

SUBCONTRACT AGREEMENT

[]

Prime Contractor

SDV Construction Inc
8912 Adams St. NE
Albuquerque, NM 87113
(505) 883-3176 — tel
(505) 888-8914 — fax

Subcontractor

,
— tel
— fax

Project Name:

SDV Construction Project No.:

SDV Construction Project Manager:

This agreement is made this , between SDV Construction Inc, (CONTRACTOR)
(SUBCONTRACTOR).

CONTRACTOR has made an agreement with the project owner. CONTRACTOR and SUBCONTRACTOR agree as set forth below and as provided in the General Provisions of the Prime Contract and Subcontract Agreement to perform the services as indicated below and on attachments as noted in Section D.

A. SCOPE OF SUBCONTRACTOR SERVICES: SUBCONTRACTOR shall provide all materials, equipment and labor for the completion, in a good and workmanlike manner, of the work described in Exhibit A, attached hereto and incorporated into this Agreement.

B. SCHEDULE: SUBCONTRACTOR acknowledges the schedule may change due to site conditions, change orders, etc. The Project Start Date is 7/29/13 and the Project Completion Date is per the current. Project schedule attached.

C. PAYMENT: PRIME CONTRACTOR agrees to pay SUBCONTRACTOR for the performance of this work:

 X Lump sum amount of

Invoices must be received by the of each month. Payment will be made within seven (7) days of payment receipt by CONTRACTOR of payment from OWNER for SUBCONTRACTOR'S work. As a condition precedent and prior to receipt of payment hereunder, SUBCONTRACTOR agrees to furnish weekly certified payroll, receipts, vouchers, statutory releases of claims for labor, material, equipment and supplies and from its subcontractors, and other written documents including schedule(s) of values, daily reports and safety reports in forms satisfactory to CONTRACTOR.



SUBCONTRACTOR’S compensation shall not exceed the amount written above without prior written approval of the CONTRACTOR and 0% RETAINAGE will be held from each pay application per the Prime Contract between SDV Construction & OWNER.

D. LIST OF ATTACHMENTS (AS INDICATED) incorporated into this agreement

- General Conditions
- Exhibit A - Statement of Work
- Exhibit B - Project Schedule
- Exhibit C - Change Order Request Form
- Exhibit D - Schedule of Values
- Exhibit E - Application for Payment/Progress Billing
- Exhibit F – Partial Lien Waiver
- Exhibit G – Final Lien Waiver
- Exhibit H – Comprehensive Safety Plan (see separate .pdf)
- Exhibit I – List of Project Documents
- Exhibit J – List of Applicable FAR Clause(s)
- Wage Decision #
- Standard Form 1413 or New Mexico Intent to Pay Prevailing Wages

In witness whereof, the parties here have executed this Agreement which is in effect as of the date above written when signed by both parties.

CONTRACTOR
SDV Construction, Inc.
License No.: 92744

SUBCONTRACTOR
License No.:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____



GENERAL CONDITIONS

SECTION 1. PRIME CONTRACT. Subcontractor, and its subcontractors and material/equipment suppliers, are bound by the Prime Contract between SDV Construction, Inc. and, (available for review at SDV Construction, Inc. (8912 Adams St. NE, Albuquerque, NM 87113), and any contract documents incorporated therein insofar as the same relate in any way, directly or indirectly, to the work covered by this Agreement (hereinafter, the “Work”).

SECTION 2. TIME. Time is of the essence of this Agreement. Subcontractor shall provide Contractor with all requested scheduling information in forms acceptable to Contractor, and shall conform to Contractor’s progress schedules, including any changes made by Contractor in the scheduling of work. Subcontractor shall coordinate its Work with that of all other contractors, subcontractors and suppliers so as not to delay their performance or damage their work on the Project. Subcontractor shall begin work as soon as any part of the structure/work feature is ready to receive same, and shall prosecute the Work with diligence so as not to delay the progress of the Project. The Subcontractor shall be liable to the Contractor for any loss the Contractor may sustain as a result of the Subcontractor delaying the completion of the Work. The Subcontractor will not be charged with any penalty or liquidated damages for delays in performance due to conditions beyond the control of the Subcontractor, but written notice of such delays and their causes shall be given to the Contractor within twenty-four (24) hours of their first observance.

SECTION 3. DELAY.

Section 3.1: Excusable Delays: In the event Subcontractor’s performance of the Work is delayed or interfered with, for any reason or for any period of time, by acts or omissions of Contractor, Owner or representatives or agents of the same, or by other subcontractors, by Change Orders, adverse weather conditions in excess of normal, or other events of force majeure, including acts of God, strikes or terrorism, or for other reasons beyond the reasonable control of Subcontractor, Subcontractor shall notify Contractor in writing, describing the delay and the anticipated results thereof, promptly after first observing or otherwise becoming aware of the occurrence causing the delay, but in no event later than two (2) work days after the date on which Subcontractor first does or should have become aware of the occurrence causing the delay. The failure to give such written notice in the manner and within the time specified in the foregoing sentence shall be deemed a waiver of the delay or interference, and shall constitute sufficient reason for a denial of an extension of time by Contractor. Contractor shall notify Subcontractor promptly if, in its opinion, the cause of delay specified is such as to entitle or not to entitle Subcontractor to an extension of time. After such cause of delay has ceased to exist, Subcontractor shall promptly file with Contractor a statement in writing of actual delay resulting from such cause of delay. The time of performance of the Work under this Subcontract shall be extended by the Contractor for all such delays that are beyond the reasonable control of Subcontractor. An extension of time will only be considered for adverse weather conditions upon submission by the Subcontractor of data documenting that the weather conditions were abnormal for the period of time in question and could not reasonably have been anticipated at the time of executing this Agreement. In such event, an extension of time will be allowed only for the difference between the number of days during which construction could not occur due to adverse weather conditions and the number of days during which the Subcontractor should reasonably have anticipated that construction could not occur due to adverse weather conditions.

Section 3.2: Delay Caused by Subcontractor In the event Subcontractor fails to perform the Work punctually and diligently in accordance with Contractor’s schedule(s), or in accordance with the sequencing of the Work established by Contractor, or if Contractor is delayed in the performance of any Work on the Project by reason of the actions or inactions of Subcontractor, including default in the proper and efficient performance of the Work, or failure to perform the Work in accordance with this Agreement or the other Contract Documents, Subcontractor shall be liable for any and all losses, damages and costs, including lost profits, and all costs and expenses resulting from Subcontractor’s delay incurred by Contractor, including all damages for which Contractor may be liable to other parties, including, but not limited to, any liquidated damages Owner shall assess against Contractor. Subcontractor agrees that Subcontractor shall be liable under this Section 3.2 even though its failure to perform is beyond the control of Subcontractor unless Subcontractor has given written notice of the delay to Contractor in accordance with the provisions of Section 3.1 above. The failure of Subcontractor to give such written notice to Contractor as required by Section 3.1 above shall prevent Subcontractor from thereafter asserting such condition as an excuse for Subcontractor’s failure to perform under this



Agreement. In the event of Subcontractor's liability under this Section 3.2, Subcontractor shall make prompt payment to Contractor for all damages sustained by Contractor, or for which Contractor is liable to Owner or other parties, promptly upon written demand by Contractor.

SECTION 4. DEFAULT. If the Subcontractor shall default in the timely performance of the Work, or if the Contractor anticipates that the Subcontractor has not provided sufficient laborers, materials or skills necessary to complete the Work fully, adequately and/or timely, the Contractor, upon 24 hours' written notice, shall have the right and option, in addition to all other rights and options in law, equity and under this Agreement, to (1) demand that Subcontractor strictly adhere to the terms of this Agreement, including any deadlines for completion or (2) correct such default or (3) terminate this Agreement and complete the Work, charging the cost of any correction or completion to Subcontractor, including reasonable overhead and profit, together with any damages caused by the delay in the performance of the Work. The Contractor may shorten the notice period herein if the Contractor deems the time constraints of the Project to require a shorter notice period. If the Subcontractor defaults, its materials, tools and equipment shall be left on the job for the use of the Contractor in completing the Work.

SECTION 5. SITE CONDITIONS. Execution of this Agreement by the Subcontractor is representation that the Subcontractor has visited the site and become familiar with the local conditions under which the Work is to be performed, and that the Subcontractor has carefully studied and compared the various drawings and other contract documents relating to that portion of the Work as well as the information furnished by the Owner, and has taken field measurements of any existing conditions and has observed any and all conditions at the site affecting the Work. The Subcontractor further agrees that it has not discovered any errors, omissions or inconsistencies in the Contract Documents.

SECTION 6. CHANGES IN WORK. Contractor may at any time, by written order and without notice of surety, make changes in the work called herein and the Subcontractor shall proceed with the work as directed. If said changes cause an increase or decrease in the cost of performance or in the time required for performance, an equitable adjustment shall be made and this Subcontract shall be modified in writing accordingly. Subcontractor shall provide written notice of any alleged change to the work or other claim directed or caused by Contractor within three (3) days of the occurrence giving rise to the alleged change or claim or such claim shall be conclusively waived. Subcontractor's entitlement to an adjustment in cost or time required for performance of a change in the work directed or caused by the Owner shall be governed by the terms of the Contract Documents. Nothing herein contained shall excuse the Subcontractor from proceeding with the prosecution of the work as changed.

SECTION 7. CLAIMS. If any dispute shall arise between Contractor and Subcontractor regarding performance of the Work, or any alleged change in the Work, Subcontractor shall timely perform the disputed Work and shall give written notice of a claim for additional compensation for the Work within ten (10) days after commencement of the disputed Work. Subcontractor's failure to give written notice within the ten (10)-day period constitutes an agreement by Subcontractor that it will receive no extra compensation for the disputed Work.

SECTION 8. INSPECTION AND PROTECTION OF WORK. Subcontractor shall make the Work accessible at all reasonable times for inspection by the Contractor. Subcontractor shall make every reasonable effort to facilitate any and all issuance of permits and conduct of inspections by governmental agencies including, but not limited to, city, county and state building inspectors, and Subcontractor will take no action that will hinder or delay issuance of permits or inspections, including, but not limited to, inspections necessary to obtaining the Certificate of Occupancy. Subcontractor shall, at the first opportunity, inspect all material and equipment delivered to the job site by others to be used or incorporated in the Subcontractor's Work and give prompt notice of any defect therein. Subcontractor assumes full responsibility to protect the Work until final acceptance by the Owner and Contractor, respectively.

SECTION 9. CLEANUP.

Subcontractor agrees to keep the premises clean at all times and to remove from the site all rubbish, debris, packing materials, scrap and waste materials resulting from its work under this Subcontract. Subcontractor shall not dispose of any Hazardous Materials in dumpsters provided by Contractor. Subcontractor shall handle and dispose of Hazardous

Materials utilized in connection with their work in accordance with applicable laws and regulations. Subcontractor further agrees to clean and remove, to the satisfaction of the Contractor, all dirt, grease, marks, stains or other imperfections from all finished work and property throughout the Project resulting from the execution of the work required under this subcontract. The Subcontractor shall properly cover and protect the work of others from damage or soiling arising from the performance of the work required under this subcontract, and Subcontractor shall promptly clean, restore, replace, or pay for the replacement of any such work damaged or soiled in the performance of its own work. If the Subcontractor refuses or fails, in a manner and time foresaid, to promptly perform such cleaning and/or repair as directed by the Contractor, the Contractor shall have the right to proceed with such cleaning and/or repair, and Subcontractor, on demand therefore, shall repay the Contractor the actual cost of such work plus a reasonable percentage to cover Contractor's supervision, insurance, tax and overhead; or at the option of the Contractor, the aforesaid charges may be accumulated and deducted from monies otherwise due the Subcontractor under the Subcontract.

SECTION 10. LABOR RELATIONS. Subcontractor shall maintain and comply with labor relations policies which are in conformity with those labor agreements applicable to the Work and to the extent required by the applicable local, state and federal law.

SECTION 11. EQUAL EMPLOYMENT OPPORTUNITY AND ANTI-HARASSMENT POLICY.

Subcontractor acknowledges that as a government contractor, Contractor is subject to various federal laws, executive orders and regulations regarding equal opportunity and affirmative action which may also be applicable to Subcontractor and lower tier subcontractors, suppliers and vendors. Accordingly, the Subcontractor, in performing the work required by this contract, shall not discriminate against or harass any applicant or employee, any other worker or individual on the site, or any minority or disadvantaged business enterprise because of belief, race, creed, color, religion, sex, age, national origin or ethnic background, disability, or sexual orientation, or because she/he is a qualified individual with disabilities or Active-Duty Wartime or Campaign badge Veteran. Unless this Subcontract is exempted by the rules, regulations or orders of the secretary of Labor, Subcontractor shall abide by the applicable requirements of and comply with the applicable provisions of Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; the Vietnam Era Veteran's Readjustment Assistance Act of 1974, as amended; the Immigration Reform and Contract Act of 1986, as amended; the Americans with Disabilities Act of 1990, as amended; Title VII of the Civil Rights Act of 1964, as amended; and the affirmative action provisions set forth in 41 CFR §60-1.4(a), 41 CFR §60-4.3, 41 CFR § 60-250.5, 41 CFR § 60-300.5(a), 41 CFR § 60-741.4, and 41 CFR §60-741.5(a). Subcontractor shall also comply with all other requirements contained in the Code of Federal Regulations that implement these laws and such regulations are incorporated herein. As applicable, these regulations prohibit discrimination against all individuals based on their belief, race, creed, color, religion, sex, age, national origin or ethnic background, disability, or sexual orientation, or because she/he is a qualified individual with disabilities or Active-Duty Wartime or Campaign Badge Veteran. Moreover, these regulations, as applicable require that covered contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to belief, race, creed, color, religion, sex, age, national origin or ethnic background, disability, or sexual orientation, or because she/he is a qualified individual with disabilities or Active-Duty Wartime or Campaign Badge Veteran. Subcontractor shall include the above provisions in all lower tier subcontracts and purchase agreements issued for work to be performed on the site under this subcontract.

It is the policy of Contractor to provide a working environment at its sites and facilities that is free of sexual harassment and harassment, intimidation and coercion based on belief, race, creed, color, religion, sex, age, national origin or ethnic background, disability, or sexual orientation, or because she/he is a qualified individual with disabilities or Active-Duty Wartime or Campaign Badge Veteran. Sexual harassment includes, but is not limited to, unwanted advances with sexual overtones, statements regarding permissiveness or the sexual reputation of an individual, and intimidation or coercion. Subcontractor shall fully comply with this policy in the performance of the Subcontract work. Any offensive materials, including offensive hard hat stickers shall be removed from the project immediately upon notice to Subcontractor. Any person found to have violated this policy shall be removed from site immediately.

SECTION 12. E-VERIFY PROGRAM.

If the Owner is an agency or instrumentality of the United States Government and the contract requires compliance with FAR entitled: "E-Verify Clause" FAR 52.222-54, then FAR 52.222-54 is hereby incorporated by reference into the



Subcontract Agreement, and Subcontractor agrees to comply fully with its requirements regarding verification of employment eligibility of its employees using the E-Verify Program. Subcontractor also agrees to incorporate the E-Verify Clause, by reference, into all subcontracts and purchase agreements of every tier with any subcontractor, supplier, distributor, vendor, or firm that furnishes supplies and services under this subcontract.

SECTION 13. CODE OF BUSINESS ETHICS AND CONDUCT.

If the Owner is an agency or instrumentality of the United States Government and the contract requires compliance with FAR Clause 52.203-13, entitled “Contractor Code of Business Ethics and Conduct”, and FAR 52.203-14 entitled “Display Hotline Poster”, and if Subcontract is for an amount in excess of \$5,000,000.00 and if the Subcontractor performance period is more than 120 days, then FAR 52.203-13 and FAR 52.203-14 are hereby incorporated by reference into Subcontract, and Subcontractor agrees to comply fully with the requirements of those provisions.

SECTION 14. TERMINATION. (i) Should Subcontractor fail to rectify any contractual deficiencies, including failure to pay its creditors, within three (3) working days from receipt of Contractor’s written notice, Contractor shall have the right to take whatever steps it deems necessary to correct said deficiencies and charge the cost thereof to Subcontractor, which shall be liable for the full cost of Contractor’s corrective action, including reasonable overhead, profit and attorney’s fees. (ii) Contractor may at any time and for any reason terminate Subcontractor’s services hereunder at Contractor’s convenience; in the event of termination for convenience, Subcontractor shall recover only the actual cost of Work completed to the date of termination. Subcontractor shall not be entitled to any claim or lien against Contractor or Owner for any additional compensation or damages in the event of such termination.

SECTION 15. INDEMNIFICATION. To the fullest extent permitted by law, and subject to all applicable statutes, regulations, ordinances and all other applicable laws, INCLUDING, BUT NOT LIMITED TO, NMSA 1978 § 56-7-1 (COMMONLY REFERRED TO AS THE "ANTI-INDEMNITY STATUTE"), Subcontractor shall indemnify and hold harmless Owner and Contractor and their respective agents and employees from all claims, demands, causes of action, losses, costs, incurred attorney fees and expenses, judgments, sanctions, fines and/or liabilities of every kind and nature whatsoever either asserted or established (hereinafter “Claims/Losses”) arising out of or related to the work performed by the Subcontractor, its agents and employees under this Agreement (hereinafter “Obligation”). Subcontractor expressly acknowledges its Obligation to indemnify and hold harmless Owner and Contractor from any Claims/Losses arising from the negligence or intentional acts or omissions of Subcontractor, its agents and employees arising out of or related to Subcontractor’s performance of (or under) this Agreement. Subcontractor shall have no Obligation to indemnify and hold harmless Owner and Contractor from Claims/Losses arising from Owner’s or Contractor’s respective sole negligence, their respective intentional acts or omissions or from their acts or omissions unrelated to the Subcontractor’s work performed under this Agreement. The Obligation shall extend to Claims/Losses arising during the performance of this Agreement as well as those Claims/Losses arising thereafter. Thus, the Obligation shall survive the termination of this Agreement, the conclusion of the Subcontractor’s Work on the Project, the Completion of the Project, and for the greatest period permitted by the laws governing this Agreement.

Subcontractor acknowledges that the Obligation is independent, separate and distinct from the requirements of Section 16 **Insurance**. Claims/Losses may be satisfied by insurance procured by Subcontractor, but in the event Claims/Losses are not fully satisfied by insurance, Subcontractor remains bound to this Obligation.

SECTION 16. INSURANCE. Subcontractor shall, at its expense, procure and maintain insurance on all of its operations, with carriers acceptable to Contractor, and in amounts acceptable to Contractor and as required by the prime contract, including but not limited to, the following coverage:

- 16.1 Workers’ Compensation \$500,000.00 or Statutory Requirements, whichever is greater
Each Accident / Policy Limit / Each Employee
- 16.2 Commercial General Liability \$1,000,000.00 Single
\$2,000,000.00 General Aggregate

16.3	Products/Completed Operations	\$1,000,000.00 Single \$2,000,000.00 General Aggregate
16.4	Personal and Advertising Injury	\$1,000,000.00 Per Occurrence
16.5	Bodily Injury/Property Damage (Including Completed Operations)	\$1,000,000.00 Per Occurrence
16.6	Automobile Liability – Any Auto	\$1,000,000.00 Per Occurrence
16.7	Umbrella Excess Liability Coverage	\$1,000,000.00 Per Occurrence
16.8	Asbestos Liability Insurance (if applicable)	\$2,000,000.00 Per Occurrence

If inspection, handling or removal of asbestos, Subcontractor shall also carry Asbestos Liability Insurance in an amount not less than \$2,000,000.00 per occurrence/annual aggregate. The policy shall be written on an “Occurrence Basis” with no sunset clause. Such Insurance shall name CONTRACTOR and OWNER/**GOVERNMENT** as Additional Insureds.

- 16.9 Subcontractor shall require and ensure that Policies issued for Lower Tier Subcontractors shall conform to all the requirements in this Section 12 (Insurance).
- 16.10 All policies shall provide for a thirty (30)-day advance written notice to the Insured as well as any Additional Insured in the event of cancellation, non-renewal, or material change of any policy.
- 16.11 Contractor and Owner shall be named as Additional Insureds with respect to the Commercial General Liability, Products/Completed Operations, Automobile Liability and Umbrella Excess Liability coverage for any liability arising out of or related to the Work performed by Subcontractor (except for Workers Compensation and Employers Liability). Such Additional Insured Endorsements shall be provided so that the coverage afforded to Additional Insureds applies to *both* ongoing operations and products/completed operations.
- 16.12 Insurance Policies shall provide:
 - a. Waiver of Subrogation in favor of Contractor and Owner on General Liability, Products/Completed Operations, Auto, Umbrella and Workers/ Compensation.
 - b. Cross Liability or Severability of Interest Clause (liability policies only).
 - c. That Subcontractor’s insurance is primary with respect to the interest of Contractor, and that any insurance maintained by Contractor Owner is considered excess and Non-contributory.
 - d. All coverage, including additional insured coverage shall be on an occurrence basis and shall be maintained by Subcontractor during the entire term of the Subcontract and for a minimum of five years after completion of the Work provided for herein.
- 16.13 Subcontractor shall provide proof of all insurance coverage required above. If Subcontractor fails to provide Certificates of Insurance for the insurance coverage *and* endorsements required pursuant to this section, Contractor may, at its option, but shall not be obligated to, purchase insurance of the character nature and limits described above. The amount of the premiums for such coverage paid by the contractor will be withheld from monies due the Subcontractor.
- 16.14 All of Subcontractor’s insurance policies shall include coverage for Subcontractor’s obligations of indemnity as described in Section 11.



SECTION 17. BOND. **Required** **Not Required** Subcontractor will furnish the Contractor, at Contractor's request either prior to or during construction, a Performance Bond and a Labor and Material Payment Bond, each a separate form, in the full amount of the total Subcontract Amount. Said Bond(s) shall be furnished by a corporate surety authorized to do and doing business in the state or city of the Project, using the ConsensusDocs™ Forms 706 and 707, CNA Forms G-23211-D and G-23212-C, AGC Forms 606 and 607 or another equivalent form acceptable to the Contractor, and shall also be listed in the current Department of the Treasury Federal Register as a company holding a Certificate of Authority as an acceptable surety on Federal Bonds. Subcontractor shall pay the premium on said Bonds unless otherwise provided in this Agreement. Further, Subcontractor shall be responsible for payment of any additional bond premiums for the increase in the Bonds due to subsequent approved extra work or contract change orders that increase the Subcontract Amount.

Subcontractor shall provide to its Bond surety(ies) a full and complete copy of this Agreement, and shall further provide to its Bond surety(ies) notice of each and every approved extra work item and/or change order that increase the Subcontract Amount hereunder.

Subcontractor's surety(ies) hereby expressly waive(s) any notice of extra work and/or change orders to this Agreement (or to related subcontracts purchase orders and field work orders) related to the Subcontractor's scope of work, Subcontract Amount, extensions of time to perform the Work, or acceleration of the Work.

SECTION 18. CLAIMS RESOLUTION. Disputes arising under this Agreement will not be decided by arbitration, unless the Prime Contract between Contractor and Owner has an arbitration provision and a particular dispute between Contractor and Subcontractor has an issue of fact or law in common with a dispute between the Owner and Contractor that is or that will be the subject of arbitration. To the extent not expressly prohibited by their Contracts with others, arbitrated claims and disputes of Owner, Contractor, Subcontractor and other subcontractors involving a common issue of fact or law shall be heard by the same arbitrator(s) in a single proceeding.

In the event Contractor and Owner or others litigate or arbitrate matters relating to this Agreement, Contractor may, at its sole discretion, either direct Subcontractor to prepare and present Contractor's case to the extent the proceedings are related to this Agreement, or use Contractor's own legal counsel to prepare and present matters relating to this Agreement, in which event Subcontractor shall promptly reimburse Contractor for any and all attorneys' fees, expert fees and costs incurred in connection with any proceedings that are related to this Agreement.

Should the Contractor enter into arbitration with the Owner or others regarding matters relating to this Agreement, Subcontractor shall be bound by the result of the arbitration to the same degree as Contractor.

SECTION 19. WARRANTY. Subcontractor warrants to Owner and Contractor that all materials and equipment furnished shall be new, free from faults and defects and of good quality. Subcontractor hereby warrants its own Work against all deficiencies and defects for the period required by the Prime Contract or the longest period permitted by the law of this State, whichever is longer.

SECTION 20. SPECIAL PROVISIONS. Wage rates will apply to all subcontractors' activities, including those of Subcontractor's third-tier subcontractor(s), and Weekly Certified Payroll Reports will be required before progress payments will be made. Certificates of insurance indemnifying SDV Construction Inc, and the Owner will be required before progress payments will be made.

SECTION 21. HEALTH AND SAFETY. Subcontractor shall assure that all of its employees and lower tier subcontractors receive essential health and safety training. Subcontractor shall attend as described below, daily tool box safety meetings. Subcontractor shall comply and secure compliance by its employees, agents, sub-subcontractors, and its other invitees to the job site, with applicable health and safety laws and regulations, including, without limitation, applicable state and federal OSHA standards, any Health and Safety Plan issued by the Contractor, and the Owner's rules and regulations concerning health, safety and security. Compliance with such requirements shall represent the minimum



standard required of Subcontractor. Subcontractor shall adhere to SDV Construction, Inc.'s Comprehensive Safety Plan provided in the Exhibits.

The Safety and Health Plan mentioned above is required reading for all employees and subcontractors prior to starting work under any contract, and subcontractors are contractually obligated to comply with this plan.

Additionally, All Subcontractors and Subcontractor personnel will be required to attend an SDV Superintendent conducted Daily Work Coordination Meeting; held onsite at the beginning of SDV's work shift @7:00 A.M., or as determined by SDV Project Manager and Superintendent. Employees assigned to work at a site will not be allowed to do so unless they have attended that days meeting and signed the meeting sign in sheet. Finally, a Foreman's coordination meeting will be held weekly, to be scheduled at the Superintendent and Project Managers discretion. Attendance and sign in at this meeting by the subcontractors lead is Mandatory.

Please be aware, on the second Friday of every month SDV's job sites will not open until 8:30 A.M. SDV personnel attend a mandatory monthly safety meeting.

SECTION 22. MATERIAL STORAGE. Subcontractor shall be responsible for storage of its materials on-site. All materials shall be stored in a safe and organized manner.

SECTION 23. INDEPENDENT CONTRACTOR. Subcontractor shall be an independent contractor in all its activities hereunder and shall not be considered the Contractor's employee for any purpose. Subcontractor is not authorized to represent or otherwise bind Contractor in any dealing between the Subcontractor and any third parties.

SECTION 24. RECORD RETENTION AND AUDIT. Subcontractor shall retain records, documents and files related to costs of Work performed under this Agreement for a period of not less than seven (7) years following the date of final payment. Subcontractor shall permit access to such records if requested by Owner or Contractor to substantiate billings or if required for audit under Contractor's Prime Contract.

SECTION 25. PAYMENT. Contractor shall pay Subcontractor for the full, faithful and prompt performance of this Agreement; however, Contractor's payment to Subcontractor will be made to Subcontractor when Contractor receives payment from Owner related to Subcontractor's pay requests, or upon completion of the Project, whichever occurs first. Exhibits F and G – Partial and Final Lien Waivers will be required to be signed before payments will be released.

SECTION 26. ASSIGNMENT. This Agreement is for the personal services of Subcontractor to Contractor, and Subcontractor shall not assign, transfer or otherwise convey this Agreement, in whole or part, including any rights to payment or monies hereunder, or Subcontractor's duties under this Agreement, to any person or entity without the prior written consent of Contractor.

SECTION 27. ADDITIONAL GENERAL CONDITIONS.

SECTION 27.1: Governing Law This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico, unless otherwise agreed in writing by and between the Contractor and Owner in the Prime Contract, or unless prohibited by the laws of the state wherein the Work is performed.

SECTION 27.2: Venue/Jurisdiction: This Agreement shall be deemed made in the State of New Mexico. Subcontractor hereby expressly agrees that any civil action or arbitration regarding the interpretation, breach and/or enforcement of this Agreement, in whole or part, shall be filed in the appropriate court or forum in New Mexico.

SECTION 27.3: Contract Survives Void Provision: If any term, provision, obligation, right, covenant or condition of this Agreement (hereinafter “provisions”) is held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, released or invalidated.

SECTION 27.4: Entire Agreement: This Agreement contains the entire agreement between the parties, and all prior or contemporaneous written or oral communications, negotiations, acts, work performed, or payments made prior to the execution of this Agreement shall be deemed superseded by this Agreement.

SECTION 27.5: Attorneys’ Fees: Should any legal action or proceedings be required to enforce this Agreement and/or the Contract Documents, or to recover damages for breach thereof, the prevailing party shall be entitled to recover as reimbursement the attorneys’ fees and costs of litigation actually incurred in said legal action or proceeding.

SECTION 27.6: Notices: Any and all notices, demands or other matters required or permitted by this Agreement to be served on, given to or delivered to either party hereto by the other party shall be in writing, and shall be deemed duly served when personally delivered to the party to whom it is addressed or, in lieu of such personal service, when deposited in the United States Mail, certified mail, return receipt requested, postage prepaid, addressed to Contractor at the address set forth at page 1 of this Agreement and to Subcontractor at the address set forth at page 1 of this Agreement. Notices personally served shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated on the 5th day after mailing or upon receipt, whichever occurs first.

SECTION 27.7: Waiver: Unless stated in writing by Contractor, the failure of Contractor to enforce any of the terms, provisions, rights, obligations, covenants or conditions of this Agreement shall not constitute a waiver of the same, nor shall it relieve Subcontractor from its obligations thereunder: any waiver given in writing in a particular instance shall not be deemed a continuing waiver under this Agreement or under future agreements between the parties.

SECTION 27.8: Licensure: Subcontractor warrants and certifies to Contractor that it has been and will remain at all times properly licensed in the governmental jurisdiction where the Work is being performed, and that it has obtained all permits, business licenses and other such documents that may be required by the appropriate governmental authorities.

SECTION 27.9: Confidentiality: Subcontractor shall treat all information provided to it in connection with this Agreement, and the Work performed hereunder, as proprietary and confidential, whether so expressly identified or not, and shall not disclose the whole, or any part thereof, to any third parties, without the prior written consent of Contractor.

SECTION 23.10: Status of Subcontractor: Subcontractor enters into this Agreement, and will remain throughout the term of the Agreement, as an independent contractor.

SECTION 27.11: Codes, Ordinances and Regulations: Subcontractor expressly warrants and represents that it has examined the Assessment Forms and specifications, all other Contract Documents and the Prime Contract for full compliance with all applicable laws, codes, ordinances, rules and regulations. All Work performed by Subcontractor must comply with all applicable laws, codes, ordinances, rules and regulations, regardless of any contrary indications or instructions (direct or implied) in this Agreement, the plans and specifications, the Contract Documents and/or the Prime Contract.

SECTION 27.12: Permits: The costs of any required specialty permits are included in the Subcontract Amount to be paid to Subcontractor. It is Subcontractor’s responsibility to schedule and obtain all required inspections pertinent to the scope of work and trade, including meeting with inspectors and arranging for walk-through Inspections.

SECTION 27.13: Substance Use Prohibited: Under no circumstances are alcoholic beverages or illegal substances to be brought to or consumed on the Project by any employee or subcontractor of Subcontractor.

SECTION 27.14: Patent and Copyright Fees and Royalties: Subcontractor shall pay for all fees and royalties, and assume all costs incidental to the use in the performance of the Work of any invention, design, process, product, article, device or composition that is the subject of patent rights or copyrights held by others, and shall, pursuant to Section 11 herein, indemnify, defend, and hold harmless Contractor, Owner and anyone directly or indirectly employed by them from and against all claims, liabilities, damages, losses and expenses, whether incurred or made by Owner, its parent company, any such employee or any third person, including, without limitation, attorney's fees, arising out of any infringement of any patent rights or copyrights held by others, and shall indemnify, defend and hold harmless Contractor, Owner and anyone directly or indirectly employed by them from and against all claims, liabilities, attorney's fees arising out of any infringement of any patent rights or copyright incident to such use or resulting from the incorporation into the Work of any such invention, design, process, article, device or composition, and shall defend all such claims in connection with any alleged infringement of any such rights, unless otherwise specifically provided in the Contract Documents.

SECTION 27.15: No Greater Remedies: Subcontractor's legal and/or equitable remedies hereunder against Contractor for any default, breach, rescission and recovery of alleged damages shall be no greater than those remedies afforded Contractor against Owner either under the terms of the Prime Contract or the laws applicable to the Project and this Agreement.

SECTION 27.16: Records, Accounts and Audits: Subcontractor agrees to keep one complete set of records and books of account in the English language on a generally recognized cost-accounting basis satisfactory to Contractor, showing all expenditures of whatever nature made pursuant to this subcontract, and to maintain such records for the period of time after the completion of this project as may be required by the terms of the General Contract. Subcontractor shall furnish Contractor and Owner access to such records, information and data when and as required by the General Contract and as may otherwise be reasonably required at no additional cost to Contractor or Owner. Contractor and Owner shall at all reasonable times be afforded the opportunity to inspect and/or audit the books and records of Subcontractor to the extent required by the terms of the General Contract or if this subcontract is terminated by Contractor. Subcontractor agrees to furnish cost and pricing information required by the General Contract in sufficient time to permit Contractor to submit a breakdown of contract lump-sum prices for payment purposes under the General Contract.

SECTION 27.17 Risk Of Loss It is the Subcontractor's responsibility to determine whether builders risk coverage has been placed to cover Subcontractor's interest. If a policy is issued and provides coverage for the Subcontractor's Work, a waiver of subrogation will be granted allowing the issuer to subrogate against the Subcontractor for a loss or damage to that portion of the covered project in which the subcontractor has no interest, and which loss or damage is caused by the fault of the Subcontractor. In addition, Subcontractor's equipment and tools will not be covered by any builders risk policy. Subcontractor should take whatever action they deem appropriate to cover this risk.

If not provided, all work covered by this Agreement done at the site or in preparing or delivering materials or equipment to the site shall be at the sole risk of Subcontractor until the completed Work is accepted by the Contractor.

-END- GENERAL CONDITIONS



**EXHIBIT A
STATEMENT OF WORK**

Prime Contractor
SDV Construction Inc
8912 Adams St. NE
Albuquerque, NM 87113
(505) 883-3176 — tel
(505) 888-8914 — fax

Subcontractor

(505) — tel
(505) — fax

Project Name:

SDV Construction Project No.:

SDV Construction Project Manager:

1. The Subcontractor covenants, promises and agrees to furnish all material and personal property and to diligently and fully perform all work hereinafter described for the construction of *(Project Name)* hereinafter referred to as the Project, to be located at *(Project Location/Address)* for the use and benefit of *(Owner)*, hereinafter referred to as the Owner, in strict compliance with the Contract, between Contractor, the Owner entered into and hereby made part of this Subcontract by reference; all to the satisfaction of the Contractor, the Owner, and the representative authorized by the Owner to interpret and judge the performance of the aforesaid Contract and named therein as architect, engineer, contracting officer, or otherwise, when such representative shall have been designated as the Owners Authorized Agent; and all which shall be done in timely, faithful and strict compliance with this Subcontract and all Subcontract Documents.

Subcontractor agrees to furnish all necessary management, supervision, labor, materials, tools, supplies, equipment, plant, services, engineering, testing and /or any other act or thing to diligently and fully perform and complete portions of work described as follows:

Complete all *(Description of work)* work as described in the issue for construction plans and specifications for the Base Bid as prepared by *(Architects Name)* dated *(Date)*, including Addenda *(Numbers)*, *(Geotech Report if available)*, *(Other contract bid Docs)*.

All work and materials described in Division *00 (as applicable)*; Division *01 (as Applicable)*;

(Describe Work)

Are included within the scope of this Subcontract with the following being the only exceptions:



- 1.
- 2.
- 3.

Your attention is specifically called to the following items, which are included in this subcontract, but without limiting scope of work as provided above:

- 1.
- 2.
- 3.

The Value of this subcontract is as follows:

Base Bid:
 Bond:
 Options/Alternates:
 Total:

2. Subcontractor will provide appropriate Personal Protective Equipment to its personnel during the construction process in compliance with all applicable local, state and federal requirements.
3. Subcontractor will provide adequate storage for its own materials and equipment. Subcontractor's personnel must stage materials and equipment, and park, in the areas designated by the SDV Superintendent for such purposes.
4. Subcontractor shall coordinate with other trades to avoid schedule and installation conflicts and achieve the project schedule. Subcontractor acknowledges the project Start Date of _____ and the Completion per the attached project schedule.
5. Subcontractor will coordinate and provide timely delivery of materials and equipment to meet construction schedule and deadlines and durations set forth in this Subcontract. Subcontractor will coordinate jobsite deliveries with SDV Project Superintendent at least 24 hours in advance, and will provide timely delivery of materials to meet construction schedule.
6. Subcontractor warrants that its employees are legal residents, and that it possesses all required certifications for all personnel on site.
7. Subcontractor will maintain a safe, clean and orderly worksite at all times. Please note that SDV will exercise our right to complete any required clean-up, should it be necessary, and charge the costs to the appropriate subcontractor(s).
8. Subcontractor shall work only in approved areas as designated by SDV Project Manager.

Contractor

Subcontractor



9. Subcontractor and its subcontractors are required to timely submit full and complete certified payrolls based on applicable Wage Rates. Subcontractor shall pay all labor at the corresponding prevailing wage rate for each trade.
10. Any additional wage classifications required must be approved by the Project Manager in writing prior to the commencement of any work to which such additional classifications apply. Wage Rates provided are not authorization to proceed with those trades until and unless approved in writing, in advance, by SDV Construction.
11. Overtime must be authorized in advance by SDV Construction project manager. Overtime starts at the conclusion of the first 40 hours worked in a week. No personnel may work longer than 14 hours in a 24-hour period.



EXHIBIT B

PRELIMINARY PROJECT SCHEDULE

A project schedule is provided for your use. Schedules are subject to frequent revision and you are responsible for familiarizing yourself with the current schedule and progress of the work to arrange your work activities to include adequate labor, materials and equipment accordingly.



EXHIBIT C
CHANGE ORDER REQUEST

Quotation to _____ Date _____
Address _____ Change Order Number _____
Address _____ Job Number _____
City, ST, Zip _____
Attention _____
Job Name _____

Description: _____

Table with 4 columns: Item Label, Description, Amount, and Total. Rows include A Material and Equipment, B Direct Labor, C Indirect Costs, D Equipment and Tools, E Subtotal, F Overhead at ___% of line E, G Subcontracts, H Overhead at ___% of line G, I Subtotal, J Profit at ___% of line I, K Subtotal, L Bond Premium at ___% of line K, M Gross Receipts Tax/Sales Tax, N Total Cost Estimate Lines K thru M (Add/Deduct).

- O Exclusions:
P [] This quotation is valid for ___ days.
Q [] We require ___ days extension of the contract.
R [] We are proceeding with this work per your authorization.
S [] Please forward your confirming change order.

Signed by _____
Project Manager

Contractor Subcontractor



EXHIBIT D
SCHEDULE OF VALUES

See attached schedule of values showing the items you will bill against for monthly progress payment requests.

This schedule shall be used as a basis for making payments unless it is found in error or conflict with the procedures or determinations of the Owner or its representative regarding partial payments to the Contractor.



EXHIBIT E
APPLICATION FOR PAYMENT/PROGRESS BILLING

To: SDV Construction, Inc.

From:

Project:

Subcontract No.:

Payment Request No.: _____ Period: _____ to _____

Statement of Contract Account

1. Original Contract Amount	\$ _____
2. Approved Change Orders	\$ _____
3. Adjusted Contract Amount	\$ _____
4. Value of Work Completed to Date	\$ _____
5. Less Previous Requested	\$ _____
6. Amount Due This Request	\$ _____

Certificate of the Contractor

I hereby certify that the work performed and the materials supplied to date, as shown above, represent the actual value of accomplishment under the terms of the Contract (and all authorized changes thereto).

I have no claims beyond the amount provided in the Contract and change orders (previously approved, if any, in writing by Owner).

I also certify that payments, less applicable retention, have been made through the period covered by previous payments received, to (1) all my subcontractors (sub-subcontractors) and (2) for all materials and labor used in or in connection with the performance of this Contract. I further certify I have complied with all applicable requirements, including, but not limited to, federal, state and local tax laws, wage laws or contracts, Social Security laws, Unemployment Compensation laws and Workers' Compensation laws insofar as applicable to the performance of this Contract. I will defend (by an attorney of your choice), hold harmless and indemnify you for any lien claims, or other claims, arising from my work. Nothing herein, nor payment by SDV Construction, modifies or releases any claims SDV Construction may otherwise have at law or by contract, whether before or after the execution of this Application for Payment.

Subcontractor

By: _____

Title: _____

Contractor

Subcontractor



**EXHIBIT F
PARTIAL LIEN WAIVER**

To All Whom It May Concern:

Whereas, the undersigned has been employed by SDV Construction Inc. to furnish labor, skill, services, materials and/or equipment for _____ work for the _____.

Now therefore, this _____ day of _____ 20____, for and in consideration of the sum of \$_____, paid and received, the undersigned does hereby waive and release any lien rights to, or claim of lien with respect to and on, said above-described premises, and the improvements thereon, and on the monies or other considerations due or to become due from the owner, on account of labor, skill, service, material and/or equipment furnished by the undersigned to or for the above-described premises and improvements thereon to this date without prejudice to assert any lien as to future delivery, performance of furnishing that increase total value delivered, performed or furnished to more than the amount stated above, to the full extent allowed by law.

Signature

Date

Title

SUBSCRIBED AND SWORN BEFORE ME by _____

On this the _____ day of _____ 20____, to certify which witness my hand and seal of office.

(NOTARY SEAL)

Notary Public in and for the State of _____

Contractor _____
Subcontractor



**EXHIBIT G
FINAL LIEN WAIVER**

To All Whom It May Concern:

Whereas, the undersigned has been employed by SDV Construction Inc. to furnish labor, skill, services, materials and/or equipment for _____ work for the _____.

Now therefore, this _____ day of _____ 20____, for and in consideration of the sum of \$_____, paid and received, the undersigned does hereby waive and release any lien rights to, or claim of lien with respect to and on, said above-described premises, and the improvements thereon, and on the monies or other considerations due or to become due from the owner, on account of labor, skill, service, material and/or equipment furnished by the undersigned to or for the above-described premises and improvements thereon to this date without prejudice to assert any lien as to future delivery, performance of furnishing that increase total value delivered, performed or furnished to more than the amount stated above, to the full extent allowed by law.

Signature

Date

Title

SUBSCRIBED AND SWORN BEFORE ME by _____

On this the _____ day of _____ 20____, to certify which witness my hand and seal of office.

(NOTARY SEAL)

Notary Public in and for the State of _____

Contractor

Subcontractor



EXHIBIT H
COMPREHENSIVE SAFETY PLAN
(PROVIDED IN PDF FORMAT)

SDV Construction Inc. and its subcontractors are obligated to work together and provide a safe workplace for all employees. Compliance with the rules and regulations contained in 29 CFR 1926 by all subcontractors is a mandatory requirement. All personnel will wear proper work clothing and footwear when on the construction site. No shorts, sleeveless shirts, tennis shoes, non-work phones, or radios will be allowed on site.

All subcontractors are required to understand and follow the attached SDV safety plan. Below are several critical items for special consideration.

RESPONSIBILITY: each subcontractor is completely responsible for their own employees, including assuring they are not exposed to hazards even if the hazards are the result of the operations of another subcontractor. SDV reserves the right to take necessary actions to remove employees from hazardous situations or eliminate hazards. The subcontractor agrees to take prompt corrective action at their expense.

PRE-TASK PLANS (PTP): PTP's are required to be completed at the start of each day and whenever the crew's task changes significantly throughout the day. The PTP must be signed by all crewmembers and be posted in the vicinity of the work being accomplished.

TOOL BOX SAFETY MEETINGS: Tool box safety meetings must be accomplished daily as part of the PTP process.

PERSONAL PROTECTIVE EQUIPMENT (PPE): PPE must be worn at all times on SDV jobsites. At a minimum Hardhats, Safety Glasses, and Hard sole Work shoes must be worn.

TRENCHING/EXCAVATION/SCAFFOLDING USE: Each subcontractor engaged in any of these activities must have a Competent Person on site at all times. Proof of Competent Person training must be turned in to the SDV Project Manager or Superintendent prior to starting any of these activities.

FALL PROTECTION: SDV has a detailed fall protection program for its employees and employees of all subcontractors. All employees must be protected from fall hazards by guardrails, personal protective equipment, or alternative approved means. SDV Safety manual has a detailed fall protection plan that must be followed by all employees and subcontractors employees.

HOUSEKEEPING: It is the subcontractors' responsibility to keep a clean and orderly worksite at all times. Subcontractors are responsible to remove all debris from the site daily. SDV reserves the right to clean the worksite if the subcontractor fails to and back charge the subcontractor for the cost.

COMMUNICATION: All personnel will comply with OSHA Standard 1926.59. Safety Data Sheets (SDS), for each hazardous chemical/substance that is brought on site and employees are exposed to must



be in the foreman's possession and a copy provided to the SDV Project Superintendent. All subcontractors are required to have a Hazardous Communication Program in place and have all employees trained.

SAFETY DIRECTIVES: Subcontractors shall comply with SDV's safety directives and SDV personnel have the right to enforce all provisions of the SDV safety program and if necessary utilize the Progressive Safety Disciplinary policy outlined in Section 5.3 of the SDV Comprehensive Safety Plan provided.

HAZARDOUS MATERIALS (Asbestos, Lead Paint, Etc.) SDV makes every effort to have these substances abated by a competent/qualified contractor before a jobsite is occupied. If a subcontractor encounters a hazardous substance they agree to stop work immediately and notify the SDV Superintendent. Also, the subcontractor will not bring asbestos or asbestos containing materials on the jobsite.

BAKER STYLE SCAFFOLDS/STILTS: Stilts are not allowed on SDV jobsites. Baker scaffolds may be utilized after written approval by the SDV Superintendent. Personnel utilizing Baker Style scaffolds must follow all manufacturers' recommendations and OSHA standards at all times and will be removed from the jobsite if they are found surfing the scaffold. The proper use of baker style scaffold must be addressed in the Pre Task Plan daily.



EXHIBIT J
LIST OF APPLICABLE FAR CLAUSES
(REFER TO WWW.ACQUISITION.GOV/?Q=BROWSEFAR)