

AGREEMENT

This Agreement is made this _____ day of October, 2019 between:

OWNER: **Tuba City Unified School District No. 15**
(hereinafter "Owner"),
a Subdivision of the State of Arizona
P.O. Box 67
Tuba City, AZ 86045

CONTRACTOR:

SERVICES: **Internal Waterline and Fixture Replacement within
Dzil Libei Elementary School**

Contractor and Owner agree as set forth below.

I. SCOPE OF WORK

A) General. The general scope of work to be provided under this Agreement will be to:

i) Perform and/or complete the work as described above and set forth in RFP 2019-08 ("Project") Scope of Work" (hereinafter "SOW") as more fully set forth in Exhibit A which is attached hereto and made a part hereof and in a manner approved by the Owner.

B) The Contractor will provide and do the work, services and materials set forth above according to the specifications and schedule to be agreed upon by the Parties in writing and attached hereto as Exhibit B, and in any event, in a workmanlike manner, in strict compliance with all relevant codes and safety regulations, manufacturer's instructions/specifications and per industry standards or such express standards including those established by the Navajo Nation EPA (NNWPA) as may be applicable or set forth herein or any attachments hereto.

II. GENERAL TERMS AND CONDITIONS

- A) The manner in which the services are to be performed shall be as provided herein including but not limited to Section I, Scope of Work, the specifications attached hereto as Exhibit B and as may be directed by the Owner.
- B) Owner and Contractor shall cooperate with one another to fulfill their respective obligations under this Agreement. Both parties shall endeavor to maintain good working relationships among all individuals and entities involved in this process.
- C) Contractor's services shall be performed as expeditiously as is consistent with professional skill and care in the orderly progress of the Project and pursuant to any schedule agreed to by the parties. Time is particularly of the essence in this Project given its nature. Safety of students, staff and others shall always be the paramount consideration in performing the Work. All services to be performed by Contractor in respect of this Agreement shall be provided in a manner consistent with the degree of care and skill usually exercised by contractors experienced in projects of similar scope and in accordance with standards of care and skill expected of contractors experienced in projects similar to the Project and under the direction of contractors duly licensed and qualified.
- D) Owner's Performance. Owner shall provide Contractor with available documents and information regarding the Project which Contractor shall verify in the field. Contractor shall provide prompt written notice to Owner if Contractor becomes aware of any errors, omissions or inconsistencies and such services or information.
- E) Time is of the essence for this project.
- F) Approval No Waiver. The Owner's approval or acceptance of, or payment for, any of Contractor's services shall not be construed to operate as a waiver of any rights under this Agreement or any cause of action arising out of the performance of this Agreement.
- G) Fees and Costs. The cost of Contractor's services under this Agreement, including all labor, materials and other costs under this agreement will be a lump sum fee of _____ dollars (\$_____) which will be complete and full payment for all services, materials, costs, taxes, including Tuba City Business Tax, and any and all other costs arising from the Project which might be payable to or by the Contractor. The Contractor will invoice the Owner monthly for services performed and will provide supporting documentation which may be reasonably requested to ensure that the work was actually performed to support the amount requested. In no event shall the Owner prepay or make advancements. Payments shall be made on the basis of percentage of work done. Payment shall be due thirty (30) days after receipt of invoice. No other payment shall be made or shall be due and owing by Owner to Contractor relative to this Agreement. Owner shall withhold retainage as may be allowed and/or required by law including, but not limited to, the Arizona Administrative Code (A.A.C.) R7-2-1104. All payments and any withholding of payments shall be done pursuant to A.A.C. R7-2-1105.

H) Contractor Provided Insurance. Prior to the commencement of construction of the Work, the Contractor shall cause to be obtained with insurers and in amounts acceptable to the Owner, insurance in the following forms:

i) Workers' Compensation insurance to cover obligations imposed by Federal and State statutes having jurisdiction of employees engaged in the construction of the Work, and Employers Liability Insurance of not less than \$1,000,000 for Bodily Injury by Accident, \$1,000,000 for Bodily Injury by Disease, and \$1,000,000 for Bodily Injury for Disease-Policy Limits.

ii) Contractor shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$250,000 for each occurrence, \$250,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury.

iii) Contractor shall maintain Business Automobile Liability insurance with a limit of \$250,000 each occurrence on Contractor's owned, hired and non-owned vehicles assigned to or used in the performance of the Contractor's work or services under this Agreement.

iv) Contractor's equipment insurance covering owned, non-owned, leased equipment used in connection with the construction of the Work.

vi) The insurance required by Section i) shall remain in effect until the end of the Correction Period and at all times after that when the Contractor may be correcting, or removing and replacing defective Work and the Contractor and the Owner have agreed in writing that the Work is covered under insurance designed for the purpose of providing coverage for the accepted Work while occupied.

viii) The Contractor shall cause insurers providing the policies required by Section i) to waive all rights of recovery against the Owner and its agents, officials and employees.

ix) Contractor shall provide, and cause subcontractors to provide, certificates of insurance from insurers acceptable to the Owner prior to commencement of the construction of the Work as evidence that policies providing the required coverages, conditions and limits are in full force and effect.

x) The Owner reserves the right to request and receive certified copies of any or all of the above insurance policies and/or endorsements.

xi) All insurance policies required by this Section i) shall be obtained from a financially sound insurance company rated not less than B+ (Very Good) XII by A.M. Best Company, and be authorized to do business in the State of Arizona.

xii) Costs of all insurance coverages required by Section i) are the sole responsibility of the Contractor.

xiii) The stipulation of insurance coverages in this Section i) shall not be construed to limit, qualify, or waive any liabilities or obligations of Contractor, assumed or otherwise, under this Contract.

- I) Relationship of the Parties. Contractor shall perform services as an independent contractor, and nothing contained herein shall be deemed to create any association, partnership, joint venture, or relationship of principal and agent or master and servant between the parties hereto, or any affiliates or subsidiaries thereof, or to provide either party with the right, power or authority, whether express or implied, to create any such duty or obligation on behalf of the other party. Contractor agrees that it will not hold itself out as an affiliate of, or a partner, joint venture, co-principal or co-employer with Owner or any of its affiliates by reason of this Agreement, and Contractor will not knowingly permit any of its employees, agents, or representatives to hold themselves out as, or claim to be, officers or employees of Owner or any of its affiliates by reason of this Agreement.
- J) General Indemnification. Contractor agrees to indemnify and save harmless the Owner, its officers, agents and employees, and any jurisdiction or agency issuing permits for any work included in the Project, their officers, agents and employees, hereinafter referred to as indemnitee, from all suits and claims, including attorney's fees and cost of litigation, actions, loss, damage, expense, cost or claims of any character or any nature arising out of the work done in fulfillment of the terms of the Contract Documents or on account of any act, claim or amount arising or recovered under worker's compensation law or arising out of the failure of the Contractor to conform to any statutes, ordinances, regulation, law or court decree. It is agreed that the Contractor will be responsible for primary loss investigation, defense and judgment costs where this contract of indemnity applies. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the Owner, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the Owner.
- K) Termination. This Agreement may be terminated by either party upon not less than seven (7) days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

The Agreement may be terminated by the Owner upon not less than seven (7) days' written notice to Contractor for the Owner's convenience and without cause.

In the event of termination not the fault of Contractor, Contractor shall be compensated for direct services actually performed on the Project minus a reasonable amount for defective or non-conforming performance and no other consequential or other damages, costs or amounts shall be paid.

- L) Assignment. It is agreed by the parties hereto that this Agreement is the obligation of Contractor. This Agreement may not be assigned or transferred to any other persons, firm or corporation without the prior written consent of Owner.
- M) Records. Upon the termination or prior to completion of this Agreement, Contractor shall deliver all records, notes, data, memoranda, models and equipment of any nature whatsoever to Owner.

N) Notices. All notices required or permitted under this Agreement shall be deemed delivered when delivered in person or deposited in the United States mail, postage prepaid, and addressed as follows:

Owner: _____

Contractor: _____

Such address may be changed from time to time by either party by providing written notice of the change of address.

- O) Amendment. This Agreement may be modified, amended or cancelled if the amendments have been made in writing and signed by both parties after being duly authorized by Owner.
- P) Severability. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable.
- Q) Waiver of Contractual Right. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.
- R) Applicable Law. This Agreement shall be governed by the laws of the State of Arizona and jurisdiction and venue for any disputes arising relative to this agreement shall be in the county wherein the Project is to be constructed.
- S) Applicable Rules and Regulations. This Agreement shall be performed in compliance with, and the services, work and products arising from this Agreement and all activities relative to the matters set forth in this Agreement must be provided in compliance with, applicable state, federal, and local rules, regulations and laws. **Due to the site of the Project, the Work under this Agreement must be performed in compliance with the Navajo Preference In Employment Act and it is the obligation of Contractor to ensure compliance therewith.**
- T) Contractor further warrants that all work will be completed in strict compliance with applicable codes and safety regulations and in a manner which will safeguard and protect the health, safety and welfare of the School's students, staff and community served by the Owner.
- U) Contractor warrants all work and equipment for a period of 24 months following final completion, except for manufacturer's or seller's warranties which may be for a longer

period. This warranty shall in no way limit the time for claims otherwise available to Owner.

- V) If requested, Contractor shall furnish Owner appropriate releases or waivers of lien for all work performed or materials provided at the time the next periodic payment shall be due.
- W) All change orders shall be in writing and signed both by Owner and Contractor, and shall be incorporated in, and become a part of the contract. Additional work shall not be initiated or performed prior to a written change order fully executed by the parties.
- X) Contractor warrants it is adequately insured for injury to its employees and others incurring loss or injury as a result of the acts of Contractor or its employees or subcontractors.
- Y) Contractor shall assist District to obtain all permits necessary for the work to be performed.
- Z) Contractor agrees to remove all debris and leave the premises in broom clean condition.

AA) Matters in Question. In signing this Agreement, Contractor agrees that any cause Contractor may have against the District and its Governing Board arising in relation to this Procurement and Project, including but not limited to, contract claims and controversies, including claims related to assignees of Contractor, shall be resolved exclusively through the procedures of the Arizona Education Procurement Code, A.A.C. R7-2-1001, et seq. and A.A.C. R7-2-1101, et seq. including, but not limited to, A.A.C. R7-2-1155-1159 and 1181-1185. Should this procedure be found to be void or otherwise barred by law, the provision set forth in A.A.C. R7-2-1155 through R7-2-1157 shall be required and shall be a condition precedent for the further prosecution of any such claim.

BB) Legal Arizona Workers Act Compliance. Contractor hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to Contractor's employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Contractor shall further ensure that each subcontractor who performs any work for Contractor under this contract likewise complies with the State and Federal Immigration Laws.

Contractor shall advise each subcontractor of Owner's rights, and the subcontractor's obligations, under this Article by including a provision in each subcontract substantially in the following form: "Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to Subcontractor's employees, and with the requirements of A.R.S. § 23-214 (A).

Any additional costs attributable directly or indirectly to remedial action under this Article shall be the responsibility of Contractor. In the event that remedial action under this Article results in delay to one or more tasks on the critical path of Contractor's approved construction or critical milestones schedule, such period of delay shall be deemed excusable delay for which Contractor shall be entitled to an extension of time, but not costs.

CC) Compliance with Arizona Workers Suitability Law. Contractor hereby warrants that it will at all times during the term of this contract strictly comply and cause all subcontractors and other vendors, and persons to whom this law is applicable comply with A.R.S. § 15-512 (H) and include a like contractual provision in all Contractor's subcontractors and agreements relative to the work. Contractor shall ensure that required finger printing be timely completed and reviewed to ensure that none of its employees, subcontractors or others for whom Contractor is responsible under this contract and the above referenced law are allowed on District property if they have been convicted of or admitted in open court or pursuant to a plea agreement of committing or pleading nolo contendere to offenses as identified in A.R.S. § 15-512 (D).

Owner shall have the right at any time to inspect Contractor's and any subcontractor's records in order to review such party's compliance with the above referenced laws; however such rights shall not remove the duty from Contractor for compliance with said laws.

Any additional cost attributable directly and indirectly to remedial action under this provision or arising from noncompliance with this provision shall be the responsibility of the Contractor.

Contractor shall advise each subcontractor of Owner's rights and the subcontractor's obligations under this provision by including a like provision in each subcontract.

Contractor shall take all steps necessary to protect and ensure the health safety and welfare of students and staff by ensuring the suitability of all construction related personnel for work on a District/school campus.

Entire Agreement. This Agreement contains the entire agreement of the parties and there are no other promises or conditions or any other agreement concerning this subject matter, whether oral or written. This Agreement supersedes any prior written or oral agreement between the parties.

[OWNER]

[CONTRACTOR]

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____