

CONTRACT NUMBER 21-001-3
Connor Hall Window Replacement 2021-2022

ARTICLE 1
INTRODUCTION

THIS AGREEMENT (hereinafter called "Contract") is effective as of the _____ day of _____, 2020 hereinafter called "Effective Date"), hereto by and between:

BannerID-@

Federal Identification Number (FIN):

hereinafter called "Contractor";

and

a State educational institution created in accordance with Article XII, Section 11 of the Constitution of the State of New Mexico:

New Mexico Highlands University 800 National
P.O. Box 9000
Las Vegas, NM 87701

Federal Identification Number: 85-6000406

hereinafter called "NMHU".

NMHU and Contractor hereinafter agree:

RECITALS: Pursuant to NMHU Invitation for Bid (IFB) 21-001-03 its attachments and addenda (hereinafter called “CONTRACT”) for Connor Hall Window Replacement (hereinafter called “Services” or “Work”), NMHU has determined that Contractor’s proposal is in the best interest of NMHU and Contractor is willing to accept assignment under the terms of this Contract.

1.1 PREVAILING DOCUMENTS

- A. To the extent that any provisions of Contractor’s proposal are inconsistent with this Contract and/or the IFB prepared by NMHU, the following order of precedence shall prevail:
 - 1. This Contract;
 - 2. The IFB number 20-001-3, its attachments, and Addendums;
 - 3. Contractor’s Proposal Response to IFB number 21-001-03

1.2 SCOPE OF SERVICES

Refer to Scope of Services Listed in Section II and III of IFB, Scope of Work 21-001-3. Proposer will adhere to rates and wages identified in response to IFB 21-001-3 to perform the services. The service awarded include: Window Replacement.

1.3 INDUSTRY ASSOCIATION MEMBERSHIP AND CERTIFICATIONS

- A. Proposer must maintain licensing and applicable certifications for duration of contract.

1.4 PERFORMANCE OF SERVICES

This contract is not an award to perform all of the Services within the first year of award. This Contract establishes fixed-prices for the term of this Contract (refer to Section 1.5 for the term of this Contract). NMHU will request from Contractor to perform Services to buildings as funds become available, whether during the first or subsequent years of this Contract.

1.5 PERIOD OF PERFORMANCE

The initial term for this Contract will be through 30 June, 2021 and include an Option for additional windows from 1 July 2020 through 31 December 2021, at the discretion of the NMHU.

1.6. Quotes

Quotes will be requested and contract administered according to contractor’s response to IFB 20-001-3 and the terms of this contract.

1.7 Contract Value

Contract Value is administered according to Attachment 1-1 and 1-2, if Option exercised.

1.8 Consideration.

Consideration for this contract will be met with award of a Purchase Order in the amount of the Base Bid fixed-price, in accordance with Attachment 1-1.

**ARTICLE 2
FINANCIAL AGREEMENTS**

2.1 FINANCIAL ARRANGEMENTS

Fees for Services to be performed in accordance with this Contract will be in accordance with the attached documents in IFB 21-001-3:

2.2 TAXES

A. Gross Receipts Taxes

NMHU is required to pay gross receipts taxes for Services received.

B. Other taxes

Contractor shall be solely responsible to pay any and all Federal, State and local taxes which may be assessed against Contractor in its operation.

2.3. INVOICING AND PAYMENTS

- A. Invoices may be presented following the completion of the Services. NMHU personnel will inspect the locations Serviced by Contractor to ensure compliance with the terms and conditions of this Contract;
- B. On all invoices, Contractor shall certify in writing to NMHU under penalty of perjury that all subcontractors working for Contractor and who comprise a portion of the prior application were paid in full within ten (10) days after Contractor received payment from NMHU for such prior Work;
- C. Should the Services be abandoned, postponed, or canceled, Contractor shall be paid for the amount of Work performed through the last day of termination, less any costs incurred by NMHU to correct any deficiencies and any other costs associated with the non-performance. Notice of abandonment, postponement, or cancellation shall be made orally, but shall be confirmed in writing within five (5) days by NMHU; at which time, Contractor shall immediately file with NMHU the final date of Services performed, and issue a final progress report. All payments made in excess of the proportion of Work completed, shall be refunded to NMHU. Costs for additional Work performed by Contractor following the date of the termination will be the sole responsibility of the Contractor;
- D. Upon certification and acceptance of Services NMHU will issue payment no later than thirty (30) days following the date of certification. If payment is made by

mail, the payment shall be deemed tendered on the date it is postmarked. After the thirtieth (30th) day from the date that written certification of acceptance is issued, late payment charges may be paid to Contractor on the unpaid balance due at the rate of one and one-half (1½%) per month;

- E. If NMHU finds that any of the Services performed are not acceptable payment will be held on the portion of Work that is unacceptable. If NMHU determines that any portion of the Services are not acceptable it is to submit to Contractor, within thirty (30) days of receipt of written notice from Contractor that payment is requested for Services, provide Contractor a letter of exception explaining the objection to the Services along with details of how Contractor may proceed to provide remedial action; and
- F. Invoices are to include the purchase order number on it and are to be sent to:
- NewMexico Highlands University
Attn: Accounts Payable
P.O. Box 9000
Las Vegas, NM 87701

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**ARTICLE 3
GENERAL TERMS AND CONDITIONS**

3.1 AMENDMENT TO CONTRACT

This Contract shall not be altered, changed, or amended except by an instrument in writing executed by both parties.

3.2 AUTHORIZED AGENT

- A. Contractor agrees that the performance of all Services required under the terms and conditions of the IFB, addendums, Proposal, and subsequent changes to the Contract are to be subject to the direction of NMHU or the person designated by NMHU. Such person designated by NMHU shall be the Authorized Agent representative of NMHU;
- B. The Authorized Agent may temporarily or permanently delegate his authority if it is in the best interest of NMHU. The Authorized Agent will inform Contractor of any delegation of authority;
- C. As of the date this Contract has been signed by both parties, the Authorized Agent is Facilities Director, Authorized Agent of Facilities Services; and
- D. All Services are to be performed only after the Authorized Agent has given approval to perform the Services. All information or direction desired or required by Contractor for the performance of his Services hereunder shall be obtained from said Authorized Agent.

3.3 ASSIGNMENT AND SUBCONTRACTING

- A. Contractor shall not assign or transfer any interest in this Contract to subcontractors, other firms or other service providers in order to fulfill its responsibilities to NMHU, unless it is preapproved by NMHU and in writing;
- B. Any such agreement or contract will be between Contractor and his subcontractors. NMHU will have no contractual obligations with any of Contractor's subcontractors;
- C. Contractor will be responsible for directing and overseeing all Work performed by its Subcontractors; and
- D. All Subcontractors of Contractor will be held to the same terms, conditions, and standards as Contractor. If Contractor's subcontractors do not perform as required, Contractor will be responsible for successful completion of the Work and will be held liable for any of subcontractor's actions.

3.4 HOURS OF OPERATION

- A. NMHU's standard operating hours are 8 am to 5 pm local time Monday through Friday.
- B. NMHU is closed on the following recognized holidays:
 - Dr. Martin Luther King Day; spring break; Memorial Day;
 - Independence Day; Labor Day; Thanksgiving Day; day after

Thanksgiving Day; fall break (usually the last week of December); and New Year's Day. All holidays are subject to change.

3.5 WARRANTY

- A. Contractor shall provide a warranty for the Services performed if such a warranty is standard in the WINDOW services industry. WARRANTY
- B. The Contractor warrants that all materials and equipment shall be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Upon Owner's or NMHU Authorized Agent's request, Contractor shall furnish satisfactory evidence of the quality and type of materials and equipment furnished. Contractor further warrants that the Contract Work shall be free from material defects not intrinsic in the design or materials required in the Contract Documents. Contractor's warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage, use for a purpose for which the Project was not intended, improper or insufficient maintenance, modifications performed by Owner or Others, or abuse. Contractor's warranty pursuant to this section shall commence on the Date of Substantial Completion of the Project.
- C. To the extent products, equipment, systems, or materials incorporated in the Contract Work are specified and purchased by Owner; they shall be covered exclusively by the warranty of the manufacturer. There are no warranties which extend beyond the description on the face of any such warranty.
- D. Contractor shall obtain from its Subcontractors and Suppliers any special or extended warranties required by the Contract Documents. Contractor's liability for such warranties shall be limited to the one-year correction period referred to in section E. After that period Contractor shall provide reasonable assistance to Owner in enforcing the obligations of Subcontractors or Suppliers for such extended warranties.

E. CORRECTION OF CONTRACT WORK WITHIN ONE YEAR

- 1. If, prior to Substantial Completion or within one year after the date of Substantial Completion of the Contract Work, any Defective Work is found, Owner shall promptly notify Contractor in writing. Unless Owner provides written acceptance of the condition, Contractor shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible. If within the one-year correction period Owner discovers and does not promptly notify Contractor or give Contractor an opportunity to test or correct Defective Work as reasonably requested by Contractor, Owner waives Contractor's obligation to correct that Defective Work as well as

Owner's right to claim a breach of the warranty with respect to that Defective Work.

2. With respect to any portion of Contract Work first performed after Substantial Completion, the one-year correction period shall be extended by the period of time between Substantial Completion and the actual performance of the later Contract Work. Correction periods shall not be extended by corrective work performed by Contractor.
3. If Contractor fails to correct Defective Work within a reasonable time after receipt of written notice from Owner prior to final payment, Owner may correct it in accordance with Owner's right to carry out the Contract Work as intended to fulfill the contract purpose. In such case, an appropriate Contract Change Order shall be issued deducting the cost of correcting such deficiencies from payments then or thereafter due Contractor. If payments then or thereafter due Contractor are not sufficient to cover such amounts, Contractor shall pay the difference to Owner.
4. Contractor's obligations and liability, if any, with respect to any Defective Work discovered after the one-year correction period shall be determined by the Law. If, after the one-year correction period but before the applicable limitation period has expired, Owner discovers any Contract Work that Owner considers Defective Work, Owner shall, unless the Defective Work requires emergency correction, promptly notify the Contractor and allow Contractor an opportunity to correct the Contract Work if Contractor elects to do so. If the Contractor elects to correct the Work, it shall provide written notice of such intent within fourteen (14) Days of its receipt of notice from Owner and shall complete the correction of Work within a mutually agreed timeframe. If Contractor does not elect to correct the Contract Work, Owner may have the work corrected by itself or Others, and, if Owner intends to seek recovery of those costs from Contractor, Owner shall promptly provide Contractor an accounting of the correction costs it incurs.
5. If Contractor's correction or removal of Defective Work causes damage to or destroys other completed or partially completed Work or existing buildings, Contractor shall be responsible for the cost of correcting the destroyed or damaged property.

6. The one-year period for correction of Defective Work does not constitute a limitation period with respect to the enforcement of Contractor's other obligations under the Contract Documents.
7. Prior to final payment, at Owner's option and with Contractor's agreement, Owner may elect to accept Defective Work rather than require its removal and correction. In such case the Contract Price shall be equitably adjusted for any diminution in the value of the Project caused by such Defective Work.

a. CORRECTION OF COVERED CONTRACT WORK

F. On request of Owner or NMHU Authorized Agent, Contract Work that has been covered without a requirement that it be inspected prior to being covered may be uncovered for Owner's or NMHU Authorized Agent's inspection. Owner shall pay for the costs of uncovering and replacement if the Work proves to be in conformance with the Contract Documents, or if the defective condition was caused by Owner or Others. If the uncovered Contract Work proves to be defective, Contractor shall pay the costs of uncovering and replacement.

1. If, contrary to specific requirements in the Contract Documents or contrary to a specific request from Owner or NMHU Authorized Agent, a portion of the Contract Work is covered, Owner or NMHU Authorized Agent, by written request, may require Contractor to uncover the Contract Work for Owner's or NMHU Authorized Agent's observation. In this circumstance the Contract Work shall be uncovered and recovered at Contractor's expense and with no adjustment to the Contract Time.

3.6 TIMELY PERFORMANCE

- A. Time may be of the essence for the performance of the Services requested of Contractor. Therefore, if Contractor is unable or unwilling to start or complete the Services within a timely manner the NMHU Authorized Agent may notify you or your staff that Work is to halt until further notice, if NMHU determines it is in its best interest to allow Contractor to continue providing its Services. Upon non-performance, NMHU reserves the right to cancel the Contract with Contractor. An exception may be made for situations that are beyond your control. NMHU will determine if such an exception is granted; and
- B. NMHU reserves the right, if it is in its best interest, to cancel the purchase order, work order or your Services at any time.

3.7 RESPONSE TIME REQUIREMENTS

Contractor and NMHU personnel must work together and mutually agree upon a schedule for the start of, anticipated completion of, and performance of any important phases of the rendering of Services.

3.8 HAZARDOUS MATERIALS PROVIDED BY OR HANDLED BY CONTRACTOR

- A. Transportation of hazardous materials to, from, and within NMHU must be performed in accordance with industry practice; local, State, and Federal laws, regulations, and ordinances; and
- B. Appropriate documentation must be provided, when necessary, in a Material Safety Data Sheet and other documentation as necessary relating to the traits, characteristics, and pervasive properties of any hazardous materials utilized for the equipment and/or systems during your performance of Services.

3.9 EXISTING HAZARDOUS MATERIALS

- A. Asbestos, asbestos-containing material, or other hazardous material may be present within or around NMHU-owned facilities, and may be encountered while Services are performed; and
- B. Upon discovery of such material, all Work shall immediately stop in the affected area and Contractor is to immediately contact the NMHU Authorized Agent. In these situations, Contractor is expected to perform in accordance with Federal, State and local laws, regulations, and ordinances and within industry standards.

3.10 STORAGE OF MATERIALS

- A. Contractor must ensure his equipment, materials, vehicles, and other materials necessary for the performance of Services are kept in a safe manner to prevent damage to NMHU or personal property of others and to prevent injury to his employees and all other individuals in and around the work site and locations where these items may be stored; and
- B. NMHU will not be responsible for any lost or stolen items owned, rented, or under the control of Contractor, except for those situations where NMHU is considered to be liable in accordance with the State of New Mexico's Tort Claims Act (§41-4- 1 N.M.S.A. 1978).

3.11 CLEANUP

During performance and completion of Services Contractor shall remove all unused equipment and instruments of service, all excess or unsuitable material, trash, rubbish and debris, and legally dispose of same, unless otherwise directed by the NMHU Authorized Agent. Contractor shall leave the entire area in a neat, clean and acceptable condition as approved by NMHU. Contractor will be responsible for all expenses related to the cleanup and disposal of such materials.

3.12 CORRECTION OF ERRORS, DEFICIENCIES AND DEFECTS

- A. Contractor agrees to perform its Services in accordance with best practices of its industry;
- B. Performance by Contractor, not meeting NMHU's standards and/or the industry best practices, are to be completed in an acceptable manner and are to be performed without undue delays and without cost to NMHU;
- C. The acceptance of the Services set forth herein by NMHU shall not relieve Contractor of the responsibility of subsequent correction of such errors, deficiencies or defects;
- D. All corrections shall be made at or by a date and time agreed upon by the NMHU Authorized Agent;
- E. Contractor shall promptly correct all apparent and latent deficiencies and/or defects in Work, and/or any Work that fails to conform to the Contract documents regardless of project completion status;
- F. The Contractor shall bear all costs of correcting such rejected Work; and
- G. If Contractor is unable or unwilling to correct the deficiencies, NMHU may contract the Work out to another vendor or perform the Work with its own staff. In such a case, if NMHU has paid to Contractor for Services it has not rendered, the Contractor will be responsible for reimbursing NMHU for the entire amount required to correct the deficiencies.

3.13 PROTECTION OF PUBLIC

- A. Contractor shall provide adequate warning devices, barricades, guards, flagmen, signage, or other necessary precautions to ensure reasonable protection, safety, and warning to persons and vehicular traffic concerned in the area(s) affected by the Work, whether outdoors or indoors; and
- B. Within a reasonable time following or prior to setting up the precautionary equipment or closing of any location, Contractor must notify and coordinate the details of such plans with the Authorized Agent, other NMHU personnel, police and fire protection personnel and/or any regulatory agency personnel.

3.14 INDEPENDENT CONTRACTOR

- A. It is expressly understood that Contractor is an independent contractor and not the agent, partner or employee of NMHU. Contractor shall have complete charge and responsibility for persons employed by Contractor and engaged in the performance of the specified Work. Neither Contractor nor any of its agents shall be treated as an employee of NMHU for any purpose whatsoever. Contractor declares that Contractor has complied with all Federal, State and local laws regarding business permits and licenses of any kind that may be required to carry out the said business and Services to be performed under this Contract;
- B. Contractor further declares that it is engaged in the same or similar activities for other clients and that NMHU is not Contractor's sole or only client or customer; and

- C. No Federal, State, or local income, payroll or employment taxes of any kind shall be withheld or paid by NMHU with respect to payments to or on behalf of Contractor, its agents, its employees or its subcontractors. Contractor shall withhold and pay any taxes on behalf of its employees as required by law. The payroll or employment taxes that are the subject of this paragraph include but are not limited to FICA, FUTA, Federal personal income tax, State personal income tax, State disability insurance tax, and State unemployment insurance tax. If Contractor is not a corporation, Contractor further understands that Contractor may be liable for self-employment (social security) tax, to be paid by Contractor according to law.

3.15 NON-DISCRIMINATION

Contractor, its employees, and any subcontractors engaged to provide Services shall not discriminate on the basis of race, color, religion, gender, age, national origin, disability, sexual preference, veteran's status, or any other basis prohibited by law in the performance of Services, including, but not limited to service, communication, or conduct, toward NMHU students, staff, visitors, invitees, or guests.

3.16 INSURANCE REQUIREMENTS

A. Without limiting any liabilities or any other obligation of the Contractor, the Contractor shall purchase and maintain (and cause its subcontractors to purchase and maintain), in a company or companies lawfully authorized to do business in the State of New Mexico, and rated at least A- VII in the current A.M. Best's, the minimum insurance coverage as follows:

- 1. Commercial General Liability Insurance with not less than \$1,000,000 combined single limit of liability for bodily injury and property damage for each occurrence. The policy shall include coverage for:
 - a. Bodily Injury;
 - b. Broad Form Property Damage;
 - c. Independent Contractors Coverage;
 - d. Personal Injury;
 - e. Blanket Contractual Liability;
- 2. Workers' Compensation and Employer's Liability Insurance covering each employee engaged in the performance of the Work under this Contract, with a limit of liability in accordance with applicable law in the case of Workers' Compensation Insurance, and with the following limits of liability in the case of Employer's Liability Insurance:

Bodily injury by accident	\$500,000 each accident
Bodily injury by disease	\$1,000,000 policy limit
Bodily injury by disease	\$500,000 each employee
- 3. Comprehensive Motor Vehicle Liability Insurance (if Contractor plans to utilize motorized automobiles for providing its food services) covering all owned, non-owned, and hired vehicles used in connection with the activities

undertaken under this Contract, with a combined single limit of liability for bodily injury and property damage of not less than \$500,000 per occurrence.

4. Umbrella liability coverage of \$2,000,000 per occurrence.
- B. The Contractor shall furnish the NMHU one (1) copy each of Certificates of Insurance herein required for each copy of the Contract, showing coverage, limits of liability, covered operations, effective dates of expiration of policies of insurance carried by the Contractor. The Contractor shall furnish to the NMHU copies of limits. The Certificate of Insurance shall be in a format acceptable to the NMHU. Such certificates shall be filed with NMHU and shall also contain the following statements in the description section of the Certificate of Insurance:
- “The Regents of New Mexico Highlands University, New Mexico Highlands University, its agents, servants and employees are held as additional named insured.”**
- and
- “The insurance coverage certified herein shall not be cancelled or materially changed except after the insurer endeavors to provide forty-five (45) days written notice to the Owner.”**
- C. The Certificate of Insurance shall be forwarded to
- New Mexico Highlands University
Attn: Purchasing Department
P.O. Box 9000
Las Vegas, NM 87701
- D. The State of New Mexico, its departments, agencies, boards and commissions reserve the right to request and receive certificates of insurance evidencing the required policies and endorsements within ten (10) calendar days of Contract signature.
- E. Failure on the part of the Contractor to meet these requirements shall constitute a material breach of contract, upon which the State of New Mexico, its departments, agencies, boards and commissions may terminate this Contract in accordance with the provisions of this IFB and the resultant Contract, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, and all monies so paid by the State of New Mexico, its departments, agencies, boards and commissions shall be repaid by the Contractor upon demand, or the State of New Mexico, its departments, agencies, boards and commissions may offset the cost of the premiums against any monies due to the Contractor. Costs for coverage broader than those required or for limits in excess of those required shall not be charged to the State of New Mexico, its departments, agencies, boards and commissions. Contractor, NMHU, and their insurer(s) shall waive their rights of recovery against the one another and their employees and officers and, with respect to the Contractor, the State of New Mexico, its departments, agencies, boards, and commissions.

3.17 AUDITING, ACCOUNTING AND REPORTING

- A. All records must be retained by Contractor, and accessible to NMHU for a minimum of three (3) years from the date of final payment of the Contract. NMHU reserves the right to audit at any time any aspect of the Services performed by Contractor. Contractor shall keep full, timely and accurate records in accordance with generally accepted accounting practices for all necessary Federal, State, County, and local forms and claims regarding the auditing services, including any of Contractor's Services that NMHU may choose to utilize in the future.
- B. The books, records, documents, and accounting procedures and practices of Contractor relevant to this Contract shall be subject to examination by NMHU. Contractor will:
 - 1. Provide NMHU and/or its auditors reasonable facilities for the examination, copying and audit of the books and records;
 - 2. Make such returns and reports available as required;
 - 3. Attend and answer under oath all lawful inquiries as required by a court of competent jurisdiction;
 - 4. Produce and exhibit such books and records as may be desired to be inspected; and
 - 5. In all things cooperate with NMHU and/or its auditors in the performance of its duties.
- C. NMHU will be informed by Contractor of any schedule of independent audits of Contractor's records and operations. NMHU shall receive a copy of the report of any findings that affect NMHU.

3.18 COMPLIANCE WITH LAWS

Contractor shall be familiar with, have a working knowledge of, and comply with all Federal, State, and local regulations, ordinances, codes and laws having jurisdiction over all Services it provides to NMHU. In addition, Contractor must be familiar with and have experience preparing and filing all required forms, reports, and submittals. The Contractor hereby represents and warrants that:

- A. It is not in arrears with respect to the payment of any monies due and owing the State of New Mexico or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- B. It shall comply with all Federal, State and local laws, regulations and ordinances applicable to its activities and obligations under this Contract;
- C. It shall procure, at its expense, all licenses, permits, insurance and governmental approvals, if any, necessary to the performance of its obligations under this Contract; and
- D. Agrees to operate under and be controlled by the Civil Rights Act of 1964, Title VI, and Executive Order No. 11246.

3.19 DAMAGED OR DESTROYED MATERIALS

A. Replacement due to damage or loss

If the Contractor loses or destroys any equipment, components, or NMHU property they will be responsible for the full replacement cost. Replacement by NMHU will include any and all service charges from vendors, staff time, and processing costs. If the Contractor does not make timely payment, or pays less than full replacement cost of the lost or destroyed item, then NMHU reserves the right to set off the full or remaining amount against any amount owed to the Contractor. If the amount owed to NMHU exceeds the amount owed to the Contractor, then the Contractor shall remain liable for the additional amount; and

B. Irreplaceable materials

When NMHU determines that an item that has been damaged or destroyed due to the Contractor's negligence is irreplaceable, it reserves the right to secure, at the Contractor's expense, a quote of the damage or loss sustained. The choice of vendor shall be made by NMHU. The Contractor shall reimburse NMHU in full for damage to, or fair market value of, the item, plus the cost of appraising/quoting, searching, order, and processing as determined by NMHU. If the Contractor does not make timely payment, or pays less than the full amount, then NMHU reserves the right to set off the full or remaining amount against any amount owed to the Contractor. If the amount owed to NMHU exceeds the amount owed to the Contractor, then the Contractor shall remain liable for the additional amount.

3.20 Removed

3.21 TERMINATION OF CONTRACT

A. Cancellation Without Cause for Convenience

1. Either party may cancel this Contract and/or the rendering of Services without cause by providing the other party written notice at least ninety (90) days prior to the non-renewal or expiration of the initial one (1) year term or during any subsequent one (1) year term. If cancellation is made by NMHU, it will be considered a cancellation for convenience;
2. Cancellation will be considered on the day the party mails or emails the cancellation notice. If emailed, an original must be mailed to the other party within two (2) business days;
3. Cancellation without cause does not grant the Contractor any financial compensation for future, anticipated or unearned profits;
4. The Contractor will be paid for Services rendered and accepted up to the last day of the cancellation. The Contractor is to continue to provide its Services until the last day of the cancellation and will be required to complete any and all remaining obligations; and
5. In the event of termination and/or expiration of this Contract, Contractor agrees to provide reasonable cooperation in ensuring a smooth transition to another provider of Services.

B. Cancellation for Default

1. Should the Contractor at any time violate any material conditions of the Contract or fail to comply with any of his contractual obligations, NMHU may, by written notice to the Contractor, demand that the Contractor remedy such violation or failure. Failure on the part of the Contractor to fulfill contractual obligations shall be considered just cause for termination of this Contract. NMHU will then no longer be bound to the Contract or further obligations;
2. If, after receipt of the notice from NMHU specifying each failure, the Contractor does not cure such failure within a period of twenty (20) business days, or by a different deadline specified by NMHU if, in its sole discretion, it feels a different period is acceptable, NMHU may terminate the whole or part of the Contract in question. An exception to this policy will occur in cases where the deficiency is deemed by NMHU to have the potential to result in direct endangerment to the health of any individual or individuals associated with Contractor or NMHU. In this case, NMHU may choose to intercede and take immediate corrective action, charging all costs of doing so to the Contractor;
3. If the Contractor does not correct a deficiency upon written notice by NMHU and within the time frame specified, NMHU may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. NMHU shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and NMHU can affirmatively collect damages;
4. In the event that NMHU terminates the Contract in whole or in part as provided herein, it may procure, in such a manner as it deems reasonable and appropriate, such Services as required by the Contract and the Contractor shall be liable for any cost for such Services. However, if the Contract is terminated in part, the Contractor shall be required to continue the performance of the Contract to the extent not terminated under the provisions of this clause, while remaining liable for any cost of Services obtained by NMHU to cover Services canceled due to the Contractor's inability or unwillingness to cure such failure;
5. Upon entry of a judgment of bankruptcy or insolvency by or against the Contractor, NMHU may terminate this Contract; and
6. In the event of termination and/or expiration of this Contract, Contractor agrees to provide reasonable cooperation in ensuring a smooth transition to another provider of Services.

C. Cancellation for Non-Appropriation of Funds

1. If NMHU funds are not appropriated or otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be cancelled automatically as of the beginning of the new fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either NMHU's rights or Contractor's rights under any termination clause in this Contract. NMHU's fiscal year begins on July 1st of each year and concludes on June 30th of the following year;
2. The effect of termination of the Contract hereunder will be to discharge both Contractor and NMHU from future performance of the Contract, but not from their rights and obligations existing at the time of termination;
3. NMHU shall notify Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract or any portion thereof for each succeeding fiscal period beyond the first;
4. NMHU's determination of funding under this section shall be final and accepted by Contractor; and
5. In the event of termination and/or expiration of this Contract, Contractor agrees to provide reasonable cooperation in ensuring a smooth transition to another provider of Services.

D. Termination for Nonpayment

Contractor may terminate this Contract or suspend services for nonpayment of properly submitted and accepted invoices within forty-five (45) days of receipt of the invoice by NMHU. If NMHU disputes an invoice or portions of it, Contractor cannot terminate this Contract for nonpayment of the disputed portions.

3.22 NON-EXCLUSIVE WORK

Contractor agrees that NMHU may employ other companies or individuals to perform similar Services or other services during the term of this Contract at the sole option of NMHU. Contractor may be directed by NMHU to work with these other companies or individuals to complete his and their Work.

3.23 EQUIPMENT AND MATERIALS

- A. Contractor, when requested by NMHU, shall be responsible for supplying, maintaining, repairing, replacing, paying for, securing, and renting all equipment and materials necessary to complete the Services required by this Contract.

COOPERATION WITH WORK OF OWNER AND OTHERS

- B. Owner may perform work at the Worksite directly or by Others. Any agreements with Others to perform construction or operations related to the Project shall include provisions pertaining to insurance, indemnification, waiver of subrogation, coordination, interference, cleanup, and safety that are substantively the same as the corresponding provisions of this Agreement.

- C. In the event that Owner elects to perform work at the Worksite directly or by Others, Contractor and Owner shall cooperate with the efforts of NMHU Authorized Agent to coordinate the activities of all forces at the Worksite and agree upon fair and reasonable schedules and operational procedures for Worksite activities. Owner shall require each separate Contractor to cooperate with Contractor and assist with the coordination of activities and the review of construction schedules and operations.
- D. With regard to the work of Owner and Others, Contractor shall (a) proceed with the Contract Work in a manner that does not hinder, delay, or interfere with the work of Owner or Others or cause the work of Owner or Others to become defective, (b) afford Owner or Others reasonable access for introduction and storage of their materials and equipment and performance of their activities, and (c) cooperate with NMHU's Authorized Agent's efforts to coordinate Contractor's construction and operations with the work of Owner or Others as required by this subsection.
- E. Before proceeding with any portion of the Contract Work affected by the construction or operations of Owner or Others, Contractor shall give Owner and NMHU Authorized Agent prompt written notification of any defects Contractor discovers in their work that will prevent the proper execution of the Contract Work. Contractor's obligations in this section do not create a responsibility for the work of Owner or Others, but are for the purpose of facilitating the Contract Work. Following receipt of written notice from Contractor of defects, Owner, through NMHU Authorized Agent, shall promptly inform Contractor what action, if any, Contractor shall take with regard to the defects.

3.24 SURVIVAL

NMHU and the Contractor agree that those obligations of the parties which by their terms require performance after termination or expiration of the Contract, shall survive the termination or expiration of this Contract.

3.25 CONFIDENTIALITY

Any information and other data developed or acquired by or furnished to Contractor in the performance of this Contractor shall be kept confidential and shall not be made available to any individual or organization without the prior written approval of NMHU. NMHU will comply with statute §14-2-1 et seq. N.M.S.A. 1978, also known as the "Inspection of Public Records Act", for requests of any records by the public.

3.26 CONFLICT OF INTEREST

Contractor warrants that he has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Services required under this Contract. Contractor shall comply with the provisions of Section §10-

16-12 et seq. N.M.S.A. 1978, which requires disclosure to the Office of Secretary of State of amounts received under State contracts when and if such provisions become applicable.

3.27 STATE PROCUREMENT CODES AND STATUTES

Contractor is hereby put on notice that the State of New Mexico Procurement Code, §13-1-28 et seq. N.M.S.A. 1978, imposes civil and criminal penalties for its violation. In addition, the State of New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

3.28 NEW MEXICO LAW PREVAILS

The place of performance of this Contract shall be the State of New Mexico. This Contract shall be construed, interpreted and enforced according to the laws of the State of New Mexico, and all claims and disputes shall be brought in the State courts of the State of New Mexico.

3.29 INDEMNIFICATION AND INSURANCE

- A. The Contractor shall indemnify, and hold harmless NMHU, their respective employees, officers and agents from and against all liability, claims, suits or causes of action, losses, damages penalties, fines, fees, costs and demands, including reasonable legal expenses and reasonable attorneys' fees connected therewith, but only to the extent arising out of or resulting from negligent acts of Contractor, its agents, employees, subcontractors in the performance of the Services under this Contract;
- B. Contractor agrees not to purport to bind NMHU or the State of New Mexico to any obligation not assumed in this Contract by NMHU or the State of New Mexico, unless Contractor has express written authority to do so, and then only within the strict limits of that authority; and
- C. Contractor agrees that it and its subcontractors will maintain general liability, product liability and property damage insurance in reasonable amounts (at least equal to the New Mexico Tort Claims Act limits) covering the above obligation and will maintain workers' compensation coverage covering all employees performing under this Contract on premises occupied by or under the control of NMHU. The liability of NMHU will be subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, Sections §41-4-1 et seq. N.M.S.A. 1978, as amended.

3.30 OTHER APPLICABLE LAWS

Any provision required to be included in a purchase order or contract of this type by any applicable and valid executive order, Federal, State or local law, ordinance, rule or regulation shall be deemed to be incorporated herein.

3.31 SEVERABILITY

In the event any term or provision of this Contract or any application to any person or circumstance shall be declared prohibited, invalid, or unenforceable to any extent in any jurisdiction, as determined by a court of competent jurisdiction, such term or provision shall, in that jurisdiction, be ineffective only to the extent of such prohibition, invalidity, or unenforceability, or as applied to such persons or circumstances, without invalidating or rendering unenforceable the remaining term or provision hereof or affecting the validity or enforceability of such term or provision in any other jurisdiction or as to other persons or circumstances in such jurisdiction, unless such would effect a substantial deviation from the general intent and purpose of the parties or make a significant change in the economic effect of the Contract on the party benefited by such term or provision.

3.32 ASSIGNMENT

Contractor shall have no right to assign or transfer any of its rights, duties or responsibilities contained in this contract or subsequent amendments without the prior written approval of NMHU.

3.33 ADDRESS FOR NOTICES

All legal notices required to be given by one party to the other hereunder shall be in writing and shall be addressed as follows:

If to NMHU:

New Mexico Highlands University
Attn: Purchasing Department
P.O. Box 9000
Las Vegas, NM 87701

and

New Mexico Highlands University
Attn: Facilities Services
P.O. Box 9000
Las Vegas, NM 87701

If to Contractor:

Attn:

[SIGNATURE PAGE FOLLOWS]

DRAFT

ARTICLE 4

IN WITNESS THEREOF the parties signify that they understand and agree to all of the terms and conditions of this Contract and are duly authorized agents of their entity/company with the authority to bind their entity/company to this Contract. This Contract will be considered executed after both parties have completed and signed this page.

NEW MEXICO HIGHLANDS UNIVERSITY

(CONTRACTOR NAME)

Printed Name

Printed Name

Title

Title

Signature

Signature

Date

Date
