



**ACTION SHEET  
CITY COUNCIL COMMITTEE MEETING OF 04/29/15  
ITEM FROM FINANCE COMMITTEE MEETING OF 04/13/15**

**ISSUE:**

10. Bid No. 15/20/B – Genoveva Chavez Community Center Natatorium Dehumidification System Remodeling Agreement Between Owner and Contractor and Construction Services Agreement; B & D Industries, Inc. in the Amount of \$1,172,747. (Jason Kluck)

**FINANCE COMMITTEE ACTION: APPROVED AS DISCUSSION ITEM**

Requested approval of Bid No. 15/20/B for Genoveva Chavez Community Center Natatorium Dehumidification System Remodeling agreement between owner and contractor and construction services agreement with B & D Industries, Inc. in the amount of \$1,172,747 inclusive of gross receipts tax.

**FUNDING SOURCE: 52722.572500.0114900**

**SPECIAL CONDITIONS OR AMENDMENTS**

**STAFF FOLLOW-UP:**

| <b>VOTE</b>           | <b>FOR</b>             | <b>AGAINST</b> | <b>ABSTAIN</b> |
|-----------------------|------------------------|----------------|----------------|
| COUNCILOR TRUJILLO    | X                      |                |                |
| COUNCILOR RIVERA      | Not Present<br>to Vote |                |                |
| COUNCILOR LINDELL     | X                      |                |                |
| COUNCILOR MAESTAS     | Not Present<br>to Vote |                |                |
| CHAIRPERSON DOMINGUEZ | X                      |                |                |

4-13-15

## CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: B & D Industries, Inc.

Procurement Title: CIP #507N – Genoveva Chavez Community Cneter (GCCC) Natatorium Dehumidification System Remodeling

Solicitation RFP/RFB#: '15/20/B

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 checked="" type="checkbox"/> | <input type="checkbox"/>            | Solicitation document (RFP, IFB),  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Screen print of legal solicitation published in newspapers, web sites, etc.: |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Screen print of addendum(s) published on the IPB/RFP:                        |
| <input checked="" type="checkbox"/> | <input 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  |

Final overall evaluation matrix or summary of evaluator scores  
  Other: \_\_\_\_\_

**AWARD\***

YES    N/A

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

**DISCLOSURES**

YES    N/A

**Contractor Disclosures & Conflicts of Interest**  
  Disclosures & Conflicts of Interest Form(s) (winning bidder(s)/offeror(s))  
  **Contractor –Conflicts of Interest**  
  Purchasing Office Letter or e-mail to designated individual regarding potential conflict  
  Conflict of Interest Form signed by all parties  
  Letter from Procurement Office regarding the potential conflict  
  **Subcontractor Disclosures**  
  Disclosures & Conflicts of Interest form of Subcontractor(s)  
  **Subcontractor –Conflicts of Interest**  
  Purchasing Officer Letter or email to designated individual regarding potential conflict  
  Conflict of Interest form signed by all parties  
  Letter from Legal Office regarding the potential conflict  
  Other: \_\_\_\_\_

**CONTRACT**

YES    N/A

Copy of Executed Contract  
  Copy of all documentation presented to the Committees  
  Finalized Council Committee Minutes  
  Other: \_\_\_\_\_

**MISCELLANEOUS FILE\***

YES    N/A

Local Preference Form  
  New Mexico Residence Form  
  Veterans Exemption  
  Sole Source determination form approved by Procurement Officer  
  Exempt determination memo approved by Procurement Officer  
  Other: \_\_\_\_\_

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

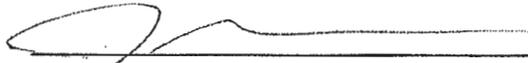
**PROTEST (If applicable)\***

- | 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 Administrator  
Department Rep Printed Name and Title

  
Department Rep Signature attesting that all information is included

Chelsey Rodriguez for  
Purchasing Officer attesting that all information is reviewed



# City of Santa Fe New Mexico

## Public Works Dept. - Facilities Division

### MEMO

**DATE:** April 13, 2015

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

**VIA:** Oscar Rodriguez, Finance Department Director 



Isaac J. Piro, PE, Public Works Department Director  
Robert Carter, Parks & Recreation Department Director   
David Pfeifer, Facilities Division Director 

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

**ISSUE:** City of Santa Fe CIP #507N / Genoveva Chavez Community Center (GCCC) Natatorium Dehumidification System Remodeling:  
**Construction Services Agreement (Exhibit 1)**  
• Request award of construction services scope to B&D Industries, Inc. (B&D) together with the associated AIA Agreement between Owner and Contractor (\$1,172,747.07 contract sum) inclusive of NMGRT.

#### SUMMARY:

The natatorium dehumidification system at the GCCC requires replacement with a new dehumidification/heating/cooling/filtration system and associated modifications to provide for essential functioning and optimization of the Natatorium environment. This replacement necessitates construction services as described in the Contractor's bid including the Procurement Scope of RFB 15/20/B (Exhibit A) and in the Construction Documents developed by The Response Group, Inc.

On March 24, 2015, Purchasing Division accepted bids from qualified contractors to provide the required construction services. The Bidders and base bids inclusive of NMGRT were as follows:

Yearout Service, Albuquerque - \$1,780,592.07

Cross Connection, Espanola - \$1,451,851.72 (\$1,324,666.55 with Local Preference)

B&D Industries, Inc., Albuquerque - \$1,244,866.99

MEMO

City of Santa Fe CIP #507N – GCCC Natatorium Dehumidification System Remodeling  
Construction Services Agreement  
Page 2

The City issued a Notice of Intent to award this contract to B&D on March 26, 2015. Contract negotiations were finalized on March 31, 2015. The negotiated fee of \$1,172,747.07 is inclusive of NMGRT, including the negotiated base bid, a \$15,000.00 allowance for Natatorium envelope repairs, a \$5,000.00 allowance to ensure continued function of the existing South Dectron unit prior to removal and \$8,323.33 for Alternate #3 with negotiated modifications to provide a three year quarterly maintenance service (Exhibit B).

**BUDGET:**

Funding is available in Exp. GCCC-CIP Bond/Remodeling & Replacement: Business Unit #52722.572500.0114900 in the amount of \$1,172,747.07.

**SCHEDULE:**

Finance Committee: 4/13/15

Public Works Committee: 4/27/15

City Council: 4/29/15

See Exhibit B under Exhibit 1 for construction schedule under the Procurement Scope

**REQUESTED ACTION:**

Please approve award of the construction services scope of this project to B&D together with the associated AIA Agreement between Owner and Contractor and General Conditions in the amount of \$1,172,747.07.

**ATTACHMENTS:**

Construction Services Agreement with exhibits (Exhibit 1)

Contractor's Bid including Procurement Scope (Exhibit A under Exhibit 1)

3 Year quarterly maintenance terms (Exhibit B under Exhibit 1)

Contractor's Certificate of Liability Insurance (Exhibit C under Exhibit 1)

Contractor's negotiated Price Proposal (Exhibit D under Exhibit 1)

xc: Shirley Rodriguez, Purchasing Division  
Project File



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

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

- |                                 |                                     |                             |                          |
|---------------------------------|-------------------------------------|-----------------------------|--------------------------|
| 1 <b>FOR:</b> 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 B&D Industries, Inc.

3 Complete information requested  Plus GRT  
 Inclusive of GRT

Original Contract Amount: \$1,172,747.07

Termination Date: June 30, 2018

Approved by Council Date: pending: 04/29/2015

or by City Manager Date: \_\_\_\_\_

**Contract is for:** City of Santa Fe CIP #507N Genoveva Chavez Community Center Natatorium Dehumidification System Remodeling

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:** New contract

7 **Funding Source:** GCCC-CIP Bond/Remodeling & Replacer Design **BU/Line Item:** 52722.572500.0114900

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 *David Pfeifer*

**Division Director:** David Pfeifer

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

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:** Project was publicly bid. Negotiations with the low bidder reduced the project cost by 61,124.12

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 and support staff.

15 **If extending contract, why?:** N/A

16 **Was a Santa Fe company awarded contract? If not, why?:** No. No Santa Fe companies bid on the project.

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?:** City Council

**To be recorded by City Clerk:**

Contract # \_\_\_\_\_

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



**AIA**<sup>®</sup>

# Document A101<sup>™</sup> – 2007

**EXHIBIT**  
**1**  
**48 PAGES**

## *Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum*

AGREEMENT made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2015

BETWEEN the Owner:

City of Santa Fe  
300 Lincoln Avenue  
Santa Fe, New Mexico 87501  
(505) 955-8937

and the Contractor:

B&D Industries, Inc.  
9730 Bell Avenue SE  
Albuquerque, NM 87123  
(505) 299-4464

for the following Project:

CD #507N – Genoveva Chavez Community Center (GCCC) Natatorium  
Demolition and System Remodeling

The Engineer:

The Response Group, Inc.  
11930 Menaul Blvd. NE, Ste. 211  
Albuquerque, NM 87112  
(505) 323-7629

The Owner and Contractor agree as follows:

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

AIA Document A201<sup>™</sup>-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Int.

AIA Document A101<sup>™</sup> – 2007. Copyright © 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1967, 1974, 1977, 1987, 1991, 1997 and 2007 by The American Institute of Architects. All rights reserved. **WARNING: This AIA<sup>®</sup> Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA<sup>®</sup> Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** This document was produced by AIA software at 09:57:45 on 03/26/2015 under Order No.2014561723\_1 which expires on 02/09/2016, and is not for resale.

User Notes:

(1903260248)

TABLE OF ARTICLES

1 THE CONTRACT DOCUMENTS

2 THE WORK OF THIS CONTRACT

3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

4 CONTRACT SUM

5 PAYMENTS

6 DISPUTE RESOLUTION

7 TERMINATION OR SUSPENSION

8 MISCELLANEOUS PROVISIONS

9 ENUMERATION OF CONTRACT DOCUMENTS

10 INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

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

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

~~(Paragraphs deleted)~~

The date of commencement of the work will be the date on the Notice to Proceed from the Owner

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

3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than one hundred twenty four (124 ) days from the date of

~~(Paragraphs deleted)~~

commencement, subject to adjustments of this Contract Time as provided by the Contract Documents and as follows:

~~(None deleted)~~

Fully Operational Natatorium ready for public use September 18, 2015

Init.

(Paragraphs deleted)

Liquidated damages of two hundred fifty (\$250.00) per calendar day will apply for work not completed by the Substantial Completion date.

**ARTICLE 4 CONTRACT SUM**

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be one million, one hundred seventy two thousand, seven hundred forty seven dollars and seven cents (\$ 1,172,747.07 ), inclusive of New Mexico Gross Receipts Tax and subject to additions and deductions as provided in the Contract Documents.

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

(1) Alternate #1 with negotiated modifications: Quarterly maintenance service: Exhibit B

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

| Item   | Price       |
|--|-------------|
| Natorium room envelope repairs                                     | \$15,000.00 |
| Existing South Central Unit function preservation prior to removal | \$5,000.00  |

(Table deleted)

(Paragraphs deleted)

**ARTICLE 5 PAYMENTS**

**§ 5.1 PROGRESS PAYMENTS**

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

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

§ 5.1.3 Provided that an Application for Payment is received by the Engineer not later than the 1st day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the 21st day of the month. If an Application for Payment is received by the Engineer after the application date fixed above, payment shall be made by the Owner not later than twenty one ( 21 ) days after the Engineer receives the Application for Payment.

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

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

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

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

Init.

- 2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing).
- 3 Subtract the aggregate of previous payments made by the Owner; and
- 4 Subtract amounts, if any, for which the Engineer has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

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

- 1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Engineer shall determine for incomplete Work, to a percentage applicable to such work and unsettled claims; and
- 2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-2007.

#### 5.1.8

*(Paragraph deleted)*

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

*(Paragraph deleted)*

#### 5.2 FINAL PAYMENT

5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when:

- 1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment; and
- 2 a final Certificate for Payment has been issued by the Engineer.

5.2.2 The Owner's final payment to the Contractor shall be made no later than 21 days after the issuance of the Engineer's final Certificate for Payment, or as follows:

Without delay, upon receipt of the Contractor's request for final payment being submitted by the Contractor to the City, provided the Owner has received the consent of Surety, Waivers, Releases of Liens, Final Certified Payroll, applicable Stop, Manufacturing and Vendor inspections, Certificate of Occupancy, CID Permit Summary, As-Built documents, all applicable Warranties, Operations & Maintenance manuals, completed final Punch List, walk-through(s) and training(s).

### ARTICLE 6. DISPUTE RESOLUTION

#### 6.1 INITIAL DECISION MAKER

The Owner shall serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007, unless the parties upon delay agree an individual, not a party to this Agreement, to serve as Initial Decision Maker.

*(Paragraph deleted)*

#### 6.2 PENDING DISPUTE RESOLUTION

For any claim, subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201-2007, the method of pending dispute resolution shall be as follows:

- Arbitration pursuant to Section 15.4 of AIA Document A201-2007
- Litigation in a court of competent jurisdiction

Int.

[ X ] In accordance with New Mexico Public Works Mediation Act 13-4C-1 through 13-4C-11, NMSA 1978

#### ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-2007. This Agreement may be terminated by the City upon thirty (30) days written notice to the Contractor. 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. If compensation is not based upon hourly rates for services rendered, the City shall pay the Contractor for the reasonable value of services satisfactorily performed and accepted by the City through the date Contractor receives notice of such termination, and for which compensation has not already been paid and prior approved reimbursable expenses incurred through the date Contractor receives notice of such termination.

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

#### ARTICLE 8 MISCELLANEOUS PROVISIONS

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

§ 8.2 The Owner's representative:

Jason M. Moore or other authorized Public Works Project Administrator or Director  
Project Administrator  
Facilities Division, Public Works Department  
City of Santa Fe  
701 Alamosa Road, Building C, Santa Fe, New Mexico, 87505  
(505) 982-5917

§ 8.3 The Contractor's representative:

Clinton Beall  
Santa Fe, New Mexico  
DSD Industries, Inc.  
9720 Bell Avenue SE, Albuquerque, NM 87123  
(505) 299-0484

§ 8.4

(Paragraphs deleted)

Notwithstanding the Owner's representative shall be changed without ten days written notice to the other party.

§ 8.5 Other provisions:

#### § 8.5.1 INDEMNIFICATION

The Contractor shall indemnify, hold harmless and defend the City and the Engineer 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.

(Paragraphs deleted)

#### § 8.5.2 APPROPRIATIONS

Int.

AIA Document A101™ - 2007. Copyright © 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1967, 1974, 1977, 1987, 1991, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 09:57:45 on 03/26/2015 under Order No.2014561723\_1 which expires on 02/09/2016, and is not for resale.

User Notes:

(1903260248)

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.

**§ 8.5.3 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.

**§ 8.5.4 STATES 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 28-1-5/CC 1987, as well as any subsequent changes to such article throughout the term of this Agreement.

**§ 8.5.5 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.

**§ 8.5.6 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.

**§ 8.5.7 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.

**§ 8.5.8 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

Init.

AIA Document A101™ – 2007. Copyright © 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1967, 1974, 1977, 1987, 1991, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 09:57:45 on 03/26/2015 under Order No.2014561723\_1 which expires on 02/09/2016, and is not for resale.

User Notes:

(1903260248)

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 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.

#### § 8.5.9 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 constitute the right of the City to recover excessive or illegal payments.

#### § 8.5.10 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.

#### § 8.5.11 AMENDMENT

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

#### § 8.5.12 NON-DISCRIMINATION

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

#### § 8.5.13 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.

#### § 8.5.14 NOTICES

Any and all notices provided for hereunder shall be in writing and shall be deemed delivered, given and received when (i) personally delivered, or (ii) five (5) days after the same are deposited in the United States Postal Service mail, postage prepaid, certified mail, return receipt requested, addressed to the applicable party at the

Init.

address indicated below for each party, or at such other address as may be designated by either party in a written notice to the other party:

**OWNER:** City of Santa Fe  
 Public Works Department, Facilities Division  
 PO Box 909  
 Santa Fe, NM 87504-0909

**CONTRACTOR:** B&D Industries, Inc.  
 9720 Bell Avenue SE, Albuquerque, NM 87123  
 (505)299-4464

**§ 8.5.15 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 any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

**§ 8.5.16 TERM AND EFFECTIVE DATE**

This Agreement shall be effective when signed by the City and the Contractor, whichever occurs last, and terminate on June 30, 2016, unless sooner pursuant to section 8.5.11, above.

**ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS**

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

and Contractor.

*(Paragraph deleted)*

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

**§ 9.1.3 The Supplementary and other Conditions of the Contract:**

| Document   | Title              | Date    | Pages                    |
|--|--------------------|---------|--------------------------|
| Request for Bid '15/20/B   | RFB/Project Manual | 2/24/15 | See Project Manual Index |
| Exhibit A: Contractor's Bid including Procurement Scope            |                    |         |                          |
| Exhibit B: Contractor's Alternate #3 with negotiated modifications |                    |         |                          |
| Exhibit C: Contractor's Certificate of Liability Insurance         |                    |         |                          |
| Exhibit D: Contractor's negotiated Price Proposal                  |                    |         |                          |

**§ 9.1.4 The Specifications:**

The specifications are included in the construction documents and in the Request for Bid '15/20/B Project Manual including all revisions prior to the Contractor's signing of this Agreement.

**§ 9.1.5 The Drawings:**

*(Paragraph deleted)*

Drawings issued by The Response Group with the Request for Bid '15/20/B including all revisions prior to the Contractor's signing of this Agreement.

Init.

AIA Document A101™ – 2007. Copyright © 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1967, 1974, 1977, 1987, 1991, 1997 and 2007 by The American Institute of Architects. All rights reserved. **WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** This document was produced by AIA software at 16:09:19 on 03/31/2015 under Order No.2014561723\_1 which expires on 02/09/2016, and is not for resale.

User Notes:

(844704616)

§ 9.1.6 The Addenda, if any:

| Number      | Date       | Pages |
|-------------|------------|-------|
| Addendum #1 | 03/6/ 2015 | 10    |
| Addendum #2 | 03/17/2015 | 7     |

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

*(Paragraphs deleted)*

**ARTICLE 10 INSURANCE AND BONDS**

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201-2007.

*(Paragraph deleted)*

| Type of insurance or bond    | Limit of liability or bond amount (\$0.00)                |
|------------------------------|---|
| Performance Payment Bonds    | 100% of the Contract amount                               |
| Commercial General Liability | \$1,000,000 per occurrence, \$2,000,000 general aggregate |
| Automobile Liability         | \$500,000 combined single limit                           |
| Workers Compensation         | \$100,000 each accident, \$100,000 disease, each employee |
| Workers                      | \$500,000 disease, policy limit                           |

*(Paragraph deleted)*

Init.

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

CITY OF SANTA FE:

JAVIER M. GONZALES, MAYOR

DATE: \_\_\_\_\_

AT TEST:

YOLANDA Y. VIGIL  
CITY CLERK

APPROVED AS TO FORM:

*MDM* 3/30/15  
KELLY A. BRENNAN,  
CITY ATTORNEY

CONTRACTOR:  
B&D INDUSTRIES, INC.

*Clinton Beall* 4/1/15  
BY CLINTON BEALL, SENIOR VICE PRESIDENT

NM LICENSE #:1426  
CRS #:01-716872-004  
CITY BUSINESS REGISTRATION #:15-00110523  
NM RESIDENT PREFERENCE #: L1754397648

APPROVED:

OSCAR RODRIGUEZ, FINANCE DIRECTOR

52722.572500.0114900  
Business Unit/Line Item

Init.

AIA Document A101™ – 2007. Copyright © 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1967, 1974, 1977, 1987, 1991, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 09:57:45 on 03/26/2015 under Order No.2014561723\_1 which expires on 02/09/2016, and is not for resale.  
User Notes:

10

(1903260248)



**AIA**<sup>®</sup>

# Document A201<sup>™</sup> – 2007

## General Conditions of the Contract for Construction

### For the following PROJECT:

CFR 0507N – Genoveva Chavez Community Center (GCCC) Natatorium  
Dehumidification System Remodeling

#### THE OWNER:

City of Santa Fe  
300 Lincoln Avenue  
Santa Fe, New Mexico 87501  
(505) 955-5937

#### THE CONTRACTOR:

B&D Industries, Inc.  
9730 Hill Avenue SE  
Santa Fe, New Mexico, 87101  
(505) 294-4164

#### THE ENGINEER:

The Response Group, Inc.  
11930 Menaul Blvd. NE, Ste. 111  
Albuquerque, N.M. 87112  
(505) 323-7629

#### TABLE OF ARTICLES

|    |  |
|----|--|
| 1  | GENERAL PROVISIONS                               |
| 2  | OWNER  |
| 3  | CONTRACTOR                                       |
| 4  | ENGINEER   |
| 5  | SUBCONTRACTORS                                   |
| 6  | CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS |
| 7  | CHANGES IN THE WORK                              |
| 8  | TIME   |
| 9  | PAYMENTS AND COMPLETION                          |
| 10 | PROTECTION OF PERSONS AND PROPERTY               |
| 11 | INSURANCE AND BONDS                              |
| 12 | UNCOVERING AND CORRECTION OF WORK                |
| 13 | MISCELLANEOUS PROVISIONS                         |

#### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

Init.

AIA Document A201<sup>™</sup> – 2007. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA<sup>®</sup> Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA<sup>®</sup> Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 10:01:34 on 03/26/2015 under Order No.2014561723\_1 which expires on 02/09/2016, and is not for resale.  
User Notes:

(1970818150)

14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES



Int.

AIA Document A201™ – 2007. Copyright © 1911, 1915, 1918, 1925, 1937, 1961, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 10:01:34 on 03/26/2015 under Order No.2014561723\_1 which expires on 02/09/2016, and is not for resale.  
User Notes:

2

(1970818150)

## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 BASIC DEFINITIONS

#### § 1.1.1 THE CONTRACT DOCUMENTS

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

#### § 1.1.2 THE CONTRACT

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

#### § 1.1.3 THE WORK

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

#### § 1.1.4 THE PROJECT

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

#### § 1.1.5 THE DRAWINGS

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

#### § 1.1.6 THE SPECIFICATIONS

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

#### § 1.1.7 INSTRUMENTS OF SERVICE

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

#### § 1.1.8 INITIAL DECISION MAKER

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

### § 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

Int.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

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

### § 1.3 CAPITALIZATION

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

### § 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

### § 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Engineer, architect, Engineer's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyright, or other rights or exclusion of rights as indicated in the agreement between Owner and Engineer. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Engineer or Engineer's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the prior written consent of the Owner, Engineer and the Engineer's consultants.

### § 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

§ 1.6.1 The Contractor shall transmit Instruments of Service or any other information or documentation in digital form, and shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or Contract Documents.

## ARTICLE 2 OWNER

### § 2.1 GENERAL

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

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

### § 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 From commencement of the Work, the Contractor may request in writing that the Owner provide such evidence as to the Owner's ability to pay that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract Documents. The Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or

Init.

the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not unreasonably vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, encroachments and charges required for construction, use or occupancy of permanent structures or for permanent alterations to existing facilities.

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

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

§ 2.2.5 In addition to what is provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for the purpose of making reproductions pursuant to Section 1.5.2.

#### § 3.2 OWNERS RIGHT TO STOP THE WORK

If the Contractor fails to perform Work that is not in accordance with the requirements of the Contract Documents as required by Section 1.1.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may, without prejudice, give written notice to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to compensate the Contractor for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

#### § 3.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default to meet the diligent and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments due to the Contractor the reasonable cost of correcting such deficiencies, including the Contractor's expense and compensation for the Engineer's additional services made necessary by such default, neglect or failure. Such amounts by the Owner and amounts charged to the Contractor are both subject to prior approval of the Engineer. If payments then due to the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

### ARTICLE 3 - CONTRACTOR

#### § 3.1 GENERAL

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

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

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents, either by activities or duties of the Engineer in the Engineer's administration of the Contract, or by tests, inspections or measurements required or performed by persons or entities other than the Contractor.

Init.

### § 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

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

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as any information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions and for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Engineer any errors, inconsistencies or omissions discovered by or made known to the Contractor and request information in such form as the Engineer may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Engineer any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Engineer may require.

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

### § 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

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

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

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

### § 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other

Int.

facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Engineer in accordance with Sections 3.1.3 and 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Engineer and in accordance with a Change Order or Construction Change Directive.

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

### § 3.5 WARRANTY

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

### § 3.6 TAXES

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

### § 3.7 PERMITS, FEES, NOTICE AND COMPLIANCE WITH LAWS

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

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

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

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise unanticipated physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Engineer before conditions are disturbed and in no event later than 3 days after first observance of the conditions. The Engineer will promptly investigate such conditions and, if the Engineer determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Engineer determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the Contract Sum or Contract Time is justified, the Engineer shall promptly notify the Owner and Contractor in writing, stating the reasons. If the party disputes the Engineer's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Engineer. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume

Init.

the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 11.

### § 3.8 ALLOWANCES

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- (1) Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- (2) Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- (3) Whenever the actual costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between the actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

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

### § 3.9 SUPERINTENDENT

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

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

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

### § 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

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

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

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Engineer.

Int.

### § 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Engineer and shall be delivered to the Engineer for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

### § 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

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

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

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concepts expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Engineer is subject to the limitations of Section 4.2.7. Informational submittals approved with the Engineer's approval to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Engineer without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Engineer Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Engineer or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or its authorized contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Engineer that the Contractor has (1) reviewed and approved them, (2) determined and verified material, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall refrain from portions of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Engineer.

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

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

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be

Init.

required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Engineer will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Engineer. The Owner and the Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Engineer have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Engineer will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

#### 3.13 USE OF SITE

3.13.1 The Contractor shall erect enclosures at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

#### 3.14 CUTTING AND PATCHING

3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by otherwise altering the Work. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor without the written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's assistance in cutting, fitting or patching the Work.

#### 3.15 CLEANING UP

3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by construction under the Contract. At completion of the Work, the Contractor shall remove waste materials, including the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

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

#### 3.16 ACCESS TO WORK

3.16.1 The Contractor shall provide the Owner and Engineer access to the Work in preparation and progress wherever needed.

#### 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Engineer harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturer is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Engineer. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Engineer and the Owner.

§ 3.18 INDEMNIFICATION

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

§ 3.18.2 In no event shall any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damage, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 4 ENGINEER

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain an Engineer lawfully licensed to practice Engineering or an entity lawfully practicing Engineering in the jurisdiction where the Project is located. That person or entity is identified as the Engineer in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 The specific duties and limitations of authority of the Engineer as set forth in the Contract Documents shall not be modified, amplified or extended without written consent of the Owner, Contractor and Engineer. Changes shall not become a part of the Contract Documents.

§ 4.1.3 In the event the Engineer is terminated, the Owner shall employ a successor Engineer as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Engineer.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Engineer will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Engineer issues the final Certificate for Payment. The Engineer shall have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

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

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

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

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

§ 4.2.5 Based on the Engineer's evaluations of the Contractor's Applications for Payment, the Engineer will review and certify the amount due the Contractor and will sign the Application for Payment.

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

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

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

§ 4.2.9 The Engineer will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner the Contractor's review and records, written warranties and related documents required by the Contract and assemblies by the Contractor as provided in Section 9.10; and sign the final Application for Payment pursuant to Section 9.14.

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

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

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

§ 4.2.13 The Engineer's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

Init.

§ 4.2.14 The Engineer will review and respond to requests for information about the Contract Documents. The Contractor's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Engineer will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

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

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

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Engineer the names of proposed persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Engineer may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Engineer has reasonable objection to any such proposed person or entity or (2) that the Engineer requires additional time for review. Failure of the Owner or Engineer to reply within the 14-day period shall constitute approval of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Engineer has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

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

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

### § 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, insofar as it is legally required for validity, the Contractor shall require each Subcontractor, in the course of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Engineer. Each subcontract agreement shall preserve and protect the rights of the Owner and Engineer under the Contract Documents with respect to the Work to be performed by the Subcontractor, and that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

Init.

**§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that:

1. assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
2. assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

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

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

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

**ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

**§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the same site. Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes such separate contract or contracts.

§ 6.1.3 The Owner shall provide the coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with each separate contractor and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedule to be used by the Contractor, separate contractors and the Owner until otherwise revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without exclusion, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

**§ 6.2 MUTUAL RESPONSIBILITY**

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report in the field any apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

Int.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall not be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

### § 6.3 OWNER'S RIGHT TO CLEAN UP

In a dispute arising among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may cause an independent firm to allocate the cost among those responsible.

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order in order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Engineer; Engineer; an order for a minor change in the Work may be issued by the Engineer alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order or order for a minor change in the Work.

### § 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Engineer and signed by the Owner, Contractor and Engineer stating the agreement upon all of the following:

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

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

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

1. Costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
2. Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
3. Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

Init.

- 4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- b Additional costs of supervision and field office personnel directly attributable to the change.

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

§ 8.2.5 When the Owner and Contractor agree with a determination made by the Engineer concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately after the issuance of a Change Order.

### § 9.3 MINOR CHANGES IN THE WORK

The Engineer has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and consistent with the intent of the Contract Documents. Such changes will be effected by written orders issued by the Engineer and shall be binding on the Owner and Contractor.

### Paragraphs Related

#### ARTICLE 8 TIME

##### § 8.1 DEFINITIONS

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

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

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

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

##### § 8.2 PROGRESS AND COMPLETION

§ 8.2.1 This Agreement is of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

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

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

##### § 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Employer, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Engineer determines may justify delay, then the Contract Time shall be extended by Change Order through a reasonable time as the Engineer may determine.

§ 8.3.2 Damages for delay shall be made in accordance with applicable provisions of Article 15.

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

Int.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 CONTRACT SUM

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

### § 9.2 SCHEDULE OF VALUES

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

### § 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least five days before the date established for each progress payment, the Contractor shall submit to the Engineer an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Engineer may require, such as copies of quotations from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Engineer, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

### § 9.4 CERTIFICATES FOR PAYMENT

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

§ 9.4.2 Signing the Application for Payment will constitute a representation by the Engineer to the Owner, based on the Engineer's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Engineer's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Engineer. Signing the Application for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, signing the Application

Init.

AIA Document A201™ - 2007. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 10:01:34 on 03/26/2015 under Order No.2014561723\_1 which expires on 02/09/2016, and is not for resale.

User Notes:

(1970818150).

25

for Payment will not be a representation that the Engineer has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data furnished by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

#### 9.5 DECISIONS TO WITHHOLD CERTIFICATION

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

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

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

9.5.3 If the Engineer withholds approving a payment under Section 9.5.1.3, the Owner may, at its sole option, cause payments to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor is entitled to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Engineer.

#### 9.6 PROGRESS PAYMENTS

9.6.1 After the Engineer has signed the Application for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Engineer.

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

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

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

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

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

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or joint liability on the part of the Contractor for breach of trust or shall entitle any person or entity to a award of punitive damages against the Contractor for breach of the requirements of this provision.

#### § 9.7 FAILURE OF PAYMENT

If the Contractor does not sign an Application 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 the time period established in the Contract Documents the amount certified by the Engineer or awarded by binding dispute resolution from the Contractor may, upon seven additional days' written notice to the Owner and Engineer, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

#### § 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Engineer a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the Contractor's obligation to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Engineer will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Engineer's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, within a reasonable time of the date of Substantial Completion, complete or correct such item upon notification by the Engineer. In such case, the Contractor shall then submit a request for another inspection by the Engineer to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Engineer will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibility for the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the certificate. Work items required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Contractor for their written acceptance of responsibility assigned to them in such Certificate, then to the Owner for their approval. Upon such acceptance, the Owner shall make payment applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

#### § 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the

Init.

Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Engineer as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Engineer.

§ 9.8.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Engineer shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.8.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

#### § 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Engineer and Owner will promptly make such inspection and when the Engineer and Owner finds the Work acceptable under the Contract Documents and the Contract fully performed, the Engineer will promptly sign and issue a Final Completion Certificate stating that the Work has been completed in accordance with terms and conditions of the Contract Documents. The Engineer's approval of the final Application for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Final payment shall not become due until the Contractor submits to the Owner (1) a certificate extending the insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be amended or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (2) a written agreement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (3) consent of surety, if any, to final payment, and (4) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor shall furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. In the event there remain unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

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

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

1. liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
2. failure of the Work to comply with the requirements of the Contract Documents; or
3. claims of special warranties required by the Contract Documents.

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

Init.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs necessary with the performance of the Contract.

### § 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to persons from damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules, regulations and orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

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

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

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1, and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Engineer or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the responsibility of assurance. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Engineer.

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

### § 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

### § 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents concerning hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Engineer in writing.

§ 10.1.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Engineer the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or ~~approve~~ to perform the task of removal or safe containment of such material or substance. The Contractor and the Engineer will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Engineer has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Engineer have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written approval of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately, and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional cost of and delay and start-up.

§ 10.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, subcontractors, furnisher, Engineer's consultants and agents and employees of any of them from and against claims, damages, costs and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work on the affected area if in fact the material or substance presents the risk of bodily injury or death as defined in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

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

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

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

#### § 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

### ARTICLE 11 INSURANCE AND BONDS

#### § 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by subcontractors or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

1. Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
2. Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;

Init.

- .4 Claims for damages insured by usual personal injury liability coverage;
- .6 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

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

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

**§ 11.2 OWNER'S LIABILITY INSURANCE**

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

**§ 11.3 PERFORMANCE BOND AND PAYMENT BOND**

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

*Paragraphs (b) and (c)*

§ 11.3.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

*Paragraphs (a) and (d)*

**ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

**§ 12.1 UNCOVERING OF WORK**

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

§ 12.1.2 If a portion of the Work has been covered that the Engineer has not specifically requested to examine prior to its being covered, the Engineer may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such

Int.

costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

#### 12.2 CORRECTION OF WORK

##### 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Engineer or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of monitoring and replacement, and compensation for the Engineer's services and expenses made necessary thereby, shall be at the Contractor's expense.

##### 12.2.2 AFTER SUBSTANTIAL COMPLETION

12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of substantial completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.7.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Engineer, the Owner may proceed in accordance with Section 2.4.

12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual commencement of the performance of the Work.

12.2.2.3 The above period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to Section 12.2.

12.2.2.4 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

12.2.2.5 The Contractor shall be at the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

12.2.2.6 Nothing contained in this section 12.2 shall be construed to establish a period of limitation with respect to the Contractor's obligations under the Contract Documents. Establishment of the one-year period for correction of Work as provided in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, or to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

##### 12.3 ACCEPTANCE OF NONCONFORMING WORK

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

#### ARTICLE 15 MISCELLANEOUS PROVISIONS

##### 15.1 GOVERNING LAW

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

Init.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by other service providing proof of delivery to, the last business address known to the party at the time.

13.4 RIGHTS AND REMEDIES

§ 13.4.1 All rights and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available at law.

§ 13.4.2 No action or failure to act by the Owner, Engineer or Contractor shall constitute a waiver of a right or duty provided hereunder, nor shall such action or failure to act constitute approval of or acquiescence in a breach hereunder, except as may be specifically agreed in writing.

13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear a calculated costs of tests, inspections and approvals. The Contractor shall give the Engineer timely notice of when and where such tests, inspections and approvals are to be made so that the Engineer may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after building codes or regulations are promulgated, and (2) tests, inspections or approvals where building codes or applicable laws, statutes, ordinances prohibit the Owner from delegating their cost to the Contractor.

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

§ 13.5.3 If test procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work in compliance with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Engineer's services and expenses shall be at the Contractor's expense.

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

§ 13.5.5 The Contractor is to observe tests, inspections or approvals required by the Contract Documents, the Engineer will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

Init.

## § 13.0 TIME LIMITS ON CLAIMS

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

*(Paragraph Deleted)*

## ARTICLE 14. TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

1. Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
2. Act of government, such as a declaration of national emergency that requires all Work to be stopped;
3. Because the Engineer has not issued a Certificate for Payment and has not notified the Contractor of the reasons for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment of a Certificate for Payment within the time stated in the Contract Documents; or
4. The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable *submittals* as required by Section 2.2.1.

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

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

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract *as set forth with respect to matters pertaining* to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Engineer, terminate the Contract and recover from the Owner as provided in Section 14.3.

### § 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

1. repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
2. fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
3. repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
4. otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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

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

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

**14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE**

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

1. that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
2. that equitable adjustment is made or denied under another provision of the Contract.

**14.4 TERMINATION BY THE OWNER FOR CONVENIENCE**

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

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

1. cease operations, as directed by the Owner in the notice;
2. do, without necessity, or that the Owner may direct, for the protection and preservation of the Work; and
3. except for Work deemed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

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

**ARTICLE 15 CLAIMS AND DISPUTES**

**15.1 CLAIMS**

**§ 15.1.1 DEFINITION**

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

**§ 15.1.2 NOTICE OF CLAIMS**

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

#### § 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 10, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Engineer will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

#### § 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency *contingent* or *pre-* arising under Section 10.4.

#### § 15.1.5 CLAIMS FOR ADDITIONAL TIME

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

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

#### § 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner ~~waive~~ Claims against each other for consequential damages arising out of or relating to the Contract. This mutual waiver includes

1. damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of subpersons; and
2. damages incurred by the Contractor for principal office expenses including the compensation of personnel allocated there, for losses of financing, business and reputation, and for loss of profit and anticipated profit arising directly from the Work.

The mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

#### § 15.2 INITIAL DECISION

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

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

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

Init.

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

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

§ 15.2.6 The party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.4.

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

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

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

#### 15.3 MEDIATION

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

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 30 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed as if the selection of the arbitrator had agreed upon a schedule for later proceedings.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

#### 15.4 ARBITRATION

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claims, disputes, or other matters not resolved by mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

Init.

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

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

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

#### § 15.4.4 CONSOLIDATION OR JOINDER

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

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

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

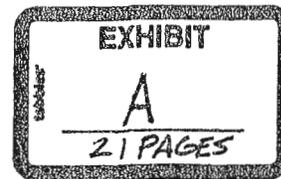
Init.

AIA Document A201™ – 2007. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 10:01:34 on 03/26/2015 under Order No.2014581723\_1 which expires on 02/09/2016, and is not for resale.

User Notes:

38

(1970818150)



**BID FORMS  
(00 4100)**

**(00 4113) BID FORM - STIPULATED SUM (Single-Prime Contract)**

Invitation No: RFB '1520/B

Project: CIP PROJECT #507N – GENOVEVA CHAVEZ COMMUNITY  
CENTER NATATORIUM DEHUMIDIFICATION SYSTEM  
REMODELING

Contractor: B&D Industries, Inc.  
9720 Bell Avenue SE  
Albuquerque, NM 87123

Date: February 24, 2015

This Bid is submitted to: CITY OF SANTA FE  
PURCHASING DIRECTOR  
2651 SIRINGO ROAD, BUILDING H  
SANTA FE, NEW MEXICO 87505

1. The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an agreement with the Owner in the form included in the Bidding Documents to perform and furnish all work as specified or indicated in the Bidding Documents for the Contract Price and within the Contract Time indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.
2. The Bidder accepts all of the terms and conditions of the Invitation for Bid and Instructions to Bidders, including, without limitation, those dealing with the disposition of Bid security and other Bidding Documents. This Bid will remain subject to acceptance for \*60 days after the day of Bid-opening. The Bidder shall sign and submit the Agreement between Owner and Contractor (hereinafter called Agreement) with the bonds and other documents required by the Bidding Requirements within fifteen (15) calendar days after the date of the Owner's Notice to Award.
3. In submitting this Bid, the Bidder represents, as more fully set forth in the Agreement, that:
  - A. The Bidder has examined copies of all the Bidding Documents and of the following Addenda (receipt of all of which is hereby acknowledged):
 

|                  |                        |                  |                         |
|------------------|------------------------|------------------|-------------------------|
| No. <u>  1  </u> | Date <u>  3/6/15  </u> | No. <u>  2  </u> | Date <u>  3/17/15  </u> |
| No. _____        | Date _____             | No. _____        | Date _____              |
| No. _____        | Date _____             | No. _____        | Date _____              |
| No. _____        | Date _____             | No. _____        | Date _____              |
  - B. The Bidder has familiarized himself with the nature and extent of the Bidding Documents, work, site, locality, and all local condition, laws, and regulations that in any manner may affect cost, progress, performance, or furnishing of the work.
  - C. The Bidder has carefully studied all reports and drawings of subsurface conditions which are identified in the Information Available to Bidders and accepts the determination set forth in the Information Available to Bidders of the extent of the technical data contained in such reports and drawings upon which the Bidder is entitled to rely.
  - D. The Bidder has correlated the results of all such observations, examinations, investigations, explorations, tests, reports, and studies with the terms and conditions of the Bidding Documents.
  - E. The Bidder has given the Owner's Representative written notice of all conflicts, errors, or discrepancies that he has discovered in the Bidding Documents, and the written resolution thereof by the Owner's Representative is acceptable to the Bidder.

- F. This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm, or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization, or corporations, the Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; the Bidder has not solicited or induced any person, firm or corporation to refrain from bidding; and the Bidder has not sought by collusion to obtain for himself any advantage over any other Bidder or over the Owner. It is understood that the Owner reserves the right to reject any or all Bids and to waive any technical irregularities in the bidding.
- G. It is the intent of the City to award a Contract to the responsible Bidder submitting the lowest total option, provided the Bid has been submitted in accordance with the requirements of the Bidding Documents and is in the best interest of the City.

The Scope of Work together with all related work required for comprehensive, fully functioning, warranted systems and finishing includes but is not limited to:

1. Complete removal of two existing dehumidification and climate control units and associated demolition work
2. Installation of two new dehumidification and climate control Pool Dehumidification Units (PDU's) including all necessary modifications and integration into the existing building systems including reconfiguration of the existing hydronic heating system
3. Installation of associated new ducting systems
4. Replacement, extension and/or modification of associated existing ducting systems
5. Installation of powered exhaust fan, with timer switch, in the roof above the Leisure Pool
6. Installation of powered exhaust fan, with thermostatic switch, in the roof above the main pump room.
7. Installation of powered exhaust fan, with thermostatic switch at the Therapy Pool dehumidifier heat loop supply boiler room
8. Installation of new cooling system to Natatorium offices 148 & 149
9. Coordination with and provision for the PDU control systems prime contractor as required to complete the unit controls scope of work for decommissioning of existing units and commissioning of new units and as specified in the contract documents.
10. Coordination with and provision for the roofing prime contractor as required to complete a partial replacement of the roof membrane in areas of new HVAC equipment installation that will become largely inaccessible after the new installation. This is anticipated to be approximately 10% or 300 SF of the associated roof area with demolition of the existing foam roof and replacement with tapered rigid insulation, cover board and cold applied BUR.
11. Provide allowance for repairs and modifications to the interior natatorium envelope as required for the proper functioning of dehumidification units and as necessary to maintain the room environment design criteria.
12. Provide allowance for preservation of function of the existing South Dectron Unit prior to its removal.
13. One mobilization from approximately May 18, 2015 through August 1, 2015 to substantially complete all interior and exterior work practicable and *NOT REQUIRING* a Natatorium shutdown, including the removal of the north Dectron unit and preparation of duct work and the like for timely installation of the new PDU's during the August mobilization.
14. One mobilization from approximately August 1, 2015 through September 18, 2015 to complete all work *REQUIRING* a Natatorium shutdown, including removal of the south Dectron unit, installation and commissioning of the new PDU's, testing and balancing, controls configuration support and all other work.
15. Any other related work associated with this improvement and as drawn and specified in the Construction Documents
16. All restorative patching and repair work in conjunction with the new work that is required to preserve the building's existing condition. The Contractor shall be responsible for preserving the integrity of existing systems and features affected by the performance of the new work and shall restore any features damaged during construction, during the time allotted for the project.
17. Provide standard 12 month Contractor's and Manufacturer's warranties on service, parts and labor.
18. Provide Additive Alternate for five year Manufacturer's warranty covering parts and labor on PDU-1 & PDU-2 complete.
19. Provide Additive Alternate for five year Manufacturer's warranty covering parts, labor and refrigerant on the refrigerant circuit of PDU-1 & PDU-2.
20. Provide Additive Alternate for three year Contractor's warranty in conjunction with the Manufacturer's five year warranty alternates to inspect the new PDU's every three months and coordinate or perform necessary repairs to or replacement of defective or malfunctioning equipment.

Contractor shall be responsible for adherence to the Contract Documents, Construction Documents, Specifications and approved directives.

Contractor shall be responsible for State CID requirements and permit.

Contractor shall be responsible for verifications of all existing conditions, measurements and dimensions for bidding.

Contractor shall be responsible for all permits, fees, and State and/or City inspections associated with the construction.

Contractor shall be responsible for removal and securing of any existing equipment necessary to provide for the new work in

accordance with the contract documents and to re-install these items in good work condition.

The Bidder will complete the work for the following price(s):

Base  
Bid One-million, one-hundred thirty-thousand, six-hundred seventy-five and 44/100  
\_\_\_\_\_  
(\$ 1,130,675.44 )  
(use words)

Allowance 1: Natatorium room envelope repairs:

Fifteen thousand dollars and zero cents \_\_\_\_\_ (\$15,000.00)  
(use words) Included under Base Bid exclusive of Gross Receipt Tax

Allowance 2: Existing South Dectron Unit function preservation prior to removal.

Five thousand dollars and zero cents \_\_\_\_\_ (\$5,000.00)  
(use words) Included under Base Bid exclusive of Gross Receipt Tax

Base Bid Plus Allowances

One-million, one-hundred fifty-thousand, six-hundred seventy-five and 44/100 dollars (\$ 1,150,675.44 )  
\_\_\_\_\_  
(use words)

Gross Receipts Tax  
(8.1875%)

Ninety-four thousand, two-hundred eleven and 55/100 dollars (\$ 94,211.55 )  
\_\_\_\_\_  
(use words)

Total Base Bid Plus Tax

One-million, two-hundred forty-four thousand, eight-hundred eighty-six and 99/100 dollars (\$ 1,244,886.99 )  
\_\_\_\_\_  
(use words)

\*\*\*\*\*Refer to attached Voluntary Alternate for \$150,000 deduct.

Alternate #1: Provide five year Manufacturer's warranty covering parts and labor on PDU-1 & PDU-2 complete.

One-hundred seventy-six thousand, six-hundred seventy-five and 00/100 dollars (\$ 176,675.00 )  
\_\_\_\_\_  
(use words) Inclusive of Gross Receipt Tax

Alternate #2: Provide five year Manufacturer's warranty covering parts, labor and refrigerant on the refrigerant circuit of PDU-1 & PDU-2.

One-hundred eighty-eight thousand and 00/100 dollars (\$ 188,000.00 )  
\_\_\_\_\_  
(use words) Inclusive of Gross Receipt Tax

Alternate #3: Provide three year Contractor's warranty in conjunction with the Manufacture's five year warranty alternates to inspect the new PDU's every three months and coordinate or perform necessary repairs to or replacement of defective or malfunctioning equipment.

Eight-thousand, three-hundred twenty-three and 33/100 (\$ 8,323.33 )  
(use words) Inclusive of Gross Receipt Tax

4. The Bidder agrees that:

- A. The work to be performed under the Contract shall commence not later than ten (10) consecutive calendar days after the date of written Notice to Proceed, and that completion of the Base Bid shall be achieved not later than 60 calendar days after the date of written "Notice to Proceed", except as hereafter extended by valid written "Change Order" by the Owner.
- B. Should the Contractor neglect, refuse, or otherwise fail to complete the work within the time specified, the Contractor agrees, in partial consideration for the award of this Contract, to pay the Owner the amount of Two Hundred Fifty Dollars (\$250) per consecutive calendar days, not as a penalty, but as liquidated damages for such breach of the Contract.
- C. The above process shall include all labor, profit, insurance, taxes, etc., to cover the finished work of the several kinds called for. Changes shall be processed in accordance with the Contract Documents.
- D. It is understood that the Owner reserves the right to reject any or all Bids and to waive any technical irregularities in the bidding.

5. The following documents are attached to and made a condition of this Bid:

- A. Bid Security only for the highest bid option.
- B. Non-Collusion Affidavit of Prime Bidder
- C. Certificate of Bidder Regarding Equal Employment Opportunity
- D. Certificate of Non-Segregated Facilities
- E. The state or any political subdivision of the state shall not accept a bid on a public works project subject to the Public Works Minimum Wage Act from a prime contractor that does not provide proof of required registration for itself.

If any of the above requirements have not been met, the bid shall not be read.

6. The terms used in this Bid and the Bidding and Contract Documents which are defined in the Conditions of the Construction Contract (General, Supplementary, and Other Conditions)

7. If the Bidder is:

A. AN INDIVIDUAL:

By: \_\_\_\_\_  
(Individual's Name)

doing business as:

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

\_\_\_\_\_

Telephone: \_\_\_\_\_

(SEAL)

B. A PARTNERSHIP:

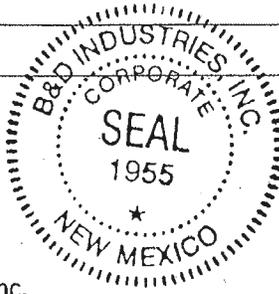
By: \_\_\_\_\_  
(Firm Name)

\_\_\_\_\_  
(General Partner)

Business Address:  
\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

(SEAL)



C. A CORPORATION

By: B&D Industries, Inc.  
(Corporation Name)

New Mexico  
(State of Incorporation)

By: Clinton Beall  
(Name of person authorized to sign)

Senior Vice President  
(Title)

If a New Mexico Corporation: 0496547  
Certificate of Incorporation No.

If a Foreign Corporation: \_\_\_\_\_  
Certificate of Authority No.

Attest: Nicole Parsons *Nicole Parsons*  
(Secretary)

Business address: 9720 Bell Avenue SE, Albuquerque, NM 87123

Telephone: 505-299-4464

D. A JOINT VENTURE

By: \_\_\_\_\_  
(Name)

Address: \_\_\_\_\_

By: \_\_\_\_\_  
(Name)

Address: \_\_\_\_\_

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

Bidder must fill in the following: (If none, write none)

NM License No.: 1426 Classification: EE98, EL01, GB98, GF09, MM98

NM Taxation and Revenue CRS No.: 01-716872-004

City of Santa Fe Business Registration No.: 15-00110523

NM Resident Preference Number (if applicable): L1754397648

**One Original and one copy of the Bid Submittal is required**

# THE AMERICAN INSTITUTE OF ARCHITECTS

## AIA Document A310 Bid Bond

KNOW ALL MEN BY THESE PRESENTS, THAT WE B&D Industries, Inc.

9720 Bell SE, Albuquerque, NM 87123

as Principal, hereinafter called the Principal, and Western Surety Company

333 S. Wabash Ave., Chicago, IL 60604

a corporation duly organized under the laws of the State of SD

as Surety, hereinafter called the Surety, are held and firmly bound unto City of Santa Fe

2651 Siringo Rd, Building H, Santa Fe, NM 87505

as Obligee, hereinafter called the Obligee, in the sum of Five Percent of Amount Bid

Dollars (\$ 5% ),

for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for Genoveva Chavez Community Center (GCCC) Natatorium

Dehumidification System Remodel, Santa Fe, NM

NOW, THEREFORE, if the Obligee shall accept the bid of the Principal and the Principal shall enter into a Contract with the Obligee in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and materials furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Obligee the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligee may, in good faith contract with another party to perform the Work covered by said bid, then this obligation shall be null and void otherwise to remain in full force and effect.

Signed and sealed this 23rd day of March



B&D Industries, Inc.

(Principal)

By:

Clinton Beall, Senior Vice President (Title)

Western Surety Company

(Surety)

(Seal)

Attorney-in-Fact Shirley A. Talley (Title)

(Title)



# Western Surety Company

## POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

**Shirley A. Talley , Individually**

of Albuquerque, NM its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

**- In Unlimited Amounts -**

Surety Bond No.: Bid Bond  
Principal: B&D Industries, Inc.  
Obligee: City of Santa Fe

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 10th day of August, 2012.

WESTERN SURETY COMPANY



*Paul T. Bruflat*

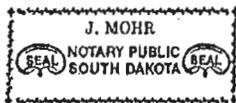
Paul T. Bruflat, Vice President

State of South Dakota }  
County of Minnehaha } ss

On this 10th day of August, 2012, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires

June 23, 2015



*J. Mohr*

J. Mohr, Notary Public

### CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 23rd day of March, 2015.



WESTERN SURETY COMPANY

*L. Nelson*

L. Nelson, Assistant Secretary

SUPPLEMENT TO BID FORMS  
(00 4300-4500)

**(00 4313) BID SECURITY FORM**

Review and Approval: This Bond has been executed by a Surety named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, United States Treasury Department.

Approved:

\_\_\_\_\_

DATE:

\_\_\_\_\_  
Owner's Representative or Governing Authority

**THIS FORM MUST ACCOMPANY THE BID BOND**

THIS FORM MUST BE  
USED BY SURETY

(00 4517) AGENT'S AFFIDAVIT

BID SECURITY FORM

(To be filled in by Agent)

STATE OF New Mexico )  
 ) ss.  
COUNTY OF Bernalillo )

Shirley A. Talley being first duly  
sworn deposes and says:

that he is the duly appointed agent for Western Surety Company  
and licensed in the State of New Mexico. Deponent further states that a certain bond given to indemnify the State of New Mexico

in connection with the construction of Genoveva Chavez Community Center (GCCC) Natatorium Dehumidification System Remodel

dated 24th day of March, 2015, executed by

B&D Industries, Inc.

contractor, as principal and Western Surety Company, as surety, signed by this deponent; and deponent further states that said bond was written, signed, and delivered by him; that the premium on the same has been or will be collected by him; and that the full commission thereon has been or will be retained by him.

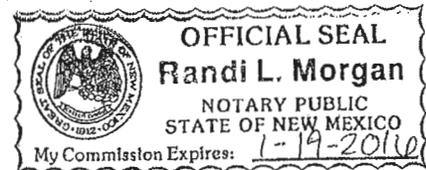
*Randi L. Morgan*  
Randi L. Morgan

Subscribed and sworn to before me, a notary public in and for the County of Bernalillo, this 23rd day of March, 2015.

My Commission expires: January 19, 2016

Agent's Address: HUB International Insurance Services, Inc.  
7770 Jefferson NE #101, Albuquerque, NM 87109

Telephone: 505-828-4000



(00 4518) SUBCONTRACTOR LISTING

Note: A subcontractor that submits a bid valued at more than fifty thousand dollars (\$50,000) for a city project that is subject to the Public Works Minimum Wage Act 13-4-10 NMSA 1978) shall be registered with the labor and industrial division of the labor department.

Section 00430

| TRADE                               | NAME                       | ADDRESS                             | TELEPHONE#   | LICENSE # | NM DEPT. OF LABOR<br>REGISTRATION #<br>(IF APPLICABLE) | SUBCONTRACTOR<br>SIGNATURE - TO BE<br>OBTAINED AFTER<br>AWARD OF CONTRACT |
|-------------------------------------|----------------------------|-------------------------------------|--------------|-----------|--|---|
| Ductwork<br>Fabrication/<br>Install | Engineered<br>Environments | 9613 Trumbull SE<br>Albuquerque, NM | 505-918-3950 | 384004    | 1739420141216  |   |
| Structural                          | Astro<br>Construction      | 3 Crest Court<br>Sandia Park, NM    | 505-281-0351 | 032269    | 1740520150105  |   |
|                                     |                            |                                     |              |           |  |   |
|                                     |                            |                                     |              |           |  |   |
|                                     |                            |                                     |              |           |  |   |
|                                     |                            |                                     |              |           |  |   |
|                                     |                            |                                     |              |           |  |   |
|                                     |                            |                                     |              |           |  |   |
|                                     |                            |                                     |              |           |  |   |

**(00 4519) NON-COLLUSION AFFIDAVIT OF PRIME BIDDER**

STATE OF New Mexico )  
 )ss.  
COUNTY OF Bernalillo )

Clinton Beall, being first duly sworn, deposes and says that:

- 1) He is the Senior Vice President of B&D Industries, Inc., the Bidder that has submitted and attached Bid;
- 2) He is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;
- 3) Such Bid is genuine and is not a collusive or sham Bid;
- 4) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees, or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with the Bidder, firm or person to submit a collusive or sham Bid in connection with the Contract for which the attached Bid has been submitted or to refrain from bidding in connection with such Contract or has in any manner directly or indirectly, sought by agreement or collusion or communications or conference with any other Bidder, firm or person to fix the price or prices in the attached Bid or of any other Bidder, or to fix any overhead, profit or cost element of the Bid price or the Bid price of any other Bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the City of Santa Fe, or any person interested in the proposed Contract; and
- 5) The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

By: [Signature]  
Title: Senior Vice President

Subscribed and sworn to before me this 23<sup>rd</sup> day of March, 2015.

[Signature]  
Notary Public

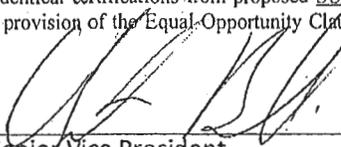
My Commission expires: 06/10/2018

 OFFICIAL SEAL  
Robert Lilley  
NOTARY PUBLIC-STATE OF NEW MEXICO  
My commission expires: 06/10/2018

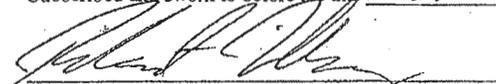
**(00 4533) CERTIFICATION OF NONSEGREGATED FACILITIES**

(Applicable to construction contracts and related subcontracts exceeding \$10,000 which are not exempt from the Equal Opportunity Clause.)

The construction contractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The construction contractor certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The construction contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this contract. As used in this certification, the term "segregated facilities" means: any waiting room, work areas, rest rooms and wash rooms, restaurants and other eating areas; time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin because of habit, local custom, or otherwise. The construction contractor agrees that (except where he has obtained identical certifications from proposed Subcontractors for specific time periods) he will obtain identical certifications from proposed SUBCONTRACTORS prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provision of the Equal Opportunity Clause and that he will retain such certifications in his files.

By:  Clinton Beall  
Title: Senior Vice President

Subscribed and sworn to before me this 23<sup>rd</sup> day of March, 2015.

  
Notary Public

My Commission expires: 06/10/2018



OFFICIAL SEAL  
Robert Lilley,  
NOTARY PUBLIC-STATE OF NEW MEXICO  
My commission expires: 06/10/2018

**(00 4534) INSTRUCTIONS RELATING TO LOCAL PREFERENCE CERTIFICATION FORM**

1. All information must be provided. A 10% local preference may be available for this procurement. To qualify for this preference, an offeror must complete and submit the local preference certification form with its offer. If an offer is received without the form attached, completed, notarized, and signed or if the form is received without the required information, the preference will not be applied. The local preference form or a corrected form will not be accepted after the deadline for receipt of bids or proposals.
2. Local Preference precedence over State Preference: The Local Preference takes precedence over the State Resident Preference and only one such preference will be applied to any one bid or proposal. If it is determined that the local preference applies to one or more offerors in any solicitation, the State Resident Preference will not be applied to any offers.
3. Principal Office and location must be stated: To qualify for the local preference, the principal place of business of the enterprise must be physically located within the Santa Fe County Geographic Boundaries. The business location inserted on the Form must be a physical location, street address or such. DO NOT use a post office box or other postal address. Principal place of business must have been established no less than six months preceding application for certification.
4. Subcontractors do not qualify: Only the business, or if joint venture, one of the parties of the joint venture, which will actually be performing the services or providing the goods solicited by this request and will be responsible under any resulting contract will qualify for this preference. A subcontractor may not qualify on behalf of a prime contractor.
5. Definition: The following definition applies to this preference.

A local business is an entity with its Principal office and place of business located in Santa Fe County.

A Principal office is defined as: The main or home office of the business as identified in tax returns, business licenses and other official business documents. A Principal office is the primary location where the business conducts its daily operations, for the general public, if applicable. A temporary location or movable property, or one that is established to oversee a City of Santa Fe project does not qualify as a Principal office.

Additional Documentation: If requested a business will be required to provide, within 3 working days of the request, documentation to substantiate the information provided on the form. Any business which must be registered under state law must be able to show that it is a business entity in good standing if so requested.

**(00 4534.1) LOCAL PREFERENCE CERTIFICATION FORM**

RFP/RFB NO: '15/20/B

Business Name: N/A

Principal Office: \_\_\_\_\_  
                                    Street Address                      City                      State                      Zip Code

City of Santa Fe Business License # \_\_\_\_\_ (Attach Copy to this Form)

Date Principal Office was established: \_\_\_\_\_ (Established date must be six months before date of Publication of this RFP or RFB).

**CERTIFICATION**

I hereby certify that the business set out above is the principal Offeror submitting this offer or is one of the principal Offerors jointly submitting this offer (e.g. as a partnership, joint venture). I hereby certify that the information which I have provided on this Form is true and correct, that I am authorized to sign on behalf of the business set out above and, if requested by the City of Santa Fe, will provide within 3 working days of receipt of notice, the necessary documents to substantiate the information provided on this Form.

Signature of Authorized Individual: \_\_\_\_\_

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

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

Subscribed and sworn before me by \_\_\_\_\_ this \_\_\_\_\_, day of \_\_\_\_\_

My commission expires \_\_\_\_\_

Notary Public

SEAL

**THIS FORM MUST ACCOMPANY THE BID**

**(00 4535) RESIDENT VETERANS PREFERENCE CERTIFICATION**

N/A (NAME OF CONTRACTOR) hereby certifies the following in regard to application of the resident veterans' preference to this procurement.

**Please check one box only:**

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is less than \$1M allowing me the 10% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$1M but less than \$5M allowing me the 8% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$5M allowing me the 7% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

I agree to submit a report or reports to the State Purchasing Division of the General Services Department declaring under penalty of perjury that during the last calendar year starting January 1 and ending on December 31, the following to be true and accurate:

In conjunction with this procurement and the requirements of this business application for a Resident Veteran Business Preference/Resident Veteran Contractor Preference under Sections 13-1-21 or 13-1-22 NMSA 1978, which awarded a contract which was on the basis of having such veterans preference, I agree to report to the State Purchasing Division of the General Services Department the awarded amount involved. I will indicate in the report the award amount as a purchase from a public body or as a public works contract from a public body as the case may be.

I understand that knowingly giving false or misleading information on this report constitutes a crime.

I declare under penalty of perjury that this statement is true to the best of my knowledge. I understand that giving false or misleading statements about material fact regarding this matter constitutes a crime.

\_\_\_\_\_  
(Signature of Business Representative)\* (Date)

\*Must be an authorized signatory of the Business.

The representation made by checking the above boxes constitutes a material representation by the business. If the statements are proven to be incorrect, this may result in denial of an award or un-award of the procurement.

SIGNED AND SEALED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:  
\_\_\_\_\_

**(00 4545) STATEMENT OF INTENT TO PAY PREVAILING WAGES**

B&D Industries, Inc. and its subcontractors intend to pay all craft personnel in accordance to the prevailing wage decision SF-12-1359B.

**(00 4546) CERTIFICATION OF BIDDER REGARDING EQUAL EMPLOYMENT OPPORTUNITY**

**INSTRUCTIONS**

This certification is required pursuant to Executive Order 11246 (30 F.R. 12319-25). The implementing rules and regulations provide that any Bidder or perspective contractor, or any of their proposed Subcontractors, shall state as an initial part of the Bid or negotiations of the Contract whether he has participated in any previous Contract or subcontract subject to the equal opportunity clause; and, if so, whether he has filed all compliance reports due under applicable instructions.

Where the certification indicates that the Bidder has not filed a compliance report due under applicable instructions, such Bidder shall be required to submit a compliance report within seven calendar days after Bid opening. No Contract shall be awarded unless such report is submitted.

**CERTIFICATION BY BIDDER**

Bidder's Name: B&D Industries, Inc.

Address: 9720 Bell Avenue SE

Albuquerque, NM 87123

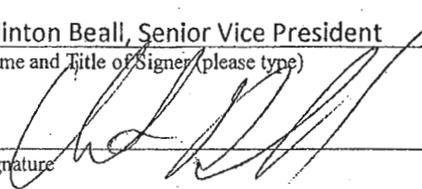
1. Bidder has participated in a previous Contract or subcontract subject to the equal Opportunity Clause.  
 Yes                       No
  
2. Compliance reports were required to be filed in connection with such Contract or subcontract.  
 Yes                       No

Certification - The information above is true and complete to the best of my knowledge and belief.

Clinton Beall, Senior Vice President

Name and Title of Signer (please type)

Signature



March 23, 2015

Date



## Business Licenses

- Home
- License Information ▶
- Renew License
- Email Us

### Public License Information

[Renew License](#)

License Number: 15-00110523  
 Business Control: 0046807 Location ID: 000034965

**Business Name & Address**

B & D INDUSTRIES INC  
 SF COUNTY  
 SANTA FE NM 87501

Date Opened: 06/30/2004

Business Phone: (505) 299-4464

**Mailing Address**

9720 BELL SE

ALBUQUERQUE NM 87123

Contractor Flag: Y

Type of Ownership: SP

Status: Active

**Owner Information**

STEVE WILSON

**License Information**

Classification: 070 OUT OF CITY CONTRACTOR - GENERAL

License Status, Date: ACTIVE, 12/30/2014

Appl, Issue Date: 12/30/2014, 12/30/2014

License Valid Thru Date: 12/31/2015

**Additional Requirements**

| DESCRIPTION              | DOCUMENT NUMBER | EXPIRATION DATE |
|--------------------------|-----------------|-----------------|
| CONTRACTOR STATE LICENSE | 1426            | 9302015         |

Susana Martinez  
Governor

Katherine C. Martinez  
Director

J. Dee Denis Jr.  
Superintendent

**State of New Mexico**  
Regulation and Licensing Department  
**CONSTRUCTION INDUSTRIES DIVISION**

2550 Cerillos Rd.  
Santa Fe, New Mexico 87505

*This is to certify that:* **B & D INDUSTRIES INC**  
**PERMANENT LICENSE #1426**

Located at: 9720 BELL SE, ALBUQUERQUE, NM 87123

*Has complied with all the requirements of the law and is hereby licensed as a contractor, to operate under the classification(s) of:*

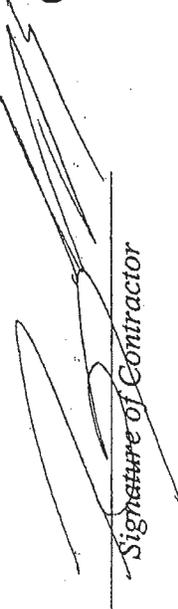
**EE98, EL01, GB98, GF09, MM98**

*And to permit or contract projects singly in New Mexico of a dollar amount up to:*

**UNLIMITED**

*Given under my signature and the seal of the Construction Industries Division at Santa Fe, New Mexico on*

**09/09/2013**

  
*Signature of Contractor*



Katherine C. Martinez

Director

NOTE: This Certificate is now and shall remain the property of the CONSTRUCTION INDUSTRIES DIVISION and shall be surrendered at any time upon demand. This certificate is not transferable

**STATE OF NEW MEXICO**

TAXATION AND REVENUE DEPARTMENT

**RESIDENT BUSINESS CERTIFICATE**

Issued to: **B & D INDUSTRIES, INC.**  
DBA: **B & D INDUSTRIES, INC.**  
**9720 BELL AVE SE**  
**ALBUQUERQUE, NM 87123-3208**

Expires: **09-Dec-2017**

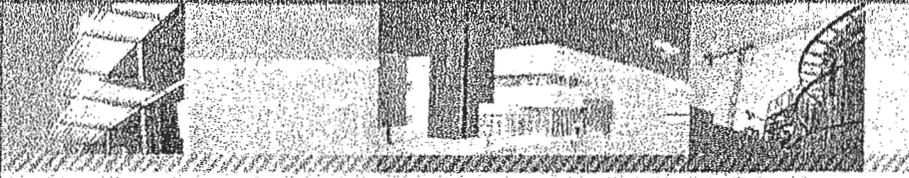
Certificate Number:

**L1754397648**

Demesia Padilla, CPA, Cabinet Secretary

THIS CERTIFICATE IS NOT TRANSFERABLE

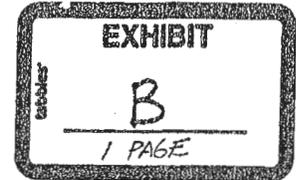
PRICE PROPOSAL



March 31<sup>st</sup>, 2015

Albuquerque, NM  
9720 Bell Ave SE,  
87123  
505-299-4464 (p)  
505-298-2114 (f)  
866-315-8349 (toll)

Jason M. Kluck  
Project Administrator  
Facilities Division  
Public Works Department  
[JMKluck@santafenm.gov](mailto:JMKluck@santafenm.gov)  
(505) 955-5937



Los Alamos, NM  
101 DP Rd, 87544  
505-661-8336 (p)  
505-661-8337 (f)

Re: Alternate #3 Specifications

Mr. Kluck,

Thank you for the opportunity to provide this quote.

Eunice, NM  
275 Andrews Hwy,  
88231  
575-394-6267 (p)  
575-394-5880 (f)

Sub-Total: \$ 8,323.33  
Tax at 8.1875%: \$ 681.47  
Grand Total: \$ 9,004.80

Odessa, TX  
5075 East 52<sup>nd</sup> Street,  
Ste. N201, 79762  
432-234-7899 (p)  
15-298-2114 (f)

**Scope:** As per meeting at building E, Siringo Rd 3-30-15, B&D shall provide the following services: Remove and replace the unit filters quarterly, check and replace worn belts each year, check and clean the condenser coil once a year after one year. Check the status of the compressor, heating section, evaporator coil and report any concerns to the facility. Maintenance report will be sent quarterly to the facility. This will remain in effect for 3 years.

Canyon, TX  
16078 FM 1541,  
79015  
806-679-4901 (p)  
505-298-2114 (f)

**Exclusions:**

- Any and all cost associated with unforeseen site conditions or delays not caused by B&D Industries
- Exterior or interior work not included in the above scope / Correcting existing code violations
- Temporary Plumbing, Power, Lighting, Hvac, or Facilities
- Shop drawings / Engineering / Load calculations / Surveying
- Any and all components not identified in the above scope
- B & D is not responsible for any failures that may be caused by design and/or control issues

Chandler, AZ  
3454 N. San Marcos Pl,  
Bldg. B, Ste. 3A, 85225  
480-632-4002 (p)  
505-298-2114 (f)

**Assumptions:**

- All existing utilities and services will accommodate the new install
- B&D will have full unrestricted access to the work area during this scope
- All other existing equipment is operational

NM Contractor  
License #1426

If you have any questions or concerns, please feel free to contact me

TX Electrical  
Contractor  
License #26425

Best regards,

AZ Electrical  
Contractor  
License #ROC259484

Jeff Tapia  
[Jtapia@banddindustries.com](mailto:Jtapia@banddindustries.com)  
(505) 991-0282 (cell)

CO Electrical  
Contractor  
License #6758

*This cost proposal is valid for 30 days following issuance by B&D Industries, Inc. If the proposal is accepted after 30 days, B&D Industries reserves the right to revise the price in accordance with commodity pricing changes including, but not limited to, copper, conduit and steel materials.*



Albuquerque, NM  
9720 Bell Ave SE,  
87123  
505-299-4464 (p)  
505-298-2114 (f)  
866-315-8349 (toll)

Los Alamos, NM  
101 DP Rd, 87544  
505-661-8336 (o)  
505-661-8337 (f)

Sunrise, NM  
275 Andrews Hwy,  
88231  
575-394-6277 (p)  
575-394-8180 (f)

Odessa, TX  
5075 East 22<sup>nd</sup> Street  
St. A201, 79761  
432-234-7899 (o)  
405-298-2114 (f)

Canyon, TX  
16078 FM 1541,  
79015  
409-579-4901 (o)  
305-298-2114 (f)

Chandler, AZ  
6434 N. San Marcos Pl,  
Bldg. B, SW 7A, 85125  
480-634-4002 (p)  
505-298-2114 (f)

NM Contractor  
License #1726

TX Electrical  
Contractor  
License #26125

AZ Electrical  
Contractor  
License #R00755 (f)

CO Electrical  
Contractor  
License #6758

March 31<sup>st</sup>, 2015

Jason M. Kluck  
Project Administrator  
Facilities Division  
Public Works Department  
[JMkluck@santafenm.gov](mailto:JMkluck@santafenm.gov)  
(505) 955-5937

Re: Base Bid CIP#50 Geneviva Chavez Community Center

Mr. Kluck,

Thank you for the opportunity to provide this quote.

|                     |                        |
|---------------------|------------------------|
| Sub-Total:          | \$ 1,075,671.65        |
| Tax at 8.1875%:     | \$ 88,070.62           |
| <b>Grand Total:</b> | <b>\$ 1,163,742.27</b> |

**Scope:** As per meeting at building E, Siringo Rd on 3-30-15, New negotiated price to include plans and specifications as per drawings dated 2/12/15 and Addenda 1, 2, and plan revision 3 by The Response Group dated 3/31/15. This proposal includes the modified equipment quote which has the deletion of the heating equipment, but leaves the section for future installation of this equipment.

**Exclusions:**

- Any and all cost associated with unforeseen site conditions or delays not caused by B&D Industries
- Exterior or interior work not included in the above scope / Correcting existing code violations
- Any and all components not identified in the above scope
- B & D is not responsible for any failures that may be caused by design and/or control issues

**Assumptions:**

- All existing utilities and services will accommodate the new install

If you have any questions or concerns, please feel free to contact me

Best regards,

Jim Tapia  
[Jimt@banddindustries.com](mailto:Jimt@banddindustries.com)  
(505) 991-0282 (cell)

*This cost proposal is valid for 30 days following issuance by B&D Industries, Inc. If the proposal is accepted after 30 days, B&D Industries reserves the right to revise the price in accordance with commodity pricing changes including, but not limited to, copper, conduit and steel materials.*

