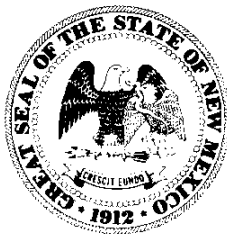


STATE OF NEW MEXICO

AGREEMENT BETWEEN OWNER AND CONTRACTOR



- Distribution to:
- Owner
 - Contractor
 - Arch/Eng.
 - DFA
 - GSD/ASD
 - Purchasing Division

Contract Number: _____
 ITB# _____

This Agreement entered into this _____ day of _____, 2003, by and between the parties as follows:

THE OWNER:

Bill Taylor, Director
 Property Control Division
 P. O. Drawer 26110
 Santa Fe, New Mexico 87502-0110
 Telephone: (505) 827-2141
 Fax: (505) 827-2181

THE CONTRACTOR:

Telephone: (505)
 Fax: (505)

FOR THE FOLLOWING PROJECT:

Building Number:

PROJECT NUMBER:

ARCHITECT/ENGINEER OF RECORD:

Telephone: (505)
 Fax: (505)

ARTICLE 3

TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

The Work to be performed under this Contract shall commence no later than ten (10) consecutive calendar days after the date of written "Notice to Proceed". . Substantial Completion shall be achieved not later than **XXX** calendar days after the date of written "Notice to Proceed", except as hereafter extended by valid written Change Order, by the Owner.

Should the Contractor neglect, refuse, or otherwise fail to complete the Work within the time specified in this article, the Contractor agrees, in partial consideration for the award of this Contract, to pay to the Owner the amount **of XXXX Dollars (\$ XXX0.00)** per consecutive calendar day, not as a penalty, but as liquidated damages for such breach of this Contract.

ARTICLE 4

CONTRACT SUM

The Owner shall pay the Contractor in current funds for the performance of the Work, subject to additions and deductions by Change Order as provided in the Contract Documents, the Contract Sum of **XXXXXXXX and XXXXXXXX and XXXXXXX Dollars and no Hundredths (\$XXXXXX.)**

The Contract sum is determined as follows:

(INSERT DATA FROM BID FORM CONCERNING BASE BID, ALTERNATES, BID LOTS, ETC.)	
Lump Sum	\$XXXX.XX
Gross Receipts Tax @ X.XXX%	\$XXXX.XX
Contract Sum	\$XXXX.XX

ARTICLE 5

PROGRESS PAYMENTS

Based upon Applications for Payment submitted to the Architect/Engineer by the Contractor and Certificates for Payment issued by the Architect/Engineer, the Owner shall make progress payments on account, of the Contract Sum, to the Contractor as provided in the Contract Documents for the period ending the last day of the month as follows:

Not later than twenty-one (21) days following receipt by the Owner, of the undisputed Application, for Payment, one hundred percent (100%) of the portion of the Contract Sum properly allocable to labor, materials, and equipment incorporated in the Work, and one hundred percent (100%) of the portion of the Contract Sum properly allocable to materials and equipment suitably stored at the site or some other location agreed upon in writing for the period covered by the Application for Payment, less the aggregate of previous payments made by the Owner; and upon Substantial Completion of the entire Work, a sum sufficient to increase the total payments to one hundred percent (100%) of the Contract Sum, less such amounts as the Architect/Engineer shall determine for all

incomplete Work and unsettled claims as provided in the Contract Documents, which shall be paid in accordance in Article 6 of this Contract.

Valid, undisputed payments, due and unpaid, under the Contract Documents shall bear interest from the date payment is due, at the legal rate established by Laws of 2001, Chapter 68, Section 5. Section 13-4-28, NMSA 1978.

ARTICLE 6

FINAL PAYMENT

Final, payment, constituting the entire undisputed, unpaid balance of the Contract Sum, shall be paid by the Owner to the Contractor within ten (10) days after notification of the Owner, by the Architect/Engineer that all incomplete and unacceptable work that was noted during the Substantial Completion Inspection, and listed on the attachment to the Certificate of Substantial Completion has been corrected, and provided the Contract has been fully performed, and a final Certificate for Payment has been issued by the Architect/Engineer. In addition, the Contractor shall provide to the Owner a certified statement of Release of Liens (AIA Document G706A or approved form) and Consent of Surety

ARTICLE 7

GENERAL AND SPECIAL PROVISIONS

- 7.1 This Agreement shall be governed exclusively by the provisions hereof, and by the laws of the State of New Mexico, as the same from time to time exist.
- 7.2 Terms used in this Agreement, which are defined in the Conditions of the Contract, shall have the meanings designated in those Conditions.
- 7.3 As between the parties to this Agreement: As to all acts or failures to act by either party to this Agreement, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the relevant Date of Substantial Completion of the Work; and as to any acts or failures to act occurring after the relevant Date of Substantial Completion, not later than the date of the Owner's approval of the Final Certificate of Payment.
- 7.4 The Contractor shall hold harmless and indemnify the Owner against any and all injury, loss, or damage, including cost of defense - including but not limited to court costs and attorneys' fees - arising out of the negligent acts, errors, or omissions of the Contractor.
- 7.5 This Agreement shall not become effective until:
 - A. Approved by the Cabinet Secretary of the General Services Department; and
 - B. Signed by all parties which are required to sign this Agreement.
- 7.6 The Contractor and his agents and employees are independent contractors, and are not employees of the State of New Mexico. The Contractor and his agents and employees shall not accrue leave, retirement, insurance, bonding, use of State vehicles, or any other benefits afforded to employees of the State of New Mexico, as a result of this Agreement.

- 7.7 The Contractor, upon final payment of the amounts due under this Agreement, releases the Owner, his officers and employees, and the State of New Mexico from all liabilities and obligations arising from or under this Agreement, including but not limited to all damages, losses, costs, liability, and expenses, including but not limited to attorneys' fees and costs of litigation that the Contractor may incur.
- 7.8 The Contractor agrees not to purport to bind the State of New Mexico to any obligation not assumed herein by the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.
- 7.9 **Notices.** All notices herein provided to be given, or which may be given, by either party to the other shall be deemed to have been fully given when made in writing and deposited in the United States mail, postage prepaid - in the instance of notice of termination of work also by certified mail - and addressed as follows:

THE OWNER:

Bill Taylor, Director
 Property Control Division
 P. O. Drawer 26110
 Santa Fe, New Mexico 87502-0110
 Telephone: (505) 827-2141
 Fax: (505) 827-2181

THE CONTRACTOR:

XXXXXXXX
 XXXXX
 XXXXX
 XXXXX
 Telephone: (505) XXXXX
 Fax: (505) XXXXX

Nothing herein contained shall preclude the giving of any such written notice by personal service. The address to which notices shall be mailed to either party may be changed by written notice given by such party to the other as here in above provided.

- 7.10 **Gender, Singular/Plural.** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context requires otherwise.
- 7.11 **Captions and Section Headings.** The captions and section headings contained in this Agreement are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope, and conditions of this Agreement.
- 7.12 This document shall be executed in no less than five (5) counterparts, each of which shall be deemed an original.
- 7.13 **Certificates and Documents Incorporated.** All certificates and documentation required by the provisions of this Agreement shall be attached to this Agreement at the time of execution and are hereby incorporated by reference as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.
- 7.14 **Separability.** If any clause or provision of this Agreement is illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, then and in that event it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby.
- 7.15 **Waiver.** No provision of this Agreement shall be deemed to have been waived by either party unless such waiver be in writing signed by the party making the waiver and addressed to the other party; nor shall any custom or practice which may evolve between the parties in the administration of the terms hereof be

construed to waive or lessen the right of either party to insist upon performance by the other party in strict accordance with the terms hereof. Further, the waiver by any party of a breach by the other party of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition thereof.

- 7.16 **Entire Agreement.** This Agreement represents the entire contract between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto. This Agreement incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this Agreement, and all such conditions, understandings, and agreements have been merged into this written Agreement. No prior condition, agreement, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this written Agreement.
- 7.17 **Interchangeable Terms.** For purposes of all provisions within this Agreement and all attachments hereto, the terms "Agreement" and "Contract" shall have the same meaning and shall be interchangeable.
- 7.18 **Words and Phrases.** Words, phrases, and abbreviations, which have well-known technical or trade meanings used in the Contract Documents shall be used according to such recognized meanings. In the event of a conflict, the more stringent meaning shall govern.
- 7.19 **Relationship of Contract Documents.** The Contract Documents are complementary, and any requirement of one contract document shall be as binding as if required by all.
- 7.20 Pursuant to Section 13-1-191, NMSA 1978, reference is hereby made to the Criminal Laws of New Mexico (including Sections 30-24-1 through 30-24-3, NMSA 1978, and 30-41-1 through 30-41-3, NMSA 1978), which prohibit bribes, kickbacks, and gratuities, violations of which constitutes a felony. Further, the Procurement Code (Sections 13-1-28 through 13-1-199, NMSA 1978) imposes civil and criminal penalties for its violation.
- 7.21 The Contract Documents, which constitute the entire Agreement between the Owner and the Contractor, are listed in Article 1, and except for Modifications issued after execution of this Agreement, are enumerated as follows:

7.21.1 The following documents bound in the Project Manual dated **XXX,XXX, XXXX:**

DOCUMENTS

PAGES

Bid Form	00300-1 - X
Agreement between Owner and Contractor	00500-1 - X
Performance Bond	00600-1 - 2

Labor and Material Payment Bond	00600-3 - 4
Agent's Affidavit	00600-5
Certificate of Insurance	00600-6
Assignment of Antitrust Claims	00600-7
Notice of Award	00600-8 - 9
Notice to Proceed	00600-10
General Conditions	00700-1 - 19
Supplementary Conditions	00800-1 - 16
Addenda and Modifications	00900-1

SPECIFICATIONS

Division 1 - General Requirements	
01005 Summary of Work	01005-1 - 2
01068 Definitions and Standards	01068-1 - 2
01155 Reporting and Payment	01155-1 - 2
01205 Procedures and Controls	01205-1 - 2
01340 Submittals	01340-1 - 2
01505 Temporary Facilities	01505-1 - 3
01605 Products and Substitutions	01605-1 - 3
01705 Project Close out	01705-1 - 3
Divisions 2-16	

7.21.2 The following Drawings, dated **XXXXXX**:

XXXXXXXXXXXX

7.21.3 Addenda

No. 1 Description: **XXXXXXXX** Date: **XXX**

No. 2 Description: **XXXXXXXX** Date: **XXX**

7.22 A potential contractor, or the Contractor agrees to comply with state laws and rules pertaining to worker’s compensation insurance coverage for its employees. If contractor fails to comply with the Worker’s Compensation Act, and applicable rules when required to do so, the contract may be canceled effective immediately.

7.23 Arbitration: Any controversy or claim arising between the parties shall be settled by binding arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

END OF ARTICLE 7

Contract No.: **XXXXXXXX**
Project No.: **XXXXXXXX**

REVIEWED:

AS TO CONTRACTOR'S REGISTRATION

TAXATION AND REVENUE DEPARTMENT: The records of the Department reflect that the Contractor is registered to pay gross receipts and compensating taxes under the following New Mexico State Tax ID Number: **XX-XXXXXXXXXX**

By: _____

Title: _____ Date: _____

AS TO LEGAL FORM AND SUFFICIENCY

General Counsel,
GSD

By: _____

Title _____ Date: _____

AS TO BUDGETARY SUFFICIENCY

Administrative Services
Division, GSD

By: _____

Title: _____ Date: _____

APPROVED: This Agreement is entered into as of the day and year, first written above.

CONTRACTOR:
XXXXXXXXXX

By: _____

Title: _____ Date: _____

Federal Tax Identification Number: **XXXXXXXXXXXXXXXXXX**

OWNER:
Property Control Division,
GSD

By: _____

Title: _____ Date: _____

Office of the Secretary,
GSD

By: _____

Title: _____ Date: _____