



## **Division Nine Contracting, Inc.**

**4047 E. Superior Ave., Phoenix AZ 85040**

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**ROC 159438 / 089827 / 094309**

### **STANDARD CONSTRUCTION AGREEMENT**

**DATE OF AGREEMENT 04/28/2014**

#### **ARTICLE 1 – CONTRACTOR AND OWNER**

BETWEEN the Contractor:

Division Nine Contracting, Inc.  
4047 E. Superior Ave.  
Phoenix AZ. 85040

And the Owner:

Name: Gila Community College

Address: 8274 Six Shooter Canyon Road, Globe AZ 85502

Owner's Agent: Steve Cullen

Address:

Architect:

N/A

The Designer is:

N/A

The Owner and Contractor agree as follows.

## **ARTICLE 2 – SCOPE OF WORK**

**PER PROPOSAL SEE ATTACHMENT “A”**

## **ARTICLE 3 - CONTRACT PRICE**

**LUMP SUM CONTRACT AMOUNT FOR BASE BID: \$84,535.00**  
**(Eighty four thousand five hundred thirty five dollars)**

**NOTE: OWNER APPROVED ALTERNATES TO BE ADDED TO CONTRACT AMOUNT.**

## **ARTICLE 4 - PAYMENTS**

Owner agrees to pay Contractor, in current funds, to perform all work listed in Article 2. Owner also agrees, that if funding for any part of this contract is from a mortgage or other type of loan, that said funding will allow payments to contractor as described in this section, and that no retention is to be held on any payments.

### **4.1 DEPOSITS**

- 4.1.1** The contractor is to receive a deposit in the amount of 20% of the overall lump sum contract price prior to start of project.
- 4.1.2** Deposits for total amount of any/all Special Order or Custom items ordered for this project to be paid by the Owner prior to ordering of such items. Deposits to be invoiced separate as necessary to meet project schedule

### **4.2 MONTHLY PROGRESS PAYMENTS**

- 4.2.1** Monthly progress payments are to be made to the contractor based on percentage of completion.
- 4.2.2** Application for progress payments received by the Owner by the 25<sup>th</sup> of the month for work completed by the end of that same month are due no later than **Ten (10)** days after Contractor's invoice is received by the Owner. If an application for payment is received by the Owner after the date fixed above, payment shall be made by the Owner not later than **Fifteen (15)** days after the Owner receives the Application for Payment.
- 4.2.3** Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

### **4.3 FINAL PAYMENT**

- 4.3.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when:
  - a.** the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Paragraph 17.2, and to satisfy other requirements, if any, which extend beyond final payment; and
  - b.** a final Certificate for Payment has been issued by the Contractor.
- 4.3.2** The Owner's final payment to the Contractor shall be made no later than **15** days after the issuance of the Contractor's final Certificate for Payment.

## **ARTICLE 5 - ENUMERATION OF CONTRACT DOCUMENTS**

**5.1** The Contract Documents are listed in Article 6 and, except for Modifications issued after execution of this Agreement, are enumerated as follows:

## **ARTICLE 6 - GENERAL PROVISIONS**

### **6.1 THE CONTRACT DOCUMENTS**

The Contract Documents consist of this Agreement with Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement. A Modification is (1) written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Owner. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

### **6.2 THE CONTRACT**

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Contractor, (2) between the Owner/Agent and a Subcontractor or sub-subcontractor, (3) between the Owner/Agent and Architect or (4) between any persons or entities other than the Owner/Agent and Contractor.

### **6.3 THE WORK**

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

### **6.4 EXECUTION OF THE CONTRACT**

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

## **ARTICLE 7 – OWNER**

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

**7.1.1** The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

### **7.2 OWNERS RIGHT TO STOP THE WORK**

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

### **7.3 OWNERS RIGHT TO CARRY OUT THE WORK**

If the Contractor defaults or persistently fails or neglects to carry out the Work in accordance with the Contract Documents, or fails to perform a provision of the Contract, the Owner, after 10 days' written notice to the Contractor and without prejudice to any other remedy the Owner may have, may make good such deficiencies and may deduct the reasonable cost thereof, from the payment then or thereafter due the Contractor.

## **ARTICLE 8 – CONTRACTOR**

### **8.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

**8.1.1** Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions or inconsistencies in the Contract Documents; however, any errors, omissions or inconsistencies discovered by the Contractor shall be reported promptly to the Owner.

**8.1.2** Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Owner.

### **8.2 SUPERVISION AND CONSTRUCTION PROCEDURES**

**8.2.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall be fully and solely responsible for the jobsite safety thereof unless the Contractor gives timely written notice to the Owner that such means, methods, techniques, sequences or procedures may not be safe.

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

### **8.3 LABOR AND MATERIALS**

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

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

**8.3.3** The Contractor shall deliver, handle, store and install materials in accordance with manufacturers' instructions.

**8.3.4** The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Owner accordance with a Change Order.

#### **8.4 WARRANTY**

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

#### **8.5 TAXES**

The Contractor shall pay sales, consumer, use and other similar taxes which are legally enacted when bids are received or negotiations concluded.

#### **8.6 PERMITS, FEES AND NOTICES**

**8.6.1** Contractor is not responsible for building permit.

**8.6.2** The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work. The Contractor shall promptly notify the Owner if the Drawings and Specifications are observed by the Contractor to be at variance therewith. If the Contractor performs Work that is contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

#### **8.7 SUBMITTALS**

**8.7.1** The Contractor shall review for compliance with the Contract Documents, approve in writing and submit to the Owner Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness. The Work shall be in accordance with approved submittals.

**8.7.2** Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

#### **8.8 USE OF SITE**

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

#### **8.9 CUTTING AND PATCHING**

The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

#### **8.10 CLEAN UP**

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

#### **8.11 ACCESS TO WORK**

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

## **8.12 INDEMNIFICATION**

**8.12.1** To the fullest extent permitted by law and to the extent claims, damages, losses or expenses are not covered by Project Management Protective Liability insurance purchased by the Contractor in accordance with Paragraph 16.3, the Contractor shall indemnify and hold harmless the Owner from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they maybe liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph .

**8.12.2** In claims against any person or entity indemnified under this Paragraph by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Subparagraph 8.12.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

## **ARTICLE 9 - CLAIMS AND DISPUTES**

**9.1** The parties shall endeavor to resolve their disputes by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

**9.2** Claims, disputes and other matters in question arising out of or relating to the Contract that are not resolved by mediation, except matters relating to aesthetic effect, shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association and shall be made within a reasonable time after the dispute has arisen. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Except by written consent of the person or entity sought to be joined, no arbitration arising out of or relating to the Contract Documents shall include, by consolidation, joinder or in any other manner, any person or entity not a party to the Agreement under which such arbitration arises, unless it is shown at the time the demand for arbitration is filed that (1) such person or entity is substantially involved in a common question of fact or law, (2) the presence of such person or entity is required if complete relief is to be accorded in the arbitration and (3) the interest or responsibility of such person or entity in the matter is not insubstantial.

## **9.3 CLAIMS FOR CONSEQUENTIAL DAMAGES**

The Contractor and Owner waive claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:

- a.** damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- b.** damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

## **ARTICLE 10 – SUBCONTRACTORS**

**10.1** A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site.

**10.2** The Contractor shall not contract with any Subcontractor to whom the Owner/Agent has made reasonable and timely objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

**10.3** Contracts between the Contractor and Subcontractors shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner.

## **ARTICLE 11 - OWNERS RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

**11.1** The Owner reserves the right to perform construction or operations related to the Project with the Owners own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under conditions of the contract identical or substantially similar to these, including those portions related to insurance and waiver of subrogation. Any/all of these items to conform to schedule generated by Contractor, if the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such claim as provided in Paragraph 9.1.

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

**11.3** The Owner shall reimburse the Contractor for supervisory and administrative costs at the rate of 15% of the Owners separate subcontractor's total contract amount when Owners separate contractors are used. In addition the Owner shall reimburse the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

## **ARTICLE 12 - CHANGES IN THE WORK**

**12.1** 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 Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner and Contractor.

**12.2** The cost or credit to the Owner from a change in the Work shall be determined and mutually agreed to by the Contractor and Owner prior to execution of written change order.

**12.3** The Owner/Agent will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

**12.4** If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be equitably adjusted.

## **ARTICLE 13 – TIME**

**13.1** If the Contractor is delayed at any time in the commencement or progress of the Work by changes ordered in the Work, by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties or any causes beyond the Contractor's control, or by other causes which the Contractor determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Contractor may determine.

**13.2 SUBSTANTIAL COMPLETION:** Substantial Completion is defined as approval of final inspection from Jurisdiction of Authority or final approval from owner or owner's agent. Contractor is to achieve "Substantial Completion" within 120 calendar days after start of construction.

## **ARTICLE 14 - PAYMENTS AND COMPLETION**

### **14.1 APPLICATIONS FOR PAYMENT**

**14.1.1** Payments shall be made as provided in Article 4 of this Agreement. Applications for Payment shall be in standard AIA form.

**14.1.2** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests.

### **14.2 PAYMENTS TO THE CONTRACTOR**

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

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

### **14.4 FINAL COMPLETION AND FINAL PAYMENT**

**14.4.1** Final payment shall not become due until the Contractor has delivered to the Owner a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including costs and reasonable attorneys' fees.

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



## **ARTICLE 15 - PROTECTION OF PERSONS AND PROPERTY**

### **15.1 SAFETY PRECAUTIONS AND PROGRAMS**

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- a. employees on the Work and other persons who may be affected thereby;
- b. the Work and materials and equipment to be incorporated therein; and
- c. other property at the site or adjacent thereto.

The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury or loss. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible, except for damage or loss attributable to acts or omissions of the Owner or by anyone for whose acts either of them maybe liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations.

### **15.2 HAZARDOUS MATERIALS**

**15.2.1** If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos, polychlorinated biphenyl (PCB), or Mold encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay and start-up.

**15.2.2** If, without negligence on the part of the Contractor, the Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

## **ARTICLE 16 – INSURANCE**

**16.1** The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located insurance for protection from claims under workers' compensation acts and other employee benefit acts which are applicable, claims for damages because of bodily injury, including death, and claims for damages, other than to the Work itself, to property which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by the Contractor or by a Subcontractor or anyone directly or indirectly employed by any of them. This insurance shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater, and shall include contractual liability insurance applicable to the Contractor's obligations, and shall include Completed Operations Coverage. Certificates of Insurance acceptable to the Owner/Agent shall be filed with the Owner prior to commencement of the Work. Each policy shall contain a provision that the policy will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner.

**16.1.1** The Contractor is to include the Owner as an additional insured on the Contractor's Liability insurance.

## **16.2 OWNER'S LIABILITY INSURANCE**

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

## **16.3 DELETED**

## **16.4 PROPERTY INSURANCE**

**16.4.1** Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance on an "all-risk" policy form, including builder's risk, in the amount of the initial Contract Sum, plus the value of subsequent modifications and cost of materials supplied and installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the Owner has an insurable interest in the property required by this Paragraph **16.4** to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and sub-subcontractors in the Project.

**16.4.2** The Owner shall file a copy of each policy with the Contractor before an exposure to loss may occur. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least **30** days' prior written notice has been given to the Contractor.

## **ARTICLE 17 - CORRECTION OF WORK**

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

**17.2** In addition to the Contractor's obligations under Paragraph **8.4**, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty.

**17.3** If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph **7.3**.

**17.4** The one year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Article **17**.

## **ARTICLE 18 - MISCELLANEOUS PROVISIONS**

### **18.1 ASSIGNMENT OF CONTRACT**

Neither party to the Contract shall assign the Contract without written consent of the other.

### **18.2 GOVERNING LAW**

The Contract shall be governed by the law of the place where the Project is located.

### **18.3 TESTS AND INSPECTIONS**

Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

### **18.4 COMMENCEMENT OF STATUTORY LIMITATION PERIOD**

As between Owner/Agent and Contractor, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued:

- a. not later than the date of Substantial Completion for acts or failures to act occurring prior to the relevant date of Substantial Completion;
- b. not later than the date of issuance of the final Certificate for Payment for acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to the issuance of the final Certificate for Payment; and
- c. not later than the date of the relevant act or failure to act by the Contractor for acts or failures to act occurring after the date of the final Certificate for Payment.

## **ARTICLE 19 - TERMINATION OF THE CONTRACT**

### **19.1 TERMINATION BY THE CONTRACTOR**

If the Owner fails to make payment for a period of **30** days through no fault of the Contractor, the Contractor may, upon seven additional days' written notice to the Owner or his Agents, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages applicable to the Project.

### **19.2 TERMINATION BY THE OWNER**

**19.2.1** The Owner/Agent may terminate the Contract if the Contractor:

- a. persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- b. fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- c. persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
- d. otherwise is guilty of substantial breach of a provision of the Contract Documents.

**19.2.2** When any of the above reasons exists, the Owner may, without prejudice to any other remedy the Owner may have and after giving the Contractor seven days' written notice, terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

**19.2.3** When the Owner terminates the Contract for one of the reasons stated in Subparagraph 19.2.1., the Contractor shall not be entitled to receive further payment until the Work is finished.

**19.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner.

ARTICLE 20 - OTHER CONDITIONS OR PROVISION

- 20.1 Deposits for any/all special order items will be invoiced separately and must be paid prior to ordering.
- 20.2 Division Nine Contracting will not be responsible for any costs due to hidden conditions.
- 20.3 Owner to supply water and power for duration of construction at no cost to contractor.

This Agreement entered into as of this 28th day of April in the year of 2014

\_\_\_\_\_  
Owner (signature)

  
\_\_\_\_\_  
Contractor (signature)

\_\_\_\_\_  
(Printed name)

Matthew L. Welch – Project Manager  
(Printed name and title)

**BEGIN ATTACHMENT "A"**  
**BID FORM**

**RFP#: 100-400-3**

**PROJECT: NEW COSMETOLOGY CLASSROOM – PAYSON CAMPUS**

**BID DATE: APRIL 25<sup>TH</sup>, 2014 BY 1:00 PM.**

BID LOCATION: SEALED BIDS TO BE DELIVERED TO GCC GILA PUEBLO CAMPUS ADMINISTRATION OFFICE IN GLOBE AZ. FAXED OR EMAILED BIDS WILL NOT BE ACCEPTED.

We the undersigned, propose to do all the work and furnish all the labor and materials necessary for the scope of work. We also declare that we have examined the site and understand the scope of the project. We also agree to hold the bid open for at least 30 days after submitting bid.

Lump Sum Base Bid to include:

**DESCRIPTION:**

**GENERAL REQUIREMENTS:**

Includes Project management & supervision, temporary enclosures/fencing, barricades and portable sanitation

**SITE CONSTRUCTION:**

Includes shrub & tree removal, grading and compaction of pad for new modular, demolition and patch back of asphalt.

**CONCRETE:**

Includes new 5' wide sidewalks at perimeter of new classroom, footings for new roof cover, sidewalk approaches/ramps per ADA requirements from parking areas and footing for sewer pump if required.

**MASONRY:**

Enclosure for new sewer pump

**MECHANICAL:**

Includes new underground sewer line, sewer grinder pump, new water line and meter, excavation and backfill as necessary, connections at new modular.

**ELECTRICAL:**

Includes underground conduit from existing power pole at Mud Springs Rd. to new building, new 400 AMP service at new building, connection to panels on modular, new 100 AMP sub-panel for owner required outlets, excavation, backfill and patch-back of asphalt as necessary.

**LUMP SUM BASE BID    \$ 84,535.00**

**ADDENDA:**

We acknowledge the following addenda: none

**CLARIFICATION:** Per direction of Gila County, neither base bid nor alternates includes any cost of pad preparation for new modular building or trenching for underground utilities, which is to be performed by County resources.

**ALTERNATES:**

<b>DESCRIPTION</b>	<b>AMOUNT</b>
1. Install insulated cement stucco assembly with integral color at exterior of new modular classroom building.	<b><u>\$ 10,005.00</u></b>
2. Install 5' wide cover over sidewalk at perimeter of building.	<b><u>\$ 19,148.00</u></b>
3. Allowance for new primary line and transformer per APS	<b><u>\$ 11,380.00</u></b>
4. Allowance for Electrical Engineering.	<b><u>\$ 1,000.00</u></b>
5. Allowance for Engineering/plans/submittal for grading and drainage.	<b><u>\$ 4,950.00</u></b>

**VOLUNTARY ALTERNATE:**

Allowance for purchase and installation of Modular Building **\$88,220.00**

**Submitted by:**

**Contractor:** Division Nine Contracting, Inc.

**By:** Matthew L. Welch **Date** 04/22/2014

**Title:** Project Manager

**Address:** 4047 E. Superior Ave., Phoenix AZ 85040

**Telephone:** (602) 437-8900 **Fax** (602) 437-5368

**Email** mattw@divisionnineinc.com

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END ATTACHMENT "A"