

ITEM # 18-0349

CITY OF SANTA FE

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into by and between the City of Santa Fe (the "City") and FacilityBUILD, Inc. (the "Contractor"). The date of this Agreement shall be the date when it is executed by the City and the Contractor, whichever occurs last.

1. SCOPE OF SERVICES

The Contractor shall provide the following professional construction services for a City of Santa Fe (CIP #646) remodel project to accommodate the CT-80DR+ luggage scanner, located inside of the Santa Fe Regional Airport terminal TSA office. In accordance with all provisions of its contract with the State of New Mexico price agreement #50-000-15-00072. See attached proposal marked Exhibit "A" attached hereto and made a part thereof from FacilityBUILD, Inc., to include the following, but is not necessarily inclusive to the items listed below:

- A. Provide labor and material to remove existing wall in TSA. Replace store front door. Replace plumbing and electrical as needed. Replace flooring and finishes to match existing.
- B. Provide and install luggage conveyer system from scanner to tarmac area.
- C. Clean up all construction debris daily and properly dispose off-site.
- D. Secure all building permits and final inspections.
- E. No breaches can be left in SIDA security area when not working.

2. STANDARD OF PERFORMANCE; LICENSES

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

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

3. COMPENSATION

A. The City shall pay to the Contractor in full payment for services rendered, a sum not to exceed One Hundred Ten Thousand Seven Hundred Fifty Five Dollars and Twenty Five cents (\$110,755.25), inclusive of the applicable New Mexico gross receipts taxes.

B. The Contractor shall be responsible for payment of gross receipts taxes levied by the State of New Mexico.

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

4. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City, this Agreement shall terminate upon written notice being given by the City to the Contractor. The City's

decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

5. TERM AND EFFECTIVE DATE

This Agreement shall be effective when signed by the City and the Contractor, whichever occurs last, and shall terminate on January 31, 2019 unless sooner pursuant to Article 6 below.

6. TERMINATION

A. This Agreement may be terminated by the City and the Contractor upon 60 days written notice to the Contractor

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

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

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

A. The Contractor and its agents and employees are independent contractors performing professional services for the City and are not employees of the City. The Contractor, and its agents and employees, shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City as a result of this Agreement.

B. The Contractor shall be solely responsible for payment of wages,

salaries and benefits to any and all employees or subcontractors retained by the Contractor in the performance of the services under this Agreement.

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

8. CONFIDENTIALITY

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

9. CONFLICT OF INTEREST

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

10. ASSIGNMENT; SUBCONTRACTING

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

11. RELEASE

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

12. INSURANCE

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

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

C. Contractor shall maintain professional liability insurance throughout

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

13. INDEMNIFICATION

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

14. NEW MEXICO TORT CLAIMS ACT

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

15. THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the City and the Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

16. RECORDS AND AUDIT

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

17. APPLICABLE LAW; CHOICE OF LAW; VENUE

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

18. AMENDMENT

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

19. SCOPE OF AGREEMENT

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the services to be performed hereunder, and all such agreements, covenants and understandings have been merged into this Agreement. This Agreement expresses the entire Agreement and understanding

between the parties with respect to said services. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

20. NON-DISCRIMINATION

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

21. SEVERABILITY

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

22. NOTICES

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

City of Santa Fe:
PO Box 909
Santa Fe, NM 87505

Contractor – FacilityBuild, Inc.
5904 Florence Avenue NE
Albuquerque, NM 87113

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

CITY OF SANTA FE:

CONTRACTOR:
FacilityBUILD, Inc.


ALAN WEBBER, MAYOR

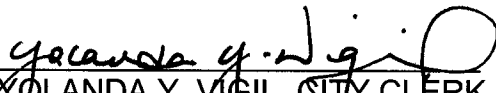
DATE: April 10, 2018

See next page
CAMERON KILCUP, PRESIDENT

DATE: _____

CRS# 02-947637-00-2
City of Santa Fe Business
Registration # 18-00110356

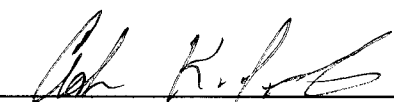
ATTEST:


YOLANDA Y. VIGIL, CITY CLERK
cc mtg. 3/28/18

APPROVED AS TO FORM:

 3/21
KELLEY A. BRENNAN, CITY ATTORNEY

APPROVED:

 4-6-18
ADAM JOHNSON, FINANCE DIRECTOR
52810.572970 WIP CONSTRUCTION
Business Unit Line Item

CITY OF SANTA FE:

CONTRACTOR:
FacilityBUILD, Inc.

JAVIER M. GONZALES, MAYOR

DATE: _____

CAMERON KILCUP, PRESIDENT

DATE: 3/1/18

CRS# 02-947637-00-2
City of Santa Fe Business
Registration # 18-00110356

ATTEST:

YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:

NDM 2/13
KELLEY A. BRENNAN, CITY ATTORNEY

APPROVED:

ADAM JOHNSON, FINANCE DIRECTOR
52810.572970 WIP CONSTRUCTION
Business Unit Line Item

Am

CONSTRUCTION COST PROPOSAL

Date: 2/9/2018

RFE: 18-142

City Of Santa Fe-Public Works Dept.
Curt Temple
P.O. Box 909 2651 W. Siringo Rd., Bldg E.

Cost Proposal Project Name: **City Of Santa Fe- Airport TSA
Baggage**
Procurement Contract: 0
Email address: cetemple@ci.santa-fe.nm.us
Telephone #: **505-955-5935**

Physical Job Address: 121 Aviation Dr. Santa Fe, NM 87507
Plans and specifications provided by: FacilityBUILD, Inc.

Scope of Work:

Per attached plans by FacilityBUILD Dated 1/30/2018, Sheets A-1 to A-2 and as noted below; Provide labor and material to remove the existing roll up door on the exterior wall and salvage for owner, remove the roll up door in the front area and relocate it to exterior wall, remove the storefront door and window unit, demolish and dispose of walls between the scanner room and baggage area, install (1) 10' x 30" wide belt, power belt conveyor, adjustable legs and auto start and cladding, install (2) 7' x 30" wide rollers, roller swing up bracket, adjustable legs and cladding, install (1) baggage slide, frame, drywall and patch areas where demo was done, remove the existing baseboard radiator, relocate one pipe and elbow, primer and paint the walls, electrical demo, install new surface mount single phase 100 amp panel, install new power poles for the electrical and data to the new scanner, install a pull box and conduit for the fiber optic jumper cable, install a new double door storefront with a transom, and install new Aladdin 10 year unravel carpet tiles with 4" vinyl base w/toe.

Includes:

As needed: prevailing wages; performance and payment bonds; insurance; permits, architectural, structural engineering and applicable fees - Unless specifically excluded in the scope of work:

Clarification: 1.) This proposal does not include afterhours/weekend work 2.) This proposal includes structural engineering only- Once engineering report is complete FB will provide additional cost if needed per structural report

Excludes:

Repair or replacement of existing architectural, structural, electrical, fire systems, life safety, code violations, hidden conditions or additional material testing, site improvements; Irrigation or landscape work or any design construction work not specifically described in the scope of work or construction documents: Material Testing, Hazardous Materials Assessment, Abatement, Disposal, Fire Alarm and Fire Protection

Cost Breakdown Subtotal (page 2):

NM GRT @ City Of Santa Fe 8.4375%

\$102,137.41

\$8,617.84

TOTAL \$110,755.25

FacilityBUILD's Authorized Signature:


Louie Campos Jr.


lcampos@facilitybuild.com

date 2/9/2018

Acceptance: The above scope of work, cost proposal and Services Agreement General Conditions are hereby accepted. You are authorized to do the work as specified. Costs are valid for 30 days.

Project Name: City Of Santa Fe- Airport TSA Baggage

Client Authorized Signature:



date 2/28/18

This agreement is the only agreement expressed or implied in which the work will be completed. The agreement takes precedent over any previous oral agreements and representations. See attached General Conditions on pages 3 and 4 of this proposal.

FacilityBUILD, Inc.

NM Contractors License: # 88676 - GB98, MM98, EE98, GA98, GF98, GF05 and GS04
5904 Florence Avenue NE, Albuquerque, NM 87113 Phone (505) 828-0060 Fax: (505) 823-0816
www.facilitybuild.com

Facility **BUILD** DESIGN • BUILD • ON-CALL

Cost Proposal Project Name: City Of Santa Fe- Airport TSA Baggage

Physical Job Address: 121 Aviation Dr. Santa Fe, NM 87507

Cost Breakdown (Per CSI Division 1-16):

Div: 1	General Requirements: Construction Design and Engineering (if applicable), Building Construction Permits, General Liability and Builders Risk Insurance, Project Management and Coordination, Weekly Construction Progress Documents, Construction Administration, Submittals, Product Approval Process, Quality Assurance and Quality Control inspections, Temporary Facilities and Utilities, Waste Management, Regulatory Control, Safety Plan, Closeouts and Training	\$16,072.84
Div: 2	Site work/Demolition: Provide labor and material to remove the existing roll up door on the exterior wall and salvage for owner, demolish and dispose of walls including the concrete wall between the scanner room and baggage area	\$9,871.96
Div: 3	Concrete: NA	\$0.00
Div: 4	Masonry: N/A	\$0.00
Div: 5	Metals: NA	\$0.00
Div: 6	Wood & Plastics: N/A	\$0.00
Div: 7	Thermal/Moisture: NA	\$0.00
Div: 8	Doors & Windows: Provide labor and material to remove the OHD 626 rapid slat roll up door in the front area and relocate it to exterior wall, install a painted aluminum storefront with wide stile doors and clear insulated low-E tempered glass based on 1 -5' x 7' pair of doors with transom.	\$14,136.78
Div: 9	Finishes: Provide labor and material to frame, drywall, texture and patch areas where demo occurred, primer and paint the walls, and install new Aladdin 10 year unravel carpet tiles with 4" vinyl base w/toe.	\$8,328.37
Div: 10	Specialties: NA	\$0.00
Div: 11	Equipment: Provide labor and material to install (1) 10' x 30" wide belt, power belt conveyor, adjustable legs and auto start and cladding, install (2) 7' x 30" wide rollers, roller swing up bracket, adjustable legs and cladding, install (1) baggage slide	\$30,841.46
Div: 12	Furnishings:	\$0.00
Div: 13	Special Construction: N/A	\$0.00
Div: 14	Conveying Systems: N/A	\$0.00
Div: 15	Mechanical/Plumbing: Provide labor and material to remove an existing baseboard radiator connecting the supply and return lines for the radiator on the floor, and relocating of the pipe and elbow that is currently exposed	\$1,843.64
Div: 16	Electrical: Provide labor and material to electrical demo , install new surface mount single phase 100 amp panel, install new power poles for the electrical and data to the new scanner, and install a pull box and conduit for the fiber optic jumper cable	\$21,042.36
Subtotal		\$102,137.41
NM GRT @ 8.4375%		\$8,617.84
TOTAL		\$110,755.25

Services Agreement/General Conditions**FacilityBUILD™**

1. Scope of Work: Contractor agrees to furnish necessary labor, materials, supplies, equipment, tools and subcontractors to perform and complete in a professional workmanlike manner, the services as described under the attached scope of work. All conclusions and recommendations regarding the work represent the professional opinions of Contractor personnel involved in the work and should not be considered a legal interpretation of existing codes or regulations. Contractor assumes no responsibility for errors in architectural plans/specifications, existing code deficiencies, or incorrect information provided by Owner/Client that Contractor relied on in preparing proposal/estimates.

2. Payment: 100% upon completion of scope of work unless credit arrangements have been made, or work duration is longer than one (1) month. Then the contractor will submit invoices monthly, or as otherwise agreed, for completed portions of services or additional work authorized pursuant to Paragraph 5 herein. Owner/Client agrees to pay the invoiced amount within 20 days from date of invoice. Any payment not received by Contractor within 30 days shall be considered delinquent and the amounts due contractor shall accrue a late charge of 1 1/2% per month for each month from date of invoice. In the event any payment due Contractor under the terms of this Agreement is delinquent, Contractor may suspend all services until all delinquent payments have been received.

3. Additional Work: The Owner/Client, without invalidating the Agreement, may order changes in the work within the general scope of the Agreement consisting of additions, deletions or revisions of the scope, cost of services and time being adjusted accordingly. All such changes in the work shall be authorized in writing. The cost or credit to the Owner/Client resulting from a change in the work shall be determined by one or more of the following: by mutual agreement of either a lump sum, and/or unit price to be multiplied by the units worked in determining the total sum; hourly rate per man hour multiplied by the man hours expended; or by other mutually agreeable cost methods. Where differing site conditions are encountered that materially affect the Contractor's cost of completing the scope of work, the Contractor will notify the Owner/Client and will use his best professional judgment in assisting the Owner/Client in deciding how to proceed. The cost of services will be equitably adjusted by written change order or supplemental agreement between both parties within twenty (20) days from the first observance of the differing site condition.

4. Access/Approvals/Permits: Owner/Client shall arrange for access and make all provisions for Contractor to enter public and private property as required for Contractor to perform the specified services. Owner/Client shall furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approval and consent from others as may be necessary. Owner/Client is responsible for informing Contractor of the structures. Contractor will not be responsible for inadvertent damage to utility locations of any underground lines or other subsurface structures that were not made known to Contractor prior to the start of work pursuant to Paragraph 5 herein.

5. Client Information: Work will not commence until the Contractor has received a duly executed copy of this contract. The Owner/Client shall direct its officers, directors, employees, subcontractors and agents to render reasonable assistance and to provide (promptly upon request) any necessary or appropriate data to the Contractor in connection with its performance under this agreement. Any data furnished shall be furnished at the Owner/Client's expense, and the Contractor shall be entitled to rely upon its accuracy and completeness. The Owner/Client shall locate for the Contractor, and shall assume responsibility for the accuracy of his representations, as to the locations of all underground utilities, tanks, structures, or other installations, unless the express responsibility of the Contractor as stated in the "Scope of Work".

6. Emergencies: In an emergency affecting the safety of persons or property, the Contractor shall act, at his discretion, to prevent threatened damage, injury or loss. Any additional compensation and/or extension of time

claimed by the Contractor on account of emergency work shall be determined as set forth under Paragraph 3, Additional Work.

7. Hazardous Substances: Nothing herein shall be construed or interpreted as requiring Contractor to identify hazardous substances or assume the status of a generator of any hazardous substances or hazardous materials, as those terms are defined under any applicable federal, state and local laws, statutes regulations, ordinances, rules or orders. If any hazardous, toxic or dangerous substances as defined by federal, state or local laws, statutes, regulations, ordinances, rules or orders, ("Hazardous Substances") are encountered at the site, Contractor will stop work and advise the Owner/Client. It is the Owner/Client's responsibility to identify and inform Contractor of Hazardous Substances at the facility. If these Hazardous Substances require handling, transportation or disposal at an off-site facility, Contractor will assist in advising the Owner/Client of the Owner/Client's options. However, Contractor will not "arrange" for disposal of, accept title to, sign manifests for, or take control of any Hazardous Substances, unless expressly stated in the "Scope of Work". ~~Owner/Client shall indemnify and hold Contractor harmless from any claims, damages, fines and fees, litigation or expenses arising out of or in any way related to identification, handling, transportation and disposal of any Hazardous Substances in the course of Contractor's performance of this Agreement.~~

8. Restoration: The Owner/Client understands that in the normal course of construction work, some minor damage to property may occur including damage to landscaping, pavement, sprinkler systems, and interior building finishes. While the Contractor will act to minimize damage, some minor damages may occur.

9. Independent Contractor: Contractor shall perform all work under this agreement as an independent contractor, retaining complete control over its personnel and operations and conforming to all legal requirements with respect to its Representatives. Neither Contractor nor its Representatives shall be, or shall be construed to be, in any sense, Owner/Client's employees or agents, or have authority to bind Owner/Client in anyway.

10. Insurance: The Contractor shall maintain policies of insurance for the following types of coverage, each with a limit of liability of one million dollars per occurrence and in the aggregate: Worker's Compensation (statutory); Comprehensive General Liability; and Comprehensive Automotive Liability, unless otherwise expressly stated in the "Scope of Work".

11. Indemnity:

a. Contractor shall indemnify and hold harmless Owner/Client, and its respective officers, directors, employees, subcontractors, agents and assigns ("Representatives"), from and against any and all liabilities, claims, causes of action, suits, losses, damages, costs and demands, including reasonable attorneys' fees, resulting from or arising out of, personal injury, including death or property damage, to the extent such injury, death or property damage is caused by the negligence or willful misconduct of Contractor or its Representatives; and, provided that such injury, death, or property damage is not caused by the sole or contributory negligence of Owner/Client, or its Representatives; and provided further, that Contractor's liability hereunder shall be limited to and not exceed the insurance coverage and limits of liability identified in Paragraph 10 or the total cost of services under of this agreement, whichever amount is less.

b. Owner/Client shall indemnify and hold harmless Contractor, and its Representatives, from and against any and all liabilities, claims, causes of action, suits, losses, damages, costs and demands, including reasonable attorneys' fees, resulting from or arising out of, personal injury, including death or property damage, to the extent such injury, death or property damage is caused by the negligence or willful misconduct of Owner/Client or its Representatives; and provided further that such injury, death, or property damage is not caused by the sole or contributory negligence of Contractor or its Representatives.

Services Agreement/General Conditions**FacilityBUILD™**

12. Dispute Resolution: All claims, disputes and other matters in question between the Contractor and Owner/Client arising out of, or relating to, this agreement or breach thereof, shall first be submitted to non-binding mediation. Then if still unresolved, the dispute will be decided by arbitration in accordance with the construction industry rules of the American Arbitration Association, unless the parties mutually agree otherwise. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Notice of Demand for mediation arbitration shall be filed in writing with the other party to the contract agreement within 90 days after the claim, dispute or other matter in question has arisen.

13. Termination: If the work is stopped for a period of thirty (30) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, through no act or fault of the Contractor or its Representatives, or if the Owner/Client has failed to make payment as provided in this Agreement for work performed, then the Contractor may at his option provide three (3) days notice to the Owner/Client, terminate this agreement and recover from the Owner/Client, payment for all work completed, with all costs arising out of such termination, and for any proved loss sustained upon any materials, equipment, and tools including reasonable profit and damages.

14. Safety/Health: By virtue of entering into this Agreement and providing services hereunder, Contractor does not assume responsibility for any existing conditions at the site that may present a danger, either potential or real, to the health, safety or the environment, except as set forth in the "Scope of Work".

15. Delays: If the Contractor is delayed at any time in the progress of the work by an act or omission of the Owner/Client, or his employees or separate contractors employed by the Owner/Client, or by changes ordered in the work, or by labor disputes, fire, unusual delay in deliveries, adverse weather conditions, permit requirements, interpretive (subjectively/capriciously enforced) code review and inspections, unavoidable casualties or other causes beyond the Contractor's control, or by delay pending arbitration, or by other causes which the Owner/Client and Contractor agree may justify delay, then the contract time shall be reasonably extended.

16. Standard of Care/Warranty: The standard of care for all construction services performed under this Agreement shall be the care and skill ordinarily used by the construction trades working under similar conditions at the same time and locality. The Contractor warrants to the Owner/Client that the construction shall be new unless otherwise specified, of good commercial quality, in conformance with the Contract Documents and free of defects in materials and workmanship for one (1) year from substantial completion. This warranty does not apply to patch and repair work.

17. Design - Build: In addition to all other terms and conditions of this Agreement, the following articles are relevant to Design-Build projects where Contractor is acting in the capacity of Designer-Builder.

a. Owner/Client shall provide Contractor with Owner/Client's Project criteria. Project criteria includes: use, space, budget, time, site, performance and expandability requirements, limitations, objectives and other relevant information. Unless otherwise stated in the scope of work, the Owner/Client will also provide, at its own cost and expense, the following:

- * Surveys describing the property, boundaries, topography and reference points for use during design and construction, including existing service and utility lines;
- * Geotechnical studies describing soils and subsurface conditions;
- * Legal description of the site;
- * As-built facility drawings and construction documents, if available;
- * Environmental site evaluations and impact studies identifying existing hazardous conditions.

b. The Contractor may establish an estimate for the work based upon the Contractor's understanding of the scope of work at the time of this Agreement. The estimate will be refined during design development and replaced by a Guaranteed Maximum Price (GMP) or as agreed to by the Owner/Client and the Contractor.

c. All drawings, specifications and other documents and electronic data furnished by Contractor to Owner/Client under this Agreement ("Work Produced") are deemed to be instruments of service and Contractor shall retain an ownership and property interest therein. In the event Owner/Client fails to enter into a design-build contract on the Project with Contractor and proceeds to design and construct the Project through its employees, agents or third parties, the Contractor shall grant Owner/Client a limited license to use the Work Product to complete the Project conditioned on the following:

- * Use by Owner/Client of the Work Product is at Owner/Client's sole risk and without liability or legal exposure to Contractor or anyone working by or through Contractor, including design professionals. ~~Owner shall defend, indemnify and hold harmless the Contractor, design professionals, and design-build subcontractors from any and all claims, damages, losses, and expenses, including attorneys' fees arising out of or resulting from the Work Product.~~
- * Owner/Client agrees to pay Contractor a reasonable agreed upon sum as compensation for the right to use the Work Product in accordance with this article.

d. The Contractor shall submit to Owner/Client interim design submissions to support the overall project schedule. When needed, the Owner/Client and Contractor shall meet and confer regarding the evolution of the design including changes and deviations. The Owner/Client shall review and provide responses to the interim submissions within the turnaround times set forth in the Project schedule or as agreed.

18. Assignment: Neither Contractor nor Owner/Client shall without written consent of the other party assign or transfer any portion or part of its obligations under this Agreement.

19. Governing Law: This Agreement shall be governed by the laws of Albuquerque, New Mexico, without giving effect to its conflict of law principles. *Santafe,*

20. Severability: If any of these General Conditions shall be finally determined to be invalid and unenforceable in sole or in part, the remaining provisions hereof shall remain in full force and effect and be binding upon the parties. The parties agree to reform the Agreement between them to replace any such invalid or unenforceable provision that comes as close as possible to the intention of the stricken provision.

21. Limitations of Liability: In no event will the contractor be liable to the Owner/Client or anyone else (including third-party beneficiaries), for any consequential, incidental, special or indirect damages, including lost revenue and profits, that result in anyway connected with the services provided herein. The Owner/Client agrees that the liability of the Contractor arising out of any kind of legal claim (whether in contract, tort or otherwise) in anyway connected with the services provided will not exceed the amount the Owner/Client originally paid the Contractor for the service or the insurance coverage and limits of liability identified in paragraph 10, whichever amount is less.

