



Flowing Wells Unified School District

Potential Finds Opportunity

INVITATION FOR BID

INVITATION FOR BID #: 24-04-25
MATERIAL OR SERVICE: Flowing Wells High School West Gym Roof and HVAC Replacement
DUE DATE: March 21, 2024 at 2:00 PM Arizona Time
DELIVERY & OPENING LOCATION: Flowing Wells School District #8
1556 W. Prince Road
Tucson, AZ 85705
520-696-8813

PRE-BID CONFERENCE **MANDATORY**

DATE: March 12, 2024
TIME: 1:00 p.m. Arizona Time
LOCATION: Flowing Wells Unified School District
Governing Board Room
1556 W Prince Rd, Tucson AZ 85705

Contact: Stacy Trueblood, Stacy.Trueblood@fwusd.org, 520/696-8813

In accordance with the School District Procurement Rules in the Arizona Administrative Code (A.A.C) promulgated by the State Board of Education pursuant to A.R.S. §15-213, §41-2578 and §41-2579, and the School District Procurement Rules, sealed bids for the materials or services specified will be received by the Flowing Wells Unified School District #8, at 1556 W Prince Road, Tucson, AZ, until the time and date cited. Bids received by the correct time and date shall be opened and the name of each Bidder will be publicly read. **Faxed bids are not acceptable.**

The district will not be responsible for the pre-opening of, post-opening of or failure to open, a bid not properly addressed or identified. **Bids must be in the actual possession of the Flowing Wells Business Office on or prior to the time (based on the official District time clock) and date, and at the location indicated above. Late Bids may not be considered.**

Bids must be submitted in a sealed envelope with the Bid number and the Bidders name and address clearly indicated on the outside of the envelope. All Bids must be written legibly in ink or typewritten. Additional instructions for preparing the Bids are provided herein.

VENDORS ARE STRONGLY ENCOURAGED TO CAREFULLY READ THE ENTIRE SOLICITATION DOCUMENT.

NOTICE INVITING SEALED BIDS

Sealed Bids will be received until 2:00 P.M. (Arizona time), March 21, 2024, by Flowing Wells Unified School District No. 8 ("Owner") in the Business Services Office, to do the work required for the Owner's Project know as Flowing Wells High School West Gym Roof and HVAC Replacement, which is located at Flowing Wells High School, 3725 N. Flowing Wells Rd., Tucson, Arizona. The Project will be completed in accordance with the Specifications prepared by Breckenridge Group Architects Planners.

Proposals will be opened publicly at the Owner's Board Room at 1556 W. Prince Rd., Tucson, Arizona, at 2:00 P.M. (Arizona time), March 21, 2024, and read aloud by a representative of the Owner. All information and Proposals submitted by bidders will be made available for public inspection during regular business hours after an award is made, if any.

Specifications for the work, including related bid documents, may be reviewed online at:
<http://flowingwellsschools.org/ourdistrict/business/procurement/materialmanagement>.

The Owner intends to contract, if at all, with the lowest responsive and responsible bidder whose bid confirms in all material respects to the requirements of the bid documents, including the Specifications. "Responsive Bidder" means the bidder who submits a bid that conforms in all material respects to this Notice Inviting Sealed Bids, Instructions to Bidders and the Specifications which are incorporated herein by this reference. "Responsive Bidder" means the bidder who has the capability to perform the contract requirements and the integrity and reliability to assure complete and good faith performance and who submits the lowest bid. In order for the bid to be considered, bidders must complete and submit the Proposal form, which is incorporated herein by reference.

A certified or cashier's check or surety bond for ten percent (10%) of the Contract Amount proposed by the bidder must accompany each Proposal as a guarantee that the bidder will enter into a contract to perform the work in accordance with the Specifications or as liquidated damages in the event of the bidder's failure or refusal to enter into a contract. The check or bond will be returned to the unsuccessful bidders. The successful bidder's check or bond will be returned upon the execution of satisfactory bonds and a contract as described by the bid documents.

It shall be mandatory on the contractor to whom the Contract is awarded, and upon any subcontractor under him, to comply in every respect with the applicable provisions of the Arizona Revised Statutes and with all other requirements of the laws of Arizona applicable to contracts for the construction of public works for school districts.

The bidder to whom the Contract is awarded shall furnish the Owner, within five (5) days after the award, satisfactory Payment and Performance Bonds in an amount equal to one hundred percent (100%) of the Contract Amount stated in the Proposal. Individual surety bonds are not acceptable.

The Owner reserves the right to reject any or all Proposals, to withhold the award of a contract for any reason it may determine and to hold any or all Proposals for a period of sixty (60) days. Any bid protests concerning this bid must be filed with the District Representative, who is Stacy Trueblood, Chief Financial Officer, Flowing Wells Unified School District No. 8, 1556 West Prince Road, Tucson, Arizona 85705 (stacy.trueblood@fwusd.org).

The Owner reserves the right to waive any irregularities in any Proposal if such action is determined by the Owner, in its sole discretion, to be in the best interest of the Owner.

Flowing Wells Unified School District No.8

By 
Title: Chief Financial Officer

Published: March 5, 2024

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DOCUMENTS REFERENCED:

You may access a copy of the documents referenced within this proposal at the following web addresses:

Arizona Revised Statutes (A.R.S.) is available at:

<http://www.azleg.state.az.us/ArizonaRevisedStatutes.asp>

School District Procurement Rules in the Arizona Administrative Code (A.A.C.) is available at:

http://azsos.gov/public_services/Title_07/7-02.htm#Article_10

I.R.S. W-9 form (Request for Taxpayer I.D. Number) is available at:

<http://ftp.fedworld.gov/pub/irs-pdf/fw9.pdf>

DEFINITION OF TERMS

As used in this solicitation and instructions, the terms listed below are defined as follows:

- A. ***“Attachment”*** means any item the Solicitation requires a Bidder to submit as part of the Bid.
- B. ***“Contract”*** means the combination of the Solicitation, including the uniform and Special Instructions to Bidders, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Bid; and any Solicitation Amendments or Contract Amendments; and any terms applied by law.
- C. ***Contract Amendment*** means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
- D. ***“Contractor”*** means any person who has a contract with the School District/public entity.
- E. ***“Days”*** means calendar days unless otherwise specified.
- F. ***“Exhibit”*** means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the solicitation.
- G. ***“Gratuity”*** means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value present or promised, unless consideration of substantially equal or greater value is received.
- H. ***“Offer”*** means bid, proposal or quotation.
- I. ***“Bidder”*** means a vendor who responds to a Solicitation.
- J. ***“Procurement Officer”*** means the person duly authorized to recommend and administer Contracts and make written determinations with respect to the Contract or his or her designee.
- K. ***“Responsible Bidder”*** means the Bidder who has the capability to perform the contract requirements and the integrity and reliability to assure complete and good faith performance and who submits the lowest Proposal.
- L. ***“Responsive Bidder”*** means the Bidder who submits a Proposal that conforms in all material respects to this Request for Proposals, Instruction to Bidders and the Plans and Specifications which are incorporated herein by this reference.
- M. ***“Solicitation”*** means an Invitation for Bids (IFB), a Request for Proposals (RFP), or a Request for Quotations (RFQ).
- N. ***“Solicitation Amendment (or Addendum)”*** means a written document that is authorized by the Procurement Officer and issued for the purpose of making changes to the Solicitation.

- O. ***“Subcontract”*** means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishings of any material or any service required for the performance of the Contract.

- P. ***“School District”*** means the School District/public entity that executes the contract.

UNIFORM INSTRUCTIONS TO BIDDERS**1. Inquiries**

- A. Duty to Examine. It is the responsibility of each Bidder to examine the entire Solicitation, seek clarification in writing, and check its Bid for accuracy before submitting the Bid. Lack of care in preparing a Bid shall not be grounds for withdrawing the Bid after the Bid due date and time nor shall it give rise to any Contract claim.
- B. Solicitation Contact Person. Any inquiry related to a Solicitation, including any requests for or inquiries regarding standards referenced in the Solicitation shall be directed solely to the Solicitation contact person. The Bidder shall not contact or direct inquiries concerning this Solicitation to any other employee unless the Solicitation specifically identifies a person other than the Solicitation contact person as a contact.
- C. Submission of Inquiries. The Procurement Officer or the person identified in the Solicitation as the contact for inquiries may require that an inquiry be submitted in writing. Any inquiry related to a Solicitation shall refer to the appropriate Solicitation number, page, and paragraph. Do not place the Solicitation number on the outside of the envelope containing that inquire since it may then be identified as an Bid and not be opened until after the Bid due date and time.
- D. Timeliness. Any inquiry shall be submitted as soon as possible and at least seven (7) days before the Bid due date and time. Failure to do so may result in the inquiry not being answered.
- E. No Right to Rely on Verbal Responses. Any inquiry that results in changes to the Solicitation shall be answered solely through a written Solicitation Amendment. An Bidder may not rely on verbal responses to its inquiries.
- F. Solicitation Amendments/Addenda. The Solicitation shall only be modified by a Solicitation Amendment or Addendum.
- G. Pre-Bid Conference. If a Pre-Bid Conference has been scheduled under this Solicitation, the date, time, and location appear on the Solicitation cover sheet or elsewhere in the Solicitation. A Bidder should raise any questions it may have about the Solicitation or the procurement at that time. Statements made during a pre-bid conference are not an amendment to the solicitation. Material issues raised at the conference that result in changes to the Solicitation shall be answered solely through a written Solicitation Amendment.
- H. Persons with Disabilities. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the appropriate Solicitation contact person. Requests shall be made as early as possible to allow time to arrange the accommodation.

2. Bid Preparation

- A. Forms: No Facsimile or Electronically Submitted Offers. A Bid shall be submitted either on the forms provided in this Solicitation or their substantial equivalent. Any substitute document for the forms provided in this Solicitation will be legible and contain the same information requested on the form. A facsimile or electronically submitted Bid shall be rejected.

- B. Typed or Ink; Corrections. The Bid must be typed or in ink. Erasures, interlineations or other modifications in the Bid must be initialed in ink by the person signing the Bid. Modifications shall not be permitted after Bids have been opened except as otherwise provided under A.A.C. R7-2-1030.
- C. Evidence of Intent to be Bound. Failure to submit verifiable evidence of intent to be bound, such as an original signature, may result in rejection of the Bid.
- D. Exceptions to Terms and Conditions. All exceptions included with the Bid shall be submitted on the Deviations and Exceptions page in which the Bidder clearly identifies the specific paragraphs of the Solicitation where the exceptions occur. Any exceptions not included in such a section shall be without force and effect in any resulting Contract unless such exception is specifically referenced by the Procurement Officer in a written statement. The Bidder's Pre-printed or standard terms will not be considered as a part of any resulting Contract. A Bid that takes exception to a material requirement of any part of the Solicitation, including terms and conditions, may be rejected.
- E. Subcontracts. Bidder shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities in the Bid.
- F. Cost of Bid Preparation. The District will not reimburse any Bidder the cost of responding to a Solicitation.
- G. Solicitation Amendments Unless otherwise stated in the Solicitation, each Solicitation Amendment shall be acknowledged by the person signing the Bid. Failure to acknowledge a material Solicitation Amendment or to follow the instructions for acknowledgement of the Solicitation Amendment may result in rejection of the Bid.
- H. Federal Excise Tax. School Districts/public entities are exempt from Federal Excise Tax on manufactured goods. Exemption Certificates will be prepared upon request.
- I. Provision of Tax Identification Numbers. Bidders are required to provide their Arizona Transaction Privilege Tax number and/or Federal Tax Identification number, if applicable, in the space provided on the Offer and Acceptance Form and provide the tax rate and amount, if applicable, on the Price Sheet.
- J. Identification of Taxes in Bid. School Districts are subject to all applicable state and local transaction privilege taxes. If Arizona resident Bidders do not indicate taxes on a separate item in the Bid, the School District will conclude that the price(s) bid includes all applicable taxes. At all times, payment of taxes and the determination of applicable taxes are the sole responsibility of the Bidder.
- K. Disclosure. If the Firm, business, or person submitting this Bid has been debarred, suspended, or otherwise lawfully precluded from participating in any public procurement activity, including being disapproved as a subcontractor with any federal, state, or local government, or if any such preclusion from participation from any public procurement activity is currently pending, the Bidder must fully explain the circumstances relating to the preclusion or proposed preclusion in the Bid. The Bidder shall include a letter with its Bid setting forth the name and address of the governmental unit, the

effective date of this suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating the suspension or debarment. If suspension or debarment is currently pending, a detailed description of all relevant circumstances including the details enumerated above must be provided.

L. Solicitation Order of Precedence. In the event of a conflict in the provisions of this Solicitation, the following shall prevail in the order set forth below:

1. Amendments;
2. Special Terms and Conditions;
3. Uniform General Terms and Conditions;
4. Scope of Work/Specifications;
5. Attachments;
6. Exhibits;
7. Special Instructions to Bidders;
8. Uniform Instructions to Bidders

M. Delivery. Unless stated otherwise in the Solicitation, all prices shall be F.O.B. Destination, freight prepaid to the Flowing Wells Unified School District as indicated on the purchase order, and shall include all delivery and unloading at the destination(s).

3. Submission of Bid

- A. Sealed Envelope or Package. Each Bid shall be submitted to the submittal location identified in this Solicitation, in a sealed envelope or package that identifies its contents as a Bid and the Solicitation number to which it responds. The appropriate Solicitation number shall be plainly marked on the outside of the envelope or package.
- B. Bid Amendment or Withdrawal. A Bidder may modify or withdraw a Bid in writing at any time before Bid opening if the modification or withdrawal is received before the Bid due date and time at the location designated in the Invitation for Bid. A Bid may not be amended or withdrawn after the Bid due date and time except as otherwise provided under A.A.C.R7-2-1028.
- C. Public Record. Under applicable law, all Bids submitted and opened are public records and must be retained by the School District. Bids shall be open to public inspection after Contract award, except for such Bids deemed to be confidential by the School District, pursuant to A.A.C. R7-2-1006. If a Bidder believes that information in its Bid contains confidential trade secrets or other proprietary data not to be disclosed as otherwise required by A.R.S. § 39-121, a statement advising the school district of this fact shall be provided on the Confidential/Proprietary Submittals page and the information shall be so identified wherever it appears. Contract terms and conditions, pricing, and information generally available to the public are not considered confidential information under this Section.
- D. Non-collusion, Employment, and Services. By signing the Offer and Acceptance form or other official contract form, the Bidder certifies that:
1. The prices have been arrived at independently, without consultation, communication or Agreement, for the purpose of restricting competition, as to any matter relating to such prices

with any other Bidder or with any competitor; the prices which have been quoted have not been nor will not be disclosed directly or indirectly to any other Bidder or to any competitor; nor attempt has been made or will be made to induce any person or firm to submit or not to submit, an Offer for the purpose of restricting competition. It did not engage in collusion or other anti-competitive practices in connection with the preparation or submission of its Proposal; and

2. It does not discriminate against any employee, applicant for employment, or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and that it complies with all applicable federal, state, and local laws and executive orders regarding employment; and
3. By submission of this Bid, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency; and
4. By submission of this Bid, that no Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a Cooperative Agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.
5. By submission of this Bid, that Bidder has taken steps and exercised due diligence to ensure that Bidder has not offered, conferred, or agreed to confer any personal gift or benefit on a person who supervises or participates in contracts, purchases, payments, claims or other financial transactions, or on a person who supervises or participates in planning recommending, selecting or contracting for materials, services, goods, construction or construction services of the District, in accordance with A.R.S. §15-213(O) and A.A.C. R7-2-1003(J).

4. Additional Bid Information

- A. Unit Price Prevails. Where applicable, in the case of discrepancy between the unit price or rate and the extension of that unit price or rate, the unit price or rate shall govern.
- B. Late Bids, Modifications or Withdrawals. A Bid, Modification or Withdrawal submitted after the exact Bid due date and exact time shall not be considered except under the circumstances set forth in A.A.C. R7-2-1028(B).
- C. Taxes. The amount of any applicable transaction privilege or use tax of a political subdivision of this state will not be a factor when determining lowest bidder.
- D. Disqualification. A Bid from a Bidder who is currently debarred, suspended or otherwise lawfully prohibited from any public procurement activity may be rejected.
- E. Bid Acceptance Period. A Bidder submitting an Bid under this Solicitation shall hold its Bid open for the number of days from the due date that is stated in the Solicitation. If the Solicitation does

not specifically state a number of days for the Bid acceptance, the number of days shall be ninety (90).

- F. Payment. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment within thirty (30) days.
- G. Waiver and Rejection Rights. Notwithstanding any other provision of the solicitation, the School District reserves the right to:
 - 1. Waive any minor informality;
 - 2. Reject any and all offers or portions thereof; or
 - 3. Cancel a solicitation.

5. Award

- A. Number or Types of Awards. Where applicable, the School District reserves the right to make multiple awards or to award a Contract by individual line items, by a group of line items, or to make an aggregate award, whichever is deemed most advantageous to the School District. If the Procurement Officer determines that an aggregate award to one Bidder is not in the School District best interest, multiple awards may be awarded.
- B. Contract Inception. A Bid does not constitute a Contract nor does it confer any rights on the Bidder to the award of a Contract. A Contract is not created until the Bid is accepted in writing by the Procurement Officer signature on the Offer and Acceptance Form. A letter or other notice of award or of the intent to award shall not constitute acceptance of the Bid.
- C. Effective Date. The effective date of this Contract shall be the date that the Procurement Officer signs the Offer and Acceptance Form or other official contract form, unless another date is specifically stated in the Contract.
- D. Final Acceptance for each participating School District will be contingent upon the approval of their Governing Board, if applicable.

6. Protests

A protest shall comply with and be resolved according to Arizona Department of Education School District Procurement Code Rule A.A.C. R7-2-1141 through R7-2-1153. Protests shall be in writing and be filed with the District Representative as listed in the Special Instructions to Bidders.

A. Protest shall include:

- 1. The name, addresses, and telephone number of the interested party
- 2. The signature of the interested party or the interested party's representative;
- 3. Identification of the purchasing agency and the Solicitation or Contract number;
- 4. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
- 5. The form of relief requested.

- B. The interested party shall supply promptly any other information requested by the district representative.
- C. Protests based upon alleged improprieties in a solicitation that are apparent before the due date and time for responses to the solicitation, shall be filed before the due date and time for responses to the solicitation.
- D. In cases other than those covered in section C of the section, the interested party shall file the protest within ten (10) days after the school district makes the procurement file available for public inspection.
- E. The interested party may file a written request for an extension of the time limit for protest filing. The written request for an extension shall be filed with the District Representative before the expiration of the time limit and shall set forth good cause as to the specific action or inaction of the school district that resulted in the interested party being unable to file the protest within the ten (10) days. The district representative shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted, set forth a new date for submission of the filing.

UNIFORM GENERAL TERMS AND CONDITIONS**1. Contract Interpretation**

- A. Arizona Law. The law of Arizona applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona School District Procurement Code, Arizona Revised Statutes (A.R.S.) § 15-213, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 7, Chapter 2, Articles 10 and 11.
- B. Implied Contract Terms. Each Provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
- C. Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee agent of the other party to the Contract.
- D. Conflict of Interest. All parties hereby are put on notice that this Contract is subject to termination if any District employee or Governing Board Member has substantial interest in the firm and/or services and has not followed State and District rules governing orders in such interest. Contractor must further certify that they have not paid or agreed to pay any person, other than a bona fide employee a fee or brokerage resulting from the award of this Contract.
- E. Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.
- F. No Parol Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document.
- G. No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

2. Contract Administration and Operation

- A. Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall Contractually require each Subcontractor to retain all data and other records ("records") relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- B. Non-Discrimination. The Contractor shall comply with State Executive Order No. 99-4, 2000-4 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
- C. Audit. At any time during the term of this Contract and five (5) years thereafter, the Contractor's or any Subcontractor's books and records shall be subject to audit by the School District and, where

applicable, the Federal Government, the extent that the books and records relate to the performance of the Contract or Subcontract.

- D. Inspection and Testing. The Contractor agrees to permit access to its facilities, Subcontractor facilities and the Contractor's processes for producing the materials, at reasonable time for inspection of the materials and services covered under this Contract. The School District shall also have the right to test at its own cost the materials to be supplies under this Contract. Neither inspection at the Contractor's facilities nor testing shall constitute final acceptance of the materials. If the School District determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the School District for testing and inspection.
- E. Notices. Notices to the Contractor required by this Contract shall be made by the School District to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. The Contractor shall make notices to the School District required by the Contract to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notices shall be given by written notice and an Amendment to the Contract shall not be necessary.
- F. Advertising and Promotion of Contract. The Contractor shall not advertise or publish information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- G. Property of the School District. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the School District. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the School District.

3. Costs and Payments

- A. Payments. Payments shall comply with the requirements of A.R.S. § 35-342 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the School District within thirty (30) days. The Purchase Order number must be referenced on the invoice.
- B. Applicable Taxes.
 - 1. Payment of Taxes by the School District. The School District will pay only the rate and/or amount of taxes identified in the Offer and in any resulting Contract.
 - 2. State and Local Transaction Privilege Taxes. The School District is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect taxes from the buyer does not relieve the seller from its obligation to remit taxes.
 - 3. Tax Indemnification. Contractor and all Subcontractors shall pay all federal, state, and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all Subcontractors to hold the School District harmless from any responsibility for taxes,

damages and interest, if applicable, contributions required under federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

4. IRS W-9. In order to receive payment under any resulting Contract, Contractor shall have a current I.R.S. W-9 Form on file with the School District.

- C. Availability of Funds for the Next Fiscal Year. Funds may not presently be available for performance under this Contract beyond the current fiscal year. No legal liability on the part of the School District for any payment may arise under this Contract beyond the current fiscal year until funds are made available for performance of the Contract. The School District will make reasonable efforts to secure such funds.

4. Contract Changes

- A. Amendments. This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract signed by the Procurement Officer. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by an unauthorized employee or made unilaterally by the Contractor are violations of the Contract and or applicable law. Such changes, including unauthorized written Contract Amendments, shall be void and without effect, and the Contractor shall not be entitled to any claim and this Contract based on those changes.
- B. Subcontracts. The Contractor shall not enter into any Subcontract under this Contract without the advance written approval of the Procurement Officer. The Subcontract shall incorporate by reference the terms and conditions of this Contract.
- C. Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The Procurement Officer shall not unreasonably withhold approval.

5. Risk and Liability

- A. Risk of Loss. The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.
- B. General Indemnification. To the extent permitted by A.R.S. § 41-621 and § 35-154, the School District shall be indemnified and held harmless by the Contractor for its vicarious liability as result of entering into this Contract. Each party to this Contract is responsible for its own negligence.
- C. Indemnification - Patent and Copyright. To the extent permitted by A.R.S. § 41-621 and § 35-154, the Contractor shall indemnify and hold harmless the School District against any liability, including costs and expenses, for infringement of any patent, trademark, or copyright arising out of Contract performance or use by the School District of materials furnished or work performed under this Contract. The School District shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph.

- D. Insurance If applicable, vendor shall secure at its own expense and keep in effect during the term of this contract Workers' Compensation Insurance for all the Contractor's employees engaged in work under this Contract and comprehensive general liability insurance, to include automobile and professional liability, providing limits of not less than \$1,000,000 per occurrence. The District shall be named on the Contractor's liability policy as an additional insured. Evidence of the insurance coverage specified above shall be by means of Certificates of Insurance giving the District thirty (30) days' notice of cancellation or material change in policy. It is understood and agreed that the successful vendor shall provide the Certificates of Insurance and other required documents, and commence the contract services within ten (10) days of notice of award from the District (see Special Terms and Conditions for other applicable insurance requirements, if applicable).
- E. Safety Bidder, at its own expense and at all times, shall take all reasonable precautions to protect persons and the District property from damage, loss or injury resulting from the activities of Bidder, its employees, its subcontractors, and/or other persons present. Bidder will comply with all specific job safety requirements promulgated by any governmental authority, including without limitation, the requirements of the Occupational Safety Health Act of 1970.
- F. Force Majeure
1. Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "*force majeure*" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injections-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.
 2. Force Majeure shall not include the following occurrences:
 - a. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market; or
 - b. Late performance by a Subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or
 - c. Inability of either the Contractor or any Subcontractor to acquire or maintain any required insurance, bonds, licenses, or permits.
 3. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt requested, and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

4. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

- G. Third Party Antitrust Violations. The Contractor assigns to the School District any claim for overcharges resulting from antitrust violation the extent that those violations concern materials of services supplied by third parties to the Contractor toward fulfillment of this Contract.

6. Warranties

- A. Liens. The Contractor warrants that the materials supplies under this Contract are free of liens.
- B. Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that for one year after acceptance by the School District of the materials or services, they shall be:
 1. Of a quality to pass without objection in the trade under the Contract description;
 2. Fit for the intended purposes for which the materials or services are used;
 3. Within the variations permitted by the Contract and are of even kind, quality, and quality within each unit and among all units;
 4. Adequately contained, packaged and marked as the Contract may require; and
 5. Conform to the written promises or affirmations of fact made by the Contractor.
- C. Fitness. The Contractor warrants that any material or service supplied to the School District shall fully conform to all requirements of the Solicitation and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.
- D. Inspection/Testing. The warranties set forth in subparagraphs A through C of this paragraph are not affected by inspection testing of or payment for the materials or services by the School District.
- E. Exclusions. Except as otherwise set forth in this Contract, there are no express or implied warranties or merchant ability fitness.
- F. Compliance with Applicable Laws. The materials and services supplied under this Contract shall comply with all applicable federal, state and local laws, and the Contract shall maintain all applicable licenses and permits.
- G. Survival of Rights and Obligations after Contract Expiration or Termination.
 1. Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration of termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the School District is not subject to or barred by any limitations of actions prescribed in A.R.S. Title 12, Chapter 5.

2. Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Office, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

7. School District's Contractual Remedies

- A. Right to Assurance. If the School District in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing the Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent or ability to perform. Failure by the Contractor to provide written assurance within the number of days specified in the demand may, at the School District's option, be the basis for terminating the Contract under the Uniform General Terms and Conditions.
- B. Stop Work Order.
 1. The School District may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for a period of up to ninety (90) days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
 2. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
- C. Non-exclusive Remedies. The rights and the remedies of the School District under this Contract are not exclusive.
- D. Nonconforming Tender. Materials supplied under this Contract shall fully comply with the Contract. The delivery of materials or a portion of the materials in an installment that do not fully comply constitutes a breach of Contract. On delivery of nonconforming materials, the School District may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.
- E. Right to Offset. The School District shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the School District or damages assessed by the School District concerning the Contractor's nonconforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform General Terms and Conditions.

8. Contract Termination

- A. Cancellation for Conflict of Interest. Per A.R.S. § 38-511 and A.A.C. R7-2-1087 (F) the School District may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract on behalf of the School District is, or becomes at any time while the Contract or

an extension the Contract is in effect, an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time.

- B. Personal Gifts or Benefits The School District may, by written notice, terminate this Contract, in whole or in part, if the School District determines that any person or vendor has offered, conferred or agreed to confer any personal gift or benefit on any employee of the School District who supervised or participated in the planning, recommending, selecting or contracting of the Contract, in accordance with A.R.S. § 15-213 (O) and A.A.C. R7-2-1087 (G).
- C. Gratuities. In accordance with A.A.C. R7-2-1087(H) the School District may, by written notice, terminate this Contract, in whole or in part, if the School District determines that employment or gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the School District for the purpose of influencing the outcome of the procurement or securing the Contract, an Amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about Contract performance. The School District/public entity, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three (3) times the value of the gratuity offered by the Contractor.
- D. Suspension or Debarment. The School District may, by written notice to the Contractor, immediately terminate this Contract if the School District/public entity determines that the Contractor has been disbarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a Subcontractor of any public procurement unit or other governmental body.
- E. Termination for Convenience. The School District reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of the School District without penalty recourse. Upon receipt of the written notice, the Contractor shall immediately stop all work, as directed in the notice, notify all Subcontractors of the effective date of the termination and minimize all further costs to the School District. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the School District. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed, and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R7-2-1125 shall apply.
- F. Termination for Default.
1. In addition to the rights reserved in the General Terms and Conditions, the School District reserves the right to terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.
 2. Upon termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the School District.

3. The School District may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials and services to replace those under this Contract. The Contractor shall be liable to the School District for any excess costs incurred by the School District re-procuring the materials or services.

G. Continuation of Performance through Termination. The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

8. Contract Claims

All Contract claims and controversies under this Contract shall be resolved according to A.R.S. §15-213 and rules adopted thereunder.

9. Gift Policy

The District will accept no gifts, gratuities or advertising products from Bidders. The Purchasing Department has adopted a zero tolerance policy concerning Bidder gifts. The District may request product samples from Bidders for official evaluation with disposal of those said samples at the discretion of the Procurement Officer.

10. Offshore Performance

Due to security and identity protection concerns, direct services under any subsequent contract shall be performed within the borders of the United States. Any services that are described in the specifications or scope of work that directly serve the school district(s) or charter schools(s) or its clients and may involve access to secure or sensitive data or personal client data or development or modification of software for the state shall be performed within the borders of the United States. Unless specifically stated otherwise in the specifications, this definition does not apply to indirect or “overhead” services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

11. Contractors Employment Eligibility

By entering the contract, contractor warrants compliance with A.R.S. § 41-4401, A.R.S. § 23-214, the Federal Immigration and Nationality Act (FINA), and all other federal immigration laws and regulations. The District may request verification of compliance from any contractor or subcontractor performing work under this contract. The District reserves the right to confirm compliance in accordance with applicable laws. Should the District suspect or find that the contractor or any of its subcontractors are not in compliance, the District may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the contract for default, and suspension and/or debarment of the contractor. All costs necessary to verify compliance are the responsibility of the contractor.

12. Fingerprint Clearance Cards

In accordance with A.R.S. § 15-512(H), a contractor, subcontractor or vendor or any employee of a contractor, subcontractor or vendor who is contracted to provide services on a regular basis at an individual school may be required to obtain a valid fingerprint clearance card pursuant to Title 41, Chapter 12, Article 3.1. An exception to this requirement may be made as authorized in Governing Board policy.

Contractor, subcontractors, vendors and their employees shall not provide services on school district properties until authorized by the District.

Additionally, contractor shall comply with the governing body fingerprinting policies of each individual School District/Public Entity.

13. Terrorism Country Divestments

Per A.R.S. § 35-392, the District is prohibited from purchasing from a company that is in violation of the Export Administration Act.

14. Integrity of Bid

By signing this Bid, the Bidder affirms that the Bidder has not given, nor intends to give any time hereafter any economic opportunity, future employment, gift, loan gratuity, special discount, trip favor, or service to any employee of the School District in connection with the submitted Bid. Failure to sign the Bid, or signing it with a false statement, shall void the submitted Bid or any resulting contract.

15. Vendor Registration

All vendors are required to be a registered vendor before a contract can be awarded to the Bidder. For information or questions regarding vendor registration contact Teressa Austin, Flowing Wells Unified School District No. 8, 1556 W Prince Road, Tucson, AZ 85705, telephone 520 696-8813, fax 520 690-2330, email teressa.austin@fwusd.org or website www.floatingwellsschools.org.

16. Registered Sex Offender Restriction

Pursuant to this order, the named vendor agrees by acceptance of this order that no employee of the vendor or a subcontractor of the vendor, who has been adjudicated to be a registered sex offender, will perform work on District premises or equipment at any time when District students are, or are reasonably expected to be, present. The vendor further agrees by acceptance of this order that a violation of this condition shall be considered a material breach and may result in a cancellation of the order at the District's discretion.

17. Affordable Care Act

Vendor understands and agrees that is shall be solely responsible for compliance with the Patient Protection and Affordable Care Act, Public Law 111-148 and the Health Care Education Reconciliation Act, Public Law 111-152 (collectively the Affordable Care Act "ACA"). Contractor shall bear sole responsibility for providing health care benefits for its employees who provide services to the District as required by state or federal law.

18. Clarifications

Clarification means communication with Bidder for the sole purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in the Bid. It is achieved by explanation or substantiation, either in a written response to an inquiry from the District or as initiated by Bidder. Clarification does not give Bidder an opportunity to revise or modify its Bid, except to the extent that correction of apparent clerical mistakes results in a revision.

19. Confidential/Proprietary Information

Confidential information request: If Bidder believes that its Bid contains trade secrets or proprietary information that should be withheld from public inspection as required by A.R.S. § 39-121, a statement advising the School District/Public Entity of this fact shall accompany the Bid, and the information shall be so identified wherever it appears. The School District/Public Entity shall review the statement and shall determine in writing whether the information shall be withheld. If the School District/Public Entity determines to disclose the information, the School District/Public Entity shall inform Bidder in writing of such determination.

When submitting a bid containing “CONFIDENTIAL” information, bidder agrees to defend, indemnify and hold harmless the District, its officers and employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney’s fees, arising out of or resulting from the District withholding information that bidder marked as “CONFIDENTIAL”.

When requesting information in your Response to be considered as Confidential/Proprietary, a complete hardbound and electronic copy of the solicitation with the Confidential/Proprietary material redacted must also be submitted with your Offer and so identified. Failure to submit redacted copies may result in denial of request.

Contract Terms and Conditions, Pricing and information generally available to the Public are not considered confidential information under this section.

Public Record: All Bids submitted in response to this solicitation shall become the property of the School District/Public Entity. They will become a matter of public record available for review, subsequent to award notification, under the supervision of the Purchasing Official.

SPECIAL TERMS AND CONDITIONS

1. **Purpose** It is the intent of the Flowing Wells Unified School District to contract with a qualified and experienced vendor to provide materials and service to complete the Flowing Wells High School West Gym Roof and HVAC.

2. **Award Basis**

The Flowing Wells School District shall award a contract to Bidders most qualified to meet the needs of the District based upon the factors set forth in the Bid. No other factors or criteria may be used in the evaluation.

- **Responsiveness** means a person (or company) who submits a bid, which conforms in all material respects to the Invitation for Bid.
- **Responsibility** means a person (or company) who has the capability to perform the contract requirements and the integrity and reliability, which will assure good faith performance.

Any deviation from the general terms and conditions or exceptions taken shall be described fully and appended to the bid form on the Bidder's letterhead over the signature of the person signing the bid form. Such appendages shall be considered part of the Bidder's formal bid. For the absence of any statements of deviation or exception, the bid shall be accepted as in strict compliance with all terms and conditions.

If a vendor receives a bid award, an order is placed and vendor is unable to meet the delivery requirements, meet service requirements, or material that meets the District's needs as outlined in this Invitation for Bid, or is unable to hold bid price, or fails to provide product or service within a reasonable period of time, AND/OR fails to provide product complying with bid specifications, as determined by the District, the District reserves the right to go to the next lowest bid price of equal quality which meets bid specifications. If the bid item delivered does not meet specifications or is received in an unsatisfactory condition and is in a damaged or unusable condition, or if service is unsatisfactory, contractor must pick up item immediately and replace to district's satisfaction at no additional charge, or issue full credit, for service a return visit must be re-scheduled within 24 hours. Rejected items must be removed from the District's premises by the vendor upon verbal notification.

Note: However, if a vendor receives a contract award and is unable to meet the service requirements as outlined in this Solicitation (and subsequent contract), or is unable to hold the contract price, or fails to provide acceptable service as determined by the District, the District reserves the right to go to the next lowest ranked vendor if this determination occurs within a reasonable time period after contract award.

3. **Award**

It is expected that the award for this contract will be made within forty-five (45) days of Bid opening unless otherwise noted.

4. **Warranty/Guarantee**

All bidders must guarantee full satisfaction of their materials/products or permit unsatisfactory materials/product to be returned collect for full money refund. All defective products shall be replaced and exchanged by the vendor. The cost of transportation, unpacking, inspection, repacking, reshipping or other like expenses shall be paid by the vendor.

5. Price Clause

Price discounts must remain firm for the initial term of the contract. The District's Procurement Officer will review fully documented requests for price increases prior to any contract renewal. The Flowing Wells School District will review fully documented requests for price increases and may, at its sole option, accept any changes or cancel from the contract those materials and/or services concerned. The vendor shall likewise offer the District any published price reduction during the contract period. All price adjustments will be effective on acceptance by the District's Procurement Officer. Prices, as indicated, shall include all costs associated with the specified service or good. Any extra or incidental costs must be indicated separately.

6. Deviations to Bid

Any deviation from the general terms and conditions or exceptions taken shall be described fully and appended to the bid form on the Bidder's letterhead. Exceptions must be signed by authorized representative of the company. Such appendages shall be considered part of the Bidders formal bid. For the absence of any statements of deviation or exception, the Bid shall be accepted as in strict compliance with all terms and conditions.

7. Procurement Methods

Any materials/services obtained under this Invitation for Bid may be by Blanket Purchase Order, or Specific Purchase Order. The percent discount for parts and the labor rate must remain the same no matter what purchasing method the District uses.

8. Non-Exclusive Contract

Any contract resulting from this solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of the District. The District reserves the rights to obtain like goods or services from other sources.

9. Vendor Responsibility

The successful Bidder shall protect all furnishings from damage and shall protect the school district's property from damage or loss arising in connection with this contract. Bidder shall make good any such damage, injury or loss caused by the operations, or those employees, to the satisfaction of the District. Any damage caused to District facilities, lawns, etc., shall be repaired immediately or replaced at no expense to the District.

The successful Bidder shall take all necessary precautions for the safety of students, school employees and the public, and shall comply with all applicable provisions of Federal, State and Municipal Safety Laws. Successful Bidder agrees that they are fully responsible to the District for the acts and omissions of any and all persons whether directly or indirectly employed by them. They shall maintain such insurance as will protect them and the District from claims or damage from personal injury including death, which may arise from operations under this contract.

The successful Bidder must be prepared to provide an adequate work force and inventory of vehicles, materials and equipment. It shall be the successful Bidders responsibility to ensure continuation of service.

The successful Bidder must provide adequate training for all contracted employees providing services under this contract.

The successful Bidder must make employees aware of the requirements of the contract including, but not limited to delivery requirements, alarm procedures, and any other information which may be necessary to properly provide the specified service.

10. District Requirements

A. Insurance

Bidder agrees to maintain such insurance as will fully protect Bidder and the District from any and all claims under any workers' compensation statute or unemployment compensation laws, and from any and all other claims of any kind or nature for damage to property or personal injury, including death, made by anyone, that may arise from work or other activities carried on, under, or facilitated by this Agreement, either by Bidder, its employees, or by anyone directly or indirectly engaged or employed by Bidder. Bidder agrees to maintain such automobile liability insurance as will fully protect Bidder and the District for bodily injury and property damage claims arising out of the ownership, maintenance or use of owned, hired or non-owned vehicles used by Bidder or its employees, while providing services to the District.

Successful Bidder will be required to provide proof of and maintain comprehensive general liability insurance with a limit of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate coverage with a deductible of not more than \$5,000.

Successful Bidder will be required to submit proof of and maintain Worker's Compensation and Employer's Liability Insurance as required by law.

B. Licenses

The successful Bidder will provide documentation of professional memberships, certifications, and licenses.

C. Safety

Bidder, at its own expense and at all times, shall take all reasonable precautions to protect persons and the District property from damage, loss or injury resulting from the activities of Bidder, its employees, its subcontractors, and/or other persons present. Bidder will comply with all specific job safety requirements promulgated by any governmental authority, including without limitation, the requirements of the Occupational Safety Health Act of 1970.

11. Vendor Required Contract

If your firm will require the District to sign any form of contract/agreement, a copy of that contract/agreement shall be included with this proposal. Contents and stipulations contained in the contract/agreement may be part of the evaluation criteria.

12. Authority

This solicitation as well as any resulting contract is issued under the authority of the Governing Board or designee. No alteration or any resulting contract may be made without the express written approval of the District in a form of an official contract amendment. Any attempt to alter any contract without such approval is a violation of the contract and the School District Procurement Rules. Any such action is subject to legal and contractual remedies available to the District inclusive of, but not limited to, contract cancellation, suspension and/or debarment of the contractor.

13. Integrity of Proposals

By signing this proposal, the Bidder affirms that the Bidder has not given, nor intends to give any time hereafter any economic opportunity, future employment, gift, loan gratuity, special discount, trip favor, or service to any employee of the District in connection with the submitted proposal. Failure to sign the proposal, or signing it with a false statement, shall void the submitted proposal or any resulting contract.

14. Contract Liaison

The Contract Liaison for any contract awarded under this Request for Proposal will be Stacy Trueblood, Chief Financial Officer, (520) 696-8828. The Contract Liaison shall act as the District's contract manager and oversee performance under the contract.

15. Billing

The successful vendor(s) will be required to bill the District on an itemized invoice that indicates the items purchased, using school or department, and the applicable District purchase order number. Invoices must be sent to the district's accounts payable, Flowing Wells School District, 1556 W. Prince Road, Tucson, AZ 85705, as shown on the purchase order. Any purchase order issued by FLOWING WELLS SCHOOL DISTRICT will refer to the Bid number of this Solicitation.

16. Additional Materials/Services

The District reserves the right to add related materials and/or services to the contract at any time during the contract period. The District shall contact the awarded vendor(s) for prices prior to adding any materials and/or service, and may, at FLOWING WELLS SCHOOL DISTRICT's sole option, accept the quoted price or purchase elsewhere those materials and/or services.

17. Sufficient Funds

The District fully anticipates that sufficient funds will be available for this purchase. However funds are not currently available. Any contract award under this proposal will be conditioned upon the availability of funds.

Firm Information

Length of time your firm has been in business? _____

Do you have a local representative to provide services as required? Yes No

Name of account representative _____

Location of account representative _____

Phone _____ Fax _____

E-Mail _____

Name of contact person for customer service calls _____

Phone _____ Fax Number _____

E-mail _____ Firm Web Site _____

Address for purchase orders: _____

City _____ State _____ Zip _____

Fax for purchase orders: _____ E-mail for purchase orders: _____

Remit to address for payments: _____

City _____ State _____ Zip _____

Vendor Check ListYes/No

- Have you completed and submitted the Proposal? _____
- Did you include the List of Subcontractors in a separate sealed envelope? _____
- Firm information provided? _____
- Did you carefully read and examine all information in the referenced Solicitation? _____
- Did you include a Bid Bond? _____
- Did you include a completed W-9 form? _____
- Did you include the signed Offer and Acceptance? _____
- Is your Bid being returned in a sealed envelope? _____
- **Are the Bid name, number, date and time of opening clearly marked on outside of sealed envelope?** _____

SPECIAL INSTRUCTIONS TO BIDDERS**1. PROPOSAL**

To be entitled to consideration, Proposals must be made in accordance with the following instructions:

a. Before submitting a Proposal, each bidder shall examine the Notice Inviting Sealed Bids, these Instructions to Bidders, the Drawings, Specifications, Contract and General Conditions Between Owner and Contractor, and all other documents comprising the Contract Documents, and fully inform himself of all existing conditions and limitations, and include in the Proposal a sum to cover the cost of all work required by the Contract Documents. The failure of any bidder to receive or examine any form, instrument, addendum, or other document, or visit the site and acquaint himself with conditions existing there, shall in no way relieve any bidder from obligations with respect to his Proposal or the Contract Documents.

b. Proposals shall be made only upon the form provided therefore. All blank spaces in the form shall be filled in completely. If some spaces do not apply, so state. Monetary amounts shall be stated both in writing and in numerals and, in case of any discrepancy between the two, the amounts in writing shall take precedence. The signature shall be in longhand and shall be that of an individual legally authorized to sign such form and bind the bidder. The completed form shall be without interlineation, alteration, or erasure.

c. Proposals shall not contain any recapitulation of the work to be done. No oral, telegraphic, telefax or telephonic proposals or modifications shall be considered.

d. Proposals shall be delivered to the place designated in the Notice Inviting Sealed Bids on or before the date and hour set for the opening of bids. Proposals shall be enclosed in an opaque, sealed envelope, bearing the title of the Project and the name of the bidder, except for that portion of the Proposal bearing the title "List of Subcontractors and Material Vendors," which shall be enclosed in a separate, opaque, sealed envelope, as hereinafter specified in these Instructions to Bidders. It is the sole responsibility of the bidder to deliver his proposal before the scheduled closing time. Any bids received after the scheduled closing time will be returned unopened.

e. The Contract Amount quoted is to include the furnishing of all materials, plant, equipment, tools, and all other facilities called for in the Contract Documents, and the performance of all labor and services necessary or proper for the completion of the Project, except such as may be otherwise expressly provided for in the Contract Documents.

f. The Proposal form must be used without alteration.

2. LIST OF SUBCONTRACTORS AND MATERIAL VENDORS

a. For use of the Owner in determining competency and capability of those who will work on the Owner's Project, and quality and workmanship of those who will supply material to the Owner's Project, each bidder is required to submit with his bid a list naming the subcontractors who will be used in performing the work. The list shall include any subcontractor that might be used in the event any or all of the various alternates are chosen by the Owner. The circumstances under which each subcontractor will be used must be specifically set forth by identifying alternates for which a particular subcontractor would be used.

b. ONE, and only one, subcontractor shall be submitted for each portion of the work for the Base Bid. The listing of more than one Subcontractor for any separate portion of the work shall be considered grounds for rejection of the bid by the Owner at the Owner's sole discretion.

c. The list shall be filled out and enclosed in a separate, opaque, sealed envelope bearing the title "List of Subcontractors" and the name of the bidder, and the envelope then inserted in the general bid envelope with the other forms. The list submitted by the successful bidder will be privately opened and will be retained by the Owner for record as a part of the Proposal. The lists of other bidders will be returned unopened.

d. No subcontractor not named in such list and approved by the Owner may be employed on the Owner's Project without express written permission of the Owner, notwithstanding any other provision of the Contract Documents which may be interpreted to the contrary. Should a change in the approved list become necessary in the opinion of the successful bidder, a written request shall be submitted to the Owner stating the reason for the change, and written approval of the Owner must be obtained before such change is made. This provision shall apply to work listed to be performed by the bidder, as well as work listed to be performed by vendors or subcontractors.

e. By this requirement of a List of Subcontractors, the Owner does not establish any contractual relation between the Owner and any subcontractor, nor will the Owner inquire into contractual or other relations of the bidder with any subcontractor, nor does this list establish limits to the contracts between the bidder and any subcontractor. The sole purpose and function of such requirement is set forth in the first sentence of the first paragraph of this section.

f. If prior to the signing of the Contract the Owner has a reasonable objection to any person or organization on the List of Subcontractors, the Owner shall notify the apparent successful bidder in writing of such objection. Failure of the Owner to make an objection to any person or organization on the list prior to the award shall constitute acceptance of such person or organization except in the case where a subcontractor is later found not to be qualified by law.

g. If, prior to the signing of the Contract, regardless of whether the Owner has evidenced any intention to award the Contract to Contractor or not, the Owner has a reasonable and substantial objection to any person or organization on such list, and refuses in writing to accept such person or organization except where such refusal is a result of the failure of a subcontractor to qualify by law, the apparent successful bidder may, prior to the signing, withdraw his bid without forfeiture of bid security. If the bidder submits an acceptable substitute with an increase in his bid price to cover the difference in cost occasioned by such substitution before the actual contract signing, the Owner may, at his discretion, accept the increased bid price or he may disqualify the bid.

3. BASE BID AND ALTERNATES

The Base Bids shall include all work as set forth on the Drawings, in the Specifications, and in all Contract Documents, plus the specified Contingency Reserve Fund and Cash Allowance, if any. Alternate bid items are described in the Specifications and indicated on the Proposal. The Owner shall have the right to accept Alternates in any order or combination and to determine the low bidder on the basis of the sum of the Base Bids and the Alternates accepted.

4. CASH ALLOWANCES

Bidders shall include Cash Allowances in their bids as described in the Specifications and in accordance with the Contract and General Conditions Between Owner and Contractor where required. In Cash Allowance items, the Owner will receive quotations and notify the Contractor of the successful bidder, and the Contractor shall purchase the items from the successful bidder as instructed by the Owner in writing. The Owner shall be charged with the actual cost of the purchase of the items by the Contractor, as determined by the quotation, including any discounts, to the Owner. In the event the purchase price of Cash Allowance items is less than the amount specified as Cash Allowance, the difference shall be credited to the Owner; and in the event the purchase price of the items exceeds the amount specified as Cash Allowance, the excess shall be paid by the Owner to the Contractor. Any adjustments to the Contract Price shall be made at the time of the final payment on the Contract.

5. BID SECURITY

All Proposals shall be accompanied by the bid security in the form and amount as published in the Notice Inviting Sealed Bids and as acceptable to the Owner, and shall be payable without conditions to the Owner as a guarantee that the bidder, if awarded the Contract, will promptly execute such Contract in accordance with the Proposal and in the manner and form required by the Contract Documents, and will furnish good and sufficient bonds for the faithful performance of the work and payment of all claimants supplying labor or materials. The bid security must be enclosed in the same envelope with the Proposal.

Note: The Notice Inviting Sealed Bids requires that this bid security will also serve as liquidated damages in the event the Contractor fails or refuses to enter into a contract. Mistake shall not excuse any failure or refusal to enter into a contract.

6. WITHDRAWAL OF BID

Any bidder may withdraw his Bid, either personally or by telegraphic or written request, at any time before the scheduled closing time for receipt of Bids. No Bid may be withdrawn for at least forty-five (45) days after the date the bids are opened, nor may any bid be withdrawn between the scheduled closing time for receipt of Proposals and the time the bids are actually opened.

7. INTERPRETATIONS AND ADDENDA

Should a bidder find discrepancies in, or omissions from, the Drawings or other Contract Documents, or should he be in doubt as to their meaning, he must at once request the Architect for an interpretation, who will send a written instruction to each person receiving a set of such documents. The bidder submitting a request for interpretations will be responsible for its prompt delivery. All requests for interpretations shall be made in writing. Neither the Owner nor the Architect will be responsible for any explanations or interpretations except those duly issued in the form of written addenda. Receipt of any addenda so issued during the time of bidding shall be included in the bid and shall be acknowledged in the Proposal and be made a part of the Contract Documents.

8. APPROVAL OF EQUAL ITEMS OF EQUIPMENT AND/OR MATERIALS BEFORE SUBMISSION OF BIDS

Products are generally specified by reference standard and/or manufacturer's name and model number or trade name. When specified only by reference standard, the bidder may select any product meeting this standard by any manufacturer. When several products or manufacturers are specified as being equally acceptable, the bidder has the option of using any product and manufacturer combination listed.

When a specific manufacturer, installer (where pre-qualification is required), trade name or material is specified, or indicated, it is to establish a standard of quality and shall not be construed as limiting competition. If the bidder desires to use other than that specified, he shall request approval of such substitution in the manner specified below:

a. Prior Approvals: Substitutions will be considered only when a written request has been submitted by a bidder, who shall be a general contractor qualified to submit a bid to the Owner, for approval at least eight (8) days prior to the original date for receipt of bids. No approvals will be granted to suppliers, distributors or subcontractors. Each request shall include all information requested hereinafter. If the Architect approves any proposed substitution, such approval shall be set forth in an Addendum.

b. Substitutions at Bid Time Not Prior Approved: A bidder may offer substitutions which have not received prior approval with his bid, together with the net addition to or deduction from the Base Bid amount and the net increase or decrease in calendar days to the construction time specified. These additions or deductions will not be considered in determining the low bid for award of the Contract.

c. Submittal Requirements: All requests shall contain sufficient information, descriptive brochures, drawings, performance and test data, samples or other data as is necessary for complete evaluation and shall indicate by direct comparison how the proposed substitution compares with the specified in every material respect with that specified. Each submittal shall be well marked and identified as to the type and kind of items proposed to be substituted. It is the sole responsibility of the bidder to submit complete descriptive and technical information so that the Architect can make a complete evaluation. Lack of sufficient information will be cause for rejection. References to catalogs will not be acceptable. Submittals shall be accompanied by a written statement from the manufacturer or contractor on his letterhead certifying that the proposed substitution meets or exceeds that specified in all aspects and that it will coordinate properly with related construction. Any redesign necessitated by the substitution shall be paid for by the Contractor.

d. As set forth in the Specifications, the bidder's request for prior approval shall include, without limitation:

- (1) Complete data substantiating compliance of the proposed substitution with the Contract Documents.
- (2) Product identification, including manufacturer's name, address and telephone number.
- (3) A tabulation comparing the specified product manufacturer's complete product description, performance test data and reference standards with the same information for the proposed products.
- (4) Samples and colors of the proposed products.
- (5) Names and addresses of similar projects in which the proposed product was used and the date of installation.
- (6) For construction methods, include a detailed description for proposed method and drawings illustrating same.

- (7) Accurate cost data on proposed substitution in comparison with product or method specified.

e. Any bidders, other than the bidder who requested a particular substitution, who choose to utilize a prior approved item, as approved by Addendum, shall comply with all terms and conditions of the original prior approval submittal. All provisions of this Paragraph 8 regarding using of substitutions shall apply to any bidder who chooses to utilize such substitution.

9. BIDDERS INTERESTED IN MORE THAN ONE BID

No person, firm, or corporation shall be allowed to make, file, or be interested in more than one bid for the same work. A person, firm, or corporation who has submitted a sub-proposal to a bidder, or who has quoted prices on materials to a bidder, is not thereby disqualified from submitting a sub-proposal or quoting prices to other bidders.

10. ACCEPTANCE OR REJECTION OF PROPOSALS

The Owner reserves the right to reject any or all bids and to waive any informalities in the Proposals received. The award of the Contract, if made by the Owner, will be made to the responsible and qualified bidder submitting the lowest bid, but the Owner shall determine in its own discretion whether a bidder is responsible and qualified to perform the Contract, what bid is the lowest, and whether it is in the interest of the Owner to accept the bid.

11. AGREEMENT AND BONDS

The form of agreement which the successful bidder will be required to execute, and the forms and amounts of surety bonds which he will be required to furnish at the time of execution of the agreement, are included in the Contract Documents on file in the office of the Architect and must be carefully examined by the bidder. All sureties must be authorized to do business in Arizona, listed on the U.S. Department of Treasury's list of approved sureties, and must be satisfactory to the Owner. No individual sureties are acceptable. The successful bidder must furnish the required bonds and insurance certificates and commence work within five (5) days after issuance of the Notice of Award and Notice to Proceed. By his submission of a Proposal, a bidder will be deemed, and agrees to be so treated, to have actual notice of every term of every Contract Document.

12. NON-COLLUSION AFFIDAVIT

Upon specific request of the Owner, the bidder, before the award of the Contract, shall submit to the Owner non-collusion affidavits covering the bidder and all subcontractors.

13. LIST OF COMPARABLE PROJECTS

If requested by Owner, the bidder must submit, within 24 hours after bid opening, a list of all projects undertaken within the three (3) years immediately preceding the bid date and a Contractor's Qualification Statement in the form of AIA A-305. Such list shall include the name, address and phone number of the owner and the architect of each project, the contract amount, and the starting date. Bidder consents to the use of the list and Qualification Statement by Owner to inquire into bidder's fitness, capabilities and responsibility in connection with Owner's consideration of the bid. Bidder agrees to hold harmless the Owner, the Architect, and each owner and architect listed from any action or claim that might arise from any adverse report received by Owner

concerning the bidder's performance on the projects listed. Failure to furnish a complete list and Qualification Statement as required herein may be considered grounds for rejection of the bid by the Owner, at the Owner's sole discretion.

14. BID PROTESTS

Any bid protests concerning this bid must be filed with the District Representative, who is Stacy Trueblood, Chief Financial Officer, Flowing Wells Unified School District, 1556 West Prince Road, Tucson, Arizona 85705.

PROPOSAL

Place _____

Date _____

Proposal of _____,

(Name)

a corporation organized and existing under the laws of the State of _____; a partnership

consisting of _____; an individual trading as

_____.

(Name)

PROJECT: Flowing Wells High School West Gym Roof and HVAC

TO: Flowing Wells Unified School District No. 8

1. In compliance with your Notice Inviting Sealed Bids and Instructions to Bidders, the undersigned hereby offers to furnish the materials and perform the work for the Owner's Project designated above, in strict accordance with the Plans, and all other pertinent Contract Documents, and agrees, upon written notice of acceptance of this Proposal at any time within forty-five (45) days after the date of opening of the bids, that he will execute the Contract in accordance with the Proposal as accepted, and give bond, as sufficient surety, in the amount of one hundred percent (100%) of the Contract Amount, within five (5) days after the Contract Documents are presented for signature, for the following sum:

A. Base bid HVAC Replacement in its entirety –

_____, (\$_____).

B. Base Bid Roof Replacement in its entirety -

_____, (\$_____).

2. Enclosed is bid security as required consisting of _____ in the amount of _____ (\$_____). (Not less than ten percent (10%) of the proposed Contract Amount, including all additive alternates.)
3. It is understood and agreed that the work under the Contract Documents shall be commenced by the undersigned Bidder, if awarded the Contract for the Project, on the date specified as the Start Date in the Notice to Proceed issued by the Architect in the manner specified in the Contract and General Conditions, and shall be completed by the Contractor by July 26, 2024. If the work is not completed by the date specified, then the undersigned Bidder shall pay Owner the amount of Two Hundred Dollars (\$200.00) as liquidated damages for each calendar day after expiration of the Contract Time that the work remains incomplete for each project.

4. The undersigned Bidder hereby acknowledges receipt of the following Addenda, if any:

Addendum No.	Date
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

5. The undersigned Bidder understands that the Owner reserves the right to reject any or all Proposals or to waive any formality or technicality, and to accept Alternates, if any, in any order or combination, and to determine the low bidder on the basis of the sum of the Base Bid and the Alternates selected, as determined by the Owner in its sole discretion, in any Proposal in the interest of the Owner.
6. The undersigned Bidder hereby certifies and affirms that this Proposal is genuine and not a sham or collusive, nor made in the interest or behalf of any person not herein named, and that the undersigned Bidder has not directly or indirectly induced or solicited any other Bidder to put in a sham bid, or any other person, firm, or corporation to refrain from bidding, and that the Bidder has not in any manner sought by collusion to secure for itself an advantage over any other Bidder.
7. Contractor's Arizona Contractor's License No(s). _____.

(Official Name of Firm)

SEAL - If Bidder is a
Corporation

By_____

Title_____

(Complete Business Address)

LIST OF SUBCONTRACTORS

(To be filled out and submitted in separate sealed envelope as a part of the Proposal)

OWNER'S PROJECT: Flowing Wells High School West Gym Roof and HVAC

TO: Flowing Wells Unified School District No. 8

In compliance with Paragraph 2 of the Instructions to Bidders, the undersigned submits the following names of Subcontractors to be used in performing the work for the Project.

Contractor must indicate any changes in the subcontractor list that would result from acceptance by the Owner of any combination of alternates by identifying the substitute Subcontractor to be used, along with the number of the alternate that would result in such substitution. No substitutions or deviations from this list shall be permitted without written consent of the Owner.

SUBCONTRACTORS OR MATERIAL VENDOR'S WORK	SUBCONTRACTOR'S NAME
Electrical	
Mechanical	
Plumbing	
Roofing	
Painting	
Steel Fabrication	

SUBMITTED BY:

Contractor

By _____

Title _____

BID BOND**PURSUANT TO RULE R7-2-1111 OF THE ARIZONA SCHOOL DISTRICT
PROCUREMENT RULES**

(Penalty of this bond must be not less than 10% of the bid amount)

KNOW ALL PERSONS BY THESE PRESENTS:

THAT, _____ (hereinafter called the "Principal"), as Principal, and _____, a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____ (hereinafter called the "Surety"), as Surety, are held and firmly bound unto Flowing Wells Unified School District No. 8 (hereinafter called the "Obligee") in the amount of _____ Dollars (\$_____), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for Flowing Wells High School West Gym Roof and HVAC.

NOW, THEREFORE, if the Obligee shall accept the proposal of the Principal and the Principal shall enter into a contract with the Obligee in accordance with the terms of the proposal and give the bonds and certificates of insurance as specified in the standard specifications with good and sufficient surety for the faithful performance of the contract and for the prompt payment of labor and materials furnished in the prosecution of the contract, or in the event of the failure of the Principal to enter into the contract and give the bonds and certificates of insurance, if the Principal pays the Obligee the difference not to exceed the penalty of the bond between the amount specified in the proposal and such larger amount for which the Obligee may in good faith contract with another party to perform the work covered by the proposal, then this obligation is void. Otherwise, it remains in full force and effect; provided, however, that this bond is executed pursuant to the provisions of Ariz. Admin. Code Rule R7-2-1111, and all liabilities on this bond shall be determined in accordance with the provisions of the section to the extent as if it were copied at length herein.

The prevailing party in a suit on this bond shall recover as a part of his judgment such reasonable attorneys' fees as may be fixed by a judge of the Court.

Witness our hands this ____ day of _____, 2024.

Principal Seal

By _____

Title _____

Surety Seal

By _____

Title _____

Agency of Record

Agency Address

Bid No. 24-04-25		OFFER AND ACCEPTANCE		Flowing Wells School District #8 1556 W. Prince Road Tucson, AZ 85705	
The Undersigned hereby offers and agrees to furnish the material, service or construction in compliance with all terms, conditions, specifications, and amendments in the Solicitation and any written exceptions in the offer.					
Company Name			For Clarification of this Offer, contact:		
Arizona Transaction (Sales) Privilege Tax License No.			Name		
Federal Employer Identification No.			Phone		
Street Address			Fax		
City			E-mail		
State		Zip			
Tax Rate (if applicable) _____%			Signature of Person Authorized to Sign Offer		
			Printed Name of Person Authorized to Sign Offer		
			Title		
CERTIFICATION By signature in the Offer section above, the bidder certifies: <ol style="list-style-type: none"> 1. The submission of the Bid did not involve collusion or other anti-competitive practices and bidder has taken steps and exercised due diligence to ensure that no violation of A.R.S. § 15-213(O), A.A.C. R7-2-1003(J) and A.A.C. R7-2-1024(B.1.q) have occurred. 2. The Bidder shall not discriminate against any employee or applicant for employment in violation of State Executive Order 99-4, 2000-4 or A.R.S. §§ 41-1461 through 1465. 3. The Bidder has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted Offer. Failure to provide a valid signature affirming the stipulations required by this clause shall result in rejection of the Bid. Signing the Bid with a false statement shall void the Bid, any resulting contract and may be subject to legal remedies provided by law. 4. The Bidder warrants that it and all proposed subcontractors will maintain compliance with the Federal Immigration and Nationality Act (FINA), A.R.S. § 41-4401 and A.R.S. § 23-214 and all other Federal immigration laws and regulations related to the immigration status of its employees which requires compliance with Federal immigration laws by employers, contractors and subcontractors in accordance with the E-Verify Employee Eligibility Verification Program. 5. In accordance with A.R.S. § 35-392, the Bidder is in compliance and shall remain in compliance with the Export Administration Act. 6. In Accordance with A.R.S. § 35-393, the bidder is not engaged in and for the duration of the contract will not engage in a boycott of Israel. 7. In Accordance with A.R.S. § 35-394, the bidder is not currently and for the duration of the contract will not use the forced labor of ethnic Uyghurs in the People's Republic of China including goods, services, contractors, subcontractors, or suppliers thereof. 8. In accordance with A.R.S. § 15-512, the Bidder shall comply with fingerprinting requirements unless otherwise exempted. 9. By submission of this Bid, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. 10. By submission of this Bid, that no Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a Cooperative Agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement. 					

ACCEPTANCE OF OFFER

When approved for award and countersigned below by the Chief Financial Officer, authorized designee, the offer is accepted.

The Contractor is now bound to sell the materials or services listed by the attached contract and based upon the solicitation, including all terms, conditions, specifications, amendments, etc., and the Contractor's Offer as accepted by the school district/public entity.

This contract shall henceforth be referred to as Contract No. 24-04-25

The Contractor is cautioned not to commence any billable work or to provide any material or service under this contract until Contractor receives purchase order, contract release document, or written notice to proceed.

Awarded this _____ day of _____ 2024

Authorized signature

Form **W-9**
(Rev. October 2018)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

► Go to www.irs.gov/FormW9 for instructions and the latest information.

Give Form to the
requester. Do not
send to the IRS.

Print or type.
See Specific Instructions on page 3.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.	
2 Business name/disregarded entity name, if different from above	
3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes. <div style="display: flex; justify-content: space-between; margin-top: 5px;"> <input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate </div> <div style="margin-top: 5px;"> <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► _____ </div> <p style="font-size: small; margin-top: 5px;">Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.</p> <div style="margin-top: 5px;"> <input type="checkbox"/> Other (see instructions) ► _____ </div>	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ <p style="font-size: x-small;">(Applies to accounts maintained outside the U.S.)</p>
5 Address (number, street, and apt. or suite no.) See instructions.	Requester's name and address (optional)
6 City, state, and ZIP code	
7 List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number									
		-			-			-	
or									
Employer identification number									
		-			-			-	

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

**Sign
Here**

Signature of
U.S. person ►

Date ►

Confidential/Proprietary Submittals
--

Confidential / Proprietary Submittals (mark one):

_____ No confidential/proprietary materials have been included with this offer.

_____ Confidential/Proprietary materials included. Offerors should identify below any portion of their offer deemed confidential or proprietary. Identification in this section does not guarantee that disclosure will be prevented but that the item will be subject to review by the Offeror and the District prior to any public disclosure. The District will be the final judge if material will be accepted as confidential or not. Request to deem the entire offer or price as confidential will not be a consideration. Complete description of the material to be considered confidential, the page number, paragraph and other identifiable information must be submitted below. Page number (s), paragraph, and description:

Deviations and Exceptions

Offerors shall indicate any and all exceptions taken to the provisions or specification in this solicitation document.

Exceptions (mark one):

_____ No exceptions

_____ Exceptions taken (describe –attach additional pages if needed)

Firm:

Authorized Signature

EXHIBIT A

**PAYMENT BOND PURSUANT TO R7-2-1112
OF THE ARIZONA ADMINISTRATIVE CODE
(SCHOOL DISTRICT PROCUREMENT RULES)
(Penalty of this bond must be 100% of the Contract Amount)**

KNOW ALL PERSONS BY THESE PRESENTS:

That, _____ (hereinafter called the "Principal"), as Principal, and _____, a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____ (hereinafter called the "Surety"), as Surety, are held and firmly bound unto Flowing Wells Unified School District No. 8, Pima County, Arizona (hereinafter called the "Obligee"), for the amount of _____ Dollars (\$_____) for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, entitled Contract and General Conditions Between Owner and Contractor, dated the ____ day of _____, 2024 ("Contract"), to construct and complete certain work described as Flowing Wells High School West Gym Roof and HVAC, which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, the condition of this obligation is such that if the Principal promptly pays all monies due to all persons supplying labor or materials to the Principal or the Principal's subcontractors in the prosecution of the work provided for in the Contract, this obligation is void. Otherwise it remains in full force and effect.

Provided, however, that this bond is executed pursuant to the provisions of Arizona Administrative Code Rule R7-2-1112, and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of said Rule, to the extent as if it were copied at length in this agreement.

The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the Court.

Witness our hands this ____ day of _____, 2024.

AGENCY OF RECORD

Agency Address

PRINCIPAL Seal
By _____
Title _____

SURETY Seal
By _____
Title _____

EXHIBIT B**PERFORMANCE BOND PURSUANT TO R7-2-1112
OF THE ARIZONA ADMINISTRATIVE CODE
(SCHOOL DISTRICT PROCUREMENT RULES)****(Penalty of this bond must be 100% of the Contract Amount)**

KNOW ALL PERSONS BY THESE PRESENTS:

That, _____ (hereinafter called the "Principal"), as Principal, and _____, a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____ (hereinafter called the "Surety"), as Surety, are held and firmly bound unto Flowing Wells Unified School District No. 8, Pima County, Arizona (hereinafter called the "Obligee"), for the amount of _____ Dollars (\$ _____) for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, entitled Contract and General Conditions Between Owner and Contractor, dated the _____ day of _____, 2024 ("Contract"), to construct and complete certain work described as Flowing Wells High School West Gym Roof and HVAC, which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, the condition of this obligation is such that if the Principal faithfully performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of the Contract during the original term of the Contract and any extension of the Contract, with or without notice to the Surety, and during the life of any guaranty required under the Contract, and also performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of all duly authorized modifications of the Contract that may hereafter be made, notice of which modifications to the Surety being hereby waived, the above obligation is void. Otherwise, it remains in full force and effect.

Provided, however, that this bond is executed pursuant to the provisions of Arizona Administrative Code Rule R7-2-1112, and all liabilities on this bond shall be determined in accordance with the provisions of said Rule, to the extent as if it were copied at length in this agreement.

The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the Court.

Witness our hands this ____ day of _____, 2024.

	_____ PRINCIPAL	_____ Seal
_____ AGENCY OF RECORD	By _____	
	Title _____	

_____ Agency Address	_____ SURETY	_____ Seal
	By _____	
	Title _____	

EXHIBIT C**CONTRACT AND GENERAL CONDITIONS
BETWEEN OWNER AND CONTRACTOR**

THIS AGREEMENT, made this ____ of _____, 2024, by and between _____, hereinafter called the "Contractor," and Flowing Wells Unified School District No. 8, an Arizona unified school district organized and operating in Pima County, hereinafter called the "Owner":

W I T N E S S E T H:

That the Contractor and the Owner agree as follows:

**ARTICLE 1
THE CONTRACT DOCUMENTS****1.1 CONTRACT DOCUMENTS.**

1.1.1 The following listed documents constitute the Contract Documents, and they are all as fully a part of the Contract and General Conditions as if herein repeated:

1. This Contract and General Conditions between Owner and Contractor.
2. Notice of Award, Notice to Proceed and Receipt of Notice dated _____
3. Performance Bond and Labor and Material Payment Bond.
4. Amendment No. 1 dated _____.
5. Specifications (as modified by the above-referenced Amendment and selected alternates as listed herein, if any) as set forth in Exhibit A to this Contract.
6. Proposal, dated _____
7. Instructions to Bidders.
8. Notice Inviting Sealed Bids.
9. Certificates of Insurance.

1.1.2 In the event of any inconsistency between any of the terms of the before enumerated documents, such inconsistencies shall be resolved by giving precedence to the terms of the lowest numbered of the above numbered documents. Anything in these Contract Documents to the contrary notwithstanding, the provisions of all pertinent general public laws of the State of Arizona in effect at the time of the execution of this Contract shall be a part of the Contract between the parties and shall take precedence over all of the other Contract Documents.

**ARTICLE 2
SCOPE OF WORK**

2.1 As required by the Contract Documents, the Contractor shall furnish and install all of the materials and labor and perform all of the work for the Owner's Project known as Flowing Wells High School West Gym Roof and HVAC, 3725 N. Flowing Wells Road., Tucson, Arizona 85705 ("Project" herein). Specifications for this Project were prepared by Breckenridge Group Architects Planners.

ARTICLE 3
CONTRACT AMOUNT, TIME AND LIQUIDATED DAMAGES

3.1 CONTRACT AMOUNT.

3.1.1 The Owner shall pay the Contractor the sum of _____ Dollars and _____ Cents (\$_____) for the Base Bid, which is the Contract Amount for the HVAC System Replacement. This sum is subject to additions or deductions made in accordance with the provisions of the Contract Documents.

3.1.2 The Owner shall pay the Contractor the sum of _____ Dollars and _____ Cents (\$_____) for the Base Bid, which is the Contract Amount for the Roof Replacement. This sum is subject to additions or deductions made in accordance with the provisions of the Contract Documents.

3.2 CONTRACT TIME. The Contract Time as used and defined in Article 11 herein shall be sixty four (64) calendar days for the Roof and HVAC replacements.

3.3 LIQUIDATED DAMAGES. Liquidated damages as used and defined in Article 11 herein shall be two hundred Dollars (\$200.00) per calendar day for each day the Work remains not substantially complete after expiration of the Contract Time as defined in Article 11 and specified in Subparagraph 3.2 above.

3.4 OVERHEAD AND PROFIT. Limits on the amount of overhead and profit allowed on Change Orders are specified in Article 15.

3.5 SOURCE OF FUNDS. The Owner's obligations and liabilities under this Contract shall be paid with funds from Arizona School Facilities Oversight Board (SFOB) funds.

3.6 CONTINGENCY FUND. It is agreed that the Contract Amount includes a "Contingency Fund Allowance" of none, and this fund is intended by the parties to be used by the Owner to pay the Contractor for the reasonable cost of work, labor and materials furnished on the Project at the Owner's request for additional construction, installations, or services not included in the Plans and Specifications, at the time of bidding, involving extra cost to the Contractor. That portion of the Contingency Fund Allowance not expended as provided herein shall be credited to the Owner upon the contract completion.

3.7 CASH ALLOWANCES. NONE.

ARTICLE 4
DEFINITIONS AND GENERAL PROVISIONS

4.1 OWNER AND CONTRACTOR. The Owner and the Contractor are those herein defined in this Contract and General Conditions. They are treated throughout the Contract Documents as though each were of the singular number and masculine gender.

4.2 SUBCONTRACTOR. See Article 8.

4.3 NOTICE. See Articles 7 and 10.

4.4 TIME. See Articles 3 and 11.

4.5 COST. The term "Cost" shall include all charges, costs, losses, and expenditures of every kind whatsoever for the Work, or portion thereof to which reference is made with respect to this term.

4.6 FINISH, SUBSTANTIAL COMPLETION AND FINAL COMPLETION DATES. See Article 11.

4.7 MODIFICATIONS. See also Article 1. A Modification is:

- .1 A written amendment to the Contract and General Conditions signed by all parties;
- .2 A Change Order properly signed by all parties pursuant to Paragraph 15.1; or
- .3 A Field Order for a minor change in the Work issued by the Owner pursuant to Paragraph 15.4.

A modification may be made only after execution of the Contract and General Conditions.

4.8 CONTRACT. The Contract consists of all the Contract Documents enumerated in Article 1. The Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification as defined in Paragraph 4.8.

4.9 WORK. The term "Work" includes, without limitation, furnishing all labor, administrative services and supervision necessary to produce the construction required by the Contract Documents and furnishing and installing all materials and equipment incorporated, or to be incorporated in such construction to complete the Project.

4.10 PROJECT. The Project is the total construction shown on the Contract Documents of which the Work performed under the Contract Documents may be the whole or a part.

4.11 EXECUTION, CORRELATION, INTENT AND INTERPRETATIONS OF THE CONTRACT DOCUMENTS.

4.11.1 The Contract and General Conditions shall be signed by the Owner and the Contractor. By executing the Contract and General Conditions, each party accepts and agrees to be bound by each of the Contract Documents listed in Article 1.

4.11.2 By executing the Contract and General Conditions, the Contractor represents and warrants that he has visited the site, has familiarized himself with the local conditions under which the Work is to be performed, including any and all relevant weather conditions or records or both, and correlated all of his observations with the requirements of the Contract Documents.

4.11.3 The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. The intention of the Contract Documents is to include, without limitation, all labor, materials, equipment and other items as provided in Subparagraph 7.4.1 necessary for the proper execution and completion of the Work. Words and abbreviations which have well known technical or trade meanings are used herein in accordance with such recognized meanings.

4.11.4 The organization of the Specifications into divisions, sections and articles, and the arrangements of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade, or constituting part of the contract or having any legal or contractual significance.

4.11.5 Written interpretations necessary for the proper execution or progress of the Work, in the form of drawings or otherwise, will be issued with reasonable promptness by the Owner in accordance with any schedule agreed upon, or with reasonable promptness in any case. Such interpretations shall be consistent with and reasonably inferable from the Contract Documents.

4.12 COPIES FURNISHED AND OWNERSHIP.

4.12.1 The Contractor will be furnished, free of charge, all copies of Contract Documents reasonably necessary for the execution of the Work as determined by the Owner.

4.12.2 It shall be the responsibility of the Contractor to insure that each Subcontractor, Sub-subcontractor and supplier has a current set of those portions of the Construction Documents that may be required for proper execution of their respective portions of the Work.

ARTICLE 5 PROJECT ADMINISTRATION

5.1 DEFINITION.

5.1.1 The Owner is the person or organization identified as such in this Contract and General Conditions.

5.2 ADMINISTRATION OF THE CONTRACT.

5.2.1 The Owner will provide general administration of this Contract, including performance of the functions hereinafter described.

5.2.2 The Owner shall make daily visits to the site to observe the progress and quality of the Work and to determine if the Work is proceeding in accordance with the Contract Documents. The Owner shall not be responsible for the Contractor's ways and means, methods, techniques and procedures in the construction of the Project or for enforcement of safety requirements on the Project.

5.2.3 Based on such observations and the Contractor's Applications for Payment, the Owner will determine the amounts owing to the Contractor and will issue Certificates for Payment in such amounts, as provided in Subparagraph 12.4.1.

5.2.4 The Owner will be, in the first instance, the interpreter of the requirements of the Contract Documents and the judge of the performance thereunder by both the Owner and the Contractor, except where otherwise provided herein. The Owner will promptly render such interpretations as he may deem necessary for the proper execution or progress of the Work.

5.2.5 All claims, disputes and other matters in question relating to the execution or progress of the Work, payment, time extension or interpretation of the Contract Documents shall be referred to the Owner in

the manner provided by Subparagraph 12.4.3, within the time limits prescribed in Subparagraph 15.2.1, for decision by the Owner, which will be rendered in writing within a reasonable time.

5.2.6 The Owner shall have authority to reject Work which does not conform to the Contract Documents. Whenever, in the Owner's reasonable opinion, he considers it necessary or advisable to insure the proper implementation of the intent of the Contract Documents, he will require special inspection or testing of the Work as provided in Subparagraph 10.8.2, whether or not such Work be then fabricated, installed or completed.

5.2.7 The Owner will review Shop Drawings, Product Data and Samples promptly as provided in Subparagraphs 7.12.1 through 7.12.8, inclusive.

5.2.8 The Owner will prepare Change Orders in accordance with Article 15 and will have authority to order minor changes in the Work not involving extra cost as provided in Subparagraph 15.3.

5.2.9 The Owner will conduct inspections to determine the date or dates of Substantial Completion and Final Completion and shall issue a Certificate of Substantial Completion and of Final Completion.

ARTICLE 6 NOT USED

ARTICLE 7 CONTRACTOR

7.1 DEFINITION.

7.1.1 The Contractor is the person or organization identified as such in this Contract and General Conditions and the term "Contractor" means the Contractor or his authorized representative. The Contractor, and all Subcontractors employed on the Project shall possess valid Arizona Contractor's Licenses as required by law.

7.1.2 Whenever the words "as may be directed," "suitable," "or equal," "as approved," or other words of similar intent and meaning are used within the Contract Documents implying that judgment or discretion is to be exercised or a decision is to be made, it is understood that it is the judgment, discretion, or decision of the Owner to which reference is made.

7.1.3 All materials and articles of any kind necessary for this Work are subject to the approval of the Owner as provided in the Contract Documents.

7.1.4 After execution of the Contract, changes of brand named, trade named, trademarked, patented articles, or any other substitutions will be allowed only by written order signed by the Owner, in which case the Owner shall receive all benefit of the difference in cost involved, except where choice of material or method is designated "or equal" or "acceptable alternates" in the Specifications.

7.2 REVIEW OF CONTRACT DOCUMENTS AND EXAMINATION OF SITE.

7.2.1 By executing this Contract the Contractor warrants that he has examined the site and carefully studied and compared the Contract and General Conditions, Drawings, Specifications, Addenda, and all other Contract Documents before so executing the Contract. The Contractor shall at once report to the Owner any

error, inconsistency or omission he may discover. The Contractor shall not be liable to the Owner for any damage resulting from any such errors, inconsistencies or omissions so long as the Owner is notified thereof unless discovery of such error, inconsistency or omission should have reasonably been made by careful examination of the Contract Documents prior to submitting a Proposal. The Contractor shall do no Work without appropriate Contract Documents, or where required, approved Shop Drawings, Product Data and Samples.

7.2.2 The Contractor shall be required to use for data and dimensions, figures marked on the drawings in preference to what the drawings may measure to scale. In the absence of figured dimensions, the Owner shall be notified and the dimensions provided within a reasonable time. Drawings shall not be scaled in the absence of figured dimensions.

7.2.3 The Contractor shall verify all dimensions shown and check all measurements in connection with any present building or buildings, levels of grades, walks, driveways, or other existing conditions, before executing any work. Contractor shall immediately report to the Owner any discrepancies between the Plans and actual field conditions. Failure to report any discrepancy within 72 hours after discovery will constitute a waiver of any claim arising out of such discrepancy. This provision shall have precedence over any other notice provisions contained herein.

7.3 **SUPERVISION AND CONSTRUCTION PROCEDURES.** The Contractor shall supervise the Work, using his best skill and attention. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract. Notwithstanding anything herein to the contrary, Subcontractors shall have an independent responsibility for the means and methods related to the performance of their work.

7.4 **LABOR AND MATERIALS.**

7.4.1 Unless otherwise specifically noted, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, heat, utilities, transportation and any other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. No materials shall be incorporated into this Work that contain more than 0% asbestos.

7.4.2 Any work necessary to be performed after regular working hours, on Sundays or legal holidays, shall be performed without additional expense to the Owner.

7.4.3 The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him. When requested in writing by the Owner, the Contractor shall remove from the Project any person who commits trespass or is, in the opinion of the Owner, disorderly, dangerous, insubordinate, incompetent or violates any policies of the Owner. If the Owner requests such a removal, he shall notify the Contractor in writing of his action. The Contractor shall keep the Owner harmless from damages or claims for compensation that may occur in the enforcement of this requirement. The Contractor shall not permit the use of tobacco products, alcohol or illegal drugs on the project site.

7.5 **WARRANTY.**

7.5.1 The Contractor warrants to the Owner that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all Work will be of good quality, free from faults and

defects and in conformance with the Contract Documents. All Work not so conforming to these standards may be considered defective. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

7.5.2 The warranty provided in Paragraphs 7.5 and 18.1 shall be in addition to and not in limitation of any other warranty or remedy available pursuant to law or the Contract Documents.

7.6 TAXES. The Contractor shall pay all sales, consumer, use, transaction privilege and other taxes required by law in connection with the performance of this Contract, whether in force as of the date of this Contract. If the Contractor's principal place of business is not in Arizona, Contractor shall post a bond for taxes in compliance with A.R.S. § 42-1305.02 and furnish evidence of such bond to Owner prior to submitting any application for payment hereunder

7.7 PERMITS, FEES AND NOTICES.

7.7.1 Unless otherwise provided in the Specifications or by Addendum, the Contractor shall secure and pay for all permits, fees, inspections and reinspections necessary for the proper execution and completion of the Work, including approval of the Arizona Department of Water Resources. The Contractor shall procure and pay for all necessary utilities for the Project, including temporary utility hook-ups and utilities used in course of construction, except for water which will be provided by Owner.

7.7.2 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work. If the Contractor observes that any of the Contract Documents are at variance therewith in any respect, he shall promptly notify the Owner in writing. If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Owner, he shall assume full responsibility therefor and shall bear all costs attributable thereto, including any reasonable attorney's fees incurred by Owner in connection therewith.

7.8 SUPERINTENDENT. The Contractor shall employ a competent Superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the Work. The Contractor shall assign to the Project a Superintendent prior to the pre-construction meeting and shall furnish to the Owner the Superintendent's resume. The Superintendent shall be satisfactory to the Owner and shall not be changed except with the consent of the Owner, unless the Superintendent proves to be unsatisfactory to the Contractor and ceases to be in his employ. The Superintendent shall represent the Contractor, and all communications given to the Superintendent shall be as binding as if given to the Contractor. Important communications will be confirmed in writing. Other communications will be so confirmed on written request in each case.

7.9 RESPONSIBILITY FOR THOSE PERFORMING THE WORK. The Contractor shall be responsible to the Owner for the acts and omissions of all his employees and all Subcontractors, their agents and employees, and all other persons performing any of the Work or supplying any material or equipment to be incorporated in the Work under a contract of any nature with the Contractor.

7.10 PROGRESS SCHEDULE AND REPORTS.

7.10.1 The Contractor, within fourteen (14) days after being awarded the Contract, shall prepare and submit for the Owner's review his planned Construction Progress Schedule for the Work as provided in the specifications. The Construction Progress Schedule shall be related to the entire Project and shall indicate the dates for the starting and completion of the various components and phases of construction and shall be revised monthly or as required by the conditions of the Work, upon request of and subject to the review of the Owner.

The Contractor shall comply with the requirements of the Specifications in connection with the preparation and revision of the Construction Progress Schedule. Approval of the Construction Progress Schedule by the Owner shall not relieve the Contractor from his obligation to complete the Project within the Contract Time.

7.11 DRAWINGS AND SPECIFICATIONS AT THE SITE.

7.11.1 The Contractor shall maintain at the site for the Owner one (1) copy of all Drawings, Specifications, Addenda, approved Shop Drawings, Change Orders, other Modifications, and manufacturers' printed specifications and recommendations, in good order and marked carefully and accurately to record on a daily basis all changes made during construction, all of which shall be available to the Owner at all times. These Drawings shall be delivered to the Owner upon completion of the Work.

7.11.2 The Contractor shall also submit to the Owner for his record three copies each of all manufacturers' maintenance manuals, printed specifications and recommendations, which by reference in the several divisions of the Specifications are a part thereof.

7.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES.

7.12.1 Shop Drawings and Product Data are drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are required by the Contract Documents and are prepared by the Contractor or any Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor, and which illustrate or describe some portion of the Work.

7.12.2 Samples are physical examples furnished by the Contractor to illustrate materials, equipment or workmanship, and to establish standards by which the Work will be judged.

7.12.3 By submitting Shop Drawings, Product Data and Samples, the Contractor thereby represents that he has determined and verified all field measurements, field construction criteria, materials, catalog numbers and similar data, or will do so, and that he has checked and coordinated all Shop Drawings, Product Data and Samples with the requirements of the Work and of the Contract Documents.

7.12.4 The Owner will review and take other appropriate action with respect to Shop Drawings, Product Data and Samples with reasonable promptness so as to cause no delay, but only for conformance with the Contract Documents.

7.12.5 The Contractor shall make any corrections required by the Owner to comply with the Contract Documents and shall resubmit the required number of corrected copies of Shop Drawings, Product Data or new Samples until approved.

7.12.6 The Owner's review of Shop Drawings, Product Data or Samples shall not relieve the Contractor of responsibility for any deviation from the requirements of the Contract Documents unless the Contractor has informed the Owner in writing of such deviation at the time of submission and the Owner has given written approval to the specific deviation, nor shall the Owner's approval relieve the Contractor from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples.

7.12.7 No portion of the Work requiring a Shop Drawing, Product Data or Sample submission shall be commenced until the submission has been approved by the Owner. All such portions of the Work shall be in accordance with approved Shop Drawings, Product Data and Samples.

7.13 CUTTING AND PATCHING OF WORK. The Contractor shall accurately and carefully do all cutting, fitting, or patching of his Work that may be required to make its several parts fit together properly, and shall not endanger any Work, either new or existing, by cutting, excavating or otherwise altering such Work or any part of it.

7.14 CLEANING UP.

7.14.1 The Contractor at all times during the progress of the Work shall keep the buildings and site free from accumulation of waste materials or rubbish caused by his operations. At the completion of the Work he shall remove all his waste materials and rubbish from and about the Project as well as all his tools, construction equipment, machinery and surplus materials not specified to be left at the site, and shall clean all glass surfaces and other areas or materials as specified, and leave the Work "broom-clean" or its equivalent, except where more stringent cleaning requirements are provided by the Contract Documents.

7.14.2 If the Contractor fails to satisfactorily clean up, the Owner will do so and the cost thereof shall be charged to the Contractor as provided in Paragraph 10.6.

7.15 COMMUNICATIONS. The Contractor shall forward all written communications to the Owner.

7.16 INDEMNIFICATION.

7.16.1 To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner and its agents and employees from and against any and all claims, damages, losses and expenses, including any attorney's fees court costs, experts' fees and other costs incurred, arising out of or resulting from the performance of the Work, delivery to the work site of any and all materials to be used in the Work, and any and all other activities connected with the Work, provided that any such claim, damage, loss or expense:

.1 is attributable to bodily injury, sickness, disease or death, or to injury or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom; and

.2 is caused in whole or in part by any negligent or intentional act or omission of the Contractor, any Subcontractor, Sub-subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

7.16.2 In any and all claims against the Owner or any of its agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph 7.16 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under worker's compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 8 SUBCONTRACTORS

8.1 DEFINITION.

8.1.1 A Subcontractor is a person or organization who has a direct contract with the Contractor to supply materials or equipment or to perform any of the Work at the site. The term "Subcontractor" is referred to

throughout the Contract Documents as if singular in number and masculine in gender and means a Subcontractor or his authorized representative.

8.1.2 A Sub-subcontractor is a person or organization who has a direct or indirect contract with the Subcontractor to perform any of the Work at the site, or to supply any materials or equipment to be used in the Project. The term "Sub-subcontractor" is referred to throughout the Contract Documents as singular in number and masculine in gender, and means a Sub-subcontractor or an authorized representative thereof.

8.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK.

8.2.1 If, after the actual signing of this Agreement, the Owner refuses to accept any person or organization on the Subcontractor and Material Vendor List for good and substantial reason, the Contractor shall submit an acceptable substitute and the Contract Amount shall be increased or decreased by the difference in cost occasioned by such substitution and an appropriate Change Order shall be issued. However, no increase in the Contract Amount shall be allowed for any such substitution unless the Contractor has acted promptly and responsively in submitting a name with respect thereto.

8.2.2 The Contractor shall not contract with any Subcontractor proposed to perform portions of the Work designated in the Construction Documents, or if none is so designated, with any Subcontractor proposed for the principal portions of the Work who has not been accepted by the Owner. The Contractor will not be required to contract with any Subcontractor against whom he has a reasonable objection.

8.2.3 If the Owner requires a change of any proposed Subcontractor previously accepted by it, the Contract Amount shall be increased or decreased by the difference in cost occasioned by such change and an appropriate Change Order shall be issued.

8.2.4 The Contractor shall not make any substitution for any Subcontractor who has been accepted by the Owner unless the substitution is approved in writing by the Owner.

8.2.5 Notwithstanding any provisions to the contrary in the Contract Documents, if any Subcontractor listed is found not to be qualified to perform public work as a matter of law, upon written notice from the Owner, the Contractor shall submit a qualified Subcontractor for the Owner's approval and shall substitute such qualified and approved Subcontractor at no additional cost to the Owner.

8.3 SUBCONTRACTUAL RELATIONS.

8.3.1 All work performed for the Contractor by a Subcontractor shall be pursuant to an appropriate written agreement between the Contractor and the Subcontractor (and where appropriate between Subcontractors and Sub-subcontractors) which shall contain provisions that:

.1 preserve and protect the rights of the Owner under the Contract with respect to the Work to be performed under the subcontract so that the subcontracting thereof will not prejudice such rights;

.2 require that such work be performed in accordance with the requirements of the Contract Documents;

.3 require submission to the Contractor of applications for payment under each subcontract to which the Contractor is a party, in reasonable time to enable the Contractor to apply for payment in accordance with Article 12;

.4 require that all claims for additional costs, extensions of time, damages for delays or otherwise with respect to subcontracted portions of the Work shall be submitted to the Contractor (via any Subcontractor or Sub-Subcontractor where appropriate) in the manner provided in the Contract Documents for like claims by the Contractor upon the Owner;

.5 waive all rights the contracting parties may have against one another for damages caused by fire or other perils covered by the property insurance described in Article 14, except such rights as they may have to the proceeds of such insurance held by the Owner as trustee under Article 14; and

.6 obligate such Subcontractor specifically to consent to the provisions of this Paragraph 8.3.

8.4 PAYMENTS TO SUBCONTRACTORS.

8.4.1 The Owner may, on request and at his discretion, furnish to any Subcontractor, if practicable, information regarding percentages of completion certified to the Contractor on account of work done by such Subcontractors.

8.4.2 The Owner shall have no obligation to pay or to see to the payment of any monies to any Subcontractor except as may otherwise be required by law.

ARTICLE 9 SEPARATE CONTRACTS

9.1 **OWNER'S RIGHT TO AWARD SEPARATE CONTRACTS.** The Owner reserves the right to award other contracts in connection with other portions of the Project under conditions similar to this Contract.

9.2 MUTUAL RESPONSIBILITY OF CONTRACTORS.

9.2.1 The Contractor shall afford other contractors reasonable opportunity for the introduction to the site and storage of their materials and equipment thereon and the execution of their work, and shall properly connect and coordinate his Work with theirs.

9.2.2 If any part of the Contractor's Work depends for proper execution or results upon the work of any other separate contractor, the Contractor shall inspect and promptly report to the Owner any apparent discrepancies or defects in such work that render it unsuitable for such proper execution and results. Failure of the Contractor to so inspect and report shall constitute an acceptance of the other contractor's work as fit and proper to receive his Work, except as to defects which may develop in the other separate contractor's work after the execution of the Contractor's Work.

9.2.3 Should the Contractor cause damage to the Work or property of any separate contractor on the Project, the Contractor shall, upon written notice, promptly attempt to settle such other contractor's claim. If such separate contractor sues the Owner on account of any damage alleged to have been so sustained, the Owner shall promptly notify the Contractor, who shall defend such proceedings at the Contractor's expense, and

if any judgment against the Owner arises therefrom, the Contractor shall promptly pay or satisfy it and shall immediately, upon presentation to it of a statement thereof, reimburse the Owner for all attorney's fees and court costs which the Owner has incurred.

9.3 CUTTING AND PATCHING UNDER SEPARATE CONTRACTS.

9.3.1 The Contractor shall do all cutting, fitting or patching of his Work that may be required to fit it to receive or be received by the work of other contractors indicated in the Contract Documents. The Contractor shall not endanger any work of any other contractors by cutting, excavating or otherwise altering any work and shall not cut or alter the work of any other contractor except with the written consent of the Owner.

9.3.2 Any costs caused by defective or ill-timed work shall be borne by the party responsible therefor.

ARTICLE 10 MISCELLANEOUS PROVISIONS

10.1 **LAW OF THE PLACE.** The Contract shall be governed by the law of the State of Arizona, and any other subordinate jurisdiction in which the Project is located.

10.2 **SUCCESSORS AND ASSIGNS.** The Owner and the Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract or any part hereof or sublet it as a whole or in part without the written consent of the other, nor shall the Contractor assign or pledge any monies due or to become due to him hereunder, without the previous written consent of the Owner.

10.3 **WRITTEN NOTICE.** Written notice shall be deemed to have been duly served if delivered in person to the individual for whom it was intended or if delivered at or sent by registered or certified mail to the last business address known to him who gives the notice.

10.4 **CLAIMS FOR DAMAGES.** Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the other party or of any of his employees, agents or others for whose acts he is legally liable which claim is not covered by Article 15 hereof, a claim shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

10.5 **PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND.** The Contractor shall furnish and maintain performance and labor and material payment bonds as required by Arizona law covering the faithful performance of the Contract and the payment of all obligations arising thereunder in such form and amount as the Owner may prescribe and with such sureties as may be agreeable to the Owner. The premiums shall be paid by the Contractor. The Contractor shall, prior to commencement of the Work, submit such bonds to the Owner. Individual sureties are not acceptable.

10.6 **OWNER'S RIGHT TO COMPLETE THE WORK.** If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, or fails to perform any provision of the Contract, the Owner may, after seven days' written notice to the Contractor and/or his surety, if any, and without prejudice to any other remedy he may have, proceed to make such other necessary and reasonable arrangements to carry out the Work in accordance with the Contract Documents, all at the expense of the Contractor, including the Owner's attorneys' fees and other costs.

10.7 ROYALTIES AND PATENTS. The Contractor shall pay all royalties and license fees. He shall defend all suits or claims from infringement of any patent right and shall save the Owner harmless from loss on account thereof, including Owner's attorneys' fees and court costs, except that Owner shall be responsible for all such loss when a particular design, process or product of a particular manufacturer or manufacturers is specified. But, if the Contractor has reason to believe that the design, process or products specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives information to the Owner prior to starting the Work.

10.8 TESTS.

10.8.1 Where the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any of the Work to be inspected, tested or approved, the Contractor shall give the Owner timely notice of its readiness and of the date arranged so the Owner may observe such inspection, testing or approval. The Owner shall pay the cost of all such tests, except where otherwise provided herein, and except for retest or reinspection of Work which fails to comply with the Contract Documents.

10.8.2 All equipment and materials used in the construction of the Project, especially those upon which the strength and durability of the structure may depend, shall be subject to adequate inspection and testing in accordance with accepted standards to establish conformity with Specifications, applicable codes and standards and suitability for use intended all as set forth more particularly in the Specifications.

10.8.3 If after the commencement of the Work the Owner determines that any of the Work requires special inspection, testing, or approval which Subparagraph 10.8.1 does not include, he will order such special inspection, testing or approval, and the Contractor shall give notice of readiness as in Subparagraph 10.8.1. If such special inspection or testing reveals a failure of the Work to comply:

.1 with the requirements of the Contract Documents, or

.2 with laws, ordinances, rules, regulations or orders of any public authority having jurisdiction over the Work,

the Contractor shall bear all costs thereof and the costs of such inspection or testing and other expenses related thereto, including without limitation Owner's legal fees, if any, incurred in connection with advising Owner on such failure of compliance; otherwise the Owner shall bear such costs.

10.8.4 Required certificates of re-inspections or testing to secure compliance with Clauses 10.8.3.1 or 10.8.3.2 above shall be paid for by the Contractor.

10.8.5 If the Owner wishes to observe the inspections, tests or approvals required by this Paragraph 10.8, he will do so promptly and, where appropriate, at the source of supply.

10.8.6 Neither the observations of the Owner in his administration of the Construction Contract, nor inspections, tests or approvals by persons other than the Contractor shall relieve the Contractor from his obligations to perform the Work in accordance with the Contract Documents.

10.9 LEGAL FEES AND COSTS. The prevailing party shall be entitled to recover its attorney's fees, any costs of suit, any expert witness fees and the actual cost of any test or inspection incurred in connection with any effort undertaken to enforce any of the terms of this Contract.

ARTICLE 11
TIME AND LIQUIDATED DAMAGES

11.1 CONTRACT TIME, LIQUIDATED DAMAGES AND RELATED PROVISIONS.

11.1.1 It is understood and agreed that the construction of the Work under the Contract Documents shall be commenced on the date stated in the Notice to Proceed issued by the Owner and shall be Substantially Complete by the Contractor no later than the number of consecutive calendar days from that date, which number is the Contract Time as specified in Paragraph 3.2, herein. The Contract Time is the period of time from (1) the date specified in the Notice to Proceed as the date upon which the Contractor is to commence the Work (the "Start Date"), through (2) the date when the agreed time for Substantial Completion of the construction of the Project expires (the "Finish Date"). The date of beginning, rate of progress, and time for completion are essential conditions of the Contract, and the Contractor agrees that said Work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will insure full completion thereof within the Contract Time specified. It is expressly agreed that the Contract Time is reasonable.

11.1.2 If the Substantial Completion Date as defined in Subparagraph 11.1.3 for the Project or any Phase thereof, occurs after the expiration of the Contract Time, the Contractor shall pay the Owner the amount or amounts stated in Article 3 as liquidated damages for each calendar day the Work remains incomplete after expiration of the Contract Time. These amounts are agreed upon because of the impracticability and extreme difficulty of ascertaining the actual damages the Owner would sustain. It is expressly agreed that the amounts of liquidated damages set forth herein are reasonable. Said amounts may be retained from time to time by the Owner from payments due the Contractor.

11.1.3 The date of the Substantial Completion of the Work, or designated portion thereof, is the date established by a Certificate of Substantial Completion prepared by the Owner when construction is sufficiently complete, in accordance with the Contract Documents as they may have been modified by any Change Orders agreed to by the parties, so that the Owner may occupy the Project, or a designated portion thereof, if he so elects, for the use for which it is intended. Certification of a designated portion of the Work by the Owner as being "Substantially Complete" and occupancy of that portion thereafter by the Owner shall neither release, or otherwise operate to excuse the Contractor from his duty to complete the remainder of the Work within the Contract Time nor relieve the Contractor from any liability for not completing expeditiously the remainder of Work.

11.1.4 The Final Completion Date is the calendar date when all items of the Work are one hundred percent (100%) finished, with no items of any scope, large or small, outstanding and remaining to be completed, and all known defective work has been corrected. When the Owner certifies in writing, pursuant to the terms of Subparagraph 12.6.2, that the Final Completion Date is reached, the Contractor may make application for final payment pursuant to Subparagraph 12.6.2.

11.2 PROGRESS AND COMPLETION.

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

11.2.2 The Contractor shall begin the Work on the Start Date as defined in Subparagraph 11.1.1. He shall carry the Work forward expeditiously with adequate forces and shall complete it as required herein.

11.3 DELAYS AND EXTENSIONS OF TIME.

11.3.1 If the Contractor is delayed at any time in the progress of the Work by any cause which the Owner determines may justify the delay, including, but not limited to, unforeseeable cause beyond the control and without the fault or negligence of the Contractor, its agents and employees and Subcontractors and Sub-subcontractors and their agents and employees, including, but not restricted to: acts of God, acts of the public enemy, acts of the Owner, acts of another contractor in performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather over the entire Contract Time, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine. No extension of the Contract Time pursuant to this paragraph shall relieve the Contractor from any obligation attendant upon him under any of the provisions of this Contract. It is expressly agreed that the Owner's liability for delay from any cause shall be limited to granting a time extension to the Contractor, and there is no other obligation, expressed or implied, on the part of the Owner to the Contractor for delay from any cause other than Owner caused delay. If the Contractor makes a claim for delay, as provided herein, for which he alleges that the Owner is responsible, which is unreasonable under the circumstances and which was not within the contemplation of the parties, the Owner agrees to negotiate with the Contractor the validity of such claim, extensions of general conditions, and/or the amount of Contractor's damages incurred by the Contractor, if any.

11.3.2 Time extensions may be granted by the Owner in cases where unusually severe weather results in the inability of the Contractor to prosecute the work. Anticipated adverse weather as determined by the records of the National Oceanic and Atmospheric Administration ("NOAA") shall not entitle the Contractor to an extension of the Contract Time. The NOAA schedule of anticipated adverse weather will constitute the base line for monthly weather time evaluations. During the Contract Time each month, actual adverse weather days will be recorded on a calendar day basis (including weekends and holidays) and compared to the monthly anticipated adverse weather. The term actual adverse weather days shall include days on which the Work is impacted by adverse weather. The number of actual adverse weather days shall be calculated chronologically from the first to the last day in each month. Adverse weather days must prevent work for 50 percent or more of the Contractor's work day and delay work critical to the timely completion of the Project. If the number of actual adverse weather days exceeds the number of days of anticipated adverse weather days, the Owner will determine whether the Contractor is entitled to a time extension. The Contractor's Construction Progress Schedule must reflect the anticipated adverse weather delays on all weather dependent activities.

11.3.3 All claims for extension of time shall be made in writing to the Owner no more than fifteen (15) days after the occurrence of the delay; otherwise, they shall be waived. In the case of a continuing cause of delay, only one claim is necessary, and the Contractor shall promptly notify the Owner in writing of the date of the termination of the continuing cause of delay.

11.3.4 If no schedule or agreement is made stating the dates upon which written interpretations as set forth in Subparagraph 4.12.5 shall be furnished, then no claim for delay shall be allowed on account of failure to furnish such interpretations until fifteen days after demand is made for them, and not then unless such claim is reasonable.

ARTICLE 12

PAYMENTS AND COMPLETION

12.1 **CONTRACT AMOUNT.** The Contract Amount is as stated in this Contract and General Conditions and is the total amount payable by the Owner to the Contractor for the performance of the Work under the Contract Documents, subject to credits or increases resulting from Change Orders.

12.2 SCHEDULE OF VALUES. Before the first Application for Payment, the Contractor shall submit to the Owner a schedule of values reflecting as nearly as reasonably possible the actual values of the various components of the Work aggregating the total Contract Amount, prepared in such form as Owner may require, and supported by such data to substantiate its correctness as the Owner may require. Each item in the schedule of values shall include its proper share of overhead and profit. This schedule shall be used only as a basis for the Contractor's Application for Payment.

12.3 PROGRESS PAYMENTS.

12.3.1 On or about the first day of each calendar month during the course of construction, the Contractor shall submit to the Owner an itemized Application for Payment supported by such data substantiating the Contractor's right to payment as the Owner may require. If the Contractor desires to exercise his option to require the Owner to accept substitute security in lieu of retention provided for in Subparagraph 12.4.2 of this Contract and General Conditions, as permitted by law, the Contractor shall submit his request for acceptance of substitute security on Owner's approved form entitled "Request for Acceptance of Substitute Security and Assignment of Securities in Lieu of Retention" prior to his first Application for Payment. The Contractor shall comply with all of the instructions appearing on Owner's approved form for assigning substitute security. The Contractor agrees to pay Owner any reasonable expenses incurred by Owner in determining the sufficiency of the assignment or assignments, including a reasonable attorney's fee, if the Contractor fails to complete any part of Owner's approved form, or completes any part of those forms incorrectly, or attempts an assignment which reasonably requires Owner to consult an attorney to determine its sufficiency and that attorney reasonably concludes that the assignment is not legally sufficient. Any expenses so incurred by Owner shall be deducted by Owner from Owner's next payment to Contractor.

12.3.2 Payments shall be based on the Work actually performed during the preceding calendar month. Payment may be made for materials not incorporated in the Work but delivered and suitably stored at the site under such conditions agreed upon in writing by the Owner.

12.3.3 Material delivered and suitably stored at the site by the Contractor, Subcontractors, Sub-subcontractors, or Material Vendors shall be insured to the full value of the material and shall be suitably stored and protected. Only such material that is in accordance with the Contract Documents shall be installed into the Work. Until the Final Completion and acceptance of the Work by the Owner, it shall be the Contractor's responsibility to protect all materials installed in or delivered to the Project.

12.3.4 The Contractor warrants and guarantees that title for all work, materials and equipment covered by the Contract Documents shall pass to the Owner upon Final Completion and acceptance by the Owner and that such work, materials and equipment shall be free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in this Article 12 as "claims".

12.4 PROGRESS PAYMENTS.

12.4.1 If the Contractor has made Application for Payment as above, then not later than the tenth day of the month the Owner shall approve or modify the Application for such amount as the Owner determines to be properly due, or state in writing the Owner's reasons for withholding, in whole or in part, the amount applied for as provided in Subparagraph 12.5.1.

12.4.2 The Owner shall make a payment to the Contractor on the basis of the value of the Work actually performed during the preceding calendar month in accordance with Subparagraph 12.3.2, less the amount of retention specified in Subparagraph 12.4.4 hereof. Such payments shall be made within thirty days after receipt

of application for payment if the Contractor has agreed to adhere to the provisions of A.R.S. § 41-2577(B),(D) and (F). If the Contractor has properly requested the Owner pursuant to Subparagraph 12.3.1 of this Contract and General Conditions to accept substitute security, the Owner shall pay to the Contractor one hundred percent (100%) of the value of the Work actually performed during the preceding calendar month in accordance with this Paragraph 12. If the Contractor did not request an acceptance of substitute security, made an incomplete or incorrect assignment or made a legally insufficient assignment of substitute security, as determined by Owner or Owner's attorney, the Owner shall retain the amount of such approved Application for Payment specified in Subparagraph 12.4.4 hereof as a guarantee of the complete performance of the Contract. Any amounts retained or any securities held by Owner shall be returned to the Contractor within sixty (60) days after the Final Completion Date as specified in Subparagraph 12.6.2 of this Contract and General Conditions, provided the Contractor has by that time duly furnished the Owner any and all documents indicated to be furnished by the close out requirements of the Specifications or required for the proper maintenance and functioning of the Work as a whole. The Contractor shall submit along with the Application for payment lien waivers from each subcontractor, materials or equipment supplier, the aggregate sum of which shall be the amount of the previous progress payment issued to the Contractor. If lien waivers from all subcontractors, materials or equipment suppliers do not equal the aggregate sum of the previous progress payment, the General Contractor shall submit the following statement along with the current progress payment request: "I hereby certify as General Contractor on this project that I have paid all subcontractors, materials or equipment suppliers, for the Work provided in conjunction with the Project for which I have previously received payment."

12.4.3 In his Application for Payment, or in a separate notice, the Contractor shall include and itemize, and furnish such supporting particulars as the Owner shall require, all claims for additional compensation against the Owner arising under the Contract Documents or any covenant thereof, express or implied, or from any cause whatsoever, within the time limits prescribed in Subparagraph 15.2.1. It is expressly covenanted that the purpose of this provision is to guard the Owner against surprise claims, to permit the Owner to investigate claims as the same may arise, and to prevent vexatious litigation of claims. It is expressly covenanted that the Owner shall have no liability on any claim unless such claim was submitted in writing at the time and in the manner required hereby.

12.4.4 The Owner shall retain ten percent (10%) of the amount of each Application for Payment as insurance of proper performance of the Contract. Once the Contract is fifty percent (50%) complete, one-half of the retention then held shall be paid to the Contractor provided the Contractor is making satisfactory progress and there is no specific cause or claim requiring a greater amount to be retained. After the Contract is fifty percent (50%) completed, five percent (5%) of the amount of each subsequent Application for Payment shall be retained providing the Contractor is making satisfactory progress on the Project. If at any time the Owner determines that the Contractor is not making satisfactory progress, then the Owner may retain ten percent (10%) of all subsequent Applications for Payment.

12.4.5 No Certificate for a progress payment, nor an acceptance of any security in lieu of the cash retention, nor any progress payment, nor any partial or entire use or occupancy of the Project by the Owner, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

12.5 PAYMENTS WITHHELD.

12.5.1 The Owner may decline to pay Contractor and may nullify the whole or any part of any Certificate for Payment previously issued to such extent as may be necessary in his opinion to protect the Owner from loss because of:

- .1 defective work not remedied,

- .2 claims filed or reasonable evidence indicating probable filing of claims,
- .3 reasonable doubt that the Work can be completed for the unpaid balance of the Contract Amount,
- .4 damage to the Owner or another contractor,
- .5 reasonable indication that the Work will not be completed within the Contract Time, or
- .6 unsatisfactory prosecution of the Work by the Contractor.

12.5.2 When the grounds in Subparagraph 12.5.1 are removed, or in the case of 12.5.1.3 above, when the Owner is satisfied that the Contractor will complete the Project at the agreed upon price, payment shall be made for amounts withheld because of them.

12.6 SUBSTANTIAL COMPLETION AND FINAL PAYMENT.

12.6.1 When the Contractor believes that the Work or a designated portion thereof acceptable to the Owner is substantially complete, the Contractor shall prepare for submission to the Owner a "punch list" of items to be completed or corrected. Any item on such list shall be completed or corrected before the Final Completion Date without regard to whether such item may be characterized by anyone as a "warranty item" or otherwise. The failure to include any items on such punch list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. When the Owner, on the basis of an inspection, determines that the Work or a portion thereof is substantially complete, he will then prepare a Certificate of Substantial Completion, which shall state the responsibilities of the Owner and the Contractor for utilities and insurance. The Certificate(s) of Substantial Completion shall be submitted to the Contractor for its written acceptance of the responsibilities assigned in such Certificate.

12.6.2 Upon receipt of written notice from the Contractor that the Work is ready for final inspection and acceptance, the Owner will promptly make such inspection and, when the Owner finds (1) the Work acceptable under the Contract Documents, (2) the Contract fully performed and (3) the Final Completion Date has been reached, as that term is defined in Subparagraph 11.1.4, then, and only then, the Owner shall promptly issue a final Certificate for Payment stating that, to the best of his knowledge, information and belief, and on the basis of observations and inspections, the Work has been fully completed in accordance with the terms and conditions of the Contract Documents, that the entire balance found to be due the Contractor is payable, and that any securities held by the Owner in lieu of a cash retention are returnable.

12.6.3 Neither the final payment nor the remaining retained percentage shall become due until the Contractor submits to the Owner (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or his property might in any way be responsible, have been paid or otherwise satisfied, (2) consent of surety to final payment, (3) if required by the Owner, other data establishing payment or satisfaction of all such obligations, to the extent and in such form as may be designated by the Owner, and (4) written certification by the Contractor, and such subcontractors, material suppliers and manufacturers as the Owner shall designate, that no materials have been incorporated into the Work which contain any asbestos.

12.6.4 The acceptance of final payment shall constitute a waiver of all claims by the Contractor except previously made in writing and still unsettled.

ARTICLE 13 PROTECTION OF PERSONS AND PROPERTY

13.1 **SAFETY PRECAUTIONS AND PROGRAMS.** The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work in compliance with all local, state and federal laws and regulations.

13.2 **SAFETY OF PERSONS AND PROPERTY.**

13.2.1 The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss, to:

.1 all employees engaged in the Work and all other persons who may be affected thereby;

.2 all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any of his Subcontractors or Sub-subcontractors; and

.3 other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

13.2.2 The Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. He shall erect and maintain, as required by existing conditions and the progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.

13.2.3 When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

13.2.4 All damage or loss to any property referred to in Clauses 13.2.1.2 and 13.2.1.3 caused in whole or in part by the Contractor, any Subcontractor, any Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, shall be remedied by the Contractor.

13.2.5 The Contractor shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's Superintendent unless otherwise designated in writing by the Contractor to the Owner.

13.2.6 The Contractor shall not load or permit any part of the Work to be loaded so as to endanger its safety.

13.3 EMERGENCIES. In any 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 or extension of time claimed by the Contractor on account of emergency work shall be determined as provided by the applicable provisions of the Contract Documents.

ARTICLE 14 INSURANCE

14.1 CONTRACTOR'S INSURANCE.

14.1.1 The Contractor shall procure and shall maintain during the entire life of this Contract, unless otherwise specified herein, the insurance of the kind and amount specified in this Article 14 from a company or companies with an AM Best rating of A- or better and licensed to do business in the State of Arizona at the time the policy is issued through the duration of the Contract, the cost of which shall be borne by Contractor.

14.1.2 The Contractor shall not commence work under this Contract until he has obtained and secured the Owner's approval of all insurance required herein, nor shall the Contractor allow any Subcontractor to commence work on his Subcontract until the insurance required of the Subcontractor has been so obtained and approved.

14.2 BUILDER'S RISK INSURANCE.

14.2.1 During the course of construction, Contractor will maintain Builder's Risk insurance until Substantial Completion. Such coverage will be on an all-risk basis providing coverage for, but not limited to, Fire, Vandalism and Malicious Mischief. Owner and Subcontractors of every tier will be additional insureds on said policy. Contractor will be responsible for deductible if a loss is caused by the negligence of Contractor or any of their subcontractors. Otherwise, Owner shall be responsible.

14.2.2 The Contractor shall furnish evidence of Builder's Risk Insurance equal in face amount to the full Contract Amount. This Certificate of Insurance shall be furnished to the Owner prior to beginning the Project.

14.2.3 During the life of this Contract, Contractor agrees to waive any right of recovery against the Owner for damage to the property of the Contractor. This provision includes specifically the waiver of the right of recovery against the Owner for fire damage to property under contract and not yet formally accepted by Owner even though said property at the time of loss may be partially occupied by the Owner.

14.3 WORKER'S COMPENSATION INSURANCE. The Contractor shall procure and shall maintain during the life of this Contract, Worker's Compensation Insurance for all his employees to be engaged in work on the Project under this Contract and, in case of any such work sublet, the Contractor shall require the Subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees to be engaged in such work unless such employees are covered by the protection afforded by the Contractor's Worker's Compensation Insurance. In case any class of employees engaged in hazardous work on the Project under this Contract is not protected under the Worker's Compensation Statute, the Contractor shall provide and shall cause each Subcontractor to provide adequate employer's general liability insurance for the protection of such of his employees as are not otherwise protected.

14.4 CONTRACTOR'S PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE. The Contractor shall procure and shall maintain during the life of this Contract public liability insurance providing combined single limits of not less than \$1,000,000.00 for any one event and an aggregate limit of \$2,000,000 for this Project. Property damage liability shall include coverage for explosion, collapse and underground. The

required insurance must be written by a Company licensed to do business in Arizona at the time the policy is issued and the Company must be acceptable to the Owner.

14.5 **CONTRACTUAL LIABILITY INSURANCE.** The Contractor shall purchase and maintain contractual liability insurance to cover the Contractor's obligations under Paragraph 7.16, herein in the amount of Combined Single Limits of \$1,000,000.00 each occurrence. The Contractor shall also provide Products and Complete Operations Insurance which shall be maintained for a minimum period of two (2) years after the final payment and Contractor shall continue to provide evidence of such coverage to Owner on an annual basis during the aforementioned period.

14.6 **AUTOMOBILE LIABILITY INSURANCE**

14.6.1 Provide Comprehensive Automobile Liability Insurance including coverage of owned, non-owned and hired vehicles, with limits not less than those stated below.

- .1 Bodily Injury Liability: \$1,000,000.00 each person and \$1,000,000.00 each occurrence;
- .2 Property Damage Liability: \$300,000.00 each occurrence; OR
- .3 \$1,000,000.00 bodily injury and property damage combined single limit.

Liability Insurance may be arranged by Comprehensive General Liability and Comprehensive Automobile Liability Policies for the full limits required; or by a combination of underlying comprehensive liability policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability Policy.

14.7 **UMBRELLA/EXCESS COVERAGE.** Liability insurance may be arranged by General Liability and Automobile Liability. Policies for the full limits required; or by a combination of underlying liability policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability Policy.

14.8 **SCOPE OF INSURANCE.** The insurance required under Article 14 hereof shall name the Owner as an additional insured and shall provide protection for the Owner, against damage which may arise from operations under this Contract, whether such operations be by the Contractor by anyone directly or indirectly employed by him.

14.9 **PROOF OF INSURANCE.** Certificates of the insurance required in this Article 14 shall be filed with the Owner prior to commencement of work, in a form satisfactory to the Owner. All insurance policies shall include a clause to the effect that the policy shall not be cancelled or reduced, restricted or limited until 15 days after the Owner has received written notice of such modification.

ARTICLE 15 CHANGES IN THE WORK AND CLAIMS

15.1 **CHANGE ORDERS.**

15.1.1 The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Contract Amount and/or the Contract Time shall be adjusted accordingly pursuant to the terms of the Contract Documents.

15.1.2 A Change Order is a written amendment to the Contract Documents signed by the Owner and the Contractor, issued after the execution of the Contract, authorizing a Change in the Work or an adjustment in the Contract Amount or the Contract Time. The Contract Amount and the Contract Time may be changed only by Change Order.

15.1.3 The debit or credit, as the case may be, to the Owner resulting from a Change in the Work shall be determined in one or more of the following ways as mutually agreed:

- .1 by a lump sum properly itemized and supported as described below in order to permit evaluation;
- .2 by unit prices stated in the Contract Documents or subsequently agreed upon; or
- .3 by actual cost and specified percentage fee covering overhead and profit.

The total amount of overhead and profit allowed on any Change Order, whether increase or decrease shall not exceed 15% of the direct costs of the Change Order Work when the Work is performed by the Contractor, or 5% of the Direct Costs for the Contractor's overhead and profit and 15% for the Subcontractor's overhead and profit when the Work is performed by any level of Subcontractor or Sub-subcontractor. The aforesaid amounts shall include the general conditions, overhead and profit for both the Contractor, Subcontractor(s), and Sub-subcontractor(s), if any. The costs of bond premiums and sales tax shall be added, in that order, after calculation and addition of overhead and profit.

The overhead and profit margin shall cover the costs of any additional supervision and project management including the Contractor's and any Subcontractor's job superintendent, project manager, estimator, field office support, home office support, small tools and all other general conditions items.

For each and every proposed change in the Contract Amount, the Contractor shall provide an itemized breakdown of direct costs, hereinafter called the cost breakdown, that: (1) clearly describes each item, location and scope of work; (2) identifies in detail all labor (by trade classification), materials, equipment and services required to complete the work; (3) lists and extends all respective man hours (or unit hours), labor rates, quantities of materials, dimensions used to compute quantities, material units and unit prices, equipment time and rental rates. This cost breakdown shall be organized in a format that clearly identifies the subtotal of direct costs before overhead (if any), profit, bond and tax are added. The cost breakdown format is subject to the approval of the Owner.

Change proposals from the Contractor shall include separate cost breakdowns as described above from any and all Subcontractors involved with the change. Subcontractor cost breakdowns are to be in writing on their letterhead and signed by the Subcontractor. Contractor shall provide any additional data needed to substantiate costs of changes, including invoices from suppliers and payroll information upon request of the Owner. The Contractor shall respond to requests for quotations from the Owner within five calendar days.

The Direct Cost is defined as the lowest locally available cost to the Contractor or Subcontractor after all discounts, rebates and concessions are calculated. The Direct Cost is the basis for computing Contractor and Subcontractor overhead and profit margins. The Direct Costs that may be included in the price of a change are limited to the following items directly attributable to the change in the work:

1. Costs of materials, including cost of delivery;

2. Cost of labor, including social security, old age and employment insurance, and fringe benefits required by agreement and Worker's compensation insurance;

3. Rental value of equipment used to perform the Work.

15.1.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order that application of the agreed unit prices to the quantities of Work proposed will create a hardship on the Owner or the Contractor, the applicable unit prices shall be equitably adjusted to prevent such hardship.

15.1.5 Should concealed conditions encountered in the performance of the Work below the surface of the ground be at variance with the conditions indicated by the Contract Documents or should unknown physical conditions below the surface of the ground of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract, be encountered, the Contract Amount shall be adjusted by Change Order upon claim by either party made in compliance with Subparagraph 12.4.4 and within the time limits prescribed in Subparagraph 15.2.1.

15.1.6 If the Contractor claims that additional cost or time is involved because of:

- .1 any written interpretation issued pursuant to Subparagraph 4.12.5,
- .2 any order by the Owner to stop the Work pursuant to Subparagraph 5.2.11 where the Contractor was not at fault, or
- .3 any written order for a minor change in the Work issued pursuant to Paragraph 15.3,

the Contractor shall make such claim as provided in Paragraph 15.2.

15.2 CLAIMS FOR ADDITIONAL COST OR TIME. If the Contractor decides to make a claim for an increase in the Contract Amount or any other claim, except one for an extension of Contract Time, he shall give the Owner written notice thereof within fifteen (15) days after the occurrence of the event giving rise to such claim or include such notice in the Application for Payment for the month in which the event giving rise to the claim occurred, whichever is earlier. Notice of a claim for extension of Contract Time shall be given within fifteen (15) days of the occurrence of the event giving rise to such claim. Any notice other than one made for an extension of the Contract Time shall be given by the Contractor before proceeding to execute the Work which is the subject matter of the claim, except in an emergency endangering life or property, in which case the Contractor shall proceed in accordance with Subparagraph 13.3.1. All claims shall be made as provided in Subparagraph 12.4.3 within the time limits prescribed herein and no such claim shall be valid unless so made. No change in the Contract Amount or Contract Time resulting from such claim shall be valid unless approved by the Owner and authorized by Change Order.

15.3 MINOR CHANGES IN THE WORK. The Owner shall have authority to order minor changes in the Work not involving an adjustment in the Contract Amount or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents.

15.4 FIELD INFORMATION MEMOS. The Owner may issue written Field Information Memos which interpret the Contract Documents in accordance with Subparagraph 4.12.5 or which order minor changes

in the Work in accordance with Paragraph 15.3 without change in Contract Amount or Contract Time. The Contractor shall carry out such changes specified in the Field Information Memos promptly.

ARTICLE 16 UNCOVERING AND CORRECTION OF WORK

16.1 UNCOVERING OF WORK.

16.1.1 If any Work should be covered contrary to the request of the Owner, it must, if required by the Owner, be uncovered for his observation and replaced, all at the Contractor's expense.

16.1.2 If any other Work has been covered which the Owner has not specifically requested to observe prior to being covered, the Owner may request to see such Work and it shall be uncovered by the Contractor. If such Work is found to be in accordance with the Contract Documents, the cost of uncovering and replacement after approval by the Owner shall, by appropriate Change Order, be charged to the Owner. If such Work is found not to be in accordance with the Contract Documents, the Contractor shall pay such costs unless it is found that this condition was caused by a separate contractor employed as provided in Article 9, and in that event the Owner shall be responsible for the payment of such costs.

16.2 CORRECTION OF WORK.

16.2.1 The Contractor shall promptly correct all Work rejected by the Owner as defective or as failing to conform to the Contract Documents whether observed before or after Final Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work.

16.2.2 If, within two years after acceptance of the Work by the Owner or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents, including the original conformance with the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor, without cost to the Owner, shall correct it promptly after receipt of a written notice from the Owner to do so. The Owner shall give such notice promptly after discovery of the condition.

16.2.3 All such defective or non-conforming Work under Subparagraphs 16.2.1 and 16.2.2 shall be removed from the site where necessary, and the Work shall be corrected to comply with the Contract Documents without cost to the Owner.

16.2.4 The Contractor shall bear the cost of making good all work of separate contractors destroyed or damaged by such removal or correction.

16.2.5 If the Contractor does not remove such defective or non-conforming Work within a reasonable time fixed by written notice from the Owner, the Owner may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten days after receipt of a statement of charges therefor, the Owner may, upon ten additional days written notice, sell such Work at auction or at private sale and shall account for the net proceeds thereof after deducting all the costs that should have been borne by the Contractor, including compensation for additional architectural services and any attorneys' fees incurred by Owner in connection therewith. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not

sufficient to cover such amount, the Contractor shall pay the difference to the Owner, and all attorneys' fees and other costs that the Owner may incur in collecting same.

16.2.6 If the Contractor fails to correct such defective or non-conforming Work, the Owner may correct it in accordance with Paragraph 10.6.

16.2.7 The obligations of the Contractor under this Paragraph 16.2 shall be in addition to and not in limitation of any obligations imposed upon him by special guarantees required by the Contract Documents or otherwise prescribed by law.

16.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK. If the Owner prefers to accept defective or non-conforming Work, he may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect an appropriate reduction in the Contract Amount, or, if the amount is determined after final payment, it shall be paid by the Contractor.

ARTICLE 17

TERMINATION OF THE CONTRACT

17.1 TERMINATION BY THE CONTRACTOR. If the Work is stopped for a period of thirty (30) days, and the Owner is immediately notified of such stopping, under an order of any court or other public authority having jurisdiction through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with the Contractor, and by reason of some act or omission of Owner, then the Contractor may, upon thirty (30) days written notice to the Owner, terminate the Contract and recover from the Owner payment for all Work executed and for any proven loss sustained upon any materials, equipment, tools, construction equipment and machinery, including the percentage profit stated in Paragraph 3.4 herein for Work accomplished through the date the notice of termination is given.

17.2 TERMINATION BY THE OWNER.

17.2.1 If the Contractor files or has filed against it any petition in bankruptcy, or if he makes a general assignment for benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if he refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or sufficient and proper materials to complete the Work in accord with the Progress Schedule and Contract Time, or he fails to make prompt payments to Subcontractors or for materials or labor, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a material breach of any provision of the Contract Documents, then the Owner, may, without prejudice to any other right or remedy and after giving the Contractor and/or his surety seven days' written notice, terminate the employment of the Contractor and take possession of the site and all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever method he may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished. Termination of the Contract under this Subparagraph 17.2.1 shall not relieve the Contractor of any warranty obligations he would otherwise have on all Work performed hereunder, and such obligations shall survive termination of this Contract.

17.2.2 If the unpaid balance of the Contract Amount exceeds the costs of finishing the Work, attorneys' fees and all other costs incurred by Owner in completion of the Contractor's obligations, such excess shall be paid to the Contractor. If such costs exceed such unpaid balance, the Contractor shall pay the difference to the Owner.

ARTICLE 18
WARRANTY AND SITE CONDITIONS

18.1 TWO-YEAR WARRANTY.

18.1.1 The Contractor shall warrant all Work under this Contract against defects of material and workmanship for a period of at least two years from the date of Substantial Completion; provided, however, that those items of the Work specified as having longer warranties shall be warranted for the period specified. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear.

18.1.2 The Contractor shall be responsible for the total cost of repairing and restoring such defective Work to a new condition, at no cost to Owner.

18.1.3 In any case where the subject matter of the defect relates to Work done under a subcontract between the Contractor and any Subcontractor, it is the responsibility of the Contractor, not the Owner, to secure the Subcontractor's performance in compliance with this Paragraph and, in the event of the Subcontractor's failure or refusal within a reasonable time to perform after notice, it shall be the Contractor's responsibility to repair and restore such defective Work to a new condition, at no cost to Owner.

18.1.4 In any case where the defective Work has been brought to the attention of the Contractor by the Owner and the Contractor fails or refuses to correct it, the Owner may elect, without precluding its use of any other remedy it may have available to it, to have the defective Work repaired and restored to a new condition in whatever manner it deems appropriate, regardless of the cost, and the Contractor shall be liable to the Owner for (1) the total cost thereof, including, without limitation, any architectural and legal fees related to effecting the repair, and (2) the sum of \$7,500.00 as liquidated damages for Contractor's failure or refusal to honor his warranty. The amount of \$7,500.00 is agreed upon because of the impracticability and extreme difficulty of ascertaining the actual damages the Owner would sustain due to the impairment to the use of the facility, other injury and expense, inconvenience and associated aggravation resulting from the Contractor's failure or refusal to honor his warranty.

18.1.5 Material and workmanship made good through compliance with such warranty shall be subject to the same warranty period as the original materials and workmanship. Such warranty period shall begin on the date the replaced material and work is certified as acceptable in writing by the Owner.

18.2 **SANITATION.** The Contractor shall provide temporary sanitation facilities as provided in the Specifications and in accordance with OSHA requirements.

18.3 **JOB OFFICE.** A job office and other temporary facilities shall be provided by the Contractor as required by the Specifications.

18.4 USE OF PREMISES.

18.4.1 The Contractor shall confine his equipment and plant, the storage of materials, and the operations of his workmen to limits indicated by law, ordinances, permits, or directions of the Owner and shall not unreasonably encumber the premises with materials or equipment.

18.5 SEVERABILITY. In the event any provision in this Contract is held invalid by any court of competent jurisdiction, the remaining provisions in this Contract shall be deemed severable and shall remain in full force and effect.

18.6 IMMIGRATION LAW COMPLIANCE. The Contractor warrants compliance with the Federal Immigration and Nationality Act (FINA) and all other Federal and State immigration laws and regulations related to the immigration status of its employees. Contractor shall obtain statements from its Subcontractors of every tier certifying compliance and shall furnish the statements to the Owner upon request. These warranties shall remain in effect through the term of the Contract, and the Contractor and its Subcontractors of every tier shall also maintain Employment Eligibility Verification forms (I-9) as required by the U.S. Department of Labor's Immigration and Control Act for all employees performing work pursuant to this Contract. I-9 forms are available for download at USCIS.GOV.

The Owner may request, and the Contractor agrees to furnish, verification of compliance from the Contractor or its Subcontractors of any tier performing work pursuant to this Contract. Should the Owner reasonably believe or discover that the Contractor or its Subcontractors of any tier are not in compliance, the Owner may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Contract for default, and suspension and/or debarment of the Contractor or its Subcontractors. All costs necessary to verify compliance are the responsibility of the Contractor.

18.7 COMPLIANCE WITH A.R.S. § 35-393.01. Pursuant to A.R.S. § 35-393.01, the Contractor hereby certifies that it is not currently engaged in nor will it engage in a boycott of Israel for the duration of this Agreement.

18.8 A.R.S. § 38-511. This Agreement may be cancelled for any violation of the provisions of A.R.S. § 38-511, which are hereby incorporated by reference.

IN WITNESS WHEREOF, two (2) identical counterparts of this Agreement, each of which shall for all purposes be deemed original thereof, have been duly executed by the parties hereinabove named, on the day and year first above written.

OWNER:

FLOWING WELLS UNIFIED SCHOOL
DISTRICT NO. 8

By: _____

Its: _____

CONTRACTOR:

By _____

Its _____

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& Lacy, P.C.

EXHIBIT D

1. Project Manual/Specifications dated February 19, 2024 by Breckenridge Group Architects Planners
2. Documents available from Breckenridge Group Architects Planners, 1735 E Ft. Lowell Road, Tucson, Arizona 85719 or Reproductions Inc., 234 E Sixth Street, Tucson, Arizona 85705 or online at:
https://www.floatingwellsschools.org/our_district/business/procurement___material_management

EXHIBIT E**Project Schedule****Flowing Wells High School West Gym Roof and HVAC**

Bidding Complete	March 21, 2024
Bid Award	March 26, 2024
Notice to Proceed: Order Equipment	March 27, 2024
Construction Start	May 24, 2024
Project Complete	July 26, 2024

Exhibit F**NOTICE OF AWARD, NOTICE TO PROCEED AND RECEIPT OF NOTICE**

TO: _____

(Contractor)

Project: Flowing Wells High School West Gym Roof and HVAC

Notice of Award

The Owner has considered the Proposal submitted by you for the Project described above. You are hereby notified that your Proposal in the Contract Amount of _____ Dollars (\$_____) has been accepted. You are required by the Contract Documents to execute the Contract and General Conditions Between Owner and Contractor when submitted to you. You are also required to furnish the required Performance and Payment Bonds and Certificates of Insurance prior to commencing any work on the Project. The Owner is finalizing the Contract and General Conditions Between Owner and Contractor for submission to you. Please return an acknowledged copy of this Notice of Award to the Owner.

Notice to Proceed

In accordance with the Contract Documents, the Contract Time will commence and you are hereby instructed to commence work on the Project on _____ and the Finish Date is _____.

Dated: _____, 2024.

OWNER:

FLOWING WELLS UNIFIED SCHOOL
DISTRICT NO. 8

By _____

Title _____

Receipt of Notice

Receipt of the above Notice of Award and Notice to Proceed is hereby acknowledged by Contractor.

Dated: _____, 2024.

CONTRACTOR:

By _____

Title _____

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