate Job Order will be issued for each project. Extra work, credits, and deletions will be contained in additional Job Orders.

## PROPOSAL REQUIREMENTS

Responses will consist of one (1) original and five (5) electronic copies (USB Flash Drive or CD's) of the following information and in the sequence presented:

### Envelope 1:

1. Submittal Sheet
2. Proposal Form
3. Personnel Qualifications Form
4. Past Projects and Performance Form
5. Campaign Contribution Disclosure Form
6. Non-Collusion Statement
7. Proposal Security Form

### Envelope 2:

1. Price Proposal Form

## EVALUATION FACTORS

Only responses that include the information as specified in Proposal Requirements will be evaluated for award purposes. Incomplete responsive qualification statements received will be determined as "non-responsive" and will not be acceptable for award consideration. All responsive qualification statements received shall be evaluated based on the following weighted factors:

FACTOR	WEIGHT
1. Qualifications of personnel	25 pts
2. Past projects and performance	25 pts
3. Award Criteria Figure (Price Proposal)	50 pts
TOTAL	<hr/> 100 PTS

## AWARD

A review committee will conduct evaluations considering the evaluation factors listed above. The committee will rank the responses according to their relative merits.

Respondents submitting responsive proposals may be offered an opportunity for negotiation prior to award for the purpose of obtaining the best and final offer:

Any substantial revision will be accepted in writing from the respondent.

The negotiation process may extend up to the time of award and may require public presentation by the respondent.

Respondents may request within their response non-disclosure of confidential data. Such data will accompany the proposal and will be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.

This does not guarantee a specific quantity of business. Purchases are to be made only as authorized by a Purchase Order issued by the school district. This is not an exclusive contract!

"Notice" The Procurement Code, Section 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.

"Equal Opportunity Compliance" The successful proposer will abide by all federal and state laws, rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations, and executive orders of the Governor, the contractor agrees to assure that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, sexual preference, age or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this agreement. If the successful proposer is found to be not in compliance with these requirements during the life of this agreement, the successful proposer agrees to take appropriate steps to correct these deficiencies.

#### CONTRACT MANAGER

This contract will be administered and supervised by the Superintendent or his/her designee.

#### REQUIREMENTS

The company shall be fully qualified and licensed to provide services requested. The contractor must have a current State of New Mexico GB98 License.

This contract is available for use by other governmental entities, such as City, County, State, Universities and Schools. Each entity will make the decision independently as to whether to participate in this contract, and each entity that elects to purchase under this price agreement will be responsible for issuing purchase authorization and payment.

This shall not be an exclusive contract with the vendor for the service and products specified. The school district and each governmental entity reserve the right to purchase like service or products from another vendor.

The District reserves the right to accept or reject any proposal or part of proposal and waive any formalities thereof. Proposals will be evaluated on the basis of advantages or disadvantages to the district.

**PORTALES MUNICIPAL SCHOOLS  
RFP 17-18-0005  
GENERAL CONSTRUCTION JOB ORDER CONTRACT**

**SUBMITTAL SHEET**

The items to which this sheet is attached represents our proposal as described therein. We certify that we have read the conditions of the request and that we understand them fully. We understand that any discrepancies in this invitation, which come to our attention must be mentioned to the Portales Municipal Schools prior to the opening of proposals or adjudication will be made by executive decision.

Please type or print.

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NAME OF COMPANY

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NAME AND TITLE OF AGENT

---

ADDRESS CITY STATE ZIP

---

TELEPHONE NUMBER

---

FAX NUMBER

---

EMAIL

---

SIGNATURE (Must be signed to be considered)

**Envelope 1:**

- (Attach completed Submittal Sheet)**
- (Attach completed & signed Proposal Form)**
- (Attach completed & signed Personnel Qualifications Form)**
- (Attach completed & signed Past Projects and Performance Form)**
- (Attach completed & signed Campaign Contribution Disclosure Form)**
- (Attach completed & signed Non-Collusion Statement)**
- (Attach Proposal Security)**

**Envelope 2:**

- (Attach completed & signed Price Proposal Form - fee schedule)**

**PORTALES MUNICIPAL SCHOOLS  
RFP 17-18-0005**

**GENERAL CONSTRUCTION JOB ORDER CONTRACT**

**PROPOSAL FORM**

Firm Name \_\_\_\_\_

Authorized Signature \_\_\_\_\_

1. The above signed Proposer proposes and agrees, if this Proposal is accepted, to enter into an agreement with the Owner in the form included in the Contract Documents to perform and furnish all work required, necessary, and proper for or incidental to completing the Detailed Scope of Work called for in each individual Job Order issued pursuant to this Contract for the unit prices set forth in the Construction Task Catalog® and the Adjustment Factors within the Job Order Completion Time and Proposal Package in accordance with the other terms and conditions of the Contract Documents.
2. The Proposer accepts all of the terms and conditions of the Request for Proposal and Instructions to Proposers, including without limitation those dealing with the disposition of Proposal security and other Proposal Documents. This Proposal will remain subject to acceptance for forty-five (45) days after the day of Proposal opening. The Proposer shall sign and submit the Agreement between Owner and Contractor (hereinafter called Agreement) with the insurance certificates and other documents required by the Proposal Requirements within fifteen (15) days after the date of the Owner's Notice of Award.
3. In submitting this Proposal, the Proposer represents, as more fully set forth in the Agreement, that:
  - A. the Proposer has examined copies of all the Contract Documents and of the following Addenda (receipt of all of which is hereby acknowledged):  
No. \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_  
No. \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_  
No. \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_
  - B. the Proposer has familiarized himself with the nature and extent of the Contract Documents, locality, and all local conditions, laws, and regulations that in any manner may affect cost, progress, performance, or furnishing of the Work;
  - C. the Proposer has given the Owner written notice of all conflicts, errors, and discrepancies that he has discovered in the Contract Documents, and the written resolution thereof by the Owner is acceptable to the Proposer;
  - D. this Proposal is genuine and not made in the interest of or on behalf of any undisclosed person, firm, or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization, or corporation; the Proposer has not directly or indirectly induced or solicited any other Proposer to submit a false or sham Proposal; the Proposer has not solicited or induced any person, firm, or corporation to refrain from proposing; and the Proposer has not sought by collusion to obtain for himself any advantage over any other Proposer or over the Owner;

- E. the Proposer acknowledges that he has attended any mandatory pre-proposal conference scheduled by the Owner pertaining to this contract;
- F. the Proposer agrees to show clearly on the envelopes in which the Proposal is submitted the Contract Name and Number, and Request for Proposal Number, Proposer, and identify the contents as Envelope 1 or Envelope 2.

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

6. The Proposer is a(n):

**A. INDIVIDUAL;**

By:

\_\_\_\_\_  
(Individual's Signature)

Doing business

as:

\_\_\_\_\_  
Business address:

\_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_\_

FAX: (\_\_\_\_) \_\_\_\_\_

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**B. PARTNERSHIP:**

By:

\_\_\_\_\_  
(Firm Name)

\_\_\_\_\_  
(General Partner's Signature)

Business address:

\_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_\_

FAX: (\_\_\_\_) \_\_\_\_\_

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**C. CORPORATION:**

Corporation  
Name:

\_\_\_\_\_

State of  
Incorporation:

\_\_\_\_\_

By \_\_\_\_\_ Title: \_\_\_\_\_  
(Print Name of Person Authorized to Sign)

\_\_\_\_\_  
(Signature of Authorized Person)

If a New Mexico Corporation:

\_\_\_\_\_  
NM Certificate of Incorporation Number

If a Foreign Corporation:

\_\_\_\_\_  
NM Certificate of Authority Number

Attest (Secretary):

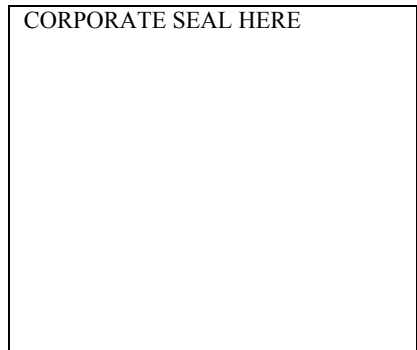
\_\_\_\_\_

Business address

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone: ( ) \_\_\_\_\_

FAX: ( ) \_\_\_\_\_





or,

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---

**D. JOINT VENTURE:**

By

(Name)

Address:

Telephone: ( )

FAX: ( )

-----

By

(Name)

Address:

Telephone: ( )

FAX: ( )

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By

(Name)

Address:

Telephone: ( )

FAX: ( )

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

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**PROPOSER MUST FILL IN THE FOLLOWING** (if none, write none)

NM License Number \_\_\_\_\_ License Classification: \_\_\_\_\_

Dept. of Workforce Solutions Minimum Wage Act Registration Number  
(DWS#) \_\_\_\_\_

Resident Contractor's Preference Number:  
\_\_\_\_\_

OR

Veteran Contractor's Preference Number:  
\_\_\_\_\_

**Please attach a copy of your valid preference certificate to the Proposal Form.**

**7. COMPANY PROFILE AND CAPABILITIES**

A. How many years has your organization been in business under its present business name?  
\_\_\_\_\_

B. Under what other or former names has your organization operated?  
\_\_\_\_\_

C. Claims and Suits. (If the answer to any of the questions below is 'yes', please attach details).

Has your organization ever failed to complete any work awarded to it?

í YES í NO

Are there any judgments, claims, arbitration proceedings or suits pending or outstanding against your organization or its officers?

í YES í NO

Has your organization filed any lawsuits or requested arbitration with regard to construction contracts within the last five years?

í YES í NO

Has your organization been involved in lawsuits or requested arbitration with regard to construction contracts within the last five years?

í YES í NO

D. Within the last five years, has any officer or principal of your organization ever been an officer or principal of another organization when it failed to complete a construction contract?

Í YES Í NO

E. Type of Work Your Firm Specializes in (by Percentage):

\_\_\_\_\_ General Building Construction

\_\_\_\_\_ Retail Construction

\_\_\_\_\_ Interior Renovation

\_\_\_\_\_ Hospitality Construction

\_\_\_\_\_ Other

F. With Regards to your Quality control Program/Procedures, please provide a brief description of the methodology employed by your firm to address the following:

a. Coordination with sub trades, consultants and Portales Municipal Schools staff involved in the project.

b. Communication between sub trades, consultants, owners and other key project members.

c. Process to ensure that quality of workmanship is provided.

d. Site is operated in a safe and clean manner.

e. Ability to maintain or expedite the project schedule, including the availability to add additional manpower.

f. Access to additional sub-trades to expedite the project schedule.

**PORTALES MUNICIPAL SCHOOLS  
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**GENERAL CONSTRUCTION JOB ORDER CONTRACT**

**PERSONNEL QUALIFICATIONS FORM**

Firm Name \_\_\_\_\_

Authorized Signature \_\_\_\_\_

**Introduction**

Key Personnel includes, but are not limited to, the Proposer's executives, project manager(s), estimator(s), and superintendent(s). The purpose of the Personnel Qualification is to rate the following of key individuals in their respective areas:

1. Professional qualifications and experience.
2. How well they see the project, from beginning to end.
3. Can they pick out and prioritize the critical points (risk) in terms of time and cost, and have they preplanned for them?
4. Can they continuously improve?
5. Can they measure their own performance?
6. Can they minimize change orders, additional charges, and customer dissatisfaction?

The Owner may elect to interview the Proposer's key personnel. The key personnel shall be evaluated by the Owner Review Panel during its meeting(s), and should be prepared to attend if invited to provide a presentation. The interview will cover the above points. Key personnel will be questioned by the Owner Review Panel who may include the procurement staff and personnel from several Portales Municipal Schools departments.

**Key Personnel**

Provide and complete the forms on the following pages regarding the Proposer's key personnel that will be assigned to this Contract.

Firm Name: \_\_\_\_\_

Project Manager Name: \_\_\_\_\_

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

# of Years with the Firm:

\_\_\_\_\_

# of Years as a Project Manager for General Construction Services: \_\_\_\_\_

**Describe Relevant General Construction Experience** *(Can Attach Additional Pages)*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**ATTACH RESUME**  Yes

**Client Reference #1 for Construction:** (It is your responsibility to assure that the contact information listed is correct. If your reference cannot be contacted, this project may not be considered.)

**Agency's contact: Name** \_\_\_\_\_ **Title** \_\_\_\_\_

**Telephone:** \_\_\_\_\_ **Email Address:** \_\_\_\_\_

**Client Reference #2 for Construction:** (It is your responsibility to assure that the contact information listed is correct. If your reference cannot be contacted, this project may not be considered.)

**Agency's contact: Name** \_\_\_\_\_ **Title** \_\_\_\_\_

**Telephone:** \_\_\_\_\_ **Email Address:** \_\_\_\_\_

Firm Name: \_\_\_\_\_

Safety Manager Name: \_\_\_\_\_

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

# of Years with the Firm:

\_\_\_\_\_

# of Years as a Safety Manager for General Construction Services: \_\_\_\_\_

**Describe Relevant General Construction Experience** *(Can Attach Additional Pages)*

\_\_\_\_\_  
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\_\_\_\_\_

**ATTACH RESUME**  Yes

**Client Reference #1 for Construction:** (It is your responsibility to assure that the contact information listed is correct. If your reference cannot be contacted, this project may not be considered.)

**Agency's contact: Name** \_\_\_\_\_ **Title** \_\_\_\_\_

**Telephone:** \_\_\_\_\_ **Email Address:** \_\_\_\_\_

**Client Reference #2 for Construction:** (It is your responsibility to assure that the contact information listed is correct. If your reference cannot be contacted, this project may not be considered.)

**Agency's contact: Name** \_\_\_\_\_ **Title** \_\_\_\_\_

**Telephone:** \_\_\_\_\_ **Email Address:** \_\_\_\_\_

Firm Name: \_\_\_\_\_

Field Superintendent Name: \_\_\_\_\_

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

# of Years with the Firm:  
\_\_\_\_\_

# of Years as a Field Superintendent for General Construction Services: \_\_\_\_\_

**Describe Relevant General Construction Experience** *(Can Attach Additional Pages)*

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**ATTACH RESUME**  Yes

**Client Reference #1 for Construction:** (It is your responsibility to assure that the contact information listed is correct. If your reference cannot be contacted, this project may not be considered.)

Agency's contact: Name \_\_\_\_\_ Title \_\_\_\_\_

Telephone: \_\_\_\_\_ Email Address: \_\_\_\_\_

**Client Reference #2 for Construction:** (It is your responsibility to assure that the contact information listed is correct. If your reference cannot be contacted, this project may not be considered.)

Agency's contact: Name \_\_\_\_\_ Title \_\_\_\_\_

Telephone: \_\_\_\_\_ Email Address: \_\_\_\_\_

**PORTALES MUNICIPAL SCHOOLS  
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**GENERAL CONSTRUCTION JOB ORDER CONTRACT**

**PAST PROJECTS AND PERFORMANCE FORM**

Firm Name \_\_\_\_\_

Authorized Signature \_\_\_\_\_

Related Project Experience:

Complete the forms on the following pages and provide five (5) sample construction projects that your company has completed since January 1, 2011 or that are in progress, that are similar and of the same complexity to the types of work required under this Contract.

At least two (2) sample construction projects must have a final cost at completion equal to or greater than \$60,000.



**SAMPLE PROJECT 1 OF 5**

**CONSTRUCTION COST EQUAL TO OR GREATER THAN \$60,000**

1) Firm Name: \_\_\_\_\_

2) Agency/Client Name: \_\_\_\_\_

3) Project Name: \_\_\_\_\_

4) Project Number: \_\_\_\_\_

5) Project Value: \_\_\_\_\_

6) **Achieved or Anticipated Final Acceptance after January 1, 2013**  Yes  No

7) **Company Role:**  Sub Contractor  Prime Contractor

8) **Agency:**  Public  Private

9) **Estimated Self Performance (%):** \_\_\_\_\_

(Based on actual hours through the working foreperson. **Supervisory hours do NOT apply.**)

**10) Client Reference for Construction:** (It is your responsibility to assure that the contact information listed is correct. If your reference can not be contacted, this project may not be considered.)

**Agency's contact: Name** \_\_\_\_\_ **Title** \_\_\_\_\_

**Telephone:** \_\_\_\_\_ **Email Address:** \_\_\_\_\_



**SAMPLE PROJECT 2 OF 5**

**CONSTRUCTION COST EQUAL TO OR GREATER THAN \$60,000**

1) Firm Name: \_\_\_\_\_

2) Agency/Client Name: \_\_\_\_\_

3) Project Name: \_\_\_\_\_

4) Project Number: \_\_\_\_\_

5) Project Value: \_\_\_\_\_

6) **Achieved or Anticipated Final Acceptance after January 1, 2013**  Yes  No

7) **Company Role:**  Sub Contractor  Prime Contractor

8) **Agency:**  Public  Private

9) **Estimated Self Performance (%):** \_\_\_\_\_

(Based on actual hours through the working foreperson. **Supervisory hours do NOT apply.**)

**10) Client Reference for Construction:** (It is your responsibility to assure that the contact information listed is correct. If your reference can not be contacted, this project may not be considered.)

**Agency's contact: Name** \_\_\_\_\_ **Title** \_\_\_\_\_

**Telephone:** \_\_\_\_\_ **Email Address:** \_\_\_\_\_



**SAMPLE PROJECT 3 OF 5**  
**ANY CONSTRUCTION COST**

1) Firm Name: \_\_\_\_\_

2) Agency/Client Name: \_\_\_\_\_

3) Project Name: \_\_\_\_\_

4) Project Number: \_\_\_\_\_

5) Project Value: \_\_\_\_\_

6) **Achieved or Anticipated Final Acceptance after January 1, 2013**  Yes  No

7) **Company Role:**  Sub Contractor  Prime Contractor

8) **Agency:**  Public  Private

9) **Estimated Self Performance (%):** \_\_\_\_\_

(Based on actual hours through the working foreperson. **Supervisory hours do NOT apply.**)

**10) Client Reference for Construction:** (It is your responsibility to assure that the contact information listed is correct. If your reference can not be contacted, this project may not be considered.)

**Agency's contact: Name** \_\_\_\_\_ **Title** \_\_\_\_\_

**Telephone:** \_\_\_\_\_ **Email Address:** \_\_\_\_\_



**SAMPLE PROJECT 4 OF 5**  
**ANY CONSTRUCTION COST**

1) Firm Name: \_\_\_\_\_

2) Agency/Client Name: \_\_\_\_\_

3) Project Name: \_\_\_\_\_

4) Project Number: \_\_\_\_\_

5) Project Value: \_\_\_\_\_

6) **Achieved or Anticipated Final Acceptance after January 1, 2013**  Yes  No

7) **Company Role:**  Sub Contractor  Prime Contractor

8) **Agency:**  Public  Private

9) **Estimated Self Performance (%):** \_\_\_\_\_

(Based on actual hours through the working foreperson. **Supervisory hours do NOT apply.**)

**10) Client Reference for Construction:** (It is your responsibility to assure that the contact information listed is correct. If your reference can not be contacted, this project may not be considered.)

**Agency's contact: Name** \_\_\_\_\_ **Title** \_\_\_\_\_

**Telephone:** \_\_\_\_\_ **Email Address:** \_\_\_\_\_





**SAMPLE PROJECT 5 OF 5**  
**ANY CONSTRUCTION COST**

1) Firm Name: \_\_\_\_\_

2) Agency/Client Name: \_\_\_\_\_

3) Project Name: \_\_\_\_\_

4) Project Number: \_\_\_\_\_

5) Project Value: \_\_\_\_\_

6) **Achieved or Anticipated Final Acceptance after January 1, 2013**  Yes  No

7) **Company Role:**  Sub Contractor  Prime Contractor

8) **Agency:**  Public  Private

9) **Estimated Self Performance (%):** \_\_\_\_\_

(Based on actual hours through the working foreperson. **Supervisory hours do NOT apply.**)

**10) Client Reference for Construction:** (It is your responsibility to assure that the contact information listed is correct. If your reference can not be contacted, this project may not be considered.)

**Agency's contact: Name** \_\_\_\_\_ **Title** \_\_\_\_\_

**Telephone:** \_\_\_\_\_ **Email Address:** \_\_\_\_\_

**11) Description of any problems or major issues encountered during the project (if any) and what was done to resolve the problems or issues:**

*(Attach Additional Information As Necessary)*

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**12) Briefly describe the project. Complete below or attach a narrative or other material that describes the project.**

*(Attach Additional Information As Necessary)*

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**PORTALES MUNICIPAL SCHOOLS**

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**GENERAL CONSTRUCTION JOB ORDER CONTRACT**

**CAMPAIGN CONTRIBUTION DISCLOSURE FORM**

13-1-191.1. Campaign contribution disclosure and prohibition.

- B.** This section applies to prospective contractors with the state or a local public body.
- C.** A prospective contractor subject to this section shall disclose all campaign contributions given by the prospective contractor or a family member or representative of the prospective contractor to an applicable public official of the state or a local public body during the two years prior to the date on which a proposal is submitted or, in the case of a sole source or small purchase contract, the two years prior to the date on which the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor or a family member or representative of the prospective contractor to the public official exceeds two hundred fifty dollars (\$250) over the two-year period.
- D.** The disclosure shall indicate the date, the amount, the nature and the purpose of the contribution. The disclosure statement shall be on a form developed and made available electronically by the department of finance and administration to all state agencies and local public bodies. The form shall be filed with the state agency or local public body as part of the competitive sealed proposal, or in the case of a sole source or small purchase contract, on the date on which the contractor signs the contract.
- E.** A prospective contractor submitting a disclosure statement pursuant to this section who has not contributed to an applicable public official, whose family members have not contributed to an applicable public official or whose representatives have not contributed to an applicable public official shall make a statement that no contribution was made.
- F.** No campaign contribution or other thing of value shall be given by a prospective contractor or a family member or representative of the prospective contractor to an applicable public official or the applicable public official's employees during the pendency of the procurement process or during the pendency of negotiations for a sole source or small purchase contract.
- G.** A solicitation or proposed award for a proposed contract shall be canceled or a contract that is executed is void if:

- (1) a prospective contractor fails to submit a fully completed disclosure statement pursuant to this section; or
- (2) a prospective contractor or family member or 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.

**H.** As used in this section:

- (1) "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;
- (2) "family member" means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law;
- (3) "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;
- (4) "prospective contractor" means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code [ 13-1-28 NMSA 1978] or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or small purchase contract; and
- (5) "representative of the 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

14-205 DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: \_\_\_\_\_

Relation to Prospective Contractor: \_\_\_\_\_

Name(s) of Applicable Public Official(s): Paul Cordova, Terry Martin, Ken Urban, Kyle Snider and Jennifer Burrill

Date Contribution(s) Made: \_\_\_\_\_

Amount(s) of Contribution(s) \_\_\_\_\_

Nature of Contribution(s) \_\_\_\_\_

Purpose of Contribution(s) \_\_\_\_\_

(Attach extra pages if necessary)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title (position)

—OR—

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE to an applicable public official by me, a family member or representative.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title (Position)

**PORTALES MUNICIPAL SCHOOLS  
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**GENERAL CONSTRUCTION JOB ORDER CONTRACT**

**NON-COLLUSION STATEMENT**

Firm Name \_\_\_\_\_

Authorized Signature \_\_\_\_\_

By submission of this proposal, Proposer certifies that this proposal is made independently and free from collusion. Proposer shall disclose below, to the best of its knowledge, any Portales Municipal Schools officer or employee, or any spouse, son, daughter, stepson, stepdaughter, or parent of any such officer or employee, who is an officer or director of, or has a material interest in, the Proposer's business who is in a position to influence this procurement. Any Portales Municipal Schools officer or employee who has any input into the writing of specifications or requirements, solicitation of offers, decision to award, evaluation of offers, or any other activity pertinent to this procurement is presumed, for purposes hereof, to be in a position to influence this procurement. For purposes hereof, a person has a material interest if he or she directly or indirectly owns more than five percent (5%) of the total assets or capital stock of any business entity, or if he or she otherwise stands to personally gain if the Contract is awarded to this vendor.

**Failure of a vendor to disclose any relationship described herein shall be reason for debarment.**

Name	Relationships
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

**PORTALES MUNICIPAL SCHOOLS  
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**GENERAL CONSTRUCTION JOB ORDER CONTRACT**

**PROPOSAL SECURITY**

Firm Name \_\_\_\_\_

Authorized Signature \_\_\_\_\_

The proposer must submit a proposal guaranty in a form acceptable to Portales Municipal Schools.

Proposer submits the attached proposal guaranty.

**PORTALES MUNICIPAL SCHOOLS  
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**GENERAL CONSTRUCTION JOB ORDER CONTRACT**

**PRICE PROPOSAL FORM (FEE SCHEDULE)**

Firm Name \_\_\_\_\_

Authorized Signature \_\_\_\_\_

1. The Proposer shall set forth Adjustment Factors in clearly legible figures in the respective space provided. Failure to submit Adjustment Factors for all categories will result in the Proposal being deemed non-responsive. **\*\*The Other Than Normal Working Hours Adjustment Factors MUST be EQUAL to or GREATER THAN the corresponding Normal Working Hours Adjustment Factors.**

	Adjustment Factor Name	Adjustment Factor Bid	X Multiplier	= Total
1.	Small Projects (< \$60,000.00), Normal Working Hours	___ . _____	X 0.40	= ___ . _____
2.	Small Projects (< \$60,000.00), Other Than Normal Working	___ . _____	X 0.05	= ___ . _____
3.	Large Projects (> \$60,000.00), Normal Working Hours	___ . _____	X 0.35	= ___ . _____
4.	Large Projects (>\$60,000.00), Other Than Normal Working Hours	___ . _____	X 0.05	= ___ . _____
5.	Federally-Funded Projects, Normal Working Hours	___ . _____	X 0.05	= ___ . _____
6.	Federally-Funded Projects, Other Than Normal Working Hours	___ . _____	X 0.05	= ___ . _____
7.	Non Pre-Priced	___ . _____	X 0.05	= ___ . _____
8.	Add all the Total amounts in the right column.  The Sum of these Total amounts is the Award Criteria Figure.			= ___ . _____



**Example:**

Write the Adjustment Factor to four decimal places as the following example illustrates.

$$\begin{array}{r} \underline{1.2102} \\ \text{One Point Two One Zero Two} \\ \text{Or} \\ \underline{0.9999} \end{array}$$

**2. Notes to the Proposer:**

Specify lines 1 through 8 to four (4) decimal places. Use conventional rounding methodology (i.e., if the number in the 5th decimal place is 0-4, the number in the 4th decimal remains unchanged; if the number in the 5th decimal place is 5-9, the number in the 4th decimal is rounded upward).

The weighted multipliers above are for the purpose of calculating an Award Criteria Figure only. No assurances are made by the Owner that Work will be ordered under the Contract in a distribution consistent with the weighted percentages above. The Award Criteria Figure is only used for the purpose of determining the lowest price. When submitting Job Order Price Proposals related to specific Job Orders, the Proposer shall utilize one or more of the Adjustment Factors applicable to the Work being performed provided in the column titled "Adjustment Factor Bid."

When submitting Job Order Price Proposals related to specific Job Orders, the Bidder shall utilize one or more of the Adjustment Factors applicable to the Work being performed.

**The Owner Reserves the right to revise all arithmetic errors in the calculation of the Award Criteria Figure for correctness. In the event of a discrepancy, the Adjustment Factors listed in the column titled "Adjustment Factor Bid" shall be used to calculate the Award Criteria Figure.**

**3. The Proposer agrees that:**

- A.** The Work to be performed under this Contract shall be commenced as set forth in the individual Job Orders and completed within the Job Order Completion Time.
- B.** Should the Contractor neglect, refuse, or otherwise fail to complete the Work within the time specified, the Contractor agrees to pay to the Owner in partial consideration for the award of this Contract the amount specified in each individual Job Order, not as a penalty, but as liquidated damages for such breach of the Contract.
- C.** The above Adjustment Factors apply to every task in the Construction Task Catalog®
- D.** It is understood that the Owner reserves the right to reject any or all Proposals and to waive any technical irregularities in the Request for Proposal process.

TABLE OF ARTICLES

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

## 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), Construction Task Catalog®, Technical Specifications, Addenda issued prior to execution of the Contract, Modification(s) issued after execution of the Contract, and other documents including, but not limited to, the Performance Bonds, Payment Bonds, Certificates of Insurance, drawings, Job Order Requests for Proposals, Detailed Scopes of Work, Notices To Proceed and Job Orders. A Modification(s) is a written amendment to the Contract signed by Owner and Contractor. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as proposal requirements (advertisement or Notice to Proposers, sample forms, the Contractor's proposal or portions of Addenda relating to proposal requirements).

#### 1.1.2. THE CONTRACT

1.1.2.1. 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 between any persons or entities other than the Owner and Contractor.

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

#### 1.1.3. THE WORK

The term "Work" means the construction and services required by or reasonably inferable from the Contract Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the results necessary for the completion of the Job Orders issued pursuant to the Contract in a safe, expeditious, orderly and workmanlike manner in keeping with current standards of the industry.

#### 1.1.4. THE PROJECT

A Project is the total construction of which the Work performed under a Job Order may be the whole or a part and which may include construction by the Owner or by separate contractors.

#### 1.1.5. THE DRAWINGS

Drawings are the graphic and pictorial portions of a Detailed Scope of Work showing, the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams. A Detailed Scope of Work may or may not include Drawings.

**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 Proposal Requirements, contract forms, Conditions of the Contract, Construction Task Catalog® and Technical Specifications.

**1.1.8. PUNCH LIST**

A punch list is a comprehensive list of incomplete, defective or incorrect Work prepared by the 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 Owner 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 for the purposes of this Paragraph and otherwise successful completion of the Detailed Scope of Work of individual Job Orders.

**1.1.9. ADJUSTMENT FACTOR**

A competitively proposed adjustment to be applied to the unit prices listed in the Construction Task Catalog®.

**1.1.10. AWARD CRITERIA FIGURE**

The amount determined in the Award Criteria Figure Calculation section of the Bid Form, which is used for the purposes of determining the lowest Bid.

**1.1.11. CONSTRUCTION TASK CATALOG®**

A comprehensive listing of specific construction related tasks, together with a specific unit of measurement and a specific Unit Price.

**1.1.12. DETAILED SCOPE OF WORK**

A document setting forth the work the Contractor is obligated to complete for a particular Job Order.

**1.1.13. ESTIMATED ANNUAL VALUE**

An estimate of the value of Job Orders that could be issued to be Contractor each year.

**1.1.14. JOB ORDER**

A written order requiring the Contractor to complete the Detailed Scope of Work within the Job Order Completion Time for the Job Order Price.

**1.1.15. JOB ORDER PRICE**

The value of the approved Job Order Price Proposal and the amount a Contractor will be paid for completing a Job Order.

**1.1.16. JOB ORDER COMPLETION TIME**

The time within which the Contractor must complete the Detailed Scope of Work.

**1.1.17. JOB ORDER PRICE PROPOSAL**

A price proposal prepared by the Contractor that includes the Pre-priced Tasks, Non Pre-priced Tasks, quantities and appropriate Adjustment Factors required to complete the Detailed Scope of Work.

**1.1.18. JOB ORDER PROPOSAL PACKAGE**

A set of documents including at least: (1) a Job Order Price Proposal; (2) a proposed project schedule; (3) a list of proposed subcontractors; (4) sketches, drawings, or layouts; and (5) technical data or information on proposed materials or equipment.

**1.1.19. JOB ORDER REQUEST FOR PROPOSAL**

A written request to the Contractor to prepare a Job Order Proposal Package for the Detailed Scope of Work referenced therein.

**1.1.20. JOINT SCOPE MEETING**

A site meeting to discuss the work before the Detailed Scope of Work is finalized.

**1.1.21. NON PRE-PRICED TASK**

An item of work required by the Detailed Scope of Work but not included in the Construction Task Catalog®.

**1.1.22. NORMAL WORKING HOURS**

The hours of 7:00 am until 4:00 pm except for Saturdays, Sundays, and Holidays.

**1.1.23. PRE-PRICED TASK**

An item of work included in the Construction Task Catalog® for which a unit price is given.

**1.1.24. PROJECT**

The collective improvements to be constructed by the Contractor pursuant to a Job Order, or a series of related Job Orders.

**1.1.25. OTHER THAN NORMAL WORKING HOURS**

The hours of 4:00 pm until 7:00 am on weekdays and any times during Saturday, Sunday, and Owner Holidays.

**1.1.26. SUPPLEMENTAL JOB ORDER**

A secondary Job Order developed after the initial Job Order has been issued for the purpose of changing, deleting, or adding work to the initial Detailed Scope of Work, or changing the Job Order Completion Time.

**1.1.27. TECHNICAL SPECIFICATIONS**

The written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

**1.1.28. UNIT PRICE**

The price published in the Construction Task Catalog® for a specific construction or construction related work task. Unit Prices for new Pre-priced Tasks can be established during the course of the Contract and added to the Construction Task Catalogs®. Each Unit Price is comprised of labor, equipment, and material costs to accomplish that specific Pre-priced Task.

**1.1.29. WORK**

All materials, labor and use of tools, equipment and services necessary by the Contractor and/or Subcontractor to complete the Job Order.

## **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 Detailed Scope of Work of individual Job Orders by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.
- 1.2.2.** Reasonably Inferable, as used in this Contract, shall mean information or knowledge that is derivable or evident by prudent and diligent examination of the Contract Documents and other information reasonably available by the Contractor or Subcontractor knowledgeable in their field and includes items:
1. specified in the Contract Documents required to complete the Detailed Scope of Work of individual Job Orders, 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 Detailed Scope of Work of individual Job Orders but not specified. Contractor shall provide the minimum product or work necessary to complete the depicted Work, such as, but not limited to, final function of Work such as strength, profile, or use as indicated by the Contract Documents.
- 1.2.3.** Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings are for convenience of reference only and shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. Such separation will not operate to make the Owner 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. Owner-Contractor Agreement
3. General Conditions shall govern over all sections of the Contract Documents, except as modified by Supplementary General Conditions or Addenda.
4. All other Contract Documents issued after contract execution with the most recent Documents taking precedent.
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**

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, Subcontractors who perform work under subcontract at any tier with the Contractor, the various Proposal and Contract Documents, Job Order, Work, titles of numbered Articles and Paragraphs within the Contract Documents, and names used to identify parts of the Job Order. When these terms are used generically and not specifically associated with the Job Order, they are not capitalized.

### **1.4. INTERPRETATION**

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 shall be signed by the Owner and Contractor.

**1.5.2.** Execution of the Contract by the Contractor is representation that the Contractor has familiarized itself with the Contract Documents and potential site(s), 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**

In the event Drawings and Technical Specifications are produced by a Design Consultant for use on a specific Job Order under this Contract, copies thereof furnished to the Contractor, and any intellectual property rights in such materials, are and shall remain the property of the Design Consultant and/or Owner. They are to be used only with respect to that Job Order and are not to be used on any other Project. With the exception of one Contract set for each party to the Contract, such documents are to be returned or suitably accounted for to the Design Consultant on request at the completion of the Work. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Design Consultant's copyright or other reserved rights.

### **1.7. OVERVIEW OF THE CONTRACT**

**1.7.1.** A Job Order Contract is an indefinite quantity contract pursuant to which the Contractor will perform an ongoing series of individual projects at different locations for Portales Municipal Schools. The Contract Documents include the Construction Task Catalog<sup>®</sup> containing construction tasks with preset unit prices. All unit prices are based on local labor, material and equipment prices and are for the direct cost of construction. The Adjustment Factors apply to every task in the Construction Task Catalog<sup>®</sup> and consist of: Normal Working Hours Small Projects (< \$60,000.00); Other Than Normal Working Hours Small Projects (< \$60,000.00); Normal Working Hours Large Projects (> \$60,000.00); Other Than Normal Working Hours Large Projects (>\$60,000.00); Normal Working Hours Federally-Funded Projects; Other Than Normal Working Hours Federally-Funded Projects; and Non Pre-priced Tasks.

**1.7.2.** The work of this Contract will be set forth in the Detailed Scopes of Work referenced in the individual Job Orders. The Contractor is required to complete each Detailed Scope of Work for the Job Order Price within the Job Order Completion Time.

**1.7.3.** This Contract is for construction work and related services to be performed at different locations on Portales Municipal Schools campuses. There is no Minimum Contract Value. The Estimated Annual Value is \$2,000,000.00. The Contractor may be issued Job Orders totaling the Estimated Annual Value during any year of the Contract. The Contractor is not guaranteed to receive this volume of Job Orders. It is merely an estimate. The Owner has no obligation to issue Job Orders under this Contract.

- 1.7.4.** The Job Order Price of each Job Order shall be:
1. The sum of the following calculation for each Pre-priced Task: the Unit Price multiplied by the quantity multiplied by the appropriate Adjustment Factor; plus
  2. The sum of the following calculation for each Non Pre-priced Task: the formula for Non Pre-priced Tasks contained in these General Conditions multiplied by the Non Pre-priced Adjustment Factor.
- 1.7.5.** Unless otherwise provided in the Contract Documents, incidental to the Job Order, the Contractor will be responsible for conducting all activities necessary to obtain all required building permits, other permits, governmental fees, licenses and inspections necessary for proper execution and completion of the Work including the preparation of all drawings, sketches, calculations and other documents and information that may be required. The cost of all activities required to obtain the permits (including expediting) will be at the Contractor's expense. However, all such permit fees paid by the Contractor will be treated as a Contract cost reimbursable. The Contractor will be allowed to include the applicable line items from the Construction Task Catalog® in its Job Order Price Proposal, supported by documented receipts, to receive a dollar-for-dollar reimbursement (no markup).
- 1.7.6.** Gross Receipt Taxes are reimbursable. The Contractor will be allowed to include the applicable line items from the Construction Task Catalog® in its Job Order Price Proposal, supported by documented receipts, to receive a dollar-for-dollar reimbursement (no markup).
- 1.7.7.** The Contractor shall obtain all final approvals for the Work, in the form of such certificates that are required by all governmental agencies having jurisdiction over the Work.
- 1.7.8.** The Contractor shall provide services assisting in the development and documentation of the Detailed Scope of Work, which includes Incidental Scope Documentation Services as required in connection with a particular Job Order, as requested by the Owner.
- 1.7.9.** The base period of the Contract is one year.
- 1.7.10.** There are two (2) option periods. Both parties must agree to extend the Contract for an option period. The term of each option period is one year.
- 1.7.11.** For price evaluation purposes only, the following work distributions shall be used to determine the Award Criteria Figure:

<b>Adjustment Factor</b>	<b>% Weight (For Evaluation Only)</b>
Small Projects (< \$60,000.00) Normal Working Hours	40%
Small Projects (< \$60,000.00) Other Than Normal Working	5%
Large Projects (> \$60,000.00) Normal Working Hours	35%
Large Projects (>\$60,000.00) Other Than Normal Working Hours	5%
Federally-Funded Projects Normal Working Hours	5%
Federally-Funded Projects Other Than Normal Working Hours	5%
Non Pre-Priced	5%



**1.7.11.1.** All Unit Prices listed in the Construction Task Catalog® are priced at a net value of 1.0000. The Adjustment Factors shall be an increase or decrease to all the Unit Prices listed in the Construction Task Catalog®. For example, 1.1000 would be a 10% increase to the Unit Prices and 0.9500 would be a 5% decrease to the Unit Prices. Respondents who submit separate Adjustment Factors for separate Unit Prices will be considered non-responsive and their proposal will be rejected.

**1.7.12. Economic Price Adjustment**

**1.7.12.1.** The Adjustment Factors for Normal Working Hours and Other than Normal Working Hours may be updated on each anniversary of the award date to account for changes in construction costs, provided, the Contractor requests in writing, approximately fourteen to thirty days prior to the anniversary of the award date, that the Adjustment Factors be updated. Such request shall be delivered to the Owner and to Gordian. In the event the Contractor fails to deliver the request timely, then the Owner shall determine the date on which the Adjustment Factors will be updated, but in no event will such date be later than thirty days after the written request to update the Adjustment Factors is received by the Owner.

**1.7.12.2.** Thereafter, the Contractor's Adjustment Factors will be adjusted according to the following:

1. A Base Year Index shall be calculated by averaging the twelve (12) month Construction Cost Indices (CCI) for the average of the twenty cities published in the Engineering News Record (ENR) for the twelve (12) months immediately prior to the month of the Agreement execution.
2. A Current Year Index shall be calculated by averaging the twelve (12) month Construction Cost Indices (CCI) for the average of the twenty cities published in the Engineering News Record (ENR) for the twelve (12) months immediately prior to the month of the latest Contract anniversary.
3. The Economic Price Adjustment shall be calculated by dividing the Current Year Index by the Base Year Index.
4. The Contractor's original Adjustment Factors shall be multiplied by the Economic Price Adjustment to obtain the Contractor's new Adjustment Factors effective for the next twelve (12) months.
5. Averages shall be obtained by summing the twelve (12) month indices and dividing by twelve (12).
6. All calculations in this Section shall be carried to the fifth decimal place and rounded to the fourth decimal place. The following rules shall be used for rounding:
  - a. The fourth decimal place shall be rounded up when the fifth decimal place is five (5) or greater.
  - b. The fourth decimal place shall remain unchanged when the fifth decimal place is less than five (5).

**1.7.12.3.** ENR occasionally revises indices. ENR CCIs used in the calculations described above shall be those currently published at the time the Economic Price Adjustment calculation is performed. No retroactive adjustments will be made as a result of an ENR revision. Revised CCI indices, if any, shall be used in subsequent calculations.

- 1.7.12.4.** If the Owner fails to issue the Economic Price Adjustment by the anniversary date, it is the Contractor's responsibility to request the Economic Price Adjustment. Under all circumstances, should the Contractor submit a Job Order Price Proposal with inaccurate Adjustment Factors, the act of submission by the Contractor is a waiver of all rights to any further compensation above the price submitted in the Job Order Price Proposal.
- 1.7.12.5.** Unlike the Contractor's Normal Working Hours Adjustment Factor and Other Than Normal Working Hours Adjustment Factor which shall be annually adjusted to account for construction escalation or de-escalation as provided in this Section, ***the Contractor's Non Pre-priced Task Adjustment Factor shall remain unchanged for the total duration of the Contract.***
- 1.7.12.6.** The same Adjustment Factors shall be used for all Job Order Price Proposals being submitted within each contract year. Upon adjustment, Job Orders begun under the previous year's Adjustment Factors shall be completed under the previous Adjustment Factors. The Contractor shall use the Adjustment Factors in effect on the date the Job Order Request For Proposal is issued. However, the Contractor cannot delay the issuance of a Job Order to take advantage of a scheduled update of the Adjustment Factors. In that event, the Contractor shall use the Adjustment Factors that would have been in effect without the delay.
- 1.7.13.** Funding sources may vary by Job Order. Portales Municipal Schools, Federal and/or Public School Capital Outlay funds may or may not be used on one or more Job Orders.

## **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. 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 of an individual Job Order 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 an individual Job Order, 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, one (1) copy of Drawings for an individual Job Order when applicable; 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**

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 of any individual Job Order 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 Supplemental Job Order shall be issued deducting from payments then or thereafter due the Contractor for the reasonable cost of correcting such deficiencies 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 of any individual Job Order 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 Job Order Completion without further notice to the Contractor or its surety. In such case, a Supplemental Job Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's 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 of any individual Job Order 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.

### 3. CONTRACTOR

#### 3.1. GENERAL

- 3.1.1.** The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.
- 3.1.2.** The Contractor shall perform the Work of each individual Job Order in accordance with the Contract Documents.
- 3.1.3.** The Contractor shall not be relieved of obligations to perform the Work of each individual Job Order in accordance with the Contract Documents either by activities or duties of the Owner'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 Job Order Proposal Package submission, be properly licensed according to the requirements of the Construction Industries Licensing Act, Chapter 60, and Article 13 NMSA 1978 and shall ensure to the Owner that such license shall remain in effect for the duration of the Work and warranty periods.
- 3.1.5. Debarred or Suspended Contractors:** A business (Contractor, Subcontractor, or supplier) that has either been debarred or suspended pursuant to the requirements of Sections 13-1-177 through 13-1-180, and 13-4-11 through 13-4-17, NMSA 1978, shall not be permitted to do business with the State and shall not be considered for award of contract during the period for which it is debarred or suspended.
- 3.1.6. Bribes, Gratuities and Kickbacks**
- 3.1.6.1.** It is illegal in the State of New Mexico for any public employee to solicit or accept anything of value in connection with award of contract for this Contract 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 Contract are hereby assigned to the State of New Mexico, but only to the extent that such overcharges are passed on to the State. The Contractor further agrees to require each of its Subcontractors and suppliers to assign any and all such claims for overcharges to the State by executing an assignment on the form provided by the Owner for such purpose. The executed forms shall be submitted prior to the commencement of the Work of the individual Job Order or the supplying of any materials by the supplier or Subcontractor. The submission of this executed form may be waived by the Owner upon a showing of a good-faith effort by the Contractor to obtain agreement in writing from its supplier or Subcontractor. Waiver by the Owner will not unreasonably be denied.
- 3.1.7.2.** It is agreed that the Contractor retains all rights to any such antitrust claims to the extent of any overcharges not passed on to the State, including the right to any treble damages attributable thereto.

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

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

**3.2. REVIEW OF THE DETAILED SCOPE OF WORK AND FIELD CONDITIONS BY THE CONTRACTOR**

**3.2.1.** Before starting each individual Job Order, the Contractor shall carefully study and compare the Detailed Scope of Work relative to that portion of the Work, as well as the information furnished by the Owner, 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 Detailed Scope of Work; any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly in writing to the Owner as a Request for Interpretation in accordance with Subparagraph 3.2.4.

**3.2.1.1.** Before ordering any materials or proceeding with Work of an individual Job Order, 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, 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 Detailed Scope of Work 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. 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 Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

**3.2.3. NOT USED**

**3.2.4. REQUEST FOR INFORMATION**

**3.2.4.1.** Any question concerning a variation or deviation from the Detailed Scope of Work, including a minor change in the Work found necessary due to actual field conditions, shall be submitted to the Owner 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 Owner 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 Owner within **ten (10) days**, or other reasonable time agreed upon between the parties. All Subcontractor RFI's must be initiated through the Contractor.

- 3.2.4.3.** If substitutions are allowed after the issuance of a Notice to Proceed for a Job Order, 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 Detailed Scope of Work of an individual Job Order gives other specific instructions concerning these matters. If the Detailed Scope of Work gives 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 shall not proceed with that portion of the Work without further written instructions 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 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. The Contractor shall assign a full-time person as its representative for this Contract. This person shall be acceptable to the Owner and shall have a cell phone at which he or she can be reached at all times. The Contractor shall also have at all times an Office Manager and a Superintendent assigned to this Contract. Additional staff will be provided depending on the volume of work.
- 3.3.4. Contractor Competition, Selection and Award of Individual Job Orders**
- 3.3.4.1.** Job Order Contracting: The Owner may award an individual Job Order to any selected Contractor under Paragraph 3.3.5 Ordering Procedures. Selection of the Contractor and award of the Job Order will be in compliance with established Owner procedures and based on one or more of the following criteria:
1. Rotational selection among all Contractors, unless otherwise determined by the Owner.
  2. Evaluation of past and current performance on Job Orders of a similar nature and type of work, project size, construction management challenges, schedule performance, design management requirements, etc.
  3. Balancing of work load (Job Order pricing and construction backlog) among Contractors.
  4. Management of Job Order dollar volume within bonding limitations of the Contractor.

5. Price, as it relates to the Owner's independent cost estimate or to an offer from any other contractor.
6. Not-To-Exceed bids (NTE Bid) submitted by two or more Contractors through BIDSsafe™.
7. Contractor's responsiveness to the Owner on Job Orders.
8. Other appropriate criteria as deemed in the best interest of the Owner.

**3.3.4.2.** BIDSsafe: The Owner may issue a Job Order Request For Proposal to two or more Contractors for a Job Order. Selection of the Contractor and award of the Job Order will be in compliance with established Owner procedures.

**3.3.4.2.1.** The Owner reserves the right to utilize BIDSsafe on a Job Order by Job Order basis.

**3.3.4.2.2.** The Owner will consider several factors when determining the applicability of BIDSsafe to a Job Order including, but not limited to, the following:

**3.3.4.2.3.** The Detailed Scope of Work (DSOW) will be developed by Owner personnel and included with the Job Order Request for Proposal.

**3.3.4.2.4.** The Owner may conduct one or more site visits with all contractors designated to receive the Job Order Request for Proposal.

**3.3.4.2.5.** All contractors that receive the Job Order Request for Proposal will have the opportunity to submit requests for information. Should the Owner choose to respond to any or all of the requests for information, the responses, and any changes to the Job Order Request for Proposal, will be provided in an addendum to all contractors designated to receive the Job Order Request for Proposal.

**3.3.4.2.6.** The Contractor will utilize the BIDSsafe application in the eGordian software to provide an NTE Bid, along with any additional requested documentation, in response to the Job Order Request for Proposal.

**3.3.4.2.7.** The Owner will issue an Intent to Award to the Contractor submitting the NTE Bid that provides the best value to the Owner based on, but not limited to, price and any technical factors considered.

**3.3.4.2.8.** The NTE Bid is valid for ninety (90) Days from the date of opening unless stated otherwise in the Job Order.

**3.3.4.2.9.** The Contractor that receives an Intent to Award will submit a Price Proposal to the Owner. Provided that any necessary Price Proposal modifications are completed in a timely and thorough manner, the Job Order may be issued to the Contractor.

**3.3.4.2.10.** The Job Order Amount shall be equal to the lessor of the NTE Bid and the Price Proposal amount.

**3.3.4.2.11.** Where the NTE Bid is less than the Price Proposal, the difference between the NTE Bid and Price Proposal shall be deemed a discount offered by the Contractor. The discount amount shall be a percent-based discount that will be calculated by the following equation:

$$\text{Percent Discount} = (\text{Price Proposal Amount} - \text{NTE Bid}) \div \text{Price Proposal Amount}$$



The discount shall be applied to subsequent Job Orders (additions or deletions) required to complete the Work, provided the Job Order contains materials, equipment and tasks that are similar in nature to the original Detailed Scope of Work.

**3.3.4.2.12.** If the Owner exercises its right to award a Job Order utilizing BIDSafe, collaboration between Contractors is specifically prohibited. Contractor collaboration undermines competition, and evidence of such will be considered a material breach of this Contract and grounds for termination for cause.

### **3.3.5. Ordering and Prosecution of the Work**

#### **3.3.5.1. Procedure for Developing a Job Order**

##### **3.3.5.1.1. Initiation of a Job Order.**

As the need exists, the Owner will notify the Contractor of a Project, schedule a Joint Scope Meeting and issue a Notice of Joint Scope Meeting. The Contractor shall attend the Joint Scope Meeting and discuss, at a minimum:

1. the general scope of the work;
2. alternatives for performing the work and value engineering;
3. access to the site and protocol for admission;
4. hours of operation;
5. staging area;
6. requirements for catalog cuts, technical data, samples and shop drawings;
7. requirements for professional services, sketches, drawings, and specifications;
8. construction duration;
9. liquidated damages;
10. the presence of hazardous materials;
11. date on which Job Order Price Proposal is due.

##### **3.3.5.1.2. Detailed Scope of Work and Job Order Request for Proposal**

Upon completion of the joint scoping process, the Owner will prepare a draft Detailed Scope of Work referencing any sketches, drawings, photographs, and specifications required to document accurately the work to be accomplished. The Contractor shall review the Detailed Scope of Work and request any required changes or modifications. When an acceptable Detailed Scope of Work has been prepared, the Owner will issue a Job Order Request for Proposal that will require the Contractor to prepare a Job Order Proposal Package. The Detailed Scope of Work, unless modified by both the Contractor and the Owner, will be the basis on which the Contractor will develop its Job Order Proposal Package and the Owner will evaluate the same. The Contractor does not have the right to refuse to perform any task or any work in connection with a particular Project.

##### **3.3.5.1.3. Preparation of the Job Order Proposal Package.**

The Contractor will prepare Job Order Proposal Packages in accordance with the following:

1. Pre-priced Tasks: A Pre-priced Task is a task described and for which a unit price is set forth in the Construction Task Catalog®. For Pre-priced Tasks the Contractor shall identify the task and quantities required from the Construction Task Catalog®.
2. Non Pre-priced Tasks: An item of work required by the Detailed Scope of Work but not included in the Construction Task Catalog®.
3. Information submitted in support of Non Pre-priced Tasks shall include, but not be limited to, the following:
  - a. Catalog cuts, specifications, technical data, drawings, or other information as required to evaluate the task.
  - b. If the Contractor will perform the work with its own forces, it shall submit three independent quotes for all material to be installed and shall, to the extent possible, use Pre-priced Tasks for labor and equipment from the Construction Task Catalog®. If the work is to be subcontracted, the Contractor must submit three independent quotes from subcontractors. The Contractor shall not submit a quote or bid from any supplier or subcontractor that the Contractor is not prepared to use. The Owner may require additional quotes and bids if the suppliers or subcontractors are not acceptable or if the prices are not reasonable. If three quotes or bids cannot be obtained, the Contractor will provide the reason in writing for the Owner's approval. If approved, less than three quotes or bids will be allowed.
  - c. The final price submitted for Non Pre-priced Tasks shall be according to the following formula:

**For Non Pre-priced Tasks Performed with Contractor's Own Forces:**

**A** = The hourly rate for each trade classification not in the Construction Task Catalog® multiplied by the quantity;

**B** = The rate for each piece of Equipment not in the Construction Task Catalog® multiplied by the quantity;

**C** = Lowest of three independent quotes for all materials.

**Total for a Non Pre-priced Tasks performed with Contractor's Own Forces = (A+B+C) x Non Pre-Priced Task Adjustment Factor**

**For Non Pre-priced Tasks Performed by Subcontractors:**

If the Non Pre-priced Task is to be subcontracted, the Contractor must submit three independent quotes for the work.

**D** = Lowest of three Subcontractor Quotes

**Total Cost for Non Pre-priced Tasks performed by Subcontractors** =  $D \times \text{Non Pre-Priced Task Adjustment Factor}$

4. After a Non Pre-priced Task has been approved by the Owner, the Unit Price for such task will be established, and fixed as a permanent Non Pre-priced Task which will no longer require price justification.
5. The Owner's determination as to whether an item is a Pre-priced Task or a Non Pre-priced Task shall be final, binding and conclusive as to the Contractor.
6. Contractor shall make the necessary arrangements for and obtain all filings and permits required for the Work, including the preparation of all drawings, sketches, calculations and other documents and information that may be required therefor. If the Contractor is required to pay an application fee for filing a project, a fee to obtain a building permit, or any other permit fee to the City, State or some other governmental or regulatory agency, then the amount of such fee paid by the Contractor for which a receipt is obtained shall be treated as a Reimbursable Task to be paid without mark-up. The cost of expediting services or equipment use fees are not reimbursable.
7. The Contractor shall provide incidental engineering and architectural services required in connection with a particular Job Order including drawings and information required for filing.
8. The Contractor's Job Order Proposal Package shall include, at a minimum:
  - a. Job Order Price Proposal;
  - b. Required drawings or sketches;
  - c. Catalog cuts, technical data or samples;
  - d. List of anticipated Subcontractors and Materialmen and anticipated price;
  - e. Construction schedule;
  - f. Sample warranties or guarantees for materials, equipment or systems proposed.
9. The Contractor's Job Order Proposal Package shall be submitted by the date indicated on the Job Order Request for Proposal. All incomplete Job Order Proposal Packages shall be rejected. The time allowed for preparation of the Contractor's Job Order Proposal Package will depend on the complexity and urgency of the Job Order but should average between seven and fourteen days. On complex Job Orders, such as Job Orders requiring incidental

engineering/architectural drawings and approvals and permits, allowance will be made to provide adequate time for preparation and submittal of the necessary documents.

10. In emergency situations and minor maintenance and repair Job Orders requiring immediate completion, the Job Order Proposal Package may be required quickly and the due date will be so indicated on the Job Order Request for Proposal or, as described below, the Contractor may be directed to begin work immediately with the paperwork to follow.

**3.3.5.1.4.** Review of the Job Order Proposal Package and Issuance of Job Order.

1. The Owner will evaluate the entire Job Order Proposal and compare these with the Owner's cost estimate of the Detailed Scope of Work to determine the reasonableness of approach, including the appropriateness of the tasks and quantities proposed.
2. The Owner reserves the right to reject a Job Order Proposal Package or cancel a project for any reason. The Owner also reserves the right not to issue a Job Order if it is determined to be in the best interests of the Owner. The Owner may perform such work by other means. The Contractor shall not recover any costs arising out of or related to the development of the Job Order including but not limited to the costs to attend the Joint Scope Meeting, review the Detailed Scope of Work, prepare a Job Order Proposal Package (including incidental architectural and engineering services), subcontractor costs, and the costs to review the Job Order Proposal Package with the Owner.

**3.3.5.1.5.** The Contractor may choose the means and methods of construction; subject however, to the Owner's right to reject any means and methods proposed by the Contractor that:

1. Will constitute or create a hazard to the work, or to persons or property;
2. Will not produce finished Work in accordance with the terms of the Contract; or
3. Unnecessarily increases the price of the Job Order when alternative means and methods are available.

**3.3.5.1.6.** By submitting a Job Order Price Proposal to the Owner, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Job Order Request for Proposal at the price submitted. It is the Contractor's responsibility to include the necessary tasks and quantities in the Job Order Price Proposal prior to delivering it to the Owner.

**3.3.5.1.7.** Each Job Order provided to the Contractor shall reference the Detailed Scope of Work and set forth the Job Order Price and the Job Order Completion Time. All clauses of this Contract shall be applicable to each Job Order. The Job Order, signed by the Owner and delivered to the Contractor constitutes the Owner's acceptance of the Contractor's Job Order Proposal Package. A signed copy of the Job Order will be provided to the Contractor.

- 3.3.5.1.8.** In the event that immediate emergency response is necessary, the Contractor shall be required to follow alternative procedures as established by the Owner. The Contractor shall begin work as directed notwithstanding the absence of a fully developed Job Order Request for Proposal, Detailed Scope of Work, or Job Order. The Contractor shall be compensated in accordance with the Construction Task Catalog® and Non Pre-priced Tasks as if the work had been ordered under the standard procedures.
- 3.3.5.1.9.** All Job Orders issued during the term of this Contract shall be valid and in effect notwithstanding that the Detailed Scope of Work may be performed, payments may be made, and the guarantee period may continue, after such period has expired. All terms and conditions of the Contract apply to each Job Order.

#### **3.4. LABOR AND MATERIALS**

- 3.4.1.** Unless otherwise provided in the individual Job Order, 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 issuance of the Notice to Proceed of the Job Order;
  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 request, with the consent of the Owner, after evaluation by the Architect and in accordance with a supplemental Job Order.
- 3.4.3.** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

#### **3.5. WARRANTY**

The Contractor warrants to the Owner and that materials and equipment furnished under the Contract will be of good quality and new, unless otherwise required or permitted by the Job Order, 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 Owner, the Contractor shall furnish satisfactory evidence as to kind and quality of materials and equipment. The Contractor shall promptly correct any Work found to be not in accordance with the requirements of the Contract Documents 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, during the one year period for correction of the Work.

#### **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/](http://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 the Job Order is issued.

**Exception:** Contractor shall not be responsible for any Tribal Employment taxes, such as, NBAT or TERO taxes.

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

### **3.6.2. Nonresident Contractor's Requirements for Gross Receipts Tax Surety Bond**

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

**3.6.2.2.** If the total sum to be paid under the Job Order 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.

**3.6.3.** Gross Receipt Taxes are reimbursable tasks. The Contractor will be allowed to include the applicable line items from the Construction Task Catalog® in its Job Order Price Proposal, supported by documented receipts, to receive a dollar-for-dollar reimbursement (no markup).

### **3.7. PERMITS, FEES AND NOTICES**

**3.7.1.** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the Building Permit and other permits and governmental fees, licenses and inspections and Certificate of Occupancy necessary for proper execution and completion of the Work of each individual Job Order which are customarily secured after execution of

the Job Order and which are legally required. Such fees are a reimbursable line item in the Job Order Price Proposal. 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 of each individual Job Order. Certificates of Inspection, use and occupancy will be delivered to the Owner upon completion of the Job Order in sufficient time for occupation of the facility in accordance with the approved schedule for the Job Order. Contractor shall deliver a photocopy of the Building Permit will be delivered to the Owner as soon as it is obtained.

### **3.8. ALLOWANCES**

A Job Order's Detailed Scope of Work may include an allowance. The quantities actually installed will be reconciled at the completion of the Work and a Supplemental Job Order will be issued to quantify the allowance. The Contractor will be paid the Job Order Price of the Supplemental Job Order and refund the allowance amount as a credit.

### **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 Job Order site during performance of the Work. The Superintendent shall represent the Contractor, and communications given to the Superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.
- 3.9.2. Within **ten (10) days after Notice of Award** and commencement of a Job Order, the Contractor shall submit to the Owner 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 issued a Job Order and before the first payment application, shall prepare and submit for the Owner's information a Critical Path Construction Schedule for the Work of an individual Job Order 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 Job Order 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 Job Order 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 of the individual Job Order in general accordance with the most recent schedule submitted to the Owner.
- 3.10.2. A Submittal Log shall be maintained by the Contractor indicating for each scheduled submittal, the appropriate specification number, the date of submission, the date of approval and any re-submittals.

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

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

Meetings shall be open forum, chaired by the Contractor and shall include any Subcontractors doing work or anticipating work in the near future or for any other reason, Owner, any entities that the Owner would like to attend, Phone or web conferencing may be used if effective in the opinion of the Owner.

**3.10.3.1. Progress Report:** Each month, the Contractor shall present a Progress Report. The Contractor prepared Progress Report shall review the ongoing Work, 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 deliver to the Owner an Emergency Contact List that will include emergency contacts for every company that has worked or will do work on the Job Order. 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.

**3.10.5. Daily Report:** The Contractor shall prepare a Daily Report each day that Contractor, Subcontractors or any other entity are on each Job Order. 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**

The Contractor shall maintain at the site for the Owner, one record copy of the Detailed Scope of Work and associated documentation, 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 as applicable.

### **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 of an individual Job Order 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 Owner is subject to the limitations of Subparagraph 4.2.7. Informational submittals upon which the Owner is not expected to take responsive action may be so identified by the Contractor. 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 Owner 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 issuance of the Notice to Proceed for a Job Order, 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 Owner 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 Owner 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 Owner 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 Detailed Scope of Work by the Owner'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 Owner in writing of such deviation at the time of submittal and the Owner 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 Owner'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 Owner on previous submittals. In the absence of such written notice the Owner'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 individual Job Order for a portion of the Work. Incidental engineering or architectural services required in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures are considered construction related costs and are included in the Contractor's Adjustment Factor. 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 Job Order, the Owner 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 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 has specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Subparagraph 3.12.10, the Owner 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 Detailed Scope of Work.
- 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 Job Order Price or Job Order Completion 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 of an individual Job Order 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 of an individual Job Order through the Owner or otherwise.
- 3.13.4.** The Contractor will bear the cost and be responsible for temporary lighting, heating and cooling required during the entire construction period of an individual Job Order.
- 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 Job Order 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 Job Order Price or Job Order Completion Time concerning any failure by the Contractor or Subcontractor to comply with the requirements of this Subparagraph 3.13.3.
- 3.13.7.** The Contractor shall provide and maintain a suitable temporary main field office at the Job Order 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 Job Order 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 a 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. 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 site(s) shall be by a designated by 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 Job Order working hours shall be those established by the Job Order and as agreed by the Owner. Any changes in 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 for approval prior to beginning construction or using the site of each individual Job Order 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 a Job Order 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 a Job Order or an area of the Job Order, 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 a Job Order 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 Job Order site 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**

The Contractor shall provide the Owner 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 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. 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 Owner.

#### **3.17.2. CONTRACTOR LICENSE FEE**

- 3.17.2.1.** The Owner selected The Gordian Group's (Gordian) Job Order Contracting (JOC) System for their JOC program. The Gordian JOC Solution includes Gordian's proprietary eGordian® and Bid Safe® JOC Applications and Construction Task Catalog®, which shall be used by the Contractor to prepare and submit Job Order Proposals, subcontractor lists, and other requirements specified by the Owner. The **Contractor shall be required to execute Gordian's JOC System License and Fee Agreement, and pay a 1% JOC System License Fee to obtain access to the Gordian JOC Solution.**

### **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, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph 3.18.

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

### **3.19. REPRESENTATIONS AND ASSURANCES**

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 of individual Job Orders 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 a 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 a 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.

#### 4. ADMINISTRATION OF THE CONTRACT

##### 4.1. DESIGN PROFESSIONAL

- 4.1.1. The term "Design Professional" means an 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. The Owner reserves the right to utilize a Design Professional (s) at any time during the duration of this Contract. If utilized, the Design Professional will be determined and identified on a Job Order-by-Job Order basis; and the Owner may designate some of its duties, responsibilities and powers defined herein to the Design Professional.

##### 4.2. COMMUNICATION FACILITATING CONTRACT ADMINISTRATION

- 4.2.1. 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 about matters arising out of or relating to the Contract. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with Owner's separate contractors shall be through the Owner.
- 4.2.2. The Contractor shall maintain at its office for its use a computer with, at a minimum, a 1 GHz processor and an internet connection. The Contractor shall maintain individual email accounts for each of its project managers.

##### 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 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 Owner will promptly investigate such conditions and if they differ materially and cause an increase or decrease in the Job Order Amount, or Job Order Completion Time required for, performance of any part of the Work, will make such adjustment in the Job Order Amount or Job Order Completion Time, or both in the manner as outlined in Article 7. If the Owner determines that the conditions at the site are not materially different from those indicated in the Detailed Scope of Work and that no change in the terms of the



Job Order is justified, the Owner shall so notify 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 Owner has given notice of the decision. If the conditions encountered are materially different, the Job Order Price and Job Order Completion Time shall be equitably adjusted by Supplemental Job Order, but if the Owner and Contractor cannot agree on an adjustment in the Job Order Price or Job Order Completion Time, the adjustment shall be 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 Job Order Price, 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 Owner, (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 Owner, (4) unjustified failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with this Paragraph 4.3.

**4.3.7. CLAIMS FOR ADDITIONAL TIME**

**4.3.7.1.** If the Contractor wishes to make a request for an increase in the Job Order Completion Time, it shall be submitted as a Request for Supplemental Job Order in accordance with Article 7. In the case of a continuing delay only one request is necessary.

**4.3.7.2.** If adverse weather conditions are the basis for a request for additional time, such request 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 Job Order, as well as, evidence supported by original Job Order schedule and daily job logs that specific Work events falling on the critical path were delayed.

**4.3.7.3.** The determination made by the Owner on an application for an extension of time required to complete the final Job Order issued pursuant to this Contract shall be binding and conclusive on the Contractor.

**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 in writing of any claims received by the Contractor for personal injury or property damage related to the Work.

**4.3.9. NOT USED**

**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 Owner. Claims, including those alleging an error or omission by the Owner, but excluding those arising under Paragraphs 10.3 through 10.5, shall be referred initially to the Owner for decision. An initial decision by the Owner 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 of an individual Job Order is due, unless **thirty (30) days** have passed after the Claim has been referred to the Owner with no decision having been rendered by the Owner. The Owner will not decide disputes between the Contractor and persons or entities other than the Owner.
- 4.4.2. The Owner will review Claims and within **ten (10) days** of the receipt of the Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, or (4) suggest a compromise.
- 4.4.3. In evaluating Claims, the Owner 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 Owner in rendering a decision.
- 4.4.4. If the Owner 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 Owner when the response or supporting data will be furnished or advise the Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part.
- 4.4.5. The Owner will approve or reject Claims by written decision, which shall state the reasons therefore and which shall notify the parties of any change in a Job Order Price or Job Order Completion Time or both. The approval or rejection of a Claim by the Owner shall be final and binding on the parties but subject to mediation and arbitration.
- 4.4.6. A written decision of the Owner shall state that (1) the decision is final, but subject to mediation and arbitration and (2) a demand for arbitration of a Claim covered by such decision must be made within **thirty (30) days** after the date on which the party making the demand receives the final written decision, then failure to demand arbitration within said **thirty (30) days** period shall result in the Owner's decision becoming final and binding upon the Owner and Contractor. If the Owner 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 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 Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

#### 4.5. MEDIATION

- 4.5.1. Any Claim arising out of or related to the Contract, except those waived as provided for in Subparagraph's 4.3.10, 6.2.3, 9.11.4, and 9.11.5 shall, after initial decision by the Owner or **thirty (30) days** after initial decision by the Owner or **thirty (30) days** after submission of the Claim to the Owner, be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.
- 4.5.2. The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the procedures of the New Mexico Public Works Mediation Act (NMSA §13-4C-1 et seq.) except that before any party may select a mediator it must confer in good faith with the other party concerning the selection of a mutually acceptable mediator. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of **sixty (60) days** from the date of notice of mediation session, unless stayed for a longer period by agreement of the parties or court order.
- 4.5.3. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Settlement Agreements reached in mediation and signed by all parties involved in the dispute shall be enforceable in any court having jurisdiction thereof.

#### 4.6. ARBITRATION

- 4.6.1. Any Claim arising out of or related to the Contract, except those waived as provided for in Subparagraphs 4.3.10, 6.2.3, 9.11.4 and 9.11.5, shall after decision by the Owner or **thirty (30) days** after submission of the Claim to the Owner, be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions under Paragraph 4.5.
- 4.6.2. Claims not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The Demand for Arbitration shall be filed in writing with the other party to the Contract and with the American Arbitration Association, and a copy shall be filed with the Owner.
- 4.6.3. A Demand for Arbitration shall be made within the time limits specified in Subparagraphs 4.4.6 and 4.6.1 as applicable, and in other cases within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to Paragraph 13.7.
- 4.6.4. Claims and Timely Assertion of Claims. The party filing a Notice of Demand for Arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.
- 4.6.5. Arbitration proceedings under this Agreement may be consolidated or joined with arbitration proceedings pending between other parties if the arbitration proceedings arise out of the same transaction or relate to the same subject matter. Consolidation will be by order of the arbitrator, in any of the pending cases, or if the arbitrator fails to make such an order, the parties may apply to any court of competent jurisdiction for such an order. Inclusive to this Subparagraph are the Owner, the Contractor, all subcontractors, material suppliers, equipment suppliers, engineers, designers, lenders, sureties, and all other parties concerned with the construction of any individual Job Order 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.

## **5. SUBCONTRACTS**

### **5.1. DEFINITIONS**

A Subcontractor is a person or entity who has a direct or indirect contract with the Contractor to perform a portion of the Work of any individual Job Order 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, the Contractor shall furnish in writing to the Owner 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 of each individual Job Order as part of its Job Order Proposal Package. The Owner will promptly reply to the Contractor in writing stating whether or not the Owner, after due investigation, has reasonable objection to any such proposed entity or person. Failure of the Owner to reply promptly shall constitute notice of no reasonable objection.

**5.2.2.** The Contractor shall not contract with a proposed person or entity to whom the Owner 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 has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner has no reasonable objection. No increase in the Job Order Price or Job Order Completion Time shall be allowed for such change.

**5.2.4.** The Contractor shall not change a Subcontractor or a Subcontractor change a Subsubcontractor without first requesting and obtaining approval from the Owner. The Contractor shall not change a Subcontractor, person or entity previously selected if the Owner 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. Each subcontract and supplier agreement shall preserve and protect the rights of the Owner 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 any individual Job Order shall, prior to starting the Work, 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**

Each subcontract or supplier agreement for a portion of the Work of any individual Job Order 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.

## **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 a Job Order 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 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 a Job Order, 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 Job Order. 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 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**

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 allocate the cost among those responsible.



## **7. CHANGES IN THE WORK**

### **7.1. GENERAL**

**7.1.1.** Changes in the Work of any individual Job Order may be accomplished after issuance of the Job Order and Notice to Proceed, and without invalidating the Job Order by issuance of a Supplemental Job Order, 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 of an individual Job Order require a Supplemental Job Order that has been finalized by agreement by the Owner and based on Job Order Price Proposal from the Contractor. Supplemental Instruction for a minor change in the Work, will not create cost or time effect on the Job Order in accordance with Subparagraph 7.4., and may be issued only by the Owner.

**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 Supplemental Job Order or Supplemental Instruction.

**7.2.** With regard to Changes in Work, related Job Orders and accompanying Scopes of Work can: (1) consist of positive Job Order Amounts (additional monies paid to the Contractor) for extra work, (2) consist of negative Job Order Amounts (monies Owed to the Trust) for cancelled or omitted work, or (3) adjustments (addition or deduction) to the Job Order Completion time.

### **7.3. SUPPLEMENTAL JOB ORDERS**

**7.3.1.** A Supplemental Job Order is a Job Order prepared in Accordance with Paragraph 3.3.4. and signed by the Owner and Contractor, stating their agreement upon:

1. extra, deleted, omitted or other changes in the Work of the Job Order;
2. amount of the adjustment priced in accordance with the Construction Task Catalog®, if any in the Job Order Price;
3. extent of the adjustment, if any, in the Job Order Completion Time; or
4. if disagreement on adjustment in the Job Order Completion Time, parties agree to postponement of inclusion of any adjustment to Job Order Completion Time into a Supplemental Job Order; however, all Contractor proposed or Owner offered adjustment(s) to time shall be incorporated into a Supplemental Job Order prior to Substantial Completion in accordance with Subparagraph 9.8.6.

**7.3.2.** Determining adjustments to the Job Order Price shall be in accordance with Paragraph 3.3.4. Job Order Proposal Packages submitted that do not follow the requirements under Paragraph 3.3.4. will be returned to be resubmitted prior to processing.

### **7.4. MINOR CHANGES IN WORK**

The Owner will have authority to order Supplemental Instructions for minor changes in the work not involving adjustment in the Job Order Price or extension of the Job Order Completion 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.

## **8. TIME**

### **8.1. DEFINITIONS**

- 8.1.1.** Unless otherwise provided, the Job Order Time is the period of time, including authorized adjustments, allotted in the Job Order for Substantial Completion of the Work.
- 8.1.2.** The date of commencement of the Work of an individual Job Order is the date established in the Notice to Proceed.
- 8.1.3.** The date of Substantial Completion is the date certified by the Owner 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 Notice to Proceed are of the essence of the Job Order. By executing the Job Order the Contractor confirms that the Job Order Completion 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 the Notice to Proceed. The date of commencement of the Work shall not be changed by the effective date of such insurance. A Notice to Proceed shall be given by the Owner for each individual Job Order that shall establish the commencement of the Job Order Completion 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 Job Order Time of each individual Job Order.
- 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 Job Order Completion 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 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 Owner determine may justify delay, then the Job Order Completion Time shall be extended by Supplemental Job Order in accordance with Article 7 for such reasonable time as the Owner may determine.
- 8.3.2.** Extensions of time not associated with changes to the Work shall not be allowed to increase the Job Order Price
- 8.3.3.** Claims relating to time shall be made in accordance with applicable provisions under Paragraph 4.3.

### **8.4. JOB ORDER COMPLETION 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 Job Order Completion Time. It is expressly understood and agreed, by and between the Contractor and the Owner, that the Job Order Completion 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 Job Order site. If the Contractor neglects, fails or refuses to complete the Work within the Job Order Completion 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 Job Order. 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.

**9. PAYMENT AND COMPLETION**

**9.1. JOB ORDER PRICE**

The Job Order Price is stated in the Job Order and is the total lump sum amount payable by the Owner to the Contractor for performance of the Detailed Scope of Work of the individual Job Order.

**9.2. SCHEDULE OF VALUES**

**9.2.1.** Before the first Application for Payment, the Contractor shall submit to the Owner 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 Owner may require. The schedule of values, upon acceptance by the Owner, shall be used as a basis for reviewing the Contractor's Application for Payment.

**9.2.1.1.** Gross Receipts Tax shall be indicated for the total amount of all items included in the Schedule of Values.

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

For a Job Order Price 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 including the provisions of Subparagraph 4.2.4.3, the Documentation and Close-Out Schedule of Value line item may be reduced each month prior to Substantial Completion up to five percent (5%) of the originally scheduled amount or one thousand dollars (\$1,000), whichever is greater, providing that the Documentation and Close-Out line item is not reduced to less than fifty percent (50%) of the original amount required until which time that Close-Out is complete as required by Paragraph 9.10.

**9.2.2.2.** If the Job Order Price is determined to be so small that a Schedule of Values is not necessary or useful (as solely determined by the Owner) the requirement to submit a Schedule of Values prior to payment application submission may be waived in its entirety.

### **9.3. APPLICATIONS FOR PAYMENT**

**9.3.1.** No later than the 25<sup>th</sup> of each month, the Contractor shall submit to the Owner 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 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 Owner and for subsequent payment applications; the Job Order 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 Owner 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 Owner.

**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 Job Order site.

**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. NOT USED**

**9.5. NOT USED**

### **9.6. PROGRESS PAYMENTS**

**9.6.1.** If an individual Job Order is for \$25,000 or less or has a Job Order Completion Time of 30 days or less, then the Owner will make one payment to the Contractor after Final

Completion and acceptance of the Work. For all other Job Orders, the Contractor may submit a payment application for progress payment on the forty-sixth day after commencement of the Work and thereafter on a monthly basis. Each payment application shall invoice only for Work actually completed prior to submission of the payment application and not covered by a prior payment application. The Contractor shall not submit a payment application unless an agreement has been reached with the Trust concerning the amount thereof.

- 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 Owner 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 Owner on account of portions of the Work done by such Subcontractor.
- 9.6.4.** The Owner shall not 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 progress payment, or partial or entire use or occupancy of the Job Order site 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 PAYMENTS**

If the Owner does not pay the Contractor the amount approved by the Owner or the Owner 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 Owner, stop the Work of the individual Job Order 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 Job Order Completion Time shall be extended appropriately and the Job Order Price 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 and by issuance of a Supplemental Job Order. In the event of a wrongful Stop-Work, the Contractor shall remain responsible to the Owner for delivering the Job Order in accordance with the Contract Documents.

## **9.8. SUBSTANTIAL COMPLETION**

- 9.8.1.** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is complete and in compliance with the Contract Documents except for minor items so that the Owner can completely occupy or fully utilize the Work for its intended use. Owner's Occupancy under conditional approval by public

authorities having jurisdiction over the Work, or occupancy of a facility or otherwise utilizing the Work under duress, shall not be considered Substantial Completion.

- 9.8.2.** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall promptly prepare and submit to the Owner a comprehensive Contractor's Punch List inclusive and all incomplete and non-compliant Work to be completed or corrected prior to final payment, as well as, the requirements of Subparagraph 9.10.2.
- 9.8.3.** The Contractor shall submit along with the punch list a separate and detailed Closeout Schedule indicating the date of Final Completion and all work to be completed before Final Completion including Close-Out requirements as provided in Paragraph 9.10. Failure to include any item on punch list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Include in the Closeout Schedule an allowance of thirty (30) days to prepare Record Drawings from Contractor As-Builts to meet requirement of Subparagraph 9.10.1.7.
- 9.8.4.** Upon receipt of the Contractor's Punch List and Closeout Schedule, the Owner will within **ten (10) days** make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner'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 Owner to determine Substantial Completion. In the event the Work does appear Substantially Complete, the Owner will review the Contractor's Punch List for completeness required for issuance of Substantial Completion. The Contractor shall be responsible for cost of excessive Owner 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 Owner will prepare a Certificate of Substantial Completion, with the Owner's prior approval, which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate in accordance with Subparagraph 9.8.2.
- 9.8.6.** Warranties shall be in accordance with this Subparagraph 9.8.6 and Paragraph 12.2 and shall include all components and equipment required by the Contract Documents. All Work shall be warranted for the greater of:
1. a minimum of one (1) year from the date of Substantial Completion of the individual Job Order;
  2. one (1) year from the date of first installation in accordance with Subparagraph 12.2.2.2;
  3. one (1) year from the date of replacement due to failure such that; each component of the Work must not fail for a one (1) year period regardless of the date of Substantial Completion;
  4. that required by the Contract Documents; or,
  5. that provided in the Certificate of Substantial Completion that will become an addendum to the Contract.

Owner and Contractor may, by mutual agreement, amend the Job Order 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 Job Order Completion Time in accordance with Paragraph 7. shall be included into a Supplemental Job Order prior to Certificate of Substantial Completion. If the Contractor and the Owner do not agree

on the Contractor Job Order Proposal Package, the Owner on the basis of evidence that critical path of work flow was reduced or expanded attributable to the change(s) in the Work with evidence being differences in Contractor's initial and current schedules and other evidence, shall make an determination for purpose of settlement of dispute. That determination of adjustment to the Job Order Completion Time shall be presented to the Owner and the Contractor for consideration. When the Owner and Contractor agree with the determination made by the Owner concerning the adjustments in the Job Order Completion Time such agreement shall be effective immediately, upon Contractor's written approval.

**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 Owner 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 Owner.

**9.9.2.** Immediately prior to such partial occupancy or use, the Owner, Contractor and Owner 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 Owner;
3. one hard copy and one electronic copy in .pdf format of final approved test, balance or performance report(s) complete with directory of contents submitted to Owner;
4. Operation and Maintenance Manuals complete and verified as such by the Owner;



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. three electronic copies in .pdf format of final approved Operation and Maintenance Manuals with directory of contents submitted to Owner;
7. As-Built drawings converted to accurate Record Drawings and verified as such by the Owner using information provided by the Contractor and by other knowledge the Owner may possess;
8. written certification signed by Owner of delivery and stocking of extra material, equipment or components required by the Contract Documents at a location established by the Owner;
9. delivery of all warranties required by the Contract Documents;
10. all keys, passes, codes, software or other methods or components of control or security which have been correctly and adequately accounted for and closed-out; and,
11. copies of all Close-Out documents turned over to the Owner including copies of Building Code Approvals and other code certifications, Substantial Completion documents, Punch Lists, Warranties, O&M Manuals, Training Sign-off, Extra Stock Sign-off, Record Drawings, Final Completion documents, Equipment inventory information as required in Division 01, Correction of Work Period documents and 11<sup>th</sup> month inspection.

**Exception:** Copies of Final Completion, Correction of Work Period and 11<sup>th</sup> month inspection documents shall be turned over to the Owner within **seven (7) days** of availability.

**9.10.2.** The Contractor shall prepare a separate Close-Out Punch List listing all requirements of Subparagraph 9.10.1 and the status of each, whether completed or not and the expected completed date of each component of the list. The Close-Out Punch List shall be a separate part and a subset of the Contractor's Punch List required for Substantial Completion in accordance with Subparagraph 9.8.2. At completion of the List, the Contractor shall state in writing to the Owner that the Close-Out Punch List has been completed and request a Close-Out Meeting with the Owner. The Owner 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 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.

## **9.11. FINAL COMPLETION AND FINAL PAYMENTS**

**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 Owner will promptly make such inspection and, when the Owner finds the Work acceptable under the Contract Documents and the Job Order fully performed, the

Owner will promptly, with the Owner's prior approval, issue a Certificate of Final Completion and following approval by all parties, a final Certificate for Payment each stating that to the best of the Owner's knowledge, information and belief and on the basis of the Owner's or Owner'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 Owner'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 Owner:

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

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

**9.11.3.** If, after Substantial Completion of the Work, Final Completion thereof is materially delayed through no fault of the Contractor or by issuance of changes in the Work affecting Final Completion, , the Owner shall, upon application by the Contractor and certification by the Owner, 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 Owner 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.

## **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 sites 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 Job Order site 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 Job Order 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 a Job Order 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 a Job Order site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
- 10.2.2.** The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.
- 10.2.3.** The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.
- 10.2.4.** When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.
- 10.2.5.** The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contractor Documents) to property referred to in Subparagraphs 10.2.1.3 and 10.2.1.4 caused in whole or in part by the Contractor, a Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible, except damage or loss attributable to acts or omissions of the Owner or 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.
- 10.2.7.** The Contractor shall report in writing to the Owner 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 by the most expeditious means.

### **10.3. HAZARDOUS MATERIALS**

- 10.3.1.** If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and immediately report the condition to the Owner 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 Job Order Completion 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 Job Order shall be equitably adjusted in accordance with Article 7.

### **10.6. EMERGENCIES**

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.

## 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 of the first Job Order. These certificates and the insurance policies required by this Paragraph shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least **forty-five (45) days** prior written notice has been given to the Owner. If any of the foregoing insurance coverages are requested to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Subparagraph 9.10.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both shall be furnished by the Contractor with reasonable promptness.

**11.1.4.1.** The Certificates of Insurance shall clearly state the coverages, limits of liability, covered operations, effective dates and dates of expiration of policies of Insurance. The Contractor will promptly notify and furnish to the Owner copies of any endorsements that are subsequently issued amending coverage or limits. The Certificates of Insurance shall be in the appropriate ACORD form, or similar format acceptable to the Owner and shall include the following statements:

1. "The State of New Mexico (if PSCOC Funds are used in full or in part to fund this Job Order), Portales Municipal Schools (The School(s) and or Site(s) specific to the Job Order, its agents, servants and employees are recognized as Additionally Insured.
2. "The insurance coverage certified herein will not be canceled or materially changed, except after **forty-five (45) days** written notice has been provided to the Owner"
3. "The insured will not violate, or permit to be violated, any conditions of this policy, and will at all times satisfy the requirements of the insurance company transacting the policy."
4. "The coverage provided by this certificate is primary."
5. "Nothing in this certificate of coverage will be construed to affect the State of New Mexico or owner, agents, servants and employees defenses, immunities or limitations of liability under the New Mexico Tort Claims Act."

**11.1.5. Minimum Required Coverages:**

**11.1.5.1.** Worker's Compensation Insurance shall be provided as required by applicable State law for all employees engaged at the site of any Job Order under this Contract, including Subcontractor employees. In case any class of employee engaged in work on a Job Order 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**

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

**11.3. PROJECT MANAGEMENT PROTECTIVE LIABILITY INSURANCE**

**11.3.1.** Optionally, the Owner may provide Project Management Protective Liability Insurance, otherwise known as Project Insurance, as primary coverage for the Owner's, Contractor's and Owner's vicarious liability for construction operations under the Contract. The minimum limits of liability purchased with such coverage shall be equal to the limits required for Contractor's Liability Insurance under Clauses 11.1.1.2 through 11.1.1.5.

- 11.3.2. To the extent damages are covered by Project Management Protective Liability insurance, the Owner and Contractor waive all rights against each other for damages, except such rights as they may have to the proceeds of such insurance. The policy shall provide for such waivers of subrogation by endorsement or otherwise.

#### 11.4. PROPERTY INSURANCE

- 11.4.1. Builders Risk Insurance- Not required at the time of Contract Award. If at some time in the future the Owner requires builder's risk insurance applicable to a specific Job Order, the premium cost paid by the Contractor to obtain coverage specific to each Job Order shall be treated as a Contract cost reimbursable. The Contractor will be allowed to include the applicable line items from the Construction Task Catalog® in its Job Order Price Proposal, supported by documented receipts, to receive a dollar-for-dollar reimbursement (no markup).
- 11.4.2. When the Work to be performed includes abatement, encapsulation or other activities involving hazardous materials, certificates of insurance evidencing appropriate coverage (i.e., Pollution Liability Insurance) with coverage amounts, endorsements, additional named insureds, etc., deemed satisfactory (in the sole judgment of the Owner) shall be provided to the Owner. The required insurance coverage can be provided by appropriately qualified and licensed Subcontractors.

#### 11.5. PERFORMANCE BOND AND PAYMENT BONDS

- 11.5.1. If the Job Order Price exceeds \$25,000, the Contractor shall furnish Payment and Performance surety bonds covering faithful performance of the Job Order in amounts not less than 100 percent of the Job Order Price, exclusive of GRT, unless Owner or the Contract Documents require a lesser percentage, for payment of obligations arising there under. These Payment and Performance bonds shall be delivered to the Owner within **seven (7) days** of the Notice to Proceed of each individual Job Order 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 Job Order Price is increased, the amounts of the bonds shall be increased accordingly.
- 11.5.1.1. A Subcontractor shall provide a performance and payment bond on a public works building project if the subcontractor's contract (to the Contractor) for work to be performed on a Job Order is one hundred and twenty-five thousand dollars (\$125,000) or more. Failure of a Subcontractor to provide required bond shall not subject the Owner to any increase in cost due to any substitution of an approved Subcontractor
- 11.5.1.2. 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.



## **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 Owner's request or to requirements specifically expressed in the Contract Documents, it must be uncovered for the Owner's examination and be replaced at the Contractor's expense without change in the Job Order Completion Time.
- 12.1.2.** If a portion of the Work has been covered, which the Owner has not specifically requested to examine prior to its being covered, the Owner 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 Supplemental Job Order 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**

The Contractor shall promptly correct Work rejected by the Owner 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 Owner'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 of an individual Job Order 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, 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 Owner shall coordinate, with 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.

### **12.3. ACCEPTANCE OF NONCONFORMING WORK**

If the Owner prefers to accept Work which is not in accordance with the requirements of the Job Order, the Owner may do so instead of requiring its removal and correction, in which case the Job Order Price will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## **13. MISCELLANEOUS PROVISIONS**

### **13.1. LAWS**

- 13.1.1.** The Contract shall be governed by the laws of the State of New Mexico and parties agree that the State of New Mexico District Court of the County, where the Project is located, shall have exclusive jurisdiction to resolve all Claims, issues and disputes not otherwise resolved in accordance with the Contract Documents.
- 13.1.2.** The Owner's total liability to Contractor or any other entity claiming by, through, or under Contractor for any Claim, cost, loss, expense or damage caused in part by the fault of the Owner and in part by the fault of the contractor or any other entity or individual shall not exceed the percentage share that Owner's fault bears to the total fault of Owner, Contractor and all other entities and individuals as determined on the basis of comparative fault principles.
- 13.1.3.** All Work shall be completed in accordance with and shall be inspected within requirements of the Construction Industries Licensing Act, Chapter 60, Article 13 NMSA 1978.

### **13.2. SUCCESSORS AND ASSIGNS**

- 13.2.1.** The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, that party shall nevertheless remain legally responsible for all obligations under the Contract.
- 13.2.2.** The Owner may, without consent of the Contractor, assign the Contract to an institutional lender providing construction financing for the Job Orders. 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**

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 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 timely notice of when and where tests and inspections and approvals are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after issuance of the Notice to Proceed for a Job Order.
- 13.5.2.** If the 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 Owner shall, 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 Owner of when and where tests and inspections are to be made so that the Owner 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 services of others 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 Owner.
- 13.5.5.** If the Owner is to observe tests, inspections or approvals required by the Contract Documents, the Owner 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**

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 PERIODS**

As between the Owner and Contractor:

1. before Substantial Completion of an individual Job Order. 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 of an individual Job Order. 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 of an individual Job Order. As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act of failure to act by the Contractor pursuant to any Warranty provided under Subparagraph 9.8.6, Paragraph 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

## **13.8. EMPLOYMENT**

### **13.8.1. Equal Employment Opportunity**

- 13.8.1.1. The Contractor agrees not to discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or other in accordance with U.S. Executive Order 11246, as amended, and NM Executive Order 85-15. The Contractor and Subcontractors agree to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of nondiscrimination. and shall in all solicitation or advertisement for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin.
- 13.8.1.2. If the Contract constitutes a federally assisted construction contract within the meaning of 41 CFR 60-1.3 (1987), then the equal opportunity clause of 41 CFR 60-1.4(b) is incorporated herein by reference.

### **13.8.2. Wage Rates**

- 13.8.2.1. For all Job Orders issued under this Contract, minimum wages will be paid as determined by the Department of Workforce Solutions in accordance with §50-4-20 to 50-4-30 NMSA 1978, entitled "Minimum Wage Act" The Contractor and Subcontractors shall deliver or mail copies of the certified weekly payrolls, prepared in accordance with regulations, to the Labor Commission and to the Owner.
- 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**

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**

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 Owner in the prosecution of the Work, in accordance with the Contract Documents. Any person executing the Work, who in the opinion of 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 a Job Order and not again be employed on any future Job Order. Failure to comply with this Subparagraph 13.8.4.1,

shall upon the Owner's decision, because to immediately stop the Work in accordance with Paragraph 14.2.

**13.8.5. Employee Background Checks**

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, costs for background checks shall be included in the Contractor's Adjustment Factor(s).

**13.9. Records**

In the event 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.

## 14. TERMINATION OR SUSPENSION OF THE CONTRACT

### 14.1. Termination by the Contractor

14.1.1. The Contractor may not terminate the Contract. The Contractor may elect to decline an Option Term for any reason:

### 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;
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 sites 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 of all outstanding Job Orders 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 of all outstanding Job Orders.

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 of all outstanding Job Orders is finished.

14.2.4. If the unpaid balances of the outstanding Job Orders exceed costs of finishing the Work of all outstanding Job Orders, including compensation for the services of others and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived. If such costs and damages exceed the unpaid balances, 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 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 of any individual Job Orders in whole or in part for such period of time as the Owner may determine.
- 14.3.2.** The Job Order Completion 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 Job Order Price shall be handled with a Supplemental Job Order and in accordance with the Construction Task Catalog®. 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. The Owner may, at any time, terminate a Job Order 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.



**TERMS AND CONDITIONS**  
**OF**  
**CONSTRUCTION AGREEMENT**

**WHEREAS**, Owner is Portales Municipal Schools (“Owner”) which has solicited proposals for a Job Order Contract for construction services at various Owner facilities within Roosevelt County, New Mexico; and

**WHEREAS**, Owner may on occasion retain an Architect, Design Consultant, or Engineer (herein collectively referred to as “Architect/Engineer”) to provide design services to produce all or a portion of a Detailed Scope of Work relative to a specific Project or Job Order; and

**WHEREAS**, the Owner desires to retain Contractor to provide all construction services necessary to complete the Contractor’s **Work** (as hereinafter defined) under the Job Order Contract in accordance with the **Contract Documents** (as hereinafter defined); and

**WHEREAS**, Contractor desires to perform such construction services under such Job Order Contract in accordance with the terms and conditions of this Agreement and for the prices set forth in the Price Proposal Form; and

**WHEREAS**, the parties hereto desire to set forth the terms of their agreements in writing to be effective as of the date set forth above.

**NOW, THEREFORE**, in consideration of the mutual terms and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

## ARTICLE 1

### GENERAL PROVISIONS

#### 1.1 Basic Definitions.

- 1.1.1 **“Contract Documents”** means the RFP Documents and any Amendments or addenda thereto including Attachment 1- Construction Task Catalog® and Attachment 2- Technical Specifications; and other documents including, but not limited to, the Performance Bonds, Payment Bonds, Certificates of Insurance, supplemental specifications, drawings, Job Order Requests for Proposal, Detailed Scopes of Work, Notices To Proceed and Job Orders. The Contract Documents shall be considered part of this Construction Agreement as if attached hereto or as if repeated herein.
- 1.1.2 The Contractor’s **“Work”** comprises the furnishing by the Contractor of all labor, materials, equipment and other incidentals necessary or convenient for the completion of the Job Orders issued pursuant to the Contract, and the Means and Methods of Construction, in accordance with all terms and conditions of the Contract.
- 1.1.3 **Other Terms.** All other capitalized terms used, but not otherwise defined herein, shall have the meanings given to them in the Definitions section of the RFP Documents or as elsewhere defined in the Contract Documents.

#### 1.2 Execution, Correlation and Intent.

- 1.2.1 **Execution.** This Construction Agreement shall be signed in not less than duplicate by the Contractor and the Owner.
- 1.2.2 **Parties' Intent.** It is the intent of Contractor and the Owner that the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any 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 intended results. Words and abbreviations which have well known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings unless otherwise specifically defined in the Contract Documents.
- 1.2.3 **Interpretation.** Words and abbreviations that have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings or in accordance with the meanings as defined in the latest edition of the AIA Glossary of Construction Industry Terms published by the American Institute of Architects.

- 1.3 **Ownership and Use of Documents.** All Drawings (if any), the Construction Task Catalog®, Technical Specifications and copies thereof furnished to the Contractor are and shall remain the property of the Job Order Contract Consultant, the Design Consultant (if utilized) and/or the Owner. They are to be used only with respect to this Contract and are not to be used on any other Contract

## ARTICLE 2

### CONTRACTOR'S RESPONSIBILITIES

#### 2.1 **Basic Services.**

- 2.1.1 **Contractor's Work.** Contractor shall provide such services as are required to complete the Contractor's Work as set forth herein and in the Contract Documents.
- 2.1.2 **Additional Services.** Other than the Contractor's Work or such services as are reasonably inferable therefrom, Contractor shall not be required to provide any additional services except when authorized in writing by Owner, and agreed to in writing by Contractor (the "Additional Services").
- 2.1.3 **Equal Employment Opportunity and Affirmative Action.** Contractor shall comply with all applicable laws, regulations and requirements of the Contract Documents, if any, regarding equal employment opportunity and affirmative action programs.

## ARTICLE 3

### OWNER'S RESPONSIBILITIES AND RIGHTS

- 3.1 **Performance.** The Owner shall have the obligations and responsibilities set forth herein and in the General Conditions. Whenever the Contract Documents require action by an Architect/Engineer, the Owner shall use all reasonable efforts to cause Architect/Engineer to take appropriate action. The Owner agrees to use all reasonable efforts to enable Contractor to perform the Contractor's Work in an expeditious manner by furnishing and approving, in a timely manner, information required by Contractor, and by making payments to Contractor in accordance with the requirements of the Contract Documents.
- 3.2 **The Owner's Representative.** The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the administration of this Contract. The Owner's representative for the administration of this Contract shall be the Director of Operations, or his/her designee. Further, the Owner shall assign and designate a Project Manager for each Project under this Contract.

## ARTICLE 4

### TIME

- 4.1 **Commencement.** Contractor agrees to perform the Contractor's Work and, as expeditiously as is consistent with the highest professional skill and care. The Contractor shall commence the Work promptly upon the date established in the Notice to Proceed issued for each Job Order under the Contract.

**4.2 Completion.** Time is of the essence. The Contractor shall complete said Work within the number of Days specified in the Job Order. This time period shall be designated the Job Order Completion Time. Subject to authorized adjustments and delays, Final Completion shall be achieved within the Job Order Completion Time.

**4.3 Liquidated Damages.** The applicability of liquidated damages shall be determined on a Job Order by Job Order basis, at the sole discretion of the Owner, and at the time the Job Order Request for Proposal, respective to each Job Order is issued by the Owner to the Contractor. Should the Contractor fail to complete the Work within the Job Order Completion Time, and if the applicability of liquidated damages is explicitly stated on the Job Order document itself, the Contractor shall pay the Owner, as liquidated damages, the sum designated in the Job Order, for each consecutive calendar day that terms of the Contract remain unfulfilled beyond the date allowed by the Contract, which sum is agreed upon as a reasonable and proper measure of damages which the Owner will sustain per day by failure of the Contractor to complete the Work within the time as stipulated; it being recognized by the Owner and the Contractor that the injury to the Owner which could result from a failure of the Contractor to complete on schedule is uncertain and cannot be computed exactly. In no way shall cost for liquidated damages be construed as a penalty on the Contractor. The Owner may deduct any liquidated damages incurred under this paragraph from pending Applications for Payment.

**4.3.1** The amount of liquidated damages set forth in Articles 4.3 hereinabove shall be assessed cumulatively. The items of cost included in the assessment of liquidated damages are as defined in the General Conditions.

## ARTICLE 5

### CONTRACT TERM

**5.1 The Term Of The Contract.** The Contract Term includes a Base Period and potentially two (2) Option Periods.

**5.2 The Base Period.** The initial one (1) year period from the effective date of the Construction Agreement.

**5.3 Option Periods.** There are two (2) bilateral Option Periods under the Contract, each with duration of one (1) year. Both the Owner and the Contractor must mutually agree to extend the Contract for additional Option Periods.

**5.4 The Total Term of The Contract.** The total duration of the Contract shall not exceed three (3) years.

## ARTICLE 6

### CONTRACT SUM

**6.1 Contract Value.** The Contract is an indefinite quantity Contract with no Guaranteed Minimum Contract Value during the Base Period. The cumulative Maximum No-To-Exceed Contract Value that may be ordered under this Contract is \$10,000,000.

- 6.2 Contractor's Compensation Per Job Order.** Provided that the Contractor shall strictly and completely perform all of its obligations under the Contract Documents, and subject only to additions and deductions by Amendment or as otherwise provided in the Contract Documents, the Owner shall pay to the Contractor the Job Order Price stated in each Job Order.

## ARTICLE 7

### **ACCOUNTING RECORDS; RIGHT TO AUDIT**

- 7.1 Maintenance of Records.** Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Construction Agreement, and the accounting and control systems shall be reasonably satisfactory to the Owner. The Owner and the Owner's representatives shall be afforded reasonable access to the necessary and relevant Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, and other data relating to the Contractor's Work, the Cost of the Contractor's Work, this Construction Agreement, and the Project generally, and Contractor shall preserve and retain the same for a period of three (3) years after Final Payment, or for such longer period as may be required by law. Contractor shall check all materials, equipment and labor entering into the Contractor's Work and shall keep such full and detailed accounts as may be necessary for proper financial management under this Construction Agreement.
- 7.2 Audit.** In addition to all other rights under the Contract Documents, the Owner shall have the right, during the term of this Construction Agreement and for a period of three (3) years after Final Payment is made hereunder, to audit Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, and other data relating to the Contractor's Work, the Cost of the Contractor's Work, this Construction Agreement, and/or the Project generally. In addition to the records referred to in this Paragraph, the Owner shall be afforded reasonable access to all documents reasonably necessary to perform a full, complete and accurate audit consistent with the terms of the Contract Documents.
- 7.3 Overcharges.** Regardless of the time when the audit is conducted, whether during the term of this Construction Agreement or within three (3) years after Final Payment, if the audit determines overcharges by Contractor, Contractor shall promptly repay the Owner the amount of said overcharges if Contractor agrees with such audit. However, if Contractor does not agree with such audit, Owner's claim for such overcharges shall be submitted as a Claim pursuant the terms and conditions of the Construction Agreement.

## ARTICLE 8

### PAYMENTS

- 8.1 Application for Payments.** The Contractor hereby agrees that on or about the last day of every month during the performance of the Work the Contractor will deliver to the Owner an Application for Payment of the Work for the preceding thirty (30) days in accordance with the provisions the General Conditions. Each Job Order will be invoiced separately by the Contractor. This date may be changed upon mutual agreement, stated in writing, between the Owner and Contractor. Payment under this Contract shall be made as provided in the General Conditions.

## ARTICLE 9

### MISCELLANEOUS PROVISIONS

- 9.1 Successors and Assigns.** This Construction Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the Owner and Contractor and their respective partners, successors, assigns and legal representatives. Neither the Owner nor Contractor shall assign this Construction Agreement without the prior written consent of the other party.
- 9.2 Legal Relations.** Nothing contained in this Construction Agreement shall create a contractual relationship with, or a cause of action in favor of, any third party against either the Contractor or Contractor.
- 9.3 Governing Law.** This Construction Agreement shall be governed by the laws of the State of New Mexico, excluding any choice of law rules that may direct the application of the laws of another jurisdiction.
- 9.4 Entire Agreement.** This Construction Agreement and the Contract Documents represent the entire agreement between Contractor and the Owner, and supersede any prior negotiations, representations or agreements between the parties with respect to the subject matter hereof. This Construction Agreement may be amended only by written instrument signed by both Contractor and the Owner
- 9.5 Dispute Resolution.** Claims, disputes and other matters in question between the parties to this Construction Agreement, or related to the Project and arising out of or relating to this Construction Agreement, shall be submitted and resolved as provided in the General Conditions. This Paragraph 9.5 shall survive completion or termination of this Construction Agreement.
- 9.6 Insurance.** The Contractor shall be responsible for purchasing and maintaining the insurance and providing the bonds required in the General Conditions.
- 9.7 No Waiver.** No waiver of any provision of this Construction Agreement shall be of force or effect unless such waiver is in writing, expressly stating to be a waiver of a specified provision of this Construction Agreement, and is signed by the party to be bound thereby. Either party's waiver of any breach or failure to enforce any of the provisions of this Construction Agreement at any time shall not, in any way, limit or waive that party's right thereafter to enforce or compel strict compliance with this Construction Agreement or any portion or provision or right under this Construction Agreement.

- 9.8 Headings.** Headings and titles of Articles, Sections and Paragraphs in this Construction Agreement are included herein for convenience of reference only, shall not constitute a part of this Construction Agreement for any other purpose, and will not affect, in any way, the meaning or interpretation of this Construction Agreement.
- 9.9 Miscellaneous.** In the event any clause, term or condition of this Construction Agreement shall be determined to be illegal or unenforceable under any applicable governmental laws, orders, rules or regulations, this Construction Agreement shall remain in full force and effect as to all other terms, conditions and provisions hereof. Further, it is the intent and understanding of the parties to this Contract that each and every provision of law required to be inserted in this Contract shall and is inserted herein, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this Contract shall forthwith upon the application of either party be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party hereunder. This Construction Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Signatures transmitted via facsimile or in PDF format by electronic mail shall be binding upon the parties hereto with the same force and effect as original signatures.
- 9.10 Termination or Suspension for Convenience.** This Construction Agreement may be terminated or suspended by the Owner, for the Owner's convenience and without cause, upon not less than thirty (30) days' prior written notice to Contractor. This may include the Owner's inability to continue with Contract due to elimination of funding. In the event of termination or suspension of this Construction Agreement for the Owner's convenience and without cause, Contractor shall be entitled to receive payment for Contractor's Work properly performed prior to such termination or suspension. Contractor shall not be entitled to receive compensation, overhead, or profit for Contractor's Work not performed under this Construction Agreement.
- 9.11 Notices.** All notices, requests, demands and other communications hereunder shall be given in writing and shall be: (a) personally delivered; (b) sent by telecopier, facsimile transmission or other electronic means of transmitting written documents; or (c) sent to the parties by registered or certified U.S. mail, return receipt requested and postage prepaid, or by a nationally recognized private overnight mail courier service (such as Federal Express) to the following addresses:

If to Owner:

Portales Municipal Schools  
 Sarah M. Stubbs, Chief Procurement Officer/Finance Director  
 LC Cozzens Administrative Office  
 Chief Procurement Office  
 501 South Abilene  
 Portales, NM 88130  
 Phone No: (575) 356-7000

If to Contractor:

\_\_\_\_\_  
 \_\_\_\_\_

Attention: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Electronic mail: \_\_\_\_\_

If personally delivered, such communication shall be deemed delivered upon actual receipt; if electronically transmitted, such communication shall be deemed delivered the next business day after transmission (and sender shall bear the burden of proof of delivery); if sent by overnight courier, such communication shall be deemed delivered upon receipt; and if sent by U.S. mail, such communication shall be deemed delivered as of the date of delivery indicated on the receipt issued by the relevant postal service; or, if the addressee fails or refuses to accept delivery, as of the date of such failure or refusal. Any party to this Construction Agreement may change its address for the purposes hereof by giving notice thereof in accordance with this Paragraph.

**THIS CONSTRUCTION AGREEMENT** is entered into as of the day and year first above written.

OWNER:

Portales Municipal Schools

By: \_\_\_\_\_

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

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

CONTRACTOR:

\_\_\_\_\_

By: \_\_\_\_\_

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

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



# SAMPLE

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AIA Document A312

## Performance Bond

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

CONTRACTOR (Name and Address):

SURETY (Name and Principal Place of Business):

OWNER (Name and Address):

CONSTRUCTION CONTRACT

Date:

Amount:

Description (Name and Location):

BOND

Date (Not earlier than Construction Contract Date):

Amount:

Modifications to this Bond:

None

See Page 3

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

SURETY

Company:

(Corporate Seal)

Signature: \_\_\_\_\_  
Name and Title:

Signature: \_\_\_\_\_  
Name and Title:

(Any additional signatures appear on page 3)

(FOR INFORMATION ONLY—Name, Address and Telephone)

AGENT or BROKER:

OWNER'S REPRESENTATIVE (Architect, Engineer or other party):

# SAMPLE

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

2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.

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

3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default; and

3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1; and

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

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

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

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

4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or

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

.1 After investigation, determine the amount for

which it may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment therefor to the Owner; or

.2 Deny liability in whole or in part and notify the Owner citing reasons therefor.

5 If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

6 After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:

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

6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and

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

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

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

9 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation avail-

# SAMPLE

able to sureties as a defense in the jurisdiction of the suit shall be applicable.

**10** Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.

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

## 12 DEFINITIONS

**12.1** Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Con-

tractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

**12.2** Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

**12.3** Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

**12.4** Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

## MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL  
Company:

(Corporate Seal)

SURETY  
Company:

(Corporate Seal)

Signature: \_\_\_\_\_  
Name and Title:  
Address:

Signature: \_\_\_\_\_  
Name and Title:  
Address:

# SAMPLE

THE AMERICAN INSTITUTE OF ARCHITECTS



AIA Document A312

## Payment Bond

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

CONTRACTOR (Name and Address):

SURETY (Name and Principal Place of Business):

OWNER (Name and Address):

### CONSTRUCTION CONTRACT

Date:

Amount:

Description (Name and Location):

### BOND

Date (Not earlier than Construction Contract Date):

Amount:

Modifications to this Bond:

None

See Page 6

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

SURETY

Company:

(Corporate Seal)

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

Name and Title:

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

Name and Title:

(Any additional signatures appear on page 6)

(FOR INFORMATION ONLY—Name, Address and Telephone)

AGENT or BROKER:

OWNER'S REPRESENTATIVE (Architect, Engineer or other party):



# SAMPLE

- 1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.
- 2 With respect to the Owner, this obligation shall be null and void if the Contractor:
  - 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and
  - 2.2 Defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for the payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.
- 3 With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.
- 4 The Surety shall have no obligation to Claimants under this Bond until:
  - 4.1 Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.
  - 4.2 Claimants who do not have a direct contract with the Contractor:
    - .1 Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and
    - .2 Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and
    - .3 Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.
- 5 If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.
- 6 When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:
  - 6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
  - 6.2 Pay or arrange for payment of any undisputed amounts.
- 7 The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
- 8 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
- 9 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
- 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
- 11 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
- 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
- 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this

# SAMPLE

Bond shall be construed as a statutory bond and not as a common law bond.

14 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

## 15 DEFINITIONS

15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the

Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

## MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL  
Company:

(Corporate Seal)

SURETY  
Company:

(Corporate Seal)

Signature: \_\_\_\_\_  
Name and Title:  
Address:

Signature: \_\_\_\_\_  
Name and Title:  
Address:

## **APPROVED MODIFICATIONS PAGE**

### **Modification No.1:**

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.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER  Broker's Name and Address	CONTACT NAME:	
	PHONE (A/C, No, Ext):	FAX (A/C, No):
	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	NAIC #
INSURED  Insured's Name and Address	INSURER A:	
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

**COVERAGES**                      **CERTIFICATE NUMBER:**                      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC		SAMPLE			EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000
	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS		SAMPLE			COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$					EACH OCCURRENCE \$1,000,000 AGGREGATE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N/A	SAMPLE			<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Name and Address of School District

and as Additionally Insured

PSCOC - PSFA, 1312 Basehart Road, SE, Suite 200, Albuquerque, NM 87106

CERTIFICATE HOLDER	CANCELLATION
	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

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ACORD 25 (2010/05)

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## Wage Determinations

General Decision Number: NM180034 01/05/2018 NM34

Superseded General Decision Number: NM20170034

State: New Mexico

Construction Type: Building

County: Roosevelt County in New Mexico.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.35 for calendar year 2018 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.35 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2018. The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number	Publication Date
0	01/05/2018

CARP1245-004 06/01/2016

	Rates	Fringes
Carpenter Metal Stud Installation Only.....	\$ 23.75	9.92

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ELEC0611-020 01/01/2017

	Rates	Fringes
ELECTRICIAN Excluding Low Voltage Wiring for Alarms Zone 1.....	\$ 30.00	10.60

ZONE 1: Mileage calculated from the main post office in the following towns: Albuquerque-40 miles, Belen-12 miles,

Carrizozo-12 miles, Clovis-12 miles, Espanola-14 miles, Farmington-6 miles, Gallup-10 miles, Las Vegas-8 miles, Los Lunas-12 miles, Portales-12 miles, Ratan-6 miles, Roswell-12 miles, Ruidoso-12 miles, Santa Fe-10 miles, Tucumcari-6 miles.

ZONE 2: Extending up to 20 miles beyond Zone 1, EXCEPT ALBURQUERQUE, shall receive 9% above Zone 1 rate.

ZONE 3: Extending up to 30 miles beyond Zone 1, EXCEPT ALBURQUERQUE, shall receive 15% above Zone 1 rate.

ZONE 4: Extending more than 30 miles beyond Zone 1, EXCEPT ALBURQUERQUE, shall receive 26% above Zone 1 rate.

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 ENGI0953-007 06/01/2016

	Rates	Fringes
Power Equipment Operator		
(2) Roller(Dirt and Grade		
Compaction).....\$ 21.97		6.10
(4) Bobcat/Skid Loader,		
Loader (Front End).....\$ 22.81		6.10
(8) Crane.....\$ 26.10		6.10

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 IRON0495-009 06/01/2017

	Rates	Fringes
IRONWORKER, ORNAMENTAL.....\$ 26.50		15.05
IRONWORKER, STRUCTURAL (Metal		
Building Erection Only).....\$ 26.50		15.05

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 PLUM0412-007 04/01/2017

	Rates	Fringes
PIPEFITTER (Including HVAC		
Pipe Installation).....\$ 32.40		12.58
PLUMBER (Excluding HVAC Pipe		
Installation).....\$ 32.40		12.58

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 \* SHEE0049-012 04/01/2017

	Rates	Fringes
Sheet Metal Worker (HVAC Duct		
and System Installation Only)....\$ 29.28		16.61

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 SUNM2010-015 11/09/2010

	Rates	Fringes
BOILERMAKER.....\$ 21.77		3.98

BRICKLAYER.....	\$ 20.36	5.74
CARPENTER (Acoustical Ceiling Installation Only).....	\$ 20.79	0.00
CARPENTER (Drywall Hanging Only).....	\$ 21.39	2.85
CARPENTER (Form Work Only).....	\$ 19.79	6.14
CARPENTER, Excludes Acoustical Ceiling Installation, Batt Insulation, Drywall Hanging, Form Work, and Metal Stud Installation.....	\$ 27.11	0.35
CEMENT MASON/CONCRETE FINISHER....	\$ 17.72	3.72
DRYWALL FINISHER/TAPER.....	\$ 19.64	2.75
ELECTRICIAN (Low Voltage Wiring for Alarms).....	\$ 28.25	6.62
FLOOR LAYER: Carpet.....	\$ 22.31	0.30
GLAZIER.....	\$ 20.15	3.95
INSULATOR - BATT.....	\$ 24.44	8.43
IRONWORKER, REINFORCING.....	\$ 20.84	7.68
IRONWORKER, STRUCTURAL, Excludes Metal Building Erection.....	\$ 22.20	8.06
LABORER: Common or General.....	\$ 13.12	3.79
LABORER: Landscape & Irrigation.....	\$ 10.60	0.24
LABORER: Mason Tender - Brick....	\$ 13.77	4.35
LABORER: Mason Tender - Cement/Concrete.....	\$ 11.51	0.85
LABORER: Pipelayer.....	\$ 13.78	2.20
OPERATOR: Backhoe.....	\$ 22.13	4.30
OPERATOR: Forklift.....	\$ 21.13	4.83
OPERATOR: Grader/Blade.....	\$ 21.39	4.94
PAINTER: Brush, Roller and Spray, Excludes Drywall Finishing/Taping.....	\$ 16.58	1.75

PLASTERER.....	\$ 17.65	7.15
ROOFER.....	\$ 13.24	0.50
SHEET METAL WORKER, Excludes HVAC Duct and Unit Installation.....	\$ 22.01	9.65
TILE FINISHER.....	\$ 14.02	0.00
TILE SETTER.....	\$ 19.00	0.00
TRUCK DRIVER: Dump Truck.....	\$ 15.36	5.00
TRUCK DRIVER: Pickup Truck.....	\$ 15.91	3.13
TRUCK DRIVER: Water Truck.....	\$ 16.25	5.00

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular

rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of

each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board

U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

General Decision Number: NM180050 01/05/2018 NM50

Superseded General Decision Number: NM20170050

State: New Mexico

Construction Type: Highway

Counties: Catron, Chaves, Curry, De Baca, Eddy, Grant, Hidalgo, Lea, Lincoln, Luna, Otero, Roosevelt, Sierra and Socorro Counties in New Mexico.

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction; and other major bridges).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.35 for calendar year 2018 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.35 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2018. The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number	Publication Date
0	01/05/2018

\* SUNM2011-004 08/26/2011

	Rates	Fringes
CARPENTER (Includes Form Work)		
Catron, Chaves, Curry,		
DeBaca, Eddy, Grant,		
Hidalgo, Lincoln, Otero,		
Roosevelt, Sierra, Socorro..\$ 13.93	13.93	0.44
Lea.....\$ 13.30	13.30	0.44
Luna.....\$ 13.11	13.11	0.44

CEMENT MASON/CONCRETE FINISHER  
 Catron, Chaves, Curry,  
 DeBaca, Eddy, Grant,



Hidalgo, Lincoln, Otero, Roosevelt, Sierra, Socorro..\$ 14.17	0.55
Lea.....\$ 13.74	0.68
ELECTRICIAN (Including Traffic Signalization)	
Catron, Chaves, Curry, DeBaca, Eddy, Grant, Hidalgo, Lincoln, Otero, Roosevelt, Sierra, Socorro..\$ 26.21	9.35
Lea.....\$ 24.90	8.56
HIGHWAY/PARKING LOT STRIPING: Includes Highway Line/Parking Lot Line Striping and Line Striping Truck Driver.....\$ 15.93	
	0.35
INSTALLER: (Guardrails, Handrails and Signs)	
Catron, Chaves, Curry, DeBaca, Eddy, Grant, Hidalgo, Lincoln, Otero, Roosevelt, Sierra, Socorro..\$ 13.58	0.35
Lea.....\$ 14.62	0.30
IRONWORKER, REINFORCING/REBAR	
Catron, Chaves, Curry, DeBaca, Eddy, Grant, Hidalgo, Lincoln, Otero, Roosevelt, Sierra, Socorro..\$ 21.66	6.03
Lea.....\$ 21.77	6.03
IRONWORKER, STRUCTURAL.....\$ 21.77	6.03
LABORER	
Asphalt Raker.....\$ 13.00	0.35
Common or General	
Catron, Chaves, Curry, Hidalgo, Lincoln, Sierra, Socorro.....\$ 11.67	0.35
DeBaca.....\$ 11.33	0.35
Eddy.....\$ 11.78	0.35
Grant.....\$ 10.62	0.35
Lea.....\$ 11.61	0.35
Luna, Roosevelt.....\$ 12.56	0.35
Otero.....\$ 12.73	0.35
Flagger/Cone Setter.....\$ 12.56	0.35
Grade Checker.....\$ 16.18	1.60
Mason Tender-	
Brick/Cement/Concrete.....\$ 11.39	0.79
Pipelayer.....\$ 19.28	
Power/Air Tool Operator, Includes Jack Hammer.....\$ 13.91	0.86
PAINTER (Brush, Roller, and Spray).....\$ 15.41	0.44

POWER EQUIPMENT OPERATOR:

Asphalt/Concrete Paver, Laydown Machine, and Plant..\$	15.42	0.26
Backhoe/Excavator/Trackhoe Catron, Chaves, Curry, DeBaca, Grant, Hidalgo, Lincoln, Luna, Otero, Roosevelt, Sierra, Socorro.\$	19.92	0.26
Eddy.....\$	14.87	0.26
Lea.....\$	16.88	0.26
Bobcat/Skid Loader.....\$	18.06	0.26
Broom.....\$	15.48	0.26
Bulldozer.....\$	16.25	0.26
Crusher.....\$	16.53	0.26
Distributor.....\$	14.50	0.26
Forklift.....\$	17.16	0.26
Grader/Blade.....\$	18.02	0.26
Loader (Front End).....\$	16.12	0.26
Mechanic Catron, Chaves, Curry, DeBaca, Eddy, Grant, Hidalgo, Lincoln, Luna, Otero, Roosevelt, Sierra, Socorro.....\$	19.44	0.26
Lea.....\$	20.69	0.26
Milling Machine.....\$	16.59	0.26
Oiler.....\$	15.79	0.26
Piledriver.....\$	17.82	0.26
Roller (Asphalt, Dirt, and Sheepsfoot) Catron, Chaves, Curry, Eddy, Grant, Hidalgo, Lincoln, Luna, Otero, Roosevelt, Sierra, Socorro.\$	15.86	0.26
DeBaca.....\$	14.19	0.75
Lea.....\$	17.41	0.26
Scraper.....\$	15.91	0.26
Screed.....\$	15.70	0.26
Tractor.....\$	15.40	0.26
Trencher.....\$	16.31	0.26

TRUCK DRIVER

Distributor Catron, Chaves, Curry, DeBaca, Grant, Hidalgo, Lea, Lincoln, Luna, Otero, Roosevelt, Sierra, Socorro.....\$	13.81	0.26
Eddy.....\$	13.70	0.26
Dump Truck Catron, Chaves, Curry, DeBaca, Eddy, Grant, Hidalgo, Lincoln, Luna, Otero, Roosevelt, Sierra, Socorro.....\$	14.60	0.26
Lea.....\$	14.61	0.26
Flatbed Truck		

Catron, Chaves, Curry, DeBaca, Grant, Hidalgo, Lincoln, Luna, Otero, Sierra, Socorro.....\$ 12.96	0.26
Eddy.....\$ 12.71	0.26
Lea.....\$ 13.05	0.26
Roosevelt.....\$ 13.26	0.26
Pickup and Pilot Car	
Catron, Chaves, Curry, DeBaca, Grant, Hidalgo, Lincoln, Luna, Otero, Roosevelt, Sierra, Socorro.\$ 12.70	0.26
Eddy.....\$ 12.60	0.26
Lea.....\$ 12.84	0.26
Semi-Trailer Truck.....\$ 16.58	0.26
Tractor Haul Truck.....\$ 14.00	
Water Truck	
Catron, Chaves, Curry, DeBaca, Eddy, Grant, Hidalgo, Lincoln, Luna, Otero, Roosevelt, Sierra, Socorro.....\$ 14.39	0.26
Lea.....\$ 15.07	0.26

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in

the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

General Decision Number: NM180012 01/05/2018 NM12

Superseded General Decision Number: NM20170012

State: New Mexico

Construction Type: Heavy

Counties: De Baca, Eddy, Grant, Hidalgo, Lea, Lincoln, Luna, Roosevelt, Sierra and Socorro Counties in New Mexico.

HEAVY CONSTRUCTION PROJECTS

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.35 for calendar year 2018 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.35 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2018. The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/05/2018

ELEC0583-006 12/01/2016

HIDALGO AND LUNA COUNTIES

	Rates	Fringes
ELECTRICIAN.....	\$ 29.30	5.25% + \$6.97

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ELEC0611-002 01/01/2017

DE BACA, GRANT, LINCOLN, ROOSEVELT, SIERRA & SOCORRO COUNTIES

	Rates	Fringes
ELECTRICIAN		
ZONE 1.....	\$ 28.45	10.53

ZONE 1: Mileage calculated from the main post office in the following towns: Albuquerque-40 miles, Belen-12 miles, Carrizozo-12 miles, Clovis-12 miles, Espanola-14 miles,

Farmington-6 miles, Gallup-10 miles, Las Vegas-8 miles, Los Lunas-12 miles, Portales-12 miles, Ratan-6 miles, Roswell-12 miles, Ruidoso-12 miles, Santa Fe-10 miles, Tucumcari-6 miles.

ZONE 2: Extending up to 20 miles beyond Zone 1, EXCEPT ALBURQUERQUE, shall receive 9% above Zone 1 rate.

ZONE 3: Extending up to 30 miles beyond Zone 1, EXCEPT ALBURQUERQUE, shall receive 15% above Zone 1 rate.

ZONE 4: Extending more than 30 miles beyond Zone 1, EXCEPT ALBURQUERQUE, shall receive 26% above Zone 1 rate.

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 ELEC0611-006 01/01/2017

EDDY & LEA COUNTIES

	Rates	Fringes
ELECTRICIAN		
Zone A.....	\$ 28.45	10.53

Zone A shall be designated 12 miles from the Main Post Office of Artesia, Carlsbad, Hobbs and Lovington, New Mexico.

Zone B extending up to 10 miles beyond Zone A, shall receive \$0.45 above Zone A wage rate.

Zone C extending up to 28 miles beyond Zone A, shall receive \$0.60 above Zone A wage rate.

Zone D extending more than 28 miles beyond Zone A, shall receive \$0.85 above Zone A wage rate.

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 \* IRON0495-004 06/01/2017

	Rates	Fringes
IRONWORKER		
Structural.....	\$ 26.50	15.05

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 SUNM2009-006 09/14/2010

	Rates	Fringes
CARPENTER.....	\$ 22.26	6.20
IRONWORKER, REINFORCING.....	\$ 22.75	9.60
LABORER: Common or General.....	\$ 12.37	0.00
LABORER: Flagger.....	\$ 10.90	0.00
OPERATOR: Backhoe.....	\$ 14.03	0.00



OPERATOR: Grader/Blade.....	\$ 18.79	2.35
OPERATOR: Loader (Front End)....	\$ 22.07	5.05
OPERATOR: Scraper.....	\$ 14.03	0.00
PIPEFITTER.....	\$ 25.64	11.31
PLUMBER.....	\$ 26.27	7.69
TRUCK DRIVER: Dump Truck.....	\$ 11.90	0.00
TRUCK DRIVER: Water Truck.....	\$ 13.72	5.25

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

## Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

## Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

## Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION