

## PROJECT MANUAL

Montezuma – Cortez High School RE1  
Existing High School Demolition –  
206 West 7<sup>th</sup> St., Cortez, CO 81321



Project Number: 13-0017.001 ADSR 09

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## Volume 1 of 1

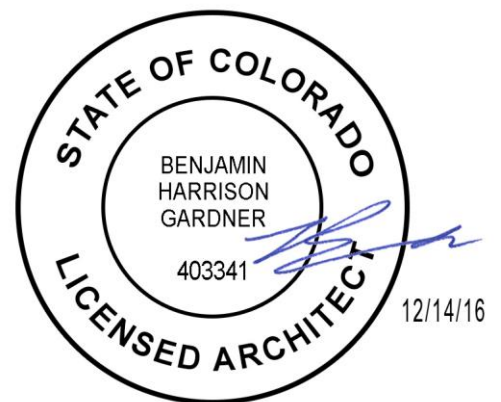
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12.14.2016

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*100% Construction Documents*

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## **SECTION 00 0100 - TABLE OF CONTENTS**

### **REQUEST FOR PROPOSAL DOCUMENTS**

- Request For Proposal
- Tab 2A - GC Qualifications
- Tab 2B - GC Qualifications

### **DIVISION 00**

00 4100	Bid Form
00 4113	Proposal Form
00 4313	Bid Bond and Payment Bond
00 4317	Agent Affidavit PB
00 4513	Prequalification
00 5101	Notice of Intent to Award
00 5102	Notice of Award
00 5213	Agreement Between OC
00 5501	Notice to Proceed
00 6113	Performance Bond
00 6114	Payment Bond
00 6129	Agent Affidavit CC Bond
00 6131	Bond Review Form CC Bond
00 6360	MCR Form
00 6361	MCR Worksheet
00 6363	Change Order
00 6516	Certificate of Substantial Completion
00 6519	Certificate of Final Completion
00 7200	General Conditions
00 7223	General Conditions
00 7300	Supplementary Conditions

### **DIVISION 01 - GENERAL REQUIREMENTS**

01 1000	Summary
01 3100	Project Management and Coordination
01 5000	Temporary Facilities and Controls
01 7000	Execution Requirements
01 7700	Closeout Procedures
01 7800	Closeout Submittals

### **DIVISION 02 - EXISTING CONDITIONS**

02 4100	Demolition
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### **DIVISION 32 – EXTERIOR IMPROVEMENTS**

32 9219	Native Seeding
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**END OF SECTION**

**REQUEST FOR QUALIFICATIONS / PROPOSAL  
(RFQ/P) FOR  
Montezuma Cortez High School Demolition**

RFQ/P NO:

For Contracting Agency: **Montezuma Cortez School District RE1**

Contact Person: **Lori Haukeness**  
Superintendent, Montezuma-Cortez School District  
Address: 400 N. Elm St.  
City/State/Zip: Cortez, CO 81321  
E-Mail: lhaukeness@cortez.k12.co.us

**DEADLINE FOR RECEIPT OF PROPOSALS IS AS FOLLOWS:**

DATE: **January 31, 2017** TIME: **11:00 AM**  
DELIVER TO: Montezuma Cortez School District RE1  
Attn: Jamie Haukeness  
Address: 400 N. Elm St.  
City/State/Zip: Cortez, CO 81321

**Late Proposals will not be accepted. It is the responsibility of the Offeror to ensure that proposals are delivered on time to the Owner's address stated in the solicitation.**

A **MANDATORY PRE-PROPOSAL WALKTHROUGH** will be held as follows:

DATE: **January 20, 2017** TIME: **2:00 PM**  
LOCATION: Montezuma Cortez High School  
206 West 7<sup>th</sup> Street  
Cortez, CO 81321

***Note: Any unauthorized change to the language or forms issued in this Project Manual or identified in any addenda shall render your proposal 'nonresponsive.'***

**00 1119 RFP DOCUMENT TABLE OF CONTENTS**

**I. PROJECT PROPOSAL DOCUMENTS – Drawings and Specifications**

- A. Project Documents Access.
- B. Project Price Proposal Information
- C. Project Proposal Security
- D. Completion Time and Liquidated Damages
- E. Method of Award
- F. Form of Agreement Between the Owner and Contractor

**II. PROJECT INFORMATION**

- A. Purpose of this Request for Proposal
- B. Project Funding
- C. Project Description
- D. Project Contacts
- E. Project Planning Schedule (Tentative)
- F. Summary Scope of Services
- G. Definitions and Terminology

**III. CONDITIONS GOVERNING THE PROCUREMENT**

- A. Sequence of Events
- B. Explanation of Sequence of Events
  - 1. Issue RFP
  - 2. Pre-Proposal Conference
  - 3. Deadline to Submit Written Questions re: RFP Process
  - 4. Deadline – Release of last Addenda Prior to Submission of Proposal
  - 5. Submission of Proposal
  - 6. Proposal Evaluation
  - 7. Notice of Short-Listed Offerors
  - 8. Interviews of Short-Listed Offerors
  - 9. Contract Negotiations
  - 10. Notice of Intent to Award
  - 11. Issue Recommendation of Award to Governing Board
  - 12. Issue Notice of Award and Prepare Contract
  - 13. Protest of Award Deadline
  - 14. Issue of Notice to Proceed
- C. Standard Conditions Governing the Procurement
  - 1. Protests
  - 2. Incurring Cost
  - 3. Third-Party or Subcontracting GC Contract Requirements
  - 4. Amendments or Modifications to a Proposal by Offeror
  - 5. Late Withdrawals or Late Modifications
  - 6. Disclosure of Proposal Contents
  - 7. Confidential Data
  - 8. Termination
  - 9. Sufficient Appropriation
  - 10. Offeror Qualifications
  - 11. Right to Waive Minor Irregularities
  - 12. Notice
  - 13. Release of Information
  - 14. Project Reporting
  - 15. Clarifications from Offerors
  - 16. Licensing Requirements
  - 17. Subcontractors

#### **IV. RFP RESPONSE FORMAT AND ORGANIZATION**

- A. Number of Responses
- B. Number of Copies of Responses
- C. Submission of Proposal
  - 1. Hand Carried,
  - 2. Common Carrier or
  - 3. USPS
- D. General Response Instructions and Information
- E. Organization

#### **VOLUME I – TECHNICAL PROPOSAL**

- A. Technical Proposal Format
- B. Tabs/Evaluation Categories
  - 1. **Tab 1 Signed Letter of Submittal & Mandatory Forms**
    - a. Preference Certificate (if applicable)
    - b. Campaign Contribution Form
    - c. Letter of Submittal Requirements Para. 1 through 9
  - 2. **Tab 2 General Contractor Qualifications Summary**
    - a. General Contractor Qualifications Statement Summary
    - b. General Contractor Attachments

#### **VOLUME II - PRICE PROPOSAL**

#### **PROPOSAL EVALUATION**

- A. Evaluation Process and Scoring Methodology
  - 1. Receipt and Opening of Proposals
  - 2. Evaluation Committee
  - 3. Technical Proposal
  - 4. Price Proposal
  - 5. Resident Preference
  - 6. Proposal Discussions
  - 7. Interviews
  - 8. Short-Listed Offeror Withdrawal from Interview
- B. Evaluation Criteria
  - 1. 50% Qualifications
  - 2. 50% fee

**I. PROJECT PROPOSAL DOCUMENTS – Drawings and Specifications**

**A. PROJECT DOCUMENTS ACCESS**

A copy of the RFQ/P and supporting documentation is posted on the school website at [www.cortez.k12.co.us](http://www.cortez.k12.co.us)

**B. PROJECT PRICE PROPOSAL INFORMATION:**

Price Proposals shall be presented in the form of a total Base Proposal under a Lump Sum Contract per the Proposal Form. A proposal must be submitted on all proposal items, allowances and alternates; segregated proposals will not be accepted.

***NOTE:*** *Proposal price shall not include state gross receipts or local options taxes.*

In submitting this proposal, each Offeror must satisfy all terms and conditions of the Proposal Documents. All work covered by this Request for Proposal shall be in accordance with applicable state laws.

**C. PROJECT PROPOSAL SECURITY**

A 100% Performance Bond and a 100% Payment and Materials Bond executed by a surety company authorized to do business in the State of Colorado shall be required from the successful Offeror prior to award of contract. The amount of the Bonds shall be the proposal price exclusive of gross receipts tax.

**D. COMPLETION TIME AND LIQUIDATED DAMAGES**

The Proposal Documents contain a time for completion of the work and further impose liquidated damages for failure to complete the work within the stated time period. No Offeror may withdraw his proposal for **45 days** after the actual date of the opening thereof.

**E. METHOD OF AWARD**

The Owner intends to award this Project to the Offeror with the best rank in accordance with the Request For Proposal requirements. The Owner reserves the right to reject any and all proposals, to waive technical irregularities, and to award the contract to the Offeror whose proposal it deems to be in the best interest of the Owner.\*

***\*NOTE:*** *Please read all of the RFQ/P documents carefully for mandatory requirements.*

**F. FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR**

The agreement for the work shall be the **Agreement between the Owner and Contractor** and **General Conditions**, with the basis of payment as a Stipulated Sum. These documents are printed in their entirety in the Project Manual.

## II. PROJECT INFORMATION

### A. PURPOSE OF THIS REQUEST FOR PROPOSALS

Owner has made a determination that the use of the competitive sealed bidding method of procurement is not advantageous to ensure that the project described herein is delivered in a quality manner, and within time and budget constraints. Therefore, it is hereby determined that soliciting competitively sealed proposals for demolition of the **Old Montezuma Cortez High School Building and Site** is the most effective means to ensure the project is delivered accordingly.

The award of a contract for construction related services shall take into consideration certain contractor qualification and performance factors that add value to a procurement contract. Factors such as contractor past performance, technical expertise and experience, and management capabilities, will form the basis for the criteria to be considered, in addition to lump sum price to perform the scope of work. Award shall be made in accordance with the terms, conditions, and requirements stated herein.

This is a qualifications based selection with cost as a consideration. The Offeror is required to provide the qualifications and other documents as requested in this RFQ/P. The Price Proposal will be evaluated separately from the Technical Proposal.

### B. PROJECT FUNDING

Montezuma Cortez School District RE1 has the funds available to administer this project and will be referred to throughout the contract documents as "Owner".

### C. PROJECT DESCRIPTION

The project is described as: **Old Montezuma Cortez High School Demolition.**

### D. PROJECT CONTACTS

Any questions and requests for clarifications concerning the selection process for this Request for Proposals shall be submitted electronically to the individuals listed below.

Procurement Manager:	<b>Jamie Haukeness</b>
Address:	400 N. Elm St.
City/State/Zip:	Cortez, CO 81321
Phone Number:	970-565-3737
Email:	<a href="mailto:jhaukeness@cortez.k12.co.us">jhaukeness@cortez.k12.co.us</a>

Owners Representative:	<b>Jim Ketter</b>
	KPMC
Email:	<a href="mailto:kpmc@mydurango.net">kpmc@mydurango.net</a>

Design Professional Representative:	<b>Benjamin H. Gardner</b>
	Dekker/Perich/Sabatini
Address:	7601 Jefferson NE, Suite 100
City/State/Zip:	Albuquerque, NM 87109
Phone Number:	505-761-9700
Email:	<a href="mailto:benjaming@dpsdesign.org">benjaming@dpsdesign.org</a>

**E. PROJECT PLANNING SCHEDULE**

Key project planning schedule milestones are:

Tentative Notice of Intent to Award:	Per Sequence Of Events A, RFQ/P Section III A.
Tentative Notice of Award:	Per Sequence Of Events A, RFQ/P Section III A.
Abatement by others	2/15 – 4/15, 2017
Demolition	4/15 – 6/15, 2017
Anticipated Substantial Completion:	<b>June 15, 2017</b>
Liquidated Damage Amount per Day:	<b>\$1,000.00</b>

\*See detailed substantial completion checklist in Section 9.8

**F. SUMMARY SCOPE OF SERVICES**

A summary of services the General Contractor shall perform to complete the Project, include, but are not limited to, the following:

- a. Planning, supervision and timely completion of the Project
- b. Prepare, monitor, and maintain Project schedule
- c. Project documentation
- d. Manage demolition labor and materials
- e. Coordinate with Owner direct labor, subcontractors, abatement contractor(s), and Owner furnished equipment suppliers, if applicable
- f. Manage site access, safety, security, and quality control
- g. Manage testing, inspections
- h. Coordination of all utility disconnects and re-connects inspections
- i. Project close-out and warranty period

**G. DEFINITIONS AND TERMINOLOGY**

This section contains definitions that are used throughout this Request for Proposals (RFP), including appropriate abbreviations.

**“Architect”** means a member of the project team who is a Colorado licensed architect and is responsible for the architectural services.

**“Award of Contract”** shall mean a formal written notice by the Owner that a firm has been selected to enter into negotiations for a contract for construction services.

**“Construction Contractor”** means successful Offeror awarded the contract that holds a current State of Colorado general contractor license designation.

**“Contract”** means an agreement between a state agency or a local public body and a New Mexico licensed contractor for the work covered by this RFQ/P.

**“Contract Documents”** means any one, or combination, of the following documents: Agreement between the Owner and the General Contractor for Construction, General Conditions of the Contract for Construction, and the drawings and specifications.

**“Contractor”** means any person, corporation, or partnership that has entered into a contract with a state agency or a local public body.

**“Design Professional”** means architect or engineer.

**“Determination”** means the written documentation of a decision of the Owner and/or the Selection Committee, including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.

**“Limited partnership”** is formed upon the filing of a certificate of limited partnership with the Secretary of State. Limited partnership shall state whether partners are general or limited.



Montezuma-Cortez High School  
Existing High School Demolition – 206 West 7<sup>th</sup> St. | Cortez, Colorado

General partners are agents of the limited partnership, may manage the limited partnership, and may be held liable for the limited partnership's obligations.

**“Joint venture”** is a partnership formed for a single transaction. As a partnership, it can be created without a formal, written agreement meeting (1) a community of interest in the performance of a common purpose; (2) a joint proprietary interest in the subject matter, (3) a mutual right to control, (4) a right to share in the profits, and (5) a duty to share in any losses which may be sustained.

**“Offeror”** is any person, corporation, or partnership who chooses to submit a proposal in response to this RFP.

**“Owner”** is Montezuma Cortez School District RE1.

**“Partnership”** is an ‘association of two or more persons who become co-owners of a business for profit. Note: When forming a partnership, written partnership agreements are not required. ‘In a ‘general partnership’ each partner is an agent of and may bind the partnership unless the partnership has limited that partner’s authority.

**“Proposal”** is the Offerors response to this RFQ/P

**“Request for Qualifications/Proposals”** or **“RFQ/P”** means all documents, attached or incorporated by reference, used for soliciting proposals for this project.

**“Resident Contractor”** In compliance with Colorado revised Statutes 8-19-102, preference shall be given to resident bidders against nonresident bidders from a state or foreign country equal to the preference given or required by the state or foreign country which the nonresident bidder is a resident. The term “resident bidder” means a person, partnership, corporation, or joint venture that is (a) authorized to transact business in Colorado and maintains its principal place of business in Colorado; or (b) authorized to transact business in Colorado, maintains a place of business in Colorado, and has paid Colorado Unemployment compensation in at least seventy-five percent of the eight (8) quarters immediately prior to bidding on the work. Colorado bidders will be allowed a preference against non-residents bidders in accordance with Colorado Law.

**“RFP Documents”** means any one, or combination, of the following documents: Request for Proposal, technical proposal, price proposal, contractor qualification statement, subcontractor qualification statements, Price Proposal.

**“Responsible Offeror”** means an Offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services described in the proposal.

**“Responsive Offer”** or **“Responsive Proposal”** means an offer or proposal, which conforms in all material, respects to the requirements set forth in the RFP. Material respects of a RFP include, but are not limited to quality, quantity or delivery requirements.

**“Selection Committee or Evaluation Committee”** means a body constituted to perform the evaluation of Offeror proposals and make a recommendation for selection (short list) or final selection recommendation to the governing body. The Evaluation Committee consists of a minimum of three members, should collectively possess expertise in the technical requirements of the project, construction design and contracting.

**“Statement of Qualifications Forms”** means the forms included as part of this RFQ/P, which all Offerors shall complete, including the qualification for the team member or partners and subcontractors proposed for the project.

Montezuma-Cortez High School  
Existing High School Demolition – 206 West 7<sup>th</sup> St. | Cortez, Colorado

**“Technical Irregularities”** are matters of form rather than substance evident from the Offeror proposal document, or insignificant mistakes that can be waived or corrected without prejudice to other Offerors; that is, when there is no effect on price, quality or quantity. If discussions are not held or if best and final offers upon which award will be made have been received, the Evaluation Committee may waive such irregularities or allow an Offeror to correct them if either is in the best interest of the Owner. Examples include, but are not limited to the failure of the Offeror to:

1. Submit the number of signed proposals required by the RFQ/P
2. Sign the proposal, but only if the unsigned proposal is accompanied by other material indicating the Offeror's intent to be bound; or
3. Acknowledge receipt of an amendment to the RFQ/P, but only if: (1) it is clear from the proposal that the Offeror received the amendment and intended to be bound by its terms; or (2) the amendment involved had no effect on price, quality or quantity.

**Note:** A technical irregularity can be waived if the irregularity does not affect quality, price, or time elements of the project.

**"User"** means the Owner's staff occupying the facility or facilities, for which a project is being designed.

**"User Contact"** is the person designated by the Owner to speak on behalf of the staff concerning the scope of work and programming requirements for the project.

The terms **"must," "shall," "will," "is required,"** or **"are required"** identify a *necessary* item or factor. Failure to comply *with such* an item or factor *may* result in the rejection of the Offerors proposal.

The terms **"can," "may," "should," "preferably,"** or **"prefers"** identifies a desirable or discretionary item or factor. Failure to comply with such an item or factor *may* result in the rejection of the Offerors proposal. *Rejection of the proposal will be subject to review by the Selection Committee and the final decision on rejection will be made by the Procurement Manager.*

### III. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP outlines and describes the major events of the selection process and the conditions that govern this procurement. Dates are subject to change.

#### A. SEQUENCE OF EVENTS

	<b><u>Action</u></b>	<b><u>Responsibility</u></b>	<b><u>Date</u></b>
1.	Issue RFP	Owner	12/15/2016
2.	<b>Mandatory</b> Pre-Proposal Walkthrough Location: Old Montezuma Cortez High School 206 West 7 <sup>th</sup> Street Cortez, CO 81321	Owner Time: 2:00 PM	01/20/2017
3.	Deadline for Request for clarifications (RFC)	Offerors	01/24/2017
4.	RFC response	Owner	01/26/2017
5.	Notice of Intent to Submit	Owner Time: 01:00 PM	01/27/2017
6.	<b>Submission of Proposals</b>	<b>Offerors</b> <b>Time: 11:00 AM</b>	01/31/2017
7.	<b>Bid Award</b>	Owner	02/03/2017

## B. EXPLANATION OF SEQUENCE OF EVENTS

1. **Issue RFP:** This RFP is issued by the Owner representative.
2. **Pre-Proposal Conference:** This is the date and time of the meeting to review the RFQ/P documents, including the Scope of Work, Response Format, Schedule, and Price Proposal requirements. This meeting is **MANDATORY** for all prime contractors. Verbal questions will not be answered. All questions must be submitted in writing.
3. **Deadline to Submit Written Questions regarding the RFQ/P Process:** This is the date and time set for submitting written questions regarding the RFQ/P document and procurement process to the Procurement Manager. Note: questions regarding the drawings and specifications shall be directed to the Design Professional.
4. **Date of Release of Last Addenda Prior to Submission of Proposals:** This is the date and time set by the Procurement Manager and Design Professional to issue a response to written questions regarding the RFQ/P procuring document or the procurement process. The Procurement Manager will coordinate this response with the Design Professional to be included in the issuance of addenda. This is also the date that signifies no other addenda will be issued on the project so that Offerors have time to finalize their responses.
5. **Submission of Proposal:** This is the date and time that has been set for the submission of Proposals. Late Proposals **WILL NOT** be accepted. It is the Offeror's responsibility to ensure that Proposals arrive at the appointed location, date and time. Proposals may be delivered early to avoid any possible delay of the submission. The documents shall be in a sealed container with the RFP number and opening date indicated on the bottom left hand side of the container as follows:

**Jamie Haukeness**

400 Elm St.  
Cortez, CO 81321  
970-565-3737

**January 31, 2017**

Proposal to be sent also via email (except fee proposal by hard copy)

**PROPOSALS RECEIVED AFTER THE DEADLINE SHALL BE CONSIDERED NON-RESPONSIVE.** Proposal submittals shall be date and time-stamped by the Owner. A public log will be kept of the names and submittal times of all Offerors who submitted proposals.

The Procurement Manager shall review the proposals for completeness and compliance with the mandatory requirements prior to distribution to the Evaluation Committee. If any proposal submitted is deemed non-responsive, the Offeror will be notified in writing of such determination which will include the right of the Offeror to protest the decision. (See Section II.C.1.). The Procurement Manager shall designate a witness to be present during the opening the proposals. The witness and Procurement Manager shall sign the "List of Offerors" for the procurement file.

- a. The Offeror shall submit **ONE (1) COMPLETE ORIGINAL** Technical Proposal that includes the following:
  - i. General Contractor's Qualifications, including Attachments
  - ii. Sub-Contractor's Qualifications, including Attachments
- b. The Offeror shall also submit **five (5) copies** of the original Technical Proposal above.

6. **Proposal Evaluation:** This is the date and time that the Evaluation Committee will convene to discuss the proposals and to report individual scores to the Procurement Manager. Individual scores shall be recorded on the Master Score/Rank Sheet. After the scores have been recorded, the Procurement Manager shall open the Price Proposals and calculate the points for each Offeror. The Procurement Manager shall record the scores allocated to Price for each Offeror on the Master Score/Rank Sheet.
7. **Notice of Short-Listed Offerors:** The Procurement Manager shall notify all Offerors of the Short List Rank of Offerors in writing, and state whether or not interviews will be held.  
**NOTE:** The Selection Committee may hold interviews with the best-ranked Offerors, where there is a natural break in the scoring. The number of interviews, if held, will be at the discretion of the Evaluation Committee. If interviews are not held, the decision shall be documented for the procurement file.
8. **Interview of Short-List Offerors:** If interview(s) are to be held, the date, time, and location of the Interview meeting will be included with the notice to those Offerors selected for interview. A list of questions shall be distributed to the Short-List Offerors that includes the points to be allocated to each question. Points allocated to the questions shall be evenly distributed.  
**NOTE:** A “Pre-Interview” meeting may be held by the Procurement Manager, if it is determined it is in the best interest of the short-listed Offerors and the Project, to answer questions regarding the interview process, and to distribute the list of prepared questions to be addressed.
9. **Contract Negotiations:** The Owner reserves the right to enter into negotiations with the best ranked Offeror. If contract negotiations are not finalized within a reasonable period of time, the Owner will conclude negotiations with the selected firm and begin negotiations with the next ranked firm based on final ranking.
10. **Notice of Intent to Award:** The Procurement Manager shall prepare the Notice of Intent to Award a contract. The Notice will be provided via e-mail to all Offerors on the Short List.
11. **Recommendation of Award to Board of Education:** The Procurement Manager shall prepare a procurement report and a recommendation to the Board for award of the Project that shall include the ranking of all Offerors and the final ranking of Short-Listed Offerors.
12. **Issue Notice of Award, Prepare Contract:** Upon the successful completion of contract negotiations and Board of Education approval, the Procurement Manager shall issue the Notice of Award and prepare the Contract for Construction.

#### C. STANDARD CONDITIONS GOVERNING THE PROCUREMENT

The Standard Conditions section contains statutory guidelines under which this RFP is issued, and conditions concerning how the project will be completed.

The Owner may evaluate the Proposals based on the anticipated completion of all or any portion of the Project. The Owner reserves the right to divide the Project into multiple parts, to reject any and all Proposals and re-solicit for new Proposals, or to reject any and all Proposals and temporarily or permanently abandon the Project, should the need arise. Owner makes no representations, written or oral, that it will enter into any form of agreement with any Offeror.

1. **Incurring Cost:** Any cost incurred by the Offeror in preparation, transmittal, or presentation of any proposal or material submitted in response to this RFQ/P shall be borne solely by the Offeror.
2. **Third-Party or Subcontracting GC Contract Responsibilities:** Direction of all work that may result from this procurement must be performed by the Offeror and payments will only be made to the Offeror. Use of consultants identified in the proposal is permitted, but since the award is made on a quality-based evaluation process, reassignment of GC duties and responsibilities to a third party is not acceptable.

3. **Amendments or Modifications to a Proposal by Offeror:** Offeror may request in writing to amend, modify or withdraw their proposal if the Procurement Manager makes a determination that it is in the best interests of the Owner and the Offeror to do so, prior to the date and time of the receipt of proposals. If the request is accepted to amend or modify a proposal, the Offeror shall replace the incorrect proposals with corrected proposals in their entirety. Substitution of random pages will not be allowed to avoid information being inserted or removed incorrectly. Any amendment or modification to an Offeror's proposal shall be documented for the procurement file.
4. **Late Withdrawals or Late Modifications:** Submission of a request to withdraw or modify a proposal after the deadline, shall be documented, and shall not be considered unless the written request is received before contract award, and the request to submit, modify or withdraw the proposal would have been timely but for the action or inaction of the Procurement Manager and/or Owner's personnel directly involved in the procurement. Any of these occurrences shall be documented by the Procurement Manager, and all Offerors of record shall be notified of the event in writing as soon as possible.
5. **Disclosure of Proposal Contents:** The content of any proposal shall not be opened to public inspection or disclosed prior to award. At that time, all proposals will be open to the public, except for the material which has clearly been noted and determined by the Procurement Manager to be proprietary or confidential as noted by the Offeror.
6. **Confidential Data:** If a request is received for disclosure of data, for which an Offeror has made written request for confidentiality, the Procurement Manager shall make a determination that the data is, in fact, confidential and proprietary financial information concerning the Offeror's organization and whether or not the data qualifies as a trade secret. After award the proposal shall be open to public inspections subject to any continuing prohibition on the disclosure of confidential data. Any pages of a proposal on which the Offeror has stamped or imprinted "proprietary" or "confidential" shall be readily separable from the proposal in order to facilitate public inspection for the non-confidential portion of the qualifications based proposal.
7. **Termination:** This RFQ/P may be canceled at any time and any and all proposals may be rejected in whole or in part when the Owner determines such action to be in the best interest of the Owner.
8. **Sufficient Appropriation:** Any contract awarded as a result of this RFQ/P process may be terminated if sufficient appropriations or authorizations do not exist. Such termination will be effected by sending written notice to the contractor. The Owner's decision as to whether sufficient appropriations and authorizations are available will be accepted by the contractor as final. If the determination is made that there is insufficient funding to continue or finalize a project, the successful Offeror will be compensated to the level of effort performed, as authorized by the Owner prior to that determination.
9. **Offeror Qualifications:** The Evaluation Committee may consider any relevant information or data, from any reliable source (references) relating to the RFQ/P evaluation factors and the Offeror's ability to successfully perform the project. Such information may be obtained from the Offeror's prior customers, commercial and public databases or other reliable sources. The Selection Committee may reject the proposal of any Offeror who is not a responsible Offeror or fails to submit a responsive offer.
10. **Right to Waive Minor Irregularities:** The Selection Committee reserves the right to waive minor irregularities. The Selection Committee also reserves the right to waive mandatory

Montezuma-Cortez High School  
Existing High School Demolition – 206 West 7<sup>th</sup> St. | Cortez, Colorado

requirements provided that all of the otherwise responsive proposals failed to meet the same mandatory requirements and the failure to do so does not otherwise materially affect the procurement. This right is at the sole discretion of the Selection Committee.

11. **Notice:** The Colorado criminal statutes impose felony penalties for bribes, gratuities and kickbacks.
12. **Release of Information:** Only the Owner is authorized to release information about the project(s) covered by this RFQ/P. The Offerors must refer to the Owner any requests to release any information that pertains to the work or activities covered by any action or award related to this RFP.
13. **Clarifications from Offerors:** The Procurement Manager may, at the request of a Selection Committee designee request clarifications on information submitted by any and all Offerors.
14. **Licensing Requirements:** The Contractor and subcontractors shall comply with all licensing regulations and the Contractor shall provide copies of all valid licenses necessary to perform the work in the State of Colorado.

#### IV. RFP RESPONSE FORMAT AND ORGANIZATION

##### A. NUMBER OF RESPONSES

General Contractors shall only submit one offer. See Paragraph B for the number of copies of the offer required. Multiple offers by one General Contractor are not allowed. Please note that the Procurement Manager, after award, shall retain the original Technical Proposal and Price Proposal for the procurement file as a matter of record.

**NOTE:** Submit Original Price Proposal with the original Technical Proposal. It shall be submitted in a clearly marked sealed envelope easily removable from the Technical Proposal.

##### B. NUMBER OF COPIES OF RESPONSES – No Electronic Media Allowed

In addition to the Original Technical Proposal and Price Proposal submittal, Offerors shall provide **five (5)** identical copies of the proposals for the Evaluation Committee.

##### C. SUBMISSION OF PROPOSAL

**Hard copies hand carried:** Proposals may be hand carried/delivered. If requested, the Owner may give the person delivering the proposal package a receipt that notes the firm name, date and time the proposal was delivered for the Offeror files.

**Common Carrier or USPS:** Offers may be shipped/mailed by common carrier or courier. Be advised that the Owner is not responsible for offers that are not received timely. It is solely the responsibility of the Offeror to ensure the submittal arrives on time at the location state herein.

**Electronic Copies:** Email or site sharing, with maximum 10mb file size for attachments to emails.

##### D. GENERAL RESPONSE INSTRUCTIONS AND INFORMATION

1. Proposals shall be prepared SIMPLY AND ECONOMICALLY, providing straightforward, CONCISE description of the respondent's ability to meet the requirements of this RFQ/P. Emphasis shall be on the completeness, clarity of content, responsiveness to the requirements, and an understanding of the owner's needs.

Montezuma-Cortez High School  
Existing High School Demolition – 206 West 7<sup>th</sup> St. | Cortez, Colorado

2. Respondents shall carefully read the information contained in this RFQ/P and submit a complete response to all requirements and questions as directed. Incomplete Proposals will be considered non-responsive and subject to rejection.
3. Offerors shall prepare and develop proposals at the sole expense of the Offeror.
4. Proposals that are qualified with conditional clauses, alterations, items not called for in the RFQ/P documents, or irregularities of any kind are subject to rejection by the Owner. Questions regarding the procurement process, the RFQ/P documents, general requirements, terms and conditions, etc. must be submitted in writing prior to the submission of Proposal for clarification purposes.
5. If your proposal contains proprietary/confidential information, you shall stamp those pages so that they are easily identifiable by the Procurement Manager. Those pages shall be examined and a written determination shall be made that specifies which portions of the proposal may not be disclosed. If the Offeror disagrees, they are entitled to take legal action to prevent the disclosure.
6. Proposals shall consist of answers to questions or requirements identified in the RFQ/P. It is not necessary to repeat the question in the Proposals; however, it is essential to reference the question number with the corresponding answer.
7. All amendments and addenda shall be acknowledged on the Price Proposal Form where designated.

## **VOLUME I - TECHNICAL PROPOSAL**

### **A. TECHNICAL PROPOSAL FORMAT**

1. Proposals may be submitted in a spiral or three-ring binder. Page format shall include 8-1/2" x 11" paper and 11" x 17" foldout sheets in size. Foldout pages shall be counted as two pages and shall be numbered as such. Text will be no smaller than 10 point. If there are any questions regarding format requirements, please contact the Procurement Contact prior to submission of Documents.
2. Proposals shall not exceed **30 pages** total for the tabbed sections 2A and 2B, Each sheet face that is printed with text or graphics counts as one page. Tab dividers do not count as pages provided the only text or graphics on the divider are the tab number and section title.
3. Any response that exceeds the referenced page limitation shall have a deduction of **five (5)** points taken from each evaluation committee member's Technical Proposal score. If there are any questions regarding format requirements, please contact the Procurement Manager prior to submission of Documents.
4. Offerors are cautioned to please keep the required documents/attachments in each category to concise, easily readable and applicable information.

### **B. TABS/EVALUATION CATEGORIES**

1. All sections shall be separated by a numbered tab that corresponds to the Evaluation Category, 1, 2A, 2B, described below.

**TAB 1 - SIGNED LETTER OF SUBMITTAL AND MANDATORY FORMS**

**A. LETTER OF SUBMITTAL**

Each proposal must be accompanied by a submittal letter. **Any submittal letter that omits any of the following information may be deemed ‘non-responsive’.** The submittal letter shall include acknowledgments and where appropriate, certification of the following:

1. Identify the name(s), title(s), telephone number(s), fax number(s) and e-mail address(es) of the person or persons who have authority to sign documents and who has sufficient knowledge to fully address all matters and respond to all inquiries included in the RFQ/P submittal.
2. If a joint proposal is being submitted, identify the firm, and disclose the work/services to be executed by the nonresident contractor as a percentage of the total amount of the Price Proposal.
3. Acknowledge acceptance of all conditions that govern the procurement.
4. Acknowledge that the information provided in the proposal is truthful, accurate and complete, and that the firm is bound by all information, data, certifications, disclosures and attachments submitted.
5. Acknowledge that the omission of any material fact concerning requested information, or the submission of any material false or misleading statement, or misrepresentation of a material fact concerning any requested or submitted information, may deem the proposal ‘non-responsive’.
6. Acknowledge that the Owner has a right to obtain relevant information from other sources (references) to determine that the Offeror is ‘responsible’.
7. Acknowledge that if awarded the contract, the RFQ/P documents, all terms and conditions stated herein, all information, data, certifications, disclosures and addendum shall be a part of the Contract.
8. Statement/Certification and/or documentation that the firm possesses the necessary equipment, financial resources, technical resources, management, professional and craft personnel resources and other required capabilities to successfully perform the contract, or will achieve same through its prelisted subcontractors with supporting information, pictures, diagrams, reports, etc.
9. Letter of Submittal shall be signed by a person or persons identified in Paragraph 1 of this section, who is/are fully authorized to contractually obligate the firm, and who has sufficient knowledge to fully address all matters and respond to all inquiries including the RFQ/P submittal.

**TAB 2A & 2B GENERAL CONTRACTOR QUALIFICATIONS**

**A. TAB 2A - General Contractor Qualifications Statement Summary:**

1. Offeror Information
2. Licensing
3. Past Experience
4. Key Personnel Experience
5. Capacity and Capability to Perform the Work
6. Surety
7. Safety
8. Insurance & Claims History
9. Quality Assurance



10. Project Scheduling and Management
11. Labor Code Violations
12. Judgments/Breach of Contract/Mediations and Arbitrations
13. Contractor Comments/Other Information

**B. TAB 2B - General Contractor Attachments:**

1. **Attachment A** – Past Experience
2. **Attachment B** – Resumes
3. **Attachment C** – Organizational Chart of Project Management Team
4. **Attachment D** – Projects currently under contract
5. **Attachment E** – Notarized declaration of surety
6. **Attachment F** – List of Work Loss Incidents and History
7. **Attachment G** – Letter from Insurance Carrier
8. **Attachment H** – Written Quality Assurance Program
9. **Attachment I** – Milestone Schedule
10. **Attachment J** – Map (Proposed staging area, delivery routes, crane locations)
11. **Attachment K** – Affidavit of non-violation of Labor codes
12. **Attachment L** – Judgments/Breach of Contract/Mediations/Arbitrations
13. **Attachment M** – Contractor Comments for Clarification
14. **Attachment O** – Advantageous Information

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**VOLUME 2 – PRICE PROPOSAL**

**PROVIDE ONE ORIGINAL COPY of Below Information in Separate Sealed envelope. Price Proposal Form is included in Section 00 4113 of the Project Manual.**

1. PRICE PROPOSAL AMOUNT

Use the Lump Sum Proposal Form provided in the Project Manual. Price SHALL NOT include Gross Receipts Tax.

**NOTE:** If a joint proposal is being submitted, be sure you have stated the % of the work/services that will be performed by the nonresident contractor.

2. STATE OF Colorado W-9
3. AGENT'S AVIDAVIT
4. PROPOSAL BOND
5. CERTIFICATE OF INSURANCE
6. POWER OF ATTORNEY
7. LICENSES, PREFERENCE, REGISTRATION, AND ANY OTHER NUMBERS
8. REQUIRED ON THE PROPOSAL FORM

## PROPOSAL EVALUATION

### A. EVALUATION PROCESS AND SCORING METHODOLOGY

1. **Receipt and Opening of Proposals:** Proposals received prior to or at submission shall be time-stamped upon receipt and the Price Proposal shall be separated from the Technical Proposal and held in a secure place until the Evaluation Committee has scored the Technical Proposal. Proposals shall not be opened publically and shall not be open to public inspection until the contract for construction is signed by the successful Offeror.
2. **Evaluation Committee:** The Evaluation Committee shall consist of a minimum of three (3) persons, but no more than ten (10) persons appointed by the Owner that has expertise in the technical requirements of the project, construction design and contracting. The Owner may use independent consultants or agents to support the Committee, provided appropriate precautions are taken to avoid potential conflicts of interest.
3. **Technical Proposal:** The Procurement Manager shall review each proposal to determine if it meets all of the mandatory requirements. Proposals that do not meet the mandatory requirements may be considered “nonresponsive”. The Procurement Manager reserves the right to contact an Offeror to clarify contents of any Technical Proposal.

Any Offeror whose proposal is determined to be non-responsive shall be notified in writing of the determination as soon as possible. The Procurement Manager will then distribute the proposals and individual score sheets to the Evaluation Committee, and review evaluation criteria.

4. **Price Proposal:** Price Proposals shall be evaluated on the basis of the numerical weight assigned below and as well as the NM resident/veteran contractor preference law. The regulatory scoring process permits the scoring of competing Offeror's price proposals in relation to one another: The Offeror with the lowest price shall receive the maximum price score, i.e., the maximum numerical weight assigned to the price below. The price score of each other Offeror shall be determined by applying the following mathematical formula: price of lowest Offeror divided by the price for this Offeror multiplied by the maximum price score:

$$\left( \frac{\text{Price of lowest Offeror}}{\text{Price of this Offeror}} \right) \times \text{maximum price score} = \text{price score this Offeror}$$

The Evaluation Committee members shall score the technical proposals individually. Those individual scores will then be combined with the price proposal score and converted to a numeric ranking of all proposals per committee member. The individual member rankings per Offeror will then be totaled and averaged to determine the overall ranking of proposals. The Committee will then determine whether or not to conduct interviews based on the final ranking.

5. **Proposal Discussions:** If mistakes are discovered after receipt of the proposal, The Evaluation Committee may request clarifications of information submitted by any or all Offerors in a written format with a specified deadline for response. Short-listed Offerors shall be accorded fair and equal treatment with respect to any clarifications of proposals. If during discussions there is a need for any substantial clarification of or change in a RFQ/P, the RFQ/P shall be amended to incorporate such clarification or change. Any substantial oral clarification of a proposal shall be reduced to writing by the short-listed Offeror.

**NOTE:** Except for circumstances and situations otherwise approved by the Procurement Manager, negotiations of the relevant terms and conditions as well as any other important factors in an RFP and proposed contract are negotiated PRIOR TO AWARD OF A CONTRACT, NOT AFTER AWARD.

6. **Interviews:** If interviews are held, the Evaluation Committee shall score each question, and the total points shall be translated to a rank. Each interview question shall have the same weight. Example: If the Interview is worth 50 points, and you have 5 questions, each question shall be worth 10 points. The same questions will be issued to each short listed firm as a

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Existing High School Demolition – 206 West 7<sup>th</sup> St. | Cortez, Colorado

benchmark for evaluation purposes. Each question may lead to other questions to help clarify and better understand the firm's capabilities, which may be considered in scoring the interview.

**NOTE:** Interview points shall be added to the Technical Proposal and Price Proposal and re-calculated to determine the final overall rank of Short-listed Offerors for recommendation for award of a contract.

7. **Short-Listed Offeror Withdrawal from Interview:** A short-listed firm may withdraw their proposal if they determine that cannot improve their position if interviews are held. This event shall be documented for the procurement file, and a notice shall be sent to all Offerors of record of the event. If the next ranked firm is invited to interview, their final points/rank for their Technical/Price evaluation does not change.

**B. EVALUATION CRITERIA:**

The criterion below aligns with the 1.4.8 NMAC 2007 Rules that govern the process.

**VOLUME 1 – TECHNICAL PROPOSAL**

**TAB 1 - LETTER OF SUBMITTAL**

**Mandatory**

**TAB 2A/B - GENERAL CONTRACTOR QUALIFICATIONS**

**50 Points**

1. Offeror Information
2. Licensing
3. Past Experience
4. Key Personnel Experience
5. Capacity and Capability to Perform the Work
6. Surety
7. Safety
8. Insurance & Claims History
9. Quality Assurance
10. Project Scheduling and Management
11. Labor Code Violations
12. Judgments/Breach of Contract/Mediations and Arbitrations
13. Contractor Comments/Other Information

**VOLUME 2 – PRICE PROPOSAL**

**PRICE PROPOSAL FORM)**

**50 POINTS**

(Amount stated to be translated to points)

**TOTAL POINTS**

**100**

**INTERVIEWS, If Held**

**GRAND TOTAL**

**50 POINTS**

**150**

TAB 2A – GC QUALIFICATIONS

**REQUEST FOR QUALIFICATIONS/PROPOSAL  
FOR  
Old Montezuma Cortez High School Demolition**

*For the convenience of the contractors, an electronic version of this RFQ/P may be issued for your use. Any changes to the document's questions or language that differs from the wording as issued in the RFQ/P dated **December 15, 2016** other than to fill in answers for the questions asked, will constitute a non-responsible proposal.*

**STATEMENT OF QUALIFICATIONS FOR GENERAL CONTRACTORS**

Project Name: \_\_\_\_\_

1. OFFEROR INFORMATION

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

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

Principal Office: \_\_\_\_\_

(☐) Corporation      (☐) Partnership      (☐) Sole Proprietorship      (☐) Joint Venture

(☐) Other \_\_\_\_\_

a. How many years has your organization been in business as a Contractor? \_\_\_\_\_

b. How many years has your organization been in business under its present business name?  
\_\_\_\_\_

c. Under what other or former names has your organization operated?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

d. List your firm's average annual revenue for the past five years.

Note: Offeror must use "audited revenue amount".

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

2. LICENSING

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Existing High School Demolition – 206 West 7<sup>th</sup> St. | Cortez, Colorado

a. Name of license holder (or qualifying party) exactly as on file with the State of Colorado:

\_\_\_\_\_

b. License Classification: \_\_\_\_\_ License Code: \_\_\_\_\_

c. License Number: \_\_\_\_\_

e. Issue Date: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

f. Is the firm's contractor's license free of ever being suspended or revoked by the the state or by the appropriate licensing agency in any other state?

☐ Yes, free of suspension or revocation

☐ IF no, provide explanation below.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

g. Does your firm hold all applicable Business licenses required by State of Colorado?

License Number: \_\_\_\_\_ Jurisdiction: \_\_\_\_\_

Fill in name of license holder, exactly as it appears on file with jurisdictional authorities:

\_\_\_\_\_  
(Name)

Issue Date: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

License Number: \_\_\_\_\_ Jurisdiction: \_\_\_\_\_

h. Is your firm free from formal debarment from public works, federal, state or local public works jurisdictions?

☐ Yes

☐ If No, provide explanation below.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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3. PAST EXPERIENCE

- a. List a total of five demolition projects that your firm has completed since 2013 that were a minimum of 95,000 square feet in size. The owner prefers the projects to be school projects, but will also accept projects that were considered partial demolition and or public projects. It is important to the owner that these projects were solely contracted/completed and managed by your firm. List the five (5) projects below and then complete **(Attachment A)** for each one of them.

Project 1 Name: \_\_\_\_\_

Project 2 Name: \_\_\_\_\_

Project 3 Name: \_\_\_\_\_

Project 4 Name: \_\_\_\_\_

Project 5 Name: \_\_\_\_\_

- b. List the categories of work that your organization normally performs with its own forces.

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- c. What is your company's process for vetting the pricing from your subcontractors and suppliers on change orders in order to ensure fair pricing to the owner?

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4. KEY PERSONNEL EXPERIENCE

	Project Manager	Superintendent	Safety Manager	
Years of Construction Experience?				
How many demolition projects totaling 95,000 square feet or more has each person completed?				

- a. Utilize the format in (**Attachment B**) to provide a resume for your proposed; Project Manager, Project Superintendent, and Safety Manager.
- b. Include an organization chart (**Attachment C**) of the management team that will be assigned to this project.
- c. Describe your firms participation in skill and safety training and development:

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5. CAPACITY AND CAPABILITY TO PERFORM THE WORK

- a. Resources: Total number of current employees:
 

Project Managers	_____
Estimators	_____
Superintendents	_____
Foremen	_____
Administration	_____
Other	_____

Montezuma-Cortez High School  
Existing High School Demolition – 206 West 7<sup>th</sup> St. | Cortez, Colorado

- b. Does your firm have the immediate capacity to perform the work required for this project:  
( ) Yes ( ) No
- c. List all projects currently under contract totaling over 50,000 square feet with scheduled completion dates (**Attachment D**)

6. SURETY

- a. Firm's current surety company:

\_\_\_\_\_

Will this surety be used for the construction contract for this project?

( ) Yes ( ) No (attach explanation)

Contact Agent Name: \_\_\_\_\_ Telephone: \_\_\_\_\_

Years utilizing this surety: \_\_\_\_\_ Maximum Capacity: \_\_\_\_\_

Aggregate Total of current surety in force: \_\_\_\_\_

- b. Is the surety company to be used on this project licensed to do business in the State of Colorado?

( ) Yes ( ) No (attach explanation)

- a. Is your firm free of having any construction contracts taken over by a surety for completion in the past five (5) years?

( ) Yes ( ) No (attach explanation)

- c. Has your firm used other surety companies since 2010? ( ) Yes (list) ( ) No

\_\_\_\_\_  
Surety Company

\_\_\_\_\_  
Contact

\_\_\_\_\_  
Surety Company

\_\_\_\_\_  
Contact

\_\_\_\_\_  
Surety Company

\_\_\_\_\_  
Contact

- d. Is your firm able to obtain bonding in the amount required for the completion of this project? Provide a notarized declaration from the surety identified above, stating the amount of bonding capacity available to your firm for this project at (**Attachment E**).



☐ Yes

☐ No (attach explanation)

7. SAFETY

- a. Does your firm have a written safety program compliant with current State regulations?

☐ Yes

☐ No (attach explanation)

- b. Provide the experience modification Rate for the past five (5) years:

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_ /

- c. Provide the Recordable Incident Rate for the past calendar year: \_\_\_\_\_

- d. Utilize (**Attachment F**) to communicate a list of Work Loss Incidents and History for the past 5 years.

- e. Is your firm free of committing serious or willful violations of federal or state safety laws as determined by a final non-appealable decision of a court or government agency?

☐ Yes

☐ No (attach explanation)

8. INSURANCE & CLAIMS HISTORY

- a. Is your firm free of any court judgments, pending litigation, arbitration and final agency decisions filed within the last five (5) years in a construction related matter in which the contractor, or any officer, is or was a party?

☐ Yes

☐ No (attach explanation)

- b. Has your firm during the past five (5) years been free of a determination by a court of competent jurisdiction that is filed a false claim with any federal, state or local government entity?

☐ Yes

☐ No (attach explanation)

- c. Does your firm have the ability to provide the required insurance in the limit stated in the project documents (General Liability and Comprehensive Auto at \$1 Million per occurrence and \$1 Million in the aggregate?)

☐ Yes

☐ No (attach explanation)

- d. Please provide a letter from an insurance carrier stating that the firm is able to obtain insurance in the limits stated as (**Attachment G**).
9. QUALITY ASSURANCE
- a. Does your firm have a written Quality Assurance Program?
- ☐ Yes                      ☐ No
- b. Provide one (1) copy of the written Assurance Program for (**Attachment H**)  
Note: The Assurance Program will not count in the 80 page maximum.
- c. Complete (**Attachment I**) to describe in detail the process your firm utilizes to physically respond to issues during the warranty period. The response should include a specific description of procedures from “first-call”/”first notification” through “on-site evaluation” and “issue completion”.

10. PROJECT SCHEDULING AND MANAGEMENT

- a. Identify the specific computer software your firm utilizes for project scheduling?  
\_\_\_\_\_
- b. For how many projects has your firm used this software? \_\_\_\_\_
- c. Submit a milestone schedule (**Attachment J**) for this project and identify specific critical processes, phases, milestones, approvals, and procurements.
- d. Submit a detailed map (**Attachment K**) that includes; staging areas, delivery routes, and crane locations.
- e. Provide information regarding your firm’s ability to complete the project within the allotted time.

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11. LABOR CODE VIOLATIONS

- a. Has your firm during the past five (5) years, been free of any determinations by a court or an administrative agency of repeated or willful violations of laws and/or regulations pertaining to the payment of prevailing wages or employment of apprentices of public works projects?     Refer to (**Attachment L**)

(☐) Yes      (☐) No

12. JUDGEMENTS/BREACH OF CONTRACT/ MEDIATIONS AND ARBITRATIONS  
**(Attachment M)**

- a. List any judgments against the firm during the past 5 years.  
Who initiated? What was the outcome?
- b. List any other actions brought against you for breach of contract during the past 5 years. Who initiated? What was the outcome or current status?
- c. List all mediations/arbitrations in the last 5 years. Who initiated? What was the outcome?

13. CONTRACTOR COMMENTS/OTHER INFORMATION

- a. Utilize **(Attachment N)** to provide explanations for “no” responses for sections 6, 7, 8, 9, and 11.
- b. **(Attachment O)** may be utilized to communicate any other information the offeror feels is advantageous to their offer.

**THE UNDERSIGNED CERTIFIES THAT ALL OF THE QUALIFICATION  
INFORMATION SUBMITTED WITH THIS FORM IS TRUE AND CORRECT.**

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Name and Title

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Firm Name

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Signature

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Address of Firm

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E-mail Address

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City/State/Zip

---

Telephone Number

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Fax Number

End of GENERAL CONTRACTOR QUALIFICATIONS QUESTIONNAIRE

TAB 2B – GC QUALIFICATIONS

ATTACHMENT A  
GENERAL CONTRACTOR'S STATEMENT OF QUALIFICATIONS

Past Experience

**Complete one form for each of the five (5) projects listed**

PROJECT DESCRIPTION

Project Type: \_\_\_\_\_ Contact Name: \_\_\_\_\_

Project Name: \_\_\_\_\_ Contact Title: \_\_\_\_\_

Owner: \_\_\_\_\_ Contact Phone No.: \_\_\_\_\_

DESIGN PROFESSIONAL

Name of Firm: \_\_\_\_\_ Contact Name: \_\_\_\_\_

Contact Phone No.: \_\_\_\_\_ Contact Title: \_\_\_\_\_

PROJECT SPECIFICS

Gross Building Area (Sq. Ft.) \_\_\_\_\_ (\_\_\_) New (\_\_\_) Addition (\_\_\_) Renovation

Project Start Date: \_\_\_\_\_ Completion Date: \_\_\_\_\_

Original Contract Amt.: \$ \_\_\_\_\_ Original No. of Days to Complete: \_\_\_\_\_

Final Contract Amount \_\_\_\_\_ Final Contract Days to Complete: \_\_\_\_\_  
With all Change Orders: \$ \_\_\_\_\_ with all Time Extensions: \_\_\_\_\_

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PROJECT EXECUTION

Were Liquidated Damages assessed on this Project? (\_\_\_) No (\_\_\_) Yes Days \_\_\_\_ \$ \_\_\_\_\_

Percentage of Work Subcontracted: \_\_\_\_\_% Contract Type: (\_\_\_) Competitive Bid Lump Sum  
(\_\_\_) Negotiated Lump Sum  
(\_\_\_) Guaranteed Maximum  
(\_\_\_) Other (Describe) Major

Subcontractors (if used):

Mechanical: \_\_\_\_\_

Electrical: \_\_\_\_\_

Plumbing: \_\_\_\_\_

Concrete: \_\_\_\_\_

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## CUSTOMER SATISFACTION

If the work on this project was not completed by the initial project completion date listed above, explain in detail the reason for the delay and what your firm did to expedite progress.

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Were you called back to the job for any reason during the warranty period? After the warranty period? If so, provide a detailed description of the nature of the work and the reason that the work wasn't completed correctly the first time.

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Did your firm refuse to perform additional work requested by the owner? If yes, provide a detailed explanation.

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Attach a letter of reference, with current contact information, from the owner. It is important that the person who writes the letter of reference either had direct experience in the progress meetings during construction or has direct knowledge of the success of the project.

**Important Note:** Failure to provide a letter of reference for each project that is listed may cause the offeror's proposal to be considered "NON-RESPONSIVE".

**ATTACHMENT B**  
**GENERAL CONTRACTOR’S STATEMENT OF QUALIFICATIONS**

**Resumes**

Attach a one to two page resume for the following personnel.

1. PROJECT MANAGER
2. PROJECT SUPERINTENDENT
3. SAFETY PROGRAM MANAGER

Resumes should utilize the following format:

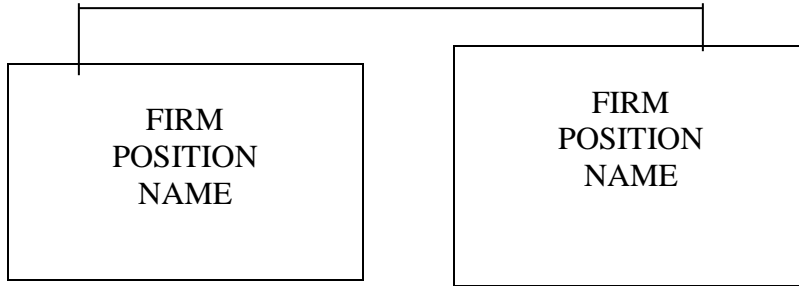
1. **EDUCATION**  
High School, College, Trade Schools, Trade Seminars, Trade/Management Specialized Courses, Etc.
2. **RELATED EXPERIENCE**  
Related experience should include the following:
  - a. Position Title
  - b. Duties and Responsibilities
  - c. Major accomplishments
  - d. Number of personnel supervised
3. **PROJECT EXPERIENCE**  
Identify specific projects from the list in Attachment A in which the person participated.
4. Other information that demonstrates the individual’s strengths for this project.
5. Project Professionals and/or Project Owner Letter of Reference may be included for each resume.

ATTACHMENT C  
GENERAL CONTRACTOR’S STATEMENT OF QUALIFICATIONS

Organizational Chart of Project Management Team

FIRM  
POSITION  
NAME

Chart should include the entire  
Project Team  
Subcontractor Key Personnel  
And Supervision



ATTACHMENT D  
GENERAL CONTRACTOR’S STATEMENT OF QUALIFICATIONS

Projects Currently Under Contract

List of all project currently under contract totaling 50,000 square feet with projected completion dates

<u>PROJECT TITLE AND LOCATION</u>	<u>START DATE</u>	<u>PROJECTED COMPLETION</u>



Montezuma-Cortez High School  
Existing High School Demolition – 206 West 7<sup>th</sup> St. | Cortez, Colorado

ATTACHMENT E  
GENERAL CONTRACTOR'S STATEMENT OF QUALIFICATIONS

Notarized Declaration of Surety

ATTACHMENT F  
GENERAL CONTRACTOR'S STATEMENT OF QUALIFICATIONS

REFERENCE: 7d.

Provide an organized list of Work Loss Incidents and History for the past 5 years.

ATTACHMENT G  
GENERAL CONTRACTOR'S STATEMENT OF QUALIFICATIONS

REFERENCE: 8d.

Letter from Insurance Carrier regarding limits of liability

DOCUMENTATION OF INSURABILITY

ATTACHMENT H  
GENERAL CONTRACTOR'S STATEMENT OF QUALIFICATIONS

REFERENCE: 9b.

Written Quality Assurance Program

Note: The Quality Assurance Program will not count in the 80 page maximum.

ATTACHMENT I  
GENERAL CONTRACTOR'S STATEMENT OF QUALIFICATIONS

REFERENCE: 9c.

Explanation of response during warranty period.

ATTACHMENT J  
GENERAL CONTRACTOR'S STATEMENT OF QUALIFICATIONS

REFERENCE: 10c.

Insert Milestone Schedule Here

ATTACHMENT K  
GENERAL CONTRACTOR'S STATEMENT OF QUALIFICATIONS

REFERENCE: 10d.

Insert a detailed map that includes; proposed staging area, delivery routes, and extents of site safety fencing.

ATTACHMENT L  
GENERAL CONTRACTOR'S STATEMENT OF QUALIFICATIONS

REFERENCE: 11a.

Affidavit of non-violation of Labor Codes

Name of Firm: \_\_\_\_\_

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

Project  
Reference: (Name of Owner & Project) Request for Proposal # \_\_\_\_\_  
Affidavit of Non-violation of Labor Codes

To: The Board of Education  
School District

The undersigned officer of \_\_\_\_\_ hereby states that  
\_\_\_\_\_ has, during the past five (5) years, been free of  
any determinations by a court or an administrative agency, of repeated or willful violations of laws and/or  
regulations pertaining to the payment of prevailing wages or employment of apprentices of public works  
projects.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

NOTARY

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

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

Signed or attested before me on \_\_\_\_\_ by \_\_\_\_\_

Seal \_\_\_\_\_

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



ATTACHMENT M  
GENERAL CONTRACTOR'S STATEMENT OF QUALIFICATIONS

REFERENCE: 12 a.b.c.

Judgments/Breach of Contract/Mediations/Arbitrations

a.

b.

c.

ATTACHMENT N  
GENERAL CONTRACTOR’S STATEMENT OF QUALIFICATIONS

REFERENCE: 13a.  
Contractor Comments for Clarification

Additional written explanations or comments required for clarification of items contained in the Statement of Qualifications.

ITEM REF. NO:	COMMENTS

Montezuma-Cortez High School  
Existing High School Demolition – 206 West 7<sup>th</sup> St. | Cortez, Colorado

ATTACHMENT O  
GENERAL CONTRACTOR’S STATEMENT OF QUALIFICATIONS

REFERENCE: 13b.  
Advantageous Information

Montezuma-Cortez High School  
Existing High School Demolition – 206 West 7<sup>th</sup> St. | Cortez, Colorado

**SECTION 00 4100 - BID FORM**

Bidders to submit Bids on the Form that is provided following this page.

END OF SECTION

# PROPOSAL FORM

OFFEROR'S Name and Address:

Telephone:

Fax:

Federal Tax ID #:

Colorado Tax ID #:

GC License #

RFP NO:

PROJECT NAME: Montezuma-Cortez High School Demolition

PROJECT NO.: 13-0017.001

LOCATION: Cortez, CO 81321

This Proposal is submitted to Owner:

**Montezuma Cortez School District RE1  
Attn: Jamie Haukeness  
400 N. Elm St.  
Cortez, CO 81321**

1. The undersigned Offeror proposes and agrees, if this proposal is accepted, to enter into an agreement with the Owner in the form included in the RFP Documents to perform and furnish all Work as specified or indicated in the RFP Documents for the Contract Price and within the Contract Time indicated in this proposal and in accordance with the other terms and conditions of the Contract Documents.
2. The Offeror accepts all of the terms and conditions of the Request for Proposals and Instructions to Offerors, including without limitation those dealing with the disposition of proposal security and other Proposal Documents. This Proposal will remain subject to acceptance for forty-five (45) days after the day of Proposal opening. The Offeror shall sign and submit the Agreement between Owner and Contractor (hereinafter called Agreement) with the Bonds and other documents required by the Proposal Requirements within fifteen (15) days after the date of the Owner's Notice of Award.
3. In submitting this Proposal, the Offeror represents, as more fully set forth in the Agreement, that:
  - A. the Offeror has examined copies of all the Proposal Documents and of the following Addenda (receipt of all of which is hereby acknowledged):

No. \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

No. \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

No. \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

No. \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

Montezuma-Cortez High School  
Existing High School Demolition – 206 West 7<sup>th</sup> St. | Cortez, Colorado

No. \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_  
No. \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

- B. the Offeror has familiarized himself with the nature and extent of the Proposal Documents, Work, site, locality, and all local conditions, laws, and regulations that in any manner may affect cost, progress, performance, or furnishing of the Work;
  - C. the Offeror has carefully studied all reports and drawings of subsurface conditions which are identified in the Information Available to Offerors and accepts the determination set forth in the Information Available to Offerors of the extent of the technical data contained in such reports and drawings upon which the Offeror is entitled to rely;
  - D. the Offeror has correlated the results of all such observations, examinations, investigations, explorations, tests, reports, and studies with the terms and conditions of the Proposal Documents;
  - E. the Offeror has given the Design Professional written notice of all conflicts, errors, and discrepancies that he has discovered in the Proposal Documents, and the written resolution thereof by the Design Professional is acceptable to the Offeror;
  - F. this Proposal 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 corporation; the Offeror has not directly or indirectly induced or solicited any other Offeror to submit a false or sham Proposal; the Offeror has not solicited or induced any person, firm, or corporation to refrain from Proposing; and the Offeror has not sought by collusion to obtain for himself any advantage over any other Offeror or over the Owner;
  - G. the Offeror acknowledges that he has attended any mandatory pre-Proposal conference scheduled by the Owner or the Design Professional pertaining to this project;
  - H. the Offeror agrees to show clearly on the envelope in which the Proposal is submitted the Project Name and Number, and RFP Number; and,
  - I. the Offeror will complete the Work for the following price(s) (**do not include any gross receipts tax in the price(s)**).
4. Proposals shall be presented in the form of a total Base Proposal under a Lump Sum Contract plus additive alternates that are selected by the Owner. A proposal must be submitted on all bid items and alternates; segregated bids will not be selected by the Owner.

**PRICE PROPOSAL** (please use typewriter or print legibly in ink)

**Base Proposal:** Complete all work in the Construction Documents for this project.

( \$ \_\_\_\_\_ )

**5. The Offeror agrees that:**

- A.** The Work to be performed under this Contract shall be commenced not later than ten (10) consecutive days after the date of written Notice to Proceed, and that Substantial Completion shall be achieved not later than **60 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 to pay to the Owner in partial consideration for the award of this Contract the amount of **one thousand dollars (\$1,000.00)** per consecutive day, not as a penalty, but as liquidated damages for such breach of the Contract.
- C.** The above prices shall include all labor, materials, removal, overhead, profit, insurance, taxes (**not including gross receipts tax**), 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 Proposals and to waive any technical irregularities in the proposals.

**6. The following documents are attached to and made a condition of this Proposal:**

- A.** Proposal Security with Agent's Affidavit;
- B.** Subcontractors Listing; and,
- C.** Other (list):

**7. The terms used in this Proposal and the Proposal and Contract Documents which are defined in the Conditions of the Construction Contract (General, Supplementary, and Other Conditions), included as part of the Proposal Documents, have the meanings assigned to them in those Conditions.**

**8. The Offeror is a(n):**

**A. INDIVIDUAL;**

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

Doing business as: \_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_\_

FAX: (\_\_\_\_) \_\_\_\_\_

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**B. PARTNERSHIP:**

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

\_\_\_\_\_  
(General Partner's Signature)

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

Telephone: (     ) \_\_\_\_\_

FAX: (     ) \_\_\_\_\_

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**C. CORPORATION:**

Corporation Name: \_\_\_\_\_

State of Incorporation: \_\_\_\_\_

By \_\_\_\_\_ Title: \_\_\_\_\_  
(Print Name of Person Authorized to Sign)

\_\_\_\_\_  
(Signature of Authorized Person)

If a Colorado Corporation: \_\_\_\_\_  
CO Certificate of Incorporation Number

If a Foreign Corporation: \_\_\_\_\_  
CO Certificate of Authority Number

Attest (Secretary): \_\_\_\_\_

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

Telephone: (     ) \_\_\_\_\_

FAX: (     ) \_\_\_\_\_

CORPORATE SEAL HERE

or,



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**D. JOINT VENTURE:**

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

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

Telephone: (\_\_\_\_) \_\_\_\_\_

FAX: (\_\_\_\_) \_\_\_\_\_

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

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

Telephone: (\_\_\_\_) \_\_\_\_\_

FAX: (\_\_\_\_) \_\_\_\_\_

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

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

Telephone: (\_\_\_\_) \_\_\_\_\_

FAX: (\_\_\_\_) \_\_\_\_\_

Each Joint Venturer 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.

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**OFFEROR MUST FILL IN THE FOLLOWING** (if none, write none)

CO License Number: \_\_\_\_\_ License Classification: \_\_\_\_\_

Montezuma-Cortez High School  
Existing High School Demolition – 206 West 7<sup>th</sup> St. | Cortez, Colorado

**SECTION 00 4313 - BID BOND AND PAYMENT BOND**

The Bid Bond to be executed is AIA Document A310, 2010 Edition or current edition. The Payment Bond to be executed is AIA Document A312, 2010 Edition or current edition.

END OF SECTION

## AGENT'S AFFIDAVIT

(To be filled in by Agent)

THIS FORM MUST BE  
USED BY SURETY

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_, being first duly sworn, deposes and says that he/she is the duly appointed agent for \_\_\_\_\_ and is licensed in the State of Colorado. Deponent further states that a certain bond was given to indemnify the Owner in connection with the construction of

**Montezuma-Cortez High School – Existing High School Demolition**

dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, executed by Contractor, as principal, and, as surety, signed by this Deponent; and Deponent further states that said bond was written, signed, and delivered by him/her; that the premium on the same has been or will be collected by him/her; and that the full commission thereon has been or will be retained by him/her.

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Subscribed and sworn to before me, a notary public in and for the County of \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Notary Public:

My Commission Expires:

AGENT'S ADDRESS:

Telephone

## **SECTION 00 4513 - PREQUALIFICATION**

### **PREQUALIFICATION**

#### **GENERAL**

The Contractor represents to the Owner that the Contractor:

1. is financially solvent, able to pay debts, and has sufficient working capital to complete the Work;
2. is able to furnish the plant, tools, materials, supplies, equipment, skilled labor and sufficient experience and competence required to complete the Work equal to or exceeding industry standards;
3. shall, prior to bid, be properly licensed according to the requirements of the Construction Industries Licensing Act, Chapter 60, Article 13 NMSA 1978 and ensures to the Owner that such license shall remain in effect for the duration of the Work and warranty periods that the Contractor is authorized and properly licensed to do business in the State of New Mexico and in the locale where the Work is located;
4. execution of the agreement and performance thereof is within the Contractor's duly authorized powers; and
5. or assigns have visited the site of Work and has become familiar with the conditions under which the Work is to be performed, obtained all available information and have correlated observations and acquired information with the requirements of the Contract Documents including conditions:
  - a. bearing upon access to the site, accommodations required, transportation, disposal, handling and storage;
  - b. affecting availability of labor, materials, equipment, water, electricity, utilities and roads;
  - c. such as weather, river stages, flooding;
  - d. related to the apparent form and nature of the Work site, including the surface and sub-surface conditions; and,
  - e. that in general would be deemed by a prudent contractor to be material to the Work as to assess risk, contingencies and other circumstances;
6. has completed prior contracts with diligent and continuous effort and has been responsive to post-occupancy corrections.

#### **PREQUALIFICATION FORMS**

Not required.

#### **DEBARRED OR SUSPENDED CONTRACTORS**

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

## Montezuma-Cortez School District

# NOTICE OF INTENT TO AWARD

TO:

DATE:

PROJECT Montezuma-Cortez High School

PROJECT NO. 13-0017.001

ITB REF NO.

Ladies and Gentlemen:

THIS IS NOT AN AWARD. This letter is to advise you that Montezuma-Cortez School District is still considering the Apparent Highest Scoring offer with the intent to award the Project to you when all considerations and approvals are complete. Without authorizing you to incur any costs or obligation, with the exception of Building Permit Costs, Montezuma-Cortez School District would like you to proceed with administrative procedures such as application for Building Permit, submittals and the like in anticipation of the Award and to minimize the time to Project start-up.

OTHER CONDITIONS PRECEDENT (if none, write none)

You are reminded that at Notice to Award, but not at this time, you will be asked to produce, along with executed Agreement the following within ten (10) calendar days of that notice:

The Performance Bond, Labor and Material Payment Bond; Agent's Affidavit; Subcontractors List including contract amount of each, evidence of required bonds, costs of each bond, and beneficiary of each bond; evidence of DOL registration, evidence of CID licensure; Assignment of Antitrust Claims (required for the Contractor, all Subcontractors, and all Suppliers); Certificate of Insurance; State W-9; evidence of other bonds or documents as specified in the Bidding Documents; and, Schedule of Values.

Prior to the first Payment Application, the Project Schedule will be required and prior to the second Payment Application, a schedule of submittals will be required.

By: \_\_\_\_\_  
Montezuma-Cortez High School

Distribution to:

- ☐ District Purchasing Agent (original)
- ☐ Design Professional of Record (copy)
- ☐ Contractor (copy)
- ☐ Other \_\_\_\_\_

## Montezuma-Cortez School District

### NOTICE OF AWARD

TO:

DATE:

PROJECT Montezuma-Cortez High School

PROJECT NO. 13-0017.001

ITB REF NO.

Ladies and Gentlemen:

This letter is to advise you that the Montezuma-Cortez School District approved award of the construction contract to your firm for the Montezuma-Cortez Existing High School Demolition.

The Contract Price is as follows:

	Description	Amount:
Base Bid Amount:		
Total Contract Amount:		

One (1) of each of the proposed Contract Documents (except Drawings) will be provided to you by the District for execution.

You must comply with the following conditions within ten (10) calendar days of the date of this Notice of Award, that is, by

1. You must deliver to the Owner one copy of the fully executed Agreement, including all Contract Documents. Each of the Contract Documents must bear your signature on the appropriate page. Provide both your State of New Mexico and Federal Tax Identification Numbers on the signature page.
2. You must deliver with the executed Agreement; the Contractor's Performance Bond, Labor and Material Payment Bond; Agent's Affidavit; Subcontractors List including contract amount of each, evidence of required bonds, costs of each bond, and beneficiary of each bond, evidence of CID licensure; Assignment of Antitrust Claims (required for the Contractor, all Subcontractors, and all Suppliers); Certificate of Insurance; State W-9; evidence of other bonds or documents as specified in the Bidding Documents; and, Schedule of Values.

Failure to comply with these conditions within the time specified will entitle the Owner to consider your bid abandoned, to annul this Notice of Award, and to declare your bid security forfeited.

Within thirty (30) days after you comply with these conditions, the Owner will return to you one fully signed Agreement with the Contract Documents attached.

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

Lori Haukeness  
Superintendent  
Montezuma-Cortez School District

Distribution to:

- ☒ Design Professional of Record (copy)  
☒ Contractor (original)  
☒ District Representative (copy)  
☐ Other \_\_\_\_\_

# Agreement between the Owner and the Contractor

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION

Project (short title): Montezuma-Cortez High School  
Contract No.  
Location: 206 West 7<sup>th</sup> Street, Cortez, CO 81321

Distribution to:

- ☒ District Representative (original)
- ☒ Contractor (original)
- ☒ Design Professional (copy)
- ☐ Other \_\_\_\_\_

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

**THE OWNER:**

MONTEZUMA-CORTEZ SCHOOL DIST  
206 WEST 7<sup>TH</sup> STREET  
CORTEZ, CO 81321  
Telephone: (970) 565-3722  
Fax: (970)

**THE CONTRACTOR:**

(NAME OF FIRM)  
(ADDRESS 1)  
(CITY /TOWN) (ZIP CODE)  
Telephone: (000) (PHONE)  
Fax: (000) (FAX NUMBER)

**DESIGN PROFESSIONAL OF RECORD:**

DEKKER/PERICH/SABATINI  
7601 JEFFERSON ST NE, SUITE 100  
ALBUQUERQUE, NM 87109  
Telephone: (505) 761-9700  
Fax: (505) 761-4222

## RECITALS

WHEREAS the Owner, through its School Board, is authorized to enter into a construction contract for the Project and

WHEREAS the Owner has let this contract according to the established State purchasing procedures for contracts of the type and amount let.

The OWNER and the CONTRACTOR agree as set forth below.

## ARTICLE 1

### THE CONTRACT DOCUMENTS

The Contract Documents consist of the following:

Bid Form	Notice to Proceed
Agreement Between Owner and Contractor	Conditions of the Contract (General,
Performance Bond	Supplementary, and Other Conditions)
Labor and Material Payment Bond	Drawings
Agent's Affidavit	Specifications
Certificate of Insurance	All Addenda Issued Prior to and All
Assignment of Antitrust Claims	Modifications Issued after Execution
Notice of Award	of This Agreement

These documents form the Contract, and all are as fully a part of the Contract as if attached to this Agreement or repeated herein. An enumeration of the Contract Documents appears in Article 7.

## ARTICLE 2

### THE WORK

The Contractor shall perform all the Work required by the Contract Documents for the following:

**Existing Montezuma-Cortez High School Demolition and all associated work as described in the construction document for Montezuma-Cortez School District.**



### ARTICLE 3

#### TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

The Work to be performed under this Contract shall commence not later than ten (10) consecutive calendar days after the date of written Notice to Proceed. Substantial Completion 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.

Should the Contractor neglect, refuse, or otherwise fail to complete the Work within the time specified for Substantial Completion, the Contractor agrees, in partial consideration for the award of this Contract, to pay to the Owner the amount of *One Thousand Dollars (\$1,000)* 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 Dollars (\$ ).

The Contract sum is determined as follows:

TOTAL	
Base Bid Amount	
Gross Receipts Tax @ %	
<b>Contract Sum</b>	

Breakdown of required labor, material and performance and payment bond costs.

Total cost of Contractor bond\* .....\$

Total cost of all Subcontractor bonds .....

Total cost of all project bonds.....\$

\*Contractor labor, material and performance and payment bond costs shall be calculated on Award Amount exclusive of GRT.

## **ARTICLE 5**

### **PROGRESS PAYMENTS**

Based upon Applications for Payment submitted to the Design Professional by the Contractor and Certificates for Payment issued by the Design Professional, 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 the end of the period covered by the Application for Payment of the portion of the Contract Sum properly allocable to labor, materials, and equipment incorporated in the Work and 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; less such amounts as the Design Professional shall determine for all incomplete Work and unsettled claims as provided in the Contract Documents.

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate provided by State statute regulating prompt payment.

## **ARTICLE 6**

### **FINAL PAYMENT**

Final payment, constituting the entire unpaid balance of the Contract Sum, shall be paid by the Owner to the Contractor within thirty (30) calendar days after notification of the Owner by the Design Professional 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, a Certificate for Final Completion and final Certificate for Payment has been issued by the Design Professional; and the Contractor has provided to the Owner a certified statement of Release of Liens (AIA Document G706A or approved form) and Consent of Surety and such other documents required by the General Conditions.

## ARTICLE 7

### GENERAL AND SPECIAL PROVISIONS

**7.1** This document shall be executed in no less than three (3) counterparts, each of which shall be deemed an original.

**7.2 Owner Provided Insurance.** See General Conditions for the Contract for Construction

**7.3** This Agreement shall be governed exclusively by the provisions hereof and by the laws of the State of Colorado as the same from time to time exist.

**7.4** Terms used in this Agreement which are defined in the Conditions of the Contract shall have the meanings designated in those Conditions.

**7.5** 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.

**7.6** 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.

**7.7** This Agreement shall not become effective until signed by all parties required to sign this Agreement.

**7.8** The Contractor and his agents and employees are independent contractors and are not employees of the Owner.

**7.9** The Contractor, upon Final Payment of the amounts due under this Agreement, releases the Owner, his officers and employees, from his 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.

**7.10** The Contractor agrees not to purport to bind the Owner to any obligation not assumed herein by the Owner unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

**7.11 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, Certified Mail, Federal Express, or similar verifiable delivery method addressed as follows:

OWNER: MONTEZUMA-CORTEZ SCHOOL DIST  
206 WEST 7<sup>TH</sup> STREET  
CORTEZ, CO 81321  
Telephone: (970) 565-3722  
Fax: (970)

CONTRACTOR: (NAME OF COMPANY)  
(ADDRESS 1)  
(CITY/TOWN), NM ( ZIP CODE)

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 herein above provided.

**7.12 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.

**7.13 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.

**7.14** This document shall be executed in no less than five (5) counterparts, each of which shall be deemed an original.

**7.15 Certificates and Documents Incorporated.** All certificates and documentation required of the Contractor 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.

**7.16 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.

**7.17 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.

**7.18 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.

**7.19 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.

**7.20 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.

**7.21 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.

**7.22** Not used.

**7.23** 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 in this Paragraph 7.21.

**7.24.1** The following documents bound in the Project Manual dated: 12/15/2016  
**See Attachment 1**

**7.24.2** The following Drawings, dated: 12/15/2016  
**See Attachment 2**

**7.24.3** Addenda

No. \_\_\_\_\_ Description \_\_\_\_\_ Date \_\_\_\_\_

No. \_\_\_\_\_ Description \_\_\_\_\_ Date \_\_\_\_\_

No. \_\_\_\_\_ Description \_\_\_\_\_ Date \_\_\_\_\_

No. \_\_\_\_\_ Description \_\_\_\_\_ Date \_\_\_\_\_

**END OF ARTICLE 7**

Contract No.:

---

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

**CONTRACTOR**

By:

Printed Name:

Title:

Date:

Federal Identification Number:

NM CRS Identification Number:

**OWNER:**

By:

Printed Name:

Title: District Representative

Date:

**Montezuma-Cortez School District**

**NOTICE TO PROCEED**

TO:

DATE:

PROJECT Montezuma-Cortez High School

PROJECT NO. 13-0017.001

ITB REF NO.

CONTRACT NO.

Ladies and Gentlemen:

Enclosed is your copy of the Contract, which has been approved. Please consider this letter as official NOTICE TO PROCEED on the above-referenced project.

The Work to be performed under this Contract shall be commenced not later than ten (10) consecutive days after the date of written Notice to Proceed, and that Substantial Completion shall be achieved not later than **60 days** after the date of written Notice to Proceed, except as hereafter extended by valid written Change Order by the Owner.

It is essential that you make reference to the above stated project number on all documents sent to the Design Professional from your office. These documents shall include correspondence, modification change requests (MCR's), change orders, payment request statements, and all other project related material which you forward to the Design Professional for information and processing.

Before you may start any Work on the site, off the site, or otherwise incur expenses or liabilities, you have delivered all pre-Work documents required by the Construction Documents that include, but are not limited to; the Labor Material and Performance Bonds and Certificate of Insurance and you must have received a Purchase Order for the Work.

Invoicing for Work: Under no circumstances shall an invoice be received prior to Purchase Order date.

OWNER:

MONTEZUMA-CORTEZ SCHOOL DIST  
206 WEST 7<sup>TH</sup> STREET  
CORTEZ, CO 81321  
Telephone: (970) 565-3722  
Fax: (970)

By: \_\_\_\_\_  
Lori Haukeness  
Superintendent  
Montezuma-Cortez School District

Distribution to:

- ☒ District Representative (copy)  
☒ Design Professional of Record (copy)  
☒ Contractor (original)  
☐ Other \_\_\_\_\_

Montezuma-Cortez High School  
Existing High School Demolition – 206 West 7<sup>th</sup> St. | Cortez, Colorado

**SECTION 00 6113 – PERFORMANCE BOND**

The AIA Document A312 2010 Performance Bond is provided following this page.

**END OF SECTION**



# DRAFT AIA® Document A312™ – 2010

## Performance Bond

### CONTRACTOR:

(Name, legal status and address)

« »« »  
« »

### SURETY:

(Name, legal status and principal place of business)

« »« »  
« »

### OWNER:

(Name, legal status and address)

« »« »  
« »

### CONSTRUCTION CONTRACT

Date: « »

Amount: \$ « »

Description:

(Name and location)

«AIA Blank Documents»

« »

### BOND

Date:

(Not earlier than Construction Contract Date)

« »

Amount: \$ « »

Modifications to this Bond: ☐ « » None ☐ « » See Section 16

### CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

### SURETY

Company: (Corporate Seal)

Signature:

Name and « »« »

Title:

(Any additional signatures appear on the last page of this Performance Bond.)

Signature:

Name and « »« »

Title:

(FOR INFORMATION ONLY — Name, address and telephone)

### AGENT or BROKER:

« »  
« »  
« »

### OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

« »  
« »  
« »  
« »  
« »  
« »

### ADDITIONS AND DELETIONS:

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

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

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

**ELECTRONIC COPYING** of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

**§ 1** The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

**§ 2** If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

**§ 3** If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

**§ 4** Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

**§ 5** When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

**§ 5.1** Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

**§ 5.2** Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

**§ 5.3** Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

**§ 5.4** Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

**§ 6** If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

**§ 7** If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to

the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

**§ 8** If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

**§ 9** The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

**§ 10** The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

**§ 11** Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

**§ 12** Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

**§ 13** When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

#### **§ 14 Definitions**

**§ 14.1 Balance of the Contract Price.** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

**§ 14.2 Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

**§ 14.3 Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

**§ 14.4 Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

**§ 14.5 Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

**§ 15** If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

<< >>

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

**CONTRACTOR AS PRINCIPAL**

Company: (Corporate Seal)

Signature:

Name and Title: << >><< >>

Address: << >>

**SURETY**

Company: (Corporate Seal)

Signature:

Name and Title: << >><< >>

Address: << >>

Montezuma-Cortez High School  
Existing High School Demolition – 206 West 7<sup>th</sup> St. | Cortez, Colorado

**SECTION 00 6114 – PAYMENT BOND**

The AIA Document A312 2010 Payment Bond is provided following this page.

**END OF SECTION**

# DRAFT AIA® Document A312™ – 2010

## Payment Bond

### CONTRACTOR:

(Name, legal status and address)

« »  
« »

### SURETY:

(Name, legal status and principal place of business)

« »  
« »

### OWNER:

(Name, legal status and address)

« »  
« »

### CONSTRUCTION CONTRACT

Date: « »

Amount: \$ « »

Description:

(Name and location)

«AIA Blank Documents»

« »

### BOND

Date:

(Not earlier than Construction Contract Date)

« »

Amount: \$ « »

Modifications to this Bond: ☐ « » None ☐ « » See Section 18

### CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

### SURETY

Company: (Corporate Seal)

Signature:

Name and « »

Title:

(Any additional signatures appear on the last page of this Payment Bond.)

Signature:

Name and « »

Title:

(FOR INFORMATION ONLY — Name, address and telephone)

### AGENT or BROKER:

« »  
« »  
« »

### OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

« »  
« »  
« »  
« »  
« »  
« »

### ADDITIONS AND DELETIONS:

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

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

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

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**§ 1** The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

**§ 2** If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

**§ 3** If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

**§ 4** When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

**§ 5** The Surety's obligations to a Claimant under this Bond shall arise after the following:

**§ 5.1** Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

**§ 5.2** Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

**§ 6** If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

**§ 7** When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

**§ 7.1** Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

**§ 7.2** Pay or arrange for payment of any undisputed amounts.

**§ 7.3** The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

**§ 8** The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

**§ 9** Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.



**§ 10** The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

**§ 11** The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

**§ 12** No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

**§ 13** Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

**§ 14** When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

**§ 15** Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

## **§ 16 Definitions**

**§ 16.1 Claim.** A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

**§ 16.2 Claimant.** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

**§ 16.3 Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.



**§ 16.4 Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

**§ 16.5 Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

**§ 17** If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

**§ 18** Modifications to this bond are as follows:

<< >>

*(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)*

**CONTRACTOR AS PRINCIPAL**

Company: (Corporate Seal)

**SURETY**

Company: (Corporate Seal)

Signature:

Name and Title:

Address:

<< >><< >>

<< >>

Signature:

Name and Title:

Address:

<< >><< >>

<< >>

## AGENT'S AFFIDAVIT

(To be filled in by Agent)

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

THIS FORM MUST BE  
USED BY SURETY

\_\_\_\_\_, being first duly sworn, deposes and says that he/she is the duly appointed agent for \_\_\_\_\_ and is licensed in the State of Colorado. Deponent further states that a certain bond was given to indemnify the Owner in connection with the construction of

**Montezuma-Cortez High School – Existing High School Demolition**

dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, executed by Contractor, as principal, and, as surety, signed by this Deponent; and Deponent further states that said bond was written, signed, and delivered by him/her; that the premium on the same has been or will be collected by him/her; and that the full commission thereon has been or will be retained by him/her.

---

Subscribed and sworn to before me, a notary public in and for the County of \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Notary Public:

My Commission Expires:

AGENT'S ADDRESS:

Telephone

**Instructions:**

1. **Contractor shall attach pre-signed or un-signed form to Performance Bond and Labor and Material Bond and submit to Design Professional with Post-Bid submittals (see Section 00 2113 - Instructions to Bidders).**
2. **District shall review Surety for acceptability and, if approved, sign form prior to approval of Contract.**
3. **After review and approval of bonds, District shall include signed form with approved Contract in transmittal to Design Professional.**

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:

By: \_\_\_\_\_  
Lori Haukeness, Superintendent

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

## MODIFICATION / CHANGE REQUEST

PROJECT NAME: Montezuma-Cortez High School Existing HS Demo PROJECT NUMBER: 13-0017.001

M/CR LOG NUMBER \_\_\_\_\_ (Assigned by DP) Current Date \_\_\_\_\_

REQUESTED BY DISTRICT REP (DR) ☐ CONTRACTOR ☐ DP ☐ INITIAL \_\_\_\_\_

WHO HAS REQUESTED THE WORK BE DONE \_\_\_\_\_  
i.e.; user group name/individual/contractor/subcontractor/ etc.

**DESCRIPTION OF CHANGE**  
First why, then how.

ATTACHMENT(S)

YES ☐ NO ☐

**OWNER REVIEW OF CONTENT AND/OR FEASIBILITY**

INITIAL \_\_\_\_\_ DATE \_\_\_\_\_

- ☐ DO NOT PROCEED
- ☐ PROCEED WITH ESTIMATE OF COSTS ONLY (within 10 calendar days of receipt of this MCR)
- ☐ PROCEED WITH WORK, ESTIMATES OF COSTS TO FOLLOW (estimate within 10 days of receipt of this MCR)

**A/E – ESTIMATED COST OF REQUIRED DESIGN WORK:** (estimate within 5 days; Include breakdown of costs)

APPROVED AMOUNT \$ \_\_\_\_\_ Initial \_\_\_\_\_ Date \_\_\_\_\_

**PROCEED WITH DESIGN:** (Forward proposed costs of work to OWNER for approval, include GRT)

APPROVED AMOUNT \$ \_\_\_\_\_ Initial \_\_\_\_\_ Date \_\_\_\_\_

**CONTRACTOR'S PROPOSED COST:** (Include backup, include GRT)

APPROVED AMOUNT \$ \_\_\_\_\_ Initial \_\_\_\_\_ Date \_\_\_\_\_

**MUST BE COMPLETED TO FINALIZE:**

Initial \_\_\_\_\_ Date \_\_\_\_\_

- ☐ PROCEED WITH MODIFICATION OF WORK AND TO CONTRACT SUM (INCLUDE IN CHANGE ORDER)
- ☐ REJECTED BUT, REPLACED BY MCR # \_\_\_\_\_
- ☐ REJECTED – STOP ALL ACTION ON THIS REQUEST \_\_\_\_\_

Montezuma-Cortez High School  
Existing High School Demolition – 206 West 7<sup>th</sup> St. | Cortez, Colorado

**MODIFICATION / CHANGE REQUEST NO.** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
**PROJECT NO.** \_\_\_\_\_

**DESCRIPTION OF PROPOSED WORK:** \_\_\_\_\_

NOTE: Fill out a separate worksheet for each subcontractor on this MCR. The GC shall use this same form to summarize the total of all subcontractor proposals while adding GC costs. Attach all worksheets and breakdowns to summary sheet for each MCR.

**SUBCONTRACTOR'S COSTS (ATTACH SUBCONTRACTOR'S SHEET AND COST BREAKDOWNS):\***

1	<b>Total of subcontractor's material</b> (attach itemized breakdown):	\$
2	Total of subcontractor's labor cost including fringe benefits and labor burden (attach itemized breakdown):	\$
3	Other directly attributable costs allowed (attach itemized breakdown):	\$
4	Subtotal:	\$
5	Subcontractor's O&P _____%:	\$
6	Subcontractor's Bond:	\$
7	Permits paid by subcontractor:	\$
8	Subcontractor's Total Costs:	\$

**GENERAL CONTRACTOR'S COSTS (ATTACH WORKSHEETS)\***

9	GC's material (attach itemized breakdown):	\$
10	General Contractor's labor cost including fringe benefits and labor burden @ _____% (attach itemized breakdown):	\$
11	Construction equipment (rental).	\$
12	Directly attributable field supervision, insurance, etc. (attach itemized breakdown):	\$
13	Subtotal:	\$
14	General Contractor's Overhead \$ Profit on subcontractor (_____% of Item 8):	\$
15	General Contractor's Overhead & Profit on work by General Contractor's forces (_____% of Item 13):	\$
16	Subtotal (sum of Items 13, 14 and 15):	\$
17	Bond (_____% of Item 16):	\$
18	Permits paid by General Contractor:	\$
19	Subtotal (sum of Items 8, 16, 17 and 18):	\$
20	Gross Receipts Tax _____% of Line 19:	\$
21	General Contractor's total cost (sum of Lines 19 and 20):	\$

Montezuma-Cortez High School  
Existing High School Demolition – 206 West 7<sup>th</sup> St. | Cortez, Colorado

**SECTION 00 6363 – CHANGE ORDER**

Change Order form is provided following this page.

**END OF SECTION**

# DRAFT AIA® Document G701™ - 2001

## Change Order

<b>PROJECT</b> (Name and address): AIA Blank Documents	<b>CHANGE ORDER NUMBER:</b> 001 <b>DATE:</b>	<b>OWNER:</b> <input type="checkbox"/> <b>ARCHITECT:</b> <input type="checkbox"/> <b>CONTRACTOR:</b> <input type="checkbox"/> <b>FIELD:</b> <input type="checkbox"/> <b>OTHER:</b> <input type="checkbox"/>
<b>TO CONTRACTOR</b> (Name and address):	<b>ARCHITECT'S PROJECT NUMBER:</b> <b>CONTRACT DATE:</b> <b>CONTRACT FOR:</b> General Construction	

### THE CONTRACT IS CHANGED AS FOLLOWS:

(Include, where applicable, any undisputed amount attributable to previously executed Construction Change Directives)

The original Contract Sum was  
The net change by previously authorized Change Orders  
The Contract Sum prior to this Change Order was  
The Contract Sum will be increased by this Change Order in the amount of  
The new Contract Sum including this Change Order will be

\$	0.00
\$	0.00
\$	0.00
\$	0.00
\$	0.00

The Contract Time will be increased by Zero (0) days.  
The date of Substantial Completion as of the date of this Change Order therefore is

**NOTE:** This Change Order does not include changes in the Contract Sum, Contract Time or Guaranteed Maximum Price which have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

**NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.**

<b>ARCHITECT</b> (Firm name)	<b>CONTRACTOR</b> (Firm name)	<b>OWNER</b> (Firm name)
<b>ADDRESS</b>	<b>ADDRESS</b>	<b>ADDRESS</b>
<b>BY</b> (Signature)	<b>BY</b> (Signature)	<b>BY</b> (Signature)
(Typed name)	(Typed name)	(Typed name)
<b>DATE</b>	<b>DATE</b>	<b>DATE</b>

**Montezuma-Cortez School District**  
Cortez, CO

**CERTIFICATE OF SUBSTANTIAL COMPLETION**

PROJECT NUMBER: 13-0017.001

CONTRACT DATED:

PROJECT NAME: Montezuma-Cortez High School Existing High School Demolition

WORK SUBSTANTIALY COMPLETE:

SUBSTANTIAL COMPLETION is defined as the date certified by the Design Professional when all the Work, or portion of the Work, is complete except for minor items so that the Owner can completely occupy or fully utilize the Work for its intended use.

The Design Professional also certifies that Contractor's Punch List of items to be completed or corrected prior to Final Completion, and Close-out List, have been reviewed by the Design Professional's best effort and found to be accurate. The Design Professional and the Contractor certify that attached are; 1) any agreed upon modifications or exceptions to Warranties stated in the Contract Documents, 2) Punch List, and 3) Close-out List and Schedule .

The DESIGN PROFESSIONAL therefore has determined that the Date of Substantial Completion for that Work defined above was \_\_\_\_\_, 20\_\_\_\_\_.

DESIGN PROFESSIONAL: DEKKER/PERICH/SABATINI

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

The CONTRACTOR certifies that the above is true and in agreement and to be responsible for any Liquidated Damages due related to Substantial Completion date in accordance with the Contract Documents.

CONTRACTOR: \_\_\_\_\_

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

The OWNER hereby accepts the above defined Work as being Substantially Complete on said date.

By: \_\_\_\_\_  
Lori Haukeness, Superintendent  
Montezuma-Cortez School District

Distribution to:  
☒ District Purchasing Agent  
☒ Design Professional of Record  
☐ Other

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



**Montezuma-Cortez School District**  
Cortez, CO

**CERTIFICATE OF FINAL COMPLETION**

PROJECT NUMBER: 13-0017.001

CONTRACT DATED: 00/00/0000

PROJECT NAME: Montezuma-Cortez High School Existing High School Demolition

SUBSTANTIAL COMPLETION DATE: 00/00/0000

FINAL COMPLETION is defined as the date certified by the Design Professional when all the Work of the Project is fully complete, the Close-Out requirements of Paragraph 9.10 of the General Conditions have been completed, the Contract fully performed in accordance with the Contract Documents, and the Contractor entitled to final payment.

The DESIGN PROFESSIONAL has inspected the Work and has determined that the Date of Final Completion was \_\_\_\_\_, 20\_\_\_\_.

DESIGN PROFESSIONAL: DEKKER/PERICH/SABATINI

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

ONE YEAR INSPECTION: Approximately thirty days prior to 00/00/0000, the one-year anniversary of the Date of Substantial Completion, the Design Professional, the Owner, and the Contractor shall conduct an inspection of the Project to determine any correction of the Work which may be required at that time.

The CONTRACTOR certifies that the Work is fully completed and was completed on or before 00/00/0000, and submits herewith:

Application for Final Payment (AIA G702 or equal)  
Affidavit of Payments (AIA G706 or equal)  
Consent of Surety (AIA G707 or equal)  
Release of Liens (AIA G706A or equal)

CONTRACTOR: \_\_\_\_\_

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

The OWNER hereby accepts the Work as fully complete and will make final payment.

By: \_\_\_\_\_  
Lori Haukeness, Superintendent  
Montezuma-Cortez School District

Distribution to:  
☒ District Purchasing Agent  
☒ Design Professional of Record  
☐ Other

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

# General Conditions of the Contract for Construction

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## TABLE OF ARTICLES

1. GENERAL PROVISIONS
2. OWNER
3. CONTRACTOR
4. ADMINISTRATION OF THE CONTRACT
5. SUBCONTRACTS
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
14. TERMINATION OR SUSPENSION OF THE CONTRACT

## **ARTICLE 1 GENERAL PROVISIONS**

### **1.1 BASIC DEFINITIONS**

#### **1.1.1 THE CONTRACT DOCUMENTS**

The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications and Addenda issued prior to execution of the Contract, and Modifications. Modifications are (1) a written amendment to the Contract signed by Owner and Contractor, (2) Modification / Change Request hereinafter referred to as MCR approved by Owner, Contractor and Design Professional, (3) Change Order, or (4) a written order for a minor change in the Work, hereinafter referred to as Supplemental Instruction issued by the Design Professional. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement or Invitation to Bid, Instructions to Bidders, sample forms, the Contractor's bid or portions of Addenda relating to bidding requirements).

#### **1.1.2 THE CONTRACT**

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

**1.1.2.1** Each and every provision of law and clause required by law to be inserted in this Contract shall be read and enforced as though it were included herein; and if through error or otherwise any such provision is not inserted, or is not correctly inserted, then upon the written application of either party the Contract shall be amended without cost to make such insertion or correction and that the remainder of this Contract shall remain in effect and not be affected thereby.

#### **1.1.3 THE WORK**

The term "Work" means the construction and services required by or reasonably inferable from the Contract Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the results indicated by the Contract Documents in a safe, expeditious, orderly and workmanlike manner in keeping with current standards of the industry. 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 or by separate contractors.

#### **1.1.5 THE DRAWINGS**

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

#### **1.1.6 THE SPECIFICATIONS**

The Specifications are the written requirements of the Contract Documents for products, materials, workmanship,

and performance of related services.

#### **1.1.7 THE PROJECT MANUAL**

The Project Manual is the volume of written Construction Documents typically containing Bidding Requirements, contract forms, Conditions of the Contract and Specifications.

#### **1.1.8 PUNCH LIST**

A punch list is a comprehensive list of incomplete, defective or incorrect Work prepared by the Contractor, Design Professional or Owner to indicate Work required to be completed. Specific punch lists required by the Contract Documents include the Substantial Completion Punch List created by the Contractor prior to application for Substantial Completion in accordance with Paragraph 9.8, and that includes the Close-Out Punch List as required by Paragraph 9.10, and any other punch list created by the Owner or Design Professional for the purposes of this Paragraph and otherwise successful completion of the Work.

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

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

**1.2.2** Reasonably Inferable, as used in this Contract, shall mean information or knowledge that is derivable or evident by prudent and diligent examination of the Contract Documents and other information reasonably available by the Contractor or Subcontractor knowledgeable in their field and includes items:

1. specified in the Contract Documents required to complete the Work, but not graphically indicated. Contractor shall provide the minimum product or work necessary to fulfill the specifications or otherwise the requirements of any industry standards, such as, but not limited to, final function of Work such as strength, profile, or use as indicated by the Contract Documents; and,
2. shown or graphically indicated as required to complete the Work but not specified. Contractor shall provide the minimum product or work necessary to complete the depicted Work, such as, but not limited to, final function of Work such as strength, profile, or use as indicated by the Contract Documents.

**1.2.3** Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings are for convenience of reference only and shall not control the Contractor in dividing the work among Subcontractors or in establishing the extent of Work to be performed by any trade. Such separation will not operate to make the Owner or Design Professional an arbiter of labor disputes or work agreements.

**1.2.4** Words shall be first interpreted within the context they are used and by definition, if any, provided by the Contract Documents themselves. Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in accordance with such recognized meanings. If the meaning of a word is not clear from the Contract Documents or have a well-known technical or construction industry meaning, the Webster's Collegiate Dictionary, current at time of contract, meaning shall apply.

#### **1.2.5 INCONSISTENCIES**

In the event of conflicts in the Contract Documents, the most restrictive or otherwise most beneficial to the Owner shall apply to all similar conditions. Other rules for conflicts in the Contract Documents shall be that:

1. Addenda shall govern over all other Contract Documents and subsequent Addenda shall govern over

prior Addenda only to the extent modified;

2. between drawings and specifications, the specifications shall govern;
3. within the drawings:
  - a) schedule, when identified as such, shall govern over notes or other directions included within the drawings.
  - b) specific note shall govern over general note.
  - c) note evidently intended to be used as a general or typical note, shall be used as such throughout.
  - d) dimensions provided shall take precedence over scaled measurements.
  - e) large scale drawings shall take precedence over smaller scale drawings; and
4. General Conditions shall govern over all sections of the Contract Documents, except as modified by Supplementary General Conditions or Addenda.
5. The Contractor shall comply with the provisions of Article 3.2 in providing notification of conflict within the Contract Documents, regardless of rules governing such conflicts and contained in this subparagraph.

### **1.3 CAPITALIZATION**

**1.3.1** Within the General Conditions, these terms are capitalized when they are used specifically in relation to the Agreement: Owner and Contractor who are parties to this Agreement, Design Professional who performs services under agreement with the Owner, Subcontractors who perform work under subcontract at any tier with the Contractor, the various Bidding and Contract Documents, Project, Work, titles of numbered Articles and Paragraphs within the Contract Documents, and names used to identify parts of the Project. When these terms are used generically and not specifically associated with the Project, they are not capitalized.

### **1.4 INTERPRETATION**

**1.4.1** 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 EXECUTION OF CONTRACT DOCUMENTS**

**1.5.1** The Contract Documents shall be signed by the Owner and Contractor. If either the Owner or Contractor does not sign all the required documents of the Contract Documents, the Design Professional shall identify such unsigned documents.

**1.5.2** Execution of the Contract by the Contractor is 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.

### **1.6 OWNERSHIP AND USE OF DRAWINGS AND SPECIFICATIONS**

**1.6.1** Drawings, specifications and copies thereof shall remain the Owner's property. They are not to be used on another project. Neither the Contractor nor any Subcontractor, material supplier or equipment supplier or any person or entity shall own or claim a copyright to any Drawings, Specifications or any other documents prepared or developed for definition of the Work. The Owner will retain all common law, statutory and other reserved rights, in addition to the copyrights. The Contractor, Subcontractors, material suppliers and equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents for use in the execution of their Work under the Contract Documents. 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 Owner's copyrights or other reserved rights.

## **1.7 GLOSSARY OF COMMONLY-USED TERMINOLOGY**

**1.7.1** These General Conditions utilize specific terms which relate to the Owner's organization, systems, and standard forms and documents. Examples of such terms are listed and defined as follows:

- 1. "Modification Change Request (MCR)"** is a written document required by the Owner on matters involving changes in the Work, and as defined by Paragraph 7.2.

## **ARTICLE 2 OWNER**

### **2.1 GENERAL**

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

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

**2.2.1** The Owner shall, at the written request of the Contractor, prior to commencement of the Work and thereafter, furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

**2.2.2** Except for permits and fees, including those required under Subparagraph 3.7.1, which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities that shall include utility expansion charges but, not tapping fees.

**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** Unless stated otherwise in the Contract Documents, the Owner shall furnish in accordance with Article 6 specific testing, adjusting and compliance monitoring and explicitly:

- 1.** geotechnical testing and analysis including soil testing and compaction, but excluding load testing for caissons and piers; and,
- 2.** concrete testing including slump analysis and compression testing with, at the Owner's request, the Contractor responsible for forming test cylinders or similar; and
- 3.** testing and balancing of heating and air-conditioning systems with the Contractor responsible for timely, diligent and coordinated corrections to Work required until performance is compliant with the Contract Documents.

The Contractor shall be responsible for testing and costs as defined by Paragraph 13.5 and Subparagraph 12.2.1.1.

**2.2.5** Information or services required of the Owner by the Contract Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Contractor's performance of the Work, under the Owner's control, shall be furnished by the Owner after receipt from the Contractor of a written request for such information or services.

**2.2.6** Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, five (5) copies of Drawings and Project Manuals; however, the Contractor may have more copies free of charge if they are available without additional cost to the Owner.

### **2.3 OWNER'S RIGHT TO STOP THE WORK**

**2.3.1** If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2 or persistently fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Subparagraph 6.1.3.

### **2.4 OWNER'S RIGHT TO CARRY OUT THE WORK**

**2.4.1** If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven (7) day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven (7) day period, without prejudice to other remedies that the Owner may have, correct such deficiencies. In such case, an appropriate Modification in accordance with Article 7 shall be issued deducting from payments then or thereafter due the Contractor for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Design Professional's additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

**2.4.2** If in the event that the Contractor defaults or neglects to carry out the Work to final completion in keeping with the Substantial Completion Schedule provided in accordance with Subparagraph 9.8.2 and, fails within a seven (7) day period after receipt of written notice from the Owner to correct such default with diligence and promptness, the Owner may after such seven (7) day period, without prejudice to other remedies, correct Punch List and Close-Out deficiencies to achieve project completion without further notice to the Contractor or its surety. In such case, an appropriate Modification in accordance with Article 7 shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Design Professional's additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

**2.4.3** In carrying out the Owner's right to complete the Work in accordance with Paragraph 2.4, the Owner shall have the right to exercise the Owner's sole discretion as to the manner, methods and reasonableness of costs of completing the Work.

## **ARTICLE 3 CONTRACTOR**

### **3.1 GENERAL**

**3.1.1** The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The 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 Design Professional in the Design Professional's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than Contractor.

**3.1.4** The Contractor shall, prior to bid, be properly licensed according to the requirements of the State of Colorado and shall ensure to the Owner that such license shall remain in effect for the duration of the Work and warranty periods.

**3.1.5 Debarred or Suspended Contractors**

**3.1.5.1** A business (Contractor, Subcontractor, or supplier) that has either been debarred or suspended pursuant to the requirements of the State of Colorado shall not be permitted to do business with the State and shall not be considered for award of contract during the period for which it is debarred or suspended.

**3.1.6 Bribes, Gratuities and Kickbacks**

**3.1.6.1** It is illegal in the State of Colorado for any public employee to solicit or accept anything of value in connection with award of contract for this Bid and for any person to offer or pay anything of value to any such public employee.

**3.1.7 Assignment of Antitrust Claims**

**3.1.7.1** The Contractor agrees that any and all claims that the Contractor may have or that may inure to the Contractor for overcharges resulting from antitrust violations as to goods, services, and materials purchased in connection with this Bid are hereby assigned to the Owner, but only to the extent that such overcharges are passed on to the Owner. The Contractor further agrees to require each of its Subcontractors and suppliers to assign any and all such claims for overcharges to the State by executing an assignment on the form provided by the Owner for such purpose. The executed forms (see Section 00 4336 of the Bid Documents) shall be submitted prior to the commencement of the Work or the supplying of any materials by the supplier or Subcontractor. The submission of this executed form may be waived by the Owner upon a showing of a good-faith effort by the Contractor to obtain agreement in writing from its supplier or Subcontractor. Waiver by the Owner will not unreasonably be denied.

**3.1.7.2** It is agreed that the Contractor retains all rights to any such antitrust claims to the extent of any overcharges not passed on to the Owner, including the right to any treble damages attributable thereto.

**3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

**3.2.1** Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Subparagraph 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating construction by the Contractor and for the purpose of discovering errors, omissions in the Contract Documents; any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly in writing to the Design Professional as a Request for Interpretation in accordance with Subparagraph 3.2.4.

**3.2.2** Before ordering any materials or proceeding with Work, the Contractor and Subcontractors shall verify measurements at the Work site and shall be responsible for the correctness of such measurements.

**3.2.3** Any design errors or omissions noted by the Contractor during this review shall be reported promptly in writing to the Owner and to the Design Professional, but 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. The Contractor is not required to ascertain that the Contract Documents are



in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any suspected non conformity discovered by or made known to the Contractor shall be reported promptly in writing to the Owner and to the Design Professional. If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Design Professional and Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

**3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Design Professional in response to the Request for Interpretation pursuant to Subparagraphs 3.2.1 and 3.2.1.1, the Contractor shall make Claims as provided in Subparagraphs 4.3.6 and 4.3.7. If the Contractor fails to perform the obligations of Subparagraphs 3.2.1 and 3.2.1.1, the Contractor shall pay such costs and damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents as would have been avoided if the Contractor had performed such obligations.

### **3.2.4 REQUEST FOR INFORMATION**

**3.2.4.1** Any question concerning a variation or deviation from the Contract Documents, including a minor change in the Work found necessary due to actual field conditions, shall be submitted to the Design Professional as a Request for Interpretation (RFI) for review and resolution before proceeding with the Work. When submitting an RFI, the Contractor must provide all information necessary for the Design Professional to promptly process, including detailed:

1. reference(s) to Specification number, Drawing page and detail, and the like;
2. description of issue;
3. drawings, photos or sketches of conditions, if necessary; and,
4. submittals or other information as necessary to facilitate resolution.

**3.2.4.2** Request for Interpretation may be initiated only by the Contractor and shall be answered by Design Professional within **ten (10) days**, or other reasonable time agreed upon between the parties. All Subcontractor RFI's must be initiated through the Contractor. All answers to RFI's by the Design Professional's consultants or Owner must be initiated through the Design Professional.

**3.2.4.3** If substitutions are allowed after the contract award, RFI shall not be used for any substitution request (see Subparagraph 3.4.2).

### **3.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

**3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Design Professional and shall not proceed with that portion of the Work without further written instructions from the Design Professional with concurrence from the Owner. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any resulting loss or damage not due to negligence of the Contractor, its employees, subcontractors or their agents or employees. This paragraph

shall not be deemed to create a duty on the part of the Design Professional or the Owner to the Contractor, Subcontractor or their employees to monitor for jobsite safety.

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

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

### **3.4 LABOR AND MATERIALS**

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

**3.4.2** The Contractor may request substitution of material only if:

1. allowed after the contract award;
2. all supporting information has been evaluated and approved by the Contractor;
3. includes a detailed itemized comparison of the proposed substitution with the specified product;
4. acceptance does not include substantial revision of Contract Documents, unless Contractor agrees to reimburse the Owner for those costs; and,
5. substitution request is submitted as a formal MCR with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order.

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

### **3.5 WARRANTY**

**3.5.1** The Contractor warrants to the Owner and Design Professional that materials and equipment furnished under the Contract will be of good quality and new, unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance and improper operation, or normal wear and tear and normal usage. If required by the Design Professional, the Contractor shall furnish satisfactory evidence as to kind and quality of materials and equipment.

### **3.6 TAXES**

#### **3.6.1 Gross Receipts Tax (GRT)**

**3.6.1.1** The Contractor shall pay New Mexico Gross Receipts and other applicable taxes specific for the Work provided by the Contractor which are legally enacted when bids are received or negotiations concluded.

**3.6.1.2** Failure of the Contractor to be registered with TRD for payment of Gross Receipts Tax will result in all payment to Contractor to be withheld until Contractor provides adequate evidence of registration with TRD.

#### **3.6.2 Nonresident Contractor's Requirements for Gross Receipts Tax Surety Bond**

**3.6.2.1** If the total sum to be paid under the Contract is changed by ten percent (10%) or more after the date the surety bond or other acceptable security is furnished to the Director or his delegate, such person shall increase or decrease, as the case may be, the amount of the bond or security within fourteen (14) days after the change.

### **3.7 PERMITS, FEES AND NOTICES**

**3.7.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the Building Permit and other permits and governmental fees, licenses and inspections and Certificate of Occupancy necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids are received, negotiations concluded, and facilities occupied. Changes or modifications to the work shall include all requirements of this paragraph.

**3.7.2** The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work. Certificates of Inspection, use and occupancy will be delivered to the Owner upon completion of the Work in sufficient time for occupation of the facility in accordance with the approved schedule for the Work. Contractor shall deliver a photocopy of the Building Permit will be delivered to the Design Professional and Owner as soon as it is obtained.

### **3.8 SUPERINTENDENT**

**3.8.1** The Contractor shall employ a competent Superintendent, who is acceptable to the Owner, and necessary assistants who shall be in attendance at the Project site during performance of the Work. The Superintendent shall represent the Contractor, and communications given to the Superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

**3.8.2** Within **ten (10) days after Notice of Award** and commencement of the Work, the Contractor shall submit to the Design Professional, for the Owner's consideration for approval, a resume and Statement of Qualification of proposed Superintendent(s) and assistants. During construction, the Contractor shall replace individuals who are no longer acceptable to the Owner and shall submit a resume and Statement of Qualification for proposed replacements.

### **3.10 CONTRACTOR'S SCHEDULES, LOGS, MEETINGS AND REPORTS**

**3.10.1** The Contractor, promptly after being awarded the Contract and before the first payment application, shall prepare and submit for the Owner's and Design Professional's information a Critical Path Construction Schedule for the Work that indicates the intended start and completion of the various construction activities, which shall be implemented and adhered to by the Contractor, Subcontractors, material suppliers and equipment suppliers. At a minimum, the schedule shall be a GANTT type schedule and shall not exceed time limits allowed by the Contract Documents with no fewer work breakdown events than line items of the Schedule of Values. The Schedule will incorporate and make provisions for significant known Owner activities, holidays and other special occasions. The Contractor will acknowledge that a reduction in activity may be necessary during the time prior to and during periods of special Owner events or occasions. The schedule shall be revised to indicate Work complete before each payment application and at appropriate intervals as required by the conditions of the Work and progress of the Work. The revised schedule 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 including, but not limited to time recovery strategies and Recovery Plan, if progress of the Work is behind schedule.

**3.10.1.1** The Contractor shall perform the Work in general accordance with the most recent schedule submitted to the Owner and Design Professional.

**3.10.2** The Contractor shall prepare before the second payment application and keep current, for the Design Professional's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule

and allows the Design Professional **ten (10) days**, or as otherwise agreed between the parties, to review submittals. A Submittal Log shall be maintained by the Contractor indicating for each scheduled submittal, the appropriate specification number, the date of submission, the date of approval and any re-submittals.

**3.10.3 Biweekly Meeting:** Prior to the start of Work on the site and in no event later than the first payment application, the Contractor shall establish a biweekly meeting time with the Owner and Design Professional and shall establish an agenda for the meeting. Contractor shall host the biweekly job site meeting and shall maintain meeting minutes and distribute such notes to all parties in attendance and to those requested at the next meeting within **three (3) days** of the meeting. The meetings shall include but not be limited to:

1. adoption of previous week's meeting notes that include list of attendees;
2. new business;
3. old business;
4. items requiring action with those assigned to action and expected action date;
5. outstanding RFI's;
6. outstanding submittals; and,
7. other business including review of Progress Report or Payment Application if appropriate.

Meetings shall be open forum, chaired by the Contractor and shall include any Subcontractors doing work or anticipating work in the near future or for any other reason, Owner, any entities that the Owner would like to attend, including User Representative or users of completed project, Design Professional, any consultant(s) to the Design Professional who have or will have any work under way associated with the consultant's specialty. The Contractor shall alert the Owner and Design Professional as to which consultants are requested to attend the next meeting and include request in the meeting minutes. Phone or web conferencing may be used if effective in the opinion of the Owner.

**3.10.3.1 Progress Report:** Each month, at the regularly scheduled weekly meeting that is just prior to the Contractor submitting the Payment Application for that month; the Contractor shall present a Progress Report. The Contractor prepared Progress Report shall review the Project Schedule, review the Schedule Recovery Plan if necessary, and review the Three-Week-Look-Ahead Schedule.

**3.10.4 Emergency Contact List:** The Contractor shall at the first weekly meeting, deliver to the Owner and the Design Professional an Emergency Contact List that will include emergency contacts for every company that has worked or will do work on the Project. List shall include company, main office number, after hours office number(s); and, both a primary and secondary contact name, cell number and home number. The Contractor shall keep the Emergency Contact List current and distribute the most current version to Owner and Design Professional.

### **3.11 DOCUMENTS AT THE SITE**

**3.11.1** The Contractor shall maintain at the site for the Owner, one record copy of the As-Built Drawings, Specifications, Addenda, Modification / Change Requests, and other Modifications, in good order and marked currently to record field changes and selections made during construction and Meeting Notes and Daily Job Reports. These shall be available to the Design Professional and the Owner and shall be delivered to the Design Professional for submittal to the Owner upon completion of the Work.

### **3.12 USE OF SITE**

**3.13.1** The Owner assumes no responsibility or liability for the physical conditions or safety of the Work site or for any improvements located on the Work site. The Contractor shall be solely responsible for providing a safe

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Existing High School Demolition – 206 West 7<sup>th</sup> St. | Cortez, Colorado

place for the performance of the Work. The Owner shall not be required to make any adjustment to either the Contract Sum or Contract Time concerning any failure by the Contractor or Subcontractor to comply with the requirements of this Paragraph 3.13.

**3.13.2** The Contractor will bear the cost and make the necessary arrangements and provisions for all construction water required during the entire construction period through the Owner or otherwise.

**3.13.3** The Contractor will bear the cost and make the necessary arrangements and provisions for all construction electricity including distribution required during the entire construction period through the Owner or otherwise.

**3.13.4** The Contractor will bear the cost and be responsible for temporary lighting, heating and cooling for the entire project.

**3.13.5** Any temporary utility or other work done by the Contractor to accommodate Work requirements shall be removed at the conclusion of the Work and all finishes shall be repaired to match the existing, or in the areas of new construction, equal to or exceeding the requirements of the Contract Documents.

**3.13.6** The Contractor shall request in writing any utility shut downs well in advance of necessity of any shut down and shall not proceed with any shut down without prior Owner approval. The Owner shall not be required to make any adjustment to either the Contract Sum or Contract Time concerning any failure by the Contractor or Subcontractor to comply with the requirements of this Subparagraph 3.13.3.

**3.13.7** The Contractor shall provide and maintain a suitable temporary main field office at the Project site. The Office may be in, or a part of, the existing facility, provided that prior approval is obtained from the Owner. The Contractor will move or remove their office from the existing facility at the request of the Owner.

**3.13.8** The Contractor may, if space is available, allow Subcontractors, material suppliers and equipment suppliers to provide and maintain field offices or storage trailers on the Project site for their own use. Locations and size of any office or storage trailers shall be as approved by the Contractor and Owner prior to their placement on site. The Owner or Contractor may at any time require any temporary building or trailer to be moved or removed.

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

**3.13.10** All project related vehicles either company or personal vehicles may park on-site only in areas designated by the Owner and Design Professional. Parking will only be provided to the extent space on site will allow. All Contractors' parking must be well removed from normal facility traffic, and especially away from any pedestrian crossings, walkways, or drop off or loading areas.

**3.13.11** All Contractor access to the Project site shall be by a designated construction entrance as directed by the contract documents, the Design Professional and the Owner, and shall be enforced by the Contractor.

**3.13.12** The Project working hours shall be those established by the Contract Documents and as agreed by the Owner. Any changes in project working hours such as adding shift work, extending work day hours or other similar changes must be submitted least forty-eight (48) hours in advance to the Owner for consideration.

**3.13.13** Contractor shall make every effort to minimize disruptions such as noise or dust and shall provide safe access and egress to the Owner's operations, facility, portion of facility, or surrounding areas, including, but not limited to neighborhood or community, and shall, to inform and gain approval from the Owner of planned work, prepare and present to the Owner and Design Professional for Owner approval prior to beginning construction or using the site a:

1. schedule for the work, to include phasing plans, proposed hours of operations, and activities to take place on weekends, school holidays and/or other special access requirements;

Montezuma-Cortez High School  
Existing High School Demolition – 206 West 7<sup>th</sup> St. | Cortez, Colorado

2. site logistics plan, showing proposed secure and fenced areas, locations and types of temporary barricades, material storage and staging areas, school property entrances used for material deliveries, and special material or equipment storage requirements. This plan will include a description and proposed location for the Contractor's temporary office, storage trailers, Subcontractor's trailers, sanitary facilities, employee parking areas, etc.;
3. detailed construction and phasing plan, to include locations of proposed temporary dust or noise partitions, alternate emergency egress routes, temporary facilities, means and path of moving materials and equipment into the facility, and provisions for maintaining and supplying required utility services; and,

**3.13.15** Whenever electric light for illumination purposes is found necessary for the safe progress of the work, the Contractor shall provide such lights as may be required to properly execute the work. This temporary lighting shall be constructed and arranged as not to interfere with the progress. This system of temporary lighting shall be erected and maintained strictly in accordance with the controlling codes and OSHA standards.

**3.13.16** In accordance with Paragraphs 3.15, 6.3, 10.2 and others of the General Conditions, the Contractor shall be responsible for the removal and disposal of all rubbish, debris and trash from the site which results from Work. The Contractor shall provide a dumpster, or other trash removal facility, for use by their Subcontractors and all rubbish, debris and trash shall be deposited in Contractor provided containers located at an approved location on the site. There shall be no burning of trash or other open fires on the site. If in the opinion of the Owner neatness is not maintained, the Owner may following appropriate notice to the Contractor, have the area cleaned and withhold cost from any amounts owing to Contractor.

**3.13.17** The Contractor shall, at the completion of Work in a given area, expeditiously remove all surplus material, equipment, and debris of every nature resulting from their operations, and put the areas in a neat, clean, and orderly condition. At Final Completion of the Project or an area of the Project, the Contractor shall final clean from top to bottom inside and out everything to the Owner's satisfaction..

**3.13.18** The Contractor shall in accordance with Article 10, afford protection to all adjacent areas, buildings, roads, walks, and all other property adjacent to their work. Any portion of a building or other property damaged during construction operations shall be promptly, properly and thoroughly repaired and replaced without cost to the Owner.

**3.13.19** Contractor shall maintain a safety plan that includes how the Contractor proposes to meet all OSHA and related requirements, details on safety equipment to be utilized, how the potential for fire and other potential hazards will be addressed, welding and cutting procedures and, how the Contractor will maintain safety related systems such as fire alarms, intercoms, and sprinklers while the Work is proceeding in accordance with Paragraph 3.3 and other parts of the General Conditions.

**3.13.20 Jobsite Requirements Pertaining to Personnel:**

1. All personnel on site, directly or indirectly in the employ of Contractor, are restricted from any interaction with any Owner Staff, Students, or other members of the public while on, or adjacent to Owner property except through jobsite meetings in accordance with Subparagraph 3.10.3 or as otherwise determined by the Owner;
2. shall remain in their designated work areas. Communications with any non-project related persons on or near the site shall be through project Superintendent;
3. no firearms or any other types of weapons, of any sort will be allowed on site. If any person is found to be in possession of any Firearm, of any kind, they will be directed to leave immediately and will not be allowed to return. This includes any firearms found in Company or Private vehicles, tool boxes or brought on site in any other manner;

4. it is the policy of the Owner to prohibit smoking on any occupied school campus and on a new, un-occupied, site to limit smoking to designated areas;
5. it is the policy of the Owner to prohibit use, possession, sale, and distribution of alcohol, drugs, or other controlled substances on its premises and to prohibit the presence of an individual with such substances in their body from the workplace, the Contractor shall enforce this policy; and,
6. Contractor agrees that any employee who is found in violation of requirements of this Paragraph, or of the Contract Documents, or who refuses to permit inspection shall be barred from the Project site at the discretion of the Owner in accordance with Subparagraph 13.8.4.1.

### **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.

**3.14.2** Cutting and patching shall be done by individuals skilled in working the materials involved so to prevent a reduction of visual qualities or resulting in substantial evidence of the cut-and-patch work.

**3.14.3** The Contractor shall not damage or endanger a portion of the Work, fully or partially completed, or existing construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor will not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

### **3.15 CLEANING UP**

**3.15.1** The Contractor on a daily basis shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials and shall then thoroughly clean the premises and the site to the Owner's satisfaction.

**3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor in accordance with Paragraph 6.3.

### **3.16 ACCESS TO WORK**

**3.16.1** The Contractor shall provide the Owner and Design Professional access to the Work in preparation and progress wherever located.

### **3.17 ROYALTIES, PATENTS AND COPYRIGHTS**

**3.17.1** 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 Design Professional harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Design Professional. 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 in writing to the Design Professional.

### **3.18 INDEMNIFICATION**

**3.18.1** To the fullest extent permitted by law and to the extent claims, damages, losses or expenses are not covered by Project Management Protective Liability insurance purchased by the Contractor in accordance with Paragraph 11.3, the Contractor shall indemnify and hold harmless the Owner, Design Professional, Design Professional'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 which would otherwise exist as to a party or person described in this Paragraph.

**3.18.2** In claims against any person or entity indemnified under this Paragraph by an employee of the Contractor, a Subcontractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Subparagraph 3.18.1 shall not be limited by a limitation on amount or type of damages compensation or benefits payable by or for the Contractor, Subcontractor under any Liability Insurance, Workers' Compensation Acts, Disability Benefit Acts or other employee benefit acts.

### **3.19 REPRESENTATIONS AND ASSURANCES**

**3.19.1** The Contractor, in addition to the requirements of the Contract Documents, represents to the Owner, as an inducement to the Owner to execute the Owner-Contractor Agreement, which representations will survive the execution and delivery of the Agreement and the completion of the Work that Contractor:

1. is financially solvent, able to pay debts, and has sufficient working capital to complete the Work;
2. is able to furnish the plant, tools, materials, supplies, equipment, skilled labor and sufficient experience and competence required to complete the Work equal to or exceeding industry standards;
3. in accordance with Subparagraph 3.1.4, is authorized and properly licensed to do business in the State of New Mexico and in the locale where the Work is located;
4. in execution of the Agreement and performance thereof is within the Contractor's duly authorized powers; and,
5. Subcontractors, material suppliers and equipment suppliers have visited the site of Work and have become familiar with the conditions under which the Work is to be performed, obtained all available information and have correlated observations and acquired information with the requirements of the Contract Documents including conditions:
  - a) bearing upon access to the site, accommodations required, transportation, disposal, handling and storage;
  - b) affecting availability of labor, materials, equipment, water, electricity, utilities and roads;
  - c) such as weather, river stages, flooding;
  - d) related to the apparent form and nature of the Work site, including the surface and sub- surface conditions; and,
  - e) that in general would be deemed by a prudent contractor to be material to the Work as to assess risk, contingencies and other circumstances.



## **ARTICLE 4 ADMINISTRATION OF THE CONTRACT**

### **4.1 DESIGN PROFESSIONAL**

**4.1.1** The term "Design Professional" means the Architect, Engineer or other professional person lawfully licensed to practice the profession within the State of New Mexico and can fulfill the requirements of the Contract Documents within that person's licensed authority. If lawfully allowed, the Design Professional shall also mean the Design Professional's authorized representative unless the Owner has a reasonable objection.

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

**4.1.3** If the employment of the Design Professional is terminated, the Owner shall employ a new Design Professional against whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the former Design Professional.

**4.1.4** If there is no Design Professional, the Owner shall assume the responsibilities for Administration of the Contract Documents.

### **4.2 DESIGN PROFESSIONAL'S ADMINISTRATION OF THE CONTRACT**

**4.2.1** The Design Professional will provide administration of the Contract as described in the Contract Documents, and will be an Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the work. The Design Professional will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

**4.2.2** The Design Professional, as a representative of the Owner, will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become familiar with and to keep the Owner informed about the progress and quality of the Work completed, (2) to use all reasonable efforts to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Design Professional will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work that is the responsibility of the Contractor to provide. The Design Professional will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Subparagraph 3.3.1. However, if the Design Professional becomes aware of the failure of the Contractor, Subcontractors or any other person or entity performing any of the Work to use proper construction means, methods, techniques, sequences, procedures, safety precautions and programs or failure of any of the foregoing parties to carry out the Work in accordance with the Contract Document, the Design Professional shall promptly notify the Contractor and the Owner of the deficiency.

**4.2.3** The Design Professional will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Design Professional 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**

**4.2.4.1** Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized or requested by the Owner, the Owner and Contractor shall endeavor to communicate with each other through the Design Professional about matters arising out of or relating to the Contract.

Communications by and with the Design Professional's consultants shall be through the Design Professional.  
Communications by and with Subcontractors and material suppliers shall be through the Contractor.  
Communications by and with Owner's separate contractors shall be through the Owner.

**4.2.5** Based on the Design Professional's evaluations of the progress and quality of the Work, Contractor's Application for Payment and all other information available to the Design Professional, the Design Professional shall within **five (5) days** of receipt of a properly completed Application for Payment certify to the Owner the undisputed amount recommended for payment to the Contractor and shall provide specific reasoning for denial of disputed amounts.

**4.2.6** The Design Professional will have authority to reject Work that does not conform to the Contract Documents, and shall do so unless, after consultation with the Owner, Owner instructs otherwise. Whenever the Design Professional considers it necessary or advisable, the Design Professional will have authority, subject to the Owner's approval, to require inspection or testing of the Work in accordance with Subparagraphs 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Design Professional nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Design Professional to the Contractor, Subcontractors, material and equipment suppliers, their agents or employee, or other persons or entities performing portions of the Work.

**4.2.6.1** Rejection of any submittal due to non-compliance with Subparagraph 3.12.6 shall not be the basis for claim for a project delay.

**4.2.7** The Design Professional may prepare for Owner consideration, Modification / Change Requests and Change Orders. The Design Professional shall review Contractor proposals for adjustment to the Contract Sum or Contract Time relative to a Modification / Change Request and shall either approve, reject or suggest compromise to such proposals.

**4.2.7.1** The Design Professional may authorize Supplemental Instructions for minor changes in the Work as provided in Paragraph 7.4, provided there is no material change to the time, cost, specification or scope of the Work.

**4.2.8** The Design Professional will conduct observations to make recommendations to the Owner of the date or dates of Substantial Completion and the date of Final Completion, will receive, approve and forward to the Owner, for the Owner's records, written warranties, Certificates of Insurance and related documents required by the Contract and assembled by the Contractor and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

**4.2.9** Subject to the claims procedures set forth in Paragraph 4.3, the Design Professional will, in the first instance, interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Design Professional's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Design Professional shall be furnished in compliance with this Paragraph 4.2, then delay shall not be recognized on account of failure by the Design Professional to furnish such interpretations until **ten (10) days** after written request is made for them.

**4.2.10** Interpretations and decisions of the Design Professional 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 initial decisions, the Design Professional will make all reasonable efforts to secure faithful performance by both the Owner and the Contractor and will not show partiality to either, and will not be liable for results or interpretations or decisions so rendered in good faith.

### **4.3 CLAIMS AND DISPUTES**

**4.3.1** Definition. A Claim is a demand or assertion by one of the parties seeking as a matter of right, adjustment

or interpretation of Contract terms, payment of money, extension of time 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. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

**4.3.2 Time Limits on Claims.** Claims by either party must be initiated within **ten (10) days** after occurrence of the event giving rise to such Claim or within **five (5) days** after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the Design Professional and the other party.

**4.3.3 Continuing Contract Performance.** Pending final resolution of a Claim except as otherwise agreed in writing or as provided in Subparagraph 9.7.1 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

**4.3.4 Claims for Concealed or Unknown Conditions.** If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which 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, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than **ten (10) days** after first observance of the conditions. The Design Professional will promptly investigate such conditions and if 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 Design Professional determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Design Professional shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within **twenty-one (21) days** after the Design Professional has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Design Professional for initial determination, subject to further proceedings pursuant to Paragraph 4.4.

**4.3.5 Claims for Additional Cost.** If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 10.6.

**4.3.6** If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Design Professional, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Design Professional, (4) unjustified failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with this Paragraph 4.3.

#### **4.3.7 CLAIMS FOR ADDITIONAL TIME**

**4.3.7.1** If the Contractor wishes to make Claim for an increase in the Contract Time, it shall be submitted as a Modification / Change Request in accordance with Article 7. In the case of a continuing delay only one Claim is necessary.

**4.3.7.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction. Substantiation must include supporting evidence from the U.S. Weather Bureau or similar for the previous ten (10) year averages for the locale

of the Project, as well as, evidence supported by original project schedule and daily job logs that specific Work events falling on the critical path were delayed.

**4.3.8 Injury or Damage to Person or Property.** If either party to the Contract 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 **five (5) days** after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

**4.3.8.1** The Contractor shall promptly notify the Owner and Design Professional in writing of any claims received by the Contractor for personal injury or property damage related to the Work.

**4.3.9** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are changed in a proposed Modification / Change Request by more than fifteen percent (15%), the applicable unit prices shall be equitably adjusted in accordance with Article 7.

**4.3.10 Claims for Consequential Damages.** The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes damages incurred by the:

1. Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
2. Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, loss of profit except anticipated profit arising directly from the Work performed.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Subparagraph 4.3.10 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

#### **4.4 RESOLUTION OF CLAIMS AND DISPUTES**

**4.4.1 Decision of Design Professional.** Claims, including those alleging an error or omission by the Design Professional, but excluding those arising under Paragraphs 10.3 through 10.5, shall be referred initially to the Design Professional for decision. An initial decision by the Design Professional shall be required as a condition precedent to mediation, arbitration or litigation of all Claims between the Contractor and Owner arising prior to the date final payment is due, unless **thirty (30) days** have passed after the Claim has been referred to the Design Professional with no decision having been rendered by the Design Professional. The Design Professional will not decide disputes between the Contractor and persons or entities other than the Owner.

**4.4.2** The Design Professional will review Claims and within **ten (10) days** of the receipt of the 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 Design Professional is unable to resolve the Claim if the Design Professional concludes that, in the Design Professional's sole discretion, it would be inappropriate for the Design Professional to resolve the Claim.

**4.4.3** In evaluating Claims, the Design Professional 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 Design Professional in rendering a decision. The Design Professional may request the Owner to authorize retention of such persons at the Owner's expense.

**4.4.4** If the Design Professional requests a third party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within **ten (10) days** after receipt of such request, and shall either

provide a response on the requested supporting data, advise the Design Professional when the response or supporting data will be furnished or advise the Design Professional that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Design Professional will either reject or approve the Claim in whole or in part.

**4.4.5** The Design Professional will approve or reject Claims by written decision, which shall state the reasons therefore and which shall notify the parties of any change in the Contract Sum or Contract Time or both. The approval or rejection of a Claim by the Design Professional shall be final and binding on the parties but subject to mediation and arbitration.

**4.4.6** A written decision of the Design Professional shall state that (1) the decision is final, but subject to mediation and arbitration and (2) a demand for arbitration of a Claim covered by such decision must be made within **ten (10) days** after the date on which the party making the demand receives the final written decision, then failure to demand arbitration within said **thirty (30) days** period shall result in the Design Professional's decision becoming final and binding upon the Owner and Contractor. If the Design Professional renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence, but shall not supersede arbitration proceedings unless the decision is acceptable to all parties concerned.

**4.4.7** Upon receipt of a Claim against the Contractor or at any time thereafter, the Design Professional or 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 Design Professional or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

## **4.5 MEDIATION**

**4.5.1** Any Claim arising out of or related to the Contract, except those waived as provided for in Subparagraph's 4.3.10, 6.2.3, 9.11.4, and 9.11.5 shall, after initial decision by the Design Professional or **thirty (30) days** after initial decision by the Design Professional or **thirty (30) days** after submission of the Claim to the Design Professional, be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.

**4.5.2** The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the procedures of the State of Colorado except that before any party may select a mediator it must confer in good faith with the other party concerning the selection of a mutually acceptable mediator. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of **sixty (60) days** from the date of notice of mediation session, unless stayed for a longer period by agreement of the parties or court order.

**4.5.3** 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. Settlement Agreements reached in mediation and signed by all parties involved in the dispute shall be enforceable in any court having jurisdiction thereof.

## **ARTICLE 5 SUBCONTRACTS**

### **5.1 DEFINITIONS**

**5.1.1** A Subcontractor is a person or entity who has a direct or indirect contract with the Contractor to perform a portion of the Work regardless of contractual tiers below the prime contract between the Owner and Contractor. 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.

## **5.2 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 Notice of Intent to Award, shall furnish in writing to the Owner through the Design Professional the names of entities and key personnel (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Design Professional will promptly reply to the Contractor in writing stating whether or not the Owner or the Design Professional, after due investigation, has reasonable objection to any such proposed entity or person. Failure of the Owner or Design Professional to reply promptly shall constitute notice of no reasonable objection.

**5.2.2** The Contractor shall not contract with a proposed person or entity to whom the Owner or Design Professional 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 Design Professional has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Design Professional 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 the change, and an appropriate Modification in accordance with Article 7 shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

**5.2.4** The Contractor shall not change a Subcontractor, person or entity previously selected if the Owner or Design Professional makes reasonable objection to such substitute.

## **5.3 SUBCONTRACTUAL AND SUPPLIER RELATIONS**

**5.3.1** By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including performance of Work, responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Design Professional. Each subcontract and supplier agreement shall preserve and protect the rights of the Owner and Design Professional under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with suppliers. The Contractor shall make available to each proposed Subcontractor and supplier, prior to execution of the Agreement, copies of the Contract Documents to which the Subcontractor and suppliers where appropriate will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents.

**5.3.2** Nothing contained in Subparagraph 5.3.1 or elsewhere in the Contract Documents shall create any contractual relationship with or cause of action in favor of a third party against the Owner.

**5.3.3** Each entity intending to do work on the Project shall, prior to bid, be properly licensed according to the requirements of the State of Colorado and shall ensure to the Contractor and to the Owner that such license shall remain in effect for the duration of the Work and warranty periods.

## **5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS AND SUPPLIER AGREEMENTS**

**5.4.1** Each subcontract or supplier agreement for a portion of the Work may be assigned by the Contractor to the Owner provided that assignment is:

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

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

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

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

**6.1.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these, including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Paragraph 4.3.

**6.1.2** When separate contracts are awarded for different portions of the Project or other Construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

**6.1.3** The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor and Subcontractors shall participate with other separate contractors, the Owner's own forces and the Owner in reviewing and coordinating their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised. The Contractor and Subcontractors shall not delay or cause additional expense to another contractor by neglecting to perform correctly or to an agreed schedule. In the absence of a schedule mutually agreed upon by all parties, the Owner may create a binding schedule for all parties or take other appropriate action to avoid unnecessary delay and damages.

**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 which apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11, and 12.

### **6.2 MUTUAL RESPONSIBILITY**

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

**6.2.2** If part of the Contractor's Work depends on proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Design Professional and Owner apparent discrepancies or defects in such other construction

that would render it unsuitable for proper execution and results. Failure of the Contractor to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

**6.2.3** The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities and damage to the Work or defective construction of the Owner or a separate Owner contractor. Should the Contractor sustain any personal injury or damage to property through any act or omission of any other Contractor having a contract with the Owner, the Contractor sustaining damage will have no claim or cause of action against the Owner for such damage and hereby waives any such claim.

**6.2.4** The Contractor shall promptly remedy damage caused by the Contractor to completed or partially completed or existing construction or to property of the Owner or separate contractors as provided in Subparagraph 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 Subparagraph 3.14.

### **6.3 OWNER'S RIGHT TO CLEAN UP**

**6.3.1** If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Design Professional will allocate the cost among those responsible.

## **ARTICLE 7 CHANGES IN THE WORK**

### **7.1 GENERAL**

**7.1.1** Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Modification / Change Request, or by Supplemental Instruction 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** Any material change in the Work require a Modification / Change Request (MCR) that has been finalized by agreement by the Owner and based on proposal from the Contractor and recommendation of the Design Professional. A Change Order, required to modify the Purchase Order, shall accumulate approved MCRs, and must be approved by the Owner, Contractor and Design Professional. Supplemental Instruction for a minor change in the Work, will not create cost or time effect on the Project in accordance with Subparagraph 7.4.1, and may be issued only by the Design Professional.

**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 Modification / Change Request or Supplemental Instruction.

### **7.2 MODIFICATION / CHANGE REQUEST**

**7.2.1** A Modification / Change Request or MCR is a written document that may be initiated by the Contractor, Design Professional or Owner that identifies why there is a potential change in the Work that may require an adjustment, to the Contract Sum or Contract Time, or both, and suggests how that the change should take place. Following the initiation of a MCR by one of the parties, the Owner:

1. must agree to MCR's content and feasibility and if in agreement may authorize the MCR to; proceed with estimates of costs only; or proceed with the Work with estimates of costs to follow in accordance with



Subparagraph 7.2.4;

2. will consider proposal(s) from the Contractor in accordance with Article 7 for adjustment to Contract Sum or Contract Time, if any; and,
3. shall authorize the Work to proceed if not previously authorized in accordance with Subparagraph 7.2.4 and authorize adjustment to Contract Sum in accordance with Paragraph 7.2 or, shall reject the MCR and replace with another or, stop all action on the MCR.

**7.2.1.1** A MCR is required for any modification or change in the Work that:

1. may affect the Contract Sum or Time;
2. alters the Work by substitution or any other way not considered minor as defined by Paragraph 7.4; or,
3. otherwise materially affect the Work or intended function of the Project including a change to aesthetics.

**7.2.1.2** A MCR when finalized by Owner approval, may modify the Contract without invalidating the Contract and may order changes in the Work within the general scope of the Contract with Contract Sum and Contract Time. Owner approval of a MCR:

1. shall adjust the Contract Sum accordingly; and,
2. will begin Owner consideration of related adjustment to Contract Time, if any;
3. and shall be included into a Change Order upon approval of the parties in accordance with Paragraph 7.3.

A MCR shall be used to:

1. approve a modification or change to the Work;
2. accumulate data such as cost and time impacts before authorizing a modification or change to the Work;
3. direct Work to be done with cost, time, etc. to follow in the absence of total agreement on the terms of a modification or change to the Work or to prevent delay of the Work; and,
4. stop all action on a proposed modification or change to the Work.

**7.2.3** If Work defined by a MCR requires an adjustment to Contract Sum or Contract Time, the Contractor shall, within **ten (10) days** of the date of Owner issuance of MCR or delivery of MCR to Contractor if that date is later, prepare and deliver to the Design Professional a proposal for such adjustment based on:

1. unit prices or lump sum allowances stated in the Contract Documents;
2. unit price or lump sum determined in accordance with Subparagraph 7.2.5;
3. provision in the MCR as determined by the Owner and in accordance with Subparagraph 7.2.5; or,
4. a manner agreed upon by the parties and consistent with Subparagraph 7.2.5 and these General Conditions.

**7.2.4** Upon receipt of a Modification / Change Request authorized by the Owner to "Proceed with the Work with costs to follow", the Contractor shall consider the MCR a directive and promptly proceed with the change in the Work involved and, provide a proposal for adjustment to Contract in accordance with Subparagraph 7.2.3.

**7.2.5 Allowable Costs and Fees:** If a proposal to adjust the Contract Sum exceeds \$200 and if not otherwise provided in the MCR or Contract Documents, the Contractor, shall provide an itemized accounting\* together with appropriate supporting data that include :

1. quantities and unit costs of materials, including cost of transportation, whether incorporated or consumed;

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Existing High School Demolition – 206 West 7<sup>th</sup> St. | Cortez, Colorado

2. quantities and unit costs of labor, including labor burdens such as social security and unemployment insurance, fringe benefits such as health insurance required by agreement or custom (Labor Burdens shall not include retirement plans qualified by minimum employment time, organizational fees or dues, legal or related expenses, information technology training and the like);
3. quantities and unit utilization or rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
4. quantities and unit costs of on-site supervision and field office personnel directly attributable to production of the change and not included in Subparagraph 7.2.5.6;
5. quantities and unit costs of and insurance, use tax or similar related to the Work;
6. Overhead and Profit\*\*;
7. quantities and unit premiums for all bond costs and permit fees on items 1 through above; and,
8. State Gross Receipts Tax (GRT); and,

\* If pricing compounds, the compounding order shall be the same as listed items 1 - 8 of this Sub-paragraph.

\*\* Overhead and Profit (O&P): Overhead may include, but is not limited to, project management costs such as time keeping, project accounting, main office expenses, estimating, processing of documents, computers, minor tools and incidentals, may be added on top of items 1 through 5 above it shall include the Fee proposed by the CM at Risk in its response to the Request for Proposals plus an allowance for Overhead, provided that combined they do not exceed the following:

Subtotal before applying overhead and profit	Under \$2000	\$2000 to \$10,000	\$10,001 to \$50,000	Over \$50,001
Contractor - For work performed by own forces	18%	16%	14%	12%
Contractor - For subcontracted work.	11%	9%	6%	5%
For work performed by 1 <sup>st</sup> tier	18%	15%	12%	9%
For work performed by 2 <sup>nd</sup> tier	10%	8%	5%	4%
Subcontractor - Maximum aggregate O&P allowed over cost regardless of number of tiers.	29%	24%	18%	14%

**7.2.6 Time-and-Material:** If for the purpose of authorizing Work to proceed upon issuance on an MCR prior to the Owner receiving proposal of costs, so that labor or material costs are to be accumulated for later inclusion into a proposal to adjust the contract sum, the MCR must clearly state conditions and limitations of time-and-material work to proceed under the change in Work with costs to follow provision of the MCR. At a minimum, the MCR shall state the maximum allowable cost. In addition, the Daily Job Report must reflect all appropriate detail on related Work, such as work performed that day, number of workers, materials received and similar. A separate daily worker log must also be maintained that will be included in the proposed cost of the MCR. The daily

worker log for each MCR, must list each worker, the type of work performed and the hours worked, and must be signed-off daily by an individual, agreed upon in the MCR, that may be the Project Superintendent. In accordance with this Paragraph 7.2, proposal of costs shall be delivered by the Contractor within Ten (10) days of issuance of MCR.

**7.2.7 Audit:** The Owner shall be entitled to audit the books and records of a Contractor or any Subcontractor for any time-and-material or negotiated cost, such as those associated with a change in the Work, to the extent that such books and records relate to the proposal or performance of such Work. Such books and records shall be maintained by the Contractor for a period of three years from the date of final payment under the prime Contract and by the Subcontractor for a period of three years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.

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

**7.2.9** A proposed adjustment to Contract Sum and Contract Time submitted by Contractor for a MCR indicates agreement of the Contractor therewith for the proposed Modification. The Design Professional shall make recommendation to the Owner on the appropriateness of the proposed adjustment. The Owner may, after evaluation of the proposal and review of the Design Professional's recommendation, accept the Contractor's proposed adjustment to Contract Sum and finalize the MCR. If Owner approves MCR, it shall be recorded for inclusion into a Change Order.

**7.2.10** If the Contractor does not respond promptly with a proposal for adjustment to Contract Sum and Contract Time relative to an MCR or disagrees with the method for adjustment, or; if there are amounts or terms in dispute for such changes in the Work; the Design Professional on the basis of reasonable expenditures or savings of those performing the Work attributable to the change in the Work shall make a determination for purpose of settlement of dispute. That determination of adjustment to the Contract Sum and Contract Time shall be presented to the Owner and the Contractor for consideration. If the Owner or the Contractor do not agree with the Design Professional's determination, the provisions of Subparagraph 7.2.11 shall apply. When the Owner and Contractor agree with the determination made by the Design Professional concerning the adjustments in the Contract Sum, such agreement shall be effective immediately upon Contractor's acceptance in writing and Owner's approval of MCR.

**7.2.11** The Owner shall, within **fifteen (15) days** of the determination made by the Design Professional regarding adjustment to Contract Sum or Contract Time in accordance with Subparagraph 7.2.10, either:

1. accept the Design Professional's determination and, approve the MCR with the adjustment recommended by the Design Professional and record the MCR as approved by the Owner to be included into a Change Order; or
2. approve the MCR with an adjustment the Owner determines to be appropriate based on available information and record the MCR as approved by the Owner to be included into a Change Order.

Adjustment to Contract Sum in accordance with this Subparagraph 7.2.11 shall be subject to the right of Contractor to disagree and assert a claim in accordance with Paragraph 4.3.

**7.2.12** Partial agreement of an adjustment to Contract Sum or Contract Time relative to a MCR may be allowed by the Owner only if adjustment to Work, requested by the MCR, can be subdivided into independent parts. In the event of such subdivision; MCR shall be broken into separate parts with alpha suffixes such as MCR 2A, MCR 2B and so on.

**7.2.13** Periodically, approved MCR's shall be accumulated by the Owner or Design Professional into a Change

Order in accordance with Paragraph 7.3.

### **7.3 CHANGE ORDERS**

**7.3.1** A Change Order is a written instrument prepared by the Design Professional and signed by the Owner, Contractor and Design Professional, stating their agreement upon:

1. change in the work as made by finalized Modification / Change Request(s) that has been previously approved by the Owner or authorized in accordance with Sub-paragraphs 7.2.8 or 7.2.9.;
2. amount of the adjustment, if any in the Contract Sum resultant of approved MCR(s);
3. extent of the adjustment, if any, in the Contract Time related to approved MCR(s); or,
4. if disagreement on adjustment in the Contract Time, parties agree to postponement of inclusion of any adjustment to Contract Time into a Change Order; however, all Contractor proposed or Owner offered adjustment(s) to time shall be incorporated into a Change Order prior to Substantial Completion in accordance with Subparagraph 9.8.6.

#### **POSTPONEMENT OF ADJUSTMENT TO CONTRACT TIME LANGUAGE:**

*"At the time of this Change Order, there is no agreement on adjustment to the Contract Time related to MCR(s) XX, XX, XX and XX. The Contractor, without prejudice and without waiving any rights to such claim for adjustment to Contract Time in relation to these MCR(s), agrees to postpone claim in accordance with Paragraph 7.3 of the General Conditions."*

**7.3.2** Methods used in determining adjustments to the Contract Sum include those listed in Paragraph 7.2. Proposals submitted that do not follow the requirements under Paragraph 7.2 will be returned to be resubmitted prior to processing.

### **7.4 MINOR CHANGES IN THE WORK**

**7.4.1** The Design Professional will have authority to order Supplemental Instructions for minor changes in the work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

## **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 Design Professional in accordance with Paragraph 9.8.

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

### **8.2 PROGRESS AND COMPLETION**

**8.2.1** Time limits stated in the Contract Documents are of the essence of the Contract. By executing the

Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

**8.2.2** The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Contract Documents, a Notice to Proceed shall be given by the Owner that shall establish the commencement of the Contract Time as provided by the Contract Documents.

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

**8.2.4** The Owner shall not be liable to the Contractor for additional time or money if the Contractor submits a progress report or construction schedule expressing an intention to achieve completion of the Work prior to the Contract Time and then is not able to achieve intended accelerated schedule regardless of the reason.

### **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 Design Professional, 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 which the Design Professional and the Owner determine may justify delay, then the Contract Time shall be extended by Modification in accordance with Article 7 for such reasonable time as the Design Professional in concurrence with the Owner may determine.

**8.3.2** Extensions of time not associated with modifications or changes to the Work shall not be allowed to increase the Contract amount for overhead or for any other reason and shall strictly apply toward liquidated damages.

**8.3.3** Claims relating to time shall be made in accordance with applicable provisions under Paragraph 4.3.

### **8.4 CONTRACT TIME AND LIQUIDATED DAMAGES**

**8.4.1** The Contractor agrees that the Work will be prosecuted regularly, diligently and without interruption at such rate of progress as will ensure completion within the Contract Time. It is expressly understood and agreed, by and between the Contractor and the Owner, that the Contract Time is a reasonable time for completion of the Work, taking into consideration the average climate range and usual industrial conditions prevailing in the locality of the Project. If the Contractor neglects, fails or refuses to complete the Work within the Contract Time, or any proper extension granted by the Owner, then the Contractor agrees to pay the Owner the amount specified in the Contract Documents, not as a penalty, but as liquidated damages.

**8.4.2** The parties agree that the amount of the likely damage to the Owner for such delay is difficult to ascertain at the time of execution of this Agreement, but that a reasonable estimate of such damages for delay is set forth in the contract Documents. Liquidated damages may be deducted from any monthly progress payments due to the Contractor or from other monies being withheld from the Contractor when a reasonable estimate of expected Substantial Completion can be determined by the Owner.

**8.4.3** Final accounting of Liquidated Damages shall be determined at Substantial Completion and the Contractor and Surety are liable for any liquidated damages over and above unpaid balance held by the Owner.

## **ARTICLE 9 PAYMENTS AND COMPLETION**

## **9.1 CONTRACT SUM**

**9.1.1** 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**

**9.2.1** Before the first Application for Payment, the Contractor shall submit to the Design Professional a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Design Professional may require. Support data shall include accounting of all Project costs distributed to Level 2 UniFormat™ convention. The schedule of values, upon acceptance by the Design Professional with the Owner's prior approval, shall be used as a basis for reviewing the Contractor's Application for Payment.

**9.2.1.1** Gross Receipts Tax shall be indicated for the total amount of all items included in the Schedule of Values. In the event of a GRT rate change, the Contractor shall submit an MCR requesting an adjusted amount on balance to complete the Contract.

**9.2.2** To protect the Owner from the significant liability and arduous accounting efforts required by lingering documentation and close-out work, the Schedule of Values shall provide a separate line item titled "Documentation and Close-Out" to provide a value consistent with and appropriate to required documentation provisions throughout the Contract including those required by Subparagraph 4.2.4.3 and Paragraph 9.10. The value of the Documentation and Close-Out line item shall not be less than the following:

## **9.3 APPLICATIONS FOR PAYMENT**

**9.3.1** No later than the 25<sup>th</sup> of each month, the Contractor shall submit to the Design Professional an itemized Application for Payment for operations completed in accordance with the Schedule of Values for that month. Such application shall be supported by such data substantiating the Contractor's right to payment as the Owner or Design Professional may require such copies of requisitions from Subcontractors and material suppliers. No Applications for Payment will be processed until the initial Schedule of Values is received and approved by Design Professional with concurrence from the Owner and for subsequent payment applications; the Project Schedule has been updated in accordance with Subparagraph 3.10.1.

**9.3.1.1** No Application for Payment may include more than:

1. ninety-five percent (95%) of the scheduled value of any work requiring testing prior to testing and verification of testing by the Design Professional to meeting requirements of the Contract Documents;
2. ninety percent (90%) of the scheduled value for systems that require, as a part of acceptance of the Work, testing or balancing including, but not limited to, mechanical heating, air- conditioning and electrical distribution until testing, balancing or other verification required by the Contract Documents has been completed and verified as acceptable by the Design Professional.

**9.3.1.2** Such applications may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to 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 into the Work. Any payments for such materials or equipment shall be conditioned upon the Contractor's demonstration that they are adequately protected from weather, damage, vandalism and theft and that such materials or equipment have been inventoried and stored in accordance with procedures established by or approved by the Owner. 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 and with sufficient Contractor provided insurance against loss, and with Owner named as co- insured, to cover the value of stored materials and their transport to the Project.

**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 be free and clear of 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, material suppliers and equipment relating to the Work. The Contractor additionally warrants that all As-Built drawings accurately depict completed Work covered by an Application for Payment.

## **9.4 CERTIFICATES FOR PAYMENT**

**9.4.1** Application for Payment must be submitted to the Design Professional no later than the 25<sup>th</sup> of the month for which the application is being made. The Design Professional will review with the Owner the accuracy and appropriateness of the application and, within **five (5) days** after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Design Professional determines is properly due, or notify the Contractor and Owner in writing of the Design Professional's reasons for withholding certification in whole or in part as provided in Subparagraph 9.5.1. In no event will the Owner accept or process a Certification for Payment received after the 10<sup>th</sup> of the month following the month for which the application is being made. Certifications for Payment received after the 10<sup>th</sup> of the month "owner-cut-off-date" will be processed along with the following month's applications and will not be considered in default of the provisions of Subparagraph 9.4.3,

**9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Design Professional to the Owner, based on the Design Professional's evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Design Professional's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents and that As-Built drawings are current to actual Work completed. 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 Design Professional. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified.

**9.4.3** The Owner will issue payment to the Contractor in the amount certified in the approved Certificate for Payment within **twenty-one (21) days** from the end of the progress payment period which shall be the end of the month for which the Certificate of Payment is made. The **five (5) days** allowed the Design Professional for review in Subparagraphs 4.2.5 and 9.4.1 are partially included in the **twenty-one (21) day** period.

## **9.5 DECISIONS TO WITHHOLD CERTIFICATION**

**9.5.1** The Design Professional may withhold a Certificate for Payment and may assess Liquidated Damages in accordance with Paragraph 8.4, in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Design Professional's opinion the representations to the Owner required by Subparagraph 9.4.2 cannot be made. If the Design Professional is unable to certify payment in the amount of the Application, the Design Professional will notify the Contractor and Owner as provided in Subparagraph 9.4.1. If the Contractor and Design Professional cannot agree on a revised amount, the Design Professional will promptly issue a Certificate for Payment for the amount for which the Design Professional is able to make such representations to the Owner. The Design Professional may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be

necessary in the Design Professional's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Subparagraph 3.3.2, because of:

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

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

## **9.6 PROGRESS PAYMENTS**

**9.6.1** After the Design Professional has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents.

**9.6.2** The Contractor shall promptly pay each Subcontractor and supplier, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained, if any, from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments in a similar manner.

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

**9.6.4** Neither the Owner nor Design Professional 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** Payment to material suppliers shall be treated in a manner similar to that provided in Subparagraphs 9.6.2, 9.6.3 and 9.6.4.

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

**9.6.7** 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, or create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

## **9.7 FAILURE OF PAYMENT**

**9.7.1** If the Owner does not pay the Contractor the amount approved by the Design Professional or the Design Professional does not approve the application for payment then, within **forty-five (45) days** from the end of the



progress payment period, Contractor may, upon **seven (7) additional days** written notice to the Owner and Design Professional, stop the Work until payment of the amount owing has been received. Unless Contractor's action was improper or if the amount claimed is shown not to have been due, 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. In the event of a wrongful Stop-Work, the Contractor shall remain responsible to the Owner for delivering the Project in accordance with 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 complete and in compliance with the Contract Documents except for minor items so that the Owner can completely occupy or fully utilize the Work for its intended use. Owner's Occupancy under conditional approval by public authorities having jurisdiction over the Work, or occupancy of a facility or otherwise utilizing the Work under duress, shall not be considered Substantial Completion.

**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 promptly prepare and submit to the Design Professional a comprehensive Contractor's Punch List inclusive and all incomplete and non-compliant Work to be completed or corrected prior to final payment, as well as, the requirements of Subparagraph 9.10.2.

**9.8.3** The Contractor shall submit along with the punch list a separate and detailed Closeout Schedule indicating the date of Final Completion and all work to be completed before Final Completion including Close-Out requirements as provided in Paragraph 9.10. Failure to include any item on punch list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

**9.8.4** Upon receipt of the Contractor's Punch List and Closeout Schedule, the Design Professional will within **ten (10) days** make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Design Professional'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, as it is fully intended and designed to be used, the Contractor shall complete or correct such item upon inspection by the Design Professional to determine Substantial Completion. In the event the Work does appear Substantially Complete, the Design Professional will review the Contractor's Punch List for completeness required for issuance of Substantial Completion. The Contractor shall be responsible for cost of excessive Design Professional time and effort in completing list of incomplete and non-compliant Work not included in Contractor's Punch List or otherwise due to Contractor's neglect of responsibilities of Subparagraph 9.8.2.

**9.8.5** When the Work or designated portion thereof is substantially complete, the Design Professional will prepare a Certificate of Substantial Completion, with the Owner's prior approval, which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate in accordance with Subparagraph 9.8.2..

**9.8.6** Warranties shall be in accordance with this Subparagraph 9.8.6 and Paragraph 12.2 and shall include all components and equipment required by the Contract Documents. All Work shall be warranted for the greater of:

1. a minimum of one (1) year from the date of Substantial Completion;
2. one (1) year from the date of first installation in accordance with Subparagraph 12.2.2.2;
3. that required by the Contract Documents; or,
4. that provided in the Certificate of Substantial Completion that will become an addendum to the Contract.

Owner and Contractor may, by mutual agreement, amend the Contract at Substantial Completion to include Performance Bonding, extended warranty, on-site maintenance, subsequent testing, scheduled replacement or other mutually agreeable terms.

**9.8.7** Any postponement(s) of inclusion(s) of adjustment(s) to Contract Time in accordance with Subparagraph 7.3.1.4 shall be included into a MCR for agreement and then into a Change Order prior to Certificate of Substantial Completion. If the Contractor and the Owner do not agree on Contractor proposal, the Design Professional on the basis of evidence that critical path of work flow was reduced or expanded attributable to the change(s) in the Work with evidence being differences in Contractor's initial and current schedules and other evidence, shall make an determination for purpose of settlement of dispute. That determination of adjustment to the Contract Time shall be presented to the Owner and the Contractor for consideration. When the Owner and Contractor agree with the determination made by the Design Professional concerning the adjustments in the Contract Time such agreement shall be effective immediately, upon Contractor's written approval, and shall be recorded by preparation and execution of an appropriate MCR that shall be approved by the Owner. If after **five (5) days** the Owner or Contractor cannot agree with the determination made by the Design Professional regarding adjustment to Contract Time, then the Design Professional may order the preparation and execution of an appropriate MCR and:

1. if the Contractor is in disagreement, the MCR shall be recorded as approved by the Owner to be included in a Change Order;
2. if the Owner is in disagreement, the MCR shall be recorded as "approved by dispute resolution authority of the Design Professional" in accordance with this Subparagraph 9.8.7 to be included into a Change Order; and,
3. either approval shall be subject to the right of either party to disagree and assert a claim in accordance with Article 4.

**9.8.8** Liquidated Damages shall be determined in accordance with Paragraph 8.4.

**9.8.9** The Certificate of Substantial Completion shall be submitted to the Contractor and Contractor shall submit for consent of surety, if required, for written acceptance and following acceptance, the Owner shall make payment to Substantial Completion. 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 provided such occupancy or use is consented to by the insurer as required under Clause 11.4.1.3 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have communicated in writing the responsibilities for payments, 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, if different from the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Design Professional as provided under Subparagraph 9.8.2. The stage or the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, then by decision of the Design Professional.

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

**9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall

not constitute acceptance of work not complying with the requirements of the Contract Documents.

#### **9.10 CLOSE-OUT REQUIREMENTS**

**9.10.2** Before final completion in accordance with Paragraph 9.11 can be achieved all Work must be complete and accepted including the requirements under Paragraph 9.10 including:

1. Substantial Completion in accordance with Paragraph 9.8;
2. Work associated with Punch List(s);
3. As-Built drawings delivered in accordance with Subparagraph 3.11.1;
4. delivery of all warranties required by the Contract Documents;

**9.10.2** The Contractor shall prepare a separate Close-Out Punch List listing all requirements of Subparagraph 9.10.1 and the status of each, whether completed or not and the expected completed date of each component of the list. The Close-Out Punch List shall be a separate part and a subset of the Contractor's Punch List required for Substantial Completion in accordance with Subparagraph 9.8.2. At completion of the List, the Contractor shall state in writing to the Design Professional that the Close-Out Punch List has been completed and request a Close-Out Meeting with the Design Professional and the Owner. The Design Professional shall schedule such meeting within **ten (10) days** of the request, or otherwise reply in writing to the Contractor why the request is pre-mature. At the Close-Out Meeting, all requirements to achieve close-out will be verified, and if Work is found to be complete, the Design Professional, with concurrence from the Owner, shall provide written approval of Contractor's completion of close-out requirements within **five (5) days** of the conclusion of the meeting.

**9.10.3** The balance at Substantial Completion of the Schedule of Values line item for Documents and Close-Out in accordance with Subparagraph 9.2.2 shall only be approved for payment when all requirements under Paragraph 9.10 are complete. No partial payment of the Close-Out balance will be considered. Contractor agrees that Close-Out Requirements, in accordance with Paragraph 9.10, are part of the value of Work defined by the Contract Documents and shall not be construed to mean retainage. Any variation or deviation from this Paragraph 9.10 shall be made through an appropriate Modification in accordance with Article 7.

#### **9.11 FINAL COMPLETION AND FINAL PAYMENT**

**9.11.1** Following completion of close-out requirements in accordance with Paragraph 9.10, and upon receipt of a written notice from the Contractor that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Design Professional will promptly make such inspection and, when the Design Professional finds the Work acceptable under the Contract Documents and the Contract fully performed, the Design Professional will promptly, with the Owner's prior approval, issue a Certificate of Final Completion and following approval by all parties, a final Certificate for Payment each stating that to the best of the Design Professional's knowledge, information and belief and on the basis of the Design Professional's or Design Professional's Project Representative's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Design Professional's issuance of Certificate of Final Completion and final Certificate for Payment will constitute a further representation that conditions listed in Subparagraphs 9.10 and 9.11.2 have been fulfilled as precedent to the Contractor's being entitled to final payment.

**9.11.2** Final payment shall not become due until the Contractor submits to the Design Professional:

1. an affidavit that payrolls, bills for subcontracts, materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied;
2. a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least **forty-five (45) days** following written notice to the Owner;
3. a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents;
4. consent of surety, if any, to final payment;
5. releases and waivers of claims of all Subcontractors, and suppliers; and,
6. if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers, 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 or other entity refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify and protect the Owner.

If any claim remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such claim, including all costs and reasonable attorney's fees.

**9.11.3** If, after Substantial Completion of the Work, Final Completion thereof is materially delayed through no fault of the Contractor or by issuance of changes in the Work affecting Final Completion, and the Design Professional so confirms, the Owner shall, upon application by the Contractor and certification by the Design Professional, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. 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 Design Professional 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.

**9.11.4** The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

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

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

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

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

**10.1.1** The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Owner may, but is

under no obligation, point out unsafe conditions or operations.

**10.1.2** The Contractor shall at all times conduct operations and take precautions under this Contract in a manner to avoid risk or bodily harm to persons on or around the Work site and to avoid risk of damage to any property. The Contractor shall continuously inspect the construction operations and shall cause Subcontractors and all other entities on or around the Project to be aware of dangers or risks and to comply with applicable health or safety laws, codes, standards and regulations applicable to the locale where the Project is located.

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

**10.2.1** The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

1. employees on the Work and other persons who may be affected thereby and shall include clean work site, well maintained equipment, barricades, safety awareness programs or whatever effort that will best accomplish required protection;
2. students, staff and public either nearby or within the Project site that shall include re-routing pedestrian ways, re-routing traffic, providing signage, building of bridges, barricades, pedestrian tunnels, or whatever effort that will best accomplish required protection;
3. 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; and
4. 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 give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

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

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

**10.2.5** The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contractor Documents) to property referred to in Subparagraph 10.2.1 caused in whole or in part by the Contractor, a 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, except damage or loss attributable to acts or omissions of the Owner or Design Professional 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 stated throughout the Contract Documents.

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

**10.2.7** The Contractor shall report in writing to the Owner and the Design Professional within **five (5) days** of an accident arising out of or in connection with the Work which caused lost time injury, personal injury, death or property damage, giving full details and statements of any witnesses. In cases of serious bodily injury, death or serious property damage, Contractor shall immediately contact the proper authorities, as well as, Owner and Design Professional by the most expeditious means.

### **10.3 HAZARDOUS MATERIALS**

**10.3.1** 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 Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and immediately report the condition to the Owner and Design Professional in writing.

**10.3.2** The Owner shall obtain the services of a properly licensed testing 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 obtain the services of a remediation contractor to remove the hazard and to verify that it has been rendered harmless. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contract Time adjusted as provided in Article 7. "Rendered Harmless" shall mean that the levels of such materials are less than any applicable exposure levels, including but not limited to EPA regulations.

**10.4** The Owner shall not be responsible under Paragraph 10.3 for materials and substances brought to the site by the Contractor.

**10.5** If, without negligence on the part of the Contractor, the Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Contract shall be equitably adjusted in accordance with Article 7.

### **10.6 EMERGENCIES**

**10.6.1** In an emergency affecting safety of persons or property, the Contractor shall use its best efforts 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 Paragraph 4.3 and Article 7.

## **ARTICLE 11 INSURANCE AND BONDS**

### **11.1 LIABILITY INSURANCE**

**11.1.1** The Contractor and Subcontractors shall purchase from and maintain in a company or companies lawfully authorized to transact insurance in Colorado, insurance that shall protect the Contractor and Subcontractors from claims set forth below, which may arise out of or result from operations under the Contract and for which the Contractor and Subcontractors may be legally liable, whether such operations be by the Contractor and 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, which 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;

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3. claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
4. claims for damage for personal injury;
5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting there from;
6. claims for damages because of bodily injury, death of a person 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 Paragraph 3.18.

Provision of insurance does not limit the liability of the Contractor under 3.18.1 herein.

**11.1.2** The Contractor shall ensure that liability insurance is maintained in accordance with Article 11 and may, at Contractor's option, either insure the activities of Subcontractors or require them to maintain insurance to cover all claims in Article 11. If the Owner is damaged by the failure or neglect of the Contractor to maintain insurance as described above, then the Contractor shall be liable for all costs and damages properly attributable thereto.

**11.1.3** The insurance required by Subparagraph 11.1.1 shall be written for not less than limits of liability specified herein or required by law, whichever coverage is greater. Coverage shall be written on an occurrence basis and shall be maintained without interruption from the date of commencement of the Work until date of Final Payment and termination of any coverage required to be maintained after final payment.

**11.1.4** Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Paragraph 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least **forty-five (45) days** prior written notice has been given to the Owner. If any of the foregoing insurance coverages are requested to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Subparagraph 9.10.2. 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.

**11.1.4.1** The Certificates of Insurance shall clearly state the coverages, limits of liability, covered operations, effective dates and dates of expiration of policies of Insurance. The Contractor will promptly notify and furnish to the Owner copies of any endorsements that are subsequently issued amending coverage or limits. The Certificates of Insurance shall be in the appropriate ACORD form, or similar format acceptable to the Owner and shall include the following statements:

1. "The Montezuma Cortez School District RE1, its agents, servants and employees are recognized as Additionally Insured."
2. "The insurance coverage certified herein will not be canceled or materially changed, except after **forty-five (45) days** written notice has been provided to the Owner"
3. "The insured will not violate, or permit to be violated, any conditions of this policy, and will at all times satisfy the requirements of the insurance company transacting the policy."
4. "The coverage provided by this certificate is primary."

5. "Nothing in this certificate of coverage will be construed to affect the owner, agents, servants and employees defenses, immunities or limitations of liability.

**11.1.5 Minimum Required Coverages:**

**11.1.5.1** Worker's Compensation Insurance shall be provided as required by applicable State law for all employees engaged at the site of the Project under this Contract, including Subcontractor employees. In case any class of employee engaged in work on the Project under this Contract is not protected under the Worker's Compensation Statute, the Contractor shall provide, and cause each Subcontractor to provide Employer's Liability Insurance in an amount not less than five hundred thousand (\$500,000). Failure to comply with the conditions of this Subparagraph 11.1.5.1 will subject this Contract to termination.

**11.1.5.2** Public Liability Insurance shall not be less than the liability amounts set forth by the State of Colorado.

**11.1.5.3** Comprehensive Vehicle Liability Insurance, for both owned and non-owned vehicles, shall be one million dollars (\$1,000,000) per occurrence combined single limit for both personal injury and property damage.

**11.2 OWNER'S LIABILITY INSURANCE**

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

**11.3 PROJECT MANAGEMENT PROTECTIVE LIABILITY INSURANCE**

**11.3.1** To the extent damages are covered by Project Management Protective Liability insurance, the Owner, Contractor and Design Professional waive all rights against each other for damages, except such rights as they may have to the proceeds of such insurance. The policy shall provide for such waivers of subrogation by endorsement or otherwise.

**11.4 PROPERTY INSURANCE**

**11.4.1** As indicated in paragraph 7.2 of the Agreement between the Owner and the Contractor, the Contractor shall provide Builder's Risk Coverage insurance which will protect the interests of the Contractor and Subcontractors in the Work. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until Final Payment has been made as provided in Paragraph 9.11 or until no person or entity other than the Owner has an insurable interest in the property required by this Paragraph 11.4 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, and Subcontractors in the Project.

**11.4.1.2** This property insurance may not cover portions of the Work stored off the site or any portions of the Work in transit. Insurance covering Work or materials stored off site shall be in accordance with sub-paragraph 9.3.2.

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

**11.4.2** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site, by property insurance under policies separate from those insuring through a policy



or policies other than those insuring the Project during the construction period, the Owner shall waive rights in accordance with the terms of Subparagraph 11.4.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

**11.4.3** Before an exposure to loss may occur, the Contractor may review any Owner provided insurance required by this Paragraph 11.4. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least **thirty (30) days** prior written notice has been given to the Contractor.

**11.4.4** Waivers of Subrogation. The Owner and Contractor waive all rights against each other and any of their subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Paragraph 11.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner. The Owner or Contractor, as appropriate, shall require of the Design Professional, Design Professional's consultants, separate contractors described in Article 6, if any, and the subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity that would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. The provisions of this paragraph shall not include claims with respect to damages to non-work buildings or properties.

**11.4.7.1** The provisions of Paragraph 11.4.7 shall not be effective as to a person or entity whose acts or failures to act cause the harm and rise to a level beyond mere negligence.

**11.4.8** A loss insured under Owner's property insurance shall be adjusted by the Owner and made payable to the Owner for the insured's, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Subparagraph 11.4.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity.

**11.4.9** The Owner shall distribute in accordance with such agreement as the parties in interest may agree, or in accordance with an arbitration award in which case the procedure shall be as provided in Paragraph 4.6. If after such loss, no other special agreement is made, and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

**11.4.10** The Owner shall have power to adjust and settle a loss with insurers.

## **11.5 PERFORMANCE BOND AND PAYMENT BOND**

**11.5.1** If the contract price exceeds \$25,000, the Contractor shall furnish Labor, Material and Performance surety bonds covering faithful performance of the Contract in amounts not less than 100 percent of the Contract amount, exclusive of GRT, unless Owner or the Contract Documents require a lesser percentage, for payment of obligations arising there under. These Labor, Material and Performance bonds shall be delivered to the Owner within **seven (7) days** of the Notice of Award or evidence satisfactory to the Owner that such bonds are forthcoming. If the amount of the Sum of the Work is increased, the amounts of the bonds shall be increased accordingly.

**11.5.2** 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 permit a copy to be made.

## **12.2 ACCEPTANCE OF NONCONFORMING WORK**

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

## **ARTICLE 13 MISCELLANEOUS PROVISIONS**

### **13.1 LAW**

**13.1.1** The Contract shall be governed by the laws of the State of Colorado and parties agree that the State of Colorado District Court of the County, where the Project is located, shall have exclusive jurisdiction to resolve all Claims, issues and disputes not otherwise resolved in accordance with the Contract Documents.

**13.1.2** The Owner's total liability to Contractor or any other entity claiming by, through, or under Contractor for any Claim, cost, loss, expense or damage caused in part by the fault of the Owner and in part by the fault of the contractor or any other entity or individual shall not exceed the percentage share that Owner's fault bears to the total fault of Owner, Contractor and all other entities and individuals as determined on the basis of comparative fault principles.

### **13.2 SUCCESSORS AND ASSIGNS**

**13.2.1** The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, 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 an institutional lender providing construction financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

**13.2.3** The Contractor shall not assign the Contract or proceeds hereof without written consent of the Owner. If contractor attempts to make such an assignment without such consent, it shall be void and confer no rights to third parties; the Contractor shall nevertheless remain legally responsible for all obligations under the Contract. Any consent of the Owner to such assignment shall be written and include "it is agreed that the funds to be paid to the assignee under this assignment are subject to performance by the Contractor and to claims for services rendered or materials supplied for the performance and of the Work and other obligations of the Contract Documents in favor of any entity rendering such services or providing such materials".

### **13.3 WRITTEN NOTICE**

**13.3.1** Written notice shall be deemed to have been duly served if delivered in person to the individual or 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, Federal Express, or similar service with proof of delivery to the last business address known to the party giving notice.

### **13.4 RIGHTS AND REMEDIES**

**13.4.1** Duties and obligations imposed by the Contract Documents and rights and remedies available there under, shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

**13.4.2** No action or failure to act by the Owner, Design Professional or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval or acquiescence in a breach there under, except as may be specifically agreed in writing.

**13.4.3** Contractor shall carry out the Work without delay in accordance with the Contract Documents during any and all disputes or disagreements, unless otherwise agreed to by the Owner in writing.

### **13.5 TEST AND INSPECTIONS**

**13.5.1** Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided by Subparagraph 2.2.4 or elsewhere in the Contract Documents, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, provided by the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals unless otherwise provided in the Contract Documents. The Contractor shall give the Owner and Design Professional timely notice of when and where tests and inspections and approvals are to be made so that the Design Professional may be present for such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

**13.5.2** If the Design Professional, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph 13.5.1, the Design Professional 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 Design Professional of when and where tests and inspections are to be made so that the Design Professional may be present for such procedures. Such costs, except as provided in Subparagraph 13.5.3, shall be at the Owner's expense.

**13.5.3** If such procedures for testing, inspection, or approval under Subparagraphs 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Design Professional's services and expenses shall be at the Contractor's expense.

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

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

### **13.6 INTEREST**

**13.6.1** Payments due and unpaid undisputed amounts, under the Contract Documents, shall bear interest from the date payment is due in accordance with State statute regulating prompt payment.

### **13.7 COMMENCEMENT OF STATUTORY LIMITATION PERIOD**

**13.7.1 As between the Owner and Contractor:**

1. before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, 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 such date of Substantial Completion;
2. between Substantial Completion and Final Certificate for Payment. As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certificate for Payment; and
3. after Final Certificate for Payment. As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, 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 date of any act of failure to act by the Contractor pursuant to any Warranty provided under Subparagraph 9.8.6, Paragraph 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

**13.8 EMPLOYMENT**

**13.8.1 Equal Employment Opportunity**

**13.8.1.1** The Contractor agrees not to discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or other in accordance with U.S. Executive Order 11246. The Contractor and Subcontractors agree to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of nondiscrimination. and shall in all solicitation or advertisement for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin.

**13.8.1.2** If the Contract constitutes a federally assisted construction contract within the meaning of 41 CFR 60-1.3 (1987), then the equal opportunity clause of 41 CFR 60-1.4(b) is incorporated herein by reference.

**13.8.2 On-the-Job Relations with Contractor**

**13.8.2.1** The Contractor shall at all times have competent superintendent(s) or foremen on the job in immediate charge of the Work who shall receive communications from Design Professional or Owner in the prosecution of the Work, in accordance with the Contract Documents. Any person executing the Work, who in the opinion of the Design Professional or the Owner, appears to be incompetent or act in a disorderly or intemperate manner or violating provisions of the Contract Documents, shall upon written request, be immediately removed from the Project and not again be employed on any part of the Work. Failure to comply with this Subparagraph 13.8.4.1, shall upon the Owner's decision, be cause to immediately stop the Work in accordance with Paragraph 14.2.

**13.9 Records**

**13.9.1** In the event of a dispute between Owner and Contractor, the Owner shall have right to discovery and access to and the right to examine any accounting or other records of the Contractor involving transactions and Work related to this Contract for three (3) years after Final Payment or after final resolution of any disputes, whichever is later. The conditions of this paragraph apply equally to Subcontractors and suppliers.

## 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 **thirty (30) consecutive days** through no act or fault of the Contractor or a Subcontractor or their agents or any other persons or entities performing portions of the Work under the contract with the Contractor, for any of the following reasons:

1. issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;
2. an act of government, such as a declaration or national emergency which requires all Work to be stopped;
3. because the Design Professional has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Subparagraph 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
4. the owner has failed to furnish to the Contractor promptly, upon the Contractor's written request, reasonable evidence as required by Subparagraph 2.2.1.

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

**14.1.3** If one of the reasons described in Subparagraph 14.1.1 or 14.1.2 exists, the Contractor may, upon **seven (7) days** written notice to the Owner and Design Professional, terminate the Contract and recover from the Owner payment for Work executed, including overhead and profit in accordance with Article 7 for Work performed, and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery excluding, overhead and profit.

**14.1.4** If the Work is stopped for a period of **sixty (60) consecutive days** through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portion of the Work under contract with the Contractor because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon **seven (7) additional days** written notice to the Owner and the Design Professional, terminate the Contract and recover from the Owner as provided in Subparagraph 14.1.3.

### 14.2 TERMINATION BY THE OWNER FOR CAUSE

**14.2.1** The Owner may terminate the Contract if the Contractor:

1. refuses or fails to supply enough properly skilled workers or proper materials;
2. fails to make payment to Subcontractors for material or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
3. disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
4. disregards the authority of the Owner or Design Professional;

5. fails after commencement of the Work to proceed day-to-day continuously with the construction and completion of the Work for more than **ten (10) days**, except as permitted under the Contract Documents;
6. fails to maintain owner approved schedule or owner approved recovery schedule; and,
7. 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 may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety notice, as required by the surety bonds, if any, **seven (7) days** written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

1. take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
2. accept assignment of subcontracts pursuant to Paragraph 5.4; and
3. finish the Work by whatever reasonable method the Owner may deem expedient. Upon 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 Subparagraph 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

**14.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Design Professional's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived. 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 Owners as the case may be, shall be certified by the Design Professional, upon application, and this obligation for payment shall survive termination of the Contract.

**14.2.5** In carrying out the Owner's right to complete the Work in accordance with Paragraph 14.2, the Owner shall have the right to exercise the Owner's sole discretion as to the manner, methods and reasonableness of costs of completing the Work.

#### **14.3 SUSPENSION BY THE OWNER BY 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 Subparagraph 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

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

#### **14.4 TERMINATION BY THE OWNER FOR CONVENIENCE**

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

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

Montezuma-Cortez High School  
Existing High School Demolition – 206 West 7<sup>th</sup> St. | Cortez, Colorado

1. cease operation as directed by the Owner in the notice;
  2. take action necessary, or that the Owner may direct, for the protection and the preservation of the Work; and
  3. except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Subcontracts and Purchase Orders.
- 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 completed.

Montezuma-Cortez High School  
Existing High School Demolition – 206 West 7<sup>th</sup> St. | Cortez, Colorado

## INDEX

Note: The General Conditions have been modified to reflect the scope of the demolition work and not all sections listed below are present in the document. The index is for general reference/guidance only.

Acceptance of Nonconforming Work	Contracts for Portions of the Work
9.6.6, 9.9.3, 12.3	5.2
Acceptance of Work	Basic Definitions
9.6.6, 9.8.2, 9.9.3, 9.10, 12.3	1.1
Access to Work	Bid Clarification of Construction Documents
3.16, 6.2.1, 12.1	1.2.1
Accident Prevention	Bidding Requirements
3.3, 4.2.3, 10	1.1.1, 1.1.7, 5.2.1, 11.5.1
Acts and Omissions	Boiler and Machinery Insurance
3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 4.3.8, 4.4.1, 8.3.1, 9.5.1, 10.2.5, 13.4.2, 13.7, 14.1	11.4.2
Addenda	Bonds, Performance and Payment
1.1.1, 3.11	9.6.7, 9.10.3, 9.11.2.6, 11.4.9, 11.5
Additional Costs, Claims for	Bribes, Gratuities and Kickbacks
4.3.4, 4.3.5, 4.3.6, 6.1.1, 10.3	3.1.6
Additional Inspections and Testing	Building Permit
9.8.3, 12.2.1, 13.5	3.7.1, 3.7.2
Additional Time, Claims for	Capitalization
4.3.4, 4.3.6, 4.3.7, 7.2, 7.3, 8.3.2, 8.3.3	1.3
Administration of the Contract	Certificate of Substantial Completion
3.1.3, 4, 9.4, 9.5	9.8.3, 9.8.4, 9.8.5
Advertisement or invitation to Bid	Certificates for Payment
1.1.1	4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7.1, 9.10.1, 9.10.3, 13.7, 14.1.1.3, 14.2.4
Aesthetic Effect	Certificates for Payment, Owner Cut-Off Time
4.2.13, 4.5.1	9.4.1
Allowable Costs and Fees (Change Orders)	Certificates of Inspection, Testing or Approval
7.2.5	13.5.4
Allowances	Certificates of Insurance
3.8	9.10.2, 11.1.3
Antitrust Claims, Assignment of	Change Orders (see Modification / Change Request)
3.1.7	1.1.1, 2.4.1, 3.4.2, 3.8.2.3, 3.11.1, 3.12.8, 4.2.8, 4.3.4, 4.3.9, 5.2.3, 7.1, 7.2.13, 7.3, 8.3.1, 9.3.11, 9.10.3, 11.4.1.211.4.4, 11.4.9, 12.1.2
Applications for Payment	Change Orders, Definition of
4.2.5, 7.3.8, 9.2, 9.3, 9.4, 9.5, 9.6.3, 9.7.1, 9.8.5, 9.10, 11.1.3, 14.2.4, 14.4.3	7.3
Approvals	Changes in the Work
2.4, 3.1.3, 3.5, 3.10.2, 3.12, 4.2.7, 9.3.2, 9.8.4, 11.1, 13.4.2, 13.5	3.11, 4.2.8, 7, 8.3.1, 9.2.1.1, 11.4.9
Arbitration	Changes, Modification / Change Request
4.4.1, 4.4.5, 4.4.6, 4.4.8, 4.5.1, 4.5.2, 4.6, 8.3.1, 11.4.9	7.2
Asbestos	Changes, Allowable Costs
10.3.1	7.2.5, 7.2.5.1, 7.2.8
As-Builts	Claim, Definition of
3.11.1, 9.3.3, 9.4.2, 9.10.1.5,	4.3.1
Attorneys' Fees	Claims and Disputes
3.18.1, 9.10.2, 10.3.3	3.2.3, 4.3, 4.4, 4.5, 4.6, 6.1.1, 6.3.7, 7.3.8, 9.3.3, 9.10.4, 10.3.3
Audit	Claims, Time limits on
7.2.7	4.3.2, 4.3.4
Award of Separate Contracts	Claims and timely Assertion of Claims 4.3.2, 4.6.4
6.1.1, 6.1.2	
Award of Subcontracts and Other	Claims for Additional Cost



Montezuma-Cortez High School  
Existing High School Demolition – 206 West 7<sup>th</sup> St. | Cortez, Colorado

3.2.3, 4.3.4, 4.3.5, 4.3.6, 6.1.1, 7.3.8, 10.3.2	Contingent Assignment of Subcontracts 5.4, 14.2.2.2
Claims or Additional Time 3.2.3, 4.3.4, 4.3.7, 6.1.1, 8.3.2, 8.3.3, 10.3.2	Continuing Contract Performance 4.3.3
Claims for Concealed or Unknown Conditions 4.3.4	Contract, definition of 1.1.2
Claims for Damages 3.2.3, 3.18, 4.3.10, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.4.5, 11.4.7, 14.1.3, 14.2.4	Contract, Termination or suspension of the 5.4.1.1, 11.4.9, 14
Claims Subject to Arbitration 4.4.1, 4.5.1, 4.6.1	Contract Administration 3.1.3, 4, 9.5
Cleaning Up 3.13.17, 3.15, 6.3	Contract Award and Execution, Conditions Relating to 3.7.1, 3.10, 5.2, 6.1, 11.1.3, 11.4.6, 11.5.1
Close-Out 1.1.8, 2.4.2, 3.11.2, 9.2.2, 9.8.2, 9.10	Contract documents, The 1.1, 1.2
Commencement of Statutory Limitation Period 13.7	Contract Documents, Copies Furnished and use of 1.6, 2.2.5, 5.3
Commencement of the Work, Conditions Relating to 2.2.1, 3.2.1, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 4.3.5, 5.2.1, 5.2.3, 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.4.1, 11.4.6, 11.5.1	Contract documents, definition of 1.1.1
Commencement of the Work, Definition of 8.1.2	Contract documents, Intent of 1.2
Communications Facilitating Contract Administration 3.9.1, 4.2.4	Contract Sum 3.8, 4.3.4, 4.3.5, 4.4.5, 5.2.3, 7.2, 7.3, 7.4, 9.1, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.4.1, 14.2.4, 14.3.2
Communications, Language 4.2.4.2	Contract Sum, Definition of 9.1
Completions, Conditions Relating to 1.6.1, 3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 13.7, 14.1.2	Contract Time 4.3.4, 4.3.7, 4.4.5, 5.2.3, 7.2.1.3, 7.3.7.4, 8.1.1, 8.2, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 14.3.2
Completion, payments and 9	Contract Time, Definition of 8.1.1
Completion, Substantial 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9, 9.10, 9.11.3, 12.2, 13.7, 14.7	Contractor 3
Compliance with Laws 1.6.1, 3.1, 3.2.2, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 4.4.4.8, 4.6.4, 4.6.6, 9.6.4, 10.2.2, 11.1, 11.4, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14.1.1, 14.2.1.3	Contractor, definition of 3.1, 6.1.2
Concealed or Unknown Conditions 4.3.4, 8.3.1, 10.3	Contractor's Construction Schedules 2.4.3, 3.7.2, 3.10, 3.12, 4.2.4.3, 4.3.7.2, 6.1.3
Condition of the Contract 1.1.1, 1.1.7, 6.1.1, 6.1.4	Contractor's Construction Schedule – Accelerated 6.1.3
Consent Written 1.6, 6.4.2, 3.12.8, 3.14.2, 4.1.2, 4.3.4, 4.6.4, 9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.4.1, 13.2, 13.4.2	Contractor's Employees 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.1.1, 11.4.7, 13.8, 14.1, 14.2.1.1
Construction by Owner or by Separate Contractors 1.1.4, 6	Contractor's Liability Insurance 11.1
Construction Change Directive, definition of 7.2.4	Contractor Licensing 3.1.4, 3.19.1.3
Change directives, MCR 7.2.4	Contractor Logs and Reports 3.10, 4.2.4.1
Construction schedules, Contractor's 3.10, 3.12.1, 3.12.2, 4.3.7.2, 6.1.3, 9.8.6	Contractor's Relationship with Separate Contractors and Owner's forces 3.12.5, 3.14.2, 4.2.4, 6, 11.4.7, 12.1.2, 12.2.4
	Contractor's Relationship with Subcontractors 1.2.2, 3.3.2, 3.18.2, 5, 9.6.2, 9.6.7, 9.10.2, 11.4.1.2, 11.4.7, 11.4.8

**Montezuma-Cortez High School**  
Existing High School Demolition – 206 West 7<sup>th</sup> St. | Cortez, Colorado

Contractor's Relationships, Bound Conditions 5.3	3.1.2, 6.2.4, 9.2.1.5, 10.2.1.2, 10.2.5, 10.6, 11.1, 11.4, 12.2.1
Contractor's Relationship with the Design Professional 1.1.2, 1.6, 3.1.3, 3.2.1, 3.2.2, 3.2.3, 3.3.1, 3.4.2, .5.1, 3.7.3, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.2, 4.1.3, 4.2, 4.3.4, 4.4.1, 4.4.7, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 11.4.7, 12, 13, 4.2, 13.5	Damage to the Work 3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.6, 11.4, 12.2.4
Contractor's Representations 1.5.2, 3.5.1, 3.12.6, 3.19, 6.2.2, 8.2.1, 9.3.3, 9.8.2	Damages, Claims for 3.2.3, 3.18, 4.3.10, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.4.5, 11.4.7, 14.1.3, 14.2.4
Contractor's Responsibility for Those Performing the Work 3.3.2, 3.18, 4.2.3, 4.3.8, 5.3.1, 6.1.3, 6.2, 6.3, 9.5.1, 10	Damages for delay 6.1.1, 8.3.3, 9.5.1.6, 9.7, 10.3.2
Contractor's Review of Contract Documents 1.5.2, 3.2, 3.7.3, 3.19	Date of Commencement of the Work, Definition of 8.1.2
Contractor's Right to Stop the Work 9.7, 13.4.3	Date of Substantial Completion, Definition of 8.1.3
Contractor's Right to Terminate the Contract 4.3.10, 14.1	Day, Definition of 8.1.4
Contractor's Submittals 3.10, 3.11, 3.12, 4.2.4.3, 4.2.7, 5.2.1, 7.3.6, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3, 11.1.3, 11.5.2	Debarred or Suspended Contractors 3.1.5
Contractor's Superintendent 3.9, 10.2.6	Decisions of the Design Professional 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.3.4, 4.4.1, 4.4.5, 4.4.6, 4.5, 6.3, 7.3.6, 7.3.8, 8.1.3, 8.3.4, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.5.2, 14.2.2, 14.2.4
Contractor's Supervision and Construction Procedures 1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 4.3.3, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 7.3.6, 8.2, 10, 12, 14	Decisions to Withhold Certification 9.4.1, 9.5, 9.7, 14.1.1.3
Contractual Liability Insurance 11.1.1.8, 11.2, 11.3	Defective or Nonconforming Work, Acceptance, Rejection and Correction of 2.3, 2.4, 3.5.1, 4.2.6, 6.2.5, 9.5.1, 9.5.2, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1, 13.7.1.3
Coordination and Correlation 1.2, 1.5.2, 3.3.1, 3.10, 3.12.3, 6.1.3, 6.2.1	Defective Work, Definition of 3.5.1
Copies Furnished of Drawings and Specifications 1.6, 2.2.5, 3.11	Definitions 1.1, 2.1.1, 3.1, 3.5.1, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 4.3.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 7.3.6, 8.1, 9.1, 9.8.1
Copyrights 1.6, 3.17	Delays and Extensions of Time 3.2.3, 4.3.1, 4.3.4, 4.3.7, 4.4.5, 5.2.3, 7.2.1, 7.3.1, 7.4.1, 7.5.1, 8.3, 9.5.1, 9.7.1, 10.3.2, 10.6.1, 14.3.2
Correction Period, 11 <sup>th</sup> month inspection 12.2.6	Design Performance 3.12.11
Correction of Work 2.3, 2.4, 3.7.4, 4.2.1, 9.4.2, 9.8.2, 9.9.1, 12.1.2, 12.2, 13.7.1.3	Design Professional 4.1
Correlation and Intent of the Contract Documents 1.2	Design Professional, Definition of 4.1.1
Cost, Definition of 7.3.6	Design Professional, Extent of Authority 2.4, 3.12.7, 4.2, 4.3.6, 4.4, 5.2, 6.3, 7.1.2, 7.3.6, 7.4, 4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.12, 4.2.13, 4.4, 5.2.1, 7.4, 9.4.2, 9.6.4, 9.6.6
Costs 2.4, 3.2.3, 3.7.4, 3.8.2, 3.15.2, 4.3, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.6, 7.3.7, 7.3.8, 9.10.2, 10.3.2, 10.5, 11.3, 11.4, 12.1, 12.2.1, 12.2.1, 13.5, 14	Design Professional's Additional Services and Expenses 2.4, 11.4.1.1, 12.2.1, 13.5.2, 13.5.3, 14.2.4
Cutting and Patching 6.2.5, 3.14	Design Professional's Administration of the Contract 3.1.3, 4.2, 4.3.4, 4.4, 9.4, 9.5
Damage to Construction of Owner or Separate Contractors	Design Professional's Approvals 2.4, 3.1.3, 3.5.1, 3.10.2, 4.2.7
	Design Professional's Authority to Reject Work

Montezuma-Cortez High School  
Existing High School Demolition – 206 West 7<sup>th</sup> St. | Cortez, Colorado

3.5.1, 4.2.6, 12.1.2, 12.2.1	Extension of Time
Design Professional's Decisions	3.2.3, 4.3.1, 4.3.4, 4.3.7, 4.4.5, 5.2.3, 7.2.1, 7.3, 7.4.1, 9.5.1 9.7.1, 10.3.2, 10.6.1, 14.3.2
4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.3.4, 4.4.1, 4.4.5 4.4.6, 4.5, 6.3, 7.3.6, 7.3.8, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.5.2, 14.2.2, 14.2.4	Failure of Payment
Design Professional's Inspections	4.3.6, 9.5.1.3, 9.7, 9.10.2, 14.1.1.3, 14.2.1.2, 13.6
4.2.2, 4.2.9, 4.3.4, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.5	Faulty Work (See Defective or Nonconforming Work) Field Office
Design Professional's Instructions	3.11, 3.13.7, 3.13.8, 4.2.4.3
3.2.3, 3.3.1, 4.2.6, 4.2.7, 4.2.8, 7.4.1, 12.1, 13.5.2	Final Completion and Final Payment
Design Professional's Interpretations	4.2.1, 4.2.9, 4.3.2, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.4.1, 11.4.5, 12.3.1, 13.7, 14.2.4, 14.3
4.2.11, 4.2.12, 4.3.6	Financial Arrangements, Owner's
Design Professional's Project Representative	2.2.1, 13.2.2
4.2.10	Fire and Extended Coverage
Design Professional's Relationship with Contractor	Insurance 11.4
1.1.2, 1.6, 3.1.3, 3.2.1, 3.2.2, 3.2.3, 3.3.1, 3.4.2, 3.5.1, 3.7.3, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.2, 4.1.3, 4.2, 4.3.4, 4.4.1, 4.4.7, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 11.4.7, 12, 13.4.2, 13.5	General Provisions
Design Professional's Relationship with Subcontractors	1
1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.4.7	Governing Law
Design Professional's Representations	13.1
9.4.2, 9.5.1, 9.10.1	Gross Receipts Tax, Nonresident Contractor's Surety Bond Requirement
Design Professional's Site visits	3.1.7
4.2.2, 4.2.5, 4.2.9, 4.3.4, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5	Gross Receipts Tax Registration
Disputes	3.6.2
4.1.4, 4.3, 4.4, 4.5, 4.6, 6.3, 7.2.10, 7.2.11, 7.3.1, 13.4.3	Guarantees ( See Warranty) Hazardous
Documents and Samples at the Site	Materials
3.11	10.2.4, 10.3, 10.5
Drawings, Definition of 1.1.5	Inconsistencies
Drawings and Specifications, Use and Ownership of	1.2.5, 3.2.1, 3.2.3
1.1.1, 1.2.5, 1.3, 2.2.5, 3.11, 5.3	Identification of Subcontractors and suppliers
Effective date of Insurance	5.2.1
8.2.2, 11.1.2	Indemnification
Emergencies	3.18, 9.11.2, 10.3.2, 11.4.1.2, 11.4.7
3.10.4, 4.3.5, 10.6, 14.1.1.2	Information and services Required of the Owner
Employees, Contractor's	2.1.2, 2.2, .2.1, 3.12, 3.12.10, 4.2.7, 4.3.3, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.9.2, 9.10.3, 10.3.3, 1.2, 11.4, 13.5.1, 13.5.2, 14.1.1.4, 14.1.4
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.1.1, 11.4.7, 13.8, 14.1, 14.2.1.1	Injury or Damage to Person or Property
Equipment, Labor, Materials, and	4.3.8, 10.2, 10.6
1.1.3, 1.1.6, 3.4, 3.5.1, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.6, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.2	Inspections
Existing Work, Protection and Repairing	3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.2, 9.8.3, 9.9.2, 9.10.1, 12.2.1, 13.5
3.13.19, 10	Instructions to Bidders
Execution and Progress of the Work	1.1.1
1.1.3, 1.2.1, 1.2.2, 2.2.3, 2.2.5, 3.1, 3.3, 3.4, 3.5, 3.7, 3.10, 3.12, 3.14, 4.2.2, 4.2.3, 4.3.3, 6.2.2, 7.1.3, 7.3.4, 8.2, 9.5, 9.9.1, 10.2, 10.3, 12.2, 14.2, 14.3	

Montezuma-Cortez High School  
Existing High School Demolition – 206 West 7<sup>th</sup> St. | Cortez, Colorado

Instructions to the Contractor 3.2.3, 3.3.1, 3.8.1, 5.2.1, 7, 12, 7.2.2, 13.5.2	Limitations of Liability 2.3, 3.2.1, 3.5.1, 3.7.3, 3.12.8, 3.12.10, 3.17, 3.18, 4.2.6, 4.2.7, 4.2.12, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 9.10.4, 10.3.3, 10.2.5, 11.1.2, 11.2.1, 11.4.7, 12.2.5, 13.4.2
Insurance 3.18.1, 6.1.1, 7.3.6, 8.2.1, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 3.10.5, 11	Limitations of Time 2.1.2, 2.2, 2.4, 3.2.1, 3.7.3, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7, 4.3, 4.4, 4.5, 4.6, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 11.4.1.5, 11.4.6, 11.4.10, 12.2, 13.5, 13.7, 14
Insurance, Boiler and Machinery 11.4.2	Liquidated Damages 4.3.10, 8.3, 8.4, 9.5.1, 9.8.7,
Insurance, Contractor's Liability 11.1	Loss of Use Insurance 11.4.3
Insurance, Effective Date of 8.2.2, 11.1.2	Material suppliers 1.6, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.6, 9.10.5
Insurance Loss of Use 11.4.3	Materials Hazardous 10.2.4, 10.3, 10.5
Insurance, Owner's Liability 11.2	Materials, Labor, and Equipment 1.1.3, 1.1.6, 1.6.1, 3.4, 3.5.1, 3.8.2, 3.8.2.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.6, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.1, 14.2
Insurance, Project management Protective Liability 11.3	MCR, Allowable Costs 7.2.5
Insurance Property 10.2.5, 11.4	Means Methods, Techniques, Sequences and Procedures of Construction 3.3.1, 3.12.10, 4.2.2, 4.2.7,
Insurance, Stored Materials 9.3.2, 11.4.1.2	Mediation 4.4.4, 4.4.5, 4.4.6, 4.4.8, 4.5, 4.6.1, 4.6.2, 8.3.1, 10.5
Insurance and Bonds 11	Meetings, Weekly 3.10.3, 3.10.3.1, 4.2.4.3
Insurance Companies, Consent to Partial Occupancy 9.9.1, 11.4.1.5	Minor Changes in the Work 1.1.1, 3.12.8, 4.2.8, 4.3.6, 7.14, 7.4
Insurance Companies, Settlement with 11.4.10	Miscellaneous Provisions 13
Intent of the Contract Documents 1.2, 4.2.7, 4.2.12, 4.2.13, 7.4, 12.2.6	Modification / Change Request (MCR) 1.1.1, 3.4.2, 4.2.4.3, 7.2, 7.3.1, 9.8.6
Interest 13.6	Modifications, Definition of 1.1.1
Interpretation 1.2.3, 1.4, 4.1.1, 4.3.1, 5.1, 6.1.2, 8.1.4	Modifications to the Contract 1.1.1, 1.1.2, 3.7.3, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7, 10.3.2, 11.4.1
Interpretation, Written 4.2.11, 4.2.12, 4.3.6	Mutual Responsibility 6.2
Joiner and Consolidation of Claims Required 4.6.4	Nonconforming Work, Acceptance of 9.6.6, 9.9.3, 12.3
Judgment on Final Award 4.6.6	Nonconforming Work, Rejection and Correction of 2.3, 2.4, 3.5.1, 4.2.6, 6.2.5, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2.1, 13.7.1.3
Labor and Materials, Equipment 1.1.3, 1.1.3, 3.4, 3.5.1, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.6, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.2	
Labor Disputes 8.3.1	
Laws and Regulations 1.6, 3.2.2, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 4.4.8, 4.6, 9.6.4, 9.9.1, 10.2.2, 11.1, 11.4, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14	
Limitations on Consolidation or Joiner 4.6.4	
Limitations, statutes of 4.6.3, 12.2.6, 13.7	

Montezuma-Cortez High School  
Existing High School Demolition – 206 West 7<sup>th</sup> St. | Cortez, Colorado

Nonresident Contractor's Requirement for Gross Receipts Tax Surety Bond 3.6.5, 3.6.5.1, 3.6.5.2	Owner's Right to Clean Up 6.3
Nonresident Persons, Partnerships or Un-admitted Foreign Corporations, Contracts with and Agent for Service of Process 3.1.8	Owner's Right to Perform Construction and to Award Separate Contracts 6.1
Notice 2.2.1, 2.3, 2.4, 3.2.3, 3.3.1, 3.7.2, 3.7.4, 3.12.9, 4.3, 4.4.8, 4.6.5, 5.2.1, 8.2.2, 9.7, 9.10, 10.2.2, 11.1.3, 11.4.6, 12.2.2, 12.2.4, 13.3, 13.5.1, 13.5.2, 14.1, 14.2	Owner's right to Stop the Work 2.3
Notice, Written 2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 4.3, 4.4.8, 4.6.5, 5.2.1, 8.2.2, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 11.4.6, 12.2.2, 12.2.4, 13.3, 14	Owner's Right to Suspend the Work 14.3
Notice of Testing and Inspections 13.5.1, 13.5.2	Owner's Right to Terminate the Contract 14.2
Notice to Proceed 8.2.2	Ownership and Use of Drawings, Specifications and Other Instruments of Service 1.1.1, 1.6, 2.2.6, 3.2.1, 3.11.1, 3.17.1, 4.2.12, 5.3
Notices, Permits, Fees and 2.2.2, 3.7, 3.13, 7.3.6.4, 10.2.2	Partial Occupancy or Use 9.6.6, 9.9, 11.4.1.5
Observations, Contractor's 1.5.2, 3.2, 3.7.3, 4.3.4	Patching, Cutting and 3.14, 6.2.5
Occupancy 2.2.2, 9.6.6, 9.8, 11.4.1.5	Patents 3.17
Orders, Written 1.1.1, 2.3, 3.9, 4.3.6, 7.8.2.2, 11.4.9, 12.1, 12.2, 13.5.2, 14.3.1	Payment, Application for 4.2.5, 7.3.8, 9.2, 9.3, 9.4, 9.5.1, 9.6.3, 9.7.1, 9.8.5, 9.10.1, 9.10.3, 9.10.5, 11.1.3, 14.2.4, 14.4.3
Owner 2	Payment, Certificates for 4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7.1, 9.10.1, 9.10.3, 13.7, 14.1.1.3, 14.2.4
Owner, Definition of 2.1, 2.1.1, 2.1.2	Payment, Failure of 4.3.6, 9.5.1.3, 9.7, 9.10.2, 14.1.1.3, 14.2.1.2, 13.6
Owner, Information and Services Required of the 2.1.2, 2.2, 3.2.1, 3.12.4, 3.12.10, 4.2.7, 4.3.3, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.4, 13.5.1, 13.5.2, 14.1.1, 14.1.4	Payment Final 4.2.1, 4.2.9, 4.3.2, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.4.1, 11.4.5, 12.3.1, 13.7, 14.2.4, 14.4.3
Owner's Authority 1.6, 2.1.1, 2.3, 2.4, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.1.3, 4.2.4, 4.2.9, 4.3.6, 4.4.7, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.1, 9.3.2, 9.5.1, 9.9.1, 9.10.2, 10.3.2, 11.1.3, 11.4.3, 11.4.10, 12.2.2, 12.3.1, 13.2.2, 14.3, 14.4	Payment Bond, Performance Bond and 7.3.6.4, 9.6.7, 9.10.3, 11.4.9, 11.5
Owner's Financial Capability 2.2.1, 13.2.2, 14.1.1.5	Payments, Progress 4.3.3, 9.3, 9.6, 9.8.5, 9.10.3, 13.6, 14.2.3
Owner's Liability Insurance 11.2	Payments and Completion 9
Owner's Loss of Use Insurance 11.4.3	Payments to Subcontractors 5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 11.4.8, 14.2.1.2
Owner's Relationship with Subcontractors 1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2	Performance Bond and Payment Bond 7.3.6.4, 9.6.7, 9.10.3, 11.4.9, 11.5
Owner's Right to Carry Out the Work 2.4, 12.2.4, 14.2.2.2	Permits, Fees and Notices 2.2.2, 3.7, 3.13, 10.2.2
	Persons and Property, Protection of 10
	Polychlorinated Biphenyl 10.3.1
	Product Data, Definition of 3.12.2

Montezuma-Cortez High School  
Existing High School Demolition – 206 West 7<sup>th</sup> St. | Cortez, Colorado

Product Data and Samples, Shop Drawings 3.11, 3.12, 4.2.7	Review of Contractor's Submittals by Owner and Design Professional 3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2
Progress and Completion 4.2.2, 4.3.3, 8.2, 9.8, 9.9.1, 14.1.4	Review of Shop Drawings, Product Data and Samples by Contractor 3.12
Progress Payments 4.3.3, 9.3, 9.6, 9.8.5, 9.10.3, 13.6, 14.2.3	RFI (see Request for Information)
Progress Report (Three-Week-Look-Ahead) 3.10.3.1	
Project, Definition of the 1.1.4	Rights and Remedies 1.1.2, 2.3, 2.4, 3.5.1, 3.15.2, 4.2.6, 4.3.4, 4.5, 4.6, 5.3, 5.4, 6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.2, 12.2.4, 13.4, 14
Project Management Protective Liability Insurance 11.3	Royalties, Patents and Copyrights 3.17
Project Manual, Definition of the 1.1.7	Rules and Notices for Arbitration 4.6.2, 4.6.5
Project Manuals 2.2.5	Safety of Persons and Property 10.2, 10.6
Project Representatives 4.2.10	Safety Precautions and Programs 3.3.1, 4.2.2, 4.2.7, 5.3.1, 10.1, 10.2, 10.3
Project Schedule 3.10	Samples, Definitions of 3.12.3
Property Insurance 10.2.5, 11.4	Samples, Shop Drawings, Product Data and 3.11, 3.12, 4.2.7
Protection of Persons and Property 10	Samples at the Site, Documents and 3.11
Punch List 1.1.8, 2.4.2, 4.2.4.3, 9.8, 9.10,	Schedule of Values 9.2, 9.3.1
Reasonably Inferable Work 1.1.3, 1.2.1, 1.2.2, 4.2.12	Schedules, Construction 3.10, 3.12.1, 3.12.2, 4.3.7.2, 6.1.3
Regulations and laws 1.6, 3.2.2, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 4.4.8, 4.6, 9.6.4, 9.9.1, 10.2.2, 11.1, 11.4, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14	Separate Contracts and Contractors 1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 4.6.4, 6, 8.3.1, 11.4.7, 12.1.2, 12.2.5
Rejection of Work 3.5.1, 4.2.6, 12.2.1	Separate Contracts and Contractors 1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 4.6.4, 6, 8.3.1, 11.4.7, 12.1.2, 12.2.5
Releases and Waivers of claims 9.11.2.5	Shop Drawings, Definition of 3.12.1
Representations 1.5.2, 3.5.1, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.8.2, 9.10.1	Shop Drawings, Product Data and Samples 3.11, 3.12, 4.2.7
Representatives 2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.1, 4.2.10, 5.1.1, 5.1.2, 13.2.1	Shop Drawings, Time for Review 3.10.2
Resolution of Claims and Disputes 4.4, 4.5, 4.6	Site, Use of 3.13, 6.1.1, 6.2.1
Request for Information (RFI) 3.2.4, 3.10.3	Site, Utility Shut Downs 3.13.3
Request for Interpretation, Response time 3.2.4.2	Site Inspections 1.2.2, 3.2.1, 3.3.3, 3.7.1, 4.2, 4.3.4, 9.4.2, 9.10.1, 13.5
Responsibility for Those Performing the Work 3.3.2, 3.18, 4.2.3, 4.3.8, 5.3.1, 6.1.3, 6.2, 6.3, 9.5.1, 10	Site Visits, Design Professional's 4.2.2, 4.2.9, 4.3.4, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5
Review of Contract Documents and Field Conditions by Contractor 1.5.2, 3.2, 3.7.3, 3.12.7, 6.1.3	Special Inspections and Testing 4.2.6, 12.2.1, 13.5

Montezuma-Cortez High School  
Existing High School Demolition – 206 West 7<sup>th</sup> St. | Cortez, Colorado

Specification, Definition of the 1.1.6	Suspension by the Owner for Convenience 14.4
Specifications, The 1.1.1, 1.1.6, 1.1.7, 1.2.2, 1.6, 3.11, 3.12.10, 3.17	Suspension of the Work 5.4.2, 14.3
Statute of Limitations 4.6.3, 12.2.6, 13.7	Suspension or Termination of the Contract 4.3.6, 5.4.11, 11.4.9, 14
Stopping the Work 2.3, 4.3.6, 9.7, 10.3, 14.1	Taxes 3.6, 3.8.2.1, 7.2.5, 7.3.6.4, 9.2.2
Stored Materials 6.2.1, 9.3.2, 10.2.1.2, 10.2.4, 11.4.1.2	Taxes, NBAT or TERO 3.6.3
Subcontractor, Definition of 5.1.1	Temporary Utilities 3.13.2, 3.13.3, 3.13.4, 3.13.5
Subcontractors Subcontractors, Work by 1.2.2, 3.3.2, 3.12.1, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2,	Temporary Lighting 3.6.3
Sub contractual Relations 5.3, 5.4, 9.3.1.2, 9.6, 9.10.10.2.1, 11.4.7, 11.4.8, 14.1, 14.2.1, 14.3.2	Termination by the Contractor 3.13.16
Submittals 1.6, 3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.6, 9.2, 9.3, 9.8, 9.9.1, 9.10.2, 9.10.3, 11.1.3	Termination by the Owner for Cause 4.3.10, 5.4.1.1, 14.2
Submittals, "Piece Meal" delivery of 3.12.4.1	Termination of the Design Professional 4.1.3
Submittals, Time for review 3.10.2	Termination of the Contractor 14.2.2
Subrogation, Waivers of 6.1.1, 11.4.5, 11.4.7	Termination or Suspension of the Contract 14
Substantial Completion 1.1.8, 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 9.10.4.2, 12.2, 13.7	Tests and Inspections 2.2.4, 3.1.3, 3.3.3, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 11.4.1.1, 12.2.1, 13.5
Substantial Completion, Definition of 9.8.1	Time 8
Substitution of Subcontractors 5.2.3, 5.2.4	Time, Delays and Extensions of 3.2.3, 4.3.1, 4.4.3, 4.3.7, 4.4.5, 5.2.3, 7.2.1, 7.3.1, 7.4.1, 7.5.1, 8.3, 9.5.1, 9.7.1, 10.3.2, 10.6.1, 14.3.2
Substitution of Design Professional 4.1.3	Time Limits 2.1.2, 2.2, 2.4, 3.2.1, 3.7.3, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 4.3, 4.4, 4.5, 4.6, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 11.4.1.5, 11.4.6, 11.4.10, 12.2, 13.5, 13.7, 14
Substitution of Materials 3.4.2, 3.5.1, 3.12.8, 7.2.8	Time Limits on Claims 4.3.2, 4.3.4, 4.3.8, 4.5, 4.6
Subsurface Conditions 4.3.4	Uncovering and Correction of Work 12
Successors and Assigns 13.2	Uncovering of Work 12.1
Superintendent 3.9, 10.2.6	Unforeseen Conditions 4.3.4, 8.3.1, 10.3
Supervision and Construction Procedures 1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 4.3.3, 6.1.3, 6.2.4, 7.1.3, 7.3.6, 8.2, 8.3.1, 9.4.2, 10, 12, 14	Unit Prices 4.3.9, 7.2.3
Surety 4.4.7, 5.4.1.2, 9.8.5, 9.10.2, 9.10.3, 14.2.2	Use of Documents 1.1.1, 1.6, 2.2.5, 3.12.6, 5.3
Surety, Consent of 9.10.2, 9.10.3	Use of Site 3.13, 6.1.1.1, 6.2.1
Surveys 2.2.3	Utilities, Use of

Montezuma-Cortez High School  
Existing High School Demolition – 206 West 7<sup>th</sup> St. | Cortez, Colorado

3.13.2, 3.13.3, 3.13.4	12.2.2, 12.2.6, 13.7.1.3
Utilities, Removal of temporary	Warranty, Extended
3.13.4	9.8.5
Utility Shutdowns	Warranty, (see also Correction Period)
3.13.6,	Weather Delays
Values, Schedule of	3.10.5.2, 3.19.1.5, 4.3.7.2
9.2, 9.3.1	Work, Definition of
Waiver of Claims by the Design Professional	1.1.3
13.4.2	Work, Hours of
Waiver of Claims by the Contractor	3.13.13
4.3.10, 9.10.5, 11.4.7, 13.4.2	Written Consent
Waiver of Claims by the Owner	1.6, 3.4.2, 3.12.8, 3.14.2, 4.1.2, 4.3.4, 4.6.4,
4.3.10, 9.9.3, 9.10.3, 9.10.4, 11.4.3, 11.4.5,	9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.4.1, 13.2,
11.4.7, 12.2.2.1, 13.4.2, 14.2.4	13.4.2
Waiver of Consequential Damages	Written Interpretations
4.3.10, 11.4.3,	4.2.11, 4.2.12, 4.3.6
Waiver of Claims	Written Notice
9.11.2.5	2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 4.3, 4.4.8,
Waivers of Subrogation	4.6.5, 5.2.1, 8.2.2, 9.7, 9.10, 10.2.2, 10.3,
6.1.1, 11.4.5, 11.4.7	11.1.3, 11.4.6, 12.2.2, 12.2.4, 13.3, 14
Warranty	Written Orders
3.5, 4.2.9, 4.3, 5.3, 9.3.3, 9.8.5, 9.9.1, 9.10.4,	1.1.1, 2.3, 3.9, 4.3.6.7, 8.2.2, 11.4.9, 12.1,
	12.2, 13.5.2, 14.3.1

END OF SECTION



**SECTION 00 7223 – GENERAL CONDITIONS**

**PART 1 - GENERAL**

**1.1 SUMMARY**

- A. “General Conditions of the Construction Management/General Contractor Agreement” is part of this Contract and is incorporated herein as fully as if here set forth.

**1.2 COMPLIANCE WITH LAWS**

- A. It is the intention of this agreement that all required legal provisions be included. If some such provision of the law is not included, or it is not in the proper form, then upon application of either party, the contract shall be amended so as to strictly comply with the law and without prejudice to the rights of either party.
- B. If any provision of this contract shall be held unconstitutional, illegal or void, such finding shall not affect any other provision of this contract.
- C. This agreement is subject to and shall be interpreted under the laws of the State of Colorado.

END OF SECTION

**SECTION 00 7300 - SUPPLEMENTARY CONDITIONS**

**MODIFICATION TO GENERAL CONDITIONS**

**1.0      None**

**ADDITIONAL CONDITIONS**

**2.0      None**

**END OF SECTION**

## **SECTION 01 1000 - SUMMARY**

### **PART 1 - GENERAL**

#### **1.1 SUMMARY**

A. Section Includes:

1. Project information.
2. Work covered by Contract Documents.
3. Work by Owner.
4. Access to site.
5. Work restrictions.
6. Specification and drawing conventions.
7. Miscellaneous provisions.

B. Related Requirements:

1. Section 01 5000 "Temporary Facilities and Controls" for limitations and procedures governing temporary use of Owner's facilities.

#### **1.2 PROJECT INFORMATION**

A. Owner: Montezuma-Cortez School District RE1

1. Owner's Representative:  
Jim Ketter (970) 946-5630 kpmc@mydurango.net  
Owner;  
Jamie Haukeness (970) 565-3737 jhaukeness@cortez.k12.co.us

B. Architect: Dekker/Perich/Sabatini

1. Architect's Representative:  
Benjamin Gardner  
7601 Jefferson NE. Suite 100  
Albuquerque NM 87109  
(505) 239-8337 (T)  
benjaming@dpsdesign.org

#### **1.3 WORK COVERED BY CONTRACT DOCUMENTS**

A. The Work of Project is defined by the Contract Documents and consists of the following:

1. Complete demolition and debris removal all old high school buildings and additions, concrete pads, foundation systems (including crawl space), CMU walls, and site utilities. Site utilities to be removed are to be capped at the property lines as required by utility companies, the City of Cortez, and the AHJ. All existing asphalt, trees, tree stumps and landscape and walk way in front of the existing school that are noted to be removed on the plans are to be removed from the site. The contractor will coordinate with owners for salvaged items and irrigation controller relocation and power.

Montezuma-Cortez High School  
Existing High School Demolition – 206 West 7<sup>th</sup> St. | Cortez, Colorado

2. After demolition and debris removal, remove or import soil as needed to allow for finish grading the site to contours shown in the documents. Install Native Seed and hydro mulch for erosion control.

B. Type of Contract:

1. Project will be constructed under a single prime contract.

**1.4 WORK BY OWNER**

- A. General: Cooperate fully with Owner so work may be carried out smoothly, without interfering with or delaying work under this Contract or work by Owner. Coordinate the Work of this Contract with work performed by Owner.

**1.5 ACCESS TO SITE**

- A. General: Contractor shall have full use of Project site for demolition operations during demolition and seeding period. Contractor's use of Project site is limited only by Owner's right to perform work or to retain other contractors on portions of Project. Project working hours per city requirements.
- B. Use of Site: Limit use of premises adjacent to construction site. Do not disturb portions of Project site beyond areas in which the Work is being performed. Contractor to review and coordinate proposed work area boundaries prior to commencement of Work.
1. On-site construction vehicle and equipment traffic shall be limited to pathways, areas and time periods approved in advance by Owner to ensure safe site conditions. The Contractor shall strictly maintain close communication with designated school representative(s) on matters of on-site construction traffic scheduling and promptly inform them in advance of any significant changes to related pre-authorized arrangements. Do not proceed with altered arrangements prior to designated school representative(s) approval.
  2. Parking: Arrange for parking for work force in manner approved by Owner.
  3. Construction activities shall be limited to areas of actual demolition.
- C. Comply with Owner's procedures for individual visual identification of Contractor's workforce on school owned property and in occupied areas. If identification badges are required make sure that they are worn at all times on site during the work.
- D. Do not allow dust and debris to blow onto adjacent or restricted areas.
- E. Utility outages and shutdowns:
1. Maximum allowable duration: 4 hours or as approved in advance by Owner.
  2. Coordinate all utility shutdowns which affect adjacent facilities and neighbors with the Architect, Owner and any entity having jurisdiction over or ownership of impacted public or private utility infrastructure.
  3. Protect facilities and equipment from damage due to shutdown and startup of utility.
  4. Schedule outages during off hours to facilitate Owner's operations.
  5. Submit written request for outage to Architect 4 calendar days before anticipated outage. Outage must be approved in writing by Owner.

## **1.6 CONTRACTOR'S PERSONNEL JOBSITE RESTRICTIONS**

- A. Contractor shall enforce the following requirements on his entire workforce throughout the progress of the Work:
1. All personnel on site, directly or indirectly in the employ of Contractor, are restricted from any interaction with any Owner, Owner's staff, students, or other members of the public while on, or adjacent to Owner's property except through jobsite meetings conducted by the Design Professional and the Owner or as otherwise determined by the Owner.
  2. Contractor's personnel shall remain in their designated work areas. Communications with any non-project related persons on or near the site shall be through Project Superintendent.
  3. No firearms or other types of weapons, of any sort are allowed on site. If member of the Contractor's workforce is found to be in possession of a firearm, of any kind, they will be directed to leave immediately and will not be allowed to return. This includes firearms found in company or private vehicles, tool boxes, or brought on site in any other manner;
  4. Montezuma-Cortez Public School District properties are Tobacco Free sites. Use of tobacco products shall be restricted to off-site areas at all times.
  5. Contractor's personnel shall not speak profane language, use profane imagery or use profane gestures on any occupied school campus, including profane language or imagery on personal attire or belongings.
  6. There shall be no use, possession, sale, and distribution of alcohol, drugs, or other controlled substances on its premises. The Contractor shall also prohibit the presence of an individual with such substances in their body from the workplace.
  7. Any employee who is found in violation of requirements of these restrictions, or of any others within the Contract Documents, or who refuses to permit inspection shall be barred from the Project site at the discretion of the Owner.
  8. Comply with Owner's procedures for individual visual identification of Contractor's workforce on school site and in occupied areas. If identification badges are required make sure that they are worn at all times on site during the work.

## **1.7 SPECIFICATION AND DRAWING CONVENTIONS**

- A. Specification Content: The Specifications use certain conventions for the style of language and the intended meaning of certain terms, words, and phrases when used in particular situations. These conventions are as follows:
1. Imperative mood and streamlined language are generally used in the Specifications. The words "shall," "shall be," or "shall comply with," depending on the context, are implied where a colon (:) is used within a sentence or phrase.
  2. Specification requirements are to be performed by Contractor unless specifically stated otherwise.
- B. Division 01 General Requirements: Requirements of Sections in Division 01 apply to the Work of all Sections in the Specifications.

## **1.8 DEFINITIONS**

- A. Additional terms used within Specifications shall have the following definitions:
1. Products: Materials, manufactured items, components, fixtures, machinery, equipment, or systems forming the Work but not including machinery, equipment, and other aids used for preparing, fabricating, conveying, and installing the Work.
  2. Supply: Furnish, deliver, and unload at Project site. Same meaning as furnish.
  3. Furnish: Supply, deliver, and unload at Project site. Same meaning as supply.

Montezuma-Cortez High School  
Existing High School Demolition – 206 West 7<sup>th</sup> St. | Cortez, Colorado

4. Install: Operations at Project site to incorporate products into the Work such as unpacking, assembling, anchoring, erecting, applying, placing, curing, finishing, and preparing for use.
5. Provide: To supply or furnish a product and to also install it.
6. Execution: Operations at Project site including preparatory actions, installing, and post-installation adjusting, testing, and cleaning.

## 1.9 ABBREVIATIONS

- A. Abbreviations used within the Specifications are defined as follows. For abbreviations not listed, refer to abbreviations listed on drawings then contact Architect for definitions.

ASTM - American Society for Testing and Materials.  
ANSI - American National Standards Institute.  
CF - Cubic feet.  
CFM - Cubic feet per minute.  
F - Fahrenheit.  
LF - Linear feet.  
LB - Pound.  
MPH - Miles per hour.  
SF - Square feet.  
SY - Square yards.  
PSI - Pounds per square foot.  
RPM - Revolutions per minute.  
IBC - International Building Code as published by International Code Council.  
IEBC - International Existing Building Code as published by International Code Council  
UL - Underwriters Laboratory.

## PART 2 - PRODUCTS

- A. Refer to Specification Section 32 9219 Native Seeding for native seed type/product name.

## PART 3 - EXECUTION (Not Used)

**END OF SECTION**

## **SECTION 01 3100 - PROJECT MANAGEMENT AND COORDINATION**

### **PART 1 - GENERAL**

#### **1.1 SUMMARY**

- A. Section includes:
  - 1. General requirements for coordination of Work.
  - 2. Requirements for participation in and administration of:
    - a. Pre-demolition conference.
    - b. Progress meetings.
  - 3. Progress schedule.
- B. Related documents and sections:
  - 1. Section 01 1000 - Summary: Work by others.
  - 2. Section 01 5000 - Temporary Facilities and Controls

#### **1.2 SUBMITTALS**

- A. Site mobilization plan (See Section 01 1500 - Temporary Facilities and Controls)
  - a. Submit for Owner's approval prior to start of Work.
  - b. Update as necessary during progress of Work to adjust for changed conditions and as approved by Owner.
- B. Staff assignment list and emergency contact information:
  - 1. Prior to Pre-demolition Conference, provide to Design Professional a list of Contractor's principal staff assignments for Project. Indicate names, duties and responsibilities, addresses, emergency contact information and telephone numbers. Include resume of proposed Project Superintendent showing prior experience as superintendent on projects of similar size and scope. Naming more than one Project Superintendent to be in charge depending which is present at the site will not be acceptable. Design Professional shall be informed in writing prior to any proposed change in Project Superintendent during the progress of the Work.
  - 2. Distribute contact information.
- C. Product Submittals
- D. Safety Plan
- E. Storm Water Management Plan
- F. List of Submittals

#### **1.3 GENERAL COORDINATION REQUIREMENTS**

- A. Scheduling: Coordinate scheduling, submittals and work of various specification sections to ensure efficient and orderly sequence of removal of construction elements. Ensure that work of one specification section is not demolished in such a manner as to limit, preclude, or restrict work of another section.

Montezuma-Cortez High School  
Existing High School Demolition – 206 West 7<sup>th</sup> St. | Cortez, Colorado

- B. Coordinate completion and clean up of work of separate specification sections in preparation for final inspection specified in Section 01 7700 - Closeout Procedures.
- C. After acceptance of Work, coordinate access to the site for required maintenance, monitoring, adjusting, and correcting deficiencies to manner to minimize disruption of Owner's activities.
- D. Coordinate with Owner regarding work of Owner's forces and separate contractors, including abatement contractor and environmental consultant. Ensure coordination of such work with Project Schedule. Phasing sections of project scope may be required.

#### **1.4 PRE-DEMOLITION CONFERENCE**

- A. Conference will be held after execution of the Agreement and prior to issuance of Notice To Proceed. Time and location will be coordinated with Owner and Design Professional. Meet at the site or other location convenient to all parties.
- B. Attendance: Owner, City of Cortez, designated school representative, Design Professional, Contractor, and subcontractors.
- C. Agenda:
  - 1. Distribution of Contract Documents.
  - 2. Designation and description of roles of responsible personnel representing Owner, Contractor, and Design Professional.
  - 3. Status of permits and Notice to Proceed. Demo permit by abatement contractor.
  - 4. Site mobilization plan, use of premises by Contractor and Owner, Owner's occupancy requirements, work hours, regular school schedule and special school schedule considerations.
  - 5. Demolition schedule, work sequence, and priorities.
  - 6. Job meeting schedule.
  - 7. Presentation and discussion of site mobilization plan specified in Section 01 5000 - Temporary Facilities and Controls.
  - 8. Construction facilities, controls, and temporary utilities.
  - 9. Procedures for processing submittals, applications for payment, field decisions and communications, and contract modifications.
  - 10. Behavior of work force on site.
  - 11. Procedures for spotting of utility lines.
  - 12. Procedures for maintaining project record documents.
  - 13. Contract closeout procedures.
  - 14. Emergency contact information.
  - 15. Other pertinent items.
  - 16. Traffic control
  - 17. Hauling procedures; weigh stations;

#### **1.5 PROGRESS MEETINGS & PROGRESS SCHEDULE**

- A. Refer to Agreement Owner's Contract with Contractor for requirements.

### **PART 2 - PRODUCTS**

#### **2.1 EQUIPMENT**



Montezuma-Cortez High School  
Existing High School Demolition – 206 West 7<sup>th</sup> St. | Cortez, Colorado

- A. Verify utility requirements and characteristics of equipment are compatible with facility utilities. Coordinate work of various specification sections having interdependent requirements for installing, connecting to, and placing in service such equipment.

**PART 3 - EXECUTION**

**3.1 COORDINATION WITH INSTALLED CONSTRUCTION**

- A. Cutting and patching of installed construction shall be accomplished in accordance with Section 01 7000 - Execution Requirements.

**END OF SECTION**

## **SECTION 01 5000 - TEMPORARY FACILITIES AND CONTROLS**

### **PART 1 - GENERAL**

#### **1.1 SUMMARY**

- A. Section includes:
  - 1. Site mobilization plan.
  - 2. Temporary services: Electricity, telephone, and waste removal.
  - 3. Fencing, barriers, and other temporary controls.
  - 4. Construction facilities: Sanitary facilities, access, and parking.
  - 5. Protection of Work and existing facilities.
- B. Related documents and sections:
  - 1. Section 01 3100 - Project Management and Coordination
  - 2. Section 01 7000 - Execution Requirements: Progress Cleaning

#### **1.2 REFERENCES**

- A. NFPA 10 - Standard for Portable Fire Extinguishers.
- B. NFPA 241 - Safeguarding Building Construction, Alterations, and Demolition Operations.

#### **1.3 TEMPORARY ELECTRICITY**

- A. Provide power outlets for construction operations with branch wiring, distribution boxes, and flexible power cords as required.
- B. Where approved by Owner, Contractor may connect to existing electricity source at site for construction operations.
- C. Coordinate with City of Cortez as required including agreement for temporary hydrant connections.

#### **1.4 TEMPORARY WATER SERVICE**

- A. Where approved by Owner, Contractor may connect to existing water source at site for construction operations.
- B. Assume responsibility for temporary connections and water lines where approved by Owner. Upon completion, remove temporary facilities.

#### **1.5 FENCING**

- A. Provide temporary fencing around site and materials storage site. Completely separate construction,

adjacent property and public right-of-way.

- B. Type: Panelized 6 foot high commercial grade chain link fence. Equip with vehicular and pedestrian gates with locks. Daisy chained to Owner locks.

#### **1.6 BARRIERS AND PROTECTION**

- A. Security: Provide to protect Work and existing facilities from unauthorized entry, vandalism, and theft. Coordinate with Owner's security program and personnel.
- B. Barriers: Provide to prevent unauthorized entry to demolition areas and to protect existing facilities and adjacent properties from demolition operations.
- C. Emergency exits and emergency vehicle access shall be maintained during construction. Provide separate barriers as appropriate.

#### **1.7 TEMPORARY FIRE PROTECTION**

- A. Install and maintain temporary fire protection components. Establish and follow procedures to protect against fire. Comply with NFPA 241.
- B. Fire extinguishers: Provide hand carried, portable, UL rated fire extinguishers of type and size recommended by NFPA 10 for building exposure conditions. Place in accessible, convenient locations in clear view.
- C. Access: Maintain unobstructed access to fire hydrants, water supply, fire extinguishers, and access routes for fighting fires.
- D. Cutting and welding: Approve in advance use of open flame cutting, welding, and soldering equipment. Ensure that safe conditions exist before granting approval.

#### **1.8 ACCESS**

- A. Coordinate with Owner for location of acceptable access routes and site entrances. Protect existing curbs and walks traversed by construction vehicles from damage.
- B. Prevent unauthorized personnel from accessing site through Contractor's work area.

#### **1.9 FIELD FACILITIES**

- A. Arrange for parking for work force in manner approved by Owner.

#### **1.10 TEMPORARY SANITARY FACILITIES**

- A. Provide and maintain required sanitary facilities for work force.

#### **1.11 DRINKING WATER**

Montezuma-Cortez High School  
Existing High School Demolition – 206 West 7<sup>th</sup> St. | Cortez, Colorado

- A. Provide independent source of drinking water for workforce.

**1.12 PROJECT SIGNS**

- A. No signs to be displayed without approval of Design Professional or as required by Owner.

**1.13 REMOVAL OF UTILITIES, FACILITIES, AND CONTROLS**

- A. Remove temporary above grade and buried utilities, equipment, facilities, and excess materials prior to final inspection.

**PART 2 - PRODUCTS**

Not used

**PART 3 - EXECUTION**

Not used

**END OF SECTION**

## **SECTION 01 7000 - EXECUTION REQUIREMENTS**

### **PART 1 - GENERAL**

#### **1.1 SUMMARY**

- A. Section includes:
  - 1. Basic requirements for examination, preparation and demolition.
- B. Related documents and sections:
  - 1. Section 01 5000 - Temporary Facilities and Controls.
  - 2. Section 01 7700 - Closeout Procedures: Final cleaning.

#### **1.2 LOCATION OF UNDERGROUND UTILITIES**

- A. The Contractor shall arrange for all spotting of lines by utility companies in advance of any excavation work.

### **PART 2 - PRODUCTS**

Not used

### **PART 3 - EXECUTION**

Not used

**END OF SECTION**

## **SECTION 01 7700 - CLOSEOUT PROCEDURES**

### **PART 1 - GENERAL**

#### **1.1 SUMMARY**

- A. Section includes:
  - 1. Closeout procedures.
- B. Related documents and sections:
  - 1. Section 01 7000 - Execution Requirements.
  - 2. Section 01 7800 - Closeout Submittals: Submittal of project record documents and certificates of inspection.

#### **1.2 SUBSTANTIAL COMPLETION PROCEDURES**

- A. Prior to or in conjunction with submission of Contractor's request for Substantial Completion, submit the items specified in Section 01 7800 - Closeout Submittals

#### **1.3 FINAL COMPLETION PROCEDURES**

- A. Follow procedures as outlined in Agreement Between Owner and Contractor.

### **PART 2 - PRODUCTS**

Not used

### **PART 3 - EXECUTION**

Not used

**END OF SECTION**

## **SECTION 01 7800 - CLOSEOUT SUBMITTALS**

### **PART 1 – GENERAL**

#### **1.1 SUMMARY**

- A. Section includes procedures for preparing and submitting closeout submittals:
  - 1. Project Record Documents.
  - 2. Insurance information.
- B. Related documents and sections:
  - 1. Section 01 7700 – Closeout Procedures: Requirements for achieving Substantial Completion and Final Completion

#### **1.2 PROJECT RECORD DOCUMENTS**

- A. Maintain on site, one set of the following record documents; record actual revisions to work:
  - 1. Contract Drawings.
  - 2. Specifications.
  - 3. Addenda.
  - 4. Change Orders and other modifications to the Contract.
    - a. Store Record Documents separate from documents used for construction. Label "Project Record Documents".
    - b. Record information concurrent with construction progress. Use erasable colored pencil. Date all entries. Call attention to entry by circling area affected.
    - c. Specifications: Legibly mark and record in each section description of actual products installed, including the following:
      - 1) Manufacturer's name and product model and number.
      - 2) Product substitutions or alternates utilized.
      - 3) Changes made by Addenda and modifications.
    - d. Contract Drawings and shop drawings: Legibly mark each item to record actual construction including:
      - 1) Measured horizontal and vertical locations of capped underground water, sewer, irrigation, electrical, and other utilities and appurtenances, referenced to permanent surface improvements.
      - 2) Details not on original Contract Drawings.
    - e. Documents will be reviewed by Architect.
    - f. Submit documents to Architect prior to or in conjunction with submission of Contractor's request for Substantial Completion and in accordance with Owner's procedures.

#### **1.3 INSURANCE INFORMATION**

- A. Submit prior to or in conjunction with submission of Contractor's request for Substantial Completion information regarding insurance including change over requirements and insurance extensions.

Montezuma-Cortez High School  
Existing High School Demolition – 206 West 7<sup>th</sup> St. | Cortez, Colorado

**PART 2 - PRODUCTS**

Not Used.

**PART 3 - EXECUTION**

Not Used.

**END OF SECTION**

CLOSEOUT SUBMITTALS

01 7800 | 2



## **SECTION 02 4100 - DEMOLITION**

### **PART 1 – GENERAL**

#### **1.1 DESCRIPTION:**

- A. This section specifies demolition and removal of buildings, building foundation, portions of buildings, utilities, other structures and resultant debris as well as restoration of associated grounds.

#### **1.2 RELATED WORK:**

- A. Demolition and removal of foundation, pads, walks, curbs, and on-grade slabs outside buildings as shown on the drawings to be demolished.
- B. Disconnecting utility services prior to demolition will be coordinated with the Owner prior to demolition procedures. Contractor to verify with Owner before proceeding with Work. All City lines shall remain undisturbed, intact and properly functional. It will be this contractor's responsibility to properly cap the sewer lateral and water lateral below grade at property line and remove the cleanouts and remove sewer line.

#### **1.3 PROTECTION:**

- A. Perform demolition in such manner as to eliminate hazards to persons and property; to minimize interference with use of adjacent areas, utilities and structures or interruption of use of such utilities; and to provide free passage to and from such adjacent areas of structures.
- B. Salvage of Materials: The Contractor will have right to salvage any of the materials for the contractor's use on other projects with the exception of items noted in the drawings to be returned to the utility company(s); the Owner does not want to retain any salvage. Contractor shall, however, remove any salvageable materials on a daily basis and maintain the property free of said materials.
- C. Provide safeguards, including warning signs, barricades, temporary fences, warning lights, and other similar items that are required for protection of all personnel during demolition and removal operations.
- D. Maintain fences, barricades, lights, and other similar items around exposed excavations until such excavations have been completely filled.
- E. Prevent spread of flying particles and dust. Sprinkle rubbish and debris with water to keep dust to a minimum. Do not use water if it results in hazardous or objectionable condition such as, but not limited to; ice, flooding, or pollution.
- F. In addition to previously listed fire and safety rules to be observed in performance of work, include following:
  - 1. Wherever a cutting torch or other equipment that might cause a fire is used, provide and maintain fire extinguishers nearby ready for immediate use. Instruct all possible users in use of fire extinguishers.
  - 2. Keep fire hydrants clear and accessible at all times. Prohibit debris from accumulating within a radius of 15 feet of fire hydrants.

Montezuma-Cortez High School  
Existing High School Demolition – 206 West 7<sup>th</sup> St. | Cortez, Colorado

- G. Before beginning any demolition work, the Contractor shall survey the site and examine the drawings and specifications to determine the extent of the work. The contractor shall take necessary precautions to avoid damages to existing items to remain in place, to be reused, or to remain the property of the Owner; any damaged items shall be repaired or replaced as approved by the Owner.

**1.4 UTILITY SERVICES:**

- A. Coordinate with Owner to schedule all utility services to be disconnected. See “Related Work”, para. 1.2 B above.

**PART 2 - PRODUCTS (NOT USED)**

**PART 3 – EXECUTION**

**3.1 DEMOLITION:**

- A. Completely demolish and remove buildings and structures, including all appurtenances related or connected thereto, as shown on the Drawings.
- B. Debris, including concrete, concrete masonry units, stone, metals and similar materials shall be disposed of by the contractor every day during demolition and regrading phase, off the Property, to avoid accumulation at the demolition site. Materials that cannot be removed daily shall be stored in areas approved by the Owner. Contractor shall legally dispose of debris in compliance with applicable federal, state or local permits, rules and/or regulations.
- C. Remove existing utilities as indicated or uncovered by work and terminate in a manner conforming to the nationally recognized code covering the specific utility and approved by the Owner. When Utility lines are encountered that are not indicated on the drawings, the Owner shall be notified prior to further work in that area.

**3.2 CLEAN-UP:**

- A. On completion of work of this Section and after removal of all debris, leave site, adjoining areas, walkways and roadways in clean condition satisfactory to Owner.

**END OF SECTION**

## **SECTION 32 9219 - NATIVE SEEDING**

### **PART 1 - GENERAL**

#### **1.1 SCOPE**

- A. Prepare all areas indicated on the drawings for seeding according to the Specifications and furnish and install all seed, and related maintenance as called for by the Contract Documents.

#### **1.2 QUALITY ASSURANCE**

- A. Contractor Qualifications: All work specified herein shall be performed by a licensed contractor experienced with the type and scale of work required and having materials, equipment and personnel adequate to perform the work satisfactorily, and having all applicable insurance, licenses and permits to legally perform that work.
- B. Contractor shall have on the site at all times a representative capable of reading and interpreting Drawings and specifications.
- C. Source Quality Control:
  - 1. Compliance with Laws: All plant materials shall comply with State and Federal Laws with respect to inspection for disease infestation.
  - 2. Analysis and Standards: All packaged standard products shall have manufacturer's certified analysis. For other materials, provide analysis if required in these specifications. Analysis is to be by a recognized laboratory and made in accordance with methods established by the Association of Official Agricultural Chemists.

#### **1.3 SITE INVESTIGATION AND PROTECTION**

- A. Contractor shall locate and protect existing adjoining pavement, curbing, structures, electric cables or conduits, irrigation and utility lines, existing plant materials, and other existing features or conditions above or below ground level that might be damaged as a result of his operations. Contractor shall report to the Architect or his authorized representative conditions which shall prevent the proper execution of native seeding operations.
- B. Contractor shall furnish and maintain all warning signs, shoring, barricades, bracing, red lanterns, etc., as required by site regulations and local ordinances.
- C. Contractor shall be responsible for repair or replacement of features or conditions damaged through failure to comply with above procedure, at no cost to Owner. All improvements, including repairs and repaving of cut paving shall be performed as part of this contract.

#### **1.4 COORDINATION**

- A. Contractor shall coordinate and cooperate with other contractors and related work.

## **1.5 STANDARDS, CODES AND SAFETY RULES**

- A. All work and materials shall be installed to meet or exceed the latest industry and manufacturer's standards of workmanship and quality, including drawings, specifications, and all applicable local and state codes. All work shall be in full accordance with the latest safety rules and regulations.

## **1.6 INSPECTIONS**

- A. All coordination between Contractor and Architect for all inspections shall be initiated by Contractor in advance. Required inspections:
  - 1. Subgrade condition.
  - 2. Fine grading condition. Size of debris to be approved by Owner. Clean soil.
  - 3. Seed species before installation and after finished grade.
  - 4. Inspection for seeding area growth and all standards during and after germination
- B. Contractor shall not proceed with work of the next sequence without completing previous work.

## **1.7 SUBMITTALS**

- A. Provide submittals for seed and hydro mulch to architect for review.
- B. Product Data:
  - 1. Proposed source of all native seed shall indicate the location from which the seed was harvested, prior to ordering seed.
  - 2. Submit type and source of hydro-mulch for approval prior to ordering the hydro-mulch.
  - 3. Submit type and source of soil stabilizer for approval prior to ordering soil binder.
- C. Seed Tags: Seed bag tags and weights per bag and copies of invoices identified by project name. Labeling shall adhere to Federal seed laws and Colorado Department of Agriculture labeling laws.
- D. Record Drawings: At final acceptance, Contractor shall furnish Record Drawings prepared by a qualified draftsperson showing the entire, actual completed seeding area.
- E. Maintenance Manual: Submit two copies of typewritten instructions bound in three-ring binder of recommended landscape operation and maintenance procedures to be followed for the seeded areas by the Owner for one full year. Submit prior to expiration of required maintenance period(s). Include and provide information on the following:
  - 1. Pest control
  - 2. Weed control
  - 3. Hydromulch
  - 4. Soil amendments
  - 5. Other pertinent planting and horticultural maintenance information

## **1.8 PRODUCT DELIVERY, STORAGE AND HANDLING**

- A. Keep seeds, soil amendments, pest /weed control and soil stabilizer products in cool, dry storage away from contaminants.

## **1.9 JOB CONDITIONS**

### **A. Existing Conditions:**

1. General: Proceed with and complete seeding work as rapidly as portions of site become available.
2. Determine the acceptability of each planting site and subgrade prior to the start of seeding work.
3. Grade Stakes: Maintain grade stakes set by others until removal is mutually agreed upon by parties concerned.

### **B. Sequencing, Scheduling:**

1. Schedule seeding operations during days in which winds are less than 10 mph.
2. No more area may be seeded than can be covered with drill seeded and hydro-mulched by the end of the work day.

## **1.10 PROJECT CLOSEOUT**

- A. Substantial completion shall be issued when Contractor has completed all work in the contract, and the Architect has inspected and is satisfied with all work.
- B. Maintenance: Contractor shall maintain the seeded area regularly throughout the installation and maintenance period defined in these Specifications. Owner shall provide maintenance afterwards.
- C. Warranty: Contractor shall warranty landscape seeding for a period of one full year after date of substantial completion against defects including death and unsatisfactory growth as determined by the Architect.
- D. Final Acceptance: Shall be issued at the end of the warranty period, when the Architect has inspected and is satisfied with all work.

## **PART 2 - PRODUCTS**

### **2.1 SEED**

#### **A. For each species of seed, the following information shall be found on each bag tag:**

1. Genus and species
2. Variety - specify if certified
3. Lot number
4. Purity: Pure live seed equals percent purity times percent germination, including dormant seed, divided by 100.
5. Germination
6. % crop seed; % inert; % weed seed, including noxious, annual and perennial weeds, and foreign grasses such as Nut grass (*Cyperus* spp), Johnson grass (*Sorghum halapensis*), or Bindweed (*Convolvulus* spp).
7. Origin
8. Test date
9. Net weight: Pounds of species or percentage of total lot

Montezuma-Cortez High School  
Existing High School Demolition – 206 West 7<sup>th</sup> St. | Cortez, Colorado

- B. All seed shall be viable to the degree specified by the seller and true to source and species. Any seed that has been damaged due to moisture or other negative conditions shall not be accepted.
- C. All seed and seeding materials shall comply with the regulations and requirements of the State Department of Agriculture. Each bag of seed shall be sealed and labeled by the seed dealer in accordance with Federal Seed Laws and state Department of Agriculture Labeling Laws, having any necessary certification and tags.
- D. A seed dealer may premix seed. Documentation must be provided in the same manner if seeds were sold or bagged separately.
- E. All native grass shall be obtained from sources in Colorado unless proof is provided that a particular seed is unavailable within the state.
- F. Seed Mixes: The seed mixes in appendix A, this specification.

## **2.2 WATER**

- A. Water for maintaining seeding shall be clean and free from pollutants, which would be harmful to plant growth or contaminate the environment.

## **2.3 HYDRO-MULCH**

- A. Hydro-mulch shall be a blend of wood fiber and clean paper fibers, free of impurities and a guar gum based binder.
- B. Weight specifications from suppliers and for all applications shall refer only to dry weight of the fiber, a standard equivalent to 10% moisture. The mulch material shall be supplied in packages having a gross weight not in excess of 100 pounds, and shall be marked by the manufacturer to show the dry weight content. Supplies shall certify that laboratory and field-testing of their product has been accomplished, meeting all of the foregoing requirements pertaining to wood cellulose fiber mulch
- C. Mulching will not be permitted with wind velocity exceeds 10 mph.
- D. Product: Basis-of-Design:
  - 1. Enviro-Plus manufactured by Southwest Environment Services, Inc (or approved equal) 903.531-Mat-Fiber Plus-Hydraulic Planting Mulch. Available from: John Deere Landscapes 505-865-9225.

## **PART 3 - EXECUTION**

### **3.1 GENERAL**

- A. All materials in drawings shall be handled carefully in accordance with supplier recommendations on loading, unloading, and storage. Contractor shall avoid rough handling which could affect the health and life of all materials. All materials shall be installed in a neat and competent manner as per drawings or field directions. Some specific procedures or equipment may be absent from these specifications that are necessary for proper installation.

Montezuma-Cortez High School  
Existing High School Demolition – 206 West 7<sup>th</sup> St. | Cortez, Colorado

- B. Installation dates: When ground is not frozen or waterlogged; optimum dates for native grass and wildflower seeding is between June 15th and September 1st.
- C. Seeding Mix and Rates: Per the drawings.
- D. Material Storage: Contractor shall deliver and stockpile materials outside of all areas to be landscaped and where they shall not interfere with vehicular/pedestrian traffic and other uses.
- E. Sequencing /Scheduling:
  - 1. Complete sub-grade preparation and clearing and grubbing prior to the start of finish grade.
  - 2. Finish grade.
  - 3. Prepare soil for seeding by rototilling to a depth of 12" and rake.
  - 4. Install temporary irrigation as required.
  - 5. Install seeding after final grades are established and soil preparation is complete. Seeding installation shall be immediately followed with watering that same workday.
  - 6. Apply hydro-mulch on areas if indicated on plans.

### **3.2 CLEARING AND GRUBBING**

- A. Contractor shall remove from site, all construction debris, miscellaneous piping and irrigation parts, dead or dying plant material, and weeds within proposed seeding areas, prior to any installations.

### **3.3 FINISH GRADE**

- A. Contractor shall provide finish grade, including necessary fill material to establish finish grade, prior to any planting installations. Finish grade is final grade with a smooth, uniform fine textured surface ready for seeding. Topsoil/planting soil that matches consistency of existing soil shall be used as fill material. Finish grade shall be 1/2" below top of adjacent paved surfaces, where no gravel mulch is indicated. Where gravel mulch is indicated, bottom of mulch will be approximately 3-1/2" below the top of the adjacent paved surfaces with the top of the mulch 1/2" below the top of adjacent paved surfaces.

### **3.4 SEED BED PREPARATION**

- A. The extent of seedbed preparation shall not exceed the area on which the entire seeding operation can be applied, without danger of erosion. If erosion or crusting occurs, the entire area affected shall be reworked beginning with seedbed preparation, and hydro-mulch shall be applied as necessary.
- B. Seed Beds:
  - 1. Grade or fine grade existing soil to a proper depth to meet finish grades for areas..
  - 2. Install temporary irrigation in areas as necessary.
  - 3. Till soil to a minimum depth of twelve inches (12) throughout the seed bed. Till in two directions each at right angles to each other.
  - 4. Rake and remove all rocks over 1-inch size, trash, debris or other deleterious material from the top three inches of the prepared bed.
  - 5. Soak the area with water. Let the area dry. Fill any large depressions or settlement that is not as shown on the drawings.

### **3.5 INSTALLATION**

Montezuma-Cortez High School  
Existing High School Demolition – 206 West 7<sup>th</sup> St. | Cortez, Colorado

A. General

1. Seed shall be installed over a firm, stabilized, and moist prepared area. Contractor shall not apply seed on crusted or muddy soil surface.

B. Hand Broadcasting

1. Hand broadcasting of seed shall be performed where it is impractical to use drill seeding equipment, in areas such as steep slopes or confined spaces, or as per Drawings.
2. Seeding procedure:
  - a. Moisten the prepared seed bed.
  - b. Evenly broadcast seed mix(es) at the rate indicated on the plans.
  - c. Fine rake the seeded area to cover the seed with soil to a depth of 1/4" to 1/2".
  - d. Roll seeded area after installation with an acceptable roller (no less than 200 lbs. on an 18" wide roller drum).
  - e. Fill, reseed, rake and compact to final grade as necessary.
  - f. Lightly water installed seed area with a fine spray.
  - g. Repeat the seeding and compaction procedure until soil is stable enough to hold a smooth, uniform surface but loose enough to permit aeration and drainage for seeding areas.
  - h. Hydro-mulch onto seeded areas at a rate(s) recommended by the manufacturer for various site slope conditions.

C. Drill Seeding

1. Following preparation of the seed bed, seed shall be sown by mechanically drilling seed per drawings. If slopes are too steep for drill seeding, hand broadcasting shall be implemented.
2. Drilling procedure:
  - a. All seeding operations, where practical shall be accomplished by drilling and shall be across the slope.
  - b. Rip seed bed in two directions and plow with a plow disc to a minimum of six (6) inches.
  - c. Drill the seed mix with a silt seeder at 1/2 inch depth, or as per seed company recommendations.
  - d. The distance between drilling furrows must not be more than 6 inches.
  - e. Seeding shall be done with grass wheels, rate control attachments, seed boxes with agitators for trashy seed, and separate boxes for small seed.
  - f. Hydro-mulch onto seeded areas at a rate(s) recommended by the manufacturer for various site slope conditions.

D. Hydro-Mulch

1. Hydraulic mulching equipment shall include a pump capable of being operated at 1,000 gpm and 100-psi, unless otherwise directed. When sprayed uniformly on the soil, the fibers shall form a blotter-like ground cover that readily absorbs water and allows infiltration to the underlying soil.
2. As required, cellulose fiber mulch shall be added with the proportionate quantities of water and other appropriate materials in the slurry tank. All ingredients shall be mixed to form a homogenous slurry. Using the color of the mulch as a metering agent, the operator shall spray-apply the slurry mixture uniformly over the designated seeding area. Unless otherwise ordered for specific areas, wood cellulose fiber mulch shall be applied at the rate of 1,400 pounds per acre.
3. Clean hydro-mulch from any surfaces inadvertently sprayed.

**3.6 PERFORMANCE STANDARD**



Montezuma-Cortez High School  
Existing High School Demolition – 206 West 7<sup>th</sup> St. | Cortez, Colorado

- A. After completion of landscape seeding, all seeding areas shall be evaluated for satisfactory germination as is typical for the species, design intent, season, and (un-)irrigated condition.
- B. All other components related to seed installation shall have a finished appearance.

**3.7 CLEAN UP**

- A. Contractor shall keep all work areas and all adjacent paving clean, neat, and orderly at all times. Contractor shall collect and remove all debris from the entire work area prior to inspection for substantial completion by the Architect.
- B. Contractor shall protect existing elements from damage due to seeding operations, operations by other contractors, other trades and trespassers.
- C. Cleaning of agitator for hydro-mulch operation shall occur in recommended waste stations as recommended by manufacturer, not on site.

**3.8 SUBSTANTIAL COMPLETION**

- D. When Contractor is satisfied that all landscape seeding is completed and in conformance to the standards listed, they shall request an inspection for substantial completion from the Architect.
- E. Any work deemed not acceptable shall be reworked to the satisfaction of the Architect, at no additional cost to Owner.
- F. When the completed work and the Record Drawings have been reviewed and approved by Architect and Owner, a written issue of substantial completion of the project shall be given to Contractor.

**3.9 MAINTENANCE**

- A. Begin maintenance immediately after planting.
- B. Maintain seeded area for not less than the period stated below, and longer as required to establish an acceptable re-vegetation cover.
  - 1. Maintenance shall continue until the entire landscape project is accepted, and until the end of the maintenance period. Maintenance period shall be not less than ninety (90) days after substantial completion, unless otherwise approved by the Architect.
  - 2. Maintain seeded areas by watering, weeding, and other operations such as rolling, re-grading and replanting as required to establish acceptable re-vegetation cover.

**3.10 WARRANTY PERIOD AND REPLACEMENT**

- A. All seeding areas shall be alive and growing properly, with all related work functioning properly, at the end of the warranty period. Contractor shall guarantee all seeding areas for a period of one (1) year beginning on the issue date of substantial completion, except as follows:
  - 1. Contractor shall not be held responsible for the replacement of any seeding area losses due to causes beyond their control, including vandalism, animals, inappropriate planting times as directed

Montezuma-Cortez High School  
Existing High School Demolition – 206 West 7<sup>th</sup> St. | Cortez, Colorado

by others, lack of dedicated irrigation, and/or other destruction caused by others during the maintenance / warranty period. Owner shall incur all such replacement costs.

- B. Contractor shall regularly inspect all seeding areas, and as approved or directed by the Architect. Contractor shall promptly repair, without cost to Owner, all seeding areas or materials that prove unhealthy, dead, or defective in material or workmanship. Contractor shall replace any seeding areas or materials as soon as weather conditions permit, during the warranty period, except for those factors excluded above. Seeding and other materials used for replacement shall be of same kind as specified in the drawings and previously approved.
- C. If at any time during the warranty period Contractor should encounter site conditions unfavorable to the health of the seeding areas, they shall notify the Architect.
- D. Contractor shall repair any settlement of seeding areas by one or both of the following methods as directed by Owner and Architect:
  - 1. Bring to grade by adding replacement soil mixture.
  - 2. Replacement with new seed, matching the former seed.

**3.11 FINAL INSPECTION/FINAL ACCEPTANCE**

- A. Contractor shall request this inspection from the Architect.
- B. Seed must be well rooted into subgrade and any bare spots, low areas or dead native grass must be repaired or reseeded to the satisfaction of the Owner prior to acceptance.
- C. Seeded areas to be at a minimum of 70% of existing coverage of live seedlings at time of final acceptance.
- D. Architect shall give a written copy of required corrections to Contractor. Any work deemed not acceptable shall be reworked to the satisfaction of the Architect. Only one (1) additional reseeding shall be required of Contractor at the end of warranty period, except for repairs or reseeding due to non-compliance with specified requirements.

When all corrected work is completed, a written issue of final acceptance of the project shall be given to the Contractor by the Architect.

END OF SECTION 329219