



CONTRACT NO. _____

FOR
**Fire Protection Systems
Inspection, Testing &
Maintenance Services**

THIS AGREEMENT is made and entered into by and between **San Juan College**, herein after referred to as the "College", and _____ herein after referred to as the "Contractor."

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

A. Definitions

1. **Agreement** means a definite quantity contract or indefinite quantity contract which requires the Contractor to furnish items of tangible personal property, services or construction to a state College or a local public body which issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any.

2. **Business/Operating Hours** means 4:30 AM thru 9:00 PM Mountain Standard or Mountain Daylight Time, whichever is in effect on the date given.

3. **Close of Business** means 5:00 PM Mountain Standard or Daylight Time, whichever is in use at that time.

4. **Contract Documents** means any one, or combination, of the following documents: Request for Proposal, Addenda, Agreement Between the Owner and the General Contractor for Construction, General Conditions of the Contract for Construction, and the drawings and specifications and any and all documents identified as Contract Documents in the Agreement Between the Owner and General Contractor for Construction.

5. **CPO** means Chief Procurement Officer or Senior Purchasing Director of San Juan College

6. **Hourly Rate** means the proposed fully loaded maximum hourly rates that include fringe benefits and any overhead costs for Contractor's personnel, as well as subcontractor personnel if appropriate.

7. **Project** means a temporary process undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The project terminates once the project scope is achieved and project acceptance is given by the project executive sponsor.

8. **Request for Proposals** or **RFP** means all documents, including those attached or incorporated by reference, used for soliciting proposals.

9. **"You"** and **"your"** refers to _____. **"We," "us"** or **"our"** refers to San Juan College, departments, programs, employees, and other local public bodies allowed by law to participate in the Agreement and whose accounts are created under this Agreement.

B. Statement of Work

C. Compensation

The College shall pay to the Contractor based upon fixed prices for each Deliverable item as listed here.

Deliverable item:	U/I (unit of issue)	Price
01	\$	
02	\$	

The total compensation under this four year Agreement shall not exceed \$--.--.

D. Payment Provisions

All payments under this Agreement are subject to the following provisions.

1. Acceptance - In accordance with Section 13-1-158 NMSA 1978, the College shall determine if the product or services provided meet specifications. No payment shall be made for any products or services until the products or services have been accepted in writing by the College. Unless otherwise agreed upon between the College and the Contractor, within fifteen (15) days from the date the College receives written notice from the Contractor that payment is requested for services or within thirty (30) days from the receipt of products, the College shall issue a written certification of complete or partial acceptance or rejection of the products or services. Unless the College gives notice of rejection within the specified time period, the products or services will be deemed to have been accepted.
2. Issuance of Orders - Only written signed orders are valid under this Agreement. A Purchase Order is the approved form for the College issuing Contract Orders under this Agreement. Other authorized government entities may utilize Purchase Orders or forms adapted by them for their own use.
3. Payment of Invoice - Upon acceptance that the products or services have been received and accepted, payment shall be tendered to the Contractor within thirty (30) days after the date of invoice. After the thirtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the contract to the Contractor at the rate of 1.5 % per month. Contractor may submit invoices for payment no more frequently than monthly. Payment will be made to the Contractor's designated mailing address. Payment on each invoice shall be due within 30 days from the date of the acceptance of the invoice. The College agrees to pay in full the balance shown on each account's statement, by the due date shown on said statement.
4. Late Charges - If the College fails to pay as required above, the Contractor may assess a late fee on the unpaid balance of more than 60 days. Late fees will be assess at a rate based upon the billing address of each College account; therefore, the periodic (monthly) late fee rate shall be 1.5% and the corresponding Annual Percentage Rate for the College will be 18%. No late fee on new purchases will be assessed during the billing cycle when the purchase was made.

E. Term

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE COLLEGE OR THE COLLEGE BOARD OF TRUSTEES, IF REQUIRED. This Agreement shall begin on date approved by the College or the College Board of Trustees, if the College has signed this Agreement, and end on **DATE**. The College reserves the right to renew the contract on an annual basis by mutual Agreement not exceed a total of four years in accordance with NMSA 1978 §13-1-150.

F. Default and Force Majeure

The College reserves the right to cancel all or any part of any orders placed under this contract without cost to the College, if the Contractor fails to meet the provisions of this contract and, except as otherwise provided herein, to hold the Contractor liable for any excess cost occasioned by the College due to the Contractor's default. The Contractor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the College shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery scheduled. The rights and remedies of the College provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this contract.

G. Termination

1. Grounds. The College may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the College's uncured, material breach of this Agreement.

2. Notice; College Opportunity to Cure.

a. Except as otherwise provided in Sections G.1 and Q, the College shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

b. Contractor shall give College written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the College's material breaches of this Agreement upon which the termination is based and (ii) state what the College must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the College does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the College does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

c. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the College; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to Section Q, "Appropriations", of this Agreement.

3. Liability. Except as otherwise expressly allowed or provided under this Agreement, the College's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or

sending the notice of termination. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE COLLEGE'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

H. Amendment

This Agreement may be amended by mutual agreement of the College and the Contractor upon written notice by either party to the other. An amendment to this Agreement SHALL NOT AFFECT ANY OUTSTANDING ORDERS issued prior to the effective date of the amendment as mutually agreed upon, and as published by the College. Amendments affecting price adjustments and/or extension of contract expiration are not allowed unless specifically provided for in the bid and contract documents.

1. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

2. If the College proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Section G herein, or to agree to the reduced funding.

I. Status of Contractor

The Contractor, and Contractor's agents and employees, are independent Contractors for the College and are not employees of the College. The Contractor, and Contractor's agents and employees, shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the College as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are personally reportable by the Contractor for income tax purposes, including without limitation, self-employment tax and business income tax. The Contractor agrees not to purport to bind the College unless the Contractor has written authority to do so, and then only within the strict limits of that authority.

J. Assignment

1. Neither this Agreement nor any orders placed under this Agreement, nor any interest therein, nor claim thereunder, shall be assigned or transferred by the Contractor, except as set forth in subparagraph J.2 below or as expressly authorized in writing by the College's Purchasing Department. No such assignment or transfer shall relieve the Contractor from the obligations and liabilities under this Agreement.

2. Contractor agrees that any and all claims for overcharge resulting from antitrust violations which are borne by the College as to goods, services, and materials purchased in connection with this bid are hereby assigned to the College.

K. Subcontracting

The Contractor shall not subcontract any portion of any services to be performed under this Agreement without written approval from the College. The following subcontractor(s) have been approved to supply resources for this Agreement <_____>.

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the College. No such subcontract shall relieve the primary

Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the College.

L. Non-Collusion

In signing this Agreement, the Contractor certifies the Contractor has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the State of New Mexico or College.

M. Inspection of Plant

The College or department that is a party to this Agreement may inspect, at any reasonable time during Contractor's regular business hours and upon prior written notice, the Contractor's plant or place of business, or any subcontractor's plant or place of business, which is related to the performance of this contract.

N. Commercial Warranty

The Contractor agrees that the tangible personal property or services furnished under this Agreement shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such tangible personal property or services, and that the rights and remedies provided herein shall extend to the College and are in addition to and do not limit any rights afforded to the College by any other clause of this order. Contractor agrees not to disclaim warranties of fitness for a particular purpose or merchantability.

O. Condition of Proposed Items

Where tangible personal property is a part of this Agreement, all proposed items are to be NEW and of most current production, unless otherwise specified.

P. Records and Audit

During the term of this Agreement and for three years thereafter, the Contractor shall maintain detailed records pertaining to the services rendered and products delivered. These records shall be subject to inspection by the College, the State Auditor and other appropriate state and federal authorities. The College shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the College to recover excessive or illegal payments.

Q. Appropriations

The terms of this Agreement, and any orders placed under it, are contingent upon sufficient appropriations and authorization being made by the College for the performance of this Agreement. If sufficient appropriations and authorization are not made by the College, this Agreement, and any orders placed under it, shall terminate upon written notice being given by the College to the Contractor. The College's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the College proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

R. Release

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

S. Confidentiality

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

T. Conflict of Interest

1. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. The Contractor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.

2. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

a) in accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any College employee while such employee was or is employed by the College and participating directly or indirectly in the College's contracting process;

b) this Agreement complies with NMSA 1978, § 10-16-7(A) because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by NMSA 1978, § 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;

c) in accordance with NMSA 1978, § 10-16-8(A), (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the College's making this Agreement;

d) this Agreement complies with NMSA 1978, § 10-16-9(A) because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a

legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

e) in accordance with NMSA 1978, § 10-16-13, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

f) in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the College.

3. Contractor's representations and warranties in Sections 1 and 2 of this Section T are material representations of fact upon which the College relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the College if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Sections 1 and 2 of this Section T were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Sections 1 and 2 of this Section T were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the College and notwithstanding anything in the Agreement to the contrary, the College may immediately terminate the Agreement.

4. All terms defined in the Governmental Conduct Act have the same meaning in this Section.

U. Approval of Contractor Representative(s)

The College reserves the right to require a change in Contractor representative(s) if the assigned representative(s) are not, in the opinion of the College, adequately serving the needs of the College.

V. Scope of Agreement; Merger

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement. No prior agreements or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

W. Notice

The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

X. Equal Opportunity Compliance

The Contractor agrees to abide by all federal and state laws, rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws, rules, and regulations, and executive orders of the Governor of the State of New Mexico, the Contractor agrees to assure that no person in the United States shall on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or

participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

Y. Indemnification

The Contractor shall hold the College and its departments and employees harmless and shall indemnify the College and its departments and employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damage to property arising from the acts or omissions of the Contractor, its agents, officers, employees or subcontractors. The Contractor shall not be liable for any injury or damage as a result of any negligent act or omission committed by the College, its officers or employees.

Z. New Mexico Employees Health Coverage

1. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

2. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

3. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://insurenwnewmexico.state.nm.us/>.

AA. Applicable Law

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, § 38-3-1 (G). By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

AB. Limitation of Liability

The Contractor's liability to the College, or any department, for any cause whatsoever shall be limited to the purchase price paid to the Contractor for the products and services that are the subject of the College's claim. The foregoing limitation does not apply to Section Y of this Agreement or to damages resulting from personal injury caused by the Contractor's negligence.

AC. **Arbitration**

Any controversy or claim arising between the parties shall be settled by arbitration pursuant to NMSA 1978 § 44-7A-1 *et seq.*

AD. **Incorporation by Reference and Precedence**

If this Agreement has been procured pursuant to a request for proposals, this Agreement is derived from (1) the request for proposal, (including any written clarifications to the request for proposals and any College response to questions); (2) the Contractor's best and final offer; and (3) the Contractor's response to the request for proposals.

In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Agreement in reverse chronological order; (2) the Agreement, including the scope of work and all terms and conditions thereof; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) the Contractor's best and final offer if such has been made and accepted by the College or department; and (5) the Contractor's response to the request for proposals.

AE. **Workers' Compensation**

The Contractor agrees to comply with state laws and rules applicable to workers' compensation benefits for its employees. If the Contractor fails to comply with the Workers' Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the College.

AF. **Inspection**

If this contract is for the purchase of tangible personal property (goods), final inspection and acceptance shall be made at Destination. Tangible personal property rejected at Destination for non-conformance to specifications shall be removed at Contractor's risk and expense promptly after notice of rejection and shall not be allowable as billable items for payment.

AG. **Inspection of Services**

If this contract is for the purchase of services, the following terms shall apply.

1. Services, as used in this Article, include services performed, workmanship, and material furnished or utilized in the performance of services.
2. The Contractor shall provide and maintain an inspection system acceptable to the College or other party to this Agreement covering the services under this Agreement. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the College or other party to this Agreement during the term of performance of this Agreement and for as long thereafter as the Agreement requires.
3. The College or other party to this Agreement has the right to inspect and test all services contemplated under this Agreement to the extent practicable at all times and places during the term of the Agreement. The College or other party to this Agreement shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor's performance.
4. If the College or other party to this Agreement performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors

- to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.
5. If any part of the services do not conform with the requirements of this Agreement, the College or other party to this Agreement may require the Contractor to re-perform the services in conformity with the requirements of this Agreement at no increase in contract amount. When the defects in services cannot be corrected by re-performance, the College or other party to this Agreement may:
 - a. require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements of this Agreement; and
 - b. reduce the contract price to reflect the reduced value of the services performed.
 6. If the Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements of this Agreement, the College or other party to this Agreement may:
 - a. by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the College or other party to this Agreement that is directly related to the performance of such service; or
 - b. terminate the contract for default.

THE PROVISIONS OF THIS ARTICLE ARE NOT EXCLUSIVE AND DO NOT WAIVE COLLEGE'S OR OTHER PARTY'S TO THIS AGREEMENT OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

AH. **Insurance**

If the services contemplated under this Agreement will be performed on or in College's facilities or property, Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the College, Risk Management Department or other party to this Agreement as additional insured.

1. Workers Compensation (including accident and disease coverage) at the statutory limit. Employers' liability: \$100,000.
2. Comprehensive general liability (including endorsements providing broad form property damage, personal injury coverage and contractual assumption of liability for all liability the Contractor has assumed under this contract). Limits shall not be less than the following:
 - a. Bodily injury: \$1,000,000 per person /\$1,000,000 per occurrence.
 - b. Property damage or combined single limit coverage: \$1,000,000.
 - c. Automobile liability (including non-owned automobile coverage): \$1,000,000.
 - d. Umbrella: \$1,000,000.
3. Contractor shall maintain the above insurance for the term of this Agreement and name the College, Risk Management Department or other party to this Agreement as an additional insured and provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

AI. **Impracticability of Performance**

A party shall be excused from performance under this Agreement for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance, epidemic, or court

order, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.

AJ. **Invalid Term or Condition**

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

AK. **Enforcement of Agreement**

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

AL. **Patent, Copyright and Trade Secret Indemnification**

1. The Contractor shall defend, at its own expense, the state and its agencies against any claim that any product or service provided under this Agreement infringes any patent, copyright to trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against the College based upon Contractor's trade secret infringement relating to any product or services provided under this Agreement, the Contractor agrees to reimburse the state for all costs, attorneys' fees and amount of the judgment. To qualify for such defense and or payment, the College shall:

- i. give the Contractor prompt written notice within 48 hours of any claim;
- ii. allow the Contractor to control the defense of settlement of the claim; and
- iii. cooperate with the Contractor in a reasonable way to facilitate the defense or settlement of the claim.

2. If any product or service becomes, or in the Contractor's opinion is likely to become the subject of a claim of infringement, the Contractor shall at its option and expense:

- i. provide the College the right to continue using the product or service and fully indemnify the College against all claims that may arise out of the College's use of the product or service;
- ii. replace or modify the product or service so that it becomes non-infringing; or,
- iii. accept the return of the product or service and refund an amount equal to the value of the returned product or service, less the unpaid portion of the purchase price and any other amounts, which are due to the Contractor. The Contractor's obligation will be void as to any product or service modified by the College to the extent such modification is the cause of the claim.

AM. **Survival**

The Agreement Sections titled "Patent, Copyright, Trademark, and Trade Secret Indemnification; Indemnification; and Limit of Liability" shall survive the expiration of this Agreement. Software licenses, leases, maintenance and any other unexpired Agreements that were entered into under the terms and conditions of this Agreement shall survive this Agreement

AN. **Employee Pay Equity Reporting**

Contractor agrees if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of this contract, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. If Contractor has (250) or more employees contractor must complete and submit the PE250 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, contractor also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual contract anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the contract, whichever comes first. Should Contractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, Contractor agrees to provide the required report within ninety (90 days) of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter. Contractor also agrees to levy this requirement on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor will submit the required report, for each such subcontractor, within ninety (90 days) of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the College's Purchasing Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. Contractor acknowledges that this subcontractor requirement applies even though contractor itself may not meet the size requirement for reporting and be required to report itself.

Notwithstanding the foregoing, if this Contract was procured pursuant to a solicitation, and if Contractor has already submitted the required report accompanying their response to such solicitation, the report does not need to be re-submitted with this Agreement.

AO. **Disclosure Regarding Responsibility**

1. Any prospective Contractor and any of its Principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with the College or local public body for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor's company:
 - a. is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state College or local public body;
 - b. has within a three-year period preceding this offer, been convicted in a criminal matter or had a civil judgment rendered against them for:
 - i. the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract or subcontract;
 - ii. violation of Federal or state antitrust statutes related to the submission of offers; or
 - iii. the commission in any federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violation of Federal criminal tax law, or receiving stolen property;

- c. is presently indicted for, or otherwise criminally or civilly charged by any (federal state or local) government entity with the commission of any of the offenses enumerated in Section AO.2 of this disclosure;
 - d. has, preceding this offer, been notified of any delinquent Federal or state taxes in an amount that exceeds \$3,000.00 of which the liability remains unsatisfied. Taxes are considered delinquent if the following criteria apply.
 - i. The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge of the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
 - ii. The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
 - iii. Have within a three year period preceding this offer, had one or more contracts terminated for default by any federal or state College or local public body.)
2. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.
 3. The Contractor shall provide immediate written notice to the College's Purchasing Department or other party to this Agreement if, at any time during the term of this Agreement, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.
 4. A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Agreement. However, the disclosure will be considered in the determination of the Contractor's responsibility and ability to perform under this Agreement. Failure of the Contractor to furnish a disclosure or provide additional information as requested will be grounds for immediate termination of this Agreement pursuant to the conditions set forth in Section G of this Agreement.
 5. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.
 6. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of this Agreement. If during the performance of the contract, the Contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses named in this document the Contractor must provide immediate written notice to the College's Purchasing Department or other party to this Agreement. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the College's Purchasing Department may terminate the involved contract for cause. Still further the College's Purchasing Department may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the College.

AP. **Public Works Minimum Wage Act**

1. If this contract is in excess of sixty thousand dollars (\$60,000) and is for construction alteration, demolition or repair (or any combination of these including painting and decorating of state public buildings, state public works or state public roads and requires or involves the employment of mechanics, laborers or both), the requirements of the Public Works Minimum Wage Act, as set forth in Sections 13-4-10 through 13-4-17 are hereby incorporated into this Contract.
2. The minimum wages and fringe benefits to be paid to various classes of laborers and mechanics at all tiers under this contract shall be based upon the wages and benefits determined by the Director of the Labor Relations Division of the New Mexico Department of Workforce Solutions at the time of individual contract award under the authority of Sections 13-4-10 through 13-4-17 NMSA 1978. Using Agencies are responsible for contacting the Labor Relations Division for the current wage rate decision applicable to any resultant contract issued under this agreement and incorporation therein.
3. Such incorporated Wage Decision shall stipulate the Contractor, Subcontractor, Employer, or person acting as Contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Subsection B of Section 13-4-11 NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.
4. The Contractor receiving any such award to which the Act applies shall cause this provision to be placed in all subcontracts awarded by Contractor.
5. In the event during performance under this Contract, if the Director of the Labor Relations Division makes a written finding that any laborer or mechanic employed on the site of the project has been or is being paid as a result of a willful violation a wage rate or fringe benefit rate less than the rates required, the contracting College may, by written notice to the Contractor, subcontractor, employer or person acting as a Contractor, terminate the right to proceed with the work or part of the work as to which there has been a willful violation to pay the required wages or fringe benefits, and the College may prosecute the work to completion by contract or otherwise, and the Contractor or person acting as a Contractor and the Contractor's or person's sureties shall be liable to the College for any excess costs occasioned thereby. Any party receiving notice of termination of a project or subcontract may appeal the finding of the Director of the Labor Relations Division as provided in the Public Works Minimum Wage Act.

AQ. **Suspension, Delay or Interruption of Work**

The College or other party to this Agreement may, without cause, order the Contractor, in writing, to suspend, delay or interrupt the work in whole or in part for such period of time as the College or other party to this Agreement may determine. The contract sum and contract time shall be adjusted for increases in cost and/or time associated with Contractor's compliance therewith. Upon receipt of such notice, Contractor shall leave the jobsite and any equipment in a safe condition prior to departing. Contractor must assert rights to additional compensation within thirty (30) days after suspension of work is lifted and return to work is authorized. Any compensation requested for which entitlement is granted and the contract sum adjusted, shall have profit included (for work completed) and for cost only (not profit) for Contractor costs incurred directly tied to the suspension itself and not otherwise covered by Contract remedy. Any change in Total Compensation must be reflected in an Amendment executed pursuant to Section H of this Agreement.

AR. **Administrative Fees**

RESERVED.

AS. **Notification**

Either party may give written notice to the other party in accordance with the terms of this Section AS. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivery or three (3) business days after being mailed.

To College:	Senior Purchasing Director/CPO
Office address: (for express carrier and hand deliveries)	4601 College Blvd. East Classroom Complex, Room 1100 Farmington, NM 87402 (505) 566-3511 (voice) (505) 566-3075 (fax) purchasing@sanjuancollege.edu

To Contractor: **Enter Contractors information**

Either party may change its representative or address above by written notice to the other in accordance with the terms of this Section AR. The carrier for mail delivery and notices shall be the agent of the sender.

AT. **Succession**

This Agreement shall extend to and be binding upon the successors and assigns of the parties.

AU. **Headings**

Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of execution by:

SAN JUAN COLLEGE

(Contractor)

BY: _____

BY: _____

TITLE: _____

TITLE: _____

This Agreement has been approved by the Senior Purchasing Director/CPO of San Juan College:

Senior Purchasing Director/CPO

Date