

**New Mexico State University**  
**REQUEST FOR PROPOSAL (RFP)**  
RFP #

Project Manual  
For



RFP DUE TIME AND DATE: @ 2:00 PM (Local time)  
NON-MANDATORY PRE PROPOSAL: @ (Local time)

PURCHASING CONTACT: at 575-646-2916  
E-MAIL: @nmsu.edu

LOCATION:  
New Mexico State University  
Central Purchasing Office  
Academic Research Bldg. C  
1620 Standley Drive Room 101  
Las Cruces, NM 88003

**OFFICIAL CONTACT ONLY**

This RFP contains restrictions on contact with Board of Regents, ASNMSU, Faculty and Staff, the University's consultants or others working on behalf of the University. Violation of this policy may lead to disqualification.

Proposers may not contact other University Departments. Any contact with a University Department may automatically result in a rejection of any proposal.

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NEW MEXICO STATE UNIVERSITY**

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- Division 48 — Electrical Power Generation
- Division 49 — RESERVED FOR FUTURE EXPANSION

**INSTRUCTIONS TO PROPOSERS**

**1. Request for Proposal (RFP)**

1.1 Request for proposals will be received at the New Mexico State University Central Purchasing Office, PO Box 30001-MSU 3890, Las Cruces, NM, 88003, prior to at 2:00 P.M. (Local time). The purpose of this Request for Proposal is for NMSU Project:

1.2 Request for Proposal Schedule and Information: The Buyer will make every effort to adhere to the following schedule however the schedule is subject to change.

<b>Action</b>	<b>Responsibility</b>	<b>Date</b>
Issuance of Request for Proposal	NMSU Purchasing	
*Non-Mandatory Pre-Proposal Conference	NMSU Purchasing Proposer	@ local time)
Deadline for Pre-Approved Equals	Proposer	@5:00 pm (local time)
Deadline for Questions	Proposer	@5:00 pm (local time)
Deadline for Addendum(s)	NMSU Purchasing	@5:00 pm (local time)
Submission of Proposal	Proposers	@2:00 pm (local time)
Subcontractor Listing Threshold	NMSU Project Manager/Proposer	\$
Time for Completion of Work	Awarded Proposer	Calendar Days from Notice to Proceed
Liquidated Damages	Awarded Proposer	\$

\*Non-Mandatory Pre-Proposal Conference and site visit (if applicable)

Proposers who attend non-mandatory pre-proposal and site visit do so at their own expense.

**1.3 Procedural or Technical Inquiries**

Any inquiries or request regarding clarification of this procurement document shall be submitted in writing to the Buyer whose decision shall be final. Technical questions will be routed to the correct representative for clarification.

Buyer	Project Manager	Architect/Engineer
<a href="mailto: @nmsu.edu">@nmsu.edu</a> PO Box 30001-MSU 3890 Las Cruces, NM 88003		

## Instructions to Offerors

1.4 New Mexico State University may waive any informality or reject any and all proposals. Any proposal may be withdrawn prior to the above scheduled time of the opening of proposals or authorized postponement thereof.

### 1.5 Submission of Proposal

Submission of proposal may be delivered to Central Purchasing Office. The envelope containing the completed offer must be marked with "Request for Proposal" and corresponding RFP number and addressed as follows:

MAIL TO: NMSU – Central Purchasing Office  
PO Box 30001 – MSC 3890  
Las Cruces, NM 88003

Or

PHYSICAL ADDRESS: Academic Research, Bldg C  
1620 Standley Drive – Room 101  
Las Cruces, NM 88003

Or

ON-LINE: Offeror may submit proposal via NMSU Online Bidding System.

1.5.1 If proposal is submitted via the On Line Bidding System, a hard copy of the 5% Bid Bond must be received in the Central Purchasing Office before the Proposal due date and time.

1.5.2. New Mexico State University's Online Bidding System utilizes the Internet and the World Wide Web which is comprised of systems that are completely out of NMSU's control including but not limited to: the University, its agents, and registered suppliers' respective internet service providers. The University and its agents are not responsible for Internet outages, hardware failures, software failures, downtime, internet slowness, acts of God, power failures, and or user errors. All proposals must be submitted before the due date regardless of your organization's ability to submit proposals online. It is the suppliers' responsibility to ensure that RFP documents arrive before the due date and time.

1.5.3 Proposers understand and agree that technical support may not be readily available the day of and or the hours/minutes prior to a bid closing time (Due Date/Time). Proposers also understand and agree that internet access, browsers, and operating systems are not supported by the University and/or its agents. Suppliers are strongly encouraged to review, create, and submit all electronic bid responses several days in advance of the due date and time.

1.5.4 It is the Proposer's responsibility to deliver its proposal at the proper time to the proper place. The mere fact that a proposal was dispatched will not be considered, the Proposer must have the proposal actually delivered or submitted to NMSU Central Purchasing Office.

## **Instructions to Offerors**

### **1.6 Withdrawal of Proposal**

1.6.1 If not withdrawn before the proposal opening date and except as otherwise provided in the Procurement Code, no proposer may withdraw its proposal within sixty (60) days after the actual date of the opening.

1.6.2 No Proposer will be deemed responsible if it has been debarred by New Mexico State University, if in the preceding twelve months it has failed to perform any contract, or if Proposer's bonding company has been required to complete the work of a contract for Proposers. At the direction of the University, the apparent successful Proposer may be required to provide any documentation necessary to show Proposer is in good standing and not subject to debarment.

### **2. COMPLETION OF PROPOSAL FORM**

2.1 All proposals must include the Proposal Form included in RFP. The Proposer shall record costs on lines provided on the Proposal Form both in written words and in figures. The Proposal Form must be signed and acknowledged by the Proposer.

2.2 In case of a difference in written words and figures on the Proposal Form, the amount stated in written words shall govern.

2.3 If the Proposer is a Corporation, the signer must be an officer of the Corporation. A copy of the corporate resolution authorizing the officer to sign for the Corporation may accompany the proposal or may be submitted at the time the contract is awarded.

### **3. BID BOND**

3.1 A Bid Bond payable to NMSU in an amount not less than 5% of the total bid submitted must accompany each proposal. This serves as a guarantee that, if awarded the RFP, the Proposer will enter into a contract with NMSU. This 5% Bid Bond must be in a form satisfactory to NMSU that is executed by a surety company authorized to do business in the State of New Mexico.

### **5. SUBCONTRACTORS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK**

5.1 The Proposer shall provide in their proposal a listing of subcontractors to be used on the project in conformance with the Subcontractors Fair Practice Act. The threshold for listing of Sub-Contractors shall be five thousand dollars (\$5,000) or ½ of 1% of the Architects /Engineers estimate of the total project costs not including alternates, whichever is greater. The Proposer shall list the following /information:

- The name and location of the place of business of each subcontractor who will perform work or labor or render service to the Proposer in or about the construction of the project in an amount in excess of the listing threshold; and

## Instructions to Offerors

- The nature of the work which will be done by each subcontractor. The Proposer shall list only one subcontractor for each category as defined by the proposer; and
- The type and classification of license with corresponding expiration date as issued by Construction Industries Division.

5.1.2 A proposal submitted by any Proposer which fails to comply with the provisions of this section is a non-responsive proposal and shall not be accepted.

5.1.3 In accordance with NMSA 13-4-36A (3) NMSU reserves the right to refuse to approve a subcontractor listed and may request substitution by the Contractor.

5.2 Listed subcontractors must be used to complete the project unless written prior approval is requested by the General Contractor and is granted by the Director of Central Purchasing and Risk Management, whose decision is final.

5.3 Relations between awarded Contractor and Subcontractors shall be in accordance with the Subcontractors Fair Practice Act - Substitution of Subcontractor, NMSA Section 13-4-36.

5.4 This act does not apply to work covering street lighting and traffic signals; construction, improvement or repair of streets or highways, including bridges; and underground utilities within easements including but not limited to water lines, sewer lines and storm sewer lines. NMSA 13-4-35.

5.5 A Subcontractor shall provide to the Contractor a performance and payment bond if the Subcontractor's work to be performed on the project is one hundred twenty five thousand dollars (\$125,000) or more. The Contractor shall furnish to the Owner copies of these bonds if requested by the owner.

## 6. WAGE RATES

6.1 Proposer should note that the New Mexico Department of Labor requires wage rates on any project that exceeds \$60,000 including all change orders issued after proposal award before taxes.

6.2 Public Works Minimum Wage Act Registration:

A Contractor or a subcontractor that submits a proposal valued at more than \$60,000.00 for a Public Works project that is subject to the Public Works Minimum Wage Act shall be registered with the Labor and Industrial Division of the Labor Department. All tiers of subcontractors are subject to this law. NMSU may reject a proposal from a contractor that does not have a proof of required registration for itself or its subcontractors. NMSA 13-4-13.1

6.3 The current New Mexico Department of Labor, Labor and Industrial Division, Public Works Bureau wage rates are included in the RFP.

### **7. INTERPRETATIONS**

7.1 No interpretation of the meaning of the plans, specifications or other proposal documents shall be made to any Proposer verbally. Every request for such interpretation should be in writing and to be given consideration must be received at least ten (10) days prior to the date fixed for the opening of proposals. Any and all such interpretations and any supplemental instructions shall be in the form of written addenda to the specifications which, if issued, shall be provided to all prospective Proposers, not later than five (5) days prior to the opening of proposals. Failure of any Proposer to receive any such addendum or interpretations shall not relieve such Proposer from any obligation under its proposal as submitted. All addenda so issued shall become part of the Contract Documents.

### **8. LAWS AND REGULATIONS**

8.1 The Proposer's attention is directed to the fact that all applicable state laws, ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the contract throughout.

### **9. OBLIGATION OF PROPOSER**

9.1 At the time of the opening of proposal, each Proposer shall be presumed to have inspected the site and to have read and to be thoroughly familiar with the plans and contract documents, including all addenda. The failure or omission of any Proposer to examine the site and any form, instrument, or document, shall in no way relieve any Proposer from obligation in respect of its proposal.

9.2 Contractor shall familiarize itself with the site, in order to anticipate unseen problems that may develop as the Work progresses. Failure to have visited the site before bidding shall in no way relieve the Contractor from furnishing any materials or performing any work required to complete the Project in accordance with the Contract Documents, without additional cost to the Regents.

### **10. TIMES FOR START AND COMPLETION OF CONSTRUCTION**

10.1 Unless a specific date is stated in the contract documents as the commencement of construction, Proposers must agree to commence work within ten (10) days of the date of receipt of the written notice to proceed. If requested on the Proposal Form the Proposer shall specify the number of project consecutive calendar days required for the completion of the project on the Proposal Form. Note that liquidated damages are included for late completion. Time for completion of this project is noted in RFP Schedule Section 1.2. The Contractor shall not begin



## **Instructions to Offerors**

until all contract documents are signed by both Regents and Contractor and Notice to Proceed has been issued to the Contractor.

### **11. STANDARD FORM OF AGREEMENT**

11.1 The Standard Form of Agreement hereinafter referred to as "Agreement", and all documents incorporated in that Agreement will be used in the award of this Request for Proposal. The successful Proposer shall execute this contract without changes with the exception of completion of any blanks that are required to be inserted as a result of the award of the proposal. Proposer's Bid Bond shall guarantee NMSU the proper execution of this agreement by the successful Proposer.

### **12. EQUAL EMPLOYMENT OPPORTUNITIES**

12.1 The Contractor and the subcontractor(s) working on contract(s) entered into subsequent to this RFP shall not discriminate against any employee or applicant for employment, to be employed in the performance of such contract, with respect to its hire, tenure, terms, conditions, or privileges of employment, because of age, color, disability, national origin, race, religion, gender, sexual orientation, or veteran status.

### **13. NEW MEXICO PUBLIC WORKS APPRENTICESHIP AND TRAINING ACT**

13.1 Proposers should inform themselves of the Public Works Apprenticeship and Training Act. Section B of that Act states in part: "Public works construction projects, except for street, highway, bridge, road, utility or maintenance contracts with employees who elect not to participate in training shall not be constructed unless an employer agrees to make contributions to approved apprentice and training programs in New Mexico in which the employer is a participant or to the public works bureau of the labor and industrial division of the labor department. Contributions shall be made in the same manner and in the same amount as apprentice and training contributions required pursuant to wage rate determinations made by the director."

### **14. NEW MEXICO WORKERS' COMPENSATION ACT**

14.1 Proposer agrees to inform themselves of the Workers' Compensation Act and to comply with state laws and rules pertaining to Workers' Compensation insurance coverage for its employees. If Contractor fails to comply with the Workers' Compensation Act and applicable rules when required to do so, a contract awarded as a result of this RFP may be cancelled effective immediately.

### **15. SUBMITTALS**

15.1 Submittals and Requirements for Prior Approval: Proposers who wish to obtain prior approval for the use of materials or products other than those specified may do so by the date specified in the RFP Schedule (Section 1.2.1). The request for prior approval for any material or

## **Instructions to Offerors**

products which is not already specified must be submitted in writing to the Architect/Engineer. Submittals for prior approval shall be rejected if they do not include sufficient information to demonstrate acceptability as specified. This request must be approved by the Architect/Engineer to be considered as an equal. The Architect/Engineer shall identify all approved materials or products in a written addendum. Prior approval of roofing materials shall not void the Roofing Warranty and Certification Submittal Requirement specified elsewhere in this RFP.

15.2 Proposers may submit a proposal (pre-award) that utilizes material or products other than those specified; however without obtaining prior approval as stated in section 15.2 the Proposer risks the disapproval of material or products as equal and rejection of the proposal.

### **16. Discussions with Offeror and Award**

16.1 The Procurement Code permits and NMSU reserve the right to negotiate and/or conduct discussions with any or all interested firms and/or to make an award of a contract without such negotiations and/or discussions based only on evaluation of the written proposals. NMSU reserves the right to contact and interview anyone connected with any past or present project with which the respondent has been associated.

### **17. Public Inspection**

17.1 After award, each proposal except those portions for which a company has made a written request for confidentiality, shall be open to public inspection. Companies wishing to designate information as proprietary/confidential shall mark as such the respective pages of their proposal with the designation "PROPRIETARY AND CONFIDENTIAL."

*(Rest of page intentionally blank)*

## Instructions to Offerors

### EVALUATION CRITERIA

Proposals must address each of the following criteria. Each proposal may be awarded points up to the numeric value listed. Points will be awarded in compliance with NMSA 13-1-21 for New Mexico In-State Resident Business and Resident Veteran Business. If proposal is Joint Venture, Offeror shall state in submitted proposal the percentage of work that will be performed by Resident Business and/or Resident Veteran Business. Please Note: A Proposer cannot be awarded both a resident preference and a resident veteran business preference. Proposers shall include in their proposal a copy of certificate issued by State of New Mexico Taxation & Revenue.

#### Federal Funds

If checked, this project utilizes federal funds and New Mexico In-State Resident and Resident Veteran Business preference points do not apply. Additionally, attached FAR forms are required.

	Possible Points	Points This RFP
<b>Financial Considerations</b> Score for this area shall be calculated by the following formula: Lowest Offer divided by other individual offers, multiplied by 50 = Score	50	
<b>Similar Project Experience</b> Provide detailed information on similar experience to this project as described within this RFP with emphasis on Higher Education and NMSU projects. List up to seven (7) completed projects and provide the following for each: <ul style="list-style-type: none"> <li>• Overview/Description of completed project</li> <li>• Beginning cost (budget) and final cost of completed project</li> <li>• Number of change orders</li> <li>• Adherence to schedule – was project completed on time</li> </ul>	20	
<b>Composition of Project Team</b> Include resumes of key personnel that will be assigned to this project and their roles and responsibilities. Provide number of years' experience, specialty in directly-related experience; previous overall experience; licensure, education and/or equivalent; length of time working together; etc.	20	
<b>Compliance with Regulatory Agencies</b> Submit Compliance with Regulatory Form included in this RFP	10	
<b>Total Possible Points</b>	<b>100</b>	
<b>New Mexico Resident Business Preference:</b> Five percent of the total possible points to a resident business. Offeror shall include a copy of their In-State Certificate issued by State of New Mexico Taxation & Revenue Department.	5	
<b>Veteran New Mexico Resident Business Preference :</b> Ten, eight, or seven percent of the total possible points to a resident veteran business. To qualify an Offeror shall include a copy of their Resident Veteran Certificate issued by State of New Mexico Taxation & Revenue Department.	10	

## Instructions to Offerors

<ul style="list-style-type: none"> <li>• 10 points for Resident Veteran Business/Contractor with annual revenues of \$1 million or less as verified by State of NM Tax &amp; Revenue.</li> <li>• 8 points for Resident Veteran Business/Contractor with annual revenues of more than \$1 million but less than \$5 million as verified by State of NM Tax &amp; Revenue.</li> <li>• 7 points for Resident Veteran Business/Contractor with annual revenues of revenues \$5 million or more as verified by State of NM Tax &amp; Revenue</li> </ul>		
<b>Total Possible Points and Preference Points</b>		

### Notice/Proposers Checklist

To preclude possible errors and/or misinterpretations, Proposers attention is called to the following requirements for this Proposal. This list is not meant to be all-inclusive. Proposer should be familiar with all of the proposal documents. Failure of proposers to submit a complete proposal in accordance with all instructions provided is cause for NMSU to reject proposal.

**Proposal Form: (Complete the following):**

1. Name of Company on first page and on top of each page of Proposal Form.
2. Resident Contractor Preference Number (In-state Certification No.) on Proposal Form and a copy of certificate.
3. Resident Veteran Contractor Preference Number (In-state Certification No.) on Proposal Form and a copy of certificate.
4. Authorized signature with name typed or printed on Proposal Form.
5. Corporate Resolution (if Corporation)
6. New Mexico Contractors License Number on Proposal Form
7. Minimum Wage Act Registration Number (if Applicable) on Proposal Form
8. Proposal amount written and enumerated in ink legibly or typewritten.
9. Any corrections to proposal amount must be initialed and submitted before due date.
10. Acknowledge addenda.

**SUBMIT TOGETHER WITH PROPOSAL FORM**

1. List of Similar Work Experience

## Instructions to Offerors

2. Information on Project Team Composition
3. List of subcontractors as required by Subcontractors Fair Practice Act.
4. Compliance with Regulatory Agencies Form
5. Bid Bond
6. Certificate of Debarment & Suspension
7. Non-Collusion Affidavit

*(Rest of page intentionally blank)*

# Proposal Form

To: Director of Central Purchasing & Risk Management Administration Office  
New Mexico State University  
Las Cruces, NM 88003

Re: RFP# \_\_\_\_\_

Proposal of \_\_\_\_\_ (hereinafter called Proposer) a:

Corporation  Partnership  or Individual

The Proposer in compliance with RFP mentioned above having examined the proposal documents and the site of the proposed work and being familiar with all the conditions surrounding the construction of the proposed project including the availability of materials, equipment and labor, hereby proposes to furnish all materials, equipment, labor and supplies and to complete the work at the prices stated below. These prices, excluding New Mexico Gross Receipts Taxes, are to cover all expenses incurred in performing the Work as required in the RFP proposal and as outlined in the contract documents.

The Proposer, if awarded the contract, agrees to commence work within ten (10) calendar days of the date of Notice of Proceed, and complete all work in all areas resulting in substantial completion of the project according to these specifications and drawings within time of completion as stated in RFP Schedule Section 1.2. Though not to be the only remedy, Liquidated Damages may be assessed at rate stated in RFP Schedule Section 1.2 per day for days beyond contract time.

An award shall be made pursuant to the evaluation criteria in the Instruction to Proposers. The University reserves the right to accept or reject any all proposals, based entirely on its own judgment as to which are in the best interest of the University and/or within available funds.

By signing this form, proposers acknowledge receipt of the following addendum/addenda: \_\_\_\_\_

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Phone*

\_\_\_\_\_  
*E-Mail*

\_\_\_\_\_  
*NM Contractor's License Number*

\_\_\_\_\_  
*Expiration Date*

\_\_\_\_\_  
*Resident Contracts Certification Number*

\_\_\_\_\_  
*Resident Veteran Contractors Certification Number*

\_\_\_\_\_  
*Applicable Minimum Wage Act Registration Number*

\_\_\_\_\_  
*License Classification (s)*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Date*

# Proposal Forms

For work, described in the specifications mentioned above, Proposer agrees to perform all work for the following sums of:

**Base Bid** (*Lump Sum or Line items*): \_\_\_\_\_ \$ \_\_\_\_\_

**Base Bid Amount (Excluding NMGR)** written out

Item #	Description	Cost ( <i>Lump Sum</i> )
1		\$

**Alternate-** (*If Applicable*)

Alt #	Description	Cost ( <i>Lump Sum</i> )
1		\$

\$ \_\_\_\_\_

**Additive Alternate #1 Amount (Excluding NMGR)** written out

Alt #	Description	Cost ( <i>Lump Sum</i> )
2		\$

\$ \_\_\_\_\_

**Additive Alternate #2 Amount (Excluding NMGR)** written out

Alt #	Description	Cost ( <i>Lump Sum</i> )
3		\$

\$ \_\_\_\_\_

**Additive Alternate #3 Amount (Excluding NMGR)** written out

Alt #	Description	Cost ( <i>Lump Sum</i> )
4		\$

\$ \_\_\_\_\_

**Additive Alternate #4 Amount (Excluding NMGR)** written out

Alt #	Description	Cost ( <i>Lump Sum</i> )
5		\$

\$ \_\_\_\_\_

**Additive Alternate #5 Amount (Excluding NMGR)** written out

**Subcontractors List**

Please list each Subcontractor for each category or trade necessary to complete the work whose bid amount exceed reporting threshold as described in Section 1.2 (RFP Schedule & Information) Please indicate if Subcontractor is for base bid or alternate (*If alternate, please indicate alternate number*).

Failure to conform to this requirement shall disqualify Proposer.

*Note: Add Additional sheets if needed to list all subcontractors.*

<b>Subcontractor</b>	<b>Address</b>	<b>Trade</b>	<b>Workforce Solutions Department Registration No</b>	<b>Base Bid or Alternate</b>



**Compliance with Regulatory Agencies**

*Please fill out this form to document and submit your response to the evaluation criteria listed in the Instruction to Proposers.*

- 1. Has your firm during the past five (5) years been free of any determination by a court or administrative agency of laws and/or regulations pertaining to the payment of prevailing wages or employment of apprentices on public works projects?  Yes  No

If "no" please explain:

- 2. Has your firm during the past five (5) years been free of any determinations by a court or administrative agency of violations or notice of violation pertaining to the Occupational Safety & Health Administration (OSHA), Department of Transportation (DOT), or Environmental Protection Agency (EPA) requirement on a job site?  Yes  No

If "no" please explain:

- 3. Has your firm during the past five (5) years been free of any determinations by a court or administrative agency of violations pertaining to Construction Industry Division requirements pertaining to projects?  Yes  No

If "no" please explain:

- 4. Is your firm free of any Subcontractor Fair Practices Act violations for the past five (5) years?  Yes  No

If "no" please explain:

- 5. Has your firm been free of violation of any Federal, State or Local Agency requirement on a jobsite that has resulted in a fine because violations?  Yes  No

If "no" please explain:

The undersigned hereby state under penalty of perjury that the above statements are true and accurate.

\_\_\_\_\_  
*Name*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Signature*

**Certification Regarding  
Debarment, Suspension, and Other Responsibility Matters**

---

The prospective participant certifies to the best of its knowledge and belief that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency.
2. Have not within a three year period preceding this proposal been convicted of all has a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal of State Antitrust statues or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.
3. Are not presently indicted for otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses in enumerated in paragraph (2) of this certification and
4. Have not within a three year period preceding this proposal had one or more public transaction ( Federal, State, or local) terminated for cause or default.

I understand that a false statement of this certification may be ground for rejection of this proposal or termination of the award. Under 18USC Sec. 101, a false statement may result in a fine up to \$10,000 or imprisonment for up to 5 years, or both.

---

Typed Name & Title of Authorized Representative

---

Signature of Authorized Representative Date

**NON-COLLUSSION AFFIDAVIT**

State of \_\_\_\_\_ )

County of \_\_\_\_\_ )

\_\_\_\_\_, being first duly sworn, deposes and says

that he/she is (title) \_\_\_\_\_

of (organization) \_\_\_\_\_

submits herewith to New Mexico State University, a proposal and that all statement of fact in such proposal are true.

That said proposal was not made in the interest of or on behalf of any undisclosed person, partnership, company, association, organization or corporation;

That said Offeror has not directly or indirectly by agreement, communication or conference with anyone attempted to induce action prejudicial to the interest of New Mexico State University, or any Offeror of anyone else interested in the proposed contract and further,

That prior to the public opening and reading of proposal, said Offeror:

1. Did not directly or indirectly induce or solicit anyone else to submit a false or sham proposal
2. Did not directly or indirectly collude, conspire, connive or agree with anyone else that said Offeror or anyone else would submit a false or sham proposal or that anyone should refrain from bidding or withdraw his proposals;
3. Did not in any manner directly or indirectly, seek by agreement, communication or conference with anyone to raise or fix the proposal price or fix the proposal price of said Offeror or of anyone else or to raise or fix any overhead, profit or cost element of their proposal price or of that of anyone else;
4. Did not directly or indirectly, submit his proposed price or any breakdown thereof, or the contest thereof, or divulge information or data relative thereto, to any corporation, partnership, company, association organization, bid depository or to any member or agent thereof, or to any individual of group of individuals, except that New Mexico State University, or to any person or persons who have a partnership or other financial interest with said Offeror in his business.

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

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

**Sample Agreement**

**AGREEMENT  
Between  
REGENTS OF NEW MEXICO STATE UNIVERSITY  
And  
CONTRACTOR**

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

Owner – Regents	Contractor
Regents of New Mexico State University	Name of Contractor
PO Box 30001	Address
Las Cruces, NM 88003	City, State, Zip
	License Number

The Project is: .

The Regents Representative /Project Manager is:

The Project Architect is: .

The Regents and the Contractor agree as set forth below.

**1. THE CONTRACT DOCUMENTS**

1.1 The term "Contract Documents" shall consist of the following and are as fully a part of the Contract as if attached to this Agreement or repeated herein.

- Agreement between Regents and Contractor
- Request for Proposal Documents
- Completed Proposal Form
- Performance Bond
- Labor and Material Payment Bond
- General Conditions and Supplementary Conditions
- Drawings
- Specifications
- State and Federal wage rate determinations as applicable
- All issued Addenda
- Notice to Proceed
- Authorized Change Orders.

## Sample Agreement

### 2. THE WORK

2.1 This contract shall include the Work as required by the Contract Documents.

### 3. TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

3.1 The Work to be performed under this Agreement shall commence within ten (10) days of the date of the Notice to Proceed and, subject to authorized adjustments, Substantial Completion shall be achieved not later than \_\_\_\_\_, 20\_\_\_\_, which is \_\_\_\_\_ calendar days from date of Notice to Proceed.

The Parties acknowledge that it is difficult to determine actual damages, should Contractor fail to perform by the date(s) specified in the Contract Documents, and further agree that the amount specified for Liquidated Damages is not unreasonable, nor punitive in nature. Liquidated Damages may be assessed to the Contractor at the Regents' discretion at (\$ \_\_\_\_\_) per day, for days beyond time agreed upon for Substantial Completion.

### 4. CONTRACT SUM

4.1 The Regents shall pay the Contractor for the performance of the Work, subject to additions and deductions by Change Order as provided in the Contract Documents, including all applicable New Mexico Gross Receipts Tax (NMGRT). The Contract Sum is determined as follows:

Base Bid:	\$
Alternative (s) #_____ (if applicable)	\$
NMGRT on above amount:	\$
 Total Contract Amount:	 \$

### 5. PROGRESS PAYMENTS

5.1 Progress payments shall be in accordance with General Conditions Section 9.5

### 6. FINAL PAYMENT

6.1 Final payment shall be made in accordance with General Conditions Section 9.8

### 7. MEDIATION

7.1 In the event that a dispute arises with respect to any of the provisions contained in this contract (other than Termination as set forth in General Conditions Section 14) or any other matter affecting this contractual relationship between the University and the Contractor, the parties agree that prior to filing

## Sample Agreement

any court action to enforce the contract or rights under the contract, they will use the services of a mediator. The mediator shall either be certified as a mediator or shall have experience of a mediator. The parties shall mutually agree upon the choice of mediator, In the event the parties have not agreed to a mediator within ten days of written notice to the other regarding the dispute, then a list of seven potential mediators will be obtained from a professional association and the parties shall use a striking process until a mediator is agreed upon. Each party shall be responsible for half of mediation costs.

### **8. NOTICES**

8.1 Should any contractual or technical questions arise throughout the contract period, notice shall be delivered by the Contractor as follows:

Contractual Questions:  
Regents of New Mexico State University  
Attn: Central Purchasing Office  
PO Box 30001  
Las Cruces, NM 88003

Technical Questions:  
Name:  
Address:  
City, State Zip:

### **9. CONDUCT ON UNIVERSITY PROPERTY AND WORK SITE:**

9.1 The Regents subscribe to the following established policies:  
A. Policy Statement Against Sexual Harassment  
B. New Mexico State University Smoking Policy  
C. Policy Statement on Equal Employment Opportunity/Affirmative Action.

Copies of these policy statements are available at the Business Office, the Central Purchasing and Risk Management Administration Office, and the Office of the University Architect. The Contractor shall require all persons in its employ, directly or by subcontract, and all representatives of suppliers to comply with these policies while on university property and construction sites. Nothing contained herein shall be interpreted to prevent the Regents from modifying such policies at any time. In the event of any such modification(s) Contractor shall be provided copies of the modified policy. Failure to provide such copy shall not be deemed a breach of this Agreement.

### **10. REFERENCE STANDARDS:**

10.1 In the event of contradiction, the Contract Documents shall take precedence over the requirements of industry or other standards referenced in the Specifications and Drawings.

## Sample Agreement

10.2 Provisions of reference standard specifications shall not be construed or effective to change the duties and responsibilities of the Regents, the Contractor, or the Architect from those set forth in the General and Supplementary Conditions.

### 11. RECORD DOCUMENTS:

11.1 Nothing in the General Conditions shall be construed to limit the requirements for Record Documents.

11.2 It is the Regents' intent that Record Documents shall provide very detailed information regarding the Work of this contract as well as the existing site conditions encountered.

11.3 Except as otherwise specified, the Contractor shall be required to provide accurate Record Documents for each portion of the Work as part of its bid for that portion of the Work, without additional cost to the Regents.

### 12. LICENSED BY THE STATE OF NEW MEXICO

12.1 All Contractors and Sub-contractors are required to be licensed by the State of New Mexico and shall continue to be so licensed for the term of the Contract.

The rights and obligations provided for in the agreement shall become effective and binding upon the signature of both parties.

REGENTS OF  
NEW MEXICO STATE UNIVERSITY

CONTRACTOR:

BY:

BY:

Signature

Signature

**REGENTS  
NEW MEXICO STATE UNIVERSITY  
GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION**

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**MARCH 2013 EDITION  
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## General Conditions

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### 1. GENERAL PROVISIONS

## General Conditions

### 1.1 DEFINITIONS

1.1.1 The term "Contract Documents" shall mean the Agreement, General and Supplementary Conditions, completed Proposal Form, Drawings, Specifications, and authorized Addenda and Change Orders.

1.1.2 The term "Proposal Documents" shall mean all of the Contract Documents, Advertisement for Proposals, Instructions to Proposers, and other information provided for the purpose of preparation of proposals for performance of the Work.

1.1.3 The term "Contract" shall mean this Contract, entered into by virtue of these complete Proposal Documents. The term "contract(s)" shall mean any other contract(s), separate and distinct from this Contract.

1.1.3.1 The term "Contract Sum" shall mean the dollar amount stated in the Agreement, or that amount as modified by Change Order, including the Base Proposal, awarded Proposal Lots, Additive Alternates, and applicable Unit Prices as stated in the Proposal Form.

1.1.4 The term "Addendum" or "Addenda" shall mean a change or changes to the Proposal Requirements and Contract Documents issued by the Architect prior to proposal due date.

1.1.5 The term "Change Order" shall mean a written order from the Architect to the Contractor issued after execution of the Contract authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time, and, which when fully executed, shall be signed by the Contractor, the Architect, and the Regents, or their respective representatives.

1.1.6 "The Work" comprises the completed construction required by the Contract Documents and includes all labor necessary to produce such construction, and all materials and equipment incorporated or to be incorporated in such construction.

1.1.7 "The Project" is the total construction of which the Work performed under the Contract Documents may be the whole or a part.

1.1.8 "Notice to Proceed" shall mean written notice to the Contractor from the Regents' representative(s) to begin performance of the Work required by the Contract Documents.

1.1.9 Unless otherwise provided, the "Contract Time" is the period of time allotted in the Contract Documents from date of Notice to Proceed to Substantial Completion of the Work, including authorized adjustments thereto.

1.1.10 The actual date of "Commencement" of the Work shall not be later than ten (10) days after the date of receipt of Notice to Proceed.

## General Conditions

1.1.11 The actual date of "Substantial Completion" of the Work or designated portion thereof is the date certified in writing by the Architect when construction is sufficiently complete, in accordance with the Contract Documents, so the Regents can occupy or utilize the Work or designated portion thereof for the use for which it is intended.

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

1.1.13 The term "New Mexico Gross Receipts Tax" or "NMGR" as used in the Contract Documents, in Applications for Payment, and in Certificates for Payment shall be defined as including all applicable Local Options Taxes.

1.1.14 "Drawings" and "drawings" shall be any plans, details, sections, elevations, and other drawings under title of this project.

1.1.15 "Specifications" shall mean the written, qualitative requirements for products, materials, and workmanship, as well as written procedural and administrative requirements of the Work. All Sections of Divisions 1 through, and including Division 49, are Specifications.

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

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

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

1.1.19 The terms "approved" and "directed" shall mean as approved and directed by the Architect.

1.1.20 "Best", "good" and "proper" shall signify the best possible and most workmanlike manner and using the best materials known to the trade.

1.1.21 "Furnish" shall mean to supply and deliver to the project site, ready for installation. "Install" shall mean to place in position, ready for service or use. "Provide" shall mean to furnish and install, complete and ready for intended use.

## **General Conditions**

### **1.2 INCORPORATION OF DOCUMENT**

1.2.1 The Supplementary Conditions, Division 1 - General Requirements, Notice to Proceed, and the Technical Specification Sections of Divisions 2 through 49, are incorporated into these General Conditions.

1.2.2 The General Conditions and Supplementary Conditions of the Contract, and Division 1 Sections apply to all other Divisions and Sections of the Specifications.

1.2.3 In the event of contradiction, these General Conditions shall take precedence over requirements of the Specifications and Drawings.

1.2.4 Titles to divisions and paragraphs in the specifications are made for convenience only, and are not to be taken as a correct separation of units of labor, materials and subcontracts. No responsibility is assumed by the Regents or Architect for the omission or duplication made by the Contractor or sub-contractors.

1.2.5 The Drawings and Specifications are complementary each to the other and what is called for by one shall be as binding as if called for by both. Where conflicting, Specifications shall take precedence over Drawings and large scale Drawings and Details shall take precedence over small scale Drawings.

1.2.6 If any error, omission or inconsistency in the Drawings or Specifications is discovered, it must be brought to the attention of the Project Architect immediately for interpretation. In general, in case of any discrepancy, the better quality and/or larger quantity shall be required.

### **1.3 SITE VISIT**

1.3.1 The site for the subject construction is defined in Request for Proposal Instruction to Proposers. Contractor shall hold the Regents harmless from damage from trespassing on property of others. There shall be no dumping of construction debris or other material on Regents property. Any material requiring special handling by Federal or State law shall be removed in compliance with the requirements of those laws. All such material shall be removed from the site by the Contractor.

1.3.2 By executing the Contract, the Contractor represents that the site has been visited, the Contractor is familiar with the local conditions under which the Work is to be performed, and the Contractor has correlated observations with the requirements of the Contract Documents.

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### 2. ARCHITECT

#### 2.1 DEFINITIONS

2.1.1 The "University Architect" is the person lawfully licensed to practice architecture in New Mexico and employed by the Regents as its immediate representative for planning, design, construction and related projects. The University Architect may also function as the Project Architect for in-house and other projects.

2.1.2 The "Project Architect" is a person lawfully licensed to practice architecture in New Mexico, or an entity lawfully practicing architecture in New Mexico who is employed by the Regents as its representative for the particular Project identified in the Contract Documents.

2.1.3 When used alone and without further modification, the term "Architect" shall mean the Project Architect, or the Project Architect's designated representative. Frequently in the technical specifications the Architect is referred to as the Engineer. In those instances, the term Engineer shall mean the Project Architect or his representative. This reference to Engineer is for managing the Project only.

2.1.4 In case of the termination of the employment of the Project Architect, the Regents, in conjunction with the University Architect will appoint a Project Architect whose status under the Contract Documents shall be that of the former Project Architect. The University Architect may be designated as the Project Architect.

#### 2.2 ADMINISTRATION OF THE CONTRACT

2.2.1 The Architect will provide administration of the Contract as hereinafter described.

2.2.2 The Architect will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work.

2.2.3 The Architect shall at all times have access to the Work wherever it is in preparation and progress. The Contractor shall provide facilities for such access so the Architect may perform the functions of the Contract Documents.

2.2.4 Based on the Architect's observations and an evaluation of the Contractor's Applications for Payment, the Architect will make recommendations to the Regents' Representative for Contract Management (herein also referred to as RRCM) for determination of the amounts owing to the Contractor. Without abrogating any of the duties and responsibilities assigned by law to the Architect of Record, the RRCM will make final determinations and will issue Certificates for Payment in such determined amounts.

2.2.5 The Architect will be the interpreter of the construction requirements.

## **General Conditions**

2.2.6 The Architect will have authority to reject work which does not conform to the Contract Documents. The Architect will have authority to require special inspecting and testing of the work.

2.2.7 The Architect will review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for conformance with the design concept of the Work and with the information given in the Contract Documents. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

2.2.8 The Architect will prepare Change Orders in accordance with Regents policy, and as provided elsewhere in this Document.

2.2.9 The Architect will conduct inspections to determine the dates of Substantial Completion and final completion, will receive and forward to the University Architect for the Regents' review written warranties and related documents required by the Contract and assembled by the Contractor, and will advise the Regents' Representative for Contract Management regarding the issuance of a final Certificate for Payment upon compliance with the requirements as specified elsewhere in this document.

### **3. REGENTS**

#### **3.1 DEFINITION**

3.1.1 The term "Regents" means the Regents of New Mexico State University, a body corporate and public, and it is the Owner of the Project. The term "Owner", as used in the technical specifications sections of the Contract Documents refers to Regents.

#### **3.2 INFORMATION AND SERVICES REQUIRED OF THE REGENTS**

3.2.1 Information or services under the Regents' control shall be furnished by the Regents with reasonable promptness to avoid delay in the orderly progress of the Work.

3.2.2 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, all copies of Drawings and Specifications reasonably necessary for the execution of the Work.

3.2.3 Normally, the Regents' may forward instructions to the Contractor through the Architect.

## **General Conditions**

### **3.4 REGENTS' RIGHT TO STOP THE WORK**

3.4.1 If the Contractor fails to correct defective Work or, if in the opinion of the Regents' representative fails to carry out the Work in accordance with the Contract Documents, the Regents may by written order direct the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated. This right of the Regents to stop the Work shall not give rise to any duty on the part of the Regents to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required elsewhere in these Conditions.

### **3.5 REGENTS' RIGHT TO CARRY OUT THE WORK**

3.5.1 If the Contractor defaults or fails, in the opinion of the Regents' representative, to carry out the Work in accordance with the Contract Documents (within seven (7) days after written notice from the Regents' representative) to commence and continue correction of such default or neglect with diligence and promptness; the Regents may require Contractor to make good the cost of correcting the deficiencies. Seven (7) days following additional written notice to the Contractor and without prejudice to any other remedy, the Regents may require compensation for the Architect's additional services made necessary by such default, neglect or failure. If the payments then or thereafter due the Contractor are not sufficient to cover such compensation, the Contractor shall promptly pay the difference to the Regents.

## **4. CONTRACTOR**

### **4.1 DEFINITION**

4.1.1 The Contractor is the Proposer whose proposal is accepted by Regents and with whom a written contract is entered. The term "Contractor" means the Contractor or its authorized representative.

### **4.2 REVIEW OF CONTRACT DOCUMENTS**

4.2.1 The Contractor shall carefully study and compare the Contract Documents and shall at once report to the Architect any error, inconsistency or omission it may discover. The Contractor shall not be liable to the Regents or the Architect for any damage resulting from any such errors, inconsistencies or omissions in the Contract Documents. The Contractor shall perform no work outside the scope of the Contract Documents.

### **4.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

4.3.1 The Contractor shall supervise and direct the Work, using its best skill and attention. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract.



## **General Conditions**

4.3.2 The Contractor shall be responsible to the Regents for the acts and omissions of its employees, Subcontractors and their agents and employees, and other persons performing any of the Work under a contract with the Contractor or with a Subcontractor or supplier.

4.3.3 The Contractor shall at all times enforce strict discipline and good order among the employees. Any employee shall be skilled in the task assigned.

4.3.4 Unless otherwise agreed between the Regents and Contractor in writing, Contractor is ultimately responsible for the performance of the Work.

### **4.4 LABOR AND MATERIALS**

4.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

### **4.5 WARRANTY, GUARANTEE, WORKMANSHIP, MATERIALS**

4.5.1 All Work shall be warranted and guaranteed against faulty materials and workmanship for a period of not less than one year from date of Substantial Completion of the whole Work by the Prime Contractor. Work by sub-contractors substantially completed before Substantial Completion by the Prime Contractor shall carry additional warranties through Substantial Completion by the Prime Contractor. All suppliers and sub-contractors shall be required by their respective contractors to provide this warranty and guarantee to the Regents.

4.5.2 Equipment shall bear the manufacturer's standard warranty in addition to Contractor's one-year materials guarantee and workmanship warranty.

4.5.3 Unless specified for a longer time period, roofing shall bear not less than the manufacturer's ten (10) year no-dollar-limit warranty in addition to Contractor's materials guarantee and workmanship warranty. Contractor or his listed roofing Subcontractor shall be approved by the roofing product or system manufacturing company for application of their product.

4.5.4. Unless specified for a longer time period, carpet shall bear not less than the manufacturer's ten (10) year warranty in addition to Contractor's materials guarantee and workmanship warranty.

4.5.5 Workmanship shall conform to industry standards and shall be executed by experienced, skilled and competent craftsmen. Materials shall be best grade, new and/or as specified. Upon acceptance of the project, all brochures, manuals, and operating procedures of equipment shall be turned over to the Regents.

4.5.6 In the event of contradiction concerning warranties and guarantees, these General Conditions shall take precedence over requirements of the Specifications and Drawings. Warranties and

## General Conditions

guarantee requirements in the technical specifications for specific items shall apply only to the items of those specifications.

### 4.6 STANDARD, EQUALS, SUBSTITUTES, SUBMITTALS

4.6.1 Materials and equipment specified by manufacturer, name or number, shall be considered as establishing standards for Work. No substitute materials or equipment shall be used except by prior approval of the Architect. Proposed substitute materials and/or equipment shall be equal in size, grade and quality, and the Architect shall be the only judge of the suitability for use in the Work.

4.6.2 Unless otherwise specified, after award of the Contract and Notice to Proceed, Contractor shall make submittals of Product Data and Samples.

4.6.3 When a trade name is specified it shall be standard. The Contractor shall clearly describe the product for which approval is requested, including all data necessary to demonstrate acceptability.

4.6.4 The Regents will not bind the Architect to consider requests for approval of any material, apparatus or appliance after the expiration of 45 days after notification to begin work if in the opinion of the Regents/Architect such request would cause delay due to either (1) time necessary to investigate and study requested substitutions or (2) time necessary to order materials/equipment.

4.6.5 The Contractor shall review, approve and submit, with reasonable promptness and in such sequence as to cause no delay in the Work or in the work of the Regents or any separate contractor, all Shop Drawings, Product Data and Samples required by the Contract Documents.

4.6.6 By approving and submitting suppliers' and Subcontractors' Shop Drawings, Product Data and Samples, the Contractor has verified that such submittals comply with the requirements of the Contract Documents.

4.6.7 The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data or samples as provided elsewhere in this Document unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submission and the Architect has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for submission of Shop Drawings, Product Data or Samples for review by the Architect.

4.6.8 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data or Samples, to revisions other than those requested by the Architect on previous submittals.

4.6.9 No portion of the Work requiring submission of a Shop Drawing, Product Data or Sample shall be commenced until the submittal has been approved by the Architect. All such portions of the Work shall be in accordance with approved submittals.

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### 4.7 MANUFACTURER'S DIRECTIONS

4.7.1 All manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by manufacturer unless otherwise specified, or directed by the Architect.

### 4.8 DEFECTIVE PERFORMANCE

4.8.1 All Work not conforming to the Contract Documents, including substitutions not properly approved and authorized, may be considered defective. The Contractor shall furnish satisfactory evidence as to the kind and quality of workmanship, materials and equipment.

### 4.9 PERMITS, FEES AND NOTICES

4.9.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for all permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required at the time the proposal is awarded.

4.9.2 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work.

4.9.3 It is the responsibility of the Contractor to make certain that the Contract Documents are in accordance with applicable laws, statutes, building codes and regulations. If the Contractor believes any of the Contract Documents are at variance therewith in any respect, the Contractor shall promptly notify the University Architect, the Project Architect and the Director of Purchasing & Risk Management in writing, and any necessary changes shall be accomplished by appropriate modification. If the appropriate University representative determines that the Contract Documents are not at variance with applicable laws, statutes, building codes and regulations, and so directs; the Contractor shall continue performance of the Work in accordance with the Contract Documents.

4.9.4 If the Contractor performs any Work having reason to believe it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the University Architect, the Project Architect and the Director of Purchasing & Risk Management Administration, the Contractor shall assume full responsibility therefor and shall bear all costs attributable thereto.

4.9.5 Testing and sampling fees and responsibility for testing and sampling fees are covered elsewhere in this document.

### 4.10 SUPERINTENDENT

4.10.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the Work. The superintendent shall represent the Contractor and all communications given to the superintendent shall be as binding as

## General Conditions

if given to the Contractor. To the extent practicable Contractor shall maintain a written log of communication that the Contractor reasonably believes to be important.

### 4.11 PROGRESS SCHEDULE AND SCHEDULE OF VALUES

4.11.1 The Schedule of Values shall include a line item for Contract Closeout Requirements. Unless otherwise agreed to by the Regents' Representative for Contract Management and the Contractor, the Contract Closeout line item shall be calculated as 3 (three) percent of the total Contract Sum, excluding taxes. Additionally, the Regents shall have the right to add additional items to the schedule of values, subject to mutual agreement of the Regents and Contractor.

4.11.2 The Contractor, within ten (10) days of the date of Notice to Proceed, shall submit to the Architect a schedule of values allocated to the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule shall accompany the Contractor's Applications for Payment, current, with columns showing the following for each portion of the Work: 1) Scheduled Value; 2) Previous Applications; 3) Work in Place; 4) Stored Materials; 5) Total Stored and Completed to Date; 6) Percentage Completed; and 7) Balance to Finish.

4.11.2.1 The Schedule of Values shall include a line item for Project Closeout Requirements. Additionally, the Owner shall have the right to add additional items to the schedule of values, subject to mutual agreement of the Owner and Contractor.

### 4.12 DOCUMENTS AND SAMPLES AT THE SITE

4.12.1 The Contractor shall maintain at the site for the Regents one record copy of all Drawings, Specifications, Addenda, approved Shop Drawings Product Data and Samples, Change Orders and other Modifications, in good order and marked currently to record all changes made during construction. These records shall be made available to the Regents at all times during the term of the Work. A legible copy of as-builts or record documents shall be delivered to the Architect upon completion of the Work.

### 4.13 USE OF SITE

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

### 4.14 CUTTING AND PATCHING OF WORK

4.14.1 Unless otherwise specified, the Contractor shall be responsible for all cutting, fitting or patching that may be required to complete the Work or to make its several parts fit together properly.

## **General Conditions**

4.14.2 The Contractor shall not damage or endanger any portion of the Work or the work of the Regents or the work of any separate contractors by cutting, patching or otherwise altering any work, or by excavation. The Contractor shall not cut or otherwise alter the work of the Regents or any separate contractor except with the written consent of the Architect.

### **4.15 CLEANING UP**

4.15.1 The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by the operation. At completion of the work the Contractor shall have removed all of the waste materials and rubbish from and about the Project and all tools, construction equipment, machinery and surplus materials. Any waste materials and rubbish defined as hazardous or requiring specific disposal requirements under any law, ordinance, or regulation shall be disposed of in accordance with the applicable law, ordinance or regulation.

4.15.2 If the Contractor fails to clean up at the completion of the Work, the Regents may do so and the cost thereof shall be charged to the Contractor.

4.15.3 All clean, uncontaminated soils excavated and not reused at the site for the Work in accordance with the Contract Documents shall be transported and dumped by the Contractor at the Contractors expense.

### **4.16 UTILITIES LOCATION AND SHUTOFF**

4.16.1 Compliance shall be required with Chapter 62, Article 14 NMSA 1978, the New Mexico State Code regarding the location, excavation and protection of utilities. Responsibilities for the location of existing utilities, their protection, and repair of damaged utilities shall be assigned in accordance with Chapter 62, Article 14 NMSA 1978. The New Mexico One Call number for requests for location of utilities is 1-800-321-2357.

4.16.2 The Contractor shall submit to the Architect a written request to schedule construction activities which require interruption of any power, water, sewer, laboratory or natural gas, steam, chilled water, vacuum, compressed air, HVAC, security, fire alarms or suppression, or any other systems, or which will impede pedestrian traffic, emergency egress, or vehicle access of any kind.

4.16.3 Unless a longer time period for notification of request is required by the Specifications or Drawings, the Contractor shall submit his written request not less than twenty one (21) days before all intended utilities shutoffs. In no case shall the period for notification be less than twenty one (21) days.

4.16.4 The Contractor's request for approval of shutoffs or impediment of access shall state the nature of the task, the anticipated duration of the activity, and the impact the Work will have on adjacent facilities and users.

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4.16.5 Written approval of the Architect shall be received before commencement of any Work requiring shutoff of a utility, or impediment of any access.

4.16.6 Unless otherwise instructed in writing by the Architect, the actual closing and opening of valves and switches for shutoff and reconnection of utilities and services shall be performed by NMSU Office of Facilities and Services personnel only.

### **4.17 COMMUNICATIONS**

4.17.1 Except as provided in the Contract Documents, the Contractor shall forward all communications to the Regents through the Architect unless directed otherwise in writing by the Regents representative. The Contractor shall respond immediately to requests made of it by the Director of Purchasing & Risk Management Administration directly to the Director of Purchasing & Risk Management and by the University Architect to the University Architect.

### **4.18 ROYALTIES AND INFRINGEMENTS**

4.18.1 The Contractor shall pay all royalties and license fees. It shall defend all suits or claims for infringement of any intellectual property rights including patent, copyright, and trademark rights, and shall save the Regents harmless from loss on account thereof, except that the Regents shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified. However, if the Contractor has reason to believe that the design, process or product specified is an infringement of a patent; the Contractor shall be responsible for such loss unless the information is promptly given to the Architect and the Director of Purchasing & Risk Management.

### **4.19 INDEMNIFICATION**

4.19.1 The Contractor shall indemnify and hold harmless the Regents and its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Work. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in the Contract Documents.

## **5. SUBCONTRACTORS**

### **5.1 DEFINITION**

5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform any of the Work. The term Subcontractor does not include any contractor under a separate contract with Regents or its Subcontractors.

## **General Conditions**

5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform any of the Work. The term Subcontractor means a Sub-subcontractor or an authorized representative thereof.

### **5.2 SUBCONTRACTUAL RELATIONS**

5.2.1 All Subcontractors shall enter into a written agreement with the Contractor providing for the performance of the work to be performed. That agreement shall incorporate by reference this Contract and shall require the Subcontractor to comply with the Contract Documents to the extent of the work to be performed by that Subcontractor. Further, each Subcontractor shall incorporate the Contract Documents and the agreement with the Contractor into any sub-subcontract for performance of work on the project.

5.2.2 In the event the Contractor desires to perform in-house Work of a listed Subcontractor, add a Subcontractor, or replace a Subcontractor listed on the Proposal Form; Regents must first consent to the substitution in accordance with the Subcontractors Fair Practice Act. Any costs incurred by Regents because of Contractor's failure to comply with the Subcontractors Fair Practice Act shall be paid by Contractor, and may be deducted from any amount due it, together with reasonable attorney's fees.

5.2.3 Requests for consent of Regents to substitute Subcontractors, or to perform in-house Work of a Subcontractor, supplement a Subcontractor shall be submitted to Regents' designated representative, the Director of Purchasing and Risk Management Administration, New Mexico State University, Box 30001, MSC 3890, Las Cruces, New Mexico 88003-0001.

## **6. WORK BY REGENTS OR BY SEPARATE CONTRACTORS**

### **6.1 REGENTS RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS**

6.1.1 The Regents reserve the right to perform work related to the Project with its own forces, or to permit contractors of the bonding company to complete the Work, or to award separate contracts in connection with other portions of the Project or other work on the site under these or similar Conditions of the Contract. If the Contractor claims that delay or additional cost is involved because of such action by the Regents, such claim shall be made as provided elsewhere in the Contract Documents.

6.1.2 The Regents will provide for the coordination of the work of their own forces and of each separate contractor with the Work of the Contractor. The Contractor shall cooperate with the Regents.

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### 6.2 SEPARATE AND OTHER CONTRACTORS

6.2.1 This Contractor shall cooperate with all separate contractors with whom the Regents shall have contracted for on this entire Project.

### 6.3 MUTUAL RESPONSIBILITY

6.3.1 The Contractor shall afford the Regents and separate contractors reasonable space for the introduction and storage of their materials and equipment and the execution of their work, and shall connect and coordinate his Work with theirs as required by the Contract Documents. Under no circumstances shall the Regents be liable for off-site storage space.

6.3.2 If any part of the Contractor's Work depends upon proper execution or results of the work of the Regents or of any separate contractor, the Contractor shall, prior to proceeding with the Work, promptly report to the Architect any apparent discrepancies or defects in such other work that render it unsuitable. Failure of the Contractor so to report shall constitute an acceptance of the Regents or separate contractors' work as fit and proper to receive its Work, except as to defects which may subsequently become apparent in such work by others.

6.3.3 Any costs caused by defective or improperly scheduled work shall be borne by the party responsible therefor.

6.3.4 Should the Contractor cause damage to the work or property of the Regents or to other work on the site, the Contractor shall promptly remedy such damage.

6.3.5 Should the Contractor cause damage to the work or property of any separate contractor, the Contractor shall upon due notice promptly attempt to settle with such other contractor by agreement, or otherwise to resolve the dispute. If such separate contractor sues the Regents on account of any damage alleged to have been caused by the Contractor, the Regents shall notify the Contractor who shall defend such proceedings at the Contractor's expense, and if any judgment or award against the Regents arises therefrom, the Contractor shall pay or satisfy it and shall reimburse the Regents for all attorneys' fees and court costs which the Regents have incurred.



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### **6.4 REGENTS RIGHT TO CLEAN UP**

6.4.1 If a dispute arises between the Contractor and separate contractors as to their responsibility for cleaning up, the Regents may clean up and charge the cost thereof to the Contractors.

## **7. MISCELLANEOUS PROVISIONS**

### **7.1 GOVERNING LAW OF THE STATE OF NEW MEXICO**

7.1.1 The Contract shall be governed by the law of the State of New Mexico. All applicable state laws, ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the contract throughout, and they shall be deemed to be included in the contract the same as though herein written out in full.

7.1.2 The criminal laws of New Mexico prohibit bribes, gratuities and kickbacks (30-24-1 NMSA 1978; 30-24-2 NMSA 1978; 30-41-1 to 30-41-3 NMSA 1978).

7.1.3 New Mexico Retainage Act. Effective June 15, 2001, New Mexico adopted a "Retainage Act." Contractor and its subcontractors shall comply with all applicable provisions of the Retainage Act (including without limitation payment provisions therein) and shall ensure that their construction contracts comport with the provisions of the Act.

### **7.2 PAYMENT OF TAXES**

7.2.1 Contractor shall be required to pay applicable New Mexico Gross Receipts Tax on the total contract amount, including any increases in taxes which may become effective after the contract is executed.

7.2.2 Applicable New Mexico Gross Receipts Tax on the bid amount shall be shown as a separate amount on each billing or request for payment made under any Contract that may be made as a result of this proposal.

7.2.3 The Regents shall pay New Mexico Gross Receipts Tax on all amounts due the Contractor under this Contract, not to exceed the effective rate of the municipality or county in which the project is constructed. Regents shall pay the Contractor any additional New Mexico Gross Receipts Tax that may become effective in the municipality or county where the construction project is located after the contract has been entered into.

### **7.3 EQUAL EMPLOYMENT OPPORTUNITIES**

7.3.1 The Contractor(s) and Subcontractor(s) working on this contract shall not discriminate against any employee or applicant for employment, to be employed in the performance of such contract, with respect to hire, tenure, terms, conditions, or privileges of employment, or because of

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age, color, disability, national origin, race, religion, gender, sexual orientation, or veteran status. Breach of this covenant may be regarded as a breach of the contract.

### 7.4 SUCCESSORS AND ASSIGNS

7.4.1 The Contractor binds itself, its partners, successors, assigns and legal representatives to the Regents in respect to all covenants, agreements and obligations contained in the Contract Documents. The Contractor shall not assign the Contract in whole or in part. The Contractor shall not assign any moneys due or to become due to it hereunder. The Regents shall not give any effect to assignment of monies due except only as directed by a court having jurisdiction over the Regents.

### 7.5 WRITTEN NOTICE

7.5.1 Except regarding the Notice to Proceed, written notice shall be deemed to have been duly served if delivered in person to the Contractor or Contractor's representative or by prepaid mail to the firm or entity or to an officer of the corporation for whom it was intended. If sent by certified mail, it is not necessary that the Contractor receive notice once it has been mailed.

### 7.6 CLAIMS FOR DAMAGES

7.6.1 Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the other party or of any of its employees, agents or others for whose acts the Contractor is legally liable, claim shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage. If damage occurs to the Contractor, a notice to the Regents shall be given in the manner and within the time set forth in the New Mexico Tort Claims Act.

7.6.2 If the Contractor defaults or fails, in the opinion of the Regents' representative, to carry out the Work in accordance with the Contract Documents and within seven days after written notice from the Regents' representative fails to commence and continue correction of such default or neglect with diligence and promptness; the Regents may require Contractor to make good the cost of correcting the deficiencies. Seven days following additional written notice to the Contractor and without prejudice to any other remedy, the Regents may require compensation for the Architect's additional services made necessary by such default, neglect or failure. If the payments then or thereafter due the Contractor are not sufficient to cover such compensation, the Contractor shall promptly pay the difference to the Regents.

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### 7.7 RIGHTS AND REMEDIES

7.7.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

7.7.2 No action or failure to act by the Regents, Architect or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract. Any acquiescence, or breach thereunder, except as may be specifically agreed in writing, shall not constitute such a waiver.

7.7.3 In the event that the Contractor is in default or violation of this contract and the Regents employs attorneys or incurs other expenses that it may deem necessary to protect its rights under this Contract, the Contractor shall pay reasonable attorney's fees and expenses so incurred by Regents.

### 7.8. LIQUIDATED DAMAGES AS A RESULT OF DELAY BY CONTRACTOR

7.8.1 Though not to be the Regents' only remedy, Liquidated Damages in the amount specified in the Contract Documents and agreed to per day for failure to complete Work in time specified shall be due the Regents from the Contractor, as provided in the Contract Documents.

7.8.2 Parties to this Contract acknowledge that it is difficult to determine actual damages, should Contractor fail to perform by the date(s) specified in the Contract Documents. Parties further agree that the amount specified for Liquidated Damages is not unreasonable, nor punitive in nature.

### 7.9 TESTS

7.9.1 If the Contract Documents, the laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the Work to be inspected, tested or approved, the Contractor shall give the Architect timely notice of its readiness so the Architect may observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests, or approvals.

7.9.2 Notwithstanding the foregoing paragraph, if the Architect determines that any Work requires special inspection, testing, or approval, he will, upon written authorization from the Regents, instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give timely notice. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the Contract Documents, the Contractor shall bear all costs thereof including compensation for the Architect's additional services made necessary by such failure; otherwise the Regents shall bear such costs, and an appropriate Change Order shall be issued.

7.9.3 Required certificates of inspection, testing or approval shall be secured by the Contractor and promptly delivered by it to the Architect.

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7.9.4 The Architect may from time to time observe the inspections, tests or approvals required by the Contract Documents, where practicable, at the source of supply.

### **8. COMMENCEMENT AND PROGRESS**

#### **8.1 TIME**

8.1.1 All time limits stated in the Contract Documents are of the essence.

8.1.2 The Contractor shall be required to commence Work under this Contract not later than ten (10) days after the date of the Notice to Proceed. It shall carry the Work forward expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

#### **8.2 DELAYS AND EXTENSIONS OF TIME**

8.2.1 If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the Regents or the Architect, or by any employee of either, or by any separate contractor employed by the Regents, or by changes ordered in the Work, fire, unusual delay in transportation, adverse weather conditions not reasonably foreseen, unavoidable casualties, or any causes beyond the Contractor's control, or by delay authorized by the Regents or by any other cause which the Regents grant, may justify the delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Regents may determine.

8.2.2 Any claim for extension of time shall be made in writing to the Architect not more than twenty (20) days after the commencement of the delay; otherwise it shall be waived. The Contractor shall provide an estimate of the probable effect of such delay on the progress of the Work.

8.2.3 This Paragraph shall not exclude the recovery of damages for delay by either party under other provisions of the Contract Documents.

### **9. PAYMENTS AND COMPLETION**

#### **9.1 CONTRACT SUM**

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

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### 9.2 SCHEDULE OF VALUES

9.2.1 The Contractor, within ten (10) days of the date of Notice to Proceed, shall submit to the Architect a schedule of values allocated to the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule shall accompany the Contractor's Applications for Payment, current, with columns showing the following for each portion of the work: 1) Scheduled Value; 2) Previous Applications; 3) Work in Place; 4) Stored Materials; 5) Total Stored and Completed to Date; 6) Percentage Completed; and 7) Balance to Finish.

9.2.1.1 The Schedule of Values shall include a line item for Project Closeout Requirements. Additionally, the Owner shall have the right to add additional items to the schedule of values, subject to mutual agreement of the Owner and Contractor.

### 9.3 APPLICATIONS FOR PAYMENT

9.3.1 Within twenty-one (21) days of the date for each progress payment, the Contractor shall submit to the Architect and the Regents' Representative for Contract Management a correct, itemized, undisputed Request or Application for Payment, notarized, supported by the current schedule of values statement and such other data substantiating the Contractor's right to payment as the RRCM and the Architect may require, as provided elsewhere in the Contract Documents. Payment of any corrected, re-submitted, and approved Application for Payment shall be within twenty-one (21) days following the re-submittal date of the application.

9.3.2 The period of construction Work covered by each Application for Payment is the calendar month within which the Application for Payment is made. Application for Payment should be received on or before the twenty-fifth (25th) day of the construction period, and the progress payment will be made thereafter in accordance with the Retainage Act.

9.3.3 Unless otherwise provided in the Contract Documents, payments will be made for materials or equipment not incorporated in the Work but delivered and suitably stored at the site and, if approved in advance by the Regents, payments may similarly be made for materials or equipment suitably stored at some other location, upon compliance with the following requirements:

9.3.3.1 Payments for materials or equipment stored on the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Regents to establish the Regents title and access to such materials or equipment or otherwise protect the Regents interest.

9.3.3.2 Payments for materials or equipment stored off-site shall only be made to the Contractor if a Financing Statement and Security Agreement approved by the Regents is properly signed and filed. The Regents may impose other conditions it determines appropriate prior to payment.

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9.3.4 The Contractor shall warrant that title to all Work, materials and equipment covered by an application for payment will pass to the Regents either by incorporation in the construction or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances.

9.3.5 Contractor shall timely pay Subcontractors and laborers. The Regents, in its sole discretion, may issue joint checks to a governmental agency, the courts and/or Subcontractors and suppliers.

9.3.6 The Regents shall have no obligation to pay or to see to the payment of any monies to any individuals, laborers, Subcontractors, suppliers, or any entity entitled to payment, except the Contractor.

### **9.4 CERTIFICATES FOR PAYMENT**

9.4.1 The Architect will, after the receipt of the Contractor's Application for Payment, make recommendations to the Regents' Representative for Contract Management for determination of the amounts due the Contractor. The RRCM will either issue a Certificate for Payment, with a copy to the Contractor, for such amount as RRCM determines is properly due, or notify the Contractor in writing the reasons for withholding a Certificate.

9.4.2 The issuance of a Certificate for Payment will constitute a representation by the RRCM based on the Architect's observations at the site and the data comprising the application for payment, that the Work has progressed to the point indicated; that, to the best knowledge, information and belief of the Architect and the RRCM, the quality of the work is in accordance with the Contract Documents; and that the Contractor is entitled to payment in the amount certified. However, by the RRCM issuing a Certificate for Payment, the Architect shall not be deemed to represent that Architect has made exhaustive or continuous on-site inspections to check the quality or quantity of the Work or has reviewed the construction means, methods, techniques, sequences or procedures, or has made any examination to ascertain how or for what purpose the Contractor has used the monies previously paid on account of the Contract Sum.

### **9.5 PROGRESS PAYMENTS**

9.5.1 After the RRCM has issued a Certificate for Payment, and to the extent approved by the RRCM, the Contractor shall be paid as provided in the Contract Documents. Payments will be made not later than twenty-one (21) days following issuance of Certificate of Payment by the RRCM. In no case shall the Regents be bound to make payment before twenty-one (21) days following issuance of Certificate for Payment by the RRCM.

9.5.2 Where performance bonds of 50% of the contract price are provided, Contractor shall not be entitled to be paid more than 50% of the Work performed until Final Completion is achieved and any Schedule of Values shall provide that the final 50% of the contract price shall not be due and payable until such time final completion is achieved.

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9.5.3 Retainage shall not be withheld.

9.5.4 The Contractor shall promptly pay each Laborer, Subcontractor, and Supplier upon receipt of payment from the Regents. The Contractor shall, by an appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its Laborers, Sub-subcontractors, and Suppliers, in similar manner.

9.5.5 The Architect may, on request and at its discretion, furnish to any Subcontractor, if practicable, information regarding the percentages of completion or the amounts applied for by the Contractor and the action taken thereon by the Architect on account of Work done by such Subcontractor.

9.5.6 No Certificate for a progress payment, nor any progress payment, nor any partial or entire use or occupancy of the Project by the Regents, shall constitute an acceptance of any work not in accordance with Contract Documents.

### 9.6 PAYMENTS WITHHELD

9.6.1 The Regents' Representative for Contract Management may decline to certify payment and may withhold a Certificate in whole or in part, to the extent reasonably necessary to protect the Regents. If the opinion of the Architect and the RRCM renders them unable to make representations to the Regents as provided elsewhere in this Document, the Architect and RRCM will notify the Contractor. If the Contractor and the RRCM cannot agree on a revised amount, the RRCM will promptly request a Certificate for Payment from the Contractor for the amount for which the RRCM is able to make such representations to the Regents. Notwithstanding the foregoing, the Regents may make partial payment. The RRCM may also decline to certify payment or, because of subsequently discovered evidence or subsequent observations, with recommendations of the Architect he may nullify the whole or any part of any Certificate for Payment previously issued, to such extent as may be necessary in his opinion to protect the Regents from loss because of: 1) Defective Work not remedied; 2) Third party claims filed or reasonable evidence indicating probable filing of such claims; 3) Failure of the Contractor to make payments properly to Subcontractors 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 Regents or another contractor; 6) Reasonable evidence that the Work will not be completed within the Contract Time, 7) Persistent failure to carry out the Work in accordance with the Contract Documents; or 8) Any other condition or event which may cause loss to Regents.

### 9.7 SUBSTANTIAL COMPLETION

9.7.1 When the Contractor considers that the Work, or a designated portion thereof which is acceptable to the Regents, is substantially complete as defined elsewhere in this Document, the Contractor shall call for an inspection by the Architect.

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9.7.2 When the Architect on the basis of inspection determines that the Work or designated portion thereof is substantially complete, the Architect will prepare a punch list of items to be completed or corrected, and a Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Regents and the Contractor for their written acceptance of the responsibilities assigned to them. Substantial Completion is not effective until accepted in writing by the RRCM.

9.7.3 The Architect's omission of any items on such punch list shall not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

9.7.4 The Certificate of Substantial Completion shall establish the Date of Substantial Completion. The Architect shall state in writing the responsibilities of the Regents and the Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete or correct the items listed in the punch list.

9.7.5 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.

9.7.6 Upon substantial Completion of the Work or designated portion thereof and upon application by the Contractor and certification by the RRCM, the Regents shall make payment for such Work or portion thereof, as provided in the Contract Documents.

### 9.8 FINAL COMPLETION AND PAYMENT

9.8.1 The Contractor shall give written notice to the Architect when the Work is ready for final inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly advise the RRCM to issue a final Certificate for Payment.

9.8.2 The final payment shall not become due until the Contractor submits through the Architect (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work have been paid or otherwise satisfied, (2) and other data establishing payment or satisfaction of all such obligations, such as receipts, release and waivers of liens and release of surety arising out of the Contract, to the extent and in such form as may be designated by the Regents. If any Subcontractor refuses to furnish a release or waiver, the Contractor may furnish a bond satisfactory to the Regents to indemnify it against any such claims. If any such claim remains unsatisfied after all payments are made, the Contractor shall refund to the Regents all monies that the latter may be compelled to pay in discharging such claim including all costs and reasonable attorneys' fees.

9.8.3 The making of final payment shall constitute a waiver of all claims by the Regents except those arising from: 1) Unsettled claims; 2) Faulty or defective Work; 3) Failure of the Work to



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comply with the requirements of the Contract Documents, or 4) Terms of all warranties required by the Contract Documents.

9.8.4 The acceptance of final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the final application for Payment.

### **9.9 APPLICATION FOR FINAL PAYMENT**

9.9.1 The Contractor shall submit a final application for payment upon completion of the project including all punch list items and delivery of all warranties and closeout documents to the Regents, including: 1) release of liens; 2) warranties; 3) operation and maintenance manuals; 4) release of surety; and 5) as-built or Record Documents to the Architect of record. Interim applications shall be submitted in accordance with the Contract Documents. The application shall first be reviewed by the Architect and shall contain a certification of accuracy of the application.

9.9.2 The Contractor understands and agrees that the Regents from time to time shall require Contractor to furnish proof satisfactory to Regents that all who have provided labor, materials, and services for the Work have been paid. Regents shall be entitled to hold any payments applied for by Contractor until such proof has been presented to Regents.

## **10. PROTECTION OF PERSONS AND PROPERTY**

### **10.1 SAFETY PRECAUTIONS AND PROGRAMS**

10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work.

### **10.2 SAFETY OF PERSONS AND PROPERTY**

10.2.1 The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to: 1) All employees on the Work and all other persons who may be affected thereby; 2) All the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or anyone directly contracting with, or indirectly employed by it, and 3) Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

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

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

10.2.4 When the use of specialized lifting equipment (aerial lifts, cranes, scaffolds, platforms, etc.), is used and is necessary for the execution of work and could potentially affect or create a hazard to campus areas outside the constructions zone, the Contractor shall first notify the NMSU Environmental Health & Safety Officer.

10.2.5 When the use or storage of hazardous materials is necessary for the execution of the Work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel. When using or storing hazardous materials at jobsite, Contractor shall first notify the NMSU Environmental Health & Safety Officer. The Contractor shall then comply with all rules, requirements and regulations of that office with regard to the hazardous material.

10.2.6 The Contractor shall promptly remedy all damage or loss to any property caused in whole or in part by the Contractor, or anyone directly contracting with, or indirectly employed by it, or by anyone for whose acts the Contractor is responsible, except damage or loss attributable to the acts or omissions of the Regents or Architect or anyone directly or indirectly employed by either of them, which is not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to his obligations stated elsewhere under this Document.

10.2.7 The Contractor shall designate a responsible member of its organization at the site whose duty shall be the prevention of accidents.

10.2.8 The Contractor shall not load or permit any part of the Work to be loaded so as to endanger its safety. This shall include, but shall not necessarily be limited to the placement of roofing materials on roofs. All materials shall be distributed in such a manner so as to prevent overloading of the designed capacity of the supporting element(s).

### **10.3 SAFETY AND ENVIRONMENTAL REQUIREMENTS**

10.3.1 Contractor shall provide for the safety of workers, Regents' personnel and the public, and shall comply with the requirements of regulating agencies for public health and safety, the Occupational Safety and Health Administration's (OSHA) rules and regulations, and with all applicable safety laws and regulations.

10.3.2 Contractor shall provide temporary enclosures or barricades at excavations and the removable sites of hazardous materials.

## General Conditions

10.3.3 The Contractor and subcontractors shall abide by all applicable regulations of: 1) the Department of Transportation in accordance with 49 CFR 1-1200; and 2) the Environmental Protection Agency in accordance with 40 CFR 1-790. In the event the Contract Documents require transportation of hazardous materials, prior to such transportation the Contractor shall submit for approval to the NMSU Central Purchasing & Risk Management Office:

10.3.4. Proof of a Department of Transportation (DOT) Registration Number.

10.3.5. DOT Hazardous Material Transportation Security Plan, if applicable. Best summarized as needed when shipping placarded amounts of hazardous materials from NMSU.

10.3.6. Proof of contractor personnel receiving DOT Hazardous Material Transportation Training, and if applicable DOT Specific Security Plan Training.

10.3.7. If transporting hazardous waste, proof of an Environmental Protection Agency (EPA) Identification Number.

10.3.8 If Contractor encounters at the site material reasonably believed to contain asbestos containing material (ACM), presumed asbestos containing material (PACM), lead paint, or polychlorinated biphenyl (which has not been rendered harmless and is not scheduled during the performance of the Work to be rendered harmless) and it must be disturbed for performance of the Work, the Contractor shall immediately stop Work in the area affected and report the condition to the contract point-of-contact in writing. Work in the affected area shall not resume until the material is rendered harmless, and it is agreed in writing by the contract Architect or Owner and the Contractor (or as otherwise allowed by law) that Work in the area should resume.

10.3.9 Contractor shall not bring to the site, nor allow to be incorporated into the Work any material containing ACM, lead paint, or polychlorinated biphenyl (PCB). Any materials incorporated into the Work, and later found to contain ACM, lead paint, or PCB shall be removed at the expense of the Contractor, including all containment, air clearances and disposal, without any additional or incidental costs to the Regents.

10.3.10 Light fixtures, mechanical and electrical equipment supplied or installed under contract with the Regents shall not contain lead or mercury; if this is not practicable, light fixtures, mechanical and electrical equipment supplied or installed under contract with Regents shall contain the lowest amounts of lead or mercury as possible. For example, non-mercury thermostats should be installed. Light bulbs certified as "low mercury" i.e. with industry standard green tips/green labeling should be used whenever possible.

10.3.11 Fixtures, piping, solder and flux provided under this Contract and used in the installation of systems delivering water for human consumption shall be lead free. The term lead free is defined as pipe and fixtures which do not contain more than 8.0% lead and solder, and flux which does not contain more than 0.2% lead.

## **General Conditions**

10.3.12 Storm Water Control at Site: Amendment to Federal Water Pollution Act prohibits the discharge of any pollutants to navigable waters from a point source unless discharge is authorized by a National Pollutant Discharge Elimination System permit. Phase II of the NPDES storm water program covers small construction activities disturbing 1 to 5 acres. Contractor(s) awarded contract(s) pursuant to these Bidding Documents shall comply with all regulations and requirements of Phase II including as follows: 1) Submission of a Notice of Intent; 2) Development implementation and inspection of a Storm Water pollution prevention plan; 3) Applying and receiving a permit; and 4) Submission of Notice of Termination.

### **10.4 EMERGENCIES**

10.4.1 In any emergency affecting the safety of persons or property the Contractor shall act, at its discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided elsewhere for Changes in the Work.

## **11. BONDING AND INSURANCE**

### **11.1 CONTRACTOR'S PERFORMANCE AND MATERIAL AND PAYMENT BONDS**

11.1.1 The Contractor shall have in force during the duration of the Contract a Performance Bond(s) and Material and Payment Bond as set forth in the Contract Documents. Such Bonds shall cover base Contract amount and all additive Change Orders.

11.1.2 Simultaneously with his delivery of the executed Contract, the Contractor shall furnish a surety bond or bonds as security for faithful performance of this Contract and for the payment of all persons performing labor on the project under this Contract and furnishing materials in connection with the Contract. For the purposes of determining the amount of the bond, applicable taxes shall be included as part of the bond amount.

11.1.3 When the Contractor is awarded a construction Contract in excess of Twenty-Five Thousand Dollars (\$25,000), the following bonds shall be delivered to the Regents and shall become binding on the parties upon the execution of the Contract:

1. A Performance Bond satisfactory to the Regents, in an amount equal to One Hundred Percent (100%) of the price specified in the Contract; and
2. A Material and Payment Bond satisfactory to the Regents, equal to One Hundred Percent (100%) of the price specified in the Contract, for the protection of all persons supplying labor and material to the Contractor or its Subcontractors for the performance of the work provided for in the Contract.

## General Conditions

3. Bonds shall be issued to The Regents and executed by a surety company authorized to do business in the State of New Mexico and approved by the Superintendent of Insurance of the State of New Mexico.

### 11.2 POWER OF ATTORNEY

11.2.1 Attorney-in-fact, who signed bid bonds or Contract bonds, must file with each bond a certified and effectively dated copy of their power-of-attorney.

### 11.3 CONTRACTOR'S INSURANCE

11.3.1 The Contractor shall have in force during the life of the Contract insurance as required by the Contract Documents.

### 11.4 CONTRACTOR'S LIABILITY INSURANCE

11.4.1 The Contractor shall purchase and maintain statutory limits of Worker's Compensation, and Public Liability and Automobile Liability insurance as approved by the Regents at the time of signing of the contract. All Certifications of Insurance must be executed by an Insurance Company authorized to do business in the State of New Mexico. The Regents shall be included as a loss payee and/or additional insured.

11.4.2 Public Liability and Automobile Liability insurance shall include at least the following coverage:

Bodily injury, each person, excluding medical and medically-related expenses.....	\$400,000
Medical and medically-related expenses.....	\$300,000
Bodily injury, each occurrence, excluding medical and medically-related expenses.....	\$750,000
Medical and medically-related expenses.....	\$300,000
Property Damage, each occurrence.....	\$100,000

11.4.3 Contractor shall furnish Regents with certificates of insurance with the contract documents and prior to the commencement of work. The Regents shall have not less than ten (10) days cancellation notice.

11.4.4 The Regents shall acquire the Builder's Risk insurance on the construction project with a \$1,000 deductible clause. The coverage shall not extend to any personal contractor equipment or to theft of any supplies, building materials, building supplies, or building components. The Contractor and not the Regents shall be responsible for the first \$1000 on this coverage. All risk or loss not covered by any Builder's Risk policy of the Regents shall be the responsibility of the Contractor.

**12. CHANGES IN THE WORK**

**12.1 CHANGE ORDERS**

12.1.1 The Contract Sum and the Contract Time may be changed only by Change Order. A Change Order signed by the Contractor indicates its agreement therewith, including the adjustment in the Contract Sum and/or the Contract Time.

12.1.2 The Regents or its representative, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions: the Contract Sum and the Contract Time being adjusted accordingly thereafter. All such changes in the Work shall be authorized by Change Order, and shall be performed under the applicable conditions of the Contract Documents.

12.1.3 The Contractor understands that the Regents' representative will not order changes in the Work which include an adjustment in the Contract Sum or an extension of the Contract Time inconsistent with the intent of the Contract Documents. Such changes shall be effected by written change order, and shall be binding on the Regents and the Contractor. The Contractor shall carry out such written change orders promptly.

**12.2 CLAIMS FOR ADJUSTMENT TO CONTRACT SUM**

12.2.1 If the Contractor believes it has a claim for an increase in the Contract Sum, he shall give the Architect written notice thereof within fourteen days after the occurrence of the event giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute the Work, except in an emergency endangering life or property in which case the Contractor shall proceed in accordance with other applicable provisions of this Document. No such claim shall be valid unless so made.

12.2.2 The cost or credit to the Regents resulting from a change in the Work shall be determined by mutual agreement between Regents and Contractor. Such adjustments shall be determined by one of the following methods:

12.2.3 Prices based on percentages or fractions of prices used in the Original Proposal by which the Project was awarded to the Contractor, for deletion of, or the addition of work;

12.2.4 An lump sum amount, agreed to by the contracting parties; or

12.2.5 Contractor's estimate for cost of labor, material, rentals, and equipment plus overhead and profit combined and added as one percentage sum only (not compounded). The Architect shall have the right to request, and the Contractor shall provide when requested breakdowns of estimated costs of labor and materials.

## General Conditions

12.2.6 Allowances for overhead and profit shall be made only on change orders resulting in net increases to the Contract amount, based on the following schedule:

<b>Change Order Amount Before Markup</b>	<b>Contractor/Subcontractor O/H &amp; Profit for Work by Own Forces</b>	<b>Contractor O/H &amp; Profit for Work by Subcontractors</b>
Less than \$20,000	12%	8%
\$20,001 or Greater	7%	5%

12.2.6.1 Overhead is defined as General Overhead Cost (Indirect Expenses) to include: Contractor or Subcontractor's office expenses (office rent or lease expense, office supplies, utilities, insurance, communication, office equipment, furniture, and taxes). Contractor's staff salary expenses (executives, administrative staff, purchasing staff, bookkeepers, office located project managers, scheduler, and/or estimators, and miscellaneous office staff not directly employed on the project). Miscellaneous expenses (legal fees, license or association fees, consultant such as accountant, auditors, and information technology, depreciation expense, travel expense, donations).

12.2.6.2 Acceptable Temporary Facilities (Direct Expenses) applied to change orders may include the following costs as they apply to a specific Change Order request, and calculated on a prorated bases: site located owned or leased office space, site located storage buildings, sanitary facilities, drinking water and cups, travel or per diem expenses. Prorated calculation:  
(original item cost) / (# of original days estimated) = (daily item cost)  
(accepted # of calendar day extension) X (daily item cost) = (Change Order item amount)

12.2.6.3 Acceptable Labor (Direct Expenses) applied to Change Orders may include the following costs as they apply to a specific Change Order request, and calculated on the established hourly wage rate cost, plus actual burden, multiplied by the amount of time the individual is expected to work on the Change Order request: Jobsite superintendent, foreman, field engineer, or other site personnel.

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

### 12.3 CONCEALED CONDITIONS

12.3.1 By agreement of the parties, the Contract Sum may be equitably adjusted by Change Order upon claim by either party made within fourteen (14) days after the first observance of the following: 1) Concealed conditions encountered in the performance of the Work below the surface

## **General Conditions**

of the ground at variance with the conditions indicated by the Contract Documents; 2) Concealed or unknown conditions in an existing structure at variance with the conditions indicated by the Contract Documents, or (3) Unknown conditions of an unusual nature, differing from those ordinarily encountered and generally recognized as typical in work of the character indicated by the Contract Documents.

### **13. UNCOVERING AND CORRECTION OF WORK**

#### **13.1 UNCOVERING OF WORK**

13.1.1 If any portion of the Work is covered contrary to requirements specifically expressed in the Contract Documents, it shall, if required in writing by the Architect, be uncovered for observation by the Architect, and shall be replaced at the Contractor's expense.

13.1.2 If any other portion of the Work has been covered which the Architect has not specifically requested to observe prior to being covered, the Architect with prior approval of Regents representative, may request to see such work and it shall be uncovered by the Contractor. If such work is found to be in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Regents. If such work is not in accordance with the Contract Documents, the Contractor shall pay all costs of uncovering the work and the costs of bringing the Work into compliance with the Contract Documents.

#### **13.2 CORRECTION OF WORK**

13.2.1 The Contractor shall promptly correct all Work rejected by the Architect or Regents' representative as defective or failing to conform to the Contract Documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including compensation for the Architect's additional services made necessary thereby.

13.2.2 If, during the guarantee period, or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly. This obligation shall survive termination of the Contract. The Regents shall give such notice promptly after discovery of the condition.

13.2.3 The Contractor shall remove from the site all portions of the Work which are defective or non-conforming, unless removal is waived by the Regents.

13.2.4 Within seven (7) days of written notice from the Architect, the Contractor shall respond with its intent and plan for correction of defective or non-conforming Work. If the Contractor has not begun correction within seven (7) days after submission of its intent and plan for correction, the Regents may correct or remove it and may store the materials or equipment at the expense of the



## **General Conditions**

Contractor. If the Contractor does not pay the cost of such removal and storage within seven (7) days thereafter, the Regents may sell the defective materials or equipment at public or private sale, and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation for the Architect's additional services made necessary thereby. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Regents.

13.2.5 The Contractor shall bear the cost of making good all work of the Regents or separate contractors destroyed or damaged by such correction or removal.

### **13.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK**

13.3.1 If the Regents prefer to accept defective or non-conforming Work, it may do so instead of requiring the Work's removal and correction, in which case a Change Order will be issued to reflect a reduction in the Contract Sum where appropriate and equitable. If final payment has been made, the Contractor shall reimburse the Regents for its damage.

## **14. TERMINATION OF THE CONTRACT**

### **14.1 TERMINATION BY THE CONTRACTOR**

14.1.1 If a permit is not issued for the commencement of any portion of the Work, or if the Work is stopped for a period of thirty (30) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Contractor or anyone directly contracting with, or indirectly employed by it, or by anyone for whose acts the Contractor is responsible, then the Contractor may, upon seven (7) additional days' written notice to the Regents and the Architect terminate the Contract and recover from the Regents payment for reasonable, actual expenses to that date.

### **14.2 TERMINATION BY THE REGENTS**

14.2.1 If the Regents, in the best interests of the University, require termination of this Contract, the Contract may be terminated after giving the Contractor and his surety, if any, seven (7) days' written notice. The Regents may require Contractor's surety to complete the Work. Regents may also take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever method they may deem expedient. In either case the Contractor shall not be entitled to receive any further payment until completion of the Work.

14.2.2 After performance of the Work and reimbursement of all costs of completion have been made, including payment to all persons directly contracting with, or indirectly employed by the

## **General Conditions**

Contractor for performance of the Work who were not paid by the Contractor for Work performed, the unpaid balance of the Contract Sum, if any, shall be paid first to the surety if surety completes the Work, and If any balance remains it will be paid to the Contractor.

14.2.3 If costs of completion of the Work exceed the unpaid balance, the Contractor shall pay the difference to the Regents. The amount to be paid to the Contractor, the surety, or to the Regents, as the case may be, shall be as recommended by the Architect and certified by the RRCM upon application, in the manner provided elsewhere in this Document, and this obligation for payment shall survive the termination of the Contract.

**END OF SECTION**

## Supplemental Conditions

### 1. BRAND NAME AND EQUIPMENT SPECIFIED:

1.1 It has been determined that some of the equipment or materials identified in the Proposal Documents for this project are required to interface with the existing, and is considered proprietary. Therefore, substitutions of those items of equipment for materials will not be accepted.

### 1.2 Proprietary items are:

#### 1.2.1 Builders Hardware, as noted, Section 08700

Cylindrical Locks: Yale Lever, 5400 Series, Augusta Trim

Finishes: All Hardware Finishes US26D

Deadbolts: Lori, Single or Double Cylinder to accept the Yale Mortise Cylinder

Door Closers: Norton Type 8501BF, Yale 3301BF or 50 Series

Exit Devices: Rim or Mortise Type only; Von Duprin 99 Series, or 88 Series when matching existing Hardware; no vertical rods.

#### 1.2.2 Power Door Operators: Opener Model 4300, by Power Access Automatic Door Co.

#### 1.2.3 Door Card Readers: Blackboard – SA3000 Door Access System

1.2.4 Facilities Management Systems: The subcontractors providing building automation services must be listed under the Owner's BACnet Prequalification program, which includes specifications of acceptable building automation devices. The firms listed under the program are:

- Automated Control Systems, Albuquerque, New Mexico
- Control and Equipment Co, El Paso, Texas
- PC Automated Control, El Paso, Texas

#### 1.2.5 Medium Voltage Distribution Equipment: by S&C or G&W with Elastomer

#### 1.2.6 Contractor-supplied Fire Alarm Panel: Firelite 9200UD Fire Alarm Control Panel

1.2.7 Campus Utility Metering Systems: Electrical Meters, as manufactured by Eaton metering system and associated components. See Guidelines and specifications for items to be owner supplied. Electrical metering will be owner supplied and contractor installed. Chilled Water Meters, as manufactured by Onicon.  
Steam Meters, as manufactured by Smith-Thompson.  
Condensate meter, as manufactured by Cadillac

#### 1.2.8 Stripping Solvent for ACM Mastic: AMW-98 by American Coating Corporation

## Supplemental Conditions

## Supplemental Conditions