

ACTION SHEET
CITY COUNCIL COMMITTEE MEETING OF 08/03/15
ITEM FROM FINANCE COMMITTEE MEETING OF 08/12/15

ISSUE:			
7. Request for Approval of Professional Services Agreement – Fire Station No. 5 Reroofing Project; Cooperative Educational Services/Progressive Services, Inc. d/b/a Progressive Roofing. (Jason Kluck)			
FINANCE COMMITTEE ACTION:			
Approved as Consent item.			
FUNDING SOURCE:			
SPECIAL CONDITIONS OR AMENDMENTS			
STAFF FOLLOW-UP:			
VOTE	FOR	AGAINST	ABSTAIN
COUNCILOR TRUJILLO	Excused		
COUNCILOR RIVERA	X		
COUNCILOR LINDELL	X		
COUNCILOR MAESTAS	X		
CHAIRPERSON DOMINGUEZ			

4-13-15

**ACTION SHEET
ITEM FROM THE
PUBLIC WORKS/CIP AND LAND USE COMMITTEE MEETING
OF
MONDAY, JULY 27, 2015**

ITEM 7

CIP PROJECT 646 – FIRE STATION #5 REROOF

- REQUEST APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT WITH COOPERATIVE EDUCATIONAL SERVICES (CES)/PROGRESSIVE ROOFING IN THE AMOUNT OF \$64,662.56 INCLUSIVE OF NMGRY (JASON KLUCK)

PUBLIC WORKS COMMITTEE ACTION: Approved on consent

FUNDING SOURCE: 32125.572500.0114900

SPECIAL CONDITIONS / AMENDMENTS / STAFF FOLLOW UP:

VOTE	FOR	AGAINST	ABSTAIN
CHAIRPERSON TRUJILLO			
COUNCILOR BUSHEE	X		
COUNCILOR DIMAS	X		
COUNCILOR DOMINGUEZ	X		
COUNCILOR RIVERA	X		

City of Santa Fe New Mexico

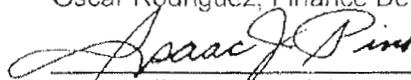
Public Works Dept. - Facilities Division

MEMO

DATE: July 27, 2014

TO: Public Works, CIP & Land Use Committee/Finance Committee/
City Council

VIA: Oscar Rodriguez, Finance Department Director



Isaac J. Pino, PE, Public Works Department Director
David Pfeifer, Facilities Division Director
Robert Rodarte, Purchasing Officer

FROM: Jason M. Kluck, Facilities Division Project Administrator JMK

ISSUE: CIP# 646 – Fire Station #5 reroofing project

- Request for approval of Professional Services Agreement with Cooperative Educational Services (CES)/ Progressive Roofing (\$64,662.56) inclusive of NMGR.

SUMMARY:

The Facilities Division is requesting approval of roofing services for the Fire Station #5 reroofing project with Progressive Roofing, under CES Contract 2013-007. An Itemized proposal of services and costs related to this procurement are attached.

By City policy, the City may use State and Federal Price or Cooperative Agreements in lieu of bidding out the project. By City policy, procurement from State or Federal agreements in amounts over \$50,000 require City Council approval (City Purchasing Manual Section 11.1).

BUDGET:

Funding will be available from Municipal Facility Repair - Business Unit #32125.572500.0114900 (\$64,662.56).

SCHEDULE:

Public Works Committee: 7/27/15

Finance Committee: 8/3/15

City Council: 8/12/12

The work is scheduled for completion within 45 calendar days after the issuance of the Notice to Proceed.

REQUESTED ACTION:

Please approve the attached Professional Services Agreement with CES/Progressive Roofing in the amount of ~~\$69,625.42~~ \$64,662.56

ATTACHMENTS:

Professional Services Agreement
Proposal from Progressive Roofing (Exhibit A)
General & Supplemental Conditions (Exhibit B)
CES Contract documentation (Exhibit C)
Certificate of General Liability Insurance (Exhibit D)

xc: Shirley Rodriguez, Project File

CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: Progressive Roofing

Procurement Title: CIP #646 – Fire Station #5 Roof Remodeling

Solicitation RFP/RFB#: N/A – Cooperative agreement

Other Methods: State Price Agreement **Cooperative** **Sole Source** **Exempt** **Other**

Department Requesting/Staff Member Public Works/Facilities/Jason Kluck

Procurement Requirements:

A procurement file shall be maintained for all contracts, regardless of the method of procurement. The procurement file shall contain the basis on which the award is made, all submitted bids and proposals, all evaluation materials, score sheets, quotations and all other documentation related to or prepared in conjunction with evaluation, negotiation, and the award process. The procurement shall contain a written determination from the Requesting Department, signed by the procurement officer, setting forth the reasoning for the contract award decision before submitting to the Committees. .

SOLICITATION*

- | YES | N/A | |
|--------------------------|-------------------------------------|--|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Project Beginning History (council requests etc) |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Budget Determination (FIR) attach |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Solicitation document (RFP, IFB), |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Screen print of legal solicitation published in newspapers, web sites, etc.: |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Screen print of addendum(s) published on the IPB/RFP: |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Pre-Bid/Pre-Offer Conference attendance sheet and other documents |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | If canceled, screen print of cancellation of solicitation notice |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Other: _____ |

EVALUATION*

- | YES | N/A | |
|--------------------------|-------------------------------------|---|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Blank evaluation form |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Evaluator's names and profiles |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Evaluation procedures or evaluation instructions |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Conflict/Confidentiality Forms signed by all Evaluators, Technical Advisors, Reviewers, and any person who assists in regard to the bid/proposal, evaluation and/or award |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Bid or Offer opening sheet(s) (If RFP, then two offer opening sheets, one for technical and one for cost) |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Screen print of Bidder/Offeror's detailed information |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Responsiveness review sheet or other sheet documenting responsiveness for each Bidder/Offeror, attach requests for additional information to cure items |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Non-Responsive/Non-Responsibility Form and correspondence or letters from Department to vendor regarding disqualifications |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Oral presentations (sign-in sheets, presentation materials, etc.) |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Documentation sent to Bidders/Offerors and responses received regarding clarifications, decisions, negotiations, and/or best and final offers, etc. |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Reference Reviews/Reference Check Questionnaires |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Individual evaluations included for each RFP. |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Pricing evaluation |

*

- | | | |
|--------------------------|-------------------------------------|--|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Final overall evaluation matrix or summary of evaluator scores |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Other: _____ |

AWARD*

YES N/A

- | | | |
|-------------------------------------|-------------------------------------|--|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Fully executed Memo to Committees from the Department with recommendation of award |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Winning proposal (this is a copy that has all confidential/proprietary information excluded) |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Screen print of Contract Award Notice |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Screen print of Award Notice published on agency website |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Email or notification sent to all Bidders/Offerors that award was made |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Waiver or "No Action Taken" from Procurement Office |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Correspondence with Procurement Office regarding waiver |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | If IFB and not awarded to lowest responsive, responsible bidder; written explanation |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Other: _____ |

DISCLOSURES

YES N/A

- | | | |
|---|-------------------------------------|--|
| Contractor Disclosures & Conflicts of Interest | | |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Disclosures & Conflicts of Interest Form(s) (winning bidder(s)/offeror(s)) |
| Contractor –Conflicts of Interest | | |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Purchasing Office Letter or e-mail to designated individual regarding potential conflict |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Conflict of Interest Form signed by all parties |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Letter from Procurement Office regarding the potential conflict |
| Subcontractor Disclosures | | |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Disclosures & Conflicts of Interest form of Subcontractor(s) |
| Subcontractor –Conflicts of Interest | | |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Purchasing Officer Letter or email to designated individual regarding potential conflict |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Conflict of Interest form signed by all parties |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Letter from Legal Office regarding the potential conflict |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Other: _____ |

CONTRACT

YES N/A

- | | | |
|-------------------------------------|-------------------------------------|---|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Copy of Executed Contract |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Copy of all documentation presented to the Committees |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Finalized Council Committee Minutes |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Other: _____ |

MISCELLANEOUS FILE*

YES N/A

- | | | |
|--------------------------|-------------------------------------|---|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Local Preference Form |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | New Mexico Residence Form |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Veterans Exemption |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Sole Source determination form approved by Procurement Officer |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Exempt determination memo approved by Procurement Officer |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Other: _____ |

Include all other substantive documents and records of communication that pertain to the procurement and any resulting contract.

*

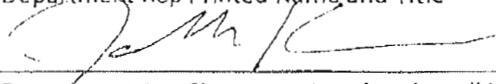
PROTEST (If applicable)*

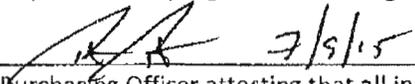
- | YES | N/A | |
|--------------------------|-------------------------------------|---|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Documentation from protester filed with the Purchasing Office |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Letter from Department to Purchasing Office Providing response to protest |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Letter from Purchasing Officer to protester and Department on final outcome |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Other: _____ |

Create a separate file folder which may contain any documents with trade secrets or other competitively sensitive, confidential or proprietary information.

- | YES | N/A | |
|--------------------------|-------------------------------------|---|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Original bid(s) or proposal(s) with no redactions. |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Documentation exempt - Proprietary, Confidential, Competitively Sensitive, or Trade Secret (i.e. e-mails, proposals, letters) |

Jason M. Kluck, Public Works Project Admin.
Department Rep Printed Name and Title


Department Rep Signature attesting that all information included

 7/9/15
Purchasing Officer attesting that all information is reviewed



**City of Santa Fe
Summary of Contracts, Agreements, & Amendments**

Section to be completed by department for each contract or contract amendment

- | | | | | |
|---|--------------------------|-------------------------------------|-----------------------------|--------------------------|
| 1 | FOR: ORIGINAL CONTRACT | <input checked="" type="checkbox"/> | CONTRACT AGREEMENT | <input type="checkbox"/> |
| | MAINTENANCE AGREEMENT | <input type="checkbox"/> | LICENSE AGREEMENT | <input type="checkbox"/> |
| | LEGAL SERVICES AGREEMENT | <input type="checkbox"/> | MEMORANDUM OF UNDERSTANDING | <input type="checkbox"/> |
| | MEMORANDUM OF AGREEMENT | <input type="checkbox"/> | JOINT POWERS AGREEMENTS | <input type="checkbox"/> |
| | GRANT AGREEMENTS | <input type="checkbox"/> | CHANGE ORDERS | <input type="checkbox"/> |

2 Name of Contractor Cooperative Educational Services/Progressive Roofing

3 Complete information requested Plus GRT
 Inclusive of GRT

Original Contract Amount: \$64,662.56

Termination Date: June 30, 2019

Approved by Council Date: (pending)

or by City Manager Date: _____

Contract is for: Re-roofing of Fire Station #5

Amendment # N/A to the Original Contract# _____

Increase/(Decrease) Amount \$ _____

Extend Termination Date to: _____

Approved by Council Date: _____

or by City Manager Date: _____

Amendment is for: _____

4 History of Contract & Amendments: (option: attach spreadsheet if multiple amendments) Plus GRT
 Inclusive of GRT

Amount \$ N/A of original Contract# _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Total of Original Contract plus all amendments: \$ _____



**City of Santa Fe
Summary of Contracts, Agreements, & Amendments**

5 Procurement Method of Original Contract: (complete one of the lines)

RFP RFQ Sole Source Other

6 Procurement History: CES contract approved by Robert Rodarte

7 Funding Source: Municipal Facilities Repair BU/Line Item: 32125.572500.0114900

8 Any out-of-the ordinary or unusual issues or concerns:
N/A
(Memo may be attached to explain detail.)

9 Staff Contact who completed this form: Jason M. Kluck Phone # 955-5937

Division Contract Administrator: David Pfeifer

Division Director: David Pfeifer *David Pfeifer*

Department Director: Isaac J. Pino, PE *Isaac J. Pino*

10 Certificate of Insurance attached. (if original Contract)

11 Description of your efforts to reduce the cost of the contract including information on efforts to obtain other quotes for the contracted activity: This contract is in addition to the CES contract used for procurement. The project was bid significantly over budget. The CES contract method was used as a cost savings measure.

12 Prior year's contract amount?: N/A

13 Describe service impact from an ongoing commitment to the contractor: N/A

14 Why staff cannot perform the work?: Requires licensed contractor with full working crew.

15 If extending contract, why?: N/A

16 Was a Santa Fe company awarded contract? If not, why?: No. This PSA is undertaken to formalize work with this contractor under the CES Contract.

17 Has the contract has been approved as to form by City Attorney's Office?: yes

18 Is this for City Manager or Council approval?: Council

To be recorded by City Clerk:

Contract # _____

Date of contract Executed (i.e., signed by all parties): _____

CITY OF SANTA FE
PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into by and between the City of Santa Fe (the "City") and Cooperative Educational Services/Progressive Services, Inc. D.B.A. Progressive Roofing (the "Contractor"). The date of this Agreement shall be the date when it is executed by the City and the Contractor, whichever occurs last.

1. SCOPE OF SERVICES

The Contractor shall provide the following services for the City:

A. Roof remodeling and associated work at Fire Station #5 located at 1130 Siler Road, Santa Fe, NM in accordance with the permit documents approved by NM Construction Industries Division and including all necessary coordination with the City's Agent, the Architect of Record providing the documents for the commercial reroofing permits, coordination with authorized City representatives and in accordance with the proposal dated June 10, 2015, Exhibit "A". The Agreement between Cooperative Educational Services (CES) and Progressive Roofing covering this scope of services shall remain in full effect for the duration of the project.

B. Services shall include coordination, meetings and conferences with authorized City Staff, any associated building officials, subcontractors, vendors and suppliers to insure a fully warrantied final product/system that functions in accordance with manufacturer specifications and all applicable codes and ordinances.

C. As a condition of final payment, The Contractor shall provide all Close Out related documents including, but not limited to, CID permit drawing set, As-

Built mark-up drawing set, final CID Permit Summary, O&M Manuals and all applicable warranties.

D. All work shall be performed in accordance with the Scope of Services and with the General and Supplementary Conditions, Exhibit "B".

E. The Contractor shall additionally provide the following items and services to the City:

- 1) Issue and adhere to a comprehensive schedule of permitting, construction, close-out and warranty inspections.
- 2) Secure and cover expenses and fees for all required permits.
- 3) Deliver permit notices and inspection tickets to the Owner's Representative immediately upon receipt.
- 4) Develop and implement a construction staging strategy to minimize interference with the Public, Facility Staff and Facility Operation.
- 5) Provide one year contractor's warranty covering all improvements included in the contract.
- 6) Conduct a walkthrough and hand-off meeting on the roof of the building with City Facilities Maintenance Staff after Substantial Completion of the work.
- 7) Issue accurate Pay Applications and wage rate Statements of Compliance as required in a timely manner.
- 8) Maintain portable toilet facilities at each site for the duration of the construction period.

9) Maintain a well-kept area of staging and construction, free of loose construction debris and building materials for the duration of the work, in conjunction with any necessary dump equipment, dump staging, hauling, permitting and fees.

10) Maintain any needed or required public and worker safety measures for the duration of the work.

2. STANDARD OF PERFORMANCE; LICENSES

A. The Contractor represents that it possesses the experience and knowledge necessary to perform the services described under this Agreement.

B. The Contractor agrees to obtain and maintain throughout the term of this Agreement, all applicable professional and business licenses required by law, for itself, its employees, agents, representatives and subcontractors.

3. COMPENSATION

A. The City shall pay to the Contractor in full payment for services rendered, a sum not to exceed fifty nine thousand, seven hundred dollars and no cents (\$59,700.00), plus applicable gross receipts tax at the rate of 8.3125%.

B. The Contractor shall be responsible for payment of gross receipts taxes levied by the State of New Mexico on the sums paid under this Agreement.

C. Payment shall be made upon receipt, approval and acceptance by the City of detailed statements containing a report of services completed. Compensation shall be paid only for services actually performed and accepted by the City.

4. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City for the performance of this Agreement. If

sufficient appropriations and authorization are not made by the City, this Agreement shall terminate upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

5. TERM AND EFFECTIVE DATE

This Agreement shall be effective when signed by the City and the Contractor, whichever occurs last, and shall terminate on June 30, 2019 unless sooner pursuant to Article 6 below.

6. TERMINATION

A. This Agreement may be terminated by the City and the Contractor upon (30) days written notice to the Contractor.

(1) The Contractor shall render a final report of the services performed up to the date of termination and shall turn over to the City original copies of all work product, research or papers prepared under this Agreement.

(2) Compensation is based upon hourly rates and expenses, Contractor shall be paid for services rendered and expenses incurred through the date Contractor receives notice of such termination.

7. STATUS OF CONTRACTOR; RESPONSIBILITY FOR PAYMENT OF EMPLOYEES AND SUBCONTRACTORS

A. The Contractor and its agents and employees are independent contractors performing professional services for the City and are not employees of the City. The Contractor, and its agents and employees, shall not accrue leave, retirement,

insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City as a result of this Agreement.

B. Contractor shall be solely responsible for payment of wages, salaries and benefits to any and all employees or subcontractors retained by Contractor in the performance of the services under this Agreement.

C. The Contractor shall comply with City of Santa Fe Minimum Wage, Article 28-1-SFCC 1987, as well as any subsequent changes to such article throughout the term of this Agreement.

8. CONFIDENTIALITY

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the City.

9. CONFLICT OF INTEREST

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. Contractor further agrees that in the performance of this Agreement no persons having any such interests shall be employed.

10. ASSIGNMENT; SUBCONTRACTING

The Contractor shall not assign or transfer any rights, privileges, obligations or other interest under this Agreement, including any claims for money due, without the prior written consent of the City. The Contractor shall not subcontract any portion of the

services to be performed under this Agreement without the prior written approval of the City.

11. RELEASE

The Contractor, upon acceptance of final payment of the amount due under this Agreement, releases the City, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the City to any obligation not assumed herein by the City unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

12. INSURANCE

A. The Contractor, at its own cost and expense, shall carry and maintain in full force and effect during the term of this Agreement, comprehensive general liability insurance covering bodily injury and property damage liability, in a form and with an insurance company acceptable to the City, with limits of coverage in the maximum amount which the City could be held liable under the New Mexico Tort Claims Act for each person injured and for each accident resulting in damage to property. Such insurance shall provide that the City is named as an additional insured and that the City is notified no less than 30 days in advance of cancellation for any reason. The Contractor shall furnish the City with a copy of a Certificate of Insurance as a condition prior to performing services under this Agreement.

B. Contractor shall also obtain and maintain Workers' Compensation insurance, required by law, to provide coverage for Contractor's employees throughout the term of this Agreement. Contractor shall provide the City with evidence of its

compliance with such requirement.

C. Contractor shall maintain professional liability insurance, as applicable, throughout the term of this Agreement providing a minimum coverage in the amount required under the New Mexico Tort Claims Act. The Contractor shall furnish the City with proof of insurance of Contractor's compliance with the provisions of this section as a condition prior to performing services under this Agreement.

13. INDEMNIFICATION

The Contractor shall indemnify, hold harmless and defend the City and the Architect of Record, his employees and consultants from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from Contractor's performance under this Agreement as well as the performance of Contractor's employees, agents, representatives and subcontractors.

14. NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

15. THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the City and the

Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

16. RECORDS AND AUDIT

The Contractor shall maintain, throughout the term of this Agreement and for a period of three years thereafter, detailed records that indicate the date, time and nature of services rendered. These records shall be subject to inspection by the City, the Department of Finance and Administration, and the State Auditor. The City shall have the right to audit the billing both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments.

17. APPLICABLE LAW; CHOICE OF LAW; VENUE

Contractor shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the City of Santa Fe. In any action, suit or legal dispute arising from this Agreement, the Contractor agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

18. AMENDMENT

This Agreement shall not be altered, changed or modified except by an amendment in writing executed by the parties hereto.

19. SCOPE OF AGREEMENT

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the services to be performed

hereunder, and all such agreements, covenants and understandings have been merged into this Agreement. This Agreement expresses the entire Agreement and understanding between the parties with respect to said services. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

20. NON-DISCRIMINATION

During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of services by Contractor hereunder, on the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

21. SEVERABILITY

In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

22. NOTICES

Any notices required to be given under this Agreement shall be in writing and served by personal delivery or by mail, postage prepaid, to the parties at the following addresses:

City of Santa Fe:

Facilities Division
2651 Siringo Rd. Bldg. E
Santa Fe, NM 87505

Contractor:

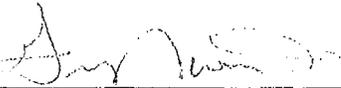
(CES)/Progressive Roofing
6320 2nd Street NW
Albuquerque, NM 87107

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.

CITY OF SANTA FE:

CONTRACTOR:

JAVIER M. GONZALES, MAYOR



GREG SKINNER, GENERAL MANAGER

DATE: _____

DATE: 7/15/15

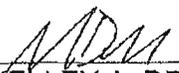
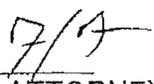
CRS# 02-198991-00-05

City of Santa Fe Business
Registration # 86-0345657

ATTEST:

YOLANDA Y. VIGIL
CITY CLERK

APPROVED AS TO FORM:

KELLEY A. BRENNAN, CITY ATTORNEY

APPROVED:

OSCAR RODRIGUZ, FINANCE DIRECTOR

32125.572500.0114900
Business Unit Line Item



7/8/2015

Attn: Jason Kluck
City of Santa Fe
Santa Fe Fire Station #5

RE: Fire Station #5 Partial Re-Roof and Restoration 4,900 Square Feet.

Thank you for the opportunity to provide a quote for the following roofing services. Progressive Roofing will perform the following:

Base Bid:

- Remove and dispose of all loose gravel.
Remove and dispose of existing sheet metal fascia.
Remove and dispose of existing fascia boards (rotted out).
Install new fascia boards in size to match existing.
Install new fascia metal in color selected by Owner from standard color options.
Install gutter at all perimeter edges with downspouts.
Install new gravel stop edging and strip in with the Garland system.
Install new Black Knight restoration system over entire area.
Install new peas gravel over Black Knight system.
Install new counter flashing at low to high roof intersection.
Remove and dispose of low corridor roof in its entirety.
Remove and replace all fascia and wood.
Install new fascia system and new wood.
Install new 60 Mil fully adhered system.
Install new counter flashings and wall flashings.
Install all sheet metal flashings and trim.
Remove Skylights and Infill and repair interior and exterior to match existing and install new Garland System.
Replace loose and or missing fasteners in adjacent metal roof.
Replace and repair existing damaged flashings on adjacent metal roof.
All work completed will meet Garland Requirements.
30 Year finish warranty on all sheet metal
10 Year warranty on the Garland Restoration System
Permit Fees Are Included In Proposal
Walk Pads are Excluded in proposal

For the total sum of: \$59,700.00
(Plus New Mexico Gross Receipt Tax if applicable)

Notes:

- We recognize (0) addenda.
Our quote is based on a Standard CES Subcontract Agreement.

Exclusions:

Taxes, all sun shades and shade structures, all wood work, interior sheet metal, through wall flashings, all metal not listed in our quote, splash blocks, sky lights, curb's, curb and wall insulation, custom colors, painting, all mechanical, electrical, and plumbing work, lightning protection, soldering and vants. Abatement or remediation of any kind for any reason. Repair of damage by others. Tenant Improvements. Phasing of construction. Independent inspection or consultants. OSHA required coverings at all openings in the deck (by GC), liquid and/or consequential damages and pollution insurance.

Greg Skinner
Progressive Roofing
Estimating Department.
Albuquerque, New Mexico
Tel: (505)-341-3800
Dir: (505)-349-5373
Fax: (505)-341-3802
greg.skinner@progressiveus.com
License# 34331
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PROGRESSIVE SERVICES, INC. D.B.A. PROGRESSIVE ROOFING

6320 2nd Street NW • Albuquerque, NM 87107
(505) 341-3800 • fax (505) 341-3802

047565 C-42 (AZ)
073961 L-42 (AZ)
082768 C-05 (AZ)
082792 BE (AZ)

082793 AE (AZ)
577294 C-39 (CA)
034331 GS-21 (NM)
22525 C-15A (NV)

Albuquerque NM Dallas TX Denver CO Flagstaff AZ Manteca CA Phoenix AZ Tucson AZ
(505) 341-3800 (214) 348-7663 (303) 286-8200 (928) 714-0688 (877) 360-0030 (602) 278-4900 (520) 744-8707

PROGRESSIVE ROOFING



CES CONTRACT #2013-007-770-007 PR

CES LINE ITEM PRICING

CITY OF SANTA FE
SANTA FE, NM

6/11/2015

SANTA FE FIRE STATION #5

SCOPE OF WORK:
PER ATTACHED

	WORK DESCRIPTION	UNIT	BID AMOUNT	QTY	PROJECT AMOUNT
9.11.6.5	MOBILIZATION & SAFFTY	HR	\$ 65.00	37	\$ 2,405.00
9.4.66	REMOVE GRAVEL	S/F	\$ 0.60	4,900	\$ 2,940.00
9.11.6.5	DEMO FASCIA	HR	\$ 65.00	42	\$ 2,730.00
9.5.11	GUTTER & CLEAT	L/F	\$ 8.00	780	\$ 6,240.00
9.6.9	GRAVEL STOP	L/F	\$ 3.80	385	\$ 1,463.00
9.6.5	COUNTER FLASHING	L/F	\$ 2.50	90	\$ 225.00
9.6.17	DOWNSPOUTS	L/F	\$ 15.00	150	\$ 2,250.00
9.7.7	2 X 6 WOOD	L/F	\$ 1.90	400	\$ 760.00
9.9.17	TERM BAR	L/F	\$ 1.00	90	\$ 90.00
9.4.670	PRIME	S/F	\$ 0.40	4,900	\$ 1,960.00
9.4.76	ROOFING	S/F	\$ 3.75	4,900	\$ 18,375.00
9.4.23	FLOOD COAT AND GRAVEL	S/F	\$ 1.50	4,900	\$ 7,350.00
9.11.2.a	FORKLIFT	DAY	\$ 650.00	5	\$ 3,250.00
9.10.21	HAULING	EA	\$ 100.00	5	\$ 500.00
9.9.25c	SKYLIGHTS (4)	S/F	\$ 3.90	32	\$ 124.80
9.10.15b	PROJECT SITE MORE THAN 65 MILES	S/F	\$ 1.50	4,900	\$ 7,350.00
9.10.12e	10 YEAR WARRANTY	EA	\$ 1,100.00	1	\$ 1,100.00
					\$ 59,112.80
10.2.1	BOND			1%	\$ 591.13
	TOTAL				\$ 59,703.93



**GENERAL CONDITIONS OF THE CONTRACT
(00 7200)**

(00 7213) GENERAL CONDITIONS

NOTICE

This document has been prepared by the Capital Improvements Program (CIP) and Contract Compliance staff of the City of Santa Fe for use in construction projects.

DOCUMENT - DIVISION 00 7213

GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

(THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES;
CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH
RESPECT TO ITS COMPLETION OR MODIFICATION.)

TABLE OF ARTICLES

1. CONTRACT DOCUMENTS
2. OWNER'S REPRESENTATIVE - FACILITIES DIVISION
3. OWNER
4. CONTRACTOR
5. SUBCONTRACTORS
6. WORK BY OWNER OR BY SEPARATE CONTRACTORS
7. MISCELLANEOUS PROVISIONS
8. TIME
9. PAYMENTS AND COMPLETION
10. PROTECTION OF PERSONS AND PROPERTY
11. INSURANCE
12. CHANGES IN THE WORK
13. UNCOVERING AND CORRECTION OF WORK
14. TERMINATION OF THE CONTRACT
15. EQUAL OPPORTUNITY
16. MINIMUM WAGE RATES

ARTICLE 1

CONTRACT DOCUMENTS

1.1 DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Owner-Contractor Agreement, the Conditions of the Contract (General, Supplementary, and Other Conditions), ~~the Drawings,~~ the Specifications, and all Addenda issued prior to and all Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a written interpretation issued by the Owner's Representative pursuant to Subparagraph 2.2.6, or (4) a written order for a minor change in the work issued by the Owner's Representative pursuant to Paragraph 12.4. The Contract Documents do not include Bidding Documents such as the Advertisement or Invitation to Bid, the Instructions to Bidders, sample forms, the Contractor's Bid, or portions of Addenda relating to any of these, or any other documents, unless specifically enumerated in the Owner-Contractor Agreement.

1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. This Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification as defined in Subparagraph 1.1.1. The Contract Documents shall not be construed to create any contractual relationship of any kind between the Owner's Representative and the Contractor, but the Owner's Representative shall be entitled to performance of obligations intended for his benefit, and to enforcement thereof. Nothing contained in the Contract Documents shall create any contractual relationship between the Owner or the Owner's Representative and any Subcontractor or Sub-subcontractor.

1.1.3 THE WORK

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

1.1.4 THE PROJECT

The Project is the total design and construction of which the work performed under the Contract Documents may be the whole or a part.

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 No fewer than two (2) copies of the Contract Documents shall be signed by the Owner and the Contractor. If either the Owner or the Contractor or both do not sign the Conditions of the Contract, Drawings, Specifications, or any of the other Contract Documents, the Owner's Representative shall identify such Documents.

1.2.2 By executing the Contract, the Contractor represents that he has visited the site, familiarized himself with the local conditions under which the work is to be performed, and correlated his observations with the requirements of the Contract Documents.

1.2.3 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all work not covered in the Contract Documents will not be required unless it is consistent therewith and is reasonably inferable therefrom as being necessary to produce the intended results. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings. In the event of a conflict between the Contract Documents, the more stringent requirements shall govern.

1.2.4 The organization of the Specifications into divisions, sections and articles, and the arrangement of Drawings shall not control the Contractor in dividing the work among Subcontractors or in establishing the extent of work to be performed by any trade.

1.3 OWNERSHIP AND USE OF DOCUMENTS

1.3.1 All designs, drawings, specifications, notes, and other work developed in the performance of this Contract shall be and remain the sole property of the Owner and may be used on any other work without additional compensation to the Owner's Representative. With respect thereto, the Owner's Representative agrees not to assert any rights and not to establish any claims under the design patent or copyright laws.

ARTICLE 2

OWNER'S REPRESENTATIVE

2.1 DEFINITION

- 2.1.1 The Owner's Representative is the person or persons designated by the City of Santa Fe as the administrator responsible for overseeing the project, identified as such in the Owner-Contractor Agreement, and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term "Owner's Representative" means the Owner's Representative or another authorized representative.

2.2 ADMINISTRATION OF THE CONTRACT – FACILITIES DIVISION

- 2.2.1 The Owner's Representative will provide administration of the Contract as hereinafter described.
- 2.2.2 The Owner's Representative will be the Owner's Agent during construction and until final payment is due. The Owner's Representative will advise and consult with the Owner. The Owner's instructions to the Contractor shall be forwarded through the Owner's Representative. The Owner's Representative shall have the authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with Subparagraph 2.2.17.
- 2.2.3 The Owner's Representative shall submit to the Owner, for approval, a list of critical inspection points based upon the construction schedule furnished by the Contract (Paragraph 4.11.1). The Owner's Representative and his staff (including the on-site representative, if agreed upon) shall make weekly visits to the site(s) at those critical points and at other times as the Owner's Representative deems appropriate during the progress of the work. Additionally, the Owner's Representative shall familiarize himself with the progress and quality of the work and determine if the work is proceeding in accordance with the Contract Documents. On the basis of on-site observations, as the Owner's Representative, he shall guard the Owner against defects and deficiencies in the construction. Should the Owner's Representative determine that any portion of the work varies from the intent of the Contract Documents he shall immediately notify the Contractor and the Owner of the non-compliance and the nature of the work required to correct such non-compliance. The Owner's Representative shall recommend to the Owner, in writing, to issue a "stop work order" for any portion of the work that does not substantially comply with the intent of the Contract Documents, except as follows.
- 2.2.4 The Owner's Representative shall not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the work. Additionally, the Owner's Representative shall not be responsible for the Contractor's failure to carry out the work in accordance with the Contract Documents. The Owner's Representative shall reject work, which does not meet or exceed the standards established by the Contract Documents. Whenever, in his reasonable opinion, he considers it necessary or advisable to ensure the proper implementation of the intent of the Contract Documents, he will have authority to require special inspection or testing of any work in accordance with the provisions of the Contract Documents whether or not such work is then fabricated, installed or completed.
- 2.2.5 The Owner's Representative 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 Owner's Representative may perform his functions under the Contract Documents.
- 2.2.6 Based on the Owner's Representative's observations and an evaluation of the Contractor's Application for Payment, the Owner's Representative will determine the amounts owing to the Contractor and will issue Certificates for Payment in such amounts, as provided in Paragraph 9.4.
- 2.2.7 The Owner's Representative will be the interpreter of the requirements of the Contract Documents and the initial decision maker regarding the performance thereunder by the Contractor.
- 2.2.8 The Owner's Representative will render interpretations necessary for the proper execution or progress of the work, with reasonable promptness and in accordance with any time limit agreed upon. The Contractor may make a written request to the Owner's Representative for such interpretations.
- 2.2.9 (Not used)
- 2.2.10 All interpretations and decisions of the Owner's Representative shall be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. In his capacity as interpreter, he will endeavor to secure faithful performance by the Contractor, will not show partiality, and will not be liable for the result of any interpretation or decision rendered in good faith in such capacity.
- 2.2.11 The Owner's Representative's decisions in matters relating to artistic effect will be final if consistent with the intent of the

Contract Documents.

- 2.2.12 The Owner's Representative will have authority to reject work which does not conform to the Contract Documents. Whenever, in his opinion, he considers it necessary or advisable for the implementation of the intent of the Contract Documents, he will have authority to require special inspection or testing of the work in accordance with Subparagraph 7.7.2 whether or not such work is then fabricated, installed or completed. However, neither the Owner's Representative's authority to act under this Subparagraph 2.2.12, nor any decision made by him in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Owner's Representative to the Contractor, any Subcontractor, any of their agents or employees, or any other person performing any of the work.
- 2.2.13 The Owner's Representative 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. Such action shall be taken with reasonable promptness so as to cause no delay. The Owner's Representative's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- 2.2.14 The Owner's Representative will prepare Change Orders in accordance with Article 12 and will have authority to order minor changes in the work as provided in Subparagraph 12.4.1.
- 2.2.15 The Owner's Representative will conduct inspections to determine the dates of Substantial Completion and Final Completion, will receive and forward to the Owner for the Owner's review of written warranties and related documents required by the Contract and assembled by the Contractor and will issue a final Certificate of payment upon compliance with the requirements of Paragraph 9.9
- 2.2.16 If the Owner and Owner's Representative agree, the Owner's Representative will provide one or more Project Representatives to assist the Owner's Representative in carrying out his responsibilities at the site. The duties, responsibilities and limitations of authority of any such Project Representative shall be as set forth in an exhibit to be incorporated in the Contract Documents.
- 2.2.17 The duties, responsibilities and limitations of authority of the Owner's Representative as the Owner's representative during construction as set for in the Contract Documents will not be modified or extended without written consent of the Owner, the Contractor and the Owner's Representative.
- 2.2.18 In case of the termination of the employment of the Owner's Representative, the Owner shall appoint an Owner's Representative whose status under the Contract Documents shall be that of the former Owner's Representative.

ARTICLE 3

OWNER

3.1 DEFINITION

- 3.1.1 The Owner is the person or entity identified as such in the Owner-Contractor Agreement and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term "Owner" means the Owner or his authorized representative.

3.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

- 3.2.1 The Owner shall, at the request of the Contractor, at the time of execution of the Owner-Contractor Agreement, furnish to the Contractor reasonable evidence that he had made financial arrangements to fulfill his obligations under the Contract. Unless such reasonable evidence is furnished, the Contractor is not required to execute the Owner-Contractor Agreement or to commence the work.
- 3.2.2 (Not used)
- 3.2.3 Except as provided in Subparagraph 4.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments, and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.
- 3.2.4 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the work.
- 3.2.5 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, all copies of Drawings and Specifications reasonable necessary for the execution of the work.

- 3.2.6 The Owner shall forward all instructions to the Contractor through the Owner's Representative.
- 3.2.7 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to work by Owner or by Separate Contractors, Payments and Completion, and Insurance in Articles 6, 9 and 11 respectively.

3.3 OWNER'S RIGHT TO STOP THE WORK

- 3.3.1 If the Contractor fails to correct defective work as required by Paragraph 13.2 or persistently fails to carry out the work in accordance with the Contract Documents, the Owner, by a written order signed personally or by an agent specifically so empowered by the Owner ~~in writing~~, may order the Contractor to stop the work, or any portion thereof, until the cause of such order has been eliminated; ~~however~~, this right of the Owner to stop the work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Subparagraph 6.1.3.

3.4 OWNER'S RIGHT TO CARRY OUT THE WORK

- 3.4.1 If the Contractor defaults or neglects to carry out the work in accordance with the Contract Documents and fails within seven days after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, after seven days following receipt by the Contractor of an additional written notice and without prejudice to any other remedy he may have, make good such deficiencies. In such case, an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Owner's Representative's additional services made necessary by such default, neglect or failure. Such action by the Owner and the amount charged to the Contractor are both subject to the prior approval of the Owner's Representative. If the payments then or thereafter due to the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

ARTICLE 4

CONTRACTOR

4.1 DEFINITION

- 4.1.1 The Contractor is the person or entity identified as such in the Owner-Contractor Agreement and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term "Contractor" means the Contractor or his authorized representative.

1.2 REVIEW OF CONTRACT DOCUMENTS

- 4.1.2 The Contractor shall carefully study and compare the Contract Documents and shall at once report to the Owner's Representative and the Owner any error, inconsistency or omission he may discover. The Contractor shall not be liable to the Owner or the Owner's Representative for any damage resulting from any such errors, inconsistencies or omissions in the Contract Documents. The Contractor shall perform no portion of the work at any time without Contract Documents or, where required, approved Shop Drawings, Product Data or Samples for such portion of the work.

4.3 SUPERVISION AND CONSTRUCTION PROCEDURES

- 4.3.1 The Contractor shall supervise and direct the work, using his best skill and attention. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the work under the contract.
- 4.3.2 The Contractor shall be responsible to the Owner for the acts and omissions of his employees, Subcontractors and their agents and employees, and other persons performing any of the work under a contract with the Contractor.
- 4.3.3 The Contractor shall not be relieved from his obligations to perform the work in accordance with the Contract Documents either by the activities or duties of the Owner's Representative in his administration of the Contract, or by inspections, tests or approvals required or performed under Paragraph 7.8 by persons other than the Contractor.

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, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the work, whether or not incorporated or to be incorporated in the work.

4.4.2 The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on the work any unfit person or anyone not skilled in the task assigned to him.

4.5 WARRANTY

4.5.1 The Contractor warrants to the Owner and Owner's Representative that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all work will be of good quality, free from faults and conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Owner's Representative, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions in Paragraph 13.2.

4.5.2 The Contractor shall and hereby does warrant and guarantee all workmanship, labor, and materials performed and supplied by him or his Subcontractors for a period of one (1) year from the date of completion as evidenced by the date of the Owner's Certificate of Final Completion of this Contract. This also includes all labor required for replacing materials or equipment found to be defective with the one (1) year period. All guarantees for a longer period of time required by the work sections of these Specifications shall be secured by the Contractor from Subcontractors and delivered to the Owner's Representative and are hereby warranted by the Contractor as much as if countersigned by him.

4.6 TAXES

4.6.1 The Contractor shall pay all sales, consumer gross receipts tax, use and other similar taxes for the work or portions thereof provided by the Contractor which are legally enacted at the time Bids are received, whether or not yet effective.

4.7 PERMITS, FEES AND NOTICES

4.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the construction permit and for all other 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 Bids are received.

4.7.2 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.

4.7.3 It is not 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 observes that any of the Contract Documents are at variance therewith in any respect, he shall promptly notify the Owner's Representative in writing, and any necessary changes shall be accomplished by appropriate Modification.

4.7.4 If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Owner's Representative, he shall assume full responsibility therefore and shall in turn notify the Owner's Representative of such action.

4.8 ALLOWANCES

4.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by these allowances shall be supplied for such amounts and by these allowances shall be supplied for such amounts and by such persons as the Owner may direct, but the Contractor will not be required to employ persons against whom he makes a reasonable objection.

4.8.2 Unless otherwise provided in the Contract Documents:

A. These allowances shall cover the cost to the Contractor, less any applicable trade, discount of the materials and equipment required by the allowance delivered at the site, and all applicable taxes.

B. The Contractor's costs for unloading and handling on the site, labor, installations costs, overhead, profit and other expenses contemplated for the original allowance shall be included in the Contract Sum and not in this allowance;

C. Whenever the cost is more than or less than the allowance, the Contract Sum shall be adjusted accordingly by Change Order, the amount of which will recognize changes, if any, in handling costs on the site, labor, installation costs, overhead, profit and other expenses.

4.9 SUPERINTENDENT

- 4.9.1 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 if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be so confirmed on written request in each case.

4.10 PROGRESS SCHEDULES

- 4.10.1 The Contractor shall, ~~within ten (10) days~~ after the effective date of Notice to Proceed, furnish five copies of a preliminary ~~progress schedule~~ covering his operations for the first thirty (30) days. The preliminary progress schedule shall be a bar graph or an arrow diagram showing the items the Contractor intends to commence and complete the various work stages, operations, and contract means planned to be started during the first thirty (30) days.
- 4.10.2 Unless otherwise specified in the Special Provisions, the Contractor shall submit for approval by the Owner's Representative, within thirty (30) days after the effective date of Notice to Proceed, five copies of a critical-path-type analysis. The critical-path-type analysis shall include as a minimum; a graphic network diagram; a computer printout or list of activities; and a brief written explanation of the proposed schedule.
- 4.10.3 The graphic network diagram shall consist of an arrow diagram or a geometric figure and connector diagram which clearly depicts the major subdivisions of the work, the order and interdependencies of activities planned by the Contractor, as well as, activities by others which affect the Contractor's planning. The intended time for starting and completing each activity, the associated float time and the quantity and kinds of major equipment to be used shall be shown for each construction operation. For those activities lasting more than 30 days, either the estimated time for 25-50 and 75 percent completion or other significant milestones in the course of the activity, shall be shown. In addition to the actual construction operations, the network diagram shall show such items as submittal of samples and Shop Drawings, delivery of materials and equipment, construction in the area by other forces, traffic detour controls, and other significant items related to the progress of construction. The graphic network diagram shall be printed or neatly and legibly drawn to a linear scale.
- 4.10.4 Activities shown shall be coordinated insofar as possible with the Contract Bid items, types of work and maximum number of activities of each type.
- 4.10.5 The computer printout or list of activities shall show for each activity the estimated duration, the earliest starting and finishing dates, the latest starting and finishing dates, and float or slack time. Activities which constitute the critical sequence shall be identified, showing a total job duration equal to the Contract Time.
- 4.10.6 The written explanation shall contain sufficient information to describe the construction methods to be used and to enable the Owner's Representative to evaluate the schedule and supporting analysis for validity and practicability. If the schedule or written explanation is not accepted by the Owner's Representative, the Contractor shall resubmit the rejected items within ten (10) days after rejection.
- 4.10.7 The analysis may employ the use of an electric computer or may consist of a non-computer analysis if the latter is suitable to analyze the number of activities required. The adequacy of the system selected shall be acceptable to the Owner's Representative.
- 4.10.8 The Contractor shall submit to the Owner's Representative monthly progress status reports on dates directed by the Owner's Representative. Such reports shall list those uncompleted activities which have less than 30 days float and which are either in progress or scheduled to be started within the next reporting period. For each of the listed activities, the following shall be shown:
- A. Starting date scheduled in last critical-path-analysis.
 - B. Actual or intended starting date.
 - C. Revised activity duration, if any.

If the noted starting dates or duration delay the scheduled project completion date, the delay shall be named. Reasons for the delay shall be given with an explanation of the Contractor's proposed corrective action. The Contract shall also note each activity completed during the report period.

- 4.10.9 A revised critical-path-type analysis shall be submitted when one or more of the following conditions occur:
- A. When an approved change Order significantly affects the contract completion date, or the sequence of activities.
 - B. When progress of any critical activity falls significantly behind the scheduled progress.
 - C. When delay on a non-critical activity is of such magnitude as to change the course of the critical

- path.
D. At any time the Contractor elects to change any sequence of activities affecting the critical path.

The revised analysis shall be made in the same form and detail as the original submittal and shall be accompanied by an explanation of the reasons for the revisions.

- 4.10.10 The Contractor shall prosecute the work in accordance with the latest critical path type analysis. Deviations therefrom shall be submitted to the Owner's Representative for review. In the event that the progress of items along the critical path is delayed, the Contractor shall revise his planning to include additional forces, equipment, shifts or hours necessary to meet the contract completion date. All ~~additional cost~~ resulting therefrom will not be borne by the Owner.

4.11 DOCUMENTS AND SAMPLES AT THE SITE

- 4.11.1 The Contractor shall maintain at the site, for the Owner, one record copy of all Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record all changes made during construction, and approved Shop Drawings, Product Data and Samples. These shall be available to the Owner's Representative and shall be delivered to him for the Owner upon completion of the work.

4.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

- 4.12.1 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.
- 4.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate a material, product or system for some portion of the work.
- 4.12.3 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the work will be judged.
- 4.12.4 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 Owner of any separate Contractor, all Shop Drawings, Product Data and Sample required by the Contract Documents.
- 4.12.5 By approving and submitting Shop Drawings, Product Data and Samples, the Contractor represents that he has determined and verified all materials, field measurements, and field construction criteria related thereto, or will do so, and that he has checked and coordinated the information contained within such submittals with the requirements of the work and of the Contract Documents.
- 4.12.6 The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Owner's Representative's approval of Shop Drawings, Product Data or Samples under Subparagraph 2.2.13 unless the Contractor has specifically informed the Owner's Representative in writing of such deviation at the time of submission and the Owner's Representative has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples by the Owner's Representative's approval thereof.
- 4.12.7 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 Owner's Representative on previous submittals.
- 4.12.8 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 Owner's Representative as provided in Subparagraph 2.2.13. All such portions of the work shall be in accordance with approved submittals.

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 reasonably encumber the site with any materials or equipment.
- 4.13.2 The Contractor shall hold and save the Owner free and harmless from liability of any nature or kind arising from use, trespass or damage occasioned by third persons.

4.14 CUTTING AND PATCHING OF WORK

- 4.14.1 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.

- 4.14.2 The Contractor shall not damage or endanger any portion of the work or the work of the Owner or any separate contracts by cutting, patching or otherwise altering any work, or by excavation. The Contractor shall not cut or otherwise alter the work of the Owner or any separate Contractor except with the written consent of the Owner and of such separate Contractor. The Contractor shall not unreasonably withhold from the Owner any separate Contractor his consent to cutting or otherwise altering the work.

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 his operations. At the completion of the work, he shall remove all his waste materials and rubbish from and about the Project as well as all his tools, construction equipment, machinery and surplus materials.
- 4.15.2 If the Contractor fails to clean up at the completion of the work, the Owner may do so as provide in Paragraph 3.4, and the cost thereof shall be charged to the Contractor.
- 4.15.3 The Contractor shall be solely responsible for performance of the following clean up:
1. Debris: Regardless of the nature of the debris, it shall be immediately cleared form the work area. Each trade shall cooperate with other trades in the removal of debris and in keeping a clean job throughout.
 2. Cleaning of All Glazes: The Contractor shall remove sealant and caulking stains and paint from all glass and shall wash and polish same. Care shall be taken not to scratch glass.
 3. Cleaning of All Painted, Decorated, and Stained Work: The Contractor shall remove all marks, stains, finger prints, and other soil or dirt from all painted, decorated, and stained work.
 4. Removal of all Temporary Protections: The Contractor shall remove all temporary protections and shall clean all floors at completion.
 5. Cleaning and Polishing of all Hardware: The Contractor shall clean and polish all hardware for all trades,. This shall include removal of all stains, dust dirt, paint, etc., upon completion, without scratching or otherwise marring the hardware.
 6. Removal of all Spot, Soil, and Paint from all Tile Work: The Contractor shall remove all spots, soil and paint from all tile work and shall wash the same upon completion.
 7. Cleaning of all Fixtures and Equipment: The Contractor shall clean all fixtures and equipment, removing all stains, paint, dirt, and dust.

4.16 COMMUNICATIONS

- 4.16.1 The Contractor shall communicate directly with the Owner's Representative for design clarifications. Any fabrication or installation issues that may result in a change order or may result in a delay to the project schedule shall be communicated to both the Owner and the Owner's Representative at the same time, and documented in writing within two business days. All oral directions from the Owner's Representative to the Contractor shall be documented in writing to the Contractor and the Owner within one business day.

4.17 ROYALTIES AND PATENTS

- 4.17.1 The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified; but if the Contractor has reason to believe that the design, process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the Owner's Representative.

4.18 INDEMNIFICATION

- 4.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner and the Owner's Representative and their 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, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other

than the work itself), including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission on the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such negligent 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 this Paragraph 4.18.

- 4.18.2 In any and all claims against the Owner or the Owner's Representative or any of their agents or employees by an employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph 4.18 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.
- 4.18.3 The obligation of the Contractor under this Paragraph 4.18 shall not extend to the liability of the Owner's Representative, his agents or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs, or specifications, or (2) the giving of or the failure to give directions by the Owner's Representative, his agents or employees, provided such giving or failure to give is the primary cause of the injury or damage.

ARTICLE 5

SUBCONTRACTOR

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 at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Subcontractor or his authorized representative. The term "Subcontractor" does not include any separate Contractor or his Subcontractors.
- 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 at the Site.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

- 5.2.1 Unless otherwise required by the Contract Documents of the Bidding Documents, the Contractor, as soon as practicable after the award of the Contract, shall furnish to the Owner and the Owner's Representative in writing the names of the persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each of the principal portions of the work. The Owner's Representative will promptly reply to the Contractor in writing stating whether or not the Owner or the Owner's Representative, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or the Owner's Representative to reply promptly shall constitute notice of no reasonable objection.
- 5.2.2 The Contractor shall not contract with any such proposed person or entity to whom the Owner or the Owner's Representative has made reasonable objection under the provisions of Subparagraph 5.2.1. The Contractor shall not be required to contract with anyone to whom he has a reasonable objection.

5.3 SUBCONTRACTUAL RELATION

- 5.3.1 By an appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the Owner and the Owner's Representative. Said agreement shall preserve and protect the rights of the Owner and the Owner's Representative under the Contract Documents with respect to the work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the Contractor-Subcontractor agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with his Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Paragraph 5.3, and identify the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Documents available to his Subcontractors.

ARTICLE 6

WORK BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS

- 6.1.1 The Owner reserves the right to perform work related to the Project with his own forces, and 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 Owner, he shall make such claim as provided elsewhere in the Contract Documents.
- 6.1.2 When separate contracts are awarded for different portions of the Project or other work on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.
- 6.1.3 The Owner will provide for the coordination of the work of his own forces and of each separate Contractor with the work of the Contractor, who shall cooperate therewith as provided in paragraph 6.2.

6.2 MUTUAL RESPONSIBILITY

- 6.2.1 The Contractor shall afford the Owner and the Separate Contractors reasonable opportunity 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.
- 6.2.2 If any part of the Contractor's work depends for proper execution or results upon the work of the Owner or any separate Contractor, the Contractor shall, prior to proceeding with the work, promptly report to the Owner's Representative any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acceptance of the Owner's or the separate Contractor's work as fit and proper to receive his work, except as to defects which may subsequently become apparent in such work by others.
- 6.2.3 Any costs caused by defective or ill-timed work shall be borne by the party responsible thereof.
- 6.2.4 Should the Contractor wrongfully cause damage to the work or property of the Owner, or to other work on the site, he shall promptly remedy such damage as provided in Subparagraph 10.2.5.
- 6.2.5 Should the Contractor wrongfully 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 or initiates an arbitration proceeding against the Owner on account of any damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor, who shall defend such proceedings at the Owner's expense, and if any judgment or award against the Owner arises therefrom, the Contractor shall pay or satisfy it and shall reimburse the Owner for all attorneys' fees and court or arbitration costs which the Owner has incurred.

6.3 OWNER'S RIGHT TO CLEAN UP

- 6.3.1 If a dispute arises between the Contractor and separate Contractors as to their responsibility for cleaning up as required by Paragraph 4.15, the Owner may clean up and charge the cost thereof to the Contractors responsible therefor as the Owner's Representative shall determine to be just.

ARTICLE 7

MISCELLANEOUS PROVISIONS

7.1 GOVERNING LAW

- 7.1.1 The Contract shall be governed by the law of the State of New Mexico.
- 7.1.2 The Owner and the Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any moneys due or to become due to him thereunder, without the previous written consent of the Owner.

7.2 WRITTEN NOTICE

- 7.2.1 Written notice shall be deemed to have duly served if delivered in person to the individual or member of the firm or entity or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified mail to the last business address known to him who gives the notice.

7.3 CLAIMS FOR DAMAGES

7.3.1 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 his employees, agents or others for whose acts he 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.

7.4 PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND

7.4.1 The Contractor to whom the Contract is awarded shall furnish and pay for reputable and approved Performance and Labor and Material Payment Bonds, each for the full amount of the Contract Sum. Bonds shall be executed on standard AIA forms.

7.5 RIGHTS AND REMEDIES

7.5.1 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.

7.5.2 No action or failure to act by the Owner, the Owner's Representative, or the Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

7.6 TESTS

7.6.1 If the Contract Document, 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 Owner's Representative timely notice of its readiness so the Owner's Representative may observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests or approvals. Tests specifically called for by specifications shall be made by an independent, certified, professional testing laboratory acceptable to the Owner's Representative, and the Contractor shall employ same and pay all charges in connection therewith. Records of tests shall be delivered to the Owner's Representative in duplicate on acceptable forms.

7.6.2 If the Owner's Representative determines that any work requires special inspection, testing, or approval which Subparagraph 7.6.1 does not include, he will, upon written authorization from the Owner, instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as provided in Subparagraph 7.6.1. 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 Owner's Representative's additional services made necessary by such failure; otherwise the Owner shall bear such costs, and an appropriate Change Order shall be issued.

7.7 INTEREST

7.7.1 The Owner will not pay interest on payments due and unpaid under the Contract Document.

ARTICLE 8

TIME

8.1 DEFINITIONS

8.1.1 Unless otherwise provided, the Contract Time is the period of time allotted in the Contract Documents for Substantial Completion of the work as defined in Subparagraph 8.1.3, including authorized adjustments thereto.

8.1.2 The date of commencement of the work is the date established in a Notice to Proceed. If there is no Notice to Proceed, it shall be the date of the Owner-Contractor Agreement or such other date as may be established therein.

8.1.3 The Date of Substantial Completion of the work or designated portion thereof is the Date certified by the Owner's Representative and approved by the Owner when construction is deficiently complete, in accordance with the Contract Documents, so the Owner can occupy or utilize the work or designated portion thereof for the use for which it is intended.

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

8.2 PROGRESS AND COMPLETION

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

8.2.2 The Contractor shall begin the work on the date of commencement as defined in Subparagraph 8.1.2. He shall carry the work forward expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

8.3 DELAYS AND EXTENSIONS OF TIME

- 8.3.1 If the Contractor is delayed at any time in the progress of the work by any act or neglect of the Owner or the Owner's Representative or by any employees of either, or by any separate Contractor employed by the Owner or by changes ordered in the work, or by labor disputes, fire, unusual delay in unavoidable casualties, or any causes beyond the Contractor's control or by delay authorized by the Owner pending arbitration, or by any other cause which the Owner's Representative determines may justify the delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner's Representative may determine.
- 8.3.2 Any claim for extension of time shall be made in writing to the Owner's Representative not more than twenty days after the commencement of the delay; otherwise it shall be waived. In the case of a continuing delay, only one claim is necessary. The Contractor shall provide an estimate of the probable effect of such delay on the progress of the work.
- 8.3.3 If written agreement is made stating the dates upon which interpretations as provided in Subparagraph 2.28 shall be furnished, then no claim for delay shall be allowed on account of failure to furnish such interpretations until fifteen days after written request is made for them, and not then unless such claim is reasonable.
- 8.3.4 This Paragraph 8.3 does not exclude the recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9

PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

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

9.2 SCHEDULE OF VALUES

- 9.2.1 Before the first Application for Payment, the Contractor shall submit to the Owner and Owner's Representative a schedule of values allocated to the various portion of the work, prepared in such form and supported by such data to substantiate its accuracy as the Owner or Owner's Representative may require. This schedule, unless objected to by the Owner or Owner's Representative, shall be used only as a basis for the Contractor's Applications for payment.

9.3 APPLICATIONS FOR PAYMENT

- 9.3.1 At least ten days before the date for each progress payment established in the Owner-Contractor Agreement, the Contractor shall submit to the Owner's Representative an itemized Application for Payment, notarized if required, supported by such data substantiating the Contractor's right to payment as the Owner or the Owner's Representative may require, as provided elsewhere in the Contract Documents.
- 9.3.2 Unless otherwise provided in the Contract Documents, payments will be made on account of materials or the Owner payments may similarly be made for materials or equipment suitably stored at some other location agreed upon in writing. Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials or equipment or otherwise protect the Owner's interest, including applicable insurance and transportation to the site for those materials and equipment stored off the site.
- 9.3.3 The Contractor warrants that title to all work, materials and equipment covered by an Application for Payment will pass to the Owner 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 interest or encumbrances hereinafter referred to in this Article 9 as "liens"; and that no work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing work at the site or furnishing materials or equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

9.4 CERTIFICATES FOR PAYMENT

- 9.4.1 The Owner's Representative will within three days after the receipt of the Contract's Application for Payment, approve the Application for Payment to the Owner with a copy to the Contractor for such amount as the Owner's Representative determines is properly due, or notify the Contractor in writing of his reasons for withholding his approval as provided in Subparagraph 9.6.1.
- 9.4.2 The issuance of an approval of the Application for Payment will constitute a representation by the Owner's Representative to the Owner, based on his observations at the site as provided in Subparagraph 2.2.3 and the data comprising the Application for Payment, that the work has progressed to the point indicated; that, to the best of his knowledge, information and belief, the quality of the work is in accordance with the Contract Documents (subject to an evaluation of the work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents correctable prior to completion, and that the Contractor is entitled to payment in the amount certified. However, by issuing an approval of the Application for Payment, the Owner's Representative shall not thereby be deemed to represent that he has made exhaustive or continuous on-site inspections to check the quality or quantity of the work or that he has reviewed the construction means, methods, techniques, sequences procedures, or that he has made any examination to ascertain how or for what purpose the Contractor has used the moneys previously paid on account of the Contract Sum.

9.5 PROGRESS PAYMENTS

- 9.5.1 After the Owner's Representative has issued an approval of the Application for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents.
- 9.5.2 The Contractor shall promptly pay each Subcontractor upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's work, the amount to which said Subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of such Subcontractor's work. The Contractor shall, by an appropriate agreement with each Subcontractor, require each Subcontractor to make payment to his Subcontractors in similar manner.
- 9.5.3 The Owner's Representative may, on request and at his 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 Owner's Representative on account of work done by such Subcontractor.
- 9.5.4 Neither the Owner nor the Owner's Representative shall have any obligation to pay or to see to the payment of any moneys to any Subcontractor except as may otherwise be required by law.
- 9.5.5 No Certificate for progress payment, no progress payment, nor any partial or entire use of occupancy of the Project by the Owner shall constitute an acceptance of any work not in accordance with the Contract Documents.

9.6 PAYMENT WITHHELD

- 9.6.1 The Owner's Representative may decline to certify payment and may withhold his Certificate in whole or in part, to the extent necessary to reasonably protect the Owner, if in his opinion he is unable to make representations to the Owner as provided in Subparagraph 9.4.2.
- 9.6.2 If the Owner's Representative is unable to make representations to the Owner, as provided in Subparagraph 9.4.2 and to certify payment in the amount of the Application, he will notify the Contractor as provided in Subparagraph 9.4.1. If the Contractor and Owner's Representative cannot agree on a revised amount, the Owner's Representative will promptly issue a Certificate for Payment for the amount for which he is able to make such representations to the Owner. The Owner's Representative may also decline to certify payment, or because of subsequently discovered evidence or subsequent observations, 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 Owner from loss because of:
- A) Defective work not remedied;
 - B) Third party claims filed or reasonable evidence indicating probable filing of such claims;
 - C) Failure of the Contractor or make payments properly to Subcontractors or for labor, materials or equipment;
 - D) Reasonable evidence that the work cannot be completed for the unpaid balance of the Contract Sum.
 - E) Damage to the work of another Contractor;

- F) Reasonable evidence that the work will not be completed within the Contract Time; or,
- G) Failure to carry out the work in accordance with the Contract Documents.

9.6.2 When the above grounds in Subparagraph 9.6.1 are removed, payment shall be made for amounts withheld because of them.

9.7 FAILURE OF PAYMENT

9.7.1 If the Owner's Representative does not issue a Certificate for Payment, through no fault of the Contractor, within three days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents any amount certified by the Owner's Representative, then the Contractor may, upon seven additional days' written notice to the Owner and the Owner's Representative, stop the work until payment of the amount owing has been received. The Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, which shall be effected by appropriate Change Order in accordance with Paragraph 12.3.

9.8 SUBSTANTIAL COMPLETION

9.8.1 When the Contractor considers that the work, or a designated portion thereof which is acceptable to the Owner, is substantially complete as defined in Subparagraph 8.1.3, the Contractor shall prepare for submission to the Owner's Representative a list of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all work in accordance with the Contract Documents. When the Owner's Representative, with the Owner, on the basis of an inspection determines that the work or designated portion thereof is substantially complete, he will then prepare a Certificate of Substantial Completion Form, AIA Document G704-1978, which shall establish the Date of Substantial Completion, shall state the responsibilities of the Owner and the Contractor for security, maintenance within which the Contractor shall complete the items listed therein. Warranties required by the Contract Document shall commence on the date of Final Completion of the work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Contractor and the Owner for their written acceptance of the responsibilities assigned to them in such Certificate.

9.8.2 Upon Substantial Completion of the work or designated portion thereof and upon application by the Contractor and certification by the Owner's Representative, the Owner shall make payment, reflecting adjustment in retainage, if any, for such work or portion thereof, as provided in the Contract Documents.

9.9 FINAL COMPLETION AND FINAL PAYMENT

9.9.1 Upon receipt of written notice that the work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner's Representative will promptly make such inspection and, if he finds the work acceptable under the Contract Documents and the Contract fully performed, he will promptly issue final Certificate for Payment stating that, to the best of his observations and inspections, the work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in said Final Certificate, is due and payable. The Owner's Representative's Final Certificate of payment will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment as set forth in Subparagraph 9.9.2 have been fulfilled.

9.9.2 Neither the final payment nor the remaining retained percentage shall become due until the Contractor submits to the Owner's Representative (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the work for which the Owner or his property might in any way be responsible have been paid or otherwise satisfied, (2) consent of surety, if any, to final payment, and (3) if required by the Owner, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the Contract, to the extent and in such form as may be designed by the Owner. If any Subcontractor refuses to furnish a release or waiver required by the Owner the Contractor may furnish a bond satisfactory to the Owner to indemnify him against any such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all moneys that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

9.9.3 If, after Substantial Completion of the work, final completion thereof is materially delayed through no fault of the Contractor or by the issuance of Change Orders affecting final completion, and the Owner's Representative so confirms, the Owner shall, upon application by the Contractor and certification by the Owner's Representative and without terminating the Contract, make payment of the balance for that portion of the work fully completed and accepted. If the remaining balance for work not fully completed or corrected is less than the retainage stipulated in the Contract Document, and if bonds have been furnished as provided in Paragraph 7.5, the written consent of the surety to the payment of the balance due for that portion of the work fully completed and accepted shall be submitted by the Contractor to the Owner's Representative prior to certification of such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

- 9.9.4 The making of final payment shall constitute a waiver of all claims by the Owner except those arising from:
- A) Unsettled liens;
 - B) Faulty or defective work appearing after Substantial Completion;
 - C) Failure of the work to comply with the requirements of the Contract Documents; and
 - D) Terms of any special warranties required by the Contract Documents.
- 9.9.5 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.

ARTICLE 10

PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

- 10.1.1 The Contractor shall be responsible in 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:
- A) All employees on the work and all other persons who may be affected thereby;
 - B) 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 any of his Subcontractors or Sub-subcontractors; and
 - C) 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.
- 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 Owners and users of adjacent utilities.
- 10.2.4 When the use of storage of explosives or other hazardous materials or equipment 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.
- 10.2.5 The Contractor shall promptly remedy all damage or loss (other than damage or loss insured under paragraph 11.3) to any property referred to in Clauses 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, any Subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the Contractor is responsible under clauses 10.2.1.2 and 10.2.1.3, except damage or loss attributable to the acts or omissions of the Owner or the Owner's Representative or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and no attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to his obligations under Paragraph 4.18.
- 10.2.6 The Contractor shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's Superintendent unless otherwise designated by the Contractor in writing to the Owner and the Owner's Representative.
- 10.2.7 The Contractor shall not load or permit any part of the work to be loaded so as to endanger its safety.

10.3 EMERGENCIES

- 10.3.1 In any emergency affecting the safety of persons or property, the Contractor shall act, at his reasonable

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 in Article 12 for Changes in the work.

ARTICLE 11

INSURANCE

11.1 CONTRACTOR'S LIABILITY INSURANCE

- 11.1.1 The Contractor shall maintain in effect, and shall require all Subcontractors and others performing any portion of this Contract to maintain in effect, insurance of the types and respective minimum limits required. Such insurance shall cover all operations under this Contract. Maintenance of such insurance in at least the specified minimum amounts shall not relieve the Contractor or liability for loss in excess of the limits of liability specified herein or otherwise not covered by the coverage's required herein. The Contractor shall bear the cost of such insurance and include its costs in the Bid. The limits of insurance to be maintained are specified in the Agreement Between Owner and Contractor.
- 11.1.2 Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the work. These Certificates shall contain a provision that coverage afforded under the policies will not be canceled until at least thirty days; prior written notice has been given to the Owner.

11.2 OWNER'S LIABILITY INSURANCE

- 11.2.1 The Owner shall be responsible for purchasing and maintaining his own liability insurance and, at his option, may purchase and maintain such insurance as will protect him against all claims which may arise from operations under the Contract.

11.3 PROPERTY INSURANCE

- 11.3.1 The Contractor shall maintain builder's risk property insurance or self-insurance, or a combination of insurance and self-insurance, upon the work at the site for at least the actual cash value thereof. The builder's risk insurance shall cover the interests of the Owner, the Contractor, Subcontractors, and Sub-subcontractors in the work. The insurance shall insure against at least the following perils: fire extended coverage, vandalism, and malicious mischief. The Contractor shall bear the cost of such insurance and include its cost in the Bid.
- 11.3.2 Any loss insured or self-insured under Subparagraph 11.3.1 is to be adjusted with the Owner and made payable to the Owner as trustee for the insured, as their interests may appear subject to the requirements of any applicable mortgage clause. The Owner shall deposit the proceeds in a separate account and shall distribute them in accordance with such agreement as the parties in interest, including the Owner, may reach. The Contractor shall pay each Subcontractor a just share of any insurance proceeds which the Contractor receives and shall require by written agreement signed by the Subcontractor that the Subcontractor will make payments to his Sub-subcontractors in a similar manner. If after such loss no other special agreement is made, replacement of damaged work shall be covered by an appropriate order.
- 11.3.3 To the extent permitted under their respective property insurance policies, the Owner and the Contractor hereby waive all rights, each against the other, for damages caused by fire or other perils to the extent covered by Insurance obtained pursuant to this Article 11 or any other property insurance applicable to the work, except such rights as they may have to the proceeds of such Insurance held by the Owner as trustee. The Owner or the Contractor, as appropriate, shall require the Owner's Representative, other Contractors, Subcontractors, and Sub-subcontractors to similarly waive rights of subrogation or property insurers.
- 11.3.4 If the Owner finds it necessary to occupy use of any portion of the work prior to Substantial Completion, such occupancy or use shall not commence prior to the time mutually agreed to by the Owner and the Contractor and, if required by the applicable insurance or self-insurance coverage not prior to the time the builder's risk property insurer has consented to such occupancy or use. The Contractor's consent to such occupancy or use shall not be unreasonably withheld.

11.4 LOSS OF USE INSURANCE

- 11.4.1 The Owner, at his option, may purchase and maintain such insurance as will insure him against loss of use of his property due to fire or other hazards, however caused.

ARTICLE 12

CHANGES IN THE WORK

12.1 CHANGE ORDERS

- 12.1.1 A Change Order is a written order to the Contractor signed by the Owner's Representative and the Contractor and approved in writing by the Owner. A Change Order may be issued only after the execution of the Contract and shall be the only means used to order changes in the work for which the Contractor requires additional compensation, changes to the Contract Time, or changes to the Contract Sum. Minor changes in the work for which the Contractor requires no additional compensation or time shall be executed in accordance with the provision of Subparagraph 12.4.1.
- 12.1.2 The Owner, without invalidating the Contract, may order changes in the work within the general scope of the Contractor consisting of additions, ~~deletions or other~~ revisions, the Contract Sum and the Contract Time being adjusted accordingly. 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 cost or credit to the Owner resulting from a change in the work shall be determined in one or more of the following ways:
- A) By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
 - B) By unit prices stated in the Contract Documents or subsequently agreed upon;
 - C) By cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
 - D) By the method provided in Subparagraph 12.1.4.
- 12.1.4 If none of the methods set forth in Clauses 12.1.2., 12.1.3. or 12.1.3. is agreed upon, the Contractor, provided he receives a written order signed by the Owner, shall promptly proceed with the work involved. The cost of such work shall be determined by the Owner's Representative on the basis of the reasonable expenditures and savings of those performing the work attributable to the change, including, in the case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, the Contractor shall keep and present, in such form as the Owner's Representative may prescribe, an itemized accounting together with appropriate supporting data for inclusion in a Change Order. Unless otherwise provided in the Contract Documents, cost shall be limited to the following: cost of materials, including sales tax and cost of delivery; cost of labor, including social security, old age and unemployment insurance, and fringe benefits, required by agreement or custom, workers' or workmen's compensation insurance; bond premiums; rental value of equipment and machinery; and the additional costs of supervision and field office personnel directly attributable to the change. Pending final determination of cost to the Owner payments on account shall be made on the Owner's Representative's Certificate for payment. The amount of credit to be allowed by the Contractor to the Owner for any deletion or change which results in a net decrease in the Contract Sum will be the amount of the actual net cost as confirmed by the Owner's Representative. When both additions and credits covering related work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any, with respect to that change.
- 12.1.5 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 Owner or the Contractor, the applicable unit prices shall be equitably adjusted.
- 12.1.6 By submission of a Bid, the Contractor agrees and binds himself to the following method of calculating Change Order costs. The Owner also agrees to the following method of calculating the cost of any changes to the Contract. With each proposal for a change in the amount of the Contract, the Contractor shall submit an itemized breakdown of all increases or decreases in the cost of the Contractor's and all Subcontractor's and Sub-subcontractor's work to include at least the following detail in the general order listed:
- A) Material quantities and unit costs;
 - B) Labor amounts and hourly rates (identified with specific items of material to be placed or operation to be performed);
 - C) Costs inherent in use of Contractor/Sub-subcontractor owned equipment;
 - D) Equipment rental, if any;
 - E) Workmen's compensation and public liability insurance;
 - F) General administration, overhead, supervision, project insurance and profit, based on the following schedule:
- | | | |
|---|--------------|------------|
| Subtotal before Applying the Percentage Shown | \$500 & Less | Over \$500 |
|---|--------------|------------|

	Contractor for work performed by his own forces	22%	19%
	Contractor for work performed by Subcontractor	10%	8%
	Subcontractor for work performed by his own forces	18%	15%
	Subcontractor for work performed by Sub-subcontractor	10%	8%
	Sub-subcontractor for work performed by his own forces	18%	15%
G)	Employment taxes under FICA and FUTA; and		
H)	State gross receipts tax (Contractor only).		

12.1.7 The quotation for work under a Change Order shall be binding for sixty (60) days from the date submitted by the Contractor.

12.2 CONCEALED CONDITIONS

- 12.2.1 Should concealed conditions encountered in the performance of the work below the surface of the ground or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Contract Documents, or should unknown physical conditions below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in work of the Character provided for in this Contract, be encountered, the Contract Sum shall be equitably adjusted by change Order upon verified claim by either party made within twenty days after the first observance of the conditions.
- 12.2.2 If the Contractor wishes to make a claim for an increase in the Contract Sum, he shall give the Owner's Representative and Owner written notice thereof within twenty 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 Paragraph 10.3. No such claim shall be valid unless so made. If such claims are justified and the Owner authorizes an increase in the Contract Sum, the Owner and the Contractor shall proceed to negotiate the amount of the adjustment in the Contract Sum. If the Owner and the Contractor cannot agree on the amount of the adjustment in the Contract Sum, it shall be determined by the Owner's Representative. Any change in the Contract Sum resulting from such claim shall be authorized by Change Order.
- 12.2.3 If the Contractor claims that additional cost is involved because of, but not limited to, (1) any written interpretation pursuant to Subparagraph 2.2.8, (2) any order by the Owner to stop the work pursuant to Paragraph 3.3 where the Contractor was not at fault, (3) any written order for a minor change in the work issued pursuant to Paragraph 12.4, or (4) failure of payment by the Owner pursuant to Paragraph 9.7, the Contractor shall make such claims provided in Subparagraph 12.3.1.

12.3 MINOR CHANGES IN THE WORK

- 12.3.1 The Owner's Representative will have authority to order minor changes in the work not involving an adjustment in the Contract Sum or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and the Contractor. The Contractor shall carry out such written orders promptly.

ARTICLE 13

UNCOVERING AND CORRECTION OF WORK

13.1 UNCOVERING OF WORK

- 13.1.1 If any portion of the work should be covered contrary to the request of the Owner's Representative or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Owner's Representative, be uncovered for his observation and shall be replaced at the Contractor's expense.
- 13.1.2 If any portion of the work has been covered which the Owner's Representative has not specifically requested to observe prior to begin covered, the Owner's Representative may request to see such work and it shall be uncovered by the Contractor. If such work be found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such work be found not in accordance with the Contract Documents, the Contractor shall pay such costs unless it be found that this condition was caused by the Owner or a separate Contractor as provided in Article 6, in which even the Owner shall be responsible for the payment of such costs.

13.2 CORRECTION OF WORK

- 13.2.1 The Contractor shall promptly correct all work rejected by the Owner's Representative as defective or as 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 Owner's Representative's additional services made necessary thereby.
- 13.2.2 If, within one year after the Date of Substantial Completion of the work or designated portion thereof or within one year after acceptance by the Owner of designated equipment 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 after receipt of a written notice from the Owner to do so unless the Owner has previously given the Contractor a specific written acceptance of such condition. This obligation shall survive termination of the Contract. The Owner 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 and which have not been corrected under Subparagraphs 4.5, 13.2.1 and 13.2.2, unless removal is specifically waived in writing by the Owner.
- 13.2.4 If the Contractor fails to correct defective or non-conforming work as provided in Subparagraph 4.5.1, 13.2.1 and 13.2.2, the Owner may correct it in accordance with Paragraph 3.4.
- 13.2.5 If the Contractor does not proceed with the correction of such defective or non-conforming work within a reasonable time fixed by written notice from the Owner's Representative, the Owner may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten days thereafter, the Owner may upon ten additional days' written notice sell such work at auction or at 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 Owner's Representative'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 Owner.
- 13.2.6 The Contractor shall bear the cost of making good all work of the Owner or separate Contractors destroyed or damaged by such correction or removal.
- 13.2.7 Nothing contained in this Paragraph 13.2 shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including Paragraph 4.5 hereof. The establishment of the time period of one year after the Date of Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the Contractor to correct the work and has no relationship to the time within which his obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to his obligations other than specifically to correct the work.

13.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK

- 13.3.1 If the Owner prefers to accept defective or non-conforming work, he may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect a reduction in the Contract Sum where appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 14

TERMINATION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR

- 14.1.1 If the work is stopped for a period of thirty days under an order of 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 a Sub-contractor or their agents or employees or any other persons performing any of the work under a contract with the Contractor because the Owner's Representative has not issued a Certificate for payment as provided in Paragraph 9.7 or because the Owner has not made payment thereon as provided in paragraph 9.7, then the Contractor may, upon seven additional days' written notice to the Owner and the Owner's Representative, terminate the Contract and recover from the Owner payment for all work executed and for any proven loss sustained upon any materials, equipment, tools, construction equipment and machinery, including reasonable profit and damages.

14.2 TERMINATION BY THE OWNER

- 14.2.1 If the Contractor is adjudged bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if he persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if he fails to make prompt payment to Subcontractors for material of labor, or persistently disregards laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of the Contract Documents, then the Owner, upon certification by the Owner's Representative that sufficient cause exists to justify such action, may without prejudice to any right or remedy and after giving the Contractor and his surety, if any, seven days written notice, terminate the employment of the Contractor and ~~take possession~~ ~~may finish~~ the work by whatever method he may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the work is finished.
- 14.2.2 If the unpaid balance of the Contract Sum exceeds the costs of finishing the work, including compensation for the Owner's Representative's additional services made necessary thereby, and any damages sustained by the Owner as a result of the Contractor's breach, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or to the Owner, as the case may be, shall be certified by the Owner's Representative upon application, in the manner provided in paragraph 9.4 and this obligation or to the Owner, as the case may be, shall be certified by the Owner's Representative upon application, in the manner provided in Paragraph 9.4 and this obligation for payment shall survive the termination of the Contract.
- 14.2.3 In the event that the Project is abandoned by the Owner, the Owner may terminate this contract at any time by giving at least seven (7) day notice to the Contractor. In the event of termination, all work completed shall become the property of the Owner. The Contractor shall be entitled to receive compensation for actual work satisfactorily completed hereunder, including reimbursable expenses authorized by the Owner which are then due.
- 14.2.4 In the event the Contractor fails to perform the work in accordance with the Contract Documents, the Owner may terminate the Contract after giving the Contractor five (5) working days notice.

ARTICLE 15

EQUAL OPPORTUNITY

- 15.1 The Contractor shall maintain policies of employment as follows:
 - 15.1.1 The Contractor, all Subcontractors, and all Sub-subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. The Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous place, available to employees and applicants for employment, notices setting forth the policies of non-discrimination.
 - 15.1.2 The Contract, all Subcontractors, and all Sub-subcontractors shall, in all solicitation or advertisements for employees placed by them or on their behalf, state that all qualified applicant will receive consideration for employment without regard to race, religion, color, sex, or national origin.

ARTICLE 16

MINIMUM WAGE RATES

- 16.1 The Contractor warrants and agrees that he and all Subcontractors and Sub-subcontractors shall comply with all applicable provisions of the New Mexico Public Works Minimum Wage Act as outlined in the Contract Documents. Wage rates are not applicable to projects costing less than \$60,000.00. Both the State of New Mexico Wage Rate Decision and the applicable Federal wage rates are included in this document.

SUPPLEMENTARY CONDITIONS (00 7300)

(00 7301) CITY OF SANTA FE REQUIREMENTS

Document is intended to be used in conjunction with the General Conditions of the Contract.

ADDITIONAL CONDITIONS

- 1.0 DEFINITIONS - The following definitions shall apply through the Bidding Documents or Contract Documents unless otherwise specified.
- 1.1 ADDENDUM: Written or graphic instrument issued prior to the execution of the Contract which modifies or interpret the Bidding Documents, including Drawings and Specifications, by additions, deletions, clarifications, or corrections. Addenda will become part of the Contract Documents when the Construction Contract is executed. Plural: ADDENDA
- 1.2 ADDITIVE OR DEDUCTIVE ALTERNATE BID: Amount stated in the Bid to be added or deducted from the amount of the Base Bid if the corresponding change in project scope or alternate materials and/or methods of construction is accepted.
- 1.3 BASE BID: Amount of money stated in the Bid as the sum for which the Bidder offers to perform the work, not including that work for which Alternate Bids are also submitted.
- 1.4 BID: A complete and properly signed proposal to do the work or designated portion thereof for the sums stipulated therein, supported by data called for by the Bidding Documents.
- 1.5 BID LOT: A major item of work for which a separate quotation or proposal is requested.
- 1.6 BIDDER: One who submits a Bid for a Prime contract with the Owner, as distinct from a Subcontractor, who submits a Bid to a Bidder. Technically, a Bidder is not a Contractor on a specific project until a contract exists between him and the Owner.
- 1.7 BIDDING DOCUMENT: Documents that include the Invitation for Bid, Instructions to Bidders, the Bid Form, other sample bidding and contract forms, and the proposed Contract Documents, including any Addenda issued prior to receipt of Bids. The Contract Documents proposed for the work consist of the Owner-Contractor Agreement, the Conditions of the Construction Contract (General, Supplementary, and Other Conditions), the Drawings, the Specifications, and all Addenda issued prior to and all Modifications issued after execution of the Contract.
- 1.8 DAY: Calendar day, which is every day shown on the calendar, beginning and ending at midnight.
- 1.9 CENTRAL PURCHASING OFFICE: The Central Purchasing Office is the City of Santa Fe Purchasing Department.
- 1.10 GOVERNING AUTHORITY: The Governing Board of the City of Santa Fe for the execution of construction contracts is the Mayor and City Manager.
- 1.11 INVITATION FOR BID: The Bidding Documents utilized for soliciting sealed Bids. "Invitation to Bid" shall have the same meaning as "Invitation for Bid".
- 1.12 OWNER: The City of Santa Fe, New Mexico.
- 1.13 PROCUREMENT OFFICER: The Director of the Purchasing Division, or a designee authorized to enter into or administer contracts and make written determination with respect thereto.
- 1.14 RESPONSIBLE BIDDER: A Bidder who submits a responsive Bid and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation, and experience are adequate to make satisfactory delivery of the services, construction, or items of tangible personal property described in the Bidding Documents (13-1-82, NMSA 1978).
- 1.15 SUCCESSFUL BIDDER: The lowest qualified and responsible Bidder to whom the Owner, on the basis of the Owner's evaluation, makes an award.

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

1.17 USER: The City of Santa Fe or agencies or designated entity for whose use the Project is being constructed.

2.0 CONTRACT AUDIT

The Owner shall be entitled to audit the books and records of a Contractor or any Subcontractor under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the Contractor for a period of three years from the date of final payment under the prime contract and by the Subcontractor for a period of three years from the date of final payment under the subcontract unless a shorter period is otherwise authorized in writing (13-1-161, NMSA 1978).

3.0 DEBARRED OR SUSPENDED CONTRACTORS

A business (Contractor, Subcontractor, or Supplier) that has either been debarred or suspended pursuant to the requirements of Sections 13-1-177 through 13-1-180, and 13-4-11 through 13-4-17, NMSA 1978, shall not be permitted to do business with the State and shall not be considered for award of contract during the period for which it is debarred or suspended.

4.0 BRIBES, GRATUITIES, AND KICK-BACKS

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

4.2 Pursuant to Section 13-1-191, NMSA 1978, reference is hereby made to the Criminal Laws of New Mexico (including 30-24-1, 30-23-2, and 30-41-1 through 30-41-3, NMSA 1978), which prohibit bribes, kick-backs, and gratuities and violation of which constitutes a felon. Further, the Procurement Code (13-1-28 through 13-1-199, NMSA 1978), imposes civil and criminal penalties for its violation.

5.0 PROTESTS

5.1 Any Contractor who is aggrieved in connection with a procurement may protest to the City Purchasing Agent and the Owner. The protest should be made in writing within twenty-four (24) hours after the facts or occurrences giving rise thereto, but in no case, less than within fifteen (15) calendar days after the facts or occurrences giving rise thereto (13-1-173, NMSA 1978).

5.2 In the event of a timely protest under Section 5.1 (13-1-172 of the Procurement Code, NMSA 1978), the City Purchasing Agent and the Owner shall not proceed further with the procurement unless the State Purchasing Agent or the Owner makes a determination that the award of contract is necessary to protect substantial interests of the Owner (13-1-173, NMSA 1978).

5.3 The City Purchasing Agent or his designee shall have the authority to take any action reasonably necessary to resolve a protest of an aggrieved Contractor concerning a procurement.

5.4 This authority shall be exercised in accordance with adopted regulations, but shall not include the authority to award money damages or attorneys' fees (13-1-174, NMSA 1978).

5.5 The City Purchasing Agent or his designee shall promptly issue a determination relating to the protest. The determination shall:

A) State the reasons for the action taken; and,

B) Inform the protestant of the right to judicial review of the determination pursuant to Section 13-1-183, NMSA 1978 (13-1-175, NMSA 1978).

5.6 A copy of the determination issued under Section 13-1-175, NMSA 1978, shall be mailed immediately to the protestant (13-1-176, NMSA 1978).

6.0 CONTRACT BOND REQUIREMENTS

6.1 The Successful Bidder, where the Contract Price exceeds twenty five thousand dollars (\$25,000), shall post a one hundred percent (100%) Performance Bond and a one hundred percent (100%) Labor and Material Payment Bond. Bonds shall be executed on Performance Bond and Labor and Material Payment Bond forms attached hereto, with amount payable conforming to the terms of the contract. Surety shall be a company licensed to do business in the State of New Mexico and acceptable to the Owner.

- 6.2 Personal sureties may be accepted if the Owner so determines in advance, but in such case the amount of the Bond shall be the full Contract Price, and the sureties shall justify under oath in amounts above liabilities and exemptions aggregating double the amount of the Bond.
- 6.3 Special attention of Bidders is called to the requirements of Section 13-4-18 through 13-4-20, NMSA 1978 regarding a Contractor who does not have his principal place of business in the State of New Mexico for all taxes due arising out of construction services rendered under the Contract.
- 6.3.1 The right to sue on this Bond accrues only to the Owner and the parties to whom Sections 13-4-18 through 13-4-20, NMSA 1978 grant such right; and any ~~such right~~ shall be exercised only in accordance with the provisions and limitations of said statutes.
- 7.0 NON-RESIDENT CONTRACTOR'S REQUIREMENTS REGARDING GROSS RECEIPTS TAX SURETY BOND**
- 7.1 Section 7-1-55A, NMSA 1978 provides that any person (as defined in Section 7-1-3, NMSA 1978) engaged in the construction business who does not have his principal place of business in New Mexico and enters into a prime construction contract to be performed in this State shall, at the time such contract is entered into, furnish the Director of the Revenue Division, Taxation and Revenue Department, or his delegate with a surety bond or other acceptable security in a sum equivalent to the gross receipts to be paid under the contract multiplied by the applicable rate of the gross receipts tax imposed by Section 7-9-4, NMSA 1978 to secure payment of the tax imposed on the gross receipts from the contract, and shall obtain a certificate from the Director of the Revenue Division, Taxation and Revenue Department, or his delegate that the requirements of this paragraph have been met.
- 7.2 If the total sum to be paid under the contract is changed by ten percent or more after the date the surety bond or other acceptable security is furnished, to the Director or his delegate, such person shall increase or decrease, as the case may be, the amount of the bond or security within fourteen days after the change (7-1-55B, NMSA 1978).
- 7.3 In addition to the above requirements, the Contractor will be subject to all the requirements of the City Procurement Code.
- 8.0 CONTRACTOR'S GROSS RECEIPTS TAX REGISTRATION**
- 8.1 Section 7-10-4, NMSA 1978 provides that any person (as defined in Section 7-10-3, NMSA 1978) performing services for the City of Santa Fe, as those terms are used in the Gross Receipts and Compensating Tax Act (Section 7-10-1 to 7-10-5, NMSA 1978), must be registered and be issued an identification number with the Revenue Division of the Taxation and Revenue Department to pay the gross receipts tax.
- 8.2 The identification number is needed to properly complete the approval process of the contract; therefore, so as to cause no delay in the processing, the Contractor must register with the State of New Mexico, Taxation and Revenue Department. For information contact:
- Revenue Division
Taxation and Revenue Department
1100 South St. Francis Drive
Santa Fe, New Mexico 87504
(505)827-0700
- 8.3 If any person who performs services for the City of Santa Fe is not registered to pay the gross receipts tax, the City shall withhold payment of the amount due until the person has presented evidence of registration with the Revenue Department to pay the gross receipts tax.
- 9.0 CONTRACT WITH NONRESIDENT PERSON OR PARTNERSHIPS OR UNADMITTED FOREIGN CORPORATIONS; AGENT FOR SERVICE OF PROCESS**
- 9.1 Special attention of Bidders is called to requirements of Sections 13-4-21 through 13-4-24, NMSA 1978, whereby a public works contract with a nonresident person or partnership or foreign corporation not authorized to do business in the State shall contain a specific provision designating an agent resident within the State, and his address, upon whom process and writs in any action or proceeding against such business may be served in any action arising out of such contract.
- 11.0 STATE ALLOWANCES**
- 11.1 The Contractor shall purchase the "Allowed Materials" as directed by the Owner through the Landscape Owner's Representative on the basis of the lowest and the best Bid of at least three competitive Bids. If the actual price for purchasing the "Allowed materials" is more or less than the "Cash Allowance", the Contract Price shall be adjusted accordingly. The adjustment in Contract Price made on the basis of the purchase price without additional charges for overhead, profit, insurance, or any other incidental expenses. The cost of installation of the "Allowed Materials" shall be included in the applicable section of the Specifications covering the work.

12.0 MINIMUM WAGE RATES

12.1 The Minimum Wage Rate Determinations for this Project are shown in this section. This project is subject to New Mexico State Wage Rate Decision No. SF-13-0607-B, if the amount of the base bid is equal to or greater than \$60,000.

13.0 FORM OF CHANGE ORDER AND CHANGE ORDER NOTICE TO PROCEED

13.1 The forms issued by the Owner are to be utilized by the Contractor, Landscape Owner's Representative, and the Owner pursuant to the requirements of the General Conditions.

14.0 STATE OF NEW MEXICO STATE INDUSTRIES DIVISION

14.1 The Contractor, at his own expense, shall secure the required building permits from the State CID as required for this Project. Contractor shall adhere to the requirements established for inspections.

15.0 CITY OF SANTA FE REQUIREMENTS

15.1 The General Contractor shall include in the Bid the cost of all landfill dumping fees; additionally, the General Contractor shall be responsible that all rubble, excess materials, etc., are disposed of at an approved, legal dumping site.

15.2 The Contractor shall account for existing conditions affecting the work and the schedule and shall consult and coordinate with the Owner as applicable and make advance and timely provisions for these accordingly.

15.3 The Contractor shall coordinate with the Owner and provide for any temporary on-site facilities, staging or storage areas required for performance of the work.

15.4 The Contractor shall make advance and timely provisions for Large vehicle, crane, lift and special access, etc. to and on the site and conduct any necessary special coordination to facilitate this work and limit its impact, to the extent possible, on existing conditions and facility operations.

15.5 The Contractor shall take all reasonable precautions and make any provisions necessary to protect existing building features and conditions for the duration of the work and shall coordinate with Facilities and Fire Department Staff to determine these measures as appropriate.

15.6 The Contractor shall make reasonable provisions to insure that the environments in areas of the facility that are in active use, remain free from excessive noise, dust, fumes and the like during periods of work.

15.7 The Contractor shall make reasonable efforts to contain the impact of work performance on daily facility operations and to prevent unnecessary contact of the Contractor's laborers, representatives and the like with patrons of the facility.

15.8 The Contractor shall coordinate with Facilities and Fire Department Staff to determine provisions for temporary power, other temporary utilities or services that may be required to complete the work. If existing on-site amenities are determined insufficient, the Contractors shall provide these as necessary to complete the work as required.

15.9 The Contractor shall provide and maintain portable Chemical Toilet(s) on site for the duration of the work for use by the Contractor, sub-contractors, vendors, suppliers, inspectors and authorized City Staff. These toilet facilities shall be secured during non-work hours and shall be located as approved by the Owner. The Contractor shall not utilize existing facility amenities for personal use during performance of the work.

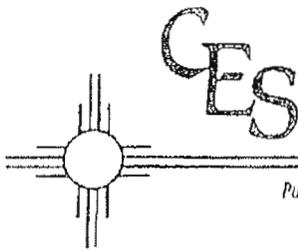
15.10 Work areas shall remain entirely free of debris and tools during non-work hours. Materials, tools and equipment shall not be stored on site other than as specifically approved by the Owner and with necessary precautions in place.

15.11 The Contractor shall provide reasonable access to Facilities and Fire Station #5 Staff or other authorized vendors for any necessary periodic maintenance, repair and monitoring of the facility and systems that may be located in the area(s) of work.

15.12 The Contractor shall coordinate with Facilities and Fire Department Staff to determine access locations and parameters required for the work. These shall be maintained for the duration of the work unless otherwise authorized by the Owner.

15.13 The Contractor shall coordinate with the Owner in a timely manner in advance of any work requiring temporary closure or downtime of the facility, an area of the facility or of any utilities and systems.

EXHIBIT
C
18 PAGES



COOPERATIVE EDUCATIONAL SERVICES

Public Educational Institutions in New Mexico United by a Joint Powers Agreement to Establish an Educational Cooperative

Contract Award Letter

February 14, 2013

Alice Hunt
PROGRESSIVE SERVICES dba PROGRESSIVE ROOFING
23 N 35th Ave
Phoenix, AZ 85009

Re: ACCEPTANCE OF OFFER and CONTRACT AWARD

2013-007 770-007 PR Roofing and Building Envelope Services

Dear Ms. Hunt,

The Association of Educational Purchasing Agencies (AEPA) issued IFB 13. You responded and were approved as an AEPA vendor. In accordance with the Terms and Conditions of the AEPA solicitation, Cooperative Educational Services (CES) received your response for consideration to provide your products and services to educational institutions in the state of New Mexico. Your response has been reviewed at CES, and it is indeed my pleasure to inform you that you have been awarded a contract.

The enclosed Acceptance of Offer and Contract Award is from the cover sheet that you submitted in your bid. I suggest that you take this award and place it with your copy of the bid that you submitted. Please read carefully the paragraph above the authorized signature. It outlines the agreement and specifies the term of the award.

We would like to include information concerning your company in our procurement directory called the Blue Book. Each of our members and participating entities receives a copy of this Blue Book. It enables their staff to look up important information concerning each vendor before placing an order. Although space is limited, the description below is intended as a quick reference of your company. If you would like to revise the description, please provide any changes in writing to CES' procurement office.

Progressive Services, Inc. operates under the core value of character and the philosophy of providing clients with the best possible service at a fair price. Whether it is maintenance or replacement of existing roofing, waterproofing weather barriers, or the design and installation of new applications, Progressive Services is prepared to meet and exceed the expectations of CES Members and Participating Entities.

On CES' website (www.nmedu.org), you can download contact information for all of CES' members and participating entities. You are invited to send marketing materials directly to these institutions.

We look forward to working with you. Please let us know if you have questions or if we can be of any further assistance.

Sincerely yours,

Cooperative Educational Services

David Chavez,
Executive Director
Ofc: 505.344.5470
Fax: 505.344.9343

Serving New Mexico Education Since 1979

4216 Balloon Park Road, NE • Albuquerque, New Mexico 87109-5801 • 505.344.5470 • Fax 505.344.9343 • www.nmedu.org

AEPA FORM B: ACCEPTANCE OF BID AND CONTRACT AWARD

AEPA IFB #013-B Roofing & Building Envelope Services

NAME OF BIDDER: Progressive Services, Inc.

INSTRUCTIONS: PART I of this form is to be completed by the Bidder and signed by its Authorized Representative. PART II will be completed by the AEPA Member Agency only upon the occasion of the bid award. The completed document must be scanned to a PDF format and saved to Folder A, and a completed and signed paper version must be included in the package. If approved by AEPA, the bidder is required to produce a copy of the document for each of the AEPA Member Agency with which it contracts.

PART I: BIDDER

In compliance with the Invitation For Bid (IFB), the undersigned warrants that I/we have examined the Instructions to Bidders, associated documents, and being familiar with all of the conditions surrounding the proposed projects, hereby offer and agree to furnish all labor, materials, supplies and equipment incurred in compliance with all terms, conditions, specifications and amendments associated with this IFB and any written exceptions to the bid. Signature also certifies understanding and compliance with the certification requirements of the AEPA Member Agency's Terms and Conditions and/or Special Terms and Conditions. The undersigned understands that their competence, ability, capacity and obligations to offer and provide the proposed tangible personal property, professional services, construction services and other services on behalf of the Offeror as well as other factors of interest to the AEPA Member Agency as stated in the evaluation section, will be a consideration in making the award.

Company Name: Progressive Services, Inc. Date 10/10/12

Company Address 23 N. 35th Ave. City: Phoenix State: AZ Zip: 85009

Contact Person Alice Hunt Title: Business Development

Authorized Signature (ink only) [Signature] Title: Vice President

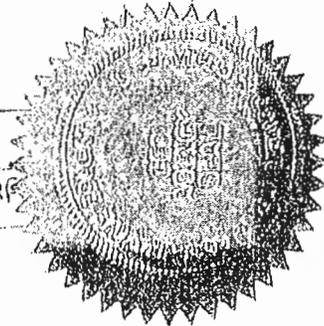
PART II: AWARDDING MEMBER AGENCY

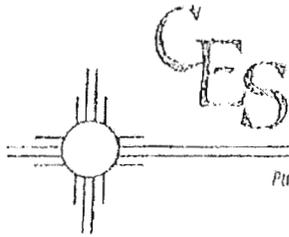
Your bid for the above identified bid is hereby accepted. As contractor you are now bound to offer and provide the products and services identified within this IFB, your response and approved by AEPA, including all terms, conditions, specifications, exceptions and amendments. As contractor, you are hereby not to commence any billable work or provide any products or services under this contract until an executed purchase order is received from the AEPA Member Agency or Participating Entities. The intent of this contract is to constitute the final and complete agreement between the AEPA Member Agency and Contractor, and no other agreements, oral or otherwise, regarding the subject matter of this contract, shall bind any of the parties hereto. No change or modification of this contract shall be valid unless in writing and signed by both parties to this contract. If any provision of this contract is deemed invalid or illegal by any appropriate court of law, the remainder of this contract shall not be affected thereby. The term of the agreement shall commence on award and continue until February 28, 2014 unless terminated, canceled or extended. By mutual written agreement as warranted, the contract may be extended month by month or for three (3) additional 12-month periods.

Awarding Agency Commercial Educational Services

Agency Executive [Signature]

Awarded this 1st day of March 2013 Contract Number 2013-007710-007 RIF





COOPERATIVE EDUCATIONAL SERVICES

Public Educational Institutions in New Mexico United by a Joint Powers Agreement to Establish an Educational Cooperative

EXTENSION OF CONTRACT

made by and between

PROGRESSIVE SERVICES dba PROGRESSIVE ROOFING
and
Cooperative Educational Services

Said Contract(s) being numbered:

2013-007 770-007 PR Roofing and Building Envelope Services

The existing Contract initially commenced on March 1, 2013 and will expire on March 1, 2014. The Term of Contract and Extension in IFB 13/2013-007 RFP A provides the Contract may be extended annually for up to three (3) additional one (1) year terms by mutual written agreement through February 28, 2017. Cooperative Educational Services desires to extend the Contract for an additional term of one (1) year until March 1, 2015. Upon the signature of an authorized officer of the above named company or corporation, the Contract is hereby extended.

This extension shall be subject to the same Terms and Conditions contained in the original Bid Document and in Contract Number IFB 13/2013-007 RFP A

COOPERATIVE EDUCATIONAL SERVICES

Authorized Signature

David Chavez

Date January 21, 2014

Contractor agrees to provide complete information of any deleted and new products or price adjustments as allowed under headings (Discontinued Products) and (New Technology and Price Reduction) of the RFP.

Authorized Signature

Alice Hunt

Date 1/22/14

Printed Name

Alice Hunt

Title Business Development

NOTE: This Contract Extension should be received by 4:00 p.m. at the offices of CES on 02/16/2014

If you do not want to extend this Contract, please sign below and return this agreement.

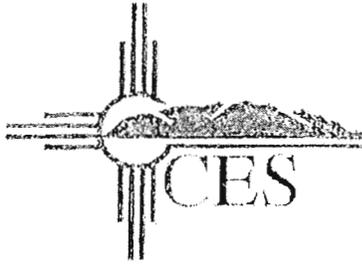
Discontinue: We desire to discontinue the contract effective 3/1/2014

Authorized Signature

Date

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COOPERATIVE EDUCATIONAL SERVICES

EXTENSION OF CONTRACT

made by and between

PROGRESSIVE SERVICES dba PROGRESSIVE ROOFING
and
Cooperative Educational Services

Said Contract(s) being numbered:

2013-007 770-007 PR Roofing and Building Envelope Services

The existing Contract initially commenced on March 1, 2013 and will expire on March 1, 2015. The Term of Contract and Extension in IFB 13/2013-007 RFP A provides the Contract may be extended annually for up to three (3) additional one (1) year terms by mutual written agreement through February 28, 2017. Cooperative Educational Services desires to extend the Contract for an additional term of one (1) year until March 1, 2016. Upon the signature of an authorized officer of the above named company or corporation, the Contract is hereby extended.

This extension shall be subject to the same Terms and Conditions contained in the original Bid Document and in Contract Number IFB 13/2013-007 RFP A

COOPERATIVE EDUCATIONAL SERVICES

Authorized Signature [Signature] Date December 08, 2014

Contractor agrees to provide complete information of any delays and new products or price adjustments as allowed under headings (Discontinued Products) and (New Technology and Price Reduction) of the RFP.

Authorized Signature [Signature] Date 12/9/14
Printed Name Alice Hunt Title Business Development

NOTE: This Contract Extension should be received by 4:00 p.m. at the offices of CES on 2/1/2015

If you do not want to extend this Contract, please sign below and return this agreement.

Discontinue: We desire to discontinue the contract effective 3/1/2015

Authorized Signature _____ Date _____

Your New Mexico Purchasing Cooperative Since 1979

CES SUPPLEMENTARY INFORMATION

AEPA VENDOR: PROGRESSIVE ROOFING

CES Contract ID: 2013-007 PGR

CES/New Mexico Representative/Firm (if different)

URL/Web Address: www.progressiveroofing.us

SALES/SUPPORT

Contract Contact	Primary	Secondary	Additional
Name	Alice Hunt	Mark Farrell	
Title	Business Development	Vice President	
Address	23 N. 35th Ave, Phoenix, AZ 05009	23 N. 35th Ave, Phoenix, AZ 05009	
Email Address	alice.hunt@progressiveus.com	mark.farrell@progressiveus.com	
Phone Number	602-278-4900	602-278-4900	
Fax Number	602-278-3199	602-278-3199	
Cell Number (optional)	602-574-9821	602-750-1026	
800 Number (optional)			

The Representative(s)/Firm(s) indicated above (Contract Contact(s)) is/are authorized to act on the company's behalf in all matters: Yes No

If no, please explain: _____

Sales Contact	Primary	Secondary	Additional
Name	Greg Skinner	Novil Griffith	Alice Hunt
Title	Branch Mgr	sales/pm	Business Development
Address	6320 2nd St. NW, Albuquerque, NM 87109	6320 2nd St. NW, Albuquerque, NM 87109	23 N. 35th Ave, Phoenix, AZ 05009
Email Address	greg.skinner@progressiveus.com	novil.griffith@progressiveus.com	alice.hunt@progressiveus.com
Phone Number	505-341-3800	505-341-3800	602-278-4900
Fax Number	505-341-3802	505-341-3802	602-278-3199
Cell Number (optional)	505-270-1712		602-574-9821
800 Number (optional)	888-766-3001	888-766-3001	888-766-3001

The Representative(s)/Firm(s) indicated above (Sales Contact(s)) is/are authorized to handle the sales, delivery, and support functions of this contract: Yes No

If no, please explain: _____

RECEIVED

JAN 22 2013

CES SUPPLEMENTARY INFORMATION

AEPA VENDOR: PROGRESSIVE ROOFING

CES Contract ID: 2013-007 PGR

Sales Support by Region: If your firm is going to have multiple sales agents calling on customers and/or have sales agents covering different areas of New Mexico, please provide the following:

NAME	REGION SERVED	TELEPHONE
	ALL	

LICENSING - If your firm is providing professional design services or construction products and/or services, please list your New Mexico contractor's license(s):

NAME ON LICENSE	LICENSE NUMBER	LICENSE TYPE	EXPIRATION DATE
Mark E. Farrell	34331	GS-21	05/30/2015

If your firm is offering any type of services, please provide your New Mexico Taxation and Revenue number:
CRS# 02-198991-00-6

Please be sure to complete the attached W-9 Form.

WARRANTY

The best warranty plans offer toll-free or collect calls from buyers. Please identify the phone numbers below:

Toll-Free Number: 888-766-3001

Collect Calls Accepted At This Number: 505-341-3800

Contact Person: Erika Gibbs Email: erika.gibbs@progressiveus.com

SERVICE AND MAINTENANCE

Service and Maintenance Phone Number: 505-341-3800 Fax Number: 505-341-3802

Contact Person: Greg Skinner Email: greg.skinner@progressiveus.com

Technical Support Phone Number: 505-341-3800

JAN 22 2013

CES SUPPLEMENTARY INFORMATION

AEPA VENDOR: PROGRESSIVE ROOFING

CES Contract ID: 2013-007 PGR

SHIPPING/HANDLING:

Contact Person: n/a Phone Number: _____

Is shipping/handling added to the cost of your product? YES NO

If yes, is shipping/handling included in the price shown on your price list? YES NO

If no, estimate shipping/handling charges as a percentage: _____

If Pre-Paid & Add, estimate shipping/handling on purchases: _____

Is your solution marketed by anyone else in New Mexico? YES NO

If Yes, explain: _____

ORDER PROCESSING

How do you prefer Pos be sent (circle one)? Emailed Faxed Mailed

Fax Number for orders: 505-341-3800 Email address for orders: alice.hunt@progressiveus.com

Vendor Name: Progressive Roofing

Attention Line: Greg Skinner

Physical Address: 6320 2nd St. NW

Mailing Address: 6320 2nd St. NW

City: Albuquerque State: NM ZIP: 87109

Will you offer CES a quick pay discount? If Yes, what is the discount? no Days? _____

PAYMENT INFORMATION

Where do you want payments sent?

Vendor Name: Progressive Roofing

Attention Line: Greg Skinner

Physical Address: 6320 2nd St. NW

Mailing Address: 6320 2nd St. NW

City: Albuquerque State: NM ZIP: 87109

Telephone (invoice questions): 505-341-3800 Fax number: 505-341-3802

If you want CES to send payments by a private, NEXT DAY carrier, please identify the carrier and your account number: _____

JAN 22 2013

AEPA VENDOR: PROGRESSIVE ROOFING

CES Contract ID: 2013-007 PGR

Before CES can issue an award for New Mexico, you (the contractor) shall agree to maintain your own insurance that will provide protection from claims that may arise as a result of your activities under this contract, whether those activities are performed by you, any subcontractor, anyone directly or indirectly employed by any of the subcontractors, or anyone for whose acts you may be liable during the entire performance period of this contract. You must, as part of the award process, furnish CES with a Certificate of Insurance showing CES as certificate holder as part of this ~~submital~~ packet prior to an official award. Bidders shall submit proof of coverage for the Workmen's Compensation Insurance, as required by the Labor Laws and New Mexico Statutes. Bidders shall submit a certificate of general liability Insurance for the personal injury, occupational disease, sickness or death, and property damage. Insurance shall include "occurrence" claim provisions. Minimum acceptable coverage is \$1,000,000 combined single limit for bodily injury and property damage, or \$750,000 bodily injury and \$300,000 property damage (each occurrence). The offeror shall name CES and the member as co-insured up to the limits of the Tort Claims Act.

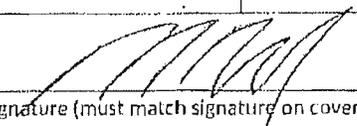
LISTING OF SUBCONTRACTORS FOR GENERAL CONTRACTORS ONLY

The listing threshold for this CES will be Five Thousand Dollars (\$5,000). The Offeror will list all persons, businesses and contractors that the Offeror anticipates to be a subcontractor under this CES contract. Pursuant to Section 13-4-38, et., N.M.S.A., 1978, if an Offeror fails to list a subcontractor in excess of the listing threshold, and they do not state that the provider is a sole source or that they will put all work that exceeds the threshold to individual bid each time, they are stipulating and stating that they are fully qualified to perform the proposed products and services themselves and that they will perform all work themselves.

Please complete the subcontractors form below if your firm will be utilizing any subcontractors to provide and/or perform any of the professional design services and/or construction products and services offered under this CES contract. Changes to this list must be given to CES in writing.

If no work is to be subcontracted, write "N/A" (Not Applicable) under the Subcontractor Name.

Subcontractor Name	License Number	Expiration Date	License Classification	Department of Labor Registration Number
N/A				



 Signature (must match signature on cover sheet)

Vice President

 Title

JAN 22 2013

ACCEPTANCE OF CES TERMS AND CONDITIONS

In addition to and in conjunction with AEPA's Terms and Conditions, CES is requiring Offerors to accept or reject the following as part of the contract terms and conditions. Where applicable, these items shall take the place of AEPA's. Indicate Offeror's acceptance, by signing the statement below. Any exceptions must be listed on this page (additional pages may be attached, if necessary).

The term Bidder, Contractor, ~~Offeror~~ and Proposer can be used to identify the person(s) or firm(s) submitting a response to a Request for Bid or Request for Proposal.

Cooperative Educational Services (CES) is the administering agency of a Joint Powers Agreement as authorized by Section 11-1-1, et. seq. NMSA 1978, which is based in Albuquerque, New Mexico and is composed of 180 New Mexico public educational institutions (Members) (comprised of K-12 public school districts; charter schools; colleges and universities and their branch campuses; community colleges and vocational schools; Bureau of Indian Education (BIE) schools) that are parties to the *Revised and Amended Joint Powers Agreement (JPA) to Establish an Educational Cooperative*. CES was organized in 1979 as a direct response to the needs of small and rural Local Education Agencies (LEA's). CES offers numerous programs and services in the following areas: administrative support, special education services and cooperative purchasing.

Eligible Agencies: consist of any CES Member or Participating Entity can use the services of Cooperative Educational Services. CES reserves the right to reject any purchase authorizations it receives under its cooperative purchasing program from New Mexico eligible agencies without cause.

Most Favored Customer: CES requires that vendors must offer prices lower than what they would offer on single school district contracts in New Mexico, on other cooperative purchasing contracts available to New Mexico public educational institutions, or state purchasing contracts for equal or less volume. Vendor awarded a CES contract must lead with and/or offer their CES contract as the agencies' first option however, it is understood that the agency has the option to use whatever procurement method they choose.

THE FOLLOWING TERMS AND CONDITIONS APPLY TO ALL TRANSACTIONS.

Administration Fee: CES charges its members and participating entities a two percent (2%) administrative fee on the total amount invoiced on a purchase/project. CES' two percent (2%) administration fee shall be included in an Offeror's net price. Depending on the pricing format and purchasing process utilized, the CES fee will either be collected by the Contractor and rebated to CES or collected by CES during the processing of the transaction.

Applicable Law: The CES awarded contract will be governed by the laws of the State of New Mexico, both as to interpretation and performance. Suits pertaining to this contract can be brought only in courts in the State of New Mexico. Offerors doing business with CES must be in compliance with the Federal Civil Rights Acts of 1964 and Title VII of that Act, Rev. 1979. All work under this contract will be done in strict accordance with the most recent edition of any relevant regulation, standard, document or code that relates to these laws. Where conflict among the requirements or with these specifications exists, the most stringent requirement will be used.

CES Supplemental Packet: Upon acceptance of the vendor's offer and a contract award by AEPA, CES will issue the vendor a supplemental packet requesting specific information necessary to enter into and execute a contract in the State of New Mexico including information relating to the vendor's qualifications, ability to conduct business in the State of New Mexico and who will be coordinating, promoting, receiving and processing orders and providing the prime contractor's goods and services in New Mexico. Once the prime contractor provides this information, CES will review, seek clarification if needed and conduct a vendor conference to complete the contract execution process. Please note the information regarding deadlines as described in "Offer Acceptance Period to Execute a Contract with CES".

CFR: Code of Federal Regulations www.gpoaccess.gov/cfr/index.html

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

Construction: As defined in the New Mexico Procurement Code Regulations under 13-1-40 NMSA 1978. Definition; construction, "construction" means building, altering, repairing, installing or demolishing in the

JAN 22 2013

ordinary course of business any road, highway, bridge, parking area or related project; building, stadium or other structure; airport, subway or similar facility; park, trail, athletic field, golf course or similar facility; dam, reservoir, canal, ditch or similar facility; sewage or water treatment facility, power generating plant, pump station, natural gas compressing station or similar facility; sewage, water, gas or other pipeline; transmission line; radio, television or other tower; water, oil or other storage tank; shaft, tunnel or other mining appurtenance; electrical wiring, plumbing or plumbing fixture, gas piping, gas appliances or water conditioners; air conditioning conduit, heating or other similar mechanical work; or similar work, structures or installations. Construction shall also include: leveling or clearing land; excavating earth; drilling wells of any type, including seismographic shot holes or core drilling; and similar work, structures or installations.

DOE: Department of Energy www.energy.gov

EPA: Environmental Protection Agency www.epa.gov

Execution of Contract and Compliance with Bid Instructions: By submitting a bid, the Offeror acknowledges its understanding of the Instructions to Bidders, the New Mexico additional terms and conditions and its willingness to comply with the requirements of the bid documents.

FCC: Federal Communications Commission www.fcc.gov

Federal Agency: [25 USC 3001 (4)] is defined as any department, agency, or instrumentality of the United States, any executive department, military department, government corporation, government-controlled corporation, or other establishment in the executive branch of government, including the Executive Office of the President or any independent regulatory agency established through legislative and/or administrative action.

Federal Requirements: Contractor agrees, when working on any federally-assisted projects with more than \$2,000 in labor costs, to comply with the Contract Work Hours and Safety Standards Act, the Davis-Bacon Act (Section 29, CFR Part 5), the Copeland "Anti-Kickback" Act and the Equal Opportunity Employment requirements of Executive Order 11375. In such projects, the Contractor agrees to post wage rates at the work site and submit a copy of their payroll to the CES Member for their files. In addition, to comply with the Copeland Act, the Contractor must keep records for three (3) years, and allow the federal grantor agency access to these records upon demand. All federally-assisted contracts to CES Members that exceed \$10,000 may be terminated by the federal grantee for noncompliance by the Contractor. In projects that are not federally funded, Contractor must agree to meet any federal, state or local requirements as necessary. In addition, if compliance with the federal regulations increases the contract costs beyond the agreed on costs in this solicitation, the additional costs may only apply to the portion of the work paid by the federal grantee. On all other projects, the prices must agree with this contract.

Insurance: On contract award, the contractor will, at its own expense, purchase and maintain insurance that will protect it from claims that may arise out of or as a result from its activities under this contract, where those activities are performed by it, by any subcontractor, by anyone directly or indirectly employed by any of the contractors or by anyone for whose acts contractor may be liable during the entire performance period of this contract. The contractor must furnish a Certificate of Insurance to the CES procurement officer prior to official award. If policy changes occur during the life of the contract, it is the contractor's responsibility to provide updated proof of coverage to the CES procurement officer. Bidders will submit proof of coverage under the Workman's Compensation Insurance, as required by the Labor Laws and New Mexico Statutes. Bidders will submit a certificate of general liability insurance for personal injury, occupational disease, sickness or death, and property damage. Insurance will include "occurrence" claim provisions. Minimum acceptable coverage is \$1,050,000 combined single limit for bodily injury and property damage, or \$750,000 bodily injury and \$250,000 property damage (each occurrence). The Offeror will name CES and the CES Member as co-insured up to the limits of the Tort Claims Act. Additional punitive damages liability to \$500,000 will be provided naming CES as co-insured. In addition, contractor must provide, upon request, identical certification of insurance to any CES Member using this contract. Prior to commencing any work, any subcontractor must procure and maintain at its own expense until final acceptance of the work, insurance coverage in a form and from insurers acceptable to the prime contractor. All subcontractors will provide workers' compensation insurance, which waives all subrogation rights against the prime contractor and CES Member.

Lease and Rentals: Offeror can allow CES Members to enter into rent, lease or lease/purchase agreements, providing such agreements are in compliance with New Mexico statutes and Public Education Department policies, rules and regulations. CES must receive a copy of the executed leasing documents prior to processing a purchase order. CES will not collect lease payments. Offeror agrees that leases will be in compliance with the Uniform Commercial Code. All terms of leasing must be included in the proposal with interest rates described as related to a government standard. Offeror must indicate in its response to this solicitation if the shipping costs for the return of leased or rented equipment are the responsibility of the CES Member and what that cost will be. No sale of a

JAN 22 2013

contract to a third party will be made without informing CES and the CES Member of the transfer. If Offeror sells a lease contract to a third party, the cost of return must not be greater than the cost of return to the original contractor.

As required by New Mexico law, the lease agreement with the CES Member or Participating Entity will need to contain a termination provision for Non-Appropriation of Funds. In the event no funds or insufficient funds are appropriated and budgeted by CES, its Members or Participating Entities (Lessee) governing body or are otherwise unavailable in any fiscal year for the payment of lease and other amounts due under any lease, the lease shall terminate on the last day of the fiscal period for which appropriations were received or other amounts are available to pay amounts due under the lease without penalty or expense to Lessee. It is up to CES, its Members or Participating Entities to determine sufficiency of funds, which determination shall be accepted by the Lessor and is final. Lessee shall give Lessor or its assignee written notice at least thirty (30) days in advance of such occurrence.

Legal Remedies: All claims and controversies are subject to the New Mexico Procurement Code, NMSA 1978, and Sections 13-1-28 through 13-1-199.

Member of CES: Any public educational institution within the State of New Mexico that has by their board resolution resolved to become a party of the Joint Powers Agreement and has been approved for membership by CES' Board of Directors and the New Mexico Department of Finance and Administration in accordance with Section 11-1-1, et. seq. NMSA 1978.

Local Public Body: All political subdivisions of the State, its agencies and institutions thereof as defined in 13-1-67 NMSA 1978 of the New Mexico Procurement Code.

NMCID: New Mexico Construction Industries Division, a state agency who is responsible for overseeing, administering, issuing and ensuring that construction projects, contractors and owners follow and comply with New Mexico laws, rules, regulations, policies and procedures.

NM Workforce Solutions: is a state agency responsible for the overseeing, administering, issuing, implementing and ensuring that all employers, contractors, and subcontractors follow and comply with New Mexico and Federal labor laws, rules, regulations, policies and procedures governing employment and the general workforce.

NM Workforce Solutions Contractor Registration Requirement: The 2004 legislative session passed HB 471 that: *"All contractors and all tiers of subcontractors bidding or performing on public works construction projects, except for street, highway, bridge, road and utility contracts, after May 19, 2004 shall be registered with the Labor and Industrial Division of the Labor Department if the amount of their bid or contract is more than \$50,000. All contractors and all tiers of subcontractors on street, highway, bridge, road and utility paving projects do not have to be registered with the Labor and Industrial Division of the Labor Department prior to bidding on public work, but must be registered before performing on a public work contract in excess of \$50,000 signed after May 19, 2004."* Because this solicitation is for an Indefinite quantity and the amount of work to be performed on Individual projects is not known, CES is requiring that all Offerors be registered on or before the date of the proposal opening.

Offer Acceptance Period to Execute a Contract with CES: In order to allow CES the opportunity to evaluate the proposals offered and approved by AEPA. CES requires that the AEPA vendor submit to CES its response to AEPA's solicitation and the CES supplemental packet within sixty (60) days after receipt of CES' supplemental packet. CES will consider failure to comply with this requirement as a failure to comply with CES' terms and conditions.

Participating Entities: Is defined as local public body or state agency or non-public/not-for-profit educational entities or other not-for-profit organizations or external procurement organizations within the State of New Mexico or outside the state that if in the state they would fall under one of these groups. These agencies and organizations may participate in and purchase tangible personal property, professional, and non-professional and construction services through their cooperative purchasing or external procurement agreement with CES.

Payment by CES: CES will make every effort to collect payment from Members or Participating Entities for the purchase of goods and services within thirty (30) days after the receipt of goods or services and a correct invoice of amount due, unless a good faith dispute exists as to any obligation to pay all or a portion of the account. *Any offer that requires payment in less than forty-five (45) days shall not be considered.* CES must first receive payment from the Member or Participating Entity in order to process payment to the Contractor. If any payment is delayed beyond 45 days from the due date, the contractor agrees not to charge CES interest on the late payment.

Price List: The AEPA vendor will submit to CES and/or its members and participating entities, if requested or make available on its website all applicable pricing for all products and services proposed and awarded under the AEPA solicitation. Price list submitted must be in accordance with and comply with the AEPA's terms, conditions and the

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requirements of the purchasing process utilized to facilitate eligible procurement agencies staff to place and process orders. When the Contractor offers a discount off retail price, the Manufacturer's Suggested Retail Price (MSRP), such discounts will include the CES two percent (2%) administrative fee and must be submitted in the format required and be auditable by CES.

Pricing-Alternative Method of Costing: CES will allow alternative pricing/costing and this pricing method will covers any product and/or service not covered by an established and approved price list or is a custom design and manufactured item to meet the requirements of an individual project's needs and requirements. The alternative pricing/costing is calculated as follows:

1. The vendor must ~~prepare, issue, and receive~~ three written quotes from available suppliers and select the supplier that offers the products and services that meets the stipulated requirements and specifications and the most cost effective solution. All quotes must be made available upon request.
2. The vendor must indicate the percent of overhead and/or markup as part of their response to be added to these costs to obtain the normal and customary retail price.
3. The vendor must indicate the percent of discount offered under CES to its Members/Participating Entities on the normal and customary retail price.
4. The CES price is calculated by taking the product and services cost to the vendor plus the indicated percent of profit/overhead to equal the normal and customary retail price. The vendor will then subtract the approved CES discount to obtain the CES price. Example: Item cost \$1,000; percent of profit/overhead of 20% equals retail price of \$1,200; less the CES discount of 10% or \$120 equals the CES price of \$1,080.

State Agency (13-1-90 NMSA 1978) is defined as any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the executive, legislative or judicial branch of the government of this state. "State agency" includes the purchasing division of the general services department and the state purchasing agent but does not include local public bodies.

THE FOLLOWING ITEMS REFER ONLY TO CONSTRUCTION

Bonds

1. Upon execution of a contract between a CES Member/Participating Entity and the prime contractor for a project with a value twenty-five thousand (\$25,000.00) or more, performance and payment bonds from a surety company authorized to do business in New Mexico will be provided the Member/Participating Entity as required by New Mexico law.
2. The prime contractor will execute a performance bond in an amount equal to one hundred percent (100%) of the price specified in the contract between the Member/Participating Entity and the prime contractor by a surety company authorized to do business in New Mexico. Performance bonds between the Member/Participating Entity and the prime contractor will be on standard forms. This bond will protect all persons supplying labor and material to the prime contractor for the performance of the work provided in the contract.
3. The prime contractor will deliver both the performance and payment bonds to the CES Member/Participating Entity at the time the contract between the Member/Participating Entity and the prime contractor is executed and a copy will be provided to CES for its records.
4. All suits for nonpayment or nonperformance will be filed as allowed under New Mexico law.
5. Performance and payment bonds for public agencies outside New Mexico must be provided by companies licensed to provide bonds for public entities in the state of the agency.
6. Any subcontractor providing and/or performing one hundred and twenty-five dollars (\$125,000) or more of work for an individual project in New Mexico must obtain and submit to the prime contractor a performance and payment bond equal to one hundred percent (100%) of the total project's cost from a surety company authorized to do business in New Mexico.

Contract Between Owner, Buyer and Contractor (Three Party Agreements)

1. An agreement by CES, its Member/Participating Entity and a CES contractor for the purpose of procuring construction and professional services for a particular project must be completed for any construction

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project offered and performed under this RFP with a total value of Sixty Thousand Dollars (\$60,000) or more. This agreement must be signed by all parties prior to the contractor starting any work.

2. Owner (Member) is an educational institution which is a party to the aforementioned Joint Powers Agreement or NMPSFA (New Mexico Public School Facilities Authority), a state agency or Participating Entity which is a local public body desiring to receive certain goods and services offered by the CES contractor under this RFP.
3. Buyer (CES) is an entity created by a Joint Powers Agreement as Authorized by Section 11-1-1, et. seq., NMSA 1978, which is acting as a conduit through which title to tangible goods may be vested in Owner. Buyer warrants ~~and assures~~ the Owner that it has complied with the Procurement Code, the Public Works Contract Act and the Subcontractor Fair Practices Act in contracting for procurements from CES contractors.
4. Contractor is a vendor who has responded to a Request for Proposal published by buyer in accordance with the Procurement Code, Section 13-1-137 (A), NMSA 1978, and a resultant contract has been issued to the vendor of goods and services in the construction area.
5. The contractor will be responsible for providing CES with the information required to complete this form.
6. It is at the discretion of the owner and the contractor to determine if an additional industry standard owner/contractor contract is to be executed in addition to this contract.

Licenses: The prime contractor shall possess the appropriate New Mexico Construction Industries Division contractor's license required to provide the construction products and perform the construction services covered by this solicitation as of the due date and time. The contractor must maintain and keep current all federal, state, and local licenses required for the performance and delivery of any and all products and services offered in its response to this RFB. Any offer using subcontractors, the subcontractor must hold and maintain the appropriate New Mexico Construction Industries Division licenses. The contractor shall submit copies of licenses with the response to the RFB (place behind Tab 4) and submit copies of any subcontractors' licenses to CES prior to CES issuing a purchase order.

New Mexico State Wage Rate Documentation

1. It is the contractor's responsibility to be acquainted with the New Mexico Department of Workforce Solutions' rules, regulations, procedures and requirements relating to state wage rates, and to comply with state and federal regulations regarding payment of wages on public projects. The contractor, as established by the New Mexico Department of Workforce Solutions and Industrial Commission, will pay wage rates for every job performed under this contract with a total project cost of more than Sixty Thousand Dollars (\$60,000) on an individual basis. The contractor will pay all mechanics and laborers employed on the site of the project by the contractor, unconditionally and not less often than once a week, and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications.
2. The New Mexico Department of Workforce Solutions requires that certain forms be completed for every project that needs a wage decision issued. CES will submit for the wage decision and, upon receipt of the decision, will provide it to the prime contractor. The contractor is responsible for completing and submitting the required forms to the NM Department of Workforce Solutions and must provide CES with a copy of the following required forms: NOTIFICATION OF AWARD, STATEMENT OF INTENT TO PAY PREVAILING WAGES, and AFFIDAVIT OF WAGES PAID.

Payment Retention, Progress Payments

1. In order to comply with New Mexico House Bill 320, NMSA, 2001, Section 4. A., Retain age Act, CES will not retain any funds on progress payments during any construction projects. The prime contractor agrees to only request payment for goods and services delivered, received and accepted by the Member/Participating Entity.
2. CES will not withhold any amount for retain age. However, Final payment of a contract, for which progress payments have been made, will not be made until project is totally completed (including punch list items, closeout documents delivered), and the final application for payment is signed by the CES Member/Participating Entity, received and audited by CES.
3. If the Member/Participating Entity and the prime contractor agree to retain age or a substitute security, the agreement must be in full compliance with New Mexico Procurement Code and House Bill 320. If a

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substitute security or retain age is agreed upon, written notice must be provided to all parties prior to the issuing of a CES purchase order.

Progress Payments: Under this solicitation, CES, its Members and Participating Entities may allow progress payments to be made on goods and/or services received and accepted under the following conditions:

1. The agency and the Contractor agree to the terms of the progress payments prior to issuing a purchase order to the Contractor.
2. The purchase order and/or the cost proposal in which the purchase order is based clearly identify and describe the amount(s) to be paid and the date(s) payment(s) are to be made.
3. The agency has satisfactory method/criteria of verifying progress (milestones) stated and agreed to in the written cost proposal and/or purchase order.
4. Payments will be made only after actual goods and/or services are verified, received and accepted.
5. Payments will be made in full compliance with the agency's local administrative procedures, board policies and any/all other applicable state rules, regulations and statutes.

Progress Payments Processing: All progress payments must be invoiced through CES. It is the responsibility of the procurement unit and/or its designee to review and approve any estimates of work completed. If the procurement unit or their designee issues a written statement to the contractor that the estimate of work is not approved and certified, the procurement unit may withhold an amount from the progress payment determined to be reasonably sufficient to cover the deficiency set forth in the written finding. In such cases, the contractor agrees to hold CES harmless for any deficiency of payment. If any payment is delayed beyond 45 days from the due date, the contractor agrees not to charge CES interest on the late payment. Any late charges will be the total responsibility of the procurement unit. The contractor can extend any due date to avoid the requirement to pay interest. Acceptance of final payment is a waiver of all claims, except unsettled claims previously made in writing.

A. Procedure for Processing Orders

Once the contractor is notified of a member/participating entity interested in having them provide construction products and perform services. The will familiarize itself with the site and project scope of work by conduct and perform its own site investigation, research, analysis and ask the pertinent questions in order to obtain a complete and comprehensive knowledge and understanding of the project's terms, conditions, requirements and the owner's expectations prior to developing, preparing and submitting a project cost proposal.

Ordering Process: CES currently offers two (2) procurement/purchasing options: the *traditional method* which occurs when online purchasing is not selected by the Member/Participating Entity; all orders accepted by the Contractor under this method must be issued by CES. CES Members/Participating entities will submit signed purchase orders to CES. CES will then issue a purchase order to the Contractor. When necessary, one or more orders may be combined. The Contractor must agree never to accept a purchase order based on this procurement method, unless the purchase order is issued by CES. The second method is the *CES e-Commerce CPP (Cooperative Purchasing Program)* online ordering solution, which allows the CES Members/Participating Entities to go online and create an order and issue a purchase order through the system directly to the Contractor; the Contractor delivers the product/services; invoices the Member/Participating Entity; the Member/Participating Entity pays the Contractor; and the Contractor rebates the CES administrative fee to CES, unless an agreement to deviate from this process has been approved in writing by both parties.

1. Contractor provides quote to the member and the quote includes the CES two percent (2%) administration fee.
2. If acceptable, the member issues CES a purchase order for the quoted amount.
3. CES verifies the quote with the solicitation response and issues a purchase order to the Contractor for two percent (2%) less than the Contractor's quote to the member.
4. The Contractor provides the items or services and invoices CES for the amount of CES' purchase order to the Contractor.
5. CES invoices the member.
6. The member pays CES.

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7. After receipt of the member payment, CES pays the Contractor for items and services delivered and accepted by the member, not to exceed the purchase order amount.

Contractor's Quote/Proposal to CES Member/Participating Entity: When preparing a quote/proposal under a CES awarded contract, the contractor must clearly identify and break out supplies, materials, equipment and services into individual line items as they appear on the contractor's awarded price schedule or pricing methodology. Stated prices must include the CES two percent (2%) administrative fee.

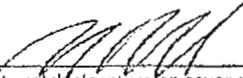
Billing: All invoices will be from the Contractor to CES, its Members or Participating Entities and will list the agency's purchase order number(s) issued. If issued by CES, the CES Member's/Participating Entity's name will be on the invoice. The Contractor will only issue invoices to CES, CES Member or Participating Entity from which the purchase order was issued. The Contractor will only accept a purchase order from a Member or Participating Entity in accordance with the purchasing process identified and agreed to by CES and the Contractor.

Once the award is made to the contractor, CES will inform its members of the contract by: 1) including the contract in the agency database that is available on the CES website, 2) announcing the award in its periodic newsletter, and 3) publishing the contract information in a catalog disseminated to all members. A list of members' and participating entities' names, contact names, addresses, and phone numbers can be viewed or downloaded by going to CES' website (www.nmedu.org).

I accept the above terms and conditions as part of our response except as listed below or attached.

Mark Farrell, VP

Printed Name and Title


Signature (must match signature on cover sheet)

JAN 23 2013

OFFEROR'S SUPPORT FOR CES PRICES
PROGRESSIVE ROOFING

Cooperative Educational Services (CES) is an educational service agency established through a Joint Powers Agreement (JPA). All school service agencies in New Mexico are supported by users' fees rather than by appropriated funds. The procurement activities of CES, therefore, are funded through a small administration fee paid by the school district or local procurement unit using one or more of CES' contracts. There is no cost or fee paid by the vendor to CES.

There are many reasons members use CES contracts. Because each of our contracts is based on a sealed proposal, members are exempt from having to issue a RFB or RFP. This saves them a great amount of time, and a large amount of money. In addition, because each vendor agrees that the price charged through a CES contract will be the lowest that vendor will offer, the member knows that issuing its own bid will not necessarily reduce the cost of the procurement. Finally, the service and convenience of processing orders through one agency (CES) simplifies the procurement process. Rather than having to issue a dozen purchase orders, for example, a member may issue one to CES. If problems occur, the member has the assistance of CES in reaching a satisfactory solution.

A vendor receives many of the same benefits as a CES member. Rather than having to respond to dozens of individual RFBs and RFPs (which is a big cost of doing business), a response to CES opens the door to over 100 school districts or procurement units. The business office of the vendor has the advantage of invoicing CES rather than each individual account. The vendor also has CES' service in collection (some public entities are slow in processing payments). If problems develop, the vendor has the mediation service of CES to settle disputes.

Purchase orders from our members are sent to CES. CES then issues its purchase order to the vendor directing the vendor to ship directly to the school, but to send CES the invoice. Next, CES invoices the member and adds a one percent administration fee to that invoice. This fee (\$10 minimum) is CES' income. The state does not give CES any funds to provide procurement services for its members.

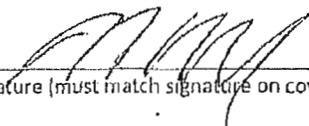
Because we ask members to pay one percent for our services, we also expect vendors, who are awarded contracts, to provide an incentive to the members to use a CES contract. If a vendor will sell a product to a school for the same price as on our contract, the member, in effect, is paying one percent more when it purchases through CES. On large purchases the convenience of not having to issue a bid may be overshadowed by the amount of the administrative fee.

Therefore, we request that each vendor offer prices on CES contracts lower than the price they offer to individual schools that purchase directly or that might issue a local bid. We ask this, not for a "most favored nation" relationship, but as a commitment of partnership between CES and the vendor. We want schools to understand that when using a CES vendor, they are not only satisfying the procurement code but are truly reducing the costs of education.

Please indicate the level of support you will offer on this contract. *Check only one box.*

Prices will be no different from what we ordinarily offer to schools.

- Prices are (check) two percent (2%) lower than our best price to individual districts.
 three percent (3%)
 four percent (4%)
 five percent (5%)
 ten percent (10%)
 Other \$90



Signature (must match signature on cover sheet)

Vice President

Title

JAN 10 2013



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
01/18/2013

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

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

PRODUCER MCGRIFF, SEIBELS & WILLIAMS, INC. P.O. Box 10285 Birmingham, AL 35202	CONTACT NAME: PHONE (A/C, No., Ext): 800-476-2211 FAX (A/C, No.): E-MAIL ADDRESS: INSURER(S) AFFORDING COVERAGE NAIC # INSURER A: Arch Insurance Company 11160 INSURER B: National Union Fire Insurance Company of Pittsburgh, PA 19445 INSURER C: INSURER D: INSURER E: INSURER F:
INSURED Progressive Services, Inc. dba Progressive Roofing 23 North 35th Avenue Phoenix, AZ 85009	

COVERAGES CERTIFICATE NUMBER: BAEQUTDZ REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBH WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC			31GPP8860202	08/01/2012	08/01/2013	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMPROP ASG \$ 4,000,000
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$			0E1580557B	08/01/2012	08/01/2013	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory In NH) If yes, describe under DESCRIPTION OF OPERATIONS below			31WC18860102	08/01/2012	08/01/2013	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
Cooperative Educational Services (CES) and CES Member are included as Additional Insureds under the General Liability coverage for work performed by the Named Insured under written contract.

CERTIFICATE HOLDER

Cooperative Educational Services (CES)
 4216 Balboa Park Road NE
 Albuquerque, NM 87109

CANCELLATION

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

AUTHORIZED REPRESENTATIVE



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
06/12/2015

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

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

PRODUCER MCGRIFF, SEIBELS & WILLIAMS, INC. P.O. Box 10265 Birmingham, AL 35202	CONTACT NAME: PHONE (A/C, No., Ext): 800-476-2211 FAX (A/C, No.): E-MAIL ADDRESS: INSURER(S) AFFORDING COVERAGE: Arch Insurance Company NAIC #: 11150 INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:
INSURED Progressive Services, Inc. dba Progressive Roofing 23 North 35th Avenue Phoenix, AZ 85009	

COVERAGES CERTIFICATE NUMBER: KANZU6KQ REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			31GPP8906604	08/01/2014	08/01/2015	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMPIOP AGG \$ 4,000,000
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS			31CAB8918200	02/14/2014	08/01/2015	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
A	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY <input type="checkbox"/> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	31WCI8906504	08/01/2014	08/01/2015	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
For any and all jobs, the City of Santa Fe, NM and the General Contractor are included as Additional Insured(s) by the General Liability policy if required by written contract.

CERTIFICATE HOLDER

City of Santa Fe
 Public Works Department - Facilities Division
 2651 Siringo Road, Bldg. E
 Santa Fe, NM 87505

CANCELLATION

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

AUTHORIZED REPRESENTATIVE
