**SOCORRO COUNTY**  
**COTTONWOOD VALLEY CHARTER SCHOOL**  
**MODULAR CLASSROOM BUILDINGS**  
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INVITATION TO BID

Socorro County (the “Owner”), Socorro, New Mexico invites general contractors to prepare and submit bids for the construction of the Cottonwood Valley Charter School Classroom Buildings project in Socorro, New Mexico. The site is located at the existing campus at 201 Neel St.

The work includes the construction of six (6) new modular classroom buildings (approximately 12,000 total gross square feet) along with site utilities and site development including drainage improvements.

Bidders also have the option to bid the project as a site-built wood-framed structure in lieu of a modular building.

Construction materials of the proposed facility include wood-framed modular buildings, metal wall panels, aluminum windows, wood doors, metal roof, plumbing fixtures, lighting fixtures, HVAC system, resilient flooring, gypsum board assemblies, suspended acoustical ceiling systems and painting. Exterior development includes subgrade preparation, landscaping, concrete walks, and required connections to existing water, sewer, electrical and telephone utilities. All new materials shall be used in this construction as described in the construction documents.

The construction contract will be awarded on a lump-sum basis. Each bid must be submitted in accordance with Bidding Documents prepared by the Project Architect, Dyron Murphy Architects, P.C., Albuquerque, NM, (505) 830-0203.

Bid Activity: Bids shall be sealed, labeled, and filed with the Socorro County Procurement Officer until 2:00 P.M. local time on Wednesday, September 23, 2015, at the Socorro County Procurement Officer’s office, Socorro, New Mexico, telephone number (575) 835-0589. Bids received after the specified date and time will not be accepted and returned unopened. No faxed or emailed bids will be accepted. Bids received by the Owner will not be opened and announced at the above mentioned time and location.

Bid Documents: Electronic Bid Documents may be obtained from Socorro County. Bidders will need to register with Socorro County for access to the bid documents on the Socorro County website. Bidders may also purchase a CD from Socorro County for $50.00. Printed copies of the Bid Documents are the sole responsibility of the bidder at the bidder’s expense. Shipping charges are the sole responsibility of the Bidder requesting documents and deposits must be received prior to shipping. Facsimile reproductions of checks are not acceptable representations of deposits. Bidders must provide account numbers for shipping carriers prior to release of bid documents.

The successful bidder will be responsible to print at its expense hard copies of the project drawings and specifications for use during construction as deemed necessary.

Additional Information: Any questions regarding this project should be addressed to:
Socorro County
Attn: Sammie Vega, Procurement Officer
210 Park Street

COTTONWOOD VALLEY CHARTER SCHOOL  INVITATION TO BID
The Owner has not scheduled a pre-bid conference. It remains the responsibility of the Bidder to exhibit due diligence in determining specific criteria and requirements related to this Bid procurement process and submittal. Bidders are encouraged to visit the site and notify Architect of any issues.

**Right to Reject Any and All Bids:** This “Invitation to Bid” does not commit the Owner to reimburse any costs incurred by the Bidder in the preparation of Bids or for procurement of supplies. The Owner reserves the right to reject any and all bids, to waive any informalities or irregularities when it is in the best interest of the Owner. No Bidder may withdraw his/her bid for a period of 90 days after the date of opening thereof. Bid security in the amount of 10 percent of the bid amount is required. Award announcement will be determined after bid opening date, or at the Owner’s convenience.

Owner’s Representative: Delilah Walsh, Socorro County Manager

END OF INVITATION TO BID
1.0 DEFINITIONS

1.1 PROJECT: The Project consists of the complete construction of the Cottonwood Valley Charter School Classroom Buildings project in Socorro, New Mexico by a Bidder, for a Lump Sum Price agreed to by the selected Bidder and the Owner.

1.2 OWNER: Socorro County (the “Owner”), Socorro, New Mexico will receive bids from general contractors for the construction of the Cottonwood Valley Charter School Classroom Buildings in Socorro, NM:

Address: Socorro County
210 Park Street
PO Box I
Socorro, New Mexico 87801
Telephone: (575) 835-0589
Procurement Officer: Sammie Vega

1.3 ARCHITECT: Architectural firm retained by the Owner to assist in development of the Cottonwood Valley Charter School Modular Buildings project whose responsibilities under this Project includes:

a. Review of Bids submitted in accordance with Bid Documents.
b. Review of design information submitted by Bidders.
c. Provides recommendations of technical nature to Owner regarding design and construction matters.
d. Issues Bid Documents and makes clarifications, issues addenda, reviews requests for substitutions, and/or receives bids.
e. Issues relevant design data, e.g., drawings or specifications for project.
f. Assists Owner in contract issuance and negotiations with selected successful Bidder.
g. Provides Construction Administration and Observation services on behalf of Owner during construction.
h. Assists Owner during contract closeout procedures.
i. Assists Owner during conferences and meetings prior to receipt of Bids, during contract negotiations, and during construction.
j. Reviews and approves construction submittals.
k. Reviews and approves construction pay requests.

Address: Dyron Murphy Architects, P.C.
4505 Montbel Pl, NE
Albuquerque, New Mexico 87107
Telephone: (505) 830-0203, Fax: (505) 830-0237
1.4 **BIDDER:** A builder, contractor or developer acting as the primary agent responsible for submitting a bonafide written Bid for a prime contract with the Owner for the Project described in the Proposed Contract Documents. The Bid shall include all required costs, e.g., labor, travel, materials, reimbursable expenses, overhead expense, profit, and related costs to provide complete construction services associated with the development of the Project. The Bidder shall be responsible for administering all aspects of the work and contract requirements. A representative shall be designated to act on behalf of the Bidder to enter into agreements, provide direction, and adjudicate matters related to construction issues under the contract.

1.5 **BID DOCUMENTS:** General documents which are issued by the Owner and describe the process for executing the Project, include, but are not limited to the following:

   a. Instructions to Bidders.
   b. Bid Submittal Form.
   c. Addenda.
   d. Subcontractor List Form.
   e. Non-Collusive Affidavit.
   f. Drawings.
   g. Project Manual
   h. Davis Bacon Wages

1.6 **CONTRACT DOCUMENTS:** As stipulated herein as the prime documents to be utilized on this Project, include, but are not limited to the following:

   a. Agreement Between Owner and Contractor. (AIA A101, 2007 Ed.)
   b. General Conditions of the Contract for Construction. (AIA A201, 2007 Ed.)
   c. Modifications to General Conditions, Supplemental Conditions to AIA A201-2007.
   d. Bid Bond.
   e. Performance and Payment Bonds.
   f. Notice To Proceed Issued by Owner.

1.7 **ADDENDA:** Written or graphic instruments issued by the Architect prior to the submission of Bids which modify or interpret the Bid Documents by additions, deletions, clarifications or corrections.

1.8 **BID:** Sealed bids will be accepted until **September 23, 2015, 2:00 PM local time.** Bids received after the specified date and time will not be accepted and returned unopened. No faxed bids will be accepted. Bids shall be sealed, labeled and filed with the Owner's representative at the location noted.
The Bid shall include the following submittal documents in order to be considered for this contract:

a. Bid Submittal Form, sealed in separate envelope.
b. Form of Non-Collusive Affidavit, notarized.
c. Bid Bond in amount of 10% of Bid entered, including Name and Address of bonding company, and limits of Bonding at time of Bid Submittal.
d. Evidence of General Construction Licensure for the State of New Mexico, including active dates.
e. Subcontractor’s List Form
f. Certificates of General Liability and Workman’s Compensation Insurance, indicating coverage amounts, both Aggregate and Per Incident.

2.0 BIDDER’S REPRESENTATION

2.1 Each Bidder by making his/her Bid represents that:

A. He/she has read and understands the Bidding Documents and their Bid is made in accordance within.
B. He/she have visited the site and have familiarized him/her with the local conditions under which the Project is to be performed.
C. His/her Bid is based upon the materials, labor, transportation, systems and equipment proposed in his/her interpretations and assumptions described by his/her design submittal as part of his/her Bid, and other pertinent information contained in the Bidding Documents.

3.0 BIDDING DOCUMENTS

3.1 Copies: Electronic Bid Documents may be obtained from Socorro County. Bidders will need to register with Socorro County for access to the bid documents on the Socorro County website. Bidders may also purchase a CD from Socorro County for $50.00. Printed copies of the Bid Documents are the sole responsibility of the bidder at the bidder’s expense. Shipping charges are the sole responsibility of the Bidder requesting documents and deposits must be received prior to shipping. Facsimile reproductions of checks are not acceptable representations of deposits. Bidders must provide account numbers for shipping carriers prior to release of bid documents.

The successful bidder will be responsible to print at its expense hard copies of the project drawings and specifications for use during construction as deemed necessary.

A. Information contained in the Bid Documents shall be used by the Bidder in preparation of his/her Bid pricing and construction documents; neither the
Owner nor the Architect assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bid Documents.

B. The Owner or the Architect, in making copies of the Bid Documents available on the above items, do so only for the purpose of obtaining Bids on the Project and do not confer a license or grant for any other use.

C. Only written inquiries will be permitted, no phone calls will be taken. Any questions regarding this project should be submitted and addressed in writing to:

Socorro County
Attn: Sammie Vega, Procurement Officer
210 Park Street
PO Box I
Socorro, NM 87801
Telephone: (575) 835-0589, Fax: (575) 835-4629
email: svega@co.socorro.nm.us

3.2 Interpretation or Correction of Bid Documents

A. Bidders shall promptly notify the Owner/Architect of any ambiguity, inconsistency or error, which they may discover upon examination of the Bid Documents, or of the site and local conditions.

B. Bidders requiring clarification or interpretation of the Bid Documents shall make a written request to the Owner at least Seven (7) calendar days prior to the date for receipt of Bids. Requests for clarification received less than seven (7) days before the date for receipt of Bids will not be addressed by the Owner or Architect.

C. Any interpretation, correction or change of the Bid Documents will be made by Addendum. Interpretations, corrections or changes of Bid Documents made in any other manner will not be binding, and Bidders shall not rely upon such interpretations, corrections or changes.

3.3 Substitutions

A. The materials, products and equipment described in the Bid Documents establish a standard of required performance, function, dimension, appearance and quality to be met by any proposed substitution. Materials, products, or equipment by other manufacturers and vendors deemed to adequately perform the duties imposed by the general design intent will be considered equally acceptable provided the material, equipment, or product so proposed is, in the opinion of the Architect, of equal performance and function. The burden of proof of the merit of the proposed substitute is upon the Bidder. The Architect's decision of approval or disapproval, after consultation with the Owner, of a proposed substitution shall be final. No
substitution shall be purchased or installed by the Contractor without the Architect's written approval.

B. It shall be the responsibility of the Bidder to provide and pay for all modifications that may be required of other trades, which may add to their costs, brought about by substitutions and/or options after the contract has been let. No additional costs shall be assessed to the Owner.

C. Substitution Bids which deviate from those materials, equipment, or products described in the Bid Documents shall be noted on the drawings or proposed method of construction in the Bidders Bid package.

D. A request for a substitution constitutes a representation that the Bidder:

1. Has investigated the proposed product and determined that it is equal to or superior in all respects to that specified.
2. Will provide the same warranties or bonds for the substitution as for the product specified.
3. Will coordinate the installation of any accepted substitution into the Project and make such other changes as may be required to make the Project complete in other respects.
4. Will not increase the maximum contract price. Where substitutions of materials are deemed acceptable and are of lesser value than the established standards, a cost credit from the Bidder to the Owner shall be applied to the maximum contract price.

3.4 Addenda

A. All who are known by the Owner and Architect to have received a complete set of Bid Documents will be notified of any Addenda issuance and place of availability for pickup. The Bidder shall provide a working fax number and/or email address where addenda may be transmitted for receipt by the Bidder.

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

C. No Addenda will be issued later than three (3) days prior to the date for receipt of Bids except an Addendum, if necessary, postponing the date for receipt of Bids or withdrawing the request for Bids.

D. Each Bidder shall ascertain, prior to submitting his/her Bid, which he/she has received all Addenda issued, and he/she shall acknowledge receipt of all issued Addenda on the Form of Bid.

4.0 BID PROCEDURE

4.1 Form and Style of Bids

A. Bids shall be submitted on the form(s) provided in the Bid Documents.

B. All blanks on the Bid Form shall be filled in by typewriter or legibly in ink.
C. Where so indicated by the makeup of the Bid Form, sums shall be expressed in both words and figures, and in case of discrepancy between the two, the written amount shall govern.

D. Any interlineation, alteration or erasure must be initialed by the signer of the Bid.

E. Bidders shall make no additional stipulations on the Bid Form, nor qualify his/her Bid in any other manner.

F. Each Bid shall include the legal name of the Bidder and a statement whether the Bidder is a sole proprietor, a partnership or a corporation, or any other legal entity and shall be signed by the person or persons legally authorized to bind the Bidder to a contract. A Bid by a corporation shall further list the State of incorporation and have the corporate seal affixed. A Bid submitted by an agent shall have a current Power of Attorney attached certifying the agent's authority to bind Bidder.

4.2 Bid Security

A. Each Bid shall be accompanied by a Bond or Cashier's Check in the required form and amount pledging that the Bidder will enter into a Contract with the Owner on the terms stated in his/her Bid and will furnish bonds as described hereunder in Article 8 covering the faithful performance of the Contract and the payment of all obligations arising thereunder. Should the Bidder refuse to enter into such Contract or fail to furnish such bonds, the amount of the Bid Bond shall be forfeited to the Owner as liquidated damages, not as a penalty.

B. The Bond shall be prepared on the forms in the Bid Document, issued by a surety licensed to do business in the State of New Mexico listed on the current U.S. Treasury Surety List and acceptable to the Owner. The Attorney-In-Fact that executes the Bond on behalf of the Surety shall affix to the Bond a certified and current copy of his Power of Attorney.

C. The Owner will have the right to retain the Bid Security of Bidders until either (a) the Contract has been executed and bonds have been furnished, or (b) the specified time has elapsed so that Bids may be withdrawn or (c) all Bids have been rejected.

4.3 Submission of Bids

A. All required documents as a part of this bid, the Bid Security and declarations required to be submitted with the Bid shall be enclosed in a sealed opaque envelope. The envelope shall be addressed as follows:

1) Cottonwood Valley Charter School Modular Classroom Buildings
   Attn: Sammie Vega, Procurement Officer
   210 Park Street
   PO Box I
   Socorro, New Mexico 87801
“COTTONWOOD VALLEY CHARTER SCHOOL – DO NOT OPEN”

If the Bid is sent by mail, the sealed envelope shall be enclosed in a separate mailing envelope with the notation “BID ENCLOSED” on the face thereof. Neither the Owner nor Architect assumes responsibility for Bids delivered after the time and date of the Bid opening.

B. Bids shall be deposited at the designated location prior to the time and date for receipt of Bids indicated in the Invitation to Bid, or any extension thereof made by Addendum. Bids received after the time and date for receipt of Bids will be returned unopened.

C. Oral, telephonic, telegraphic, or faxed Bids are invalid and will not be considered.

D. Failure to include all required Bid Documents as stipulated will be cause for disqualification.

4.4 Modification or Withdrawal

A. A Bid may not be modified, withdrawn, or canceled by the Bidder for a period of ninety (90) calendar days following the time and date designated for the receipt of Bids, and Bidder so agrees in submitting the Bid.

B. Bids submitted early may be modified or withdrawn prior to the time designated for receipt of Bids.

C. Withdrawn Bids may be resubmitted up to the time designated for the receipt of Bids provided that they are then fully in conformance with these Instructions to Bidders.

4.5 Owner's Bid Declarations

A. It is the intent of the Owner to award a contract to the most responsive Bidder, provided Bid has been submitted in accordance with the requirements of the Bid Documents and does not exceed the funds available. The Owner shall have the right to take such steps, as it deems necessary to determine the ability of the Bidder to perform the Project. Bidders shall furnish to the Owner such additional information and data for purpose as Owner may request. Owner reserves the right to reject any or all Bids that in the Owner's sole judgment are in the Owner's best interest.

4.6 Pre-Bid Conference

A. The Owner has not scheduled a pre-bid conference. It remains the responsibility of the Bidder to exhibit due diligence in determining specific criteria and requirements related to this Bid procurement process and submittal. Bidders are encouraged to visit the site and notify Architect of any issues.
5.0 CONSIDERATION OF BIDS

5.1 Receipt of Bids

A. Bids will be received at the office of the Owner, on the date and time specified herein. The Bids will be evaluated by the Owner thereafter to determine compliance with the bid documents, and most suitable candidate for contract award.

5.2 Rejection of Bids

A. The Owner has the right to reject any or all Bids, reject a Bid not accompanied by any required Bid Security, or data required by the Bid Documents or a Bid, which is in any way incomplete or irregular. Conditional Bids will not be accepted.

5.3 Acceptance of Bid

A. The Owner has the right to waive any informality or irregularity in any Bid received.
B. If the Bid is within the amount of the funds available to finance the construction contract, then the contract award will be made to that most responsive Bidder.

6.0 SUB-BIDDERS

6.1 Listing of Subcontractors and Suppliers

A. The Bidder shall list the Subcontractors or material suppliers they propose to use for all trades or items supplied, on the "Subcontractor List Form" attached.

1. The Bidder shall not list itself as the supplier or the Subcontractor for any trade unless he has previously performed Project of this type or can prove to the Architect's satisfaction that he/she actually has, or will obtain, fully adequate facilities and plans to perform the Project with his/her own forces.
2. Omission or non-compliance with the intent of the "Subcontractor List Form" will be grounds for considering a Bid as non-responsive.
3. Subcontractors, Suppliers or other Bidders who feel that the candidate for award has not complied with the intent of these listing requirements must notify the Architect within 24 hours after the Bid Opening of their intent to file an appeal, and submit their reasons in writing within 48 hours after Bid Opening. All decisions of the Architect will be final.
4. The candidate’s "Subcontractor List Form" may be divulged to interested parties following the receipt of Bids, or at the Owner's discretion.

5. The Bidder will, upon request, be required to establish to the satisfaction of the Architect and the Owner the reliability and responsibility of the proposed Subcontractors to furnish and perform the Project described in the Sections of the Specifications pertaining to the proposed Subcontractors respective trades.

6. Prior to the award of the Contract, the Architect will notify the Bidder, in writing, if either the Owner or the Architect, after due investigation, has reasonable and substantial objection to any person or organization on such list. If the Owner or Architect has a reasonable and substantial objection to any person or organization on such list, and refuses in writing to accept such person or organization, the Bidder may, at their option, (1) withdraw their Bid, or (2) submit an acceptable substitute Subcontractor with no increase in the Bid price. In the event of withdrawal under this Subparagraph, Bid Security will not be forfeited, notwithstanding anything to the contrary in Paragraph above.

B. Subcontract awards shall be bound with the provisions outlined in the "Labor and Wage Standards", contained in the Contract Conditions section of the Bid Package.

7.0 PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND

7.1 Security for Faithful Performance

A. The Bidder shall furnish and maintain bonds covering the faithful performance of the Contract, and the payment of all obligations arising thereunder, in an amount equal to one hundred percent (100%) of the Contract Sum as adjusted, and with such sureties secured through the Bidder's usual sources, licensed to do business in the State of New Mexico and as may be agreeable to the parties.

7.2 Time of Delivery and Form of Bonds

A. The Bidder shall deliver the required bonds to the Owner within seven (7) calendar days of receipt of written notice of award of the Bid. If the Project must commence prior thereto, in response to a letter of Notice to Proceed from the Owner, the Bidder shall, prior to commencement of Project, submit evidence satisfactory to the Owner that such bonds will be furnished.

B. The bonds shall be written on the form(s) described under Bid Contract Documents.

C. The Bidder shall require the Attorney-In-Fact that executes the required bonds on behalf of the surety to affix thereto a certified and current copy of his/her Power of Attorney.
7.3 Taxes

A. It is understood that the stipulated sum or contract amount will include the cost of New Mexico Gross Receipts Tax, City of Socorro (per location code).

7.4 Insurance

A. Contractor shall, at its sole expense, procure and maintain adequate and sufficient insurance for all of Contractor’s potential liabilities relating to any claims by any party for any injury to persons or damage to property arising out of or connected with any work performed or services provided under this Contract by the Contractor.

B. Contractor shall not commence nor continue to perform any work unless he, at his own expense, has in full force and effect all required insurance. Neither shall the Contractor permit any Subcontractor to perform work on the project unless the Workers’s Compensation insurance requirements have been complied with by such Subcontractor.

7.5 Acknowledgments

A. This Agreement represents the entire and integrated Agreement between Owner and Contractor and supersedes all prior negotiations, representations or Agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Contractor.

8.0 SPECIAL BINDING AND CONTRACT PROVISIONS

8.1 Submission Materials

A. Letter of certification from the Bidder, attesting to Bidder's compliance with Wage Rates as stipulated in the Bid Documents.

9.0 FORM OF AGREEMENT BETWEEN OWNER AND BIDDER

9.1 Form to be Used

A. The Agreement for the Project will be written on the forms indicated under the Bid Contract Documents.

10.0 LIQUIDATED DAMAGES

10.1 Time of Completion and Liquidated Damages

A. Bidder must agree to commence Project on a date specified in a written "Notice to Proceed" issued by the Owner. The Bidder must agree to complete the project within a 9 month period (270 calendar days)
commencing in October 2015 and completion by July 1, 2016. Off-site construction and coordination of the modular buildings will begin on the date of the “Notice to Proceed”.

10.2 Assessment

A. Liquidated Damages will be assessed on this project at a rate of $500.00 per calendar day beyond the contract time agreed upon in the contract documents, unless amended due to delays beyond the control of the Bidder and/or Owner.

11.0 MISCELLANEOUS PROVISIONS

11.1 Permits and Fees

A. Contractor shall pay for all permits and fees applicable to the project that is required by Government, State, County and Local municipalities.
B. Bidder’s attention is drawn to the New Mexico Gross Receipts Tax, City of Socorro (per location code).

END OF INSTRUCTIONS TO BIDDERS
BID SUBMITTAL FORM

Date of Bid: __________________, 2015

Name of Proposer_______________________________________________________________

COTTONWOOD VALLEY CHARTER SCHOOL
CLASSROOM BUILDINGS PROJECT
Socorro, New Mexico
DMA Project No. 2014.02

Proposal of (company name): _____________________________________,
(hereinafter called the "Bidder") organized and existing under the laws of the State of ____________, doing business as a Corporation, Partnership or Individual. (Circle correct one).

To: Socorro County (hereinafter called the "Owner").

The undersigned, as an authorized representative for the Bidder named above, in compliance with the Instructions to Bidders for the COTTONWOOD VALLEY CHARTER SCHOOL BUILDINGS PROJECT having examined the drawings and project manual, with related documents, and having examined the site of the proposed work, and being familiar with all of the conditions surrounding the construction of the proposed project, including the availability of labor, materials and supplies, hereby proposes to furnish all labor, materials and supplies, and to construct the project in accordance with the contract documents at the prices stated below. These prices are to cover all expenses incurred in performing the work required under the contract documents, of which this proposal is a part.

The undersigned Bidder’s representative also acknowledges receipt of the following Addenda:

Addendum No: ___, dated __________
Addendum No: ___, dated __________
Addendum No: ___, dated __________
Addendum No: ___, dated __________
Addendum No: ___, dated __________
Addendum No: ___, dated __________
Is the Base Bid included for:

Circle One: Modular Building Construction  OR  Site-Built, Wood-Framed Construction

**BASE BID:** The Bidder agrees to perform all work for the construction of the COTTONWOOD VALLEY CHARTER SCHOOL CLASSROOM BUILDINGS PROJECT, as described in the Project Manual and as shown on the Drawings for the following lump sum: (Amounts to be shown in both words and figures. In case of a discrepancy, the amount shown in words will govern, **please print**.) All sums include New Mexico Gross Receipts Tax, City of Socorro (per location code) as well as all permits and fees required by State and Local municipalities.

**Total Base Bid Lump Sum:**

________________________________________________________________________

________________________________________________________________________

Dollars,

$  

Amount for New Mexico Gross Receipts Tax, City of Socorro (per location code), as included in Base Bid:

________________________________________________________________________

Dollars,

($____________________)

The Bidder understands that the contract will be awarded in accordance with the provisions of Article 5 of the Instructions to Bidders and that the Owner reserves the right to reject any or all bids and to waive any formalities in the bidding.

The Bidder agrees that this bid shall be good and may not be withdrawn for a period of ninety (90) calendar days after the scheduled closing time for receiving bids.

Upon receipt of written notice of acceptance of this bid, Bidder will execute the final contract and deliver surety bonds as stipulated in the "Instructions to Bidders".

The **BID SECURITY** attached in the sum of 10% of the bid amount is:

________________________________________________________________________

Dollars,

($____________________)

and shall become the property of the Owner in the event the contract and bonds are not executed within the time set forth herein, as liquidated damages for the delay and additional expenses to the Owner caused thereby.
The undersigned Bidder’s representative also acknowledges the following Bid Alternates which are to be included in Base Bid:

**Deductive Alternate No. 1: Classroom Building:**
Delete one (1) classroom building as shown on sheet A003. Classroom to be deleted to be a Type 3 building. Type 1 building to be relocated as shown on A003. Delete concrete sidewalks and concrete patios as shown on A001.

Bid Alternate No. 1 Amount:

$ _____________ Dollars,

**Deductive Alternate No. 2: Classroom Buildings:**
Delete two (2) classroom buildings as shown on sheet A003. Classrooms to be deleted to be a Type 2 and Type 3. Type 1 building to be relocated as shown on A003. Delete concrete sidewalks and concrete patios as shown on A001 and provide concrete sidewalks as shown on A003. Revise location of valley gutter as shown on A003 at new sidewalk location. Existing portable building, stairs and ramp to remain as shown on A003.

Bid Alternate No. 2 Amount:

$ _____________ Dollars,

Respectfully Submitted,

By:(Authorized Signature) __________________________ Date: __________________

By:(Same Name, Printed or Typed) __________________________

Title: ____________________________________________

Company: __________________________________________

Address: ____________________________ Phone: _____________

(Affix Corporate Seal if bid by Corporation):
BID BOND

KNOW ALL MEN BY THESE PRESENTS, That we the undersigned,

(Name of Principal)

as PRINCIPAL, and

(Name of Surety)

firmly bound unto the Socorro County, hereinafter called the “Owner”, in the penal sum of

$___________Dollars, lawful money of the United States, for the payment of which sum will and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION IS SUCH, that whereas the Principal has submitted the accompanying bid dated ___________, 2015 for the COTTONWOOD VALLEY CHARTER SCHOOL CLASSROOM BUILDINGS PROJECT.

NOW, THEREFORE, if the Principal shall not withdraw said bid within the period specified therein after the opening of the same, or if no period be specified, within ninety (90) days after said opening, and shall within the period specified therefore, or, if no period be specified within ten (10) days after the prescribed forms are presented to for signature, enter into a written contract with the Owner in accordance with the bid as accepted, and give the required performance and payment security, for the faithful performance and proper fulfillment of such contract; or in the event of the withdrawal of said bid within the period specified, or the failure to enter into such contract and give such security within the time specified, if the Principal shall pay the Owner the difference between the amount specified in said bid and the amount for which the Owner may procure the required work or supplies or both, if the latter amount to be in excess of the former, then the above obligation shall be avid and of no effect, otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above-bounded parties have executed this instrument under their several seals this ___________ day of _________________, 2015, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

In presence of

__________________________________

(Individual Principal)

__________________________________

(Business Principal)

ATTEST:

__________________________________

(Corporate Principal)
CERTIFICATE AS TO CORPORATE PRINCIPAL

I, ________________________________, certify that I am the ____________ (Title) of the Corporation named as Principal in the within Bond; that ____________________, who signed the said Bond on behalf of the Principal was then ____________________, of said Corporation; that I know his signature, and his signature thereto is genuine; and that said Bond was duly signed, sealed, and attested to for and in behalf of said corporation by authority of its governing body.

______________________________ (Corp. Seal)
SUBCONTRACTOR LIST FORM

1. GENERAL:

A. The Contractor must list below the name and address of all qualified Subcontractor's or suppliers he/she will employ for the various portions of the work indicated. Failure on the part of the Contractor to complete or properly complete this list will constitute sufficient grounds to reject his/her bid.

B. The Contractor may list him/herself to perform one or more of the listed categories of work for which he has any requisite state licenses when required. In this case, all personnel performing such work at the site shall be carried on his/her own payroll, except that he/she may sublet those portions of the work that are traditionally and commonly sublet by the representative Subcontractor in the community. If equipment is leased with operators, the operators need not be carried on the Contractor's payroll.

C. List only a single name for each listing. If a change occurs in the list, brought about by the exercising of any of the alternates involved in the Bid Form, the Bidder must show this change on the list. If no name appears other than those listed under the base bid, adherence to those names will be required no matter which alternate, if any, is exercised.

II. LISTING

<table>
<thead>
<tr>
<th>TRADE</th>
<th>SUBCONTRACTOR / SUPPLIER NAME</th>
<th>New Mexico License Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Earthwork, Grading, Excavation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Asphalt Paving (if applicable)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Site Water Utilities (if applicable)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Site Electrical Utilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Site Wastewater Utilities (if applicable)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Site Communications Utilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Concrete</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Masonry</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Work Item</td>
<td></td>
<td></td>
</tr>
<tr>
<td>---------------------------</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Modular Building</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Insulation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Metal Roof Panels</td>
<td></td>
<td></td>
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<tr>
<td>Metal Wall Panels</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Doors and Windows</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hardware</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gypsum Board</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Painting</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Flooring</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mechanical/HVAC-Building</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Plumbing-Building</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Electrical-Building</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other (Specify)</td>
<td></td>
<td></td>
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<tr>
<td>Other (Specify)</td>
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<tr>
<td>Other (Specify)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other (Specify)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>END OF SUBCONTRACTOR LIST FORM</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
FORM OF NON-COLLUSIVE AFFIDAVIT

AFFIDAVIT

(Prime Bidder)

State of ______________________________)ss.

County of ______________________________)

_____________________________________; being first duly sworn, deposes and says:

That he/she is __________________________   (a partner or officer of the firm of, etc.) the party making the foregoing proposal or bid, that such proposal or bid is genuine and collusive or sham; that said bidder has not colluded, conspired, connived, or agreed, directly or indirectly, with any bidder, or person, to put in a sham bid or refrain from bidding, and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference, with any person, to fix the bid price of affiant or of any other bidder, or to fix any overhead, profit or cost element of said bid price, or of that of any other bidder, or to secure any advantage against Socorro County or any person interested in the proposed contract; and that all statements in said proposal or bid are true.

Signature of:

Bidder, if the bidder is an individual;

Partner, if the bidder is a partnership;

Officer, if the bidder is Corporation;

Subscribed and sworn to before me
This _________________ day of _____________________, 20 _______.

My commission expires _______________________________, 20 _______.
LITIGATION DISCLOSURE

Failure to fully and truthfully disclose the information required by this Litigation Disclosure form may result in the disqualification of your bid from consideration or termination of the contract, once awarded.

Has the Company or any member of the Company/Team been involved in any claim or litigation with any Federal, State or Local Government, or Private Entity during the last five (5) years?

Circle One:     YES      NO

If the Company has answered “YES” to the above question, please indicate the name(s) of the person(s) or entities, the nature, and the status and/or outcome of the action, indictment, conviction, termination, claim or litigation, as applicable. Any such information should be provided on a separate page, attached to this form and submitted with your proposal.

I CERTIFY THAT THE ABOVE INFORMATION IS TRUE AND CORRECT.

Company Name:

Signature of Principal:

Printed Name of Principal:

Title of Principal:
Standard Form of Agreement Between Owner and Contractor
where the basis of payment is a Stipulated Sum

Editing Template
CAUTION: Take care not to remove or otherwise edit
the FillPoint areas when making custom edits to this
document.

AGREEMENT made as of the %[Day] day of %[Month] in the year %[Year]
(In words, indicate day, month and year)

BETWEEN the Owner:
(Name, address and other information)

%[OwnerFullName]
%[OwnerLongAddress]
%[OwnerOtherInfo]

and the Contractor:
(Name, address and other information)

%[ContractorFullName]
%[ContractorLongAddress]
%[ContractorOtherInfo]

for the following Project:
(Name, location and detailed description)

%[ProjectName]
%[ProjectLocation]
%[ProjectDescription]

The Architect:
(Name, address and other information)

%[ArchitectFullName]
%[ArchitectLongAddress]
%[ArchitectOtherInfo]

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:
The author of this document has added information
needed for its completion.
The author may also have
revised the text of the
original AIA standard form.
An Additions and Deletions
Report that notes added
information as well as
revisions to the standard
form text is available from
the author and should be
reviewed.

This document has important
legal consequences.
Consultation with an
attorney is encouraged with
respect to its completion
or modification.

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4 CONTRACT SUM
5 PAYMENTS
6 DISPUTE RESOLUTION
7 TERMINATION OR SUSPENSION
8 MISCELLANEOUS PROVISIONS
9 ENUMERATION OF CONTRACT DOCUMENTS
10 INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS
The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT
The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

%[CommencementDate]

If, prior to the commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:

%[OwnersTimeRequirement]

§ 3.2 The Contract Time shall be measured from the date of commencement.

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than %[ContractorsTimeRequirementWords] ( %[ContractorsTimeRequirement] ) days from the date of commencement, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)
Portion of Work
%[ForEachBlock("cat", ContractorsAlternateTimeReq)]%[cat.PortionOfWork]

Substantial Completion Date
%[IfTrue(cat.SubstantialCompletionDate = 0, "", cat.SubstantialCompletionDate)]%[EndBlock()]

, subject to adjustments of this Contract Time as provided in the Contract Documents.

(In Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

ProvisionsForDamage

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor’s performance of the Contract. The Contract Sum shall be %[ContractSumWords] ($ %[ContractSum]), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

%[ForEachBlock("csa", CSA)]%[csa.AlternateIdentifier]
%[EndBlock()]

§ 4.3 Unit prices, if any:

(Identify and state the unit price; state quantity limitations, if any, to which the unit price will be applicable.)

<table>
<thead>
<tr>
<th>Item</th>
<th>Units and Limitations</th>
<th>Price Per Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>%[ForEachBlock(&quot;up&quot;, CSUP)]%[up.Description]</td>
<td>%[up.Unit]</td>
<td>%[IfTrue(up.UnitPrice=&quot;&quot;, &quot;$&quot;, &amp;FormatNum(up.UnitPrice, 2))]%[EndBlock()]</td>
</tr>
</tbody>
</table>

§ 4.4 Allowances included in the Contract Sum, if any:

(Identify allowance and state exclusions, if any, from the allowance price.)

<table>
<thead>
<tr>
<th>Item</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>%[ForEachBlock(&quot;a&quot;, Allowances)]%[a.Allowance]</td>
<td>%[IfTrue(a.AmountOfAllowance=&quot;&quot;, &quot;$&quot;, &amp;FormatNum(a.AmountOfAllowance, 2))]%[EndBlock()]</td>
</tr>
</tbody>
</table>

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

%[PeriodGreaterCalMonth]

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the %[ArchitectPayReceiveDOM] day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the %[OwnerPayContractorDOM] day of the %[MonthToPayContractor] month. If an
Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than %DOMToPayContractorWords] [DOMToPayContractor] days after the Architect receives the Application for Payment. (Federal, state or local laws may require payment within a certain period of time.)

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor’s Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

.1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of %PercentRetainedWorkCompWords] [PercentRetainedWorkComp]. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™-2007, General Conditions of the Contract for Construction;

.2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of %PercentRetainedMatAndEquipWords] [PercentRetainedMatAndEquip];

.3 Subtract the aggregate of previous payments made by the Owner; and

.4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

.1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and (Section 9.8.5 of AIA Document A201-2007 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)

.2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-2007.

§ 5.1.8 Reduction or limitation of retainage, if any, shall be as follows:

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.1.6.1 and 5.1.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)

%RedOrLimitOfRetainage

§ 5.1.9 Except with the Owner’s prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 FINAL PAYMENT
§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when
.1 the Contractor has fully performed the Contract except for the Contractor’s responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment; and

.2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner’s final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect’s final Certificate for Payment, or as follows:

%[FinalPayDays]

ARTICLE 6 DISPUTE RESOLUTION
§ 6.1 INITIAL DECISION MAKER
The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

%[InitialDecisionMaker]

§ 6.2 BINDING DISPUTE RESOLUTION
For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:
(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)


[ %[L] ] Litigation in a court of competent jurisdiction

[ %[O] ] Other (Specify)

%[OtherMethod]

ARTICLE 7 TERMINATION OR SUSPENSION
§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2007.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007.

ARTICLE 8 MISCELLANEOUS PROVISIONS
§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon, if any.)

%[InterestOverduePay] %[BasisOfInterest]

§ 8.3 The Owner’s representative:
(Name, address and other information)

%[OwnerRepName]
%[OwnerRepAddress]
§ 8.4 The Contractor’s representative:
(Name, address and other information)

§ 8.5 Neither the Owner’s nor the Contractor’s representative shall be changed without ten days written notice to the other party.

§ 8.6 Other provisions:

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 9.1.1 The Agreement is this executed AIA Document A101–2007, Standard Form of Agreement Between Owner and Contractor.

§ 9.1.2 The General Conditions are AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 9.1.3 The Supplementary and other Conditions of the Contract:

<table>
<thead>
<tr>
<th>Document</th>
<th>Title</th>
<th>Date</th>
<th>Pages</th>
</tr>
</thead>
</table>

§ 9.1.4 The Specifications:
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Date</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>%[KeepBlockIf(A101.SpecificationsOption = &quot;listed as follows&quot;)]</td>
<td>%[spec.Title]</td>
<td>%[IfTrue(spec.Date=&quot;&quot;, &quot;&quot;, spec.Date)]</td>
<td>%[spec.Pages]%[EndBl ock()]</td>
</tr>
</tbody>
</table>

§ 9.1.5 The Drawings:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

<table>
<thead>
<tr>
<th>Number</th>
<th>Title</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>%[ForEachBlock(&quot;d&quot;, Drawing)]%[d.Number]</td>
<td>%[d.Title]</td>
<td>%[IfTrue(d.Date=&quot;&quot;, &quot;&quot;, d.Date)]%[EndBlock()]</td>
</tr>
</tbody>
</table>

§ 9.1.6 The Addenda, if any:

<table>
<thead>
<tr>
<th>Number</th>
<th>Date</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>%[ForEachBlock(&quot;a&quot;, Addenda)]%[a.Number]</td>
<td>%[IfTrue(a.Date=&quot;&quot;, &quot;&quot;, a.Date)]</td>
<td>%[a.Pages]%[EndBlock()]</td>
</tr>
</tbody>
</table>
Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

§ 9.1.7 Additional documents, if any, forming part of the Contract Documents:

1. AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:

%[OtherDigitalDataProtocol]

2. Other documents, if any, listed below:
   (List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201—2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

%[ForEachBlock("docs", OtherDocs)]%[docs.Reference]
%[EndBlock()]

ARTICLE 10 INSURANCE AND BONDS
The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201—2007.
(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201—2007.)

<table>
<thead>
<tr>
<th>Type of insurance or bond</th>
<th>Limit of liability or bond amount ($ 0.00)</th>
</tr>
</thead>
<tbody>
<tr>
<td>%[ForEachBlock(&quot;b&quot;, BondingRequirements)]%[b.TypeOfInsurance]</td>
<td>%[If(True(b.LimitOfLiability=&quot;&quot;, &quot;$&quot;&amp;FormatNum(b.LimitOfLiability, 2)))%[EndBlock()]]</td>
</tr>
</tbody>
</table>

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

OWNER (Signature)
%[OwnerRepName]%[OwnerRepTitle]
(Printed name and title)

CONTRACTOR (Signature)
%[ContractorRepName]%[ContractorRepTitle]
(Printed name and title)
CONTRACT FORMS, BONDS AND CERTIFICATES

Contract Forms to be utilized on this project shall be on the AIA Documents listed below. The Contract Forms consist of:

1. AIA Document A101, Standard Form of Agreement Between Owner and Contractor, 2007 Edition - To be executed by the Owner with the successful bidder.

2. AIA Document A201, General Conditions of the Contract for Construction, 2007 Edition - To be executed by the Owner with the successful bidder.

3. AIA Document A312, Performance/Labor/Material Bond, current Edition- for 100% of the contract amount to be executed by the contractor.


5. AIA Document G703, Continuation Sheet, current Edition-Executed by the Contractor, submitted each payment period as specified in the contract.


7. AIA Document G706, Contractor’s Affidavit of Payment of Debts and Claims, current edition, Executed by the Contractor.

8. AIA Document G715, Certificate of Insurance - or similar format acceptable to the Owner. Obtained and Executed by Contractor.

END OF CONTRACT FORMS, BONDS AND CERTIFICATES
for the following PROJECT:
(Name and location or address)
Cottonwood Valley Charter School Classroom Buildings
Socorro, New Mexico 87801

THE OWNER:
(Name, legal status and address)
Socorro County
PO Box 1
Socorro, New Mexico 87801

THE ARCHITECT:
(Name, legal status and address)
Dyron Murphy Architects, P.C.
James Houser, AIA, Principal
4505 Montbel Pl, NE
Albuquerque, NM 87107

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ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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ARTICLE 1   GENERAL PROVISIONS
§ 1.1 BASIC DEFINITIONS
§ 1.1.1 THE CONTRACT DOCUMENTS
The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor’s bid or proposal, or portions of Addenda relating to bidding requirements.

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

§ 1.1.3 THE WORK
The term “Work” means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor’s obligations. The Work may constitute the whole or a part of the Project.

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

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

§ 1.1.6 THE SPECIFICATIONS
The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 INSTRUMENTS OF SERVICE
Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect’s consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER
The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS
§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.
§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 CAPITALIZATION
Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 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 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE
§ 1.5.1 The Architect and the Architect’s consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect’s or Architect’s consultants’ reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect’s consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM
If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER
§ 2.1 GENERAL
§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner’s approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term “Owner” means the Owner or the Owner’s authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic’s lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner’s interest therein.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER
§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner’s obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner’s ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or
the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, 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.

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

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner’s control and relevant to the Contractor’s performance of the Work with reasonable promptness after receiving the Contractor’s written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 OWNER’S RIGHT TO STOP THE WORK
If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly 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 Section 6.1.3.

§ 2.4 OWNER’S RIGHT TO CARRY OUT THE WORK
If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-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 have, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner’s expenses and compensation for the Architect’s additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR
§ 3.1 GENERAL
§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term “Contractor” means the Contractor or the Contractor’s authorized representative.

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

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect’s administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.
§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

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

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. 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.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor’s notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor’s best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. 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 loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor’s employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

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

§ 3.4 LABOR AND MATERIALS

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

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

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

§ 3.5 WARRANTY
The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor’s warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.6 TAXES
The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS
§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that 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, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor’s cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect’s determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume
the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

.1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

.2 Contractor’s costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances;

.3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor’s costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner’s consent, which shall not unreasonably be withheld or delayed.

§ 3.10 CONTRACTOR’S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner’s and Architect’s information a Contractor’s construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect’s approval. The Architect’s approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor’s construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.
§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE
The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES
§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-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 that 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. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, 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.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) 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 Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect’s approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect’s approval thereof.

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

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor’s responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be
required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect 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. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional’s written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE
The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 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. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed 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 shall 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 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 waste materials, rubbish, the Contractor’s tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 ACCESS TO WORK
The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS
The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. 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 to the Architect.
§ 3.18 INDEMNIFICATION
§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect’s consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys’ fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 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 or a Subcontractor under workers’ compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 4 ARCHITECT
§ 4.1 GENERAL
§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

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

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT
§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner’s representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor’s rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor’s failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.
§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

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

§ 4.2.5 Based on the Architect’s evaluations of the Contractor’s Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor’s submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect’s action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect’s professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect’s review of the Contractor’s submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect’s review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect’s approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner’s review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect’s responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect’s response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect’s decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.
§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect’s response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5   SUBCONTRACTORS
§ 5.1 DEFINITIONS
§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. 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.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term “Sub-subcontractor” is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK
§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period 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 or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor’s Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS
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 the responsibility for safety of the Subcontractor’s Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect 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 Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may...
be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS
§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor’s rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor’s compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor’s obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
§ 6.1 OWNER’S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS
§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner’s own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 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 shall participate with other separate contractors and the Owner in reviewing their construction schedules. 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.

§ 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 that 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.

§ 6.2 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 for 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 Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so 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 Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor’s delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor’s delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 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 Section 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 the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK
§ 7.1 GENERAL
§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order 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 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 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 Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.2 CHANGE ORDERS
§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:
.1 The change in the Work;
.2 The amount of the adjustment, if any, in the Contract Sum; and
.3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES
§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:
.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
.2 Unit prices stated in the Contract Documents or subsequently agreed upon;
.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
§7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor’s agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor’s agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

1. Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers’ compensation insurance;
2. Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
3. Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
4. Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
5. Additional costs of supervision and field office personnel directly attributable to the change.

§7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect’s professional judgment, to be reasonably justified. The Architect’s interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§7.4 MINOR CHANGES IN THE WORK
The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.
ARTICLE 8   TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

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

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

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

§ 8.2 PROGRESS AND COMPLETION

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

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

§ 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 Architect, or of an employee of either, 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 that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9   PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

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

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor’s Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor’s right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.
§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay 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 in the Work. 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. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner’s title to such materials and equipment or otherwise protect the Owner’s interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the 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, to the best of the Contractor’s knowledge, information and belief, be free and clear of liens, 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, materials and equipment relating to the Work.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor’s Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect’s reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect’s evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect’s knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor’s right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect’s opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to certify payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner in writing of the Architect’s reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.5.2 The Architect may withhold a Certificate for Payment, to the extent reasonably necessary to protect the Owner, if in the Architect’s opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect’s opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

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

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

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.6 PROGRESS PAYMENTS
§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor’s portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

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

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, 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, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 FAILURE OF PAYMENT
If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor’s Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days’ written notice to the Owner and Architect,
§ 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 sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 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 prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor’s list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect’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 for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that 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. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. 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 when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, 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 required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect 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 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor’s written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Work for its intended use. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor’s reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.
§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner’s property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days’ prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, 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 refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien 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 lien, including all costs and reasonable attorneys’ fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and 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 Architect 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.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

1. liabilities, 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.

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY
§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS
The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 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;
2. the 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 or Sub-subcontractors; and
3. other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

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

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

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-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 under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect 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 under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor’s organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor’s superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY
If either party 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 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS
§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and 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 the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect.

§ 10.3.2 Upon receipt of the Contractor’s written notice, the Owner shall obtain the services of a licensed 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 cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor’s reasonable additional costs of shut-down, delay and start-up.
§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect’s consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys’ fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, 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), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor’s fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner’s fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.4 EMERGENCIES
In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor’s discretion, 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 Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS
§ 11.1 CONTRACTOR’S LIABILITY INSURANCE
§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor’s operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor 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 that 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 damages insured by usual personal injury liability coverage;
.5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
.6 Claims for damages because of bodily injury, death of a person or 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 Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor’s completed operations coverage, until the expiration of the period for correction
of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days’ prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. 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 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect’s consultants as additional insureds for claims caused in whole or in part by the Contractor’s negligent acts or omissions during the Contractor’s operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor’s negligent acts or omissions during the Contractor’s completed operations.

§ 11.2 OWNER’S LIABILITY INSURANCE
The Owner shall be responsible for purchasing and maintaining the Owner’s usual liability insurance.

§ 11.3 PROPERTY INSURANCE
§ 11.3.1 The Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder’s risk “all-risk” or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an “all-risk” or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect’s and Contractor’s services and expenses required as a result of such insured loss.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or
otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE
The Contractor shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 LOSS OF USE INSURANCE
The Owner, at the Owner’s option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner’s property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner’s property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days’ prior written notice has been given to the Contractor.

§ 11.3.7 WAIVERS OF SUBROGATION
The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect’s consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect’s consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner’s property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner’s duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the
Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner’s exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§ 11.4.2 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 authorize a copy to be furnished.

ARTICLE 12   UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect’s request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect’s examination and be replaced at the Contractor’s expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect 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 Change Order, be at the Owner’s expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of 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 Architect 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 rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect’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 Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, 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 Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.
§ 12.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 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 that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 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.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK
If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS
§ 13.1 GOVERNING LAW
The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 SUCCESSORS AND ASSIGNS
§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, 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 a lender providing construction financing for the Project, if the lender assumes the Owner’s rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE
Written notice shall be deemed to have been duly served if delivered in person to the individual, to 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 or by courier service providing 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 thereunder 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, Architect 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 of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.
§ 13.5 TESTS AND INSPECTIONS
§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Contractor shall bear costs of (1) tests, inspections or approvals that do not become required until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner’s expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 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 Architect’s services and expenses shall be at the Contractor’s expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect 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 under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 13.7 TIME LIMITS ON CLAIMS
The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time periods specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT
§ 14.1 TERMINATION BY THE CONTRACTOR
§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:
.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
.2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
.3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or

.4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor’s request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days’ written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner’s obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days’ written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

.1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
.2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
.4 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, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor’s surety, if any, seven days’ written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

.1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
.2 Accept assignment of subcontracts pursuant to Section 5.4; and
.3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect’s services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.
§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

1. that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or

2. that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE
§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner’s convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner’s convenience, the Contractor shall

1. cease operations as directed by the Owner in the notice;

2. take actions necessary, or that the Owner may direct, for the protection and 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 and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner’s convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 15  CLAIMS AND DISPUTES
§ 15.1 CLAIMS
§ 15.1.1 DEFINITION
A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, 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. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS
Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE
Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 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. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST
If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME
§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor’s Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.
§ 15.1.6 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:

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

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 Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker’s sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker 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 Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner’s expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.
§ 15.2.7 In the event of a Claim against the Contractor, 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.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic’s lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 MEDIATION
§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 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. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 ARBITRATION
§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. 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.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 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.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 CONSOLIDATION OR JOINER
§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an
additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.
SUPPLEMENTARY CONDITIONS

The following supplements modify, change, delete from or add to the “General Conditions of the Contract for Construction”, AIA Document A201, 2007 as indicated in each numbered “Part” heading. Where any article of the General Conditions is modified or any paragraph, subparagraph or clause thereof is modified or deleted by these Supplementary Conditions, the unaltered provisions of that article, paragraph, subparagraph or clause shall remain in effect.

MODIFICATIONS TO GENERAL CONDITIONS

PART 1.0 (Re: 1.1 BASIC DEFINITIONS) - ADD THE FOLLOWING SUBPARAGRAPH 1.1.9:

1.1.9 ADDITIONAL DEFINITIONS

The following definitions shall apply throughout the Bidding Documents or Contract Documents unless otherwise specified:

.1 SURETY: The person or entity obligated to provide such performance or payment as set forth in bonds required by the Contract Documents.

.2 UNIT PRICES: Amounts stated in the Contract as prices per unit of measurement for materials or services as described in the Contract Documents.

.3 USER: The Owner agency or agencies or designated entity for whose use the Project is being constructed.

.4 OWNER: Socorro County referenced as Owner within these Documents.

.5 ARCHITECT/ENGINEER: The Architect/Engineer referenced within these documents.

.6 RETAINAGE: The amount of money otherwise due to a Contractor that may be withheld by the Owner to secure performance of the Contract.”

PART 2.0 (Re: 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE) - SUBSTITUTE THE FOLLOWING FOR THE FIRST SENTENCE OF SUBPARAGRAPH 1.5.1:

1.5.1 The Drawings, Project Manual Documents and Technical Specifications, notes, and other work developed for the performance of this Contract and copies thereof furnished by the Architect/Engineer shall be the sole property of the Owner with the understanding and agreement that they are to be used only with respect to this Project and are not to be used on any other Project, or for any other purpose.”

PART 3.0 (Re: 3.6 TAXES) - ADD THE FOLLOWING TO PARAGRAPH 3.6:

“The Contractor shall comply with the requirements of the state of New Mexico gross receipts law and shall require all subcontractors to comply with the same. Any increase or decrease in gross receipts and local option taxes enacted after the date the Contract is signed shall result in a similar increase or decrease in the contract sum by appropriate modification.”

PART 4.0 (Re: 3.15 CLEANING UP) - ADD THE FOLLOWING TO SUBPARAGRAPH 3.15.1:

“The Contractor shall thoroughly clean the premises at the completion of the Work.”

PART 5.0 (Re: ARTICLE 4 ARCHITECT) - ADD THE FOLLOWING SUBPARAGRAPH 4.1.4:

4.1.4 Any dispute in connection with such an appointment shall be considered an aggrievement and subject to the provisions of ARTICLE 15 CLAIMS AND DISPUTES.”

PART 6.0 (Re: ARTICLE 4 ARCHITECT) - ADD THE FOLLOWING SUBPARAGRAPH 4.1.5:

4.1.5 The Owner may, but is not required, to assist the Architect/Engineer to provide administration of the Contract for Construction.”

PART 7.0 (Re: 4.2 ADMINISTRATION OF THE CONTRACT) - ADD THE FOLLOWING TO SUBPARAGRAPH 4.2.3:

“Should the Architect determine that any portion of the Work varies from the requirements of the Contract Documents, the
Architect/Engineer shall promptly notify the Owner and the Contractor of the nature of the non-compliance and the correction of the Work required. The Contractor expressly recognizes that the Architect does not owe him any duty to supervise or direct his work as to protect the Contractor from the consequences of his own acts or omissions.”

PART 8.0 (Re: ARTICLE 7 CHANGES IN THE WORK) - DELETE ARTICLE 7 IN ENTIRETY AND SUBSTITUTE THE FOLLOWING “NEW” ARTICLE 7:

“ARTICLE 7   CHANGES IN THE WORK

7.1 CHANGES

7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by initiation of a Construction Change Directive or order 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 A Construction Change Directive requires agreement by the Owner and the Architect and shall be prepared by the Owner or the Architect on its own initiative or at the request of the Owner’s representative, or the Contractor. To result in a change in the Work, any change in Contract Time, any change in Contract Sum, or any combination of the foregoing, the Construction Change Directive must be included ultimately in a Change Order. An order for a minor change in the Work, without a change in Contract Time or Contract Sum, may be issued by the Architect alone.

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 Construction Change Directive or order for a minor change in the Work.

7.1.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a Construction Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

7.2 CONSTRUCTION CHANGE DIRECTIVES

7.2.1 A Construction Change Directive is a written order signed by the Owner and Architect/Engineer, directing a change in the Work an stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

7.2.2 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

.1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data on costs to permit evaluation;
.2 unit prices stated in the Contract Documents or subsequently agreed upon; or
.3 cost to be determined in accordance with Subparagraph 7.2.5 with or without a guaranteed maximum.

7.2.3 Upon receipt of a Construction Change Directive, the Contractor shall acknowledge receipt of it on the document, and, if applicable, the Contractor’s agreement to its terms, promptly proceed with the change in the Work involved and advise the Architect/Engineer if the Contractor is in disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

7.2.4 A Construction Change Directive signed as agreed to by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately, shall remain binding for sixty days and shall ultimately be included in a Change Order.

7.2.5 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Architect/Engineer on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, and a reasonable allowance for overhead and profit as set forth in Table 1 below. In such case, and also under Clause 7.2.2, the Contractor shall keep and present, in such form as the Architect/Engineer may prescribe, an itemized accounting together with appropriate supporting data of costs incurred in performing the change required by the Construction Change Directive. Costs for the purposes of this Paragraph 7.2.5 includes only the following:

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.1 material quantities and unit costs;
.2 labor amounts and hourly rates (identified with specific items of material to be placed or operation to be performed);
.3 costs inherent in the use of equipment owned by the Contractor, the Subcontractors, and/or the Sub-subcontractors;
.4 equipment rental, if any;
.5 worker's compensation and public liability insurance;
.6 general administration, overhead, supervision, project insurance, bonds and profit, based on the following schedule (subtotal before applying the percentage shown):

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<th>$500 or less</th>
<th>$501 to 5% of Contract</th>
<th>Over 5% of Contract Negotiable</th>
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<tbody>
<tr>
<td>Contractor for Work</td>
<td>22%</td>
<td>19%</td>
<td>Negotiable</td>
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<tr>
<td>performed by his own</td>
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<td>Contractor for Work</td>
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<td>performed by Subcontractor</td>
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<tr>
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<td>Subcontractor for Work</td>
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<td>performed by Sub-subcontractor</td>
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<td>Work performed by his</td>
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.7 employment taxes under FICA and FUTA; and

.8 state gross receipts and local option tax (Contractor only).

7.2.6 Pending final determination of cost to the Owner, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by the Contractor to the Owner for a change that results in a net decrease in the Contract Sum shall be the amount of net cost decrease plus an amount equal to the net cost decrease multiplied by a percentage of 3% for general administration, overhead, supervision, project insurance, bonds, and profit as specified in Clause 7.2.5.6.

7.2.7 If the Owner and Contractor do not agree with the adjustment in Contract Time or the method for determining it, the adjustment or the method shall be referred to the Architect/Engineer for determination.

7.2.8 When the Owner and Contractor agree with the determination made by the Architect/Engineer concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

7.3 CHANGE ORDERS

7.3.1 A Change Order is a written instrument prepared by the Architect/Engineer and signed by the Owner, Contractor, and Architect/Engineer, stating their agreement upon all of the following:

.1 a change in the Work;
.2 the amount of the adjustment in the Contract Sum, if any, and
.3 the extent of the adjustment in the Contract Time, if any.

7.3.2 A Change Order may include more than one Construction Change Directive and will customarily be executed after the completion in the Work.

7.4 MINOR CHANGES IN THE WORK

7.4.1 The Architect/Engineer will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.”

PART 9.0 (Re: PROGRESS AND COMPLETION) - ADD THE FOLLOWING SUBPARAGRAPH 8.2.4:

“8.2.4 The Contractor agrees that the Work shall be prosecuted regularly, diligently and uninterruptedly at a rate of progress that will insure full completion within the Contract Time specified. It is expressly understood and agreed, by and between the Contractor and the Owner, that the Contract time specified for the completion of the Work is reasonable; taking into
consideration the average climate conditions, temperature ranges, and usual industrial conditions prevailing in this locality. If the Contractor shall neglect, fail or refuse to complete the Work within the Contract Time, or any proper extension granted by the Owner, then the Contractor agrees, as a part consideration for the awarding of this Contract, not as a penalty but as liquidated damages for such breach of contract as set forth in the Contract Documents, for each and every calendar day that the Contractor shall be in default after the Contract Time.”

PART 10.0 (Re: 8.3 DELAYS AND EXTENSIONS OF TIME) - ADD THE FOLLOWING SENTENCE TO SUBPARAGRAPH 8.3.1:

“Where individual items or designated portions of the Work require changes in completion time, but are not interrelated with items of work governed by the Contract Time, the Architect/Engineer and the Owner may establish by Change Order separate completion dates with separate Liquidated Damages acceptable to the Contractor and leave the Contract Time unchanged.”

PART 11.0 (Re: 9.2 SCHEDULE OF VALUES) - ADD THE FOLLOWING TO SUBPARAGRAPH 9.2:

“This schedule shall include separate line items for costs pertaining to each Cash Allowance item indicated in the Contract Documents and for a reasonable amount, which shall be designated as ‘Final Administrative Closeout’, attributable to Contractor completion of the administrative and documentation requirements for Contract Closeout following certification of Substantial Completion.”

PART 12.0 (Re: 9.3 APPLICATIONS FOR PAYMENT) - ADD NEW SUBPARAGRAPHS 9.3.1.3 and 9.3.1.4

"9.3.1.3 Retainage: Unless good cause exists, the Owner shall not withhold retainage from any payments due and owing a contractor.
9.3.1.4 Upon completion and acceptance of each separate building, public work, or other division of the contract, on which the price is stated separately in the contract, payment may be made without retention of a percentage.”

PART 13.0 (Re: 9.5 DECISIONS TO WITHHOLD CERTIFICATION) - ADD THE FOLLOWING ITEMS TO SUB-PARAGRAPH 9.5.1:

“8 failure to provide an approved progress schedule.
9 the contract sum has been reduced by change order, and the payment request exceeds the revised Contract Sum.”

PART 14.0 (Re: 9.5 DECISIONS TO WITHHOLD CERTIFICATION) - ADD THE FOLLOWING SUBPARAGRAPH 9.5.4:

“9.5.4 The Owner may refuse to make payment of the full amount recommended by the Architect/Engineer in order to protect itself from loss because of Subparagraphs 9.5.1.1 through 9.5.1.8, but the Owner must give the Contractor immediate written notice, with a copy to the Architect/Engineer, stating the reasons for such action.”

PART 15.0 (Re: PAYMENTS AND COMPLETION) - ADD THE FOLLOWING PARAGRAPH 9.11:

"9.11 LIQUIDATED DAMAGES
9.11.1 The Contractor and the Contractor's surety shall be jointly and severally liable for and shall pay the Owner the sums hereinafter stipulated in the Contract as liquidated damages for each calendar day of delay until the work is substantially complete. Liquidated damages set forth in the Agreement will be assessed from the Contractor's scheduled completion date."

PART 16.0 (Re: 10.3 HAZARDOUS MATERIALS) - DELETE IN ITS ENTIRETY. Article IX, Section 12 and the similar constitutional debt restrictions for the state and other local governments (N.M. Const. art. IX, §§ 8, 11-13) have been judicially interpreted to preclude a government from entering into an agreement subjecting it to contingent liability, the amount of which is uncertain at the time of the agreement.

PART 17.0 (Re: ARTICLE 11 INSURANCE AND BONDS) - SUBSTITUTE THE FOLLOWING FOR SUBPARAGRAPH 11.1.1:

1. 11.1.1 The contractor shall purchase and maintain, in a company or companies licensed to do business in the State in which the project is located, such insurance as will protect him, the Owner and the Architect from claims set forth below which may arise out of, or result from, the Contractors’ operations under the contract, whether such operation be by himself, or by
any Sub-contractor, or by anyone for whose acts any of them may be liable. (Subparagraphs .1 through .8 shall remain unchanged.)

2. 11.1.9 Liability insurance shall include all major divisions of coverage and be on a comprehensive basis including:
   a) Premises operations.
   b) Independent contractor’s protective.
   c) Products and completed operations.
   d) Contractual – Including specified provisions for the Contractor’s obligations under paragraph 4.18.
   e) Owned, non-owned, and hired vehicles.
   f) Broad form coverage for property damage.
   g) Personal injury.

3. For the duration of the contract and until all work specified in the contract is completed, the Contractor shall maintain in effect all insurance as required below and comply with all limits, terms, and conditions stipulated therein. Any claims made coverages shall be maintained for two years after the substantial completion.
   a) Work under this contract shall not commence until evidence of all required insurance and bonding is provided to the Owner and the Architect.
   b) All insurance shall be written to conform to the requirements below.
   c) Evidence of such insurance shall consist of a completed certificate of insurance, signed by the insurance agent for the Contractor and returned to the Owner.

4. Certificate of Insurance:
   a) All required insurance is in effect.
   b) The Owner is an additional insured on the Contractor’s general liability policy with respect to activities under this contract. The additional insured endorsement shall be ISO form CG 20 10 11 85 or a substitute endorsement providing equivalent coverage.
   c) The general liability insurance afforded applies separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company’s liability.
   d) The general liability insurance of the Contractor shall be primary insurance and any insurance or self-insurance of the Owner shall be excess and not contributory insurance.
   e) If for any reason, any material change occurs in the coverage during the course of the contract, such change will not become effective until 30 days after the Owner has received written notice of such change.

5. Contractor shall obtain insurance of the types described below from an insurer with an A.M. Bests rating of not less than A-VIII and authorized to do business in the State of New Mexico.
   a) Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 or similar and shall cover liability arising from products and completed operations, premises, contractual liability, personal injury, and advertising injury. There shall be no endorsement or modification of the Commercial General Liability insurance limiting coverage for claims arising from explosion, collapse, or underground exposures.
   b) Workers’ Compensation Insurance as required by the State.
   c) Automobile Liability Insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on ISO form CA 00 01 or a substitute form providing equivalent liability coverage.
   d) Property Insurance: Not required.

PART 18.0 (Re: ARTICLE 11 INSURANCE AND BONDS) - SUBSTITUTE THE FOLLOWING FOR SUBPARAGRAPH 11.1.2 :

A. The limits of liability for the insurance required by Subparagraph 11.1.1 shall provide coverage for not less than the following amounts or greater if required by law:
   1. Commercial General Liability insurance shall be written with limits no less than $1,000,000 each occurrence, a $2,000,000 general aggregate and a $2,000,000 products-completed operations aggregate limit.
   2. Workers’ Compensation Insurance with limits as required by Statute.
   3. Automobile Liability Insurance with a combined single limit for bodily injury and property damage of not less than $1,000,000 per accident.
   4. Commercial general liability and automobile liability insurance shall include as additional named insured: The Owner, the Architect, The Architect’s consultants and engineers, and each of their officers, employees and agents, and any other persons with an insurable interest designated by the Owner as an additional named insured.

B. Subcontractors:
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1. The Contractor shall:
   a. Include all subcontractors as insureds under its policies, or
   b. Shall furnish separate certificates and endorsements for each subcontractor to the Owner. The Subcontractors’ Commercial General Liability insurance shall be written with limits no less than $1,000,000 each occurrence, a $2,000,000 general aggregate and a $1,000,000 products-completed operations aggregate limit.

C. Contractor’s Insurance for Other Losses:
   1. The Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Contractor’s employee-owned tools, machinery, equipment, or motor vehicles owned or rented by the Contractor, or the Contractor’s agents, suppliers or contractors, as well as to any temporary structures, scaffolding, and protective fences.

PART 19.0 (Re: ARTICLE 11 INSURANCE AND BONDS) - ADD THE FOLLOWING TO SUBPARAGRAPH 11.1.3:

"11.1.3 Furnish one (1) copy of Certificates herein required for each copy of the Agreement, specifically setting forth evidence of all coverage required by subparagraph 11.1.2.

11.1.3.1 Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will mail 30 days written notice to the certificate holder named to the left, but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives."

PART 20.0 (Re: ARTICLE 11 INSURANCE AND BONDS) - ADD THE FOLLOWING SUBPARAGRAPH 11.1.4:

"11.1.4 The Contractor shall have the Owner named as an additional insured on the Comprehensive General Liability form or Commercial Liability form furnished by the Contractor. The certificate of insurance shall state that the coverage provided under the policy is primary over any other valid and collectible insurance."

PART 21.0 (Re: ARTICLE 11 INSURANCE AND BONDS) - MODIFY PARAGRAPH 11.4 IN THE FOLLOWING MANNER:

11.4.1 The General Contractor shall purchase Builder’s Risk Insurance per Section 11.4.

11.4.1.2 The General Contractor shall purchase Builder’s Risk Insurance.

11.4.1.3 The Contractor is responsible for Builder’s Risk deductible.

11.4.2 Delete

PART 22.0 (Re: 11.4.3 LOSS OF USE INSURANCE) - DELETE THE LAST SENTENCE OF SUBPARAGRAPH 11.4.3.

PART 23.0 (Re: 11.5 PERFORMANCE BOND AND PAYMENT BOND) - SUBSTITUTE THE FOLLOWING FOR SUBPARAGRAPHS 11.5.1 and 11.5.2 and add 11.5.3 and 11.5.4:

"11.5.1 The Contractor shall post a one hundred percent (100%) Performance Bond and a one hundred percent (100%) Labor and Material Payment Bond, forms attached hereto with amount payable conforming to the terms of the Contract. Surety shall be a company licensed to do business in the State of New Mexico and executed by such sureties as are named in the current list of Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds as published in federal circular 570 by the Audit Staff Bureau of Accounts, U.S. Treasury Department.

11.5.2 Special attention is called to the requirements of §13-4-18 through §13-4-20, NMSA 1978, regarding a Contractor who does not have his principal place of business in the State of New Mexico for all taxes due arising out of construction services rendered under the Contract.

11.5.3 The right to sue on this Bond accrues only to the Owner and the parties to whom §13-4-18 through §13-4-20, NMSA 1978, grant such right; and any such right shall be exercised only in accordance with the provisions and limitations of said statutes.

11.5.4 Subcontractor Bonding Requirements

11.5.4.1 It is the responsibility of each subcontractor submitting a bid to a contractor to be prepared to submit a faithful performance and payment bond if the subcontract exceeds $50,000.
11.5.4.2 In the event any subcontractor is submitting a bid to a contractor does not, upon the request of the contractor and at the expense of the subcontractor at the established charge or premium therefore, furnish to the contractor a bond issued by a corporate surety authorized to do business in New Mexico in accordance with the New Mexico Insurance Code (59A-1-1 to 591-A-18, NMSA 1978) and listed in the United States Treasury Department circular 570 where in the contractor is named the obligee, guaranteeing prompt and faithful performance of the subcontract and the payment of all claims for labor and materials furnished or used in and about the work to be done and performed under the subcontract, the contractor may reject the bid and make a substitution of another subcontractor subject to the provisions of Section 13-4-36, NMSA 1978. Such bond may be required at the expense of the subcontractor only if the contractor has in his written or published request for subcontract bids:

.1 Specifies that the expense for the bond shall be borne by the subcontractor; and
.2 Clearly specifies the amount and requirements of the bond.”

PART 24.0 (Re: 13.5 TESTS AND INSPECTIONS) - ADD THE FOLLOWING SUB-SUBPARAGRAPH TO SUBPARAGRAPH 13.5.1:

“13.5.1.1 All sampling, transportation, and storage of samples; testing; and reporting shall be undertaken by representatives of the testing laboratory. No sampling, transportation, and storage of samples; testing; or reporting shall be undertaken by the Architect/Engineer, the Owner, or the Subcontractors.”

PART 25.0 (Re: 13.5 TESTS AND INSPECTIONS) - SUBSTITUTE THE FOLLOWING SUBPARAGRAPH 13.5.4:

“13.5.4 Two copies of all test reports shall be furnished directly to the Owner, the Architect/Engineer, and the Contractor by the testing laboratory. All test reports shall be sequentially numbered and labeled in accordance with industry standards.”

PART 26.0 DELETE PARAGRAPH 13.6 IN ITS ENTIRETY.

PART 27.0 (Re: TERMINATION OR SUSPENSION OF THE CONTRACT) - ADD THE FOLLOWING TO ARTICLE 14:

"14.4.4 The terms of this Contract are contingent upon sufficient appropriations and authorization being made by the governing body for the performance of this Contract. If sufficient appropriations are not made by the governing body, this Contract shall terminate upon written notice being given by the County to the Contractor. The County’s determination as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final."

PART 28.0 (Re: ARTICLE 15 CLAIMS AND DISPUTES) - SUBSTITUTE THE FOLLOWING FOR THE FIRST SENTENCE OF SUBPARAGRAPH 15.1.2:

“15.1.2 NOTICE OF CLAIMS
All claims, disputes, and other matters in question between the Owner and the Contractor shall be referred to the Architect/Engineer for formal decision pursuant to the relevant paragraphs and clauses of ARTICLE 15 CLAIMS AND DISPUTES.”

PART 29.0 (Re: PARAGRAPH 15.3 MEDIATION AND PARAGRAPH 15.4 ARBITRATION) - SUBSTITUTE THE FOLLOWING FOR PARAGRAPH 15, INCLUSIVE OF ALL SUBPARAGRAPHS AND FOR PARAGRAPH 15.4, INCLUSIVE OF ALL SUBPARAGRAPHS:

“15.3 AGGRIVEMENT PROCEDURE DURING CONTRACT ADMINISTRATION

15.3.1 Any claim, dispute, or other matter in question between the Contractor and the Owner, except those relating to artistic effect as provided in Subparagraph 4.2.13 and except those which have been waived by the making or acceptance of final payment as provided in Subparagraph 9.10.4, shall be presented in the form of a written request accompanied by supporting data to the Architect/Engineer for formal decision, with a copy to the other party. Such formal decision of the Architect/Engineer is binding upon the Contractor and the Owner unless either or both parties notify each other and the Architect/Engineer in writing within fifteen days of their receipt of the decision that they are unwilling to abide by the Architect/Engineer’s decision, and are thereby aggrieved in connection with the decision and are separately exercising such rights as either may have under the Contract Documents or by law and regulation. If the Architect/Engineer fails to provide a written decision or a reasonable schedule to issue a written decision or a reasonable schedule to issue a written decision with ten days after the Owner or the Contractor has presented his request, that party may consider himself aggrieved and may proceed to exercise his rights.
15.3.2 A settlement agreement signed by the Owner and the Contractor shall supersede and cancel any other dispute resolution proceedings regarding the same matter.

15.3.3 Mediation and arbitration of controversies and claims. Should the procedures for dispute resolution stated in Subparagraph 15.3.1 fail to adequately resolve the claim, dispute or other matter in question, any such claim, dispute or matter in question shall be resolved by binding arbitration governed by the provisions of this Paragraph 15.3.3 and the New Mexico Uniform Arbitration Act. Before submitting a dispute to arbitration the parties shall make a good faith effort to resolve the dispute through formal mediation or other agreed upon alternative dispute resolution technique. The arbitration shall be before a single arbitrator chosen by mutual agreement of the parties. If they cannot agree, then a list of seven potential arbitrators will be obtained from the New Mexico Association of Counties and the parties shall utilize a striking process until an arbitrator is agreed upon. In the event this Contract results in dispute, mediation, arbitration litigation, or settlement, the prevailing party of such action shall NOT be entitled to an award of attorneys’ fees and costs.

15.3.4 Unless work is stopped or payment withheld in accordance with the conditions of the Contract, or unless otherwise agreed in writing, the Contractor shall carry on the Work and maintain its progress during any aggrievement proceedings, and the Owner shall continue to make payments to the Contractor in accordance with the Contract Documents.”

**ADDITIONAL CONDITIONS**

### PART 1.0 EQUAL OPPORTUNITY

1.1 The Contractor, all Subcontractors, and all Sub-subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, or national origin. Such action shall include, but not be limited to, the following: employment, recruitment or recruitment advertising, upgrading, layoff or termination, demotion, rates of pay or other forms of compensation, transfer, selection for training (including apprenticeship).

1.2 The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of nondiscrimination.

1.3 The Contractor, all Subcontractors, and all Sub-subcontractors 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.

### PART 2.0 MINIMUM WAGE RATES

2.1 The Contractor warrants and agrees that he will comply and will require all Subcontractors and Sub-subcontractors to comply with all applicable provisions of the New Mexico Public Works Minimum Wage Act as outlined in the Contract Documents. Wage rates are not applicable to projects costing less than $20,000. The Contractor and his Subcontractors shall deliver by mail copies of certified weekly payroll in accordance with the regulations under "Minimum Wage Rates" to the office of the State Labor Commission, Santa Fe, New Mexico 87503, address as stated in the Determination and to the Owner.

### PART 3.0 CONTRACT AUDIT

3.1 The Owner shall be entitled to audit the books and records of a Contractor or any Subcontractor under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the Contractor for a period of three years from the date of final payment under the prime Contract and by the Subcontractor for a period of three years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing (§13-1-16 NMSA 1978).

### PART 4.0 DEBARRED OR SUSPENDED CONTRACTORS

4.1 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...
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business with the State and shall not be considered for award of contract during the period for which it is debarred or suspended.

PART 5.0 BRIBES, GRATUITIES, AND KICKBACKS

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

5.2 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.

PART 6.0 NONRESIDENT CONTRACTOR’S REQUIREMENTS: GROSS RECEIPTS TAX SURETY BOND

6.1 Section 7-1-55A NMSA 1978 provides that any person (as defined in § 7-1-3 NMSA 1978) engaged in the construction business who does not have his principal place of business in this state and enters into a prime construction contract to be performed in this State shall, at the time such contract is entered into, furnish the Director of the Revenue Division, Taxation and Revenue Department, or his delegate with a surety bond or other acceptable security in a sum equivalent to the gross receipts tax to be paid under the contract multiplied by the applicable rate of the gross receipts tax imposed by Section 7-9-4 NMSA 1978 to secure payment of the tax imposed on the gross receipts from the Contract. The person shall obtain a certificate from the Director of the Revenue Division, Taxation and Revenue Department, or his delegate that the requirements of this paragraph have been met.

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

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

PART 7.0 CONTRACTOR’S GROSS RECEIPTS TAX REGISTRATION

7.1 Section 7-10-4 NMSA 1978 provides that any person (as defined in § 7-10-3 NMSA 1978) performing services for the State, as those terms are used in the Gross Receipts and Compensating Tax Act (§§ 7-10-1 through 7-10-5 NMSA 1978), must be registered and be issued an identification number with the Revenue Division of the Taxation and Revenue Department to pay the gross receipts tax.

7.2 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 Division. For information, contact: Revenue Division, Taxation and Revenue Department, Manuel Lujan Sr., Building, 1200 St. Francis Drive, Santa Fe, New Mexico 87503, Telephone: (505) 988-2290.

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

PART 8.0 ASSIGNMENT OF ANTITRUST CLAIMS

8.1 The Contractor agrees that any and all claims that the Contractor may have or that may inure to the Contractor for overcharges resulting from antitrust violations as to goods, services, and materials purchased in connection with this Bid are hereby assigned to the State of New Mexico, but only to the extent that such overcharges are passed on to the State. The Contractor further agrees to require each of its Suppliers, Subcontractors, and Sub-subcontractors 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 form (see Section 00600) shall be submitted prior to the commencement of the Work or the supplying of any materials by the Supplier, Subcontractor, or Sub-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 his Supplier, Subcontractor, or Sub-subcontractor. Waiver by the Owner may not unreasonably be denied.
SUPPLEMENTARY CONDITIONS

8.2 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.

PART 9.0 CONTRACTS WITH NONRESIDENT PERSONS OR PARTNERSHIPS OR UNADMITTED FOREIGN CORPORATIONS; AGENT FOR SERVICE OF PROCESS

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

PART 10.0 ADDENDA AND MODIFICATIONS

10.1 All Addenda and Modifications issued in writing during the Bidding period will become part of the Contract Documents.

ADD THE FOLLOWING SIGNATURE LINE FOR THE COUNTY

APPROVED, ADOPTED, AND PASSED on this ________day of _________2014.

__________________________   __________________________
DANIEL P. MONETTE, CHAIR    PAULINE JARAMILLO, VICE-CHAIR
DISTRICT IV                   DISTRICT I

__________________________   __________________________
JUAN JOSE GUTIERREZ, COMMISSIONER  MARTHA SALAS, COMMISSIONER
DISTRICT V                    DISTRICT II

__________________________
MANUEL E. ANAYA, COMMISSIONER
DISTRICT III

ATTEST BY:

__________________________
REBECCA (BECKY) VEGA, COUNTY CLERK

-End-
- EXHIBIT 1 –

WAGE DETERMINATION

COTTONWOOD VALLEY CHARTER SCHOOL
CLASSROOM BUILDINGS
NEW MEXICO DEPARTMENT OF WORKFORCE SOLUTIONS PUBLIC WORKS

WAGE DECISION #SO-15-1193 B

WAGE DECISION

A. All laborers and mechanics employed by Contractors or Subcontractors in the construction, alteration, or repair, of buildings or other facilities in connection with contracts awarded under this project, shall be paid wages at no less than those prevailing as indicated on the attached New Mexico Department of Workforce Solutions, Labor Relations Division.

B. In accordance with provisions of the State of New Mexico, wages and benefits shall be paid in accordance with this determination. Refer to the New Mexico Department of Workforce Solutions website for the corresponding wage rate decision and additional information.
## Type "B" - GENERAL BUILDING

**Effective January 1, 2015**

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<th>Fringe Rate</th>
<th>Apprenticeship</th>
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**Subsistence & Incentive Rates**

- $50.00/day subsistence pay plus base/fringe regardless of county.

**NOTE:** SUBSISTENCE AND INCENTIVE RATES BY TRADE & LOCATION

#1 - Inside Electricians working at a Los Alamos County job site get $4.10/hr. subsistence pay plus base/fringe. Inside

#2 - Ironworkers working on projects 50+ miles over the most direct regularly traveled route from Albuquerque, or the

#3 - Plumbers/Pipefitters working at a Los Alamos County job site get $.80/hr. incentive pay plus base/fringe.

#4 - Sheet Metal Workers working at a Los Alamos County job site get $2.00/hr. incentive pay plus base/fringe.

#4 - Sheet Metal Workers living 60+ miles from a San Juan County job site get $3.00/hr. subsistence pay plus $50.00/day subsistence pay plus base/fringe regardless of county.
EXHIBIT 2 –

DRAWING INDEX

COTTONWOOD VALLEY CHARTER SCHOOL
CLASSROOM BUILDINGS
### SOCORRO COUNTY
### COTTONWOOD VALLEY CHARTER SCHOOL
### CLASSROOM BUILDINGS
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- G101 LIFE SAFETY PLAN AND CODE ANALYSIS
- G102 SITE CODE PLAN

#### CIVIL
- C100 GRADING AND DRAINAGE PLAN
- C200 UTILITY PLAN

#### STRUCTURAL
- S001 ABBREVIATIONS AND LEGEND
- S002 GENERAL STRUCTURAL NOTES
- S101 FOUNDATION PLAN
- S301 FOUNDATION SECTIONS AND DETAILS
- S001A ABBREVIATIONS AND LEGEND
- S002A GENERAL STRUCTURAL NOTES & SPECIAL INSPECTIONS
- S101A FOUNDATION AND FRAMING TYPES TYPE 1
- S102A FOUNDATION AND FRAMING TYPES TYPE 2
- S103A FOUNDATION AND FRAMING TYPES TYPE 3
- S301A SECTIONS AND DETAILS

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- AD001 DEMOLITION SITE PLAN
- A001 SITE PLAN
- A002 SITE DETAILS
- A003 BID ALTERNATES
- A101 FLOOR PLAN-TYPE 1
- A102 FLOOR PLAN-TYPE 2
- A103 FLOOR PLAN-TYPE 3
- A201 EXTERIOR ELEVATIONS-TYPE 1
- A202 EXTERIOR ELEVATIONS-TYPE 2
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- A301 BUILDING SECTIONS
- A302 WALL SECTIONS, PARTITION TYPES AND DETAILS
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- A501 DOOR AND WINDOW DETAILS
- A601 DOOR AND WINDOW TYPES AND SCHEDULES

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PLUMBING
P001  PLUMBING SCHEDULES/DETAILS
P101  PLUMBING PIPING PLANS-TYPE 1
P102  PLUMBING PIPING PLANS-TYPE 2
P103  PLUMBING PIPING PLANS-TYPE 3

MECHANICAL
M001  MECHANICAL NOTES, LEGENDS AND SCHEDULES
M101  MECHANICAL HVAC PLAN-TYPE 1 AND TYPE 2
M102  MECHANICAL HVAC PLAN-TYPE 3

ELECTRICAL
E001  ELECTRICAL SYMBOLS LEGEND, ABBREVIATIONS AND NOTES
E100  ELECTRICAL SITE PLAN-EXISTING
E101  ELECTRICAL SITE PLAN
E102  ELECTRICAL LIGHTING PLAN
E103  ELECTRICAL POWER PLAN
E104  ELECTRICAL SPECIAL SYSTEMS PLAN
E201  ELECTRICAL POWER PLAN
E301  ELECTRICAL SECTIONS
E501  ELECTRICAL DETAILS
E601  ELECTRICAL ONE-LINE DIAGRAM AND FEEDER SCHEDULE
E701  LIGHT FIXTURE SCHEDULE AND EQUIPMENT SCHEDULE
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