

Henry P. Roybal
Commissioner, District 1

Miguel Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

DATE: *September 9, 2015*

TO: *Board of County Commissioners*

FROM: *Bill Taylor, Purchasing Manager* 

VIA: *Katherine Miller, County Manager* 
Jeff Trujillo, ASD Director
Adam Leigland, Public Works Director

ITEM AND ISSUE: BCC Meeting September 29, 2015

REQUEST APPROVAL OF CONSTRUCTION CONTRACT NO. 2015-0365-PW/MM BETWEEN SANTA FE COUNTY AND SALLS BROTHERS CONSTRUCTION, INC. IN THE AMOUNT OF \$1,295,301.87, EXCLUSIVE OF GRT FOR THE OLD SANTA FE TRAIL ROAD IMPROVEMENTS AND WATERLINE TL2N CONSTRUCTION AND REQUEST SIGNATURE AUTHORITY BE GRANTED TO THE COUNTY MANAGER TO EXECUTE THE PURCHASE ORDER. (PURCHASING/BILL TAYLOR)

SUMMARY:

The Purchasing Division and the Public Works Department are requesting County Manager signature approval on the Salls Brothers Construction, Inc., purchase order in the amount of \$1,295,301.87 exclusive of GRT for the Old Santa Fe Trail Road Improvements and Waterline TL2N contract No. 2015-0365-PW/MM.

BACKGROUND:

Molzen Corbin was contracted to provide full design services for the road improvements for Old Santa Fe Trail and Waterline TL2N, budgeted from the 2013 Series General Obligation Bonds.

The Purchasing Division issued an Invitation for Bid (IFB) # 2015-0365-PW/MM on July 26, 2015 for construction services. Four (4) bids were received from the following Bidders:

Salls Brothers Construction, Albuquerque, NM
RMCi Construction, Albuquerque, NM
Century Club Construction, Albuquerque, NM
Sparling Construction, Albuquerque, NM

The Bids ranged from \$ 1,295,301.87 to \$1,748,385.25 with Sall's Brother Construction being to lowest responsive bid.

The improvements will include 0.25 miles of shoulder construction, drainage and traffic improvements on El Gancho Way, 0.9 miles of construction, drainage and traffic improvements on Old Santa Fe Trail, 0.25 miles of 12 inch waterline and appurtenances on El Gancho Way and 1.2 miles of 12 inch waterline appurtenances on Old Santa Fe Trail.

ACTION REQUESTED:

The Purchasing Division and the Public Works Department are requesting BCC approval of contract no. 2015-0365-PW/MM with Salls Brothers Construction, Inc. in the amount of \$1,295,301.87 exclusive of GRT for the Old Santa Fe Trail Road Improvements and Waterline TL2N and request signature authority be granted for the County Manager to execute the purchase order.

**AGREEMENT BETWEEN SANTA FE COUNTY AND CONTRACTOR
FOR CONSTRUCTION SERVICES**



**SANTA FE COUNTY
ADMINISTRATIVE SERVICES DEPARTMENT
PURCHASING DIVISION
2014 EDITION**

[Changes, additions, deletions and/or any modifications other than those agreed upon by the parties upon execution of this contract, without the written consent of Santa Fe County shall render this document null and void.]

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION.

Hereafter "County":

Katherine Miller, County Manager
Santa Fe County
PO Box 276
Santa Fe, New Mexico 87504-0276
TELEPHONE: 505-986-6200
FAX: 505-995-2740

Hereafter "Contractor":

Fred H. Salls
Salls Brothers Construction, Inc.
PO Box 66239
Albuquerque, New Mexico 87193
TELEPHONE: 505-873-8780
E-MAIL ADDRESS: fsalls@sallsbrothers.com

Table of Contents

	Page No
RECITALS	10
Article 1 The Contract Documents	10
1.1 Documents	10
1.2 Certificates and Documentation	10
Article 2 The Work	11
2.1 The Work.....	11
Article 3 Effective Date, Time of Commencement, Substantial Completion and Amendments	11
3.1 Effective Date	11
3.2 Time of Commencement	11
3.3 Substantial Completion.....	11
3.4 Time for Completion and Liquidated Damages	11
3.5 Amendments	13
Article 4 Contract Sum	13
4.1 Lump Sum	13
4.2 Contract Amount	13
Article 5 Progress Payments	14
5.1 Progress Payments	14
Article 6 Final Payment	15
6.1 Final Payment	15
6.2 Acceptance of Final Payment Constitutes Release.....	15
 GENERAL CONDITIONS	
1. Definitions	17
1.1 Application for Payment.....	17
1.2 Change Order.....	17
1.3 Calendar Day	17
1.4 Contract Period	17
1.5 Contractor	17
1.6 Construction Documents	17
1.7 Construction Schedule.....	17
1.8 Day.....	17
1.9 Labor and Material Payment Bond.....	17

1.10	Lump Sum Agreement.....	18
1.11	Lump Sum Bid.....	18
1.12	Lump Sum Contract.....	18
1.13	Payment Bond.....	18
1.14	Performance Bond	18
1.15	Progress Payment.....	18
1.16	Progress Schedule.....	18
1.17	Punch List	18
1.18	Schedule of Values	18
1.19	Services.....	18
1.20	Stipulated Sum Agreement.....	19
1.21	Subcontractor	19
1.22	Unit Price Contract	19
1.23	Unit Prices	19
1.24	Working Day	19
1.25	Work on the Project.....	19
2.	Contract and Contract Documents.....	19
2.1	Entire Agreement.....	19
2.2	Relationship of Contract Documents.....	19
2.3	Conflicting Conditions.....	19
3.	Plans, Specifications and Addenda.....	20
3.1	The plans, specifications and addenda.....	20
3.2	Certificates and Documents Incorporated	20
4.	Contract Security - Bonds.....	20
4.1	Performance Bond	20
4.2	Payment Bond.....	20
4.3	Additional or Substitute Bond	20
4.4	Labor and Material Bond.....	20
5.	Terms and Meanings.....	20
5.1	Words and Phrases.....	21
5.2	Gender, Singular/Plural	21
5.3	Captions & Section Headings.....	21
5.4	Interchangeable Terms.....	21
6.	Compliance with Applicable Law, Choice of Law	21
6.1	Agreement governed by the laws of the State of New Mexico	21
6.2	Contractor shall comply with all applicable laws, ordinances & regulations.....	21
6.3	Minimum Wage Rate.....	21

6.4 Litigation shall be federal and state district courts of New Mexico21

6.5 Bribes, Kickbacks and Gratuities21

6.6 New Mexico Tort Claims Act.....21

6.7 Provision Required by Law Deemed Inserted22

7. Effective Date & Term22

7.1 Agreement shall become effective.....22

7.2 Substantial Completion.....22

8. Termination.....22

8.1 Termination of Agreement for Cause22

8.2 Termination for Convenience22

8.3 Right of the County to Terminate Contract23

9. Appropriations & Authorizations23

10. Amendments – Change Orders23

11. Indemnification.....23

11.1 Contractor shall indemnify23

11.2 County shall have right to control and participate in defense
of demand or suit24

11.3 Contractor’s obligations shall not be limited by provisions of
insurance policy24

12. Aggrievement Procedure During Contract Administration24

12.1 Claims, Disputes or other matters.....24

12.2 Settlement Agreement24

12.3 Contractor shall carry on Work during dispute resolution proceedings24

13. Dispute Resolution.....24

13.1 Mediation.....24

13.2 Mediation Process.....24

13.3 Litigation.....25

14. Insurance.....25

14.1 Insurance required before contractor commences work2

14.2 Proof of Carriage of Insurance.....25

14.3 General Conditions25

14.4 General Liability Insurance, including automobile25

14.5 Subcontractor’s Public Liability & Property Damage Insurance25

14.6 Worker’s Compensation Insurance.....25

14.7 Scope of Insurance and Special Hazards26

14.8 Builder’s Risk Insurance.....26

14.9 Increased Limits.....26

14.10 Additional Insured26

15. Independent Contractor26

15.1 Contractor and its agents are independent contractors26

15.2 Contractor shall not subcontractor without written approval27

15.3 Contractor shall maintain detailed time records27

16. Conflict of Interest of Officers or Employees of the Local Jurisdiction27

16.1 No officer or employee shall have any interest shall have any interest.....27

16.2 No official of the County shall be interested personally in this contract.....27

16.3 Contractor warrants no conflict of interest27

17. Assignment27

17.1 Contractor shall not assign or transfer any interest in this Agreement.....27

18. Subcontracting27

18.1 Contractor shall not subcontract without written notice to County.....27

18.2 Contractor shall provide listing of subcontractors.....28

18.3 Contractor shall adhere to all provisions of Subcontractor’s Fair Practices Act.....28

18.4 Contractor shall provide Non-Collusion and EEO forms for all subcontractors28

18.5 Contractor shall not award any work without written notice to County.....28

18.6 Contractor shall be responsible for acts and omissions of subcontractors28

18.7 Contractor shall cause appropriate provisions in all subcontracts.....28

18.8 Nothing shall create contractual relation between County and subcontractors28

18.9 New Mexico Little Miller Act28

19. Personnel.....28

19.1 All work performed by Contractor28

19.2 Contractor shall secure all qualified personnel required to perform work29

20. Notices29

20.1 Notice required shall be in writing29

20.2 Nothing shall preclude the giving of written Notice29

21. Release29

22. Waiver.....29

CONDITIONS OF THE WORK

1. Additional Instructions & Detail Drawings30

1.1 Additional instructions & drawings as necessary30

2. Shop or Setting Drawings30

2.1 Contractor shall submit copies of shop or setting drawing.....30

3. Materials, Services and Facilities30

4. Contractor’s Title to Materials.....31

4.1 No materials or supplies shall be purchased by subject to chattel mortgage31

5. Inspection and Testing of Materials31

5.1 All material and equipment shall be subject to adequate inspection31

5.2 Materials of construction shall be subject to inspection and testing.....31

6. “Or Equal” Clause31

6.1 To establish a standard.....31

7. Patents31

7.1 Patented or Unpatented Invention31

7.2 License or Royalty Fees.....31

7.3 Copyrighted Design31

8. Surveys, Permits and Regulations32

8.1 County will furnish all surveys32

8.2 Contractor shall procure and pay all permits, licenses and approvals32

8.3 Contractor shall comply with all laws, ordinances, rules orders & regulations32

9. Contractor’s Obligations.....32

9.1 Contractor shall perform all work and furnish all materials,
equipment, machinery.....32

9.2 Contractor shall complete entire work.....32

10. Weather Conditions32

10.1 Temporary suspension of Work.....32

11. Protection of Work and Property - Emergency33

11.1 Contractor shall safeguard County’s property33

11.2 Emergency which threatens loss or injury of property33

11.3 Contractor shall act as instructed or authorized.....33

11.4 Reimbursement claimed by Contractor33

12. Inspection.....33

12.1 County shall be permitted to inspect all work, materials, payrolls, records33

13. Reports, Records and Data33

13.1 Contractor shall submit to County schedules, payrolls, reports, estimates33

14. Superintendent by Contractor33

14.1 Contractor shall employ a construction superintendent.....33

15. Changes in Work34

15.1 No changes in Work without written approval.....34

16. Extras34

16.1 County may order extra Work34

17. Inspection of Services.....34

17.1 Contractor shall provide inspection system.....34

17.2 County has the right to inspect and test all services34

17.3 Contractor shall furnish all reasonable facilities and assistance.....34

17.4 If any services do not conform with Contract requirements.....35

17.5 County may perform the services and charge Contractor.....35

18. Correction of Work.....35

18.1 Work shall be made good if failure to meet County approval.....35

19. Warranty of Construction35

19.1 Warrants that Work conforms with Contract requirements.....35

19.2 One year warranty.....35

19.3 Contractor shall remedy any failure to conform.....35

19.4 Contractor shall restore any Work damaged36

19.5 County shall notify Contractor of any failure, defect or damage36

19.6 If Contractor fails to remedy.....36

19.7 Contractor shall obtain all warranties, executed in writing36

19.8 Contractor’s warranty has expired.....36

19.9 Defect in County furnished material or design.....36

19.10 County’s rights under the Inspection and Acceptance Clause.....36

20. Subsurface Conditions Found Different36

20.1 Subsurface conditions materially differing from plans and specifications.....36

21. Claims for Extra Cost36

21.1 No claim for extra work or cost.....36

22. Construction Schedule and Periodic Estimates37

22.1 Estimated construction progress schedule.....37

22.2	Progress Schedule.....	37
23.	Assignments.....	37
23.1	Contractor shall not assign.....	37
24.	Mutual Responsibility of Contractors.....	37
24.1	Acts of Negligence	37
25.	Separate Contract.....	38
25.1	Coordination with other contractors	38
26.	Architect/Engineer's Authority	38
26.1	Orders & Directions to execution of the Work.....	38
26.2	Decisions concerning meaning and intent	38
27.	Stated Allowances	38
27.1	Contract sum for all allowances	38
28.	Use of Premises and Removal of Debris	39
28.1	Contractor undertakes at own expense	39
29.	Quantities of Estimate.....	39
29.1	Increase and decrease of estimated quantities	39
30.	Lands and Right-of-Way	39
30.1	County shall obtain all lands and rights-of way	39
31.	General Guaranty.....	39
31.1	Work not done in accordance with contract documents	39
32.	Protection of Lives and Health	40
32.1	Protection of persons and property	40
33.	Interest of Member	40
33.1	BCC shall not have any share or interest.....	40
34.	Other Prohibited Interests	40
34.1	No County official or others to be personally interested in Contract	40
35.	Use & Occupancy Prior to Acceptance by County	40
35.1	Partial Occupancy by County.....	40
	Attachment A Bid Sheets	41
	Attachment B Addenda and Modifications.....	42
	Exhibit A Project Manual	43
	Exhibit B Technical Specifications.....	44

Exhibit C	Labor and Material Payment Bond.....	45
Exhibit D	Performance Bond	47
Exhibit E	Assignment of Antitrust Claims	49
Exhibit F	Certificate of Liability Insurance.....	50
Exhibit G	Notice of Contract Award.....	51
Exhibit H	Notice to Proceed	52
Exhibit I	Change Order)	53
Exhibit J	Certificate of Substantial Completion	55

RECITALS

WHEREAS, in accordance with Section 13-1-103 through Section 13-1-110 NMSA 1978, the County issued Invitation for Bid (IFB) No. 2015-0365-PW/MM for construction services for Old Santa Fe Trail Road Improvements and Waterline TL2N;

WHEREAS, the Contractor submitted its bid, dated August 28, 2015 in response to IFB No. 2015-0365-PW/MM;

WHEREAS, the County is authorized to enter into a construction contract for the Project pursuant to Sections 13-1-100, NMSA 1978;

WHEREAS, the Contractor hereby represents that it is a licensed contractor of the State of New Mexico pursuant to Chapter 60, Article 13 NMSA 1978;

WHEREAS, the Owner agrees to hire the Contractor, and the Contractor agrees to provide Construction Services as required herein for the Project in accordance with the terms and conditions set forth in this Agreement; and,

WHEREAS, the County requires the services of the Contractor, and the Contractor is willing to provide these services and both parties wish to enter into this Agreement.

ARTICLE 1 THE CONTRACT DOCUMENTS

1.1 DOCUMENTS

The contract documents consist of the following:

- Agreement between County and Contractor
 - General Conditions of the Construction Contract
 - Conditions of the Work of the Construction Contract
 - Bid Sheet
 - Addenda and Modifications issued
 - before and after execution of this Contract
- Attachment A
Attachment B

1.2 CERTIFICATES AND DOCUMENTATION

The following certificates and documentation are hereby attached as exhibits as follows:

- Project Manual
 - Technical Specifications as listed in Plan Set
 - Labor and Material Payment Bond
 - Performance Bond
 - Assignment of Antitrust Claims
 - Certificate of Insurance
- Exhibit A
Exhibit B
Exhibit C
Exhibit D
Exhibit E
Exhibit F

Notice of Award
Notice to Proceed
Change Order
Certificate of Substantial Completion

Exhibit G
Exhibit H
Exhibit I
Exhibit J

ARTICLE 2 THE WORK

2.1 THE WORK

The Contractor shall perform all the Work required by the Contract Documents for the following:

The road work consists of 0.25 miles along El Gancho Way and 0.9 miles of road along Old Santa Fe Trail. The waterline project is 0.25 miles along El Gancho Way and 1.2 miles along Old Santa Fe Trail.

The Contractor shall supply all labor, materials and equipment necessary to complete the work in accordance with the construction plans and specifications.

ARTICLE 3 EFFECTIVE DATE, TIME OF COMMENCEMENT, SUBSTANTIAL COMPLETION AND AMENDMENTS

3.1 EFFECTIVE DATE

The Effective Date of this Agreement is the date of signature by the County.

3.2 TIME OF COMMENCEMENT

The work to be performed under this Contract shall be commenced no later than ten (10) consecutive calendar days after the date of written Notice to Proceed issued by the County, hereto attached as Exhibit H.

3.3 SUBSTANTIAL COMPLETION

The Contractor shall achieve Substantial Completion of the entire work no later than one hundred fifteen (115) working days from the date of the Notice to Proceed, except as hereafter extended by valid written Change Order. A Certificate of Substantial Completion, attached hereto as Exhibit J, will be issued by the County to the Contractor, as adjusted by any Change Order, attached hereto as Exhibit I.

3.4 TIME FOR COMPLETION AND LIQUIDATED DAMAGES

Should the Contractor neglect, refuse, or otherwise fail to complete the Work within the time specified in this Article, the Contractor agrees that Liquidated Damages in the amount of One

Thousand Five Hundred Dollars (\$1500.00) shall be assessed per each calendar day that expires after the date of substantial completion, as adjusted by any change order, and until issuance by the County of a certificate of Substantial Completion in accordance with Paragraph 7 EFFECTIVE DATE AND TERM of the General Conditions.

- A. It is hereby understood and mutually agreed, by and between the Contractor and the County, that the date of beginning and the time for completion as specified in the contract of the work to be done hereunder are *essential conditions* of this contract and it is further mutually understood and agreed that the work outlined in this contract shall be commenced on a date to be specified in the "Notice to Proceed."
- B. The Contractor agrees that work shall be prosecuted regularly, diligently and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the County, that the time for the completion of the work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.
- C. If the Contractor shall neglect, fail or refuse to complete the work within the time herein specified or any proper extension thereof granted by the County, then the Contractor does hereby agree, as a part consideration for the awarding of this contract, to pay to the County the amount specified in the contract, not as a penalty but as liquidated damages for such breach of contract as herein set forth, for each and every calendar day that the contract shall be in default after the time stipulated in the contract for completing the work.
- D. The amount is fixed and agreed upon by and between the Contractor and the County because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the County would in such event sustain, and the amount is agreed to be the amount of damages which the County would sustain and the amount shall be retained from time to time by the County from current periodical estimates.
- E. It is agreed that time is of the essence of each and every portion of this contract and of the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever and where under the contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this contract. Provided that the Contractor shall not be charged with liquidated damages or any excess cost when the County determines that the Contractor is without fault and the Contractor's reasons for the time extension are acceptable to the County. Provided that the Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the work is due:
 - 1. To any preference, priority or allocation order duly issued by the County;
 - 2. To unforeseeable cause beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, or of the public enemy, acts of the County, acts of another contractor in the performance of a

contract with the County, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather;

3. To any delays of subcontractors or suppliers occasioned by any of the causes specified in subsections above.

F. Provided further, that the Contractor shall, within ten (10) days from the beginning of such delay, unless the County shall grant a further period of time prior to the date of final settlement of the contract, notify the County in writing of the causes of the delay, who shall ascertain the facts and extent of the delay and notify the Contractor within a reasonable time of its decision in the matter.

3.5 AMENDMENTS

This Agreement may be amended by mutual agreement by both parties upon issuance of a Change Order by the County to the Contractor. Any such amendment shall be in accordance with Paragraph 10 AMENDMENTS-CHANGE ORDERS of the General Conditions. Unless otherwise agreed to by the parties, an amendment shall not affect any outstanding Purchase Order(s) issued by the County prior to the effective date of the amendment.

ARTICLE 4 CONTRACT SUM

4.1 LUMP SUM

The County shall pay the Contractor in current funds for the performance of the Work, subject to additions and deductions by Change Order as provided in the Contract Documents, an agreed upon Lump Sum of One Million Two Hundred Ninety Five Thousand Three Hundred One Dollars And Eighty Seven Cents (\$1,295,301.87), exclusive of New Mexico gross receipts tax.

4.2 CONTRACT AMOUNT

The Contract sum is determined as follows:

Base Bid	\$ 1,172,732.67
Additive Alternate 2	\$ 51,528.50
Additive Alternate 3	\$ 71,040.70
Total Contract Amount	\$ 1,295,301.87

ARTICLE 5 PROGRESS PAYMENTS

5.1 PROGRESS PAYMENTS

Based upon an Application for Payment submitted to the County by the Contractor and Certificates for Payment issued by the County, the County shall make progress payments on account of the Contract sum to the Contractor as provided in the Contract documents for the period ending the last day of the month as follows:

- A. No later than (21) working days following receipt by the County of an undisputed Application for Payment, one hundred percent (100%) of the portion of the Contract Sum properly allocable to labor, materials, and equipment incorporated in the Work and one hundred percent (100%) of the portion of the Contract Sum properly allocable to materials and equipment suitably stored at the site or some other location agreed upon in writing for the period covered by the Application for Payment, less the aggregate of previous payments made by the County; less such amounts as the Architect/ Engineer shall determine for all incomplete Work and unsettled claims as provided in the Contract Documents (Section 57-28-5, NMSA 1978).
- B. When making payments, the County, Contractor or subcontractor shall not retain, withhold, hold back or in any other manner not pay amounts owed for work performed. For additional information regarding retainage and the Prompt Payment Act (refer to Section 57-28-5, NMSA 1978).
- C. Contractors and subcontractors shall make prompt payment to their subcontractors and suppliers for amounts owed for work performed on the construction project within twenty-one days after receipt of payment from the County, contractor or subcontractor. If the contractor or subcontractor fails to pay its subcontractor and suppliers by first-class mail or hand delivery within twenty-one days after receipt of an undisputed request for payment, the contractor or subcontractor shall pay interest to its subcontractors and suppliers beginning on the twenty-second day after payment was due, computed at one and one-half percent of the undisputed amount per month or fraction of a month until payment is issued. These payment provisions apply to all tiers of contractors, subcontractors and suppliers (Section 57-28-1 et. seq. NMSA 1978).
- D. In preparing estimates the material delivered on the site and preparatory work done may be taken into consideration.
- E. All material and work covered by partial payments made shall thereupon become the sole property of the County, but this provision shall not be construed as relieving the Contractor from the sole responsibility for the care and protection of materials and work upon which payments have been made or the restoration of any damaged work, or as a waiver of the right of the County to require the fulfillment of all of the terms of the contract.

- F. County's right to withhold certain amounts and make application thereof. The Contractor agrees that it will indemnify and hold the County harmless from all claims growing out of the lawful demands of subcontractors, laborers, workmen, mechanics, material men, and furnisher of machinery and parts thereof, equipment, power tools, and all supplies, including commissary, incurred in the furtherance of the performance of this contract. The Contractor shall, at the County's request, furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged, or waived. If the Contractor fails so to do, then the County may, after having served written notice on the said Contractor, either pay unpaid bills, of which the County has written notice, direct, or withhold from the Contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the Contractor shall be resumed, in accordance with the terms of this contract, but in no event shall the provisions of this sentence be construed to impose any obligations upon the County to either the Contractor or its Surety. In paying any unpaid bills of the Contractor, the County shall be deemed the agent of the Contractor, and any payment so made by the County shall be considered as a payment made under the contract by the County to the Contractor and the County shall not be liable to the Contractor for any such payments made in good faith.

ARTICLE 6 FINAL PAYMENT

6.1 FINAL PAYMENT

The entire unpaid balance of the Contract Sum, shall be paid by the County to the Contractor within thirty (30) calendar days after notification of the County by the Architect/Engineer that all incomplete and unacceptable work that was noted during the Substantial Completion Inspection and listed on the attachment to the Certificate of Substantial Completion has been corrected, and provided the Contract has been fully performed and a final Certificate for Payment has been issued by the Architect/Engineer. In addition, the Contractor shall provide to the County a certified statement of Release of Liens and Consent of Surety.

6.2 ACCEPTANCE OF FINAL PAYMENT CONTITUTES RELEASE

The acceptance by the Contractor of final payment shall be and shall operate as a release to the County of all claims and all liability to the Contractor for all things done or furnished in connection with this work and for every act and neglect of the County and others relating to or arising out of this work. No payment, however, final or otherwise, shall operate to release the Contractor or its sureties from any obligations under this contract or the Performance and Payment Bond.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first written above.

SANTA FE COUNTY

Robert A. Anaya, Chair
Santa Fe County Board of County Commissioners

Date

ATTESTATION:

Geraldine Salazar
Santa Fe County Clerk

REVIEWED AS TO LEGAL FORM AND SUFFICIENCY

Gregory S. Shaffer
Santa Fe County Attorney

Date

FINANCE DEPARTMENT APPROVAL:

Carole H. Jaramillo
Santa Fe County Finance Director

Date

CONTRACTOR:

Fred H. Salls
President

Date

**GENERAL CONDITIONS
TO AGREEMENT BETWEEN SANTA FE COUNTY
AND CONTRACTOR
FOR CONSTRUCTION SERVICES**

1.0 DEFINITIONS

The following terms as used in this contract are respectively defined as follows:

- 1.1 *Application for Payment* Contractor's written request for payment for completed portions of the work and, for materials delivered or stored and properly labeled for the respective project.
- 1.2 *Change Order* A written document between the County and the Contractor signed by the County and the Contractor authorizing a change in the work or an adjustment in the contract sum or the contract time. A change order may be signed by the Architect or Engineer, provided they have written authority from the County for such procedure and that a copy of such written authority is furnished to the Contractor upon request. The contract sum and the contract time may be changed only by change order. A change order may be in the form of additional compensation or time; or less compensation or time known as a Deduction (from the contract) the amount deducted from the contract sum by change order.
- 1.3 *Calendar Day* Each and every Day shown on the calendar, beginning and ending at midnight.
- 1.4 *Contract Period* The elapsed number of working days or calendar days from the specified date of commencing work to the specified date of completion, as specified in the contract.
- 1.5 *Contractor* is a person, firm or corporation with whom the contract is entered into with the County.
- 1.6 *Construction Documents* All drawings, specifications and addenda associated with a specific construction project.
- 1.7 *Construction Schedule* A schedule in form satisfactory to the County, showing the proposed dates of commencement and completion of each of the various subdivisions of work required under the contract documents and the anticipated amount of each monthly payment that will become due the Contractor in accordance with the progress schedule.
- 1.8 *Day* The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.
- 1.9 *Labor and Material Payment Bond* A written form of security from a surety (bonding) company to the County, on behalf of an acceptable prime Contractor or

subcontractor, guaranteeing payment to the County in the event the Contractor fails to pay for all labor, materials, equipment, or services in accordance with the contract. (see Performance Bond and Surety Bond).

- 1.10 *Lump Sum Agreement (See Stipulated Sum Agreement)*
- 1.11 *Lump Sum Bid* A single entry amount to cover all labor, equipment, materials, services, and overhead and profit for completing the construction of a variety of unspecified items of work without the benefit of a cost breakdown.
- 1.12 *Lump Sum Contract* A written contract between the County and Contractor wherein the County agrees to pay the contractor a specified sum of money for completing a scope of work consisting of a variety of unspecified items or work.
- 1.13 *Payment Bond* A written form of security from a surety company to the County, on behalf of an acceptable prime contractor or subcontractor, guaranteeing payment to all persons providing labor, materials, equipment, or services in accordance with the contract.
- 1.14 *Performance Bond* A written form of security from a surety company to the County, on behalf of an acceptable prime contractor or subcontractor, guaranteeing the completion of the work in accordance with the terms of the contract.
- 1.15 *Progress Payment* A payment from the County to the Contractor determined by calculating the difference between the completed work and materials stored and a predetermined schedule of values or unit costs. (see Schedule of Values, Unit Costs).
- 1.16 *Progress Schedule* A pictorial or written schedule (including a graph or diagram) that shows proposed and actual start and completion dates of the various work elements.
- 1.17 *Punch list* a list of items to be completed or corrected, prepared by the Architect/Engineer, checked and augmented as required by the Contractor or Construction Manager is appended hereto as Exhibit J. Note: The failure to include any item on such list does not relieve the Contractor of the responsibility to complete all work in accordance with the contract documents.
- 1.18 *Schedule of Values* A statement furnished by the Contractor to the Architect or Engineer and the County reflecting the portions of the contract sum allotted for the various parts of the work and used as the basis for reviewing the Contractor's Applications for Payment.
- 1.19 *Services* Includes services performed, workmanship, and material furnished or utilized in the performance of services.

- 1.20 Stipulated Sum Agreement** A written agreement in which a specific amount is set forth as the total payment for completing the contract (See Lump Sum Contract).
- 1.21 Subcontractor** is a person, firm or corporation supplying labor and materials or only labor for work at the site of the project for, and under separate contract or agreement with, the Contractor.
- 1.22 Unit Price Contract** A written contract wherein the County agrees to pay the Contractor a specified amount of money for each unit of work successfully completed as set forth in the contract.
- 1.23 Unit Prices** A predetermined price for a measurement or quantity of work to be performed within a specific contract. The designated unit price would include all labor materials, equipment or services associated with the measurement or quantity established.
- 1.24 Working Day** means every day except Saturday, Sunday and holidays recognized by Santa Fe County. Based on a review of weather that may adversely affect the Contractor's ability to effectively prosecute the Work, and the actual Work performed by the Contractor, the Architect or Engineer will determine (between the end of the day and noon of the next day) if the County will charge a Working Day. If the Contractor was able to effectively prosecute Work on a critical path item for six (6) or more hours on a Saturday, Sunday or County-recognized Holiday, the Architect or Engineer may charge a Working Day.
- 1.25 Work on (at) the project** is work to be performed at the location of the project, including the transportation of materials and supplies to or from the location of the project by employees of the Contractor and any subcontractor.

2. CONTRACT AND CONTRACT DOCUMENTS

- 2.1 Entire Agreement.** This Agreement represents the entire contract between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto. This Agreement incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this Agreement, and all such conditions, understandings, and agreements have been merged into this written Agreement. No prior condition, agreement, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless incorporated in this written Agreement.
- 2.2 Relationship of Contract Documents.** The Contract Documents are complementary, and any requirement of one Contract Document shall be as binding as if required by all.
- 2.3 Conflicting Conditions.** Any provisions in any of the Contract Documents which may be in conflict or inconsistent with any of the paragraphs in these General Conditions shall be void to the extent of such conflict or inconsistency.

3. PLANS, SPECIFICATIONS AND ADDENDA

- 3.1 The plans, specifications and addenda, hereinafter enumerated in Article 1 of the Agreement Between County and Contractor for Construction shall form part of this Contract and the provisions thereof shall be as binding upon the parties hereto as if they were herein fully set forth. The table of contents, titles, headings, running headlines and marginal notes contained herein and in said documents are solely to facilitate reference to various provisions of the Contract Documents and in no way affect or limit the interpretation of the provisions to which they refer.
- 3.2 Certificates and Documents Incorporated. All certificates and documentation required by the provisions of the Agreement shall be attached to this Agreement at the time of execution, and are hereby incorporated by reference as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

4. CONTRACT SECURITY – BONDS

- 4.1 Performance Bond. The Contractor shall furnish a performance bond in an amount at least equal to one hundred percent (100%) of the contract sum as security for the faithful performance of this contract. The performance bond and the payment bond may be in one or in separate instruments in accordance with local law.
- 4.2 Payment Bond. The Contractor shall provide payment bond in an amount not less than one hundred percent (100%) of the contract price or in a penal sum not less than that prescribed by state, territorial or local law, as security for the payment of all persons performing labor on the project under this contract, furnishing materials in connection with this contract and all of Contractor's requirements as specified in the contract documents. The Payment Bond shall remain in effect until one year after the date when final payment becomes due.
- 4.3 Additional or Substitute Bond. If at any time the County for justifiable cause shall be or become dissatisfied with any surety or sureties, then upon the Performance or Payment Bonds, the Contractor shall within five (5) days after notice from the County so to do, substitute an acceptable bond (or bonds) in such form and sum and signed by such other surety or sureties as may be satisfactory to the County. The premiums on such bond shall be paid by the Contractor. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished such an acceptable bond to the County.
- 4.4 Labor and Material Bond. The Contractor shall provide to the County Labor and Material Bond in an amount equal to the required payments by the Contractor to pay specified subcontractors, laborers, and materials suppliers associated with the project.

5. TERMS AND MEANINGS

Terms used in this Agreement that are defined in the Conditions of the Contract shall have the meanings designated in those Conditions.

- 5.1 **Words and Phrases.** Words, phrases, and abbreviations which have well-known technical or trade meanings used in the Contract Documents shall be used according to such recognized meanings. In the event of a conflict, the more stringent meaning shall govern.
- 5.2 **Gender, Singular/Plural.** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.
- 5.3 **Captions and Section Headings.** The captions and section headings contained in this Agreement are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope and conditions of this Agreement.
- 5.4 **Interchangeable Terms.** For purposes of all provisions within this Agreement and all attachments hereto, the terms "Agreement" and "Contract" shall have the same meaning and shall be interchangeable.

6. COMPLIANCE WITH APPLICABLE LAW, CHOICE OF LAW

- 6.1 This Agreement shall be governed exclusively by the provisions hereof and by the laws of the State of New Mexico and applicable ordinances of Santa Fe County.
- 6.2 In performing its obligations hereunder, the Contractor shall comply with all applicable laws, ordinances, and regulations, including Santa Fe County Ordinance 2014-1 (Establishing a Living Wage).
- 6.3 **Minimum Wage Rates.** The Contractor, all subcontractors and subsubcontractors warrants and agree to will comply with all applicable provisions of the New Mexico Public Works Minimum Wage Act as outlined in the Bid Documents. Wage rates are not applicable to projects costing less than \$60,000.
- 6.4 This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules. Contractor and the County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be federal and state district courts of New Mexico.
- 6.5 Pursuant to 13-1-191, NMSA 1978, reference is hereby made to the criminal laws of New Mexico, including §30-14-1, §30-24-2, and §30-41-1 through 3 NMSA 1978, which prohibit bribes, kickbacks, and gratuities, violation of which constitutes a felony. Further, the Procurement Code, 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation.
- 6.6 **New Mexico Tort Claims Act.** By entering into this Agreement, neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, et Seq. NMSA 1978, as amended. The County and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not

waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

- 6.7 **Provision Required by Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

7. EFFECTIVE DATE AND TERM

- 7.1 This Agreement shall, upon due execution by all parties, become effective in accordance with the Agreement Between County and Contractor for Construction, Article 3 - Effective Date, Time of Commencement and Substantial Completion. This Agreement shall not become effective until: (1) approved by the Santa Fe County Commissioners and/or the County Manager or their designee; and (2) signed by all parties required to sign this Agreement.

- 7.2 This Contract shall achieve Substantial Completion in accordance with the Agreement Between County and Contractor, Article 3 - Effective Date, Time of Commencement and Substantial Completion, unless earlier terminated pursuant to Section 8 (Termination) or 9, (Appropriations and Authorizations) of these General Conditions.

8. TERMINATION

- 8.1 **Termination of Agreement for Cause.** Either party may terminate the Agreement based upon any material breach of this Agreement by the other party. The non-breaching party shall give the breaching party written notice of termination specifying the grounds for the termination. The termination shall be effective thirty (30) days from the breaching party's receipt of the notice of termination, during which time the breaching party shall have the right to cure the breach. If, however, the breach cannot with due diligence be cured within thirty (30) days, the breaching party shall have a reasonable time to cure the breach, provided that, within thirty (30) days of its receipt of the written notice of termination, the breaching party began to cure the breach and advised the non-breaching party in writing that it intended to cure.
- 8.2 **Termination for Convenience of the County.** The County may, in its discretion, terminate this Agreement at any time for any reason by giving the Contractor written notice of termination. The notice shall specify the effective date of termination, which shall not be less than fifteen (15) days from the Contractor's receipt of the notice. The County shall pay the Contractor for acceptable work, determined in accordance with the specifications and standards set forth in this Agreement, performed before the effective date of termination but shall not be liable for any work performed after the effective date of termination.

- 8.3 Right of the County to Terminate Contract** In the event that any of the provisions of this contract are violated by the Contractor, or by any of its subcontractors, the County may serve written notice upon the Contractor and the Surety of its intention to terminate the contract, such notices to contain the reasons for such intention to terminate the contract, and unless within ten (10) days after the serving of such notice upon the Contractor, such violation or delay shall cease and satisfactory arrangement of correction be made, the contract shall, upon the expiration of said ten (10) days, cease and terminate. In the event of any such termination, the County shall immediately serve notice thereof upon the Surety and the Contractor and the Surety shall have the right to take over and perform the contract. Provided, however, that if the Surety does not commence performance thereof within ten (10) days from the date of the mailing to such Surety of notice of termination, the County may take over the work and prosecute the same to completion by contract or by force account and at the expense of the Contractor and the Contractor and its Surety shall be liable to the County for any excess cost occasioned the County thereby, and in such event the County may take possession of and utilize in completing the work, such materials, appliances, and plant as may be on the site of the work and necessary therefore.

9. APPROPRIATIONS AND AUTHORIZATIONS

This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Santa Fe County Board of County Commissioners and/or, if state funds are involved, the New Mexico State Legislature. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Agreement shall terminate upon written notice by the County to the Contractor. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse the Contractor for expenditures made in the performance of this Agreement. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. The County's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by the Contractor in any way or forum, including a lawsuit.

10. AMENDMENTS – CHANGE ORDERS

Contract Documents may be amended by a Change Order, hereto attached as Exhibit I to allow for additions, deletions, and revision as specified in Article 2 "The Work" of the Agreement between Santa Fe County and the Contractor or to amend the terms and conditions by a Change Order.

11. INDEMNIFICATION

- 11.1** The Contractor shall defend, indemnify, and hold harmless the County and its elected officials, agents, and employees from any losses, liabilities, damages, demands, suits, causes of action, judgments, costs or expenses (including but not limited to court costs and attorneys' fees) resulting from or directly or indirectly arising out of the Contractor's performance or non-performance of its obligations under this Agreement, including but not limited to the Contractor's breach of any representation or warranty made herein.

- 11.2 The Contractor agrees that the County shall have the right to control and participate in the defense of any such demand, suit, or cause of action concerning matters that relate to the County and that such suit will not be settled without the County's consent, such consent can not to be unreasonably withheld. If a conflict exists between the interests of the County and the Contractor in such demand, suit, or cause of action, the County may retain its own counsel to represent the County's interest.
- 11.3 The Contractor's obligations under this section shall not be limited by the provisions of any insurance policy the Contractor is required to maintain under this Agreement.

12. AGGRIEVEMENT PROCEDURE DURING CONTRACT ADMINISTRATION

- 12.1 Any claims, disputes, or other matters in question between the Contractor and the County, except those which have been waived by the making or acceptance of final payment as provided in Paragraph 6.2 of the Agreement Between Santa Fe County and Contractor for Construction, shall be presented in the form of a written request accompanied by supporting data to the Architect/Engineer for formal decision, with a copy to the other party. Such formal decision of the Architect/Engineer is binding upon the Contractor and the Owner unless either or both notify each other and the Architect/Engineer in writing within fifteen (15) days of their receipt of the decision that they are unwilling to abide by the Architect's/Engineer's decision, are thereby aggrieved in connection with the decision, and are separately exercising such rights as either may have under the Contract Documents or by law and regulation. If the Architect/Engineer fails to provide a written decision or a reasonable schedule to issue a written decision within ten (10) days after the County or the Contractor has presented its request, that party may consider itself aggrieved and may proceed to exercise its rights.
- 12.2 A settlement agreement signed by the County and the Contractor shall supersede and cancel any other dispute resolution proceedings regarding the same matter.
- 12.3 Unless work is stopped or payment withheld in accordance with the conditions of the Contract, or unless otherwise agreed in writing, the Contractor shall carry on the Work and maintain its progress during any dispute resolution proceedings, and the Owner shall continue to make payments to the Contractor in accordance with the Contract Documents.

13. DISPUTE RESOLUTION

- 13.1 Either County or Contractor may request mediation pursuant to the New Mexico Public Works Mediation Act, 13-4C-1 NMSA 1978, of any claim before such decision become final and binding. The request for mediation shall be submitted in writing to the other party. Timely submission of the request shall stay the effect of Paragraph 12.1.
- 13.2 County and Contractor shall participate in the mediation process in good faith. The process shall be completed within Sixty (60) days of filing of the request. The mediation shall be governed by the rules for mediation pursuant to the New Mexico Public Works Mediation

Act.

13.3 If the dispute is not resolved by mediation, the dispute shall be resolved through litigation in the district court. The parties agree that the exclusive forum for such litigation shall be the State of New Mexico District Court for the First Judicial District at Santa Fe, New Mexico. Contractor irrevocably consents to the jurisdiction of said Court and agrees to accept service of a summons and complaint by mail or commercial courier service in accordance with Rule 1-004(E)(3) NMRA.

14. INSURANCE

14.1 The Contractor shall not commence work under this contract until they have obtained all the insurance required under this paragraph and such insurance has been approved by the County, nor shall the Contractor allow any subcontractor to commence work on its subcontract until the insurance required of the subcontractor has been so obtained and approved.

14.2 Proof of Carriage of Insurance. The Contractor shall furnish the County with certificates showing the type, amount, class of operations covered, effective dates and date of expiration of policies. Such certificates shall also contain substantially the following statement: "Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions".

14.3 General Conditions. The Contractor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.

14.4 General Liability Insurance, Including Automobile. The Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,000,000.00 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the County by the Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Agreement is an insured contract. The Santa Fe County shall be a named additional insured on the policy.

14.5 Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance. The Contractor shall either 1) require each of its subcontractors to procure and to maintain during the life of its subcontract, Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance of the type and in the amounts specified in 14.4 above.

14.6 Workers' Compensation Insurance. The Contractor shall comply with the provisions of the Workers' Compensation Act, 52-1-1 to 52-1-70 NMSA 1978. The Contractor shall procure and shall maintain during the life of this contract Workmen's Compensation Insurance as

required by applicable State law for all of its employees to be engaged in work at the site of the project under this Contract and, in case of any such work sublet, the Contractor shall require the subcontractor similarly to provide Workmen's Compensation Insurance for all of the latter's employees to be engaged in such work unless such employees are covered by the protection afforded by the Contractor's Workmen's Compensation Insurance. In case any class of employees engaged in hazardous work on the project under this contract is not protected under the Workmen's Compensation law, the Contractor shall provide and shall cause each subcontractor to provide adequate employer's liability insurance for the protection of such of its employees as are not otherwise protected.

- 14.7 Scope of Insurance and Special Hazards.** The insurance require under subparagraphs 14.4 and 14.5 hereof shall provide adequate protection for the Contractor and his subcontractors, respectively, against damage claims which may arise from operations under this Contract, whether such operations be by the insured or by anyone directly or indirectly employed by him and, also against any of the special hazards which may be encountered in the performance of this Contract.
- 14.8 Builder's Risk Insurance (Fire and Extended Coverage).** Until the project is completed and accepted by the County, the County, or Contractor at the County's option is required to maintain Builder's Risk Insurance (fire and extended coverage) on a 100 percent completed value basis on the insurable portion of the project for the benefit of the County, the Contractor, subcontractors as their interests may appear. The Contractor shall not include any costs for Builder's Risk Insurance (fire and extended coverage) premiums during construction unless the Contractor is required to provide such insurance; however, this provision shall not release the Contractor from its obligation to complete, according to plans and specifications, the project covered by the contract, and the Contractor and his Surety shall be obligated to full performance of the Contractor's undertaking.
- 14.9 Increased Limits.** If, during the life of this Agreement, the New Mexico State Legislature increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended), the Contractor shall increase the maximum limits of any insurance required herein.
- 14.10 Additional insured.** Santa Fe County will be listed as an additional insured on all policies, and proof of coverage must be provided before work begins. Contractor shall maintain adequate insurance in at least the maximum amounts which the County could be liable under the New Mexico Tort Claims Act. It is the sole responsibility of the Contractor to be in compliance with the law.

15. INDEPENDENT CONTRACTOR

- 15.1** The Contractor and the Contractor's agents and employees are independent contractors performing professional and technical services for the County and are not employees of the County. The Contractor and the Contractor's agents and employees shall not accrue leave, retirement, insurance, bonding, use of County's vehicles, or any other benefits afforded to employees of the County as a result of this Agreement.

15.2 The Contractor shall not subcontract any portion of the services to be performed under this Agreement without prior written approval of the County.

15.3 The Contractor shall maintain detailed time records which indicate the date, time and nature of services rendered. These records shall be subject to inspection by the County and the State Auditor. The County shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the County to recover excessive illegal payments.

16. CONFLICT OF INTEREST OF OFFICERS OR EMPLOYEES OF THE LOCAL JURISDICTION, MEMBERS OF THE LOCAL GOVERNING BODY, OR OTHER PUBLIC OFFICIALS

16.1 No officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this contract, during its tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed. Further, the Contractor shall cause to be incorporated in all subcontracts the language set forth in this paragraph prohibiting conflict of interest.

16.2 No official of the County who is authorized in such capacity and on behalf of the County to negotiate, make, accept or approve, or to take part in negotiating, making accepting or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part hereof. No officer, employee, architect, attorney, engineer or inspector of or for the County who is authorized in such capacity and on behalf of the County to exercise any legislative, executive, supervisory or other similar functions in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the project.

16.3 The Contractor warrants that the Contractor presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under this Agreement.

17. ASSIGNMENT

17.1 The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the advance written approval of the County. Any attempted assignment or transfer without the County's advance written approval shall be null and void and without any legal effect.

18. SUBCONTRACTING

18.1 The Contractor shall not subcontract or delegate any portion of the services to be

performed under this Agreement without the advance written approval of the County. Any attempted subcontracting or delegating without the County's advance written approval shall be null and void and without any legal effect.

- 18.2 Contractor shall provide to the County a listing of subcontractors within ten (10) days of the Contract award.
- 18.3 Contractor shall adhere to all provisions of the Subcontractor's Fair Practices Act 13-4-31 to 13-4-42, NMSA 1978.
- 18.4 Contractor shall provide to the County completed Non-Collusion Affidavit of Subcontractor form and Certification of Subcontractor Regarding Equal Employment Opportunity form for all subcontractors listed.
- 18.5 The Contractor shall not award any work to any subcontractor without prior written approval of the County, which approval will not be given until the Contractor submits to the County a written statement concerning the proposed award to the subcontractor, which statement shall contain such information as the County may require.
- 18.6 The Contractor shall be as fully responsible to the County for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as they are for the acts and omissions of persons directly employed by them.
- 18.7 The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractors to the Contractor by the terms of the General Conditions and other contract documents insofar as applicable to the work of subcontractors and to give the Contractor the same power as regards terminating any subcontract that the County may exercise over the Contractor under any provision of the contract documents.
- 18.8 Nothing contained in this contract shall create any contractual relation between any subcontractor and the County.
- 18.9 All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate written agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of County. Any contract between Contractor and a Subcontractor or Supplier shall provide that any remedy or claim for nonpayment of sums due or owing to Subcontractor or Supplier or services performed or materials provided is against Contractor and not County, subject to any remedy or rights Subcontractor or Supplier may have under the terms of the Contractor's Performance Bond and Section 13-4-19 NMSA 1978, the New Mexico Little Miller Act.

19. PERSONNEL

- 19.1 All work performed under this Agreement shall be performed by the Contractor or under its supervision.

19.2 The Contractor represents that it has, or will secure at its own expense, all personnel required to discharge its obligations under this Agreement. Such personnel (i) shall not be employees of or have any contractual relationships with the County and (ii) shall be fully qualified and licensed or otherwise authorized or permitted under federal, state, and local law to perform such work.

20. NOTICES

20.1 Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the County: Santa Fe County
Office of the County Attorney
102 Grant Avenue
Santa Fe, New Mexico 87501

To the Contractor: Fred H. Salls
Salls Brothers Construction, Inc.
PO Box 66239
Albuquerque, New Mexico 87193

20.2 Nothing herein contained shall preclude the giving of any such written notice by personal service. The address to which notices shall be mailed to either party may be changed by written notice given by such party to the other as hereinabove provided.

21. RELEASE

The Contractor, upon final payment of the amounts due under this Agreement, releases the County, the County's officers and employees from all liabilities and obligations arising from or under this Agreement, including, without limitation, all damages, losses, costs, liability, and expenses, including, without limitation, attorney's fees and costs of litigation that the Contractor may have.

22. WAIVER

No provision of this Agreement shall be deemed to have been waived by either party unless such waiver be in writing signed by the party making the waiver and addressed to the other party; nor shall any custom or practice which may evolve between the parties in the administration of the terms hereof be construed to waive or lessen the right of either party to insist upon performance by the other party in strict accordance with the terms hereof. Further, the waiver by any party of a breach by the other party of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition thereof.

CONDITIONS OF THE WORK

1. ADDITIONAL INSTRUCTIONS AND DETAIL DRAWINGS

- 1.1 The Contractor will be furnished additional instructions and detail drawings as necessary to carry out the work included in the Contract. The additional drawings and instructions supplied to the Contractor will coordinate with the Contract Documents and will be so prepared that they can be reasonably interpreted as part thereof. The Contractor shall carry out the work in accordance with the additional detail drawings and instructions. The Contractor and the Architect/Engineer/County will prepare jointly (a) a schedule, fixing the dates at which special detail drawings will be required, such drawings, if any, to be furnished by the Architect/ Engineer/County in accordance with the schedule, and (b) a schedule fixing the respective dates for the submission of shop drawings, the beginning of manufacture, testing and installation of materials, supplies and equipment, and the completion of the various parts of the work; each schedule to be subject to change from time to time in accordance with progress of the work.

2. SHOP OR SETTING DRAWINGS

- 2.1 The Contractor shall submit promptly to the Architect/Engineer/County two (2) copies of each shop or setting drawing prepared in accordance with the schedule predetermined as aforesaid. After examination of such drawings by the Architect/Engineer/County and the return thereof, the Contractor shall make such corrections to the drawings as have been indicated and shall furnish the Architect/ Engineer/County with two corrected copies. If requested by the Architect/Engineer/County the Contractor must furnish additional copies. Regardless of corrections made in or approval given to such drawings by the Architect/Engineer/County, the Contractor will be responsible for the accuracy of such drawings and for their conformity to the Plans and Specifications, unless the Contractor notifies the Architect/Engineer/County in writing of any deviations at the time the Contractor furnishes such drawings.

3. MATERIALS, SERVICES AND FACILITIES

3.1 It is understood that except as otherwise specifically stated in the Contract Documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, superintendence, temporary construction of every nature, and all other services and facilities of every nature whatsoever necessary to execute, complete, and deliver the work within the specified time.

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

4. CONTRACTOR'S TITLE TO MATERIALS

- 4.1 No materials or supplies for the work shall be purchased by the Contractor or by any subcontractor subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller. The Contractor warrants that he/she has good title to all materials and supplies used by him/her in the work, free from all liens, claims or encumbrances.

5. INSPECTION AND TESTING OF MATERIALS

- 5.1 All materials and equipment used in the construction of the project shall be subject to adequate inspection and testing in accordance with accepted standards. The laboratory or inspection agency shall be selected by the County. The County will pay for all laboratory inspection service direct, and not as a part of the Contract.
- 5.2 Materials of construction, particularly those upon which the strength and durability of the structure may depend, shall be subject to inspection and testing to establish conformance with specifications and suitability for uses intended.

6. "OR EQUAL" CLAUSE

- 6.1 Whenever a material, article or piece of equipment is identified on the plans or in the specifications by reference to manufacturers' or vendors' names, trade names, catalogue numbers, etc., it is intended merely to establish a standard; and, any material, article, or equipment or other manufacturers and vendors which will perform adequately the duties imposed by the general design will be considered equally acceptable provided the material, article, or equipment so proposed, is, in the opinion of the Architect/Engineer/County, of equal substance and function. It shall not be purchased or installed by the Contractor without the Architect/Engineer/County's written approval.

7. PATENTS

- 7.1 The Contractor shall hold and save the County and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the Contract, including its use by the County, unless otherwise specifically stipulated in the Contract Documents.
- 7.2 License and/or Royalty Fees for the use of a process which is authorized by the County of the project must be reasonable, and paid to the holder of the patent, or its authorized licensee, direct by the County and not by or through the Contractor.
- 7.3 If the Contractor uses any design, device or materials covered by letters, patent or copyright, the Contractor shall provide for such use by suitable agreement with the County of such patented or copyrighted design, device or material. It is mutually agreed and understood, that, without exception, the Contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the work. The Contractor and/or its Sureties shall indemnify and save harmless the County of the

project from any and all claims for infringement by reason of the use of such patented or copyrighted design, device or materials, or any trademark or copyright in connection with work agreed to be performed under this Contract, and shall indemnify the County for any cost, expense or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after, completion of the work.

8. SURVEYS, PERMITS AND REGULATIONS

- 8.1 Unless otherwise expressly provided for in the Specifications, the County will furnish to the Contractor all surveys necessary for the execution of the work.
- 8.2 Unless otherwise expressly provided for in the Specifications, the Contractor shall procure and pay all permits, licenses and approvals necessary for the execution of this Contract.
- 8.3 The Contractor shall comply with all laws, ordinances, rules, orders, and regulations relating to performance of the work, the protection of adjacent property, and the maintenance of passageways, guard fences or other protective facilities.

9. CONTRACTOR'S OBLIGATIONS

- 9.1 The Contractor shall and will, in good workmanlike manner, do and perform all work and furnish all supplies and materials, machinery, equipment, facilities and means, except as herein otherwise expressly specified, necessary or proper to perform and complete all the work required by this Contract, within the time herein specified. The Contractor will perform the Work in accordance with the provisions of this Contract and said specifications and in accordance with the plans and drawings covered by this Contract any and all supplemental plans and drawings, and in accordance with the directions of the Architect/Engineer/County as given from time to time during the progress of the work. The Contractor shall furnish, erect, maintain, and remove such construction plans and such temporary works as may be required.
- 9.2 The Contractor shall observe, comply with, and be subject to all terms, conditions, requirements, and limitations of the Contract and specifications, and shall do, carry on, and complete the entire work to the satisfaction of the Architect/Engineer and the County.

10. WEATHER CONDITIONS

- 10.1 In the event of temporary suspension of work, or during inclement weather, or whenever the Architect/Engineer/County shall direct, the Contractor will, and will cause its subcontractors to protect carefully its and their work and materials against damage or injury from the weather. If, in the opinion of the Architect/Engineer/County, any work or materials shall have been damaged or injured by reason of failure on the part of the Contractor or any of its Subcontractors so to protect its work, such materials shall be removed and replaced at the expense of the Contractor.

11. PROTECTION OF WORK AND PROPERTY-EMERGENCY

- 11.1 The Contractor shall at all times safely guard the County's property from injury or loss in connection with this Contract. The Contractor shall at all times safely guard and protect its own work, and that of adjacent property from damage. The Contractor shall replace or make good any such damage, loss or injury unless such is caused directly by errors contained in the Contract or by the County, or its duly authorized representatives.
- 11.2 In case of an emergency which threatens loss or injury of property, and/or safety of life, the Contractor will be allowed to act, without previous instructions from the Architect/Engineer/County, in a diligent manner. The Contractor shall notify the Architect/Engineer/County immediately thereafter. Any claim for compensation by the Contractor due to such extra work shall be promptly submitted to the Architect/Engineer/County for approval.
- 11.3 Where the Contractor has not taken action but has notified the Architect/Engineer/County of an emergency threatening injury to persons or to damage to the work or any adjoining property, the Contractor shall act as instructed or authorized by the Architect/Engineer/County.
- 11.4 The amount of reimbursement claimed by the Contractor on account of any emergency action shall be determined in the manner provided in Paragraph 15 of these Conditions of the Work.

12. INSPECTION

- 12.1 The authorized representatives and agents of the County shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records.

13. REPORTS, RECORDS AND DATA

- 13.1 The Contractor shall submit to the County such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data as the County may request concerning work performed or to be performed under this Contract.

14. SUPERINTENDENT BY CONTRACTOR

- 14.1 At the site of the work the Contractor shall employ a construction superintendent or foreman who shall have full authority to act for the Contractor. It is understood that such representative shall be acceptable to the Architect/Engineer/County and shall be one who can be continued in that capacity for the particular job involved unless he/she ceases to be on the Contractor's payroll.

15. CHANGES IN WORK

15.1 No changes in the work covered by the approved Contract Documents shall be made without having prior written approval of the County. Charges or credits for the work covered by the approved change shall be determined by one or more, or a combination of the following methods:

- A. Unit bid prices previously approved.
- B. An agreed lump sum.
- C. The actual cost of:
 - 1) Labor, including foremen;
 - 2) Materials entering permanently into the work;
 - 3) The County's or rental cost of construction equipment during the time of use on the extra work;
 - 4) Power and consumable supplies for the operation of power equipment;
 - 5) Insurance;
 - 6) Social Security and old age and unemployment contributions.
- D. To the costs for changes in work a fixed fee will be added to be agreed upon but not to exceed ten percent (10%) of the actual cost of the work. The fee shall be compensation to cover the cost of supervision, overhead, bond, profit and any other general expenses.

16. EXTRAS

16.1 Without invalidating the contract, the County may order extra work or make changes by altering, adding to or deducting from the work, the contract sum being adjusted accordingly, and the consent of the Surety being first obtained where necessary or desirable. All the work of the kind bid upon shall be paid for at the price stipulated in the proposal, and no claims for any extra work or materials shall be allowed unless the work is ordered in writing by the County or the Architect/Engineer, acting officially for the County, and the price is stated in such order.

17. INSPECTION OF SERVICES

17.1 The Contractor shall provide and maintain an inspection system acceptable to the County covering the services under this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the County during contract performance and for as long afterwards as the Contract requires.

17.2 The County has the right to inspect and test all services called for by the Contract, to the extent practicable at all times and places during the term of the Contract. The County shall perform inspections and tests in a manner that will not unduly delay the work.

17.3 If the County 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 these duties.

17.4 If any of the services do not conform with the Contract requirements, the County may require the Contractor to perform the services again in conformity with Contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by re-performance, the County may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and reduce the Contract sum to reflect the reduced value of the services performed.

17.5 If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with Contract requirements, the County may by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the County that is directly related to the performance of such service, or terminate the Contract for default.

18. CORRECTION OF WORK

18.1 All work, all materials, whether incorporated in the work or not, all processes of manufacture, and all methods of construction shall be at all times and places subject to the inspection of the Architect/ Engineer/County who shall be the final judge of the quality and suitability of the work, materials, processes of manufacture, and methods of construction for the purposes for which they are used. Should they fail to meet their approval they shall be forthwith reconstructed, made good, replaced and/or corrected, as the case may be, by the Contractor at its own expense. Rejected material shall immediately be removed from the site. If, in the opinion of the Architect/Engineer/County, it is undesirable to replace any defective or damaged materials or to reconstruct or correct any portion of the work injured or not performed in accordance with the Contract Documents, the compensation to be paid to the Contractor hereunder shall be reduced by such amount as in the judgment of the Architect/Engineer/County shall be equitable.

19. WARRANTY OF CONSTRUCTION

19.1 In addition to any other warranties in this Contract, the Contractor warrants that work performed under this Contract conforms to the Contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

19.2 This warranty shall continue for a period of one (1) year from the date of final acceptance of the work. If the County takes possession of any part of the work before final acceptance, this warranty shall continue for a period of one (1) year from the date the County takes possession.

19.3 The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to County-owned or controlled real or personal property, when that damage is the result of the Contractor's failure to conform to contract requirements or any defect of equipment, material, workmanship, or design furnished.

- 19.4 The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for one (1) year from the date of repair or replacement.
- 19.5 The County shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.
- 19.6 If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the County shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.
- 19.7 With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this Contract, the Contractor shall obtain all warranties that would be given in normal commercial practice; require all warranties to be executed, in writing, for the benefit of the County, if directed by the County; and, enforce all warranties for the benefit of the County, if directed by the County.
- 19.8 In the event the Contractor's warranty under subparagraph 19.4 of this clause has expired, the County may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.
- 19.9 Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the County nor for the repair of any damage that results from any defect in County-furnished material or design.
- 19.10 This warranty shall not limit the County's rights under the Inspection and Acceptance clause of this Contract with respect to latent defects, gross mistakes, or fraud.

20. SUBSURFACE CONDITIONS FOUND DIFFERENT

- 20.1 Should the Contractor encounter sub-surface and/or latent conditions at the site materially differing from those shown on the Plans or indicated in the Specifications, the Contractor shall immediately give notice to the Architect/Engineer/County of such conditions before they are disturbed. The Architect/Engineer/County will thereupon promptly investigate the conditions, and if they find that they materially differ from those shown on the Plans or indicated in the Specifications, they will at once make such changes in the Plans and/or Specifications as they may find necessary, any increase or decrease of cost resulting from such changes to be adjusted in the manner provided in Paragraph 15 above.

21. CLAIMS FOR EXTRA COST

- 21.1 No claim for extra work or cost shall be allowed unless the same was done in pursuance of a written order of the Architect/Engineer approved by the County, as aforesaid, and the claim presented with the first estimate after the changed or extra work is done. When work

is performed under the terms of General Conditions, the Contractor shall furnish satisfactory bills, payrolls and vouchers covering all items of cost and when requested by the County, giving the County access to accounts relating thereto.

22. CONSTRUCTION SCHEDULE AND PERIODIC ESTIMATES

22.1 Immediately after execution and delivery of the Contract, and before the first partial payment is made, the Contractor shall deliver to the County an estimated construction progress schedule in a form satisfactory to the County, showing the proposed dates of commencement and completion of each of the various subdivisions of work required under the Contract Documents and the anticipated amount of each monthly payment that will become due to the Contractor in accordance with the progress schedule. The Contractor shall also furnish on forms to be supplied by the County (a) a detailed estimate giving a complete breakdown of the Contract sum and (b) periodic itemized estimates of work done for the purpose of making partial payments thereof. The costs employed in making up any of these schedules will be used only for determining the basis of partial payments and will not be considered as fixing a basis for additions to or deductions from the Contract price.

22.2 Schedule

The Contractor shall, within five (5) days after the effective date of Notice to Proceed, prepare and submit five (5) copies of a progress schedule covering project operations for the Contract period. This progress schedule shall be of the type generally referred to as a Critical Path Method (CPM), Critical Path Schedule (CPS), and Critical Path Analysis (CPA), and other similar designations. The CPM shall be used to control the timing and sequences of the project. All work shall be done in accordance with the CPM Planning and Scheduling. A written statement of explanation shall be submitted with the progress schedule. All costs incurred by the contractor to implement the CPM shall be borne by the Contractor.

23. ASSIGNMENTS

23.1 The Contractor shall not assign the whole or any part of this Contract or any monies due or to become due hereunder without written consent of the County. In case the Contractor assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due to the Contractor shall be subject to prior claims of all persons, firms and corporations of services rendered or materials supplied for the performance of the work called for in this Contract.

24. MUTUAL RESPONSIBILITY OF CONTRACTORS

24.1 If, through acts of neglect on the part of the Contractor, any other Contractor or any subcontractor shall suffer loss or damage on the work, the Contractor agrees to settle with such other Contractor or subcontractor by agreement or arbitration if such other Contractor or subcontractors will so settle. If such other Contractor or subcontractor shall assert any

claim against the County on account of any damage alleged to have been sustained, the County shall notify the Contractor, who shall indemnify and save harmless the County against any such claim.

25. SEPARATE CONTRACT

25.1 The Contractor shall coordinate its operations with those of other contractors. Cooperation will be required in the arrangement for the storage of materials and in the detailed execution of the work. The Contractor, including its subcontractors, shall keep informed of the progress and the detail work of other contractors and shall notify the Architect/Engineer/County immediately of lack of progress or defective workmanship on the part of other contractors. Failure of a contractor to keep informed of the work progressing on the site and failure to give notice of lack of progress or defective workmanship by others shall be construed as acceptance by the Contractor of the status of the work as being satisfactory for proper coordination with its own work.

26. ARCHITECT/ENGINEER'S AUTHORITY

26.1 The Architect/Engineer/County shall give all orders and directions contemplated under this Contract and specifications, relative to the execution of the work. The Architect/Engineer/County shall determine the amount, quality, acceptability, and fitness of the several kinds of work and materials which are to be paid for under this Contract and shall decide all questions which may arise in relation to said work and the construction thereof. The Architect/Engineer/County's estimates and decisions shall be final and conclusive, except as herein otherwise expressly provided. In case any question shall arise between the parties hereto relative to said contract or specifications, the determination or decision of the Architect/Engineer/County shall be a condition precedent to the right of the Contractor to receive any money or payment for work under this Contract affected in any manner or to any extent by such question.

26.2 The Architect/Engineer/County shall decide the meaning and intent of any portion of the specifications and of any plans or drawings where the same may be found obscure or be in dispute. Any differences or conflicts in regard to their work which may arise between the Contractor under this Contract and other Contractors performing work for the County shall be adjusted and determined by the Architect/Engineer/County.

27. STATED ALLOWANCES

27.1 It is understood that Contractor has included in its proposal for the Contract sum all allowances including "Allowed Materials" The Contractor shall purchase the "Allowed Materials" as directed by the County on the basis of the lowest and best bid of at least three competitive bids. If the actual sum for purchasing the "Allowed Materials" is more or less than the "Cash Allowance," the Contract sum shall be adjusted accordingly. The adjustment in contract price shall be made on the basis of the purchase price without additional charges for overhead, profit, insurance or any other incidental expenses. The cost of installation of the "Allowed Materials" shall be included in the applicable sections

of the Contract Specifications covering this work.

28. USE OF PREMISES AND REMOVAL OF DEBRIS

28.1 The Contractor expressly undertakes at its own expense:

- A. to take every precaution against injuries to persons or damage to property;
- B. to store its apparatus, materials, supplies and equipment in such orderly fashion at the site of the work as will not unduly interfere with the progress of its work or the work of any other subcontractors;
- C. to place upon the work or any part thereof only such loads as are consistent with the safety of the portion of the work;
- D. to clean up frequently all refuse, rubbish, scrap materials, and debris caused by its operations, to the end that at all times the site of the work shall present a neat, orderly and workmanlike appearance;
- E. before final payment to remove all surplus material, false-work, temporary structures, including foundations thereof, plant of any description and debris of every nature resulting from its operations, and to put the site in a neat, orderly condition.
- F. to effect all cutting, fitting or patching of its work required to make the same to conform to the plans and specifications and, except with the consent of the Architect/Engineer/County, not to cut or otherwise alter the work of any other Contractor.

29. QUANTITIES OF ESTIMATE

29.1 Wherever the estimated quantities of work to be done and materials to be furnished under this Contract are shown in any of the documents including the proposal, they are given for use in comparing bids and the right is especially reserved except as herein otherwise specifically limited, to increase or diminish them as may be deemed reasonably necessary or desirable by the County to complete the work contemplated by this Contract, and such increase or diminution shall in no way void this Contract, nor shall any such increase or diminution give cause for claims or liability for damages.

30. LANDS AND RIGHTS-OF-WAY

30.1 Prior to the start of construction, the County shall obtain all lands and rights-of-way necessary for the carrying out and completions of work to be performed under this Contract.

31. GENERAL GUARANTY

31.1 Neither the final certificate of payment nor any provision in the Contract Documents, nor partial or entire occupancy of the premises by the County, shall constitute an acceptance of work not done in accordance with the Contract Documents or relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The Contractor shall remedy any defects in the work and pay for any damage to other work resulting therefrom, which shall appear within a period of one (1)

year from the date of final acceptance of the work unless a longer period is specified. The County will give notice of observed defects with reasonable promptness.

32. PROTECTION OF LIVES AND HEALTH

32.1 The Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the site, which occur as a result of its prosecution of the work. The safety provisions of applicable laws and building and construction codes shall be observed and the Contractor shall take or cause to be taken, such additional safety and health measures as the County may determine to be reasonably necessary.

33. INTEREST OF MEMBER

33.1 No member of Santa Fe Board of County Commissioners shall be admitted to any share or part of this Contract or to any benefit that may arise therefrom.

34. OTHER PROHIBITED INTERESTS

34.1 No official of the County who is authorized in such capacity and on behalf of the County to negotiate, make, accept or approve, or to take part in negotiating, making accepting or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the project, shall become directly or indirectly interested personally in this Contract or in any part hereof. No officer, employee, architect, attorney, engineer or inspector of or for the County who is authorized in such capacity and on behalf of the County to exercise any legislative, executive, supervisory or other similar functions in connection with the construction of the project, shall become directly or indirectly interested personally in this Contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the project.

35. USE AND OCCUPANCY PRIOR TO ACCEPTANCE BY COUNTY

- 35.1** The Contractor agrees to the use and/or occupancy of a portion or unit of the project before formal acceptance by the County, provided the County:
- A. Secures written consent of the Contractor except in the event, in the opinion of the Architect/ Engineer, the Contractor is chargeable with unwarranted delay in final cleanup of punch list items or other contract requirements.
 - B. Secures endorsement from the insurance carrier and consent of the surety permitting occupancy of the building or use of the project during the remaining period of construction.
 - C. When the project consists of more than one building, and one of the buildings is occupied, secures permanent fire and extended coverage insurance, including a permit to complete construction. Consent of the surety must also be obtained.

ATTACHMENT A

BID SHEETS

ATTACHMENT C
REVISED BID SHEETS

IFB# 2015-0365-PW/MM
OLD SANTA FE TRAIL ROAD IMPROVEMENTS AND WATERLINE TL2N

Please offer your best price for the work required for the construction for road improvements and waterline TL2N. The lump sum base bid must include pricing for materials, equipment, labor, travel, and fees for any required permitting. Be advised that award may be made without discussion with bidders on offers received.

BID ITEMS FOR THE
OLD SANTA FE TRAIL ROAD IMPROVEMENTS AND WATERLINE TL2N

BID NO.	DESCRIPTION	UNIT	ESTIM QUANT	UNIT PRICE	AMOUNT
<i>Multimodal Improvements</i>					
207000	SUBGRADE PREP, 12"	SY	9285	2.10	19,498.50
208XXX	GRADING < 2'	SY	5200	1.20	6,240.00
208XXX	SITE CLEARING AND GRUBBING	ACRE	4.86	2,322.00	11,284.92
303160	AGGREGATE BASE COURSE, 6"	SY	8860	11.50	101,890.00
423282	ASPHALT PAVEMENT, 3"	SY	8860	17.20	152,392.00
423282	ASPHALT PAVEMENT, DRIVEWAYS	SY	425	21.60	9,180.00
423XXX	SAWCUT ASPHALT CONCRETE	LF	11650	2.70	31,455.00
423XXX	REMOVE AND DISPOSE EXISTING ASPHALT	SY	3900	2.90	11,310.00
570024	CULVERT PIPE, 24"	LF	12	197.90	2,374.80
570025	CULVERT PIPE END SECTION, 24"	EA	2	405.20	810.40
570031	CULVERT PIPE END SECTION, 30"	EA	2	590.60	1,181.20
570012	CULVERT PIPE, 12"	LF	135	32.40	4,374.00
570013	CULVERT PIPE END SECTION, 12"	EA	1	324.70	324.70
570018	CULVERT PIPE, 18"	LF	8	48.40	387.20
570019	CULVERT PIPE END SECTION, 18"	EA	1	331.00	331.00
570061	CULVERT PIPE END SECTION, 60"	EA	1	2,461.70	2,461.70
570XXX	REMOVE EXISTING CULVERT	LF	205	7.90	1,619.50
602000	NEW RIPRAP, 8" NOM. DIAMETER	CY	25	155.90	3,897.50
602XXX	REMOVE, SALVAGE, AND RELOCATE EXISTING RIPRAP	CY	20	70.60	1,412.00
606000	GUARD RAIL	LF	260	25.90	6,734.00
606100	METAL BARRIER END TREATMENTS	EA	6	2,403.50	14,421.00
607220	FENCE RELOCATION	LF	760	8.60	6,536.00
609500	STANDARD CURB AND GUTTER	LF	677	12.90	8,733.30
623XXX	DROP INLET TYPE "D"	EA	1	6,165.50	6,165.50

632000	SEEDING	ACRE	2.00	2,934.90	5,869.80
663XXX	TELEPHONE PEDESTAL RELOCATION	EA	9	226.40	2,037.60
667XXX	RELOCATION OF MAILBOXES	EA	3	576.70	1,730.10
701015	RADAR TRAFFIC CONTROL SIGNS	EA	2	5,685.50	11,371.00
701031	REMOVE AND RELOCATE TRAFFIC SIGNS	EA	20	140.20	2,804.00
701XXX	INSTALL NEW TRAFFIC SIGNS	EA	26	227.00	5,902.00
704700	THERMOPLASTIC MARKING, 4", WHITE	LF	12300	1.10	13,530.00
704769	RETROREFLECTIVE THRU ARROW, WHITE	EA	13	146.90	1,909.70
704782	RETROREFLECTIVE BICYCLE MARKING, WHITE	EA	13	213.60	2,776.80
603280	SWPP PLAN, INSTALLATION, AND MAINTENANCE OF BMP'S	LS	1	2,563.70	2,563.70
<i>Waterline Improvements</i>					
30	JACK AND BORE, 24" STEEL CASING, WITH CASING SPACERS AND END SEALS, CIP	LF	85	220.60	18,751.00
31	12" WATERLINE PIPE, DR18 PVC, INCLUDING TRENCH, COMPACTED BACKFILL, RESTRAINED JOINTS, FITTINGS, AND APPURTENANCES, CIP	LF	7300	42.50	310,250.00
32	12" CARRIER PIPE, DIP WITH INTEGRAL JOINT RESTRAINT, CIP	LF	100	123.00	12,300.00
33	8" WATERLINE, DR18 PVC, INCLUDING TRENCH, COMPACTED BACKFILL, RESTRAINED JOINTS, FITTINGS, AND APPURTENANCES, CIP	LF	550	34.40	18,920.00
34	6" WATERLINE, DR18 PVC, INCLUDING TRENCH, COMPACTED BACKFILL, RESTRAINED JOINTS, FITTINGS, AND APPURTENANCES, CIP	LF	110	19.70	2,167.00
35	ROCK EXCAVATION, FOR TRENCH TO INSTALL WATERLINE, REMOVAL OF UNSUITABLE MATERIAL, SUPPLY AND HAULING OF IMPORTED BACKFIL MATERIAL, PLACEMENT AND COMPACTION, CIP	LF	100	27.70	2,770.00
36	CLEARING AND GRUBBING	ACRE	1.78	4,233.40	7,535.45
37	12" GATE VALVE AND BOX	EA	17	2,932.40	49,850.80
38	8" GATE VALVE AND BOX	EA	9	1,715.70	15,441.30
39	6" GATE VALVE AND BOX	EA	11	1,275.50	14,030.50
40	AIR/VACUUM VALVE AND BOX	EA	8	4,399.00	35,192.00
41	16" LINE STOP	EA	1	19,895.20	19,895.20

42	6" STUBOUT FOR FUTURE FIRE HYDRANT CONNECTION, INCL BLUE CARSONITE MARKERS AT END OF STUB	EA	11	1,159.70	12,756.70
43	3" SP IV ASPHALT PAVEMENT REMOVAL, DISPOSAL, AND REPLACEMENT, INCLUDING TACK COAT, BASE COURSE, AND GRADE PREP, CIP	SY	850	40.00	34,000.00
Miscellaneous					
618000	TRAFFIC CONTROL	LS	1	47,668.40	47,668.40
618XXX	MESSAGE BOARDS (14 DAYS)	EA	2	2,670.50	5,341.00
621000	MOBILIZATION	LS	1	13,305.60	13,305.60
801000	CONSTRUCTION STAKING	LS	1	34,048.80	34,048.80
	ENVIRONMENTAL MONITORING AND PLAN PREPARATION	ALLOW	\$35,000		35,000.00
801012	MATERIAL TESTING ALLOWANCE	ALLOW	\$28,000		28,000.00

BASE BID TOTAL WRITTEN IN NUMBERS	1,172,732.67
BASE BID TOTAL WRITTEN IN WORDS	One Million One Hundred Seventy Two Thousand Seven Hundred Thirty Two and sixty seven cents

ADDITIVE ALTERNATE #1

ITEM NO.	DESCRIPTION	UNIT	ESTIM QUANT	UNIT PRICE	AMOUNT
Multimodal Improvements					
401000	SLURRY SEAL	SY	20905	No Bid Received for Slurry Seal	
704700	THERMOPLASTIC MARKING, 6", WHITE	LF	12300	0.90	11,070.00
704700	THERMOPLASTIC MARKING, 4", YELLOW	LF	12500	0.70	8,750.00

ADDITIVE ALTERNATE #1 TOTAL WRITTEN IN NUMBERS	No Bid Received Slurry Seal
ADDITIVE ALTERNATE #1 TOTAL WRITTEN IN WORDS	

ADDITIVE ALTERNATE #2

ITEM NO	DESCRIPTION	UNIT	ESTIM QTY	UNIT PRICE	AMOUNT
<i>Waterline Improvements</i>					
55	FIRE HYDRANT ASSEMBLY, ATTACH TO EXISTING STUBOUT, 5'BURY, CIP	EA	11	3,844.50	42,289.50
56	PROTECTIVE BOLLARDS FOR EACH FIRE HYDRANT (3 PER HYDRANT)	EA	33	198.90	6,563.70
57	MOBILIZATION/DEMOBILIZATION ADDITIVE ALTERNATE #2	LS	1	672.40	672.40
58	TRAFFIC CONTROL ADDITIVE ALTERNATE #2	LS	1	2,002.90	2,002.90

ADDITIVE ALTERNATE #2 TOTAL WRITTEN IN NUMBERS		51,528.50
ADDITIVE ALTERNATE #2 TOTAL WRITTEN IN WORDS		Fifty One Thousand Five Hundred Twenty Eight and fifty cents

ADDITIVE ALTERNATE #3

ITEM NO	DESCRIPTION	UNIT	ESTIM QTY	UNIT PRICE	AMOUNT
<i>Waterline Improvements</i>					
59	MASTER METER, CIP	LS	1	42,758.80	42,758.80
60	SERVICE CONNECTION	LS	1	16,610.50	16,610.50
61	PNM CONNECTION ALLOWANCE	ALLOW	\$10,000		10,000.00
62	MOBILIZATION/DEMOBILIZATION ADDITIVE ALTERNATE #3	LS	1	336.20	336.20
63	TRAFFIC CONTROL ADDITIVE ALTERNATE #3	LS	1	1,335.20	1,335.20

ADDITIVE ALTERNATE #3 TOTAL WRITTEN IN NUMBERS		174,097.70
ADDITIVE ALTERNATE #3 TOTAL WRITTEN IN WORDS		One Hundred Seventy Four Thousand Ninety Seven and seventy cents

ATTACHMENT B
ADDENDA & MODIFICATIONS

Henry P. Roybal
Commissioner, District 1



Kathleen Holian
Commissioner, District 4

Miguel M. Chavez
Commissioner, District 2

Liz Stefanics
Commissioner, District 5

Robert A. Anaya
Commissioner, District 3

Katherine Miller
County Manager

August 21, 2015

SANTA FE COUNTY
IFB#2016-0365-PW/MM
Old Santa Fe Trail Road Improvements and Waterline TL2N

ADDENDUM #2

Dear Proponents,

This addendum is issued to reflect the following immediately. It shall be the responsibility of interested bidders to adhere to any changes or revisions to the IFB as identified in this Addendum No. 2. This documentation shall become permanent and made part of the departmental files.

ATTACHMENT A: PRE-BID AGENDA
ATTACHMENT B: PRE-BID ATTENDANCE SHEET
ATTACHMENT C: REVISED BID SHEET

Listed below are clarifications of the IFB and questions received via email concerning the above referenced IFB.

Question# 1- Will tree removal be required?

Answer# 1- *Yes, particularly along the south side of El Gancho Way and at the curve shift along Old Santa Fe Trail (west side) between STA 53+00 and STA 55+00 as indicated at the Pre-Bid meeting. See Specification 01 14 191.02B*

Question# 2- Is there soil sterilant under the pass?

Answer# 2- *No.*

Question# 3- Are there any dry utilities?

Answer# 3- *Yes. See sheets G.011 thru G.014. Contacts are listed on Sheet G-003.*

Question# 4- Is there room to store extra dirt or do the contractors have to haul it off site?

Answer# 4- *As shown on the Google Earth presentation, there is not a lot of room on either side of El Gancho Way and Old Santa Fe Trail for material storage. The County is not providing areas for dirt storage.*

Question# 5- Is there a designated staging site?

Answer # 5- *No. This will be the contactors responsibility to locate.*

Question# 6- What is the Engineer's estimate?

Answer # 6- *Santa Fe County is not releasing that information at this time.*

Question# 7- Does the County have funds to complete this project?

Answer # 7- *Yes, the County has designated funds for the completion of this project.*

Question# 8- Spec Section 402702.10,3.02, A: Will Valve Position indicators be required on gate valves?

Answer# 8- *No. Delete 40 27 02.10 F,G and H. Delete 40.27 03.02A*

Question 9- Bid item# 60, Service Connection, 1 LS: Where is this specifically in the drawings? What is the anticipated scope of this bid item?

Answer 9- *This bid item includes all work shown on Sheet E-101*

Question 10- Sheet C105 and C401: Plans show 18" culvert pipe and an 18" end section. What bid item do they pay under?

Answer 10- *A revised bid sheet with adjusted culvert quantities is attached.*

Question 11- Does this job require domestic material?

Answer 11- *No.*

Question 12- Please confirm on sheet W202 it shows ¼" service after the Jack & Bore, but on sheet W506 it shows it as a 2" connection. Should there be a bid item for this particular service?

Answer 12- *The referenced sheet should actually be W201. The water service was deleted from the project.*

Question 13- Please confirm the Master Meter Vault in Alt. #3 is 12 inch.

Answer 13- *It is a 12 inch meter.*

Clarification to Public Notification Requirements:

Public Notification Requirements:

01 14 16.01 1.03 A 1 should read as follows:

A. Construction Notices Before Construction:

1. Delivered not more than seven (7) calendar days nor less than four (4) calendar days prior to actual physical construction on each line, line segment or roadway segment.

01 14 16.01 1.03 B 1 should read as follows:

B. Construction Notices After Construction

1. Delivered not more than seven (7) calendar days nor less than four (4) calendar days prior to actual physical construction on each line, line segment or roadway segment.

01 14 16.01 1.04 should include the following:

B. Contractor shall install electronic message boards at the B.O.P. and E.O.P. 14 days prior to the start of construction. The message boards shall be installed for 14 days. The County will provide message details at the time of installation.

C. Contractor shall coordinate with residents regarding relocation of mailboxes, landscaping features, gates, fences and other objects or structures that interfere with proposed improvements.

Please add this Addendum #2 to the original bid documents and refer to bid documents, hereto as such. This and all subsequent addenda will become part of any resulting contract documents and have effects as if original issued. All other unaffected sections will have their original interpretation and remain in full force and effect.

Responders are reminded that any questions or need for clarification must be addressed to Maricela Martinez, Senior Procurement Specialist at mcmartinez@santafecountnm.gov.

ATTACHMENT A



OLD SANTA FE TRAIL ROAD IMPROVEMENTS AND WATER LINE TL2N
IFB# 2015-0365-PW/MM
PRE-BID MEETING (NON-MANDATORY)
August 7, 2015
Santa Fe County Projects and Facilities Conference Room
901 West Alameda, Suite 20-C, Santa Fe, NM
To be followed by site visit
2:00 pm (MDT)

INTRODUCTIONS

Contracting Agency: Santa Fe County

- | | | |
|---------------------|----------------------------|---|
| • Maricela Martinez | Procurement Specialist Sr. | Purchasing Division |
| • Chuck Vigil | Roads Project Manager | Public Works Department/Projects Division |
| • David L. Madrid | Project Manager III | Public Works Department/Projects Division |

Project Representative and Engineering Design Firm: Molzen Corbin

- Steve Morrow Project Engineer
- Construction Observation

PROJECT INFORMATION/BACKGROUND

- Project Location, Background and Scope
 - 0.25 miles of shoulder construction, drainage and traffic improvements on El Gancho Way.
 - 0.9 miles of shoulder construction, drainage and traffic improvements on Old Santa Fe Trail
 - 0.25 miles of 12-inch waterline and appurtenances on El Gancho Way
 - 1.2 miles of 12-inch waterline and appurtenances on Old Santa Fe Trail
- Project Funding - State (Design), County - GOB (Design and Construction - Road and Water Line)
- Liquidated Damages – Schedule is a safety concern. \$1500 per each working day
- Project Design / Specifications (Includes Geotechnical Report and Notice to Contractors)
- Traffic Control Requirements : Submit Traffic Control Plan to Johnny Baca, SFC Traffic Control Mgr. (jpbaca@.santafecountynm.gov) (505) 992-3020 (See note 6 on sheet G-003). Contractor must provide insurance certificate and traffic control plan stamped/signed by NM licensed engineer. If traffic control plan, traffic control, flagging and maintenance are provided by ie: Highway Supply, then the traffic control plan *does not* have to be stamped by a licensed engineer. Proof of flagger certifications will be required and kept on the job site file. Traffic control costs include 2 message boards for 14 days.
- NMDOT Utility Permit: Molzen Corbin will provide completed application with required attachments.
- Public Concerns
 - Businesses, Residents and Desert Academy School need to be kept informed of traffic situations that might impact access to their properties
 - Fire Department needs to be kept informed of traffic situations that might impact emergency responses.
 - Coordinate water shut-off with Engineer and SFC Public Utilities. Temporary water outages exceed 4 hours duration require temporary water supply. Connection to existing waterline that requires a temporary water outage that impacts nearby business may be required to occur at night time or during non-business hours.

- Provide timely notification to business and residents of any anticipated road closures and water outages.
 - Contractor shall coordinate with landowners regarding relocation of landscape features.
 - Contractor shall coordinate with owner of El Gancho Fitness property re: relocation of fence and gate. Gate relocation to be done by property owner.
- Environmental Concerns
 - **Minimize roadside disturbance wherever possible**
 - **Pay close attention to sheet G-009 (Environmental Commitments)**
 - Environmental Monitoring (Marron and Associates 505-898-8848) 48 hours notice
 - Nesting Survey (Marron and Associates 505-898-8848) 48 hours notice
 - Fines – To be paid for by Contractor (Indemnify and hold harmless to the County)
 - SWPPP – Contractor responsible for SWPPP preparation, BMP installation and maintenance and SWPPP inspections.
 - Notice of Intent (NOI) needs to be submitted at least two (2) weeks prior to beginning construction.
 - Existing Utilities
 - Contractor shall coordinate with utility providers regarding relocations (See sheet G-003 for utility contacts)
 - Allowances:
 - Material Testing at \$28,000.00
 - Environmental Monitoring/Nesting Survey at \$35,000.00 (Marron & Associates- Hannah Mattson)
 - Add Alternate #3: PNM Connection Allowance at \$10,000.00

BID PACKAGE INFORMATION (Maricela Martinez)

- ***CLARIFICATION: BIDS ARE DUE AUGUST 28, 2015 @ 2:00PM***
- Bid Documents including plans and specifications are available on the Santa Fe County website at www.santafecountynm.gov/asd/current_bid_solicitations
- Basis of Award - The lowest, responsive base bid, however, in the event there is not sufficient budget to fund the project in its entirety, the County reserves the right to select what can be funded at this time.
- Preferences:
 - 1) N.M. In-State Resident Contractor Preference, bid will be deemed 5% lower than bid actually received.
 - OR
 - 2) N.M. Resident Veteran Preference, bid will be deemed 10%, 8% or 7% lower than bid actually received based on information provided in Resident Veterans Preference Certification (Appendix C).

Copy of Resident Contractor or Resident Veteran Preference Certificate must be included with the bid submittal in order to receive the preference.

For more information on New Mexico State Preferences: www.tax.newmexico.gov
- Carefully read all bid documents for requirements, terms & conditions, including the sample contract.
- All bid forms must be completed and signed and included in bid submittal as outlined on page 16 of the IFB. ***Failure to include any of the documents listed in the bid submittal may be considered grounds for disqualification of the bidder and rejection of its bid.***
- Subcontractor Listing Form must be completed with all required information. For all trades that are listed "only one bid received" or "no bid received", the County may require the names and telephone numbers of all businesses contacted for a quote.

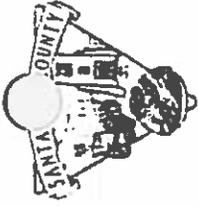
- The contractor and all subcontractors shall possess the appropriate licensure issued by the State Construction Industries Division (CID) to perform the work required.
- All contractors and subcontractors must be registered with the N.M. Department of Workforce Solutions for all work over \$60,000 on day of bid. (**Must be registered as "Active"**).
- Last Day for additional Questions – Wednesday, August 19, 2015
(email additional questions to Maricela Martinez: mcmartinez@santafecountynm.gov)
- Addendum Issued- Friday, August 21, 2015
Only questions answered by formal written addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

Bid Schedule:

Accept Bids on Date: August 28, 2015
Location: Santa Fe County Attorney's Conference Room
 102 Grant Avenue (Second Floor)
 Santa Fe, New Mexico 87501
Time: 2:00 pm

- Substantial Completion: 115 working days
- Project Schedule (*Tentative*): BCC Approval: September 29, 2015
 Issue Notice To Proceed: October 5, 2015
 Pre-construction Meeting: October 12, 2015
 Start Date: October 13, 2015

QUESTIONS



PRE BID CONFERENCE
 IFB# 2015-0365-PW/MM

OLD SANTA FE TRAIL ROAD IMPROVEMENTS AND WATER LINE TL2N

AUGUST 7, 2015

2:00 PM

ATTACHMENT B

NAME	COMPANY	TELEPHONE	E-MAIL ADDRESS
Chuck Vigil	Santa Fe County	992-3018 (505)	cvigil@santafecounty.nm.gov
STEVE MORROW	MORROW CORBIN	242-5700	smorrow@malzenscobin.com
Maricela Martinez	SFC Purchasing	992-9804	mmartinez@santafecountynm.gov
Rolando Molinar	hoconstruction	505-2882231	hoconstruction@men.com
Gary Echeagaray	EMCO of SF	505-490-0695	emcoerpceo.com
Lady Keelin	Subsurface	690-2540	Sanjose@subsurface.com
Brent Bower	KMCZ INC	345-0008	bbower@kmczinc.com
John White	Salls Brothers Const.	505 873 8780	jwhite@sallsbrothers.com
David Medvid	Santa Fe County	505-580-6237	dmedvid@santafecountynm.gov
Robert George	SFCU	505-992-3046	rjgeorge@santafecountynm.gov
Wesley Spaulding	Spaulding Const.	505-821-1034	wspaulding@spauldingconstruction.net

ATTACHMENT C
REVISED BID SHEETS

IFB# 2015-0365-PW/MM
OLD SANTA FE TRAIL ROAD IMPROVEMENTS AND WATERLINE TL2N

Please offer your best price for the work required for the construction for road improvements and waterline TL2N. The lump sum base bid must include pricing for materials, equipment, labor, travel, and fees for any required permitting. Be advised that award may be made without discussion with bidders on offers received.

BID ITEMS FOR THE
OLD SANTA FE TRAIL ROAD IMPROVEMENTS AND WATERLINE TL2N

ITEM NO.	DESCRIPTION	UNIT	ESTIM QUANT	UNIT PRICE	AMOUNT
<i>Multimodal Improvements</i>					
207000	SUBGRADE PREP, 12"	SY	9285		
208XXX	GRADING < 2'	SY	5200		
208XXX	SITE CLEARING AND GRUBBING	ACRE	4.86		
303160	AGGREGATE BASE COURSE, 6"	SY	8860		
423282	ASPHALT PAVEMENT, 3"	SY	8860		
423282	ASPHALT PAVEMENT, DRIVEWAYS	SY	425		
423XXX	SAWCUT ASPHALT CONCRETE	LF	11650		
423XXX	REMOVE AND DISPOSE EXISTING ASPHALT	SY	3900		
570024	CULVERT PIPE, 24"	LF	12		
570025	CULVERT PIPE END SECTION, 24"	EA	2		
570031	CULVERT PIPE END SECTION, 30"	EA	2		
570012	CULVERT PIPE, 12"	LF	135		
570013	CULVERT PIPE END SECTION, 12"	EA	1		
570018	CULVERT PIPE, 18"	LF	8		
570019	CULVERT PIPE END SECTION, 18"	EA	1		
570061	CULVERT PIPE END SECTION, 60"	EA	1		
570XXX	REMOVE EXISTING CULVERT	LF	205		
602000	NEW RIPRAP, 8" NOM. DIAMETER	CY	25		
602XXX	REMOVE, SALVAGE, AND RELOCATE EXISTING RIPRAP	CY	20		
606000	GUARD RAIL	LF	260		
606100	METAL BARRIER END TREATMENTS	EA	6		
607220	FENCE RELOCATION	LF	760		
609500	STANDARD CURB AND GUTTER	LF	677		
623XXX	DROP INLET TYPE "D"	EA	1		

632000	SEEDING	ACRE	2.00		
663XXX	TELEPHONE PEDESTAL RELOCATION	EA	9		
667XXX	RELOCATION OF MAILBOXES	EA	3		
701015	RADAR TRAFFIC CONTROL SIGNS	EA	2		
701031	REMOVE AND RELOCATE TRAFFIC SIGNS	EA	20		
701XXX	INSTALL NEW TRAFFIC SIGNS	EA	26		
704700	THERMOPLASTIC MARKING, 4", WHITE	LF	12300		
704769	RETROREFLECTIVE THRU ARROW, WHITE	EA	13		
704782	RETROREFLECTIVE BICYCLE MARKING, WHITE	EA	13		
603280	SWPP PLAN, INSTALLATION, AND MAINTENANCE OF BMP'S	LS	1		
<i>Waterline Improvements</i>					
30	JACK AND BORE, 24" STEEL CASING, WITH CASING SPACERS AND END SEALS, CIP	LF	85		
31	12" WATERLINE PIPE, DR18 PVC, INCLUDING TRENCH, COMPACTED BACKFILL, RESTRAINED JOINTS, FITTINGS, AND APPURTENANCES, CIP	LF	7300		
32	12" CARRIER PIPE, DIP WITH INTEGRAL JOINT RESTRAINT, CIP	LF	100		
33	8" WATERLINE, DR18 PVC, INCLUDING TRENCH, COMPACTED BACKFILL, RESTRAINED JOINTS, FITTINGS, AND APPURTENANCES, CIP	LF	550		
34	6" WATERLINE, DR18 PVC, INCLUDING TRENCH, COMPACTED BACKFILL, RESTRAINED JOINTS, FITTINGS, AND APPURTENANCES, CIP	LF	110		
35	ROCK EXCAVATION, FOR TRENCH TO INSTALL WATERLINE, REMOVAL OF UNSUITABLE MATERIAL, SUPPLY AND HAULING OF IMPORTED BACKFILL MATERIAL, PLACEMENT AND COMPACTION, CIP	LF	100		
36	CLEARING AND GRUBBING	ACRE	1.78		
37	12" GATE VALVE AND BOX	EA	17		
38	8" GATE VALVE AND BOX	EA	9		
39	6" GATE VALVE AND BOX	EA	11		
40	AIR/VACUUM VALVE AND BOX	EA	8		
41	16" LINE STOP	EA	1		

42	6" STUBOUT FOR FUTURE FIRE HYDRANT CONNECTION, INCL BLUE CARSONITE MARKERS AT END OF STUB	EA	11		
43	3" SP IV ASPHALT PAVEMENT REMOVAL, DISPOSAL, AND REPLACEMENT, INCLUDING TACK COAT, BASE COURSE, AND GRADE PREP, CIP	SY	850		
<i>Miscellaneous</i>					
618000	TRAFFIC CONTROL	LS	1		
618XXX	MESSAGE BOARDS (14 DAYS)	EA	2		
621000	MOBILIZATION	LS	1		
801000	CONSTRUCTION STAKING	LS	1		
	ENVIRONMENTAL MONITORING AND PLAN PREPARATION	ALLOW	\$35,000		
801012	MATERIAL TESTING ALLOWANCE	ALLOW	\$28,000		

BASE BID TOTAL WRITTEN IN NUMBERS	
BASE BID TOTAL WRITTEN IN WORDS	

ADDITIVE ALTERNATE #1

ITEM NO.	DESCRIPTION	UNIT	ESTIM QUANT	UNIT PRICE	AMOUNT
<i>Multimodal Improvements</i>					
401000	SLURRY SEAL	SY	20905		
704700	THERMOPLASTIC MARKING, 6", WHITE	LF	12300		
704700	THERMOPLASTIC MARKING, 4", YELLOW	LF	12500		

ADDITIVE ALTERNATE #1 TOTAL WRITTEN IN NUMBERS	
ADDITIVE ALTERNATE #1 TOTAL WRITTEN IN WORDS	

ADDITIVE ALTERNATE #2

ITEM NO.	DESCRIPTION	UNIT	ESTIM QUANT	UNIT PRICE	AMOUNT
<i>Waterline Improvements</i>					
55	FIRE HYDRANT ASSEMBLY, ATTACH TO EXISTING STUBOUT, 5'BURY, CIP	EA	11		
56	PROTECTIVE BOLLARDS FOR EACH FIRE HYDRANT (3 PER HYDRANT)	EA	33		
57	MOBILIZATION/DEMOBILIZATION ADDITIVE ALTERNATE #2	LS	1		
58	TRAFFIC CONTROL ADDITIVE ALTERNATE #2	LS	1		

ADDITIVE ALTERNATE #2 TOTAL WRITTEN IN NUMBERS		
ADDITIVE ALTERNATE #2 TOTAL WRITTEN IN WORDS		

ADDITIVE ALTERNATE #3

ITEM NO.	DESCRIPTION	UNIT	ESTIM QUANT	UNIT PRICE	AMOUNT
<i>Waterline Improvements</i>					
59	MASTER METER, CIP	LS	1		
60	SERVICE CONNECTION	LS	1		
61	PNM CONNECTION ALLOWANCE	ALLOW	\$10,000		
62	MOBILIZATION/DEMOBILIZATION ADDITIVE ALTERNATE #3	LS	1		
63	TRAFFIC CONTROL ADDITIVE ALTERNATE #3	LS	1		

ADDITIVE ALTERNATE #3 TOTAL WRITTEN IN NUMBERS		
ADDITIVE ALTERNATE #3 TOTAL WRITTEN IN WORDS		

Henry P. Roybal
Commissioner, District 1



Kathleen Holian
Commissioner, District 4

Miguel M. Chavez
Commissioner, District 2

Liz Stefanics
Commissioner, District 5

Robert A. Anaya
Commissioner, District 3

Katherine Miller
County Manager

August 14, 2015

SANTA FE COUNTY
IFB#2016-0365-PW/MM
Old Santa Fe Trail Road Improvements and Waterline TL2N

ADDENDUM #1

Dear Proponents,

This addendum is issued to reflect the following immediately. It shall be the responsibility of interested bidders to adhere to any changes or revisions to the IFB as identified in this Addendum No. 1. This documentation shall become permanent and made part of the departmental files.

Clarification:

The proposal due date has changed to:

Date: Friday, August 28, 2015
Time: 2:00PM
Place: Santa Fe County Legal Conference room
located at 102 Grant Avenue, 2nd Floor
Santa Fe, New Mexico 87501

Please add this Addendum #1 to the original bid documents and refer to bid documents, hereto as such. This and all subsequent addenda will become part of any resulting contract documents and have effects as if original issued. All other unaffected sections will have their original interpretation and remain in full force and effect.

Responders are reminded that any questions or need for clarification must be addressed to Maricela Martinez, Senior Procurement Specialist at mcmartinez@santafecountnm.gov.

EXHIBIT A
PROJECT MANUAL

EXHIBIT B

TECHNICAL SPECIFICATIONS AS LISTED IN PLAN SET

EXHIBIT C

LABOR AND MATERIAL PAYMENT BOND (SAMPLE)

KNOW ALL MEN BY THESE PRESENT, THAT WE _____
 _____ as PRINCIPAL hereinafter called the "PRINCIPAL" and
 _____ as SURETY hereinafter called the "SURETY", are held and
 firmly bound unto Santa Fe County, a Political Subdivision of the State of New Mexico as OBLIGEE
 hereinafter called the "COUNTY", for the use and benefit of any claimants as herein below defined, in
 the amount of _____ (\$.) dollars for the payment whereof
 PRINCIPAL and SURETY bind themselves, their heirs, executors, administrators, successors, and
 assigns, jointly and severally, firmly by these presents.

WHEREAS, the PRINCIPAL has a written contract dated _____, 2015, with the
 COUNTY for the construction services for the construction services for the Old Santa Fe Trail Road
 Improvements and Waterline TL2N in Santa Fe County, New Mexico, which must be constructed in
 accordance with drawings and specifications which contract is referenced and made a part hereof, and is
 hereinafter referred to as the "Contract."

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if PRINCIPAL shall
 promptly make payment to all claimants as hereinafter defined, for all labor and material used or
 reasonably required for use in the performance of the Contract, then this obligation shall be void;
 otherwise, it shall remain in full force and effect, subject to the following conditions:

1. A claimant is defined as one having a direct contract with the PRINCIPAL or with a
 subcontractor of the PRINCIPAL for labor, material, or both, used or reasonably required for
 use in the performance of the Contract, labor and material being construed to include but not
 be limited to that part of water, gas, power, light, heat, oil, gasoline, telephone services or
 rental of equipment directly applicable to the Contract.
2. The above named PRINCIPAL and SURETY hereby jointly and severally agree with the
 COUNTY that every claimant as herein defined, who has not been paid in full before the
 expiration of a period of ninety (90) days after the date on which the last of such claimant's
 work or labor was done or performed, or materials were furnished by such claimant,
 prosecute a suit to final judgment for such sum or sums as may be justly due claimant, and
 have execution thereof. The COUNTY shall not be liable for payment of any cost or
 expenses of any such suit.
3. No suit or action shall be commenced hereunder by any claimant:
 - a. Unless claimant, or other than one having a direct contract with the PRINCIPAL,
 shall have written notice in the form of an sworn statement to the COUNTY and any
 one or both of the following: the PRINCIPAL or SURETY above named, within
 ninety (90) days after such said claim is made or suit filed, stating with substantial
 accuracy the amount claimed and the name of the party to whom the materials were
 furnished, or for whom the work or labor was done or performed.
 - b. Such notice shall be served by mailing the same by registered mail or certified mail,
 postage prepaid, in an envelope addressed to the COUNTY, PRINCIPAL or

SURETY, at any place where an office is regularly maintained by said COUNTY, PRINCIPAL or SURETY for the transaction of business, or served in any manner in which legal process may be served in the State in which the aforesaid project is located, save that such service need not be made by a public officer.

- 4. Any suit under this Labor and Material Bond must be instituted in accordance with the statute of limitation under Section 37-1-3 NMSA 1978.
- 5. No right of action shall accrue on this Bond to or for the use of any person or corporation other than subcontractors or sub-subcontractors of the said Contract between PRINCIPAL and Santa Fe County named herein.

SIGNED AND SEALED THIS _____ DAY OF _____, 2015.

CONTRACTOR – PRINCIPAL (signature)

By: _____
(Printed name and title)

NOTARY PUBLIC

(seal)

My Commission expires: _____

SURETY (signature)

(Printed name and title)

NOTARY PUBLIC

(seal)

My Commission expires: _____

SURETY'S Authorized New Mexico Agent

EXHIBIT D

PERFORMANCE BOND (SAMPLE)

A. KNOW ALL MEN BY THESE PRESENT, THAT WE _____, as PRINCIPAL hereinafter called the "CONTRACTOR" and _____, as SURETY hereinafter called the "SURETY", are held and firmly bound unto OBLIGEE Santa Fe County, a Political Subdivision of the State of New Mexico, hereinafter called the "COUNTY", in the sum of _____ (\$_____) dollars for the payment whereof CONTRACTOR and SURETY bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

B. WHEREAS, the CONTRACTOR has a written contract dated _____, 2015, with the COUNTY for the construction services for the Old Santa Fe Trail Road Improvements and Waterline TL2N in Santa Fe County, New Mexico, in accordance with drawings and specifications which contract is referenced made part hereof, and is hereinafter referred to as the "Contract."

C. NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if CONTRACTOR shall promptly and faithfully perform said Contract (including any amendment thereto), then this obligation shall be null and void; otherwise it shall remain in full force and effect until the COUNTY shall by written instrument notify the SURETY that the obligation is discharged, except that the obligation shall continue for at least three (3) months following the expiration of the term of the Contract.

1. The SURETY hereby waives notice of any alteration or extension of the Contract time made by the COUNTY.
2. Whenever CONTRACTOR shall be, and is declared by the COUNTY to be in default under the Contract, the COUNTY having performed the COUNTY'S obligations thereunder, the SURETY must promptly remedy the default and shall promptly:
 - (1) Complete the Contract in accordance with its terms and conditions, or
 - (2) Obtain a bid or bids for submission to the COUNTY for completing the Contract in accordance with its terms and conditions, and upon determination by the COUNTY and SURETY of the lowest responsible bidder, arrange for a contract between such bidder and Santa Fe County, and make available as work progresses (even though there should be a default or a secession of defaults under the Contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract price, but not exceeding, including other costs and damages for which the SURETY may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the Contract price" as used in this paragraph, shall mean the total amount payable by the COUNTY to CONTRACTOR under the Contract and any amendments thereto, less the amount properly paid by the COUNTY to CONTRACTOR.

D. No right of action shall accrue on this Performance Bond to or for the use of any person or corporation other than Santa Fe County named herein or the heirs, executors, administrators, or successors of Santa Fe County.

E. This Bond shall be enforceable without the need to have recourse to any judicial or arbitral proceedings.

SIGNED AND SEALED THIS _____ DAY OF _____, 2015.

CONTRACTOR - PRINCIPAL (signature)

By: _____
(Printed name and title)

NOTARY PUBLIC (seal)

My Commission expires: _____

SURETY (signature)

(Printed name and title)

NOTARY PUBLIC (seal)

My Commission expires: _____

SURETY'S Authorized New Mexico Agent

EXHIBIT E

ASSIGNMENT OF ANTITRUST CLAIMS

TO BE EXECUTED BY GENERAL CONTRACTORS, SUBCONTRACTORS, SUPPLIERS,
AND SUBSUBCONTRACTORS OF CONTRACTORS ON COUNTY CONTRACTS.

FIRM NAME:
ADDRESS:

PROJECT:

PHONE NO.:

PROJECT NO:

_____ agrees that any and all claims which it may have or may inure to it for overcharges resulting from antitrust violations as to goods, services, and materials purchased in connection with the above-referenced project are hereby assigned to Santa Fe County, but only to the extent that such overcharges are passed on to the County. It is agreed that the undersigned retains all rights to any such antitrust claims to the extent of any overcharges not passed on to the County, including the right to any treble damages attributable thereto.

FIRM: _____

BY: _____
Signed by Individual empowered to obligate Suppliers,
Subcontractors or Subsubcontractors

TITLE: _____

EXHIBIT F
CERTIFICATE OF LIABILITY INSURANCE

EXHIBIT G

NOTICE OF CONTRACT AWARD

TO:

FROM: _____, Public Works Department

CONTRACT NO. _____

This is to inform that you that you have been awarded the Contract for:

Project Name: _____

Date of Award _____ Amount of Award _____

Contractor Information:

Firm Name: _____ License# _____

Address: _____ Phone # _____

It is anticipated that construction will take place:

Approximate Starting Date: _____ Approximate Completion Date: _____

Santa Fe County hereby accepts your offer on the solicitation No. _____ as reflected in this award document. The rights and obligations of the parties shall be subject to and governed by this document and any documents attached or incorporated by reference.

SANTA FE COUNTY

Name of Public Works Director or designee: _____
(Print Name)

Signature

EXHIBIT H

NOTICE TO PROCEED

TO:

DATE:
PROJECT:

ATTN:

PROJECT NO.
CONTRACT NO.
IFB NO.

Enclosed is your copy of the Contract, which has been approved. Please consider this letter as official NOTICE TO PROCEED on the above-referenced project.

Your firm shall commence work within ten (10) calendar days of the above date and shall achieve Substantial Completion _____ calendar days thereafter, which shall be _____, 2015, unless modified by Change Order.

It is essential that you make reference to the above-stated project number on all documents sent to the Architect/Engineer from your office. These documents shall include correspondence, change order proposals, change orders, payment request statements, and all other project-related material which you forward to the Architect/Engineer for information and processing.

Also, before you may start any Work at the site, you must (add any other requirements):

OWNER:

Santa Fe County
SFC _____ DEPARTMENT

By: _____

Director, SFC Department

EXHIBIT I

CHANGE ORDER

PROJECT:

CONTRACTOR
CHANGE ORDER NO:

ARCHITECT/ENGINEER

PROJECT NO:

Contractor Telephone:
Contractor e-mail:
ENGINEER'S/ARCHITECT'S PROJECT NO:

CHANGE ORDER JUSTIFICATION (Provide definitive reason for proposed change order.)

You are directed to make the following changes in this Contract: (Provide a detailed description of the Scope of the Work.)

NOT VALID UNTIL SIGNED BY BOTH THE COUNTY AND THE ARCHITECT/ENGINEER.
Signature of the Contractor indicates his agreement herewith, including any adjustment in the Contract Sum or Contract Time.

The Original Contract Sum was _____
Net change by previously authorized Change Orders \$0.00
The Contract Sum prior to this Change Order was he Contract Sum will be increased/decreased/unchanged _____
by this Change Order in the amount of \$0.00
The new contract Sum including this Change Order will be \$0.00
The Contract Time will be increased/decreased/unchanged by ___ days.
The date of Substantial Completion as of the date of this Change Order therefore is: _____

EXHIBIT J

CERTIFICATE OF SUBSTANTIAL COMPLETION

SANTA FE COUNTY – (INSERT DEPARTMENT)

Public Works Director or designee (name): _____

CONTRACTOR: _____

Contractor Purchase Order Number: _____

ARCHITECT/ENGINEER: _____

Project Name: _____

Contract Date: _____

Project Description - Article 2 to Agreement Between Santa Fe County and Contractor (include address and project location description):

The contractor hereby certifies the Work of this project to be in complete conformance to the Contract Documents and is substantially complete, enabling the County to make use of the Work as intended.

By its signature below the Contractor further requests Architect/Engineer and County to inspect the Work and to concur in the Work's substantial completion by their signature and/or to provide in a timely manner to Contractor a listing of work items adjudged by them as remaining to be completed or corrected. Contractor agrees to complete and correct all work items (Punch List) representative of such listing within ___ days from date of receipt from Architect/Engineer.

Contractor

Signature

Print Name

Date

Accepted by Santa Fe County

Signature (Public Works Director or Designee) Print Name Date

Inspected/Concurrence Architect/Engineer

Signature Print Name Date

PUNCH LIST

A list of items (Punch List) to be completed or corrected, verified by the Architect/Engineer and County, is appended hereto. Failure to include any incomplete items on such list does not alter the responsibility of the Contractor to provide all Work in complete conformance with the Contract Documents.

The Contractor shall complete or correct the work on the punch list appended hereto by _____ (Date)

The punch list consists of _____ (indicate number of items) items.

The Work performed under this Contract has been reviewed and found to be substantially complete by the Director of Public Works who has hereby established the Date of Substantial Completion as _____ (date) which is also the date of commencement of all warranties and guarantees required by the Contract Documents. The Date of Substantial Completion of the Work or designated portion thereof is the date established by the Director of Public Works (or designee) when construction is sufficiently complete, in accordance with the Contract Documents, so the County may occupy the Work, or designated portion thereof, for the use for which it is intended.

The County accepts the Work or designated portion thereof as substantially complete and assumes full possession thereof, in accordance with the contract documents.

Punch List Items: (Use additional sheets if necessary)

Henry P. Roybal
Commissioner, District 1

Miguel Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

DATE: September 9, 2015

TO: Board of County Commissioners

FROM: Bill Taylor, Procurement Manager *BT*

VIA: Katherine Miller, County Manager *KM*
Jeffrey Trujillo, ASD Director
Adam Leigland, Public Works Director

ITEM AND ISSUE: *BCC Meeting September 29, 2015*
REQUEST APPROVAL OF THE CONSTRUCTION CONTRACT NO. 2015-0143-PW/PL WITH REINEKE CONSTRUCTION IN THE AMOUNT OF \$284,844.00, EXCLUSIVE OF GRT FOR THE RIO QUEMADO WATERSHED RESTORATION PROJECT, AND GRANT THE COUNTY MANAGER SIGNATURE AUTHORITY TO SIGN THE PURCHASE ORDER FOR SAID CONTRACT. (Bill Taylor, Purchasing Division)

SUMMARY:

Santa Fe County Purchasing Division together with the Public Works Department issued a Request of Proposals for Construction, RFP No. 2015-0143-PW/PL for the Rio Quemado Watershed Restoration Project. It was determined by the Purchasing Division that it would be in the best interest of the County to pre-qualify Bidders due to the unique and specialized construction services that would be required for this project.

Two Proposals were received from:

Reineke Construction, Sandia Park, NM
Padilla Industries, Santa Fe, NM

Both Firms met the required qualifications and were then asked to submit their respective cost proposals for the project.

Reineke Construction provided the lowest responsive cost for the project and it was determined to award the contract to Reineke Construction.

BACKGROUND:

In 2012 Santa Fe County received a grant from the Water Trust Board (WTB) for planning, designing and implementing a watershed restoration project on the Rio Quemado, a tributary of the Rio Santa Cruz, below Santa Cruz Reservoir located in Chimayo, New Mexico. The County owns

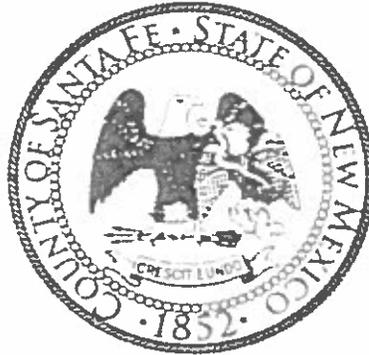
and manages El Potrero Open Space consisting of approximately 36 acres at the confluence of the Rio Quemado and the Rio Santa Cruz. In 2013 Santa Fe County contracted with William J. Miller Engineers to provide stream restoration designs for the Rio Quemado and the Rio Santa Cruz in the proximity of the County's El Potrero Open Space in fulfillment of the grant. Engineering services included completing an assessment of the existing stream conditions and based on the results of the assessment, designing restoration structures to stabilize the streams and improve stream functions where stream degradation is interfering with historic acequia diversions and access to the pastures. The engineer completed designs for stream stabilization structures on the Rio Santa Cruz at the Las Cuevas and Manuel Vigil acequia diversions that irrigate El Potrero Open Space, and on the Rio Quemado at the Senora Epitacio DeAgüero acequia diversion and the at-grade stream crossing maintenance access to El Potrero Open Space.

The construction work consists of stream bank stabilization and restoration including the rehabilitation of existing in-stream irrigation diversion structures using fluvial geomorphological restoration techniques. The work involves the installation of cross vanes, rock vanes, step pools and rock toe protection in the stream bed.

ACTION REQUESTED:

Request approval of the construction contract No. 2015-0143-PW/PL in the amount of \$284,844.00, exclusive of NM GRT with Reineke Construction for the Rio Quemado Watershed Restoration Project and grant the County Manager signature authority to sign the purchase order.

**AGREEMENT BETWEEN SANTA FE COUNTY AND CONTRACTOR
FOR CONSTRUCTION SERVICES**



**SANTA FE COUNTY
ADMINISTRATIVE SERVICES DEPARTMENT
PURCHASING DIVISION
2014 EDITION**

[Changes, additions, deletions and/or any modifications other than those agreed upon by the parties upon execution of this contract, without the written consent of Santa Fe County shall render this document null and void.]

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION.

Hereafter "County":

Katherine Miller, County Manager
Santa Fe County
PO Box 276
Santa Fe, New Mexico 87504-0276
TELEPHONE: 505-986-6200
FAX: 505-985-2740

Hereafter "Contractor":

Mark Reineke, Owner
Reineke Construction
75 Canyon Road
Sandia Park, NM 87047
TELEPHONE: (505) 270-6866
E-MAIL ADDRESS: mreineke@earthlink.net

ENGINEER:

NAME: William J. Miller Engineers, Inc.
ADDRESS: 2019 Galisteo Street #M-4
Santa Fe, New Mexico 87505
TELEPHONE: (505) 983-7694
E-MAIL ADDRESS: bill@wjmillereengineers.com

Table of Contents

	Page No
RECITALS	10
Article 1 The Contract Documents	10
1.1 Documents	10
1.2 Certificates and Documentation	10
Article 2 The Work	11
2.1 The Work	11
Article 3 Effective Date, Time of Commencement, Substantial Completion and Amendments	11
3.1 Effective Date	11
3.2 Time of Commencement	11
3.3 Substantial Completion	11
3.4 Time for Completion and Liquidated Damages	11
3.5 Amendments	13
Article 4 Contract Sum	13
4.1 Lump Sum	13
4.2 Contract Amount	13
Article 5 Progress Payments	13
5.1 Progress Payments	13
Article 6 Final Payment	15
6.1 Final Payment	15
6.2 Acceptance of Final Payment Constitutes Release	15
 GENERAL CONDITIONS	
1. Definitions	17
1.1 Application for Payment	17
1.2 Change Order	17
1.3 Calendar Day	17
1.4 Contract Period	17
1.5 Contractor	17
1.6 Construction Documents	17
1.7 Construction Schedule	17
1.8 Day	17

1.9 Labor and Material Payment Bond.....17

1.10 Lump Sum Agreement.....18

1.11 Lump Sum Bid.....18

1.12 Lump Sum Contract.....18

1.13 Payment Bond.....18

1.14 Performance Bond18

1.15 Progress Payment.....18

1.16 Progress Schedule.....18

1.17 Punch List18

1.18 Schedule of Values18

1.19 Services.....18

1.20 Stipulated Sum Agreement18

1.21 Subcontractor19

1.22 Unit Price Contract19

1.23 Unit Prices19

1.24 Working Day19

1.25 Work on the Project.....19

2. Contract and Contract Documents.....19

2.1 Entire Agreement.....19

2.2 Relationship of Contract Documents.....19

2.3 Conflicting Conditions.....19

3. Plans, Specifications and Addenda.....20

3.1 The plans, specifications and addenda.....20

3.2 Certificates and Documents Incorporated20

4. Contract Security - Bonds.....20

4.1 Performance Bond20

4.2 Payment Bond.....20

4.3 Additional or Substitute Bond20

4.4 Labor and Material Bond.....20

5. Terms and Meanings.....20

5.1 Words and Phrases.....21

5.2 Gender, Singular/Plural21

5.3 Captions & Section Headings.....21

5.4 Interchangeable Terms.....21

6. Compliance with Applicable Law, Choice of Law21

6.1 Agreement governed by the laws of the State of New Mexico21

6.2 Contractor shall comply with all applicable laws, ordinances & regulations.....21

6.3 Minimum Wage Rate.....21

6.4 Litigation shall be federal and state district courts of New Mexico21

6.5 Bribes, Kickbacks and Gratuities21

6.6 New Mexico Tort Claims Act.....21

6.7 Provision Required by Law Deemed Inserted22

7. Effective Date & Term22

7.1 Agreement shall become effective.....22

7.2 Substantial Completion.....22

8. Termination.....22

8.1 Termination of Agreement for Cause22

8.2 Termination for Convenience22

8.3 Right of the County to Terminate Contract23

9. Appropriations & Authorizations23

9.1 Agreement contingent on Sufficient Appropriations.....23

10. Amendments – Change Orders23

10.1 Contract may be amended by change orders23

11. Indemnification.....23

11.1 Contractor shall indemnify23

11.2 County shall have right to control and participate in defense
of demand or suit24

11.3 Contractor’s obligations shall not be limited by provisions of
insurance policy24

12. Aggrievement Procedure During Contract Administration24

12.1 Claims, Disputes or other matters.....24

12.2 Settlement Agreement24

12.3 Contractor shall carry on Work during dispute resolution proceedings24

13. Dispute Resolution.....24

13.1 Mediation24

13.2 Mediation Process.....24

13.3 Litigation.....25

14. Insurance.....25

14.1 Insurance required before contractor commences work.....25

14.2 Proof of Carriage of Insurance.....25

14.3 General Conditions25

14.4 General Liability Insurance, including automobile25

14.5 Subcontractor’s Public Liability & Property Damage Insurance25

14.6 Worker’s Compensation Insurance.....25

14.7 Scope of Insurance and Special Hazards26

14.8 Builder’s Risk Insurance.....26

14.9 Increased Limits.....26

14.10 Additional Insured26

15. Independent Contractor26

15.1 Contractor and its agents are independent contractors26

15.2 Contractor shall not subcontract without written approval27

15.3 Contractor shall maintain detailed time records27

16. Conflict of Interest of Officers or Employees of the Local Jurisdiction27

16.1 No officer or employee shall have any interest shall have any interest.....27

16.2 No official of the County shall be interested personally in this contract.....27

16.3 Contractor warrants no conflict of interest27

17. Assignment27

17.1 Contractor shall not assign or transfer any interest in this Agreement.....27

18. Subcontracting27

18.1 Contractor shall not subcontract without written notice to County.....28

18.2 Contractor shall provide listing of subcontractors.....28

18.3 Contractor shall adhere to all provisions of Subcontractor’s
Fair Practices Act.....28

18.4 Contractor shall provide Non-Collusion and EEO forms for
all subcontractors28

18.5 Contractor shall not award any work without written notice to County.....28

18.6 Contractor shall be responsible for acts and omissions of subcontractors28

18.7 Contractor shall cause appropriate provisions in all subcontracts.....28

18.8 Nothing shall create contractual relation between County
and subcontractors28

18.9 New Mexico Little Miller Act28

19. Personnel.....28

19.1 All work performed by Contractor28

19.2 Contractor shall secure all qualified personnel required to perform work29

20. Notices29

20.1 Notice required shall be in writing29

20.2 Nothing shall preclude the giving of written Notice29

21. Release.....29

21.1 Contractor released the County29

22. Waiver.....29

22.1 Waiver to be in writing29

CONDITIONS OF THE WORK

1. Additional Instructions & Detail Drawings30

1.1 Additional instructions & drawings as necessary30

2. Shop or Setting Drawings30

2.1 Contractor shall submit copies of shop or setting drawing.....30

3. Materials, Services and Facilities30

3.1 Contractor shall provide and pay for all materials, labor, etc.30

3.2 Any work performed after working hours.30

4. Contractor’s Title to Materials.....30

4.1 No materials or supplies shall be purchased by subject to chattel mortgage30

5. Inspection and Testing of Materials31

5.1 All material and equipment shall be subject to adequate inspection31

5.2 Materials of construction shall be subject to inspection and testing.....31

6. “Or Equal” Clause31

6.1 To establish a standard.....31

7. Patents.....31

7.1 Patented or Unpatented Invention31

7.2 License or Royalty Fees.....31

7.3 Copyrighted Design31

8. Surveys, Permits and Regulations32

8.1 County will furnish all surveys32

8.2 Contractor shall procure and pay all permits, licenses and approvals.....32

8.3 Contractor shall comply with all laws, ordinances, rules orders & regulations32

9. Contractor’s Obligations.....32

9.1 Contractor shall perform all work and furnish all materials, equipment, machinery.....32

9.2 Contractor shall complete entire work.....32

10. Weather Conditions32

10.1 Temporary suspension of Work.....32

11. Protection of Work and Property - Emergency33

11.1 Contractor shall safeguard County’s property33

11.2 Emergency which threatens loss or injury of property33

11.3 Contractor shall act as instructed or authorized.....33

11.4 Reimbursement claimed by Contractor33

12. Inspection.....33

12.1 County shall be permitted to inspect all work, materials, payrolls, records33

13. Reports, Records and Data33

13.1 Contractor shall submit to County schedules, payrolls, reports, estimates33

14. Superintendent by Contractor33

14.1 Contractor shall employ a construction superintendent.....33

15. Changes in Work34

15.1 No changes in Work without written approval34

16. Extras34

16.1 County may order extra Work34

17. Inspection of Services.....34

17.1 Contractor shall provide inspection system34

17.2 County has the right to inspect and test all services34

17.3 Contractor shall furnish all reasonable facilities and assistance.....34

17.4 If any services do not conform with Contract requirements.....35

17.5 County may perform the services and charge Contractor.....35

18. Correction of Work.....35

18.1 Work shall be made good if failure to meet County approval.....35

19. Warranty of Construction35

19.1 Warrants that Work conforms with Contract requirements.....35

19.2 One year warranty.....35

19.3 Contractor shall remedy any failure to conform35

19.4 Contractor shall restore any Work damaged36

19.5 County shall notify Contractor of any failure, defect or damage36

19.6 If Contractor fails to remedy.....36

19.7 Contractor shall obtain all warranties, executed in writing36

19.8 Contractor’s warranty has expired.....36

19.9 Defect in County furnished material or design36

19.10 County’s rights under the Inspection and Acceptance Clause.....36

20. Subsurface Conditions Found Different36

20.1 Subsurface conditions materially differing from plans and specifications.....36

21. Claims for Extra Cost36

21.1 No claim for extra work or cost.....36

22. Construction Schedule and Periodic Estimates37

22.1 Estimated construction progress schedule37

22.2 Progress Schedule.....37

23. Assignments.....37

23.1 Contractor shall not assign.....37

24. Mutual Responsibility of Contractors.....37

24.1 Acts of Negligence37

25. Separate Contract.....38

25.1 Coordination with other contractors38

26. Architect/Engineer’s Authority38

26.1 Orders & Directions to execution of the Work.....38

26.2 Decisions concerning meaning and intent38

27. Stated Allowances38

27.1 Contract sum for all allowances38

28. Use of Premises and Removal of Debris39

28.1 Contractor undertakes at own expense39

29. Quantities of Estimate.....39

29.1 Increase and decrease of estimated quantities39

30. Lands and Right-of-Way39

30.1 County shall obtain all lands and rights-of way39

31. General Guaranty.....39

31.1 Work not done in accordance with contract documents.....39

32. Protection of Lives and Health40

32.1 Protection of persons and property40

33. Interest of Member40

33.1 BCC shall not have any share or interest.....40

34. Other Prohibited Interests40

34.1 No County official or others to be personally interested in Contract40

35. Use & Occupancy Prior to Acceptance by County40

35.1 Partial Occupancy by County.....40

Attachment A Bid Sheets41

Attachment B Addenda and Modifications.....42

Exhibit A Project Manual.....43

Exhibit B Technical Specifications.....44

Exhibit C Labor and Material Payment Bond.....45

Exhibit D Performance Bond47

Exhibit E Assignment of Antitrust Claims49

Exhibit F Certificate of Liability Insurance.....50

Exhibit G Notice of Contract Award.....51

Exhibit H Notice to Proceed52

Exhibit I Change Order.....53

Exhibit J Certificate of Substantial Completion55

RECITALS

WHEREAS, in accordance with Section 13-1-111 through Section 13-1-117 NMSA 1978, the County issued Competitive Sealed Proposals (RFP) No. 2015-0143-PW/PL for the construction services for the Rio Quemado Watershed project; and

WHEREAS, the Contractor submitted its bid, dated May 20, 2015 in response to RFP No. 2015-0143-PW/PL; and

WHEREAS, the County is authorized to enter into a construction contract for the Project pursuant to Sections 13-1-100, NMSA 1978; and

WHEREAS, the Contractor hereby represents that it is a licensed contractor of the State of New Mexico pursuant to Chapter 60, Article 13 NMSA 1978; and

WHEREAS, the Owner agrees to hire the Contractor, and the Contractor agrees to provide Construction Services as required herein for the Project in accordance with the terms and conditions set forth in this Agreement; and

WHEREAS, the County requires the services of the Contractor, and the Contractor is willing to provide these services and both parties wish to enter into this Agreement.

**ARTICLE I
THE CONTRACT DOCUMENTS**

1.1 DOCUMENTS

The contract documents consist of the following:

- Agreement between County and Contractor
 - General Conditions of the Construction Contract
 - Conditions of the Work of the Construction Contract
 - Bid Sheet
 - Addenda and Modifications issued before and after execution of this Agreement
- Attachment A
Attachment B

1.2 CERTIFICATES AND DOCUMENTATION

The following certificates and documentation are hereby attached as exhibits as follows:

- Project Manual
 - Technical Specifications as listed in Plan Set
 - Labor and Material Payment Bond
 - Performance Bond
 - Assignment of Antitrust Claims
 - Certificate of Insurance
- Exhibit A
Exhibit B
Exhibit C
Exhibit D
Exhibit E
Exhibit F

Notice of Award
Notice to Proceed
Change Order
Certificate of Substantial Completion

Exhibit G
Exhibit H
Exhibit I
Exhibit J

ARTICLE 2 THE WORK

2.1 THE WORK

The Contractor shall perform all the Work required by the Contract Documents for the following:

The Rio Quemado is located in Chimayo, New Mexico. The work consists of stream bank stabilization and restoration and includes the rehabilitation of existing in-stream irrigation diversion structures using fluvial geomorphological restoration techniques. The work will include the installation of cross vanes, rock vanes, step pools and rock toe protection in the stream bed.

ARTICLE 3 EFFECTIVE DATE, TIME OF COMMENCEMENT, SUBSTANTIAL COMPLETION AND AMENDMENTS

3.1 EFFECTIVE DATE

The Effective Date of this Agreement is the date of signature by the County.

3.2 TIME OF COMMENCEMENT

The work to be performed under this Contract shall be commenced no later than ten (10) consecutive calendar days after the date of written Notice to Proceed issued by the County, hereto attached as Exhibit H.

3.3 SUBSTANTIAL COMPLETION

The Contractor shall achieve Substantial Completion of the entire work no later than one hundred twenty (120) calendar days from the date of the Notice to Proceed, except as hereafter extended by valid written Change Order. A Certificate of Substantial Completion, attached hereto as Exhibit J, will be issued by the County to the Contractor, as adjusted by any Change Order, attached hereto as Exhibit I.

3.4 TIME FOR COMPLETION AND LIQUIDATED DAMAGES

Should the Contractor neglect, refuse, or otherwise fail to complete the Work within the time specified in this Article, the Contractor agrees that Liquidated Damages in the amount of three hundred dollars (\$300.00) shall be assessed per each calendar day that expires after the date of

substantial completion, as adjusted by any Change Order, and until issuance by the County of a certificate of Substantial Completion in accordance with Paragraph 7 EFFECTIVE DATE AND TERM of the General Conditions.

- A. It is hereby understood and mutually agreed, by and between the Contractor and the County, that the date of beginning and the time for completion as specified in the contract of the work to be done hereunder are *essential conditions* of this contract and it is further mutually understood and agreed that the work outlined in this contract shall be commenced on a date to be specified in the "Notice to Proceed."
- B. The Contractor agrees that work shall be prosecuted regularly, diligently and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the County, that the time for the completion of the work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.
- C. If the Contractor shall neglect, fail or refuse to complete the work within the time herein specified or any proper extension thereof granted by the County, then the Contractor does hereby agree, as a part consideration for the awarding of this contract, to pay to the County the amount specified in the contract, not as a penalty but as liquidated damages for such breach of contract as herein set forth, for each and every calendar day that the contract shall be in default after the time stipulated in the contract for completing the work.
- D. The amount is fixed and agreed upon by and between the Contractor and the County because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the County would in such event sustain, and the amount is agreed to be the amount of damages which the County would sustain and the amount shall be retained from time to time by the County from current periodical estimates.
- E. It is agreed that time is of the essence of each and every portion of this contract and of the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever and where under the contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this contract. Provided that the Contractor shall not be charged with liquidated damages or any excess cost when the County determines that the Contractor is without fault and the Contractor's reasons for the time extension are acceptable to the County. Provided that the Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the work is due:
 - 1. To any preference, priority or allocation order duly issued by the County;
 - 2. To unforeseeable cause beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, or of the public enemy, acts of the County, acts of another contractor in the performance of a

contract with the County, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather;

- 3. To any delays of subcontractors or suppliers occasioned by any of the causes specified in subsections above.

F. Provided further, that the Contractor shall, within ten (10) days from the beginning of such delay, unless the County shall grant a further period of time prior to the date of final settlement of the contract, notify the County in writing of the causes of the delay, who shall ascertain the facts and extent of the delay and notify the Contractor within a reasonable time of its decision in the matter.

3.5 AMENDMENTS

This Agreement may be amended by mutual agreement by both parties upon issuance of a Change Order by the County to the Contractor. Any such amendment shall be in accordance with Paragraph 10 AMENDMENTS-CHANGE ORDERS of the General Conditions. Unless otherwise agreed to by the parties, an amendment shall not affect any outstanding Purchase Order(s) issued by the County prior to the effective date of the amendment.

**ARTICLE 4
CONTRACT SUM**

4.1 LUMP SUM

The County shall pay the Contractor in current funds for the performance of the Work, subject to additions and deductions by Change Order as provided in the Contract Documents, an agreed upon Base Bid Sum of **Two Hundred Eighty Four Thousand Eight Hundred Forty-Four dollars and zero cents (\$284,844.00)**, exclusive of New Mexico gross receipts tax.

4.2 CONTRACT AMOUNT

The Contract sum is determined as follows:

Base Bid	\$ 284,844.00
Total Contract Amount	\$ 284,844.00 exclusive of GRT

**ARTICLE 5
PROGRESS PAYMENTS**

5.1 PROGRESS PAYMENTS

Based upon an Application for Payment submitted to the County by the Contractor and Certificates for Payment issued by the County, the County shall make progress payments on account of the Contract sum to the Contractor as provided in the Contract documents for the period ending the last day of the month as follows:

- A. No later than (21) working days following receipt by the County of an undisputed Application for Payment, one hundred percent (100%) of the portion of the Contract Sum properly allocable to labor, materials, and equipment incorporated in the Work and one hundred percent (100%) of the portion of the Contract Sum properly allocable to materials and equipment suitably stored at the site or some other location agreed upon in writing for the period covered by the Application for Payment, less the aggregate of previous payments made by the County; less such amounts as the Architect/ Engineer shall determine for all incomplete Work and unsettled claims as provided in the Contract Documents (Section 57-28-5, NMSA 1978).
- B. When making payments, the County, Contractor or subcontractor shall not retain, withhold, hold back or in any other manner not pay amounts owed for work performed. For additional information regarding retainage and the Prompt Payment Act (refer to Section 57-28-5, NMSA 1978).
- C. Contractor and subcontractors shall make prompt payment to their subcontractors and suppliers for amounts owed for work performed on the construction project within twenty-one (21) days after receipt of payment from the County, Contractor or subcontractor. If the Contractor or subcontractor fails to pay its subcontractor and suppliers by first-class mail or hand delivery within twenty-one (21) days after receipt of an undisputed request for payment, the Contractor or subcontractor shall pay interest to its subcontractors and suppliers beginning on the twenty-second day after payment was due, computed at one and one-half percent (1.5%) of the undisputed amount per month or fraction of a month until payment is issued. These payment provisions apply to all tiers of contractors, subcontractors and suppliers (Section 57-28-1 et. seq. NMSA 1978).
- D. In preparing estimates the material delivered on the site and preparatory work done may be taken into consideration.
- E. All material and work covered by partial payments made shall thereupon become the sole property of the County, but this provision shall not be construed as relieving the Contractor from the sole responsibility for the care and protection of materials and work upon which payments have been made or the restoration of any damaged work, or as a waiver of the right of the County to require the fulfillment of all of the terms of the contract.
- F. County's right to withhold certain amounts and make application thereof. The Contractor agrees that it will indemnify and hold the County harmless from all claims growing out of the lawful demands of subcontractors, laborers, workmen, mechanics, material men, and furnisher of machinery and parts thereof, equipment, power tools, and all supplies, including commissary, incurred in the furtherance of the performance of this contract. The Contractor shall, at the County's request, furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged, or waived. If the Contractor fails so to do, then the County may, after having served written notice on the said Contractor, either pay unpaid bills,

of which the County has written notice, direct, or withhold from the Contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the Contractor shall be resumed, in accordance with the terms of this contract, but in no event shall the provisions of this sentence be construed to impose any obligations upon the County to either the Contractor or its Surety. In paying any unpaid bills of the Contractor, the County shall be deemed the agent of the Contractor, and any payment so made by the County shall be considered as a payment made under the contract by the County to the Contractor and the County shall not be liable to the Contractor for any such payments made in good faith.

ARTICLE 6 FINAL PAYMENT

6.1 FINAL PAYMENT

The entire unpaid balance of the Contract Sum, shall be paid by the County to the Contractor within thirty (30) calendar days after notification of the County by the Architect/Engineer that all incomplete and unacceptable work that was noted during the Substantial Completion Inspection and listed on the attachment to the Certificate of Substantial Completion has been corrected, and provided the Contract has been fully performed and a final Certificate for Payment has been issued by the Architect/Engineer. In addition, the Contractor shall provide to the County a certified statement of Release of Liens and Consent of Surety.

6.2 ACCEPTANCE OF FINAL PAYMENT CONTITUTES RELEASE

The acceptance by the Contractor of final payment shall be and shall operate as a release to the County of all claims and all liability to the Contractor for all things done or furnished in connection with this work and for every act and neglect of the County and others relating to or arising out of this work. No payment, however, final or otherwise, shall operate to release the Contractor or its sureties from any obligations under this contract or the Performance and Payment Bond.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first written above.

SANTA FE COUNTY:

Robert A. Anaya, Chair
Santa Fe County Board of County Commissioners

Date

ATTESTATION:

Geraldine Salazar
Santa Fe County Clerk

Date

REVIEWED AS TO LEGAL FORM AND SUFFICIENCY:

Gregory S. Shaffer
Santa Fe County Attorney

Date

COUNTY MANAGER APPROVAL:

Katherine Miller
Santa Fe County Manager

Date

FINANCE DEPARTMENT APPROVAL:

Carole H. Jaramillo
Santa Fe County Finance Director

Date

CONTRACTOR:

Signature

Date

Print Name

Print Title

GENERAL CONDITIONS

TO AGREEMENT BETWEEN SANTA FE COUNTY AND CONTRACTOR FOR CONSTRUCTION SERVICES

1. DEFINITIONS

The following terms as used in this contract are respectively defined as follows:

- 1.1 *Application for Payment* Contractor's written request for payment for completed portions of the work and, for materials delivered or stored and properly labeled for the respective project.
- 1.2 *Change Order* A written document between the County and the Contractor signed by the County and the Contractor authorizing a change in the work or an adjustment in the contract sum or the contract time. A Change Order may be signed by the Architect or Engineer, provided they have written authority from the County for such procedure and that a copy of such written authority is furnished to the Contractor upon request. The contract sum and the contract time may be changed only by Change Order. A Change Order may be in the form of additional compensation or time; or less compensation or time known as a deduction.
- 1.3 *Calendar Day* Each and every Day shown on the calendar, beginning and ending at midnight.
- 1.4 *Contract Period* The elapsed number of working days or calendar days from the specified date of commencing work to the specified date of completion, as specified in the contract.
- 1.5 *Contractor* is a person, firm or corporation with whom the contract is entered into with the County.
- 1.6 *Construction Documents* All drawings, specifications and addenda associated with a specific construction project.
- 1.7 *Construction Schedule* A schedule in form satisfactory to the County, showing the proposed dates of commencement and completion of each of the various subdivisions of work required under the contract documents and the anticipated amount of each monthly payment that will become due the Contractor in accordance with the progress schedule.
- 1.8 *Day* The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.
- 1.9 *Labor and Material Payment Bond* A written form of security from a surety (bonding) company to the County, on behalf of an acceptable prime Contractor or

subcontractor, guaranteeing payment to the County in the event the Contractor fails to pay for all labor, materials, equipment, or services in accordance with the contract. (see Performance Bond and Surety Bond).

- 1.10 *Lump Sum Agreement (See Stipulated Sum Agreement)*
- 1.11 *Lump Sum Bid* A single entry amount to cover all labor, equipment, materials, services, and overhead and profit for completing the construction of a variety of unspecified items of work without the benefit of a cost breakdown.
- 1.12 *Lump Sum Contract* A written contract between the County and Contractor wherein the County agrees to pay the Contractor a specified sum of money for completing a scope of work consisting of a variety of unspecified items or work.
- 1.13 *Payment Bond* A written form of security from a surety company to the County, on behalf of an acceptable prime contractor or subcontractor, guaranteeing payment to all persons providing labor, materials, equipment, or services in accordance with the contract.
- 1.14 *Performance Bond* A written form of security from a surety company to the County, on behalf of an acceptable prime contractor or subcontractor, guaranteeing the completion of the work in accordance with the terms of the contract.
- 1.15 *Progress Payment* A payment from the County to the Contractor determined by calculating the difference between the completed work and materials stored and a predetermined schedule of values or unit costs. (see Schedule of Values, Unit Costs).
- 1.16 *Progress Schedule* A pictorial or written schedule (including a graph or diagram) that shows proposed and actual start and completion dates of the various work elements.
- 1.17 *Punch list* a list of items to be completed or corrected, prepared by the Architect/Engineer, checked and augmented as required by the Contractor or Construction Manager is appended to Exhibit J (Certificate of Substantial Completion). Note: The failure to include any item on such list does not relieve the Contractor of the responsibility to complete all work in accordance with the Contract Documents.
- 1.18 *Schedule of Values* A statement furnished by the Contractor to the Architect or Engineer and the County reflecting the portions of the contract sum allotted for the various parts of the work and used as the basis for reviewing the Contractor's Applications for Payment.
- 1.19 *Services* Includes services performed, workmanship, and material furnished or utilized in the performance of services.

- 1.20 *Stipulated Sum Agreement* A written agreement in which a specific amount is set forth as the total payment for completing the contract (See Lump Sum Contract).
- 1.21 *Subcontractor* is a person, firm or corporation supplying labor and materials or only labor for work at the site of the project for, and under separate contract or agreement with, the Contractor.
- 1.22 *Unit Price Contract* A written contract wherein the County agrees to pay the Contractor a specified amount of money for each unit of work successfully completed as set forth in the contract.
- 1.23 *Unit Prices* A predetermined price for a measurement or quantity of work to be performed within a specific contract. The designated unit price would include all labor materials, equipment or services associated with the measurement or quantity established.
- 1.24 *Working Day* means every day except Saturday, Sunday and holidays recognized by Santa Fe County. Based on a review of weather that may adversely affect the Contractor's ability to effectively prosecute the Work, and the actual Work performed by the Contractor, the Architect or Engineer will determine (between the end of the day and noon of the next day) if the County will charge a Working Day. If the Contractor was able to effectively prosecute Work on a critical path item for six (6) or more hours on a Saturday, Sunday or County-recognized Holiday, the Architect or Engineer may charge a Working Day.
- 1.25 *Work on (at) the project* is work to be performed at the location of the project, including the transportation of materials and supplies to or from the location of the project by employees of the Contractor and any subcontractor.

2. CONTRACT AND CONTRACT DOCUMENTS

- 2.1 *Entire Agreement.* This Agreement represents the entire contract between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto. This Agreement incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this Agreement, and all such conditions, understandings, and agreements have been merged into this written Agreement. No prior condition, agreement, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless incorporated in this written Agreement.
- 2.2 *Relationship of Contract Documents.* The Contract Documents are complementary, and any requirement of one Contract Document shall be as binding as if required by all.
- 2.3 *Conflicting Conditions.* Any provisions in any of the Contract Documents which may be in conflict or inconsistent with any of the paragraphs in these General Conditions shall be void to the extent of such conflict or inconsistency.

3. PLANS, SPECIFICATIONS AND ADDENDA

- 3.1 The plans, specifications and addenda, hereinafter enumerated in Article 1 of the Agreement Between County and Contractor for Construction shall form part of this Contract and the provisions thereof shall be as binding upon the parties hereto as if they were herein fully set forth. The table of contents, titles, headings, running headlines and marginal notes contained herein and in said documents are solely to facilitate reference to various provisions of the Contract Documents and in no way affect or limit the interpretation of the provisions to which they refer.
- 3.2 Certificates and Documents Incorporated. All certificates and documentation required by the provisions of the Agreement shall be attached to this Agreement at the time of execution, and are hereby incorporated by reference as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

4. CONTRACT SECURITY – BONDS

- 4.1 Performance Bond. The Contractor shall furnish a performance bond in an amount at least equal to one hundred percent (100%) of the contract sum as security for the faithful performance of this Contract. The performance bond and the payment bond may be in one or in separate instruments in accordance with local law.
- 4.2 Payment Bond. The Contractor shall provide payment bond in an amount not less than one hundred percent (100%) of the contract price or in a penal sum not less than that prescribed by state, territorial or local law, as security for the payment of all persons performing labor on the project under this contract, furnishing materials in connection with this contract and all of Contractor's requirements as specified in the contract documents. The Payment Bond shall remain in effect until one (1) year after the date when final payment becomes due.
- 4.3 Additional or Substitute Bond. If at any time the County for justifiable cause shall be or become dissatisfied with any surety or sureties, then upon the Performance or Payment Bonds, the Contractor shall within five (5) days after notice from the County so to do, substitute an acceptable bond (or bonds) in such form and sum and signed by such other surety or sureties as may be satisfactory to the County. The premiums on such bond shall be paid by the Contractor. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished such an acceptable bond to the County.
- 4.4 Labor and Material Bond. The Contractor shall provide to the County Labor and Material Bond in an amount equal to the required payments by the Contractor to pay specified subcontractors, laborers, and materials suppliers associated with the project.

5. TERMS AND MEANINGS

Terms used in this Agreement that are defined in the Conditions of the Contract shall have the meanings designated in those Conditions.

- 5.1 **Words and Phrases.** Words, phrases, and abbreviations which have well-known technical or trade meanings used in the Contract Documents shall be used according to such recognized meanings. In the event of a conflict, the more stringent meaning shall govern.
- 5.2 **Gender, Singular/Plural.** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.
- 5.3 **Captions and Section Headings.** The captions and section headings contained in this Agreement are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope and conditions of this Agreement.
- 5.4 **Interchangeable Terms.** For purposes of all provisions within this Agreement and all attachments hereto, the terms "Agreement" and "Contract" shall have the same meaning and shall be interchangeable.

6. COMPLIANCE WITH APPLICABLE LAW, CHOICE OF LAW

- 6.1 This Agreement shall be governed exclusively by the provisions hereof and by the laws of the State of New Mexico and applicable ordinances of Santa Fe County.
- 6.2 In performing its obligations hereunder, the Contractor shall comply with all applicable laws, ordinances, and regulations, including Santa Fe County Ordinance 2014-1 (Establishing a Living Wage).
- 6.3 **Minimum Wage Rates.** The Contractor, all subcontractors and subsubcontractors warrants and agree to will comply with all applicable provisions of the New Mexico Public Works Minimum Wage Act as outlined in the Bid Documents. Wage rates are not applicable to projects costing less than \$60,000.
- 6.4 This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules. Contractor and the County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be federal and state district courts of New Mexico.
- 6.5 Pursuant to 13-1-191, NMSA 1978, reference is hereby made to the criminal laws of New Mexico, including §30-14-1, §30-24-2, and §30-41-1 through 3, NMSA 1978, which prohibit bribes, kickbacks, and gratuities, violation of which constitutes a felony. Further, the Procurement Code, 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation.
- 6.6 **New Mexico Tort Claims Act.** By entering into this Agreement, neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, et Seq. NMSA 1978, as amended. The County and its "public employees" as

defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

- 6.7 **Provision Required by Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

7. EFFECTIVE DATE AND TERM

- 7.1 This Agreement shall, upon due execution by all parties, become effective in accordance with the Agreement Between County and Contractor for Construction, Article 3 - Effective Date, Time of Commencement and Substantial Completion. This Agreement shall not become effective until: (1) approved by the Santa Fe County Commissioners and/or the County Manager or their designee; and (2) signed by all parties required to sign this Agreement.
- 7.2 This Contract shall achieve Substantial Completion in accordance with the Agreement Between County and Contractor, Article 3 - Effective Date, Time of Commencement and Substantial Completion, unless earlier terminated pursuant to Section 8 (Termination) or 9, (Appropriations and Authorizations) of these General Conditions.

8. TERMINATION

- 8.1 **Termination of Agreement for Cause.** Either party may terminate the Agreement based upon any material breach of this Agreement by the other party. The non-breaching party shall give the breaching party written notice of termination specifying the grounds for the termination. The termination shall be effective thirty (30) days from the breaching party's receipt of the notice of termination, during which time the breaching party shall have the right to cure the breach. If, however, the breach cannot with due diligence be cured within thirty (30) days, the breaching party shall have a reasonable time to cure the breach, provided that, within thirty (30) days of its receipt of the written notice of termination, the breaching party began to cure the breach and advised the non-breaching party in writing that it intended to cure.
- 8.2 **Termination for Convenience of the County.** The County may, in its discretion, terminate this Agreement at any time for any reason by giving the Contractor written notice of termination. The notice shall specify the effective date of termination, which shall not be less than fifteen (15) days from the Contractor's receipt of the notice. The County shall pay the Contractor for acceptable work, determined in accordance with the specifications and standards set forth in this Agreement, performed before the effective date of termination but shall not be liable for any work performed after the effective date of

termination.

- 8.3 Right of the County to Terminate Contract In the event that any of the provisions of this Contract are violated by the Contractor, or by any of its subcontractors, the County may serve written notice upon the Contractor and the Surety of its intention to terminate this Contract, such notices to contain the reasons for such intention to terminate, and unless within ten (10) days after the serving of such notice upon the Contractor, such violation or delay shall cease and satisfactory arrangement of correction be made, the Contract shall, upon the expiration of said ten (10) days, cease and terminate. In the event of any such termination, the County shall immediately serve notice thereof upon the Surety and the Contractor and the Surety shall have the right to take over and perform the Contract. Provided, however, that if the Surety does not commence performance thereof within ten (10) days from the date of the mailing to such Surety of notice of termination, the County may take over the work and prosecute the same to completion by contract or by force account and at the expense of the Contractor and the Contractor and its Surety shall be liable to the County for any excess cost occasioned the County thereby, and in such event the County may take possession of and utilize in completing the work, such materials, appliances, and plant as may be on the site of the work and necessary therefore.

9. APPROPRIATIONS AND AUTHORIZATIONS

- 9.1 This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Santa Fe County Board of County Commissioners and/or, if state funds are involved, the New Mexico State Legislature. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Agreement shall terminate upon written notice by the County to the Contractor. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse the Contractor for expenditures made in the performance of this Agreement. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. The County’s decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by the Contractor in any way or forum, including a lawsuit.

10. AMENDMENTS – CHANGE ORDERS

- 10.1 Contract Documents may be amended by a Change Order, hereto attached as Exhibit I to allow for additions, deletions, and revision as specified in Article 2 “The Work” of the Agreement between Santa Fe County and the Contractor or to amend the terms and conditions by a Change Order.

11. INDEMNIFICATION

- 11.1 The Contractor shall defend, indemnify, and hold harmless the County and its elected officials, agents, and employees from any losses, liabilities, damages, demands, suits, causes of action, judgments, costs or expenses (including but not limited to court costs and attorneys’ fees) resulting from or directly or indirectly arising out of the Contractor’s performance or non-performance of its obligations under this Agreement, including but not

limited to the Contractor's breach of any representation or warranty made herein.

- 11.2** The Contractor agrees that the County shall have the right to control and participate in the defense of any such demand, suit, or cause of action concerning matters that relate to the County and that such suit will not be settled without the County's consent, such consent can not to be unreasonably withheld. If a conflict exists between the interests of the County and the Contractor in such demand, suit, or cause of action, the County may retain its own counsel to represent the County's interest.
- 11.3** The Contractor's obligations under this section shall not be limited by the provisions of any insurance policy the Contractor is required to maintain under this Agreement.

12. AGGRIEVEMENT PROCEDURE DURING CONTRACT ADMINISTRATION

- 12.1** Any claims, disputes, or other matters in question between the Contractor and the County, except those which have been waived by the making or acceptance of final payment as provided in Paragraph 6.2 of the Agreement Between Santa Fe County and Contractor for Construction, shall be presented in the form of a written request accompanied by supporting data to the Architect/Engineer for formal decision, with a copy to the other party. Such formal decision of the Architect/Engineer is binding upon the Contractor and the Owner unless either or both notify each other and the Architect/Engineer in writing within fifteen (15) days of their receipt of the decision that they are unwilling to abide by the Architect's/Engineer's decision, are thereby aggrieved in connection with the decision, and are separately exercising such rights as either may have under the Contract Documents or by law and regulation. If the Architect/Engineer fails to provide a written decision or a reasonable schedule to issue a written decision within ten (10) days after the County or the Contractor has presented its request, that party may consider itself aggrieved and may proceed to exercise its rights.
- 12.2** A settlement agreement signed by the County and the Contractor shall supersede and cancel any other dispute resolution proceedings regarding the same matter.
- 12.3** Unless work is stopped or payment withheld in accordance with the conditions of the Contract, or unless otherwise agreed in writing, the Contractor shall carry on the Work and maintain its progress during any dispute resolution proceedings, and the Owner shall continue to make payments to the Contractor in accordance with the Contract Documents.

13. DISPUTE RESOLUTION

- 13.1** Either County or Contractor may request mediation pursuant to the New Mexico Public Works Mediation Act, 13-4C-1, NMSA 1978, of any claim before such decision become final and binding. The request for mediation shall be submitted in writing to the other party. Timely submission of the request shall stay the effect of Paragraph 12.1.
- 13.2** County and Contractor shall participate in the mediation process in good faith. The process shall be completed within sixty (60) days of filing of the request. The mediation shall be

governed by the rules for mediation pursuant to the New Mexico Public Works Mediation Act.

13.3 If the dispute is not resolved by mediation, the dispute shall be resolved through litigation in the district court. The parties agree that the exclusive forum for such litigation shall be the State of New Mexico District Court for the First Judicial District at Santa Fe, New Mexico. Contractor irrevocably consents to the jurisdiction of said Court and agrees to accept service of a summons and complaint by mail or commercial courier service in accordance with Rule 1-004(E)(3) NMRA.

14. INSURANCE

14.1 The Contractor shall not commence work under this Contract until they have obtained all the insurance required under this paragraph and such insurance has been approved by the County, nor shall the Contractor allow any subcontractor to commence work on its subcontract until the insurance required of the subcontractor has been so obtained and approved.

14.2 Proof of Carriage of Insurance. The Contractor shall furnish the County with certificates showing the type, amount, class of operations covered, effective dates and date of expiration of policies. Such certificates shall also contain substantially the following statement: "Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions".

14.3 General Conditions. The Contractor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.

14.4 General Liability Insurance, Including Automobile. The Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,050,000.00 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the County by the Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Agreement is an insured contract. The Santa Fe County shall be a named additional insured on the policy.

14.5 Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance. The Contractor shall either 1) require each of its subcontractors to procure and to maintain during the life of its subcontract, Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance of the type and in the amounts specified in 14.4 above.

14.6 Workers' Compensation Insurance. The Contractor shall comply with the provisions of the Workers' Compensation Act, 52-1-1 to 52-1-70 NMSA 1978. The Contractor shall procure

and shall maintain during the life of this contract Workmen's Compensation Insurance as required by applicable State law for all of its employees to be engaged in work at the site of the project under this Contract and, in case of any such work sublet, the Contractor shall require the subcontractor similarly to provide Workmen's Compensation Insurance for all of the latter's employees to be engaged in such work unless such employees are covered by the protection afforded by the Contractor's Workmen's Compensation Insurance. In case any class of employees engaged in hazardous work on the project under this contract is not protected under the Workmen's Compensation law, the Contractor shall provide and shall cause each subcontractor to provide adequate employer's liability insurance for the protection of such of its employees as are not otherwise protected.

14.7 Scope of Insurance and Special Hazards. The insurance require under subparagraphs 14.4 and 14.5 hereof shall provide adequate protection for the Contractor and his subcontractors, respectively, against damage claims which may arise from operations under this Contract, whether such operations be by the insured or by anyone directly or indirectly employed by him and, also against any of the special hazards which may be encountered in the performance of this Contract.

14.8 Builder's Risk Insurance (Fire and Extended Coverage). Until the project is completed and accepted by the County, the County, or Contractor at the County's option is required to maintain Builder's Risk Insurance (fire and extended coverage) on a 100 percent completed value basis on the insurable portion of the project for the benefit of the County, the Contractor, subcontractors as their interests may appear. The Contractor shall not include any costs for Builder's Risk Insurance (fire and extended coverage) premiums during construction unless the Contractor is required to provide such insurance; however, this provision shall not release the Contractor from its obligation to complete, according to plans and specifications, the project covered by the Contract, and the Contractor and his Surety shall be obligated to full performance of the Contractor's undertaking.

14.9 Increased Limits. If, during the life of this Agreement, the New Mexico State Legislature increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended), the Contractor shall increase the maximum limits of any insurance required herein.

14.10 Additional insured. Santa Fe County will be listed as an additional insured on all policies, and proof of coverage must be provided before work begins. Contractor shall maintain adequate insurance in at least the maximum amounts which the County could be liable under the New Mexico Tort Claims Act. It is the sole responsibility of the Contractor to be in compliance with the law.

15. INDEPENDENT CONTRACTOR

15.1 The Contractor and the Contractor's agents and employees are independent contractors performing professional and technical services for the County and are not employees of the County. The Contractor and the Contractor's agents and employees shall not accrue leave, retirement, insurance, bonding, use of County's vehicles, or any other benefits afforded to

employees of the County as a result of this Agreement.

15.2 The Contractor shall not subcontract any portion of the services to be performed under this Agreement without prior written approval of the County.

15.3 The Contractor shall maintain detailed time records which indicate the date, time and nature of services rendered. These records shall be subject to inspection by the County and the State Auditor. The County shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the County to recover excessive illegal payments.

16. CONFLICT OF INTEREST OF OFFICERS OR EMPLOYEES OF THE LOCAL JURISDICTION, MEMBERS OF THE LOCAL GOVERNING BODY, OR OTHER PUBLIC OFFICIALS

16.1 No officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this contract, during its tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed. Further, the Contractor shall cause to be incorporated in all subcontracts the language set forth in this paragraph prohibiting conflict of interest.

16.2 No official of the County who is authorized in such capacity and on behalf of the County to negotiate, make, accept or approve, or to take part in negotiating, making accepting or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the project, shall become directly or indirectly interested personally in this Contract or in any part hereof. No officer, employee, architect, attorney, engineer or inspector of or for the County who is authorized in such capacity and on behalf of the County to exercise any legislative, executive, supervisory or other similar functions in connection with the construction of the project, shall become directly or indirectly interested personally in this Contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the project.

16.3 The Contractor warrants that the Contractor presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under this Agreement.

17. ASSIGNMENT

17.1 The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the advance written approval of the County. Any attempted assignment or transfer without the County's advance written approval shall be null and void and without any legal effect.

18. SUBCONTRACTING

18.1 The Contractor shall not subcontract or delegate any portion of the services to be

performed under this Agreement without the advance written approval of the County. Any attempted subcontracting or delegating without the County's advance written approval shall be null and void and without any legal effect.

- 18.2 Contractor shall provide to the County a listing of subcontractors within ten (10) days of the Contract award.
- 18.3 Contractor shall adhere to all provisions of the Subcontractor's Fair Practices Act 13-4-31 to 13-4-42, NMSA 1978.
- 18.4 Contractor shall provide to the County completed Non-Collusion Affidavit of Subcontractor form and Certification of Subcontractor Regarding Equal Employment Opportunity form for all subcontractors listed.
- 18.5 The Contractor shall not award any work to any subcontractor without prior written approval of the County, which approval will not be given until the Contractor submits to the County a written statement concerning the proposed award to the subcontractor, which statement shall contain such information as the County may require.
- 18.6 The Contractor shall be as fully responsible to the County for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as they are for the acts and omissions of persons directly employed by them.
- 18.7 The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractors to the Contractor by the terms of the General Conditions and other contract documents insofar as applicable to the work of subcontractors and to give the Contractor the same power as regards terminating any subcontract that the County may exercise over the Contractor under any provision of the contract documents.
- 18.8 Nothing contained in this Contract shall create any contractual relation between any subcontractor and the County.
- 18.9 All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate written agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of County. Any contract between Contractor and a Subcontractor or Supplier shall provide that any remedy or claim for nonpayment of sums due or owing to Subcontractor or Supplier or services performed or materials provided is against Contractor and not County, subject to any remedy or rights Subcontractor or Supplier may have under the terms of the Contractor's Performance Bond and Section 13-4-19, NMSA 1978, the New Mexico Little Miller Act.

19. PERSONNEL

- 19.1 All work performed under this Agreement shall be performed by the Contractor or under its supervision.

19.2 The Contractor represents that it has, or will secure at its own expense, all personnel required to discharge its obligations under this Agreement. Such personnel (i) shall not be employees of or have any contractual relationships with the County and (ii) shall be fully qualified and licensed or otherwise authorized or permitted under federal, state, and local law to perform such work.

20. NOTICES

20.1 Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the County: Santa Fe County
 Office of the County Attorney
 102 Grant Avenue
 Santa Fe, New Mexico 87501

To the Contractor: Mark Reineke, Owner
 75 Canyon Rd
 Sandia Park, NM 98047

20.2 Nothing herein contained shall preclude the giving of any such written notice by personal service. The address to which notices shall be mailed to either party may be changed by written notice given by such party to the other as hereinabove provided.

21. RELEASE

21.1 The Contractor, upon final payment of the amounts due under this Agreement, releases the County, the County's officers and employees from all liabilities and obligations arising from or under this Agreement, including, without limitation, all damages, losses, costs, liability, and expenses, including, without limitation, attorney's fees and costs of litigation that the Contractor may have.

22. WAIVER

22.1 No provision of this Agreement shall be deemed to have been waived by either party unless such waiver be in writing signed by the party making the waiver and addressed to the other party; nor shall any custom or practice which may evolve between the parties in the administration of the terms hereof be construed to waive or lessen the right of either party to insist upon performance by the other party in strict accordance with the terms hereof. Further, the waiver by any party of a breach by the other party of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition thereof.

CONDITIONS OF THE WORK

1. ADDITIONAL INSTRUCTION AND DETAIL DRAWINGS

- 1.1 The Contractor will be furnished additional instructions and detail drawings as necessary to carry out the work included in the Contract. The additional drawings and instructions supplied to the Contractor will coordinate with the Contract Documents and will be so prepared that they can be reasonably interpreted as part thereof. The Contractor shall carry out the work in accordance with the additional detail drawings and instructions. The Contractor and the Architect/Engineer/County will prepare jointly (a) a schedule, fixing the dates at which special detail drawings will be required, such drawings, if any, to be furnished by the Architect/ Engineer/County in accordance with the schedule, and (b) a schedule fixing the respective dates for the submission of shop drawings, the beginning of manufacture, testing and installation of materials, supplies and equipment, and the completion of the various parts of the work; each schedule to be subject to change from time to time in accordance with progress of the work.

2. SHOP OR SETTING DRAWINGS

- 2.1 The Contractor shall submit promptly to the Architect/Engineer/County two (2) copies of each shop or setting drawing prepared in accordance with the schedule predetermined as aforesaid. After examination of such drawings by the Architect/Engineer/County and the return thereof, the Contractor shall make such corrections to the drawings as have been indicated and shall furnish the Architect/ Engineer/County with two corrected copies. If requested by the Architect/Engineer/County the Contractor must furnish additional copies. Regardless of corrections made in or approval given to such drawings by the Architect/Engineer/County, the Contractor will be responsible for the accuracy of such drawings and for their conformity to the Plans and Specifications, unless the Contractor notifies the Architect/Engineer/County in writing of any deviations at the time the Contractor furnishes such drawings.

3. MATERIALS, SERVICES AND FACILITIES

- 3.1 It is understood that except as otherwise specifically stated in the Contract Documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, superintendence, temporary construction of every nature, and all other services and facilities of every nature whatsoever necessary to execute, complete, and deliver the work within the specified time.
- 3.2 Any work necessary to be performed after regular working hours, on Sundays or legal holidays recognized by Santa Fe County, shall be performed without additional expense to the County.

4. CONTRACTOR'S TITLE TO MATERIALS

- 4.1 No materials or supplies for the work shall be purchased by the Contractor or by any subcontractor subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller. The Contractor warrants that he/she has good title to all materials and supplies used by him/her in the work, free from all liens, claims or encumbrances.

5. INSPECTION AND TESTING OF MATERIALS

- 5.1 All materials and equipment used in the construction of the project shall be subject to adequate inspection and testing in accordance with accepted standards. The laboratory or inspection agency shall be selected by the County. The County will pay for all laboratory inspection service direct, and not as a part of the Contract.
- 5.2 Materials of construction, particularly those upon which the strength and durability of the structure may depend, shall be subject to inspection and testing to establish conformance with specifications and suitability for uses intended.

6. "OR EQUAL" CLAUSE

- 6.1 Whenever a material, article or piece of equipment is identified on the plans or in the specifications by reference to manufacturers' or vendors' names, trade names, catalogue numbers, etc., it is intended merely to establish a standard; and, any material, article, or equipment or other manufacturers and vendors which will perform adequately the duties imposed by the general design will be considered equally acceptable provided the material, article, or equipment so proposed, is, in the opinion of the Architect/Engineer/County, of equal substance and function. It shall not be purchased or installed by the Contractor without the Architect/Engineer/County's written approval.

7. PATENTS

- 7.1 The Contractor shall hold and save the County and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the Contract, including its use by the County, unless otherwise specifically stipulated in the Contract Documents.
- 7.2 License and/or Royalty Fees for the use of a process which is authorized by the County of the project must be reasonable, and paid to the holder of the patent, or its authorized licensee, direct by the County and not by or through the Contractor.
- 7.3 If the Contractor uses any design, device or materials covered by letters, patent or copyright, the Contractor shall provide for such use by suitable agreement with the County of such patented or copyrighted design, device or material. It is mutually agreed and understood, that, without exception, the Contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the work. The Contractor and/or its Sureties shall indemnify and save harmless the County of the

project from any and all claims for infringement by reason of the use of such patented or copyrighted design, device or materials, or any trademark or copyright in connection with work agreed to be performed under this Contract, and shall indemnify the County for any cost, expense or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after, completion of the work.

8. SURVEYS, PERMITS AND REGULATIONS

- 8.1** Unless otherwise expressly provided for in the Specifications, the County will furnish to the Contractor all surveys necessary for the execution of the work.
- 8.2** Unless otherwise expressly provided for in the Specifications, the Contractor shall procure and pay all permits, licenses and approvals necessary for the execution of this Contract.
- 8.3** The Contractor shall comply with all laws, ordinances, rules, orders, and regulations relating to performance of the work, the protection of adjacent property, and the maintenance of passageways, guard fences or other protective facilities.

9. CONTRACTOR'S OBLIGATIONS

- 9.1** The Contractor shall and will, in good workmanlike manner, do and perform all work and furnish all supplies and materials, machinery, equipment, facilities and means, except as herein otherwise expressly specified, necessary or proper to perform and complete all the work required by this Contract, within the time herein specified. The Contractor will perform the Work in accordance with the provisions of this Contract and said specifications and in accordance with the plans and drawings covered by this Contract any and all supplemental plans and drawings, and in accordance with the directions of the Architect/Engineer/County as given from time to time during the progress of the work. The Contractor shall furnish, erect, maintain, and remove such construction plans and such temporary works as may be required.
- 9.2** The Contractor shall observe, comply with, and be subject to all terms, conditions, requirements, and limitations of the Contract and specifications, and shall do, carry on, and complete the entire work to the satisfaction of the Architect/Engineer and the County.

10. WEATHER CONDITIONS

- 10.1** In the event of temporary suspension of work, or during inclement weather, or whenever the Architect/Engineer/County shall direct, the Contractor will, and will cause its subcontractors to protect carefully its and their work and materials against damage or injury from the weather. If, in the opinion of the Architect/Engineer/County, any work or materials shall have been damaged or injured by reason of failure on the part of the Contractor or any of its Subcontractors so to protect its work, such materials shall be removed and replaced at the expense of the Contractor.

11. PROTECTION OF WORK AND PROPERTY-EMERGENCY

- 11.1** The Contractor shall at all times safely guard the County's property from injury or loss in connection with this Contract. The Contractor shall at all times safely guard and protect its own work, and that of adjacent property from damage. The Contractor shall replace or make good any such damage, loss or injury unless such is caused directly by errors contained in the Contract or by the County, or its duly authorized representatives.
- 11.2** In case of an emergency which threatens loss or injury of property, and/or safety of life, the Contractor will be allowed to act, without previous instructions from the Architect/Engineer/County, in a diligent manner. The Contractor shall notify the Architect/Engineer/County immediately thereafter. Any claim for compensation by the Contractor due to such extra work shall be promptly submitted to the Architect/Engineer/County for approval.
- 11.3** Where the Contractor has not taken action but has notified the Architect/Engineer/County of an emergency threatening injury to persons or to damage to the work or any adjoining property, the Contractor shall act as instructed or authorized by the Architect/Engineer/County.
- 11.4** The amount of reimbursement claimed by the Contractor on account of any emergency action shall be determined in the manner provided in Paragraph 15 of these Conditions of the Work.

12. INSPECTION

- 12.1** The authorized representatives and agents of the County shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records.

13. REPORTS, RECORDS AND DATA

- 13.1** The Contractor shall submit to the County such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data as the County may request concerning work performed or to be performed under this Contract.

14. SUPERINTENDENT BY CONTRACTOR

- 14.1** At the site of the work the Contractor shall employ a construction superintendent or foreman who shall have full authority to act for the Contractor. It is understood that such representative shall be acceptable to the Architect/Engineer/County and shall be one who can be continued in that capacity for the particular job involved unless he/she ceases to be on the Contractor's payroll.

15. CHANGES IN WORK

15.1 No changes in the work covered by the approved Contract Documents shall be made without having prior written approval of the County. Charges or credits for the work covered by the approved change shall be determined by one or more, or a combination of the following methods:

- A. Unit bid prices previously approved. An agreed lump sum.
- B. The actual cost of:
 - 1) Labor, including foremen;
 - 2) Materials entering permanently into the work;
 - 3) The County's or rental cost of construction equipment during the time of use on the extra work;
 - 4) Power and consumable supplies for the operation of power equipment;
 - 5) Insurance; and
 - 6) Social Security and old age and unemployment contributions.
- C. To the costs for changes in work a fixed fee will be added to be agreed upon but not to exceed ten percent (10%) of the actual cost of the work. The fee shall be compensation to cover the cost of supervision, overhead, bond, profit and any other general expenses.

16. EXTRAS

16.1 Without invalidating the contract, the County may order extra work or make changes by altering, adding to or deducting from the work, the contract sum being adjusted accordingly, and the consent of the Surety being first obtained where necessary or desirable. All the work of the kind bid upon shall be paid for at the price stipulated in the proposal, and no claims for any extra work or materials shall be allowed unless the work is ordered in writing by the County or the Architect/Engineer, acting officially for the County, and the price is stated in such order.

17. INSPECTION OF SERVICES

17.1 The Contractor shall provide and maintain an inspection system acceptable to the County covering the services under this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the County during contract performance and for as long afterwards as the Contract requires.

17.2 The County has the right to inspect and test all services called for by the Contract, to the extent practicable at all times and places during the term of the Contract. The County shall perform inspections and tests in a manner that will not unduly delay the work.

17.3 If the County 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 these duties.

- 17.4 If any of the services do not conform with the Contract requirements, the County may require the Contractor to perform the services again in conformity with Contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by re-performance, the County may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and reduce the Contract sum to reflect the reduced value of the services performed.
- 17.5 If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with Contract requirements, the County may by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the County that is directly related to the performance of such service, or terminate the Contract for default.

18. CORRECTION OF WORK

- 18.1 All work, all materials, whether incorporated in the work or not, all processes of manufacture, and all methods of construction shall be at all times and places subject to the inspection of the Architect/ Engineer/County who shall be the final judge of the quality and suitability of the work, materials, processes of manufacture, and methods of construction for the purposes for which they are used. Should they fail to meet their approval they shall be forthwith reconstructed, made good, replaced and/or corrected, as the case may be, by the Contractor at its own expense. Rejected material shall immediately be removed from the site. If, in the opinion of the Architect/Engineer/County, it is undesirable to replace any defective or damaged materials or to reconstruct or correct any portion of the work injured or not performed in accordance with the Contract Documents, the compensation to be paid to the Contractor hereunder shall be reduced by such amount as in the judgment of the Architect/Engineer/County shall be equitable.

19. WARRANTY OF CONSTRUCTION

- 19.1 In addition to any other warranties in this Contract, the Contractor warrants that work performed under this Contract conforms to the Contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.
- 19.2 This warranty shall continue for a period of one (1) year from the date of final acceptance of the work. If the County takes possession of any part of the work before final acceptance, this warranty shall continue for a period of one (1) year from the date the County takes possession.
- 19.3 The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to County-owned or controlled real or personal property, when that damage is the result of the Contractor's failure to conform to contract requirements or any defect of equipment, material, workmanship, or design furnished.

- 19.4 The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for one (1) year from the date of repair or replacement.
- 19.5 The County shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.
- 19.6 If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the County shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.
- 19.7 With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this Contract, the Contractor shall obtain all warranties that would be given in normal commercial practice; require all warranties to be executed, in writing, for the benefit of the County, if directed by the County; and, enforce all warranties for the benefit of the County, if directed by the County.
- 19.8 In the event the Contractor's warranty under subparagraph 19.4 of this clause has expired, the County may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.
- 19.9 Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the County nor for the repair of any damage that results from any defect in County-furnished material or design.
- 19.10 This warranty shall not limit the County's rights under the Inspection and Acceptance clause of this Contract with respect to latent defects, gross mistakes, or fraud.

20. SUBSURFACE CONDITIONS FOUND DIFFERENT

- 20.1 Should the Contractor encounter sub-surface and/or latent conditions at the site materially differing from those shown on the Plans or indicated in the Specifications, the Contractor shall immediately give notice to the Architect/Engineer/County of such conditions before they are disturbed. The Architect/Engineer/County will thereupon promptly investigate the conditions, and if they find that they materially differ from those shown on the Plans or indicated in the Specifications, they will at once make such changes in the Plans and/or Specifications as they may find necessary, any increase or decrease of cost resulting from such changes to be adjusted in the manner provided in Paragraph 15 above.

21. CLAIMS FOR EXTRA COST

- 21.1 No claim for extra work or cost shall be allowed unless the same was done in pursuance of a written order of the Architect/Engineer approved by the County, as aforesaid, and the claim presented with the first estimate after the changed or extra work is done. When work

is performed under the terms of General Conditions, the Contractor shall furnish satisfactory bills, payrolls and vouchers covering all items of cost and when requested by the County, giving the County access to accounts relating thereto.

22. CONSTRUCTION SCHEDULE AND PERIODIC ESTIMATES

- 22.1** Immediately after execution and delivery of the Contract, and before the first partial payment is made, the Contractor shall deliver to the County an estimated construction progress schedule in a form satisfactory to the County, showing the proposed dates of commencement and completion of each of the various subdivisions of work required under the Contract Documents and the anticipated amount of each monthly payment that will become due to the Contractor in accordance with the progress schedule. The Contractor shall also furnish on forms to be supplied by the County (a) a detailed estimate giving a complete breakdown of the Contract sum and (b) periodic itemized estimates of work done for the purpose of making partial payments thereof. The costs employed in making up any of these schedules will be used only for determining the basis of partial payments and will not be considered as fixing a basis for additions to or deductions from the Contract price.

22.2 Schedule

The Contractor shall, within five (5) days after the effective date of Notice to Proceed, prepare and submit five (5) copies of a progress schedule covering project operations for the Contract period. This progress schedule shall be of the type generally referred to as a Critical Path Method (CPM), Critical Path Schedule (CPS), and Critical Path Analysis (CPA), and other similar designations. The CPM shall be used to control the timing and sequences of the project. All work shall be done in accordance with the CPM Planning and Scheduling. A written statement of explanation shall be submitted with the progress schedule. All costs incurred by the contractor to implement the CPM shall be borne by the Contractor.

23. ASSIGNMENTS

- 23.1** The Contractor shall not assign the whole or any part of this Contract or any monies due or to become due hereunder without written consent of the County. In case the Contractor assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due to the Contractor shall be subject to prior claims of all persons, firms and corporations of services rendered or materials supplied for the performance of the work called for in this Contract.

24. MUTUAL RESPONSIBILITY OF CONTRACTORS

- 24.1** If, through acts of neglect on the part of the Contractor, any other Contractor or any subcontractor shall suffer loss or damage on the work, the Contractor agrees to settle with such other Contractor or subcontractor by agreement or arbitration if such other Contractor or subcontractors will so settle. If such other Contractor or subcontractor shall assert any

claim against the County on account of any damage alleged to have been sustained, the County shall notify the Contractor, who shall indemnify and save harmless the County against any such claim.

25. SEPARATE CONTRACT

25.1 The Contractor shall coordinate its operations with those of other contractors. Cooperation will be required in the arrangement for the storage of materials and in the detailed execution of the work. The Contractor, including its subcontractors, shall keep informed of the progress and the detail work of other contractors and shall notify the Architect/Engineer/County immediately of lack of progress or defective workmanship on the part of other contractors. Failure of a contractor to keep informed of the work progressing on the site and failure to give notice of lack of progress or defective workmanship by others shall be construed as acceptance by the Contractor of the status of the work as being satisfactory for proper coordination with its own work.

26. ARCHITECT/ENGINEER'S AUTHORITY

26.1 The Architect/Engineer/County shall give all orders and directions contemplated under this Contract and specifications, relative to the execution of the work. The Architect/Engineer/County shall determine the amount, quality, acceptability, and fitness of the several kinds of work and materials which are to be paid for under this Contract and shall decide all questions which may arise in relation to said work and the construction thereof. The Architect/Engineer/County's estimates and decisions shall be final and conclusive, except as herein otherwise expressly provided. In case any question shall arise between the parties hereto relative to said contract or specifications, the determination or decision of the Architect/Engineer/County shall be a condition precedent to the right of the Contractor to receive any money or payment for work under this Contract affected in any manner or to any extent by such question.

26.2 The Architect/Engineer/County shall decide the meaning and intent of any portion of the specifications and of any plans or drawings where the same may be found obscure or be in dispute. Any differences or conflicts in regard to their work which may arise between the Contractor under this Contract and other Contractors performing work for the County shall be adjusted and determined by the Architect/Engineer/County.

27. STATED ALLOWANCES

27.1 It is understood that Contractor has included in its proposal for the Contract sum all allowances including "Allowed Materials" The Contractor shall purchase the "Allowed Materials" as directed by the County on the basis of the lowest and best bid of at least three competitive bids. If the actual sum for purchasing the "Allowed Materials" is more or less than the "Cash Allowance," the Contract sum shall be adjusted accordingly. The adjustment in contract price shall be made on the basis of the purchase price without additional charges for overhead, profit, insurance or any other incidental expenses. The cost of installation of the "Allowed Materials" shall be included in the applicable sections

of the Contract Specifications covering this work.

28. USE OF PREMISES AND REMOVAL OF DEBRIS

28.1 The Contractor expressly undertakes at its own expense:

- A. to take every precaution against injuries to persons or damage to property;
- B. to store its apparatus, materials, supplies and equipment in such orderly fashion at the site of the work as will not unduly interfere with the progress of its work or the work of any other subcontractors;
- C. to place upon the work or any part thereof only such loads as are consistent with the safety of the portion of the work;
- D. to clean up frequently all refuse, rubbish, scrap materials, and debris caused by its operations, to the end that at all times the site of the work shall present a neat, orderly and workmanlike appearance;
- E. before final payment to remove all surplus material, false-work, temporary structures, including foundations thereof, plant of any description and debris of every nature resulting from its operations, and to put the site in a neat, orderly condition; and
- F. to effect all cutting, fitting or patching of its work required to make the same to conform to the plans and specifications and, except with the consent of the Architect/Engineer/County, not to cut or otherwise alter the work of any other Contractor.

29. QUANTITIES OF ESTIMATE

29.1 Wherever the estimated quantities of work to be done and materials to be furnished under this Contract are shown in any of the documents including the proposal, they are given for use in comparing bids and the right is especially reserved except as herein otherwise specifically limited, to increase or diminish them as may be deemed reasonably necessary or desirable by the County to complete the work contemplated by this Contract, and such increase or diminution shall in no way void this Contract, nor shall any such increase or diminution give cause for claims or liability for damages.

30. LANDS AND RIGHTS-OF-WAY

30.1 Prior to the start of construction, the County shall obtain all lands and rights-of-way necessary for the carrying out and completions of work to be performed under this Contract.

31. GENERAL GUARANTY

31.1 Neither the final certificate of payment nor any provision in the Contract Documents, nor partial or entire occupancy of the premises by the County, shall constitute an acceptance of work not done in accordance with the Contract Documents or relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The Contractor shall remedy any defects in the work and pay for any damage to other work resulting therefrom, which shall appear within a period of one (1)

year from the date of final acceptance of the work unless a longer period is specified. The County will give notice of observed defects with reasonable promptness.

32. PROTECTION OF LIVES AND HEALTH

32.1 The Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the site, which occur as a result of its prosecution of the work. The safety provisions of applicable laws and building and construction codes shall be observed and the Contractor shall take or cause to be taken, such additional safety and health measures as the County may determine to be reasonably necessary.

33. INTEREST OF MEMBER

33.1 No member of Santa Fe Board of County Commissioners shall be admitted to any share or part of this Contract or to any benefit that may arise therefrom.

34. OTHER PROHIBITED INTERESTS

34.1 No official of the County who is authorized in such capacity and on behalf of the County to negotiate, make, accept or approve, or to take part in negotiating, making accepting or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the project, shall become directly or indirectly interested personally in this Contract or in any part hereof. No officer, employee, architect, attorney, engineer or inspector of or for the County who is authorized in such capacity and on behalf of the County to exercise any legislative, executive, supervisory or other similar functions in connection with the construction of the project, shall become directly or indirectly interested personally in this Contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the project.

35. USE AND OCCUPANCY PRIOR TO ACCEPTANCE BY COUNTY

35.1 The Contractor agrees to the use and/or occupancy of a portion or unit of the project before formal acceptance by the County, provided the County:

- A. Secures written consent of the Contractor except in the event, in the opinion of the Architect/ Engineer, the Contractor is chargeable with unwarranted delay in final cleanup of punch list items or other contract requirements.
- B. Secures endorsement from the insurance carrier and consent of the surety permitting occupancy of the building or use of the project during the remaining period of construction.
- C. When the project consists of more than one building, and one of the buildings is occupied, secures permanent fire and extended coverage insurance, including a permit to complete construction. Consent of the surety must also be obtained.



ATTACHMENT A
BID SHEETS

ATTACHMENT B
ADDENDA & MODIFICATIONS

EXHIBIT A
PROJECT MANUAL

EXHIBIT B

TECHNICAL SPECIFICATIONS AS LISTED IN PLAN SET

EXHIBIT C**LABOR AND MATERIAL PAYMENT BOND
(SAMPLE)**

KNOW ALL MEN BY THESE PRESENT, THAT WE _____
_____ as PRINCIPAL hereinafter called the "PRINCIPAL" and
_____ as SURETY hereinafter called the "SURETY", are held and
firmly bound unto Santa Fe County, a Political Subdivision of the State of New Mexico as OBLIGEE
hereinafter called the "COUNTY", for the use and benefit of any claimants as herein below defined, in
the amount of _____ (\$.) dollars for the payment whereof
PRINCIPAL and SURETY bind themselves, their heirs, executors, administrators, successors, and
assigns, jointly and severally, firmly by these presents.

WHEREAS, the PRINCIPAL has a written contract dated _____, 2015, with the
COUNTY for the construction services for the Rjo Quemado Watershed in Santa Fe County, New
Mexico, which must be constructed in accordance with drawings and specifications which contract is
referenced and made a part hereof, and is hereinafter referred to as the "Contract."

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if PRINCIPAL shall
promptly make payment to all claimants as hereinafter defined, for all labor and material used or
reasonably required for use in the performance of the Contract, then this obligation shall be void;
otherwise, it shall remain in full force and effect, subject to the following conditions:

1. A claimant is defined as one having a direct contract with the PRINCIPAL or with a
subcontractor of the PRINCIPAL for labor, material, or both, used or reasonably required for
use in the performance of the Contract, labor and material being construed to include but not
be limited to that part of water, gas, power, light, heat, oil, gasoline, telephone services or
rental of equipment directly applicable to the Contract.
2. The above named PRINCIPAL and SURETY hereby jointly and severally agree with the
COUNTY that every claimant as herein defined, who has not been paid in full before the
expiration of a period of ninety (90) days after the date on which the last of such claimant's
work or labor was done or performed, or materials were furnished by such claimant,
prosecute a suit to final judgment for such sum or sums as may be justly due claimant, and
have execution thereof. The COUNTY shall not be liable for payment of any cost or
expenses of any such suit.
3. No suit or action shall be commenced hereunder by any claimant:
 - a. Unless claimant, or other than one having a direct contract with the PRINCIPAL,
shall have written notice in the form of an sworn statement to the COUNTY and any
one or both of the following: the PRINCIPAL or SURETY above named, within
ninety (90) days after such said claim is made or suit filed, stating with substantial
accuracy the amount claimed and the name of the party to whom the materials were
furnished, or for whom the work or labor was done or performed.
 - b. Such notice shall be served by mailing the same by registered mail or certified mail,
postage prepaid, in an envelope addressed to the COUNTY, PRINCIPAL or
SURETY, at any place where an office is regularly maintained by said COUNTY,

PRINCIPAL or SURETY for the transaction of business, or served in any manner in which legal process may be served in the State in which the aforesaid project is located, save that such service need not be made by a public officer.

- 4. Any suit under this Labor and Material Bond must be instituted in accordance with the statute of limitation under Section 37-1-3 NMSA 1978.
- 5. No right of action shall accrue on this Bond to or for the use of any person or corporation other than subcontractors or sub-subcontractors of the said Contract between PRINCIPAL and Santa Fe County named herein.

SIGNED AND SEALED THIS _____ DAY OF _____, 2015.

CONTRACTOR – PRINCIPAL (signature)

By: _____
(Printed name and title)

NOTARY PUBLIC (seal)

My Commission expires: _____

SURETY (signature)

(Printed name and title)

NOTARY PUBLIC (seal)

My Commission expires: _____

SURETY'S Authorized New Mexico Agent

EXHIBIT D

PERFORMANCE BOND (SAMPLE)

A. KNOW ALL MEN BY THESE PRESENT, THAT WE _____, as PRINCIPAL hereinafter called the "CONTRACTOR" and _____, as SURETY hereinafter called the "SURETY", are held and firmly bound unto OBLIGEE Santa Fe County, a Political Subdivision of the State of New Mexico, hereinafter called the "COUNTY", in the sum of _____ (\$ _____) dollars for the payment whereof CONTRACTOR and SURETY bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

B. WHEREAS, the CONTRACTOR has a written contract dated _____, 2015, with the COUNTY for the construction services for the Rio Quemado Watershed in Santa Fe County, New Mexico, in accordance with drawings and specifications which contract is referenced made part hereof, and is hereinafter referred to as the "Contract."

C. NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if CONTRACTOR shall promptly and faithfully perform said Contract (including any amendment thereto), then this obligation shall be null and void; otherwise it shall remain in full force and effect until the COUNTY shall by written instrument notify the SURETY that the obligation is discharged, except that the obligation shall continue for at least three (3) months following the expiration of the term of the Contract.

1. The SURETY hereby waives notice of any alteration or extension of the Contract time made by the COUNTY.
2. Whenever CONTRACTOR shall be, and is declared by the COUNTY to be in default under the Contract, the COUNTY having performed the COUNTY'S obligations thereunder, the SURETY must promptly remedy the default and shall promptly:
 - (1) Complete the Contract in accordance with its terms and conditions, or
 - (2) Obtain a bid or bids for submission to the COUNTY for completing the Contract in accordance with its terms and conditions, and upon determination by the COUNTY and SURETY of the lowest responsible bidder, arrange for a contract between such bidder and Santa Fe County, and make available as work progresses (even though there should be a default or a secession of defaults under the Contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract price, but not exceeding, including other costs and damages for which the SURETY may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the Contract price" as used in this paragraph, shall mean the total amount payable by the COUNTY to CONTRACTOR under the Contract and any amendments thereto, less the amount properly paid by the COUNTY to CONTRACTOR.

D. No right of action shall accrue on this Performance Bond to or for the use of any person or corporation other than Santa Fe County named herein or the heirs, executors, administrators, or successors of Santa Fe County.

E. This Bond shall be enforceable without the need to have recourse to any judicial or arbitral proceedings.

SIGNED AND SEALED THIS _____ DAY OF _____, 2015.

CONTRACTOR – PRINCIPAL (signature)

By: _____
(Printed name and title)

NOTARY PUBLIC (seal)

My Commission expires: _____

SURETY (signature)

(Printed name and title)

NOTARY PUBLIC (seal)

My Commission expires: _____

SURETY'S Authorized New Mexico Agent

EXHIBIT E

ASSIGNMENT OF ANTITRUST CLAIMS

TO BE EXECUTED BY GENERAL CONTRACTORS, SUBCONTRACTORS, SUPPLIERS,
AND SUBSUBCONTRACTORS OF CONTRACTORS ON COUNTY CONTRACTS.

FIRM NAME:

PROJECT: Construction Services for the
Rio Quemado Watershed

ADDRESS:

PROJECT NO: 2015-0143-PW/PL

PHONE NO.:

_____ agrees that any and all claims which it may have or may incur to it for overcharges resulting from antitrust violations as to goods, services, and materials purchased in connection with the above-referenced project are hereby assigned to Santa Fe County, but only to the extent that such overcharges are passed on to the County. It is agreed that the undersigned retains all rights to any such antitrust claims to the extent of any overcharges not passed on to the County, including the right to any treble damages attributable thereto.

FIRM: _____

BY: _____
Signed by Individual empowered to obligate Suppliers,
Subcontractors or Subsubcontractors

TITLE: _____

EXHIBIT F
CERTIFICATE OF LIABILITY INSURANCE

EXHIBIT G

NOTICE OF CONTRACT AWARD

TO:

FROM: _____, Public Works Department

CONTRACT NO. 2015-0143-PW/PL

This is to inform that you that you have been awarded the Contract for:

Project Name: Construction Services for the Rio Quemado Watershed

Date of Award _____ Amount of Award _____

Contractor Information:

Firm Name: _____ License# _____

Address: _____ Phone # _____

It is anticipated that construction will take place:

Approximate Starting Date: _____ Approximate Completion Date: _____

Santa Fe County hereby accepts your offer on the solicitation No. 2015-0143-PW/PL as reflected in this award document. The rights and obligations of the parties shall be subject to and governed by this document and any documents attached or incorporated by reference.

SANTA FE COUNTY

Name of Public Works Director or designee: _____
(Print Name)

Signature

EXHIBIT H

NOTICE TO PROCEED

TO: DATE:
PROJECT: Construction Services for the
Rio Quemado Watershed

ATTN: PROJECT NO. 2015-0143-PW/PL
CONTRACT NO. 2015-0143-PW/PL

Ladies and Gentlemen:

Enclosed is your copy of the Contract, which has been approved. Please consider this letter as official NOTICE TO PROCEED on the above-referenced project.

Your firm shall commence work within ten (10) calendar days of the above date and shall achieve Substantial Completion _____ calendar days thereafter, which shall be _____, 2015, unless modified by Change Order.

It is essential that you make reference to the above-stated project number on all documents sent to the Architect/Engineer from your office. These documents shall include correspondence, change order proposals, change orders, payment request statements, and all other project-related material which you forward to the Architect/Engineer for information and processing.

Also, before you may start any Work at the site, you must (add any other requirements):

OWNER: Santa Fe County
SFC _____ DEPARTMENT

By: _____
Director, SFC Department

EXHIBIT I

CHANGE ORDER

PROJECT:

CONTRACTOR
CHANGE ORDER NO:

ARCHITECT/ENGINEER

PROJECT NO:

Contractor Telephone:
Contractor e-mail:
ENGINEER'S/ARCHITECT'S PROJECT NO:

CHANGE ORDER JUSTIFICATION (Provide definitive reason for proposed change order.)

You are directed to make the following changes in this Contract: (Provide a detailed description of the Scope of the Work.)

NOT VALID UNTIL SIGNED BY BOTH THE COUNTY AND THE ARCHITECT/ENGINEER.
Signature of the Contractor indicates his agreement herewith, including any adjustment in the Contract Sum or Contract Time.

The Original Contract Sum was _____
Net change by previously authorized Change Orders \$0.00
The Contract Sum prior to this Change Order was he Contract Sum will be increased/decreased/unchanged _____
by this Change Order in the amount of \$0.00
The new contract Sum including this Change Order will be \$0.00
The Contract Time will be increased/decreased/unchanged by ___ days.
The date of Substantial Completion as of the date of this Change Order therefore is: _____

CHANGE ORDER SIGNATURE PAGE

REVIEWED

Santa Fe County

By:

Date:

AGREED AND RECOMMENDED

CONTRACTOR

By:

Date:

Title:

ARCHITECT/ENGINEER

By:

Date:

APPROVED

SANTA FE COUNTY

By:

Date:

EXHIBIT J

CERTIFICATE OF SUBSTANTIAL COMPLETION

SANTA FE COUNTY - PUBLIC WORKS DEPARTMENT

Public Works Director or designee (name): _____

CONTRACTOR: _____

Contractor Purchase Order Number: _____

ARCHITECT/ENGINEER: _____

Project Name: _____

Contract Date: _____

Project Description - Article 2 to Agreement Between Santa Fe County and Contractor (include address and project location description):

The contractor hereby certifies the Work of this project to be in complete conformance to the Contract Documents and is substantially complete, enabling the County to make use of the Work as intended.

By its signature below the Contractor further requests Architect/Engineer and County to inspect the Work and to concur in the Work's substantial completion by their signature and/or to provide in a timely manner to Contractor a listing of work items adjudged by them as remaining to be completed or corrected. Contractor agrees to complete and correct all work items (Punch List) representative of such listing within ___ days from date of receipt from Architect/Engineer.

Contractor

Signature

Print Name

Date

Accepted by Santa Fe County

Signature (Public Works Director or Designee) Print Name Date

Inspected/Concurrence Architect/Engineer

Signature Print Name Date

PUNCH LIST

A list of items (Punch List) to be completed or corrected, verified by the Architect/Engineer and County, is appended hereto. Failure to include any incomplete items on such list does not alter the responsibility of the Contractor to provide all Work in complete conformance with the Contract Documents.

The Contractor shall complete or correct the work on the punch list appended hereto by _____ (Date)

The punch list consists of _____(indicate number of items) items.

The Work performed under this Contract has been reviewed and found to be substantially complete by the Director of Public Works who has hereby established the Date of Substantial Completion as _____ (date) which is also the date of commencement of all warranties and guarantees required by the Contract Documents. The Date of Substantial Completion of the Work or designated portion thereof is the date established by the Director of Public Works (or designee) when construction is sufficiently complete, in accordance with the Contract Documents, so the County may occupy the Work, or designated portion thereof, for the use for which it is intended.

The County accepts the Work or designated portion thereof as substantially complete and assumes full possession thereof, in accordance with the contract documents.

Punch List Items: (Use additional sheets if necessary)

Henry P. Roybal
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Hollan
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

DATE: *September 9, 2015*

TO: *Board of County Commissioners*

FROM: *Bill Taylor, Purchasing Manager*

VIA: *Katherine Miller, County Manager* 
Jeff Trujillo, Director of Legal and Administration

ITEM AND ISSUE: *BCC Meeting September 29, 2015*

REQUEST APPROVAL OF AMENDMENT NO. 2 TO AGREEMENT NO. 2014-0002-LG/MS WITH DANIELS INSURANCE, INC. FOR AN INCREASED CONTRACT AMOUNT OF \$95,000.00 AND EXTEND THE CONTRACT TERM ONE (1) ADDITIONAL YEAR FOR INSURANCE BROKER AND CONSULTING SERVICES AND GRANT SIGNATURE AUTHORITY TO THE COUNTY MANAGER TO SIGN THE PURCHASE ORDER. (Bill Taylor, Purchasing Division)

SUMMARY:

The Purchasing Division requests approval of Amendment No. 2 to Agreement No. 2014-0002-LG/MS with Daniels Insurance, Inc. to provide insurance broker and consulting services for an additional one (1) year term at a cost of ninety five thousand dollars (\$95,000).

Amendment No. 2 will begin the third year term and increase the total contact amount to \$285,000, which requires the Board of County Commissioner's approval.

BACKGROUND:

Santa Fe County requires insurance broker and consulting services. The Purchasing Division issued Request for Proposals (RFP) No. 2014-0002-LG/MS "Insurance Broker and Consulting Services" June 30, 2013. The original contract was signed by all parties on October 1, 2013. Amendment No. 1 was signed on October 1, 2014 which extended the term of the agreement an additional year and increased compensation by ninety five thousand dollars (\$95,000.00). Amendment No. 2 will

extend the term of the agreement for one (1) additional year and will increase the total contract amount an additional ninety five thousand dollars (\$95,000.00) making the total contract amount two hundred eighty five thousand dollars (\$285,000.00).

ACTION REQUESTED:

The Purchasing Division requests approval of Amendment No. 2 to Agreement No. 2014-0002-LG/MS with Daniels Insurance, Inc. to extend the term of the agreement for one (1) year and increase the contract compensation ninety five thousand dollars (\$95,000.00). The Purchasing Division also requests signature authority for the County Manager to execute the purchase order.

**AMENDMENT NO. 2
TO THE AGREEMENT WITH DANIELS INSURANCE, INC. FOR
INSURANCE BROKER AND CONSULTING SERVICES**

This Amendment is made and entered into as of this ___ day of _____, 2015 by and between **Santa Fe County**, hereinafter referred to as "the County", a New Mexico political subdivision, and **Daniels Insurance, Inc.** hereafter referred to as the "Contractor".

WHEREAS, in accordance with Section 13-1-112 NMSA 1978, and 13-1-117 NMSA 1978, competitive sealed proposals were solicited via a formal request for proposals for the provision of these services; and

WHEREAS, the County and Contractor entered into Agreement No. 2014-0002-LG/MS on October 1, 2013 for a term of one (1) year and compensation of \$95,000.00 for the Contractor to provide Insurance Broker services; and

WHEREAS, Agreement 2014-0002-LG/MS has a term of (1) year with an option to extend the term in one (1) year increments. The term of the Agreement extended by Amendment No. 1 is due to expire October 1, 2015 and the County wishes to extend the term for another year; and

WHEREAS, Article 15, "NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED," of Agreement No. 2014-0002-LG/MS allows parties to amend the Agreement by an instrument in writing executed by the parties; and

WHEREAS, the parties wish to extend the term of the Agreement from October 1, 2015 to October 1, 2016, increase the Contractor's compensation by \$95,000.00 for the extended term, and replace Exhibit A with an updated Exhibit A-2. With this Amendment No. 2, the total contract sum for Agreement 2014-0002-LG/MS shall not exceed \$285,000.00, inclusive of NM grt; and

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties hereto mutually agree as follows.

1. Article 2. "COMPENSATION, INVOICING, AND SET-OFF" is amended by adding the following as subparagraph "(b)":

(b) By Amendment No. 2 to this Agreement, the Contractor's compensation is increased by Ninety Five Thousand Dollars and No Cents (\$95,000.00) for the term of October 1, 2015 to October 1, 2016. The specific monthly payments to the Contractor are as indicated on Exhibit A-2 attached hereto and incorporated by reference.

The total amount payable to the Contractor under this Agreement as amended shall not exceed Two Hundred Eighty Five Thousand Dollars (\$285,000.00), inclusive of NM grt.

2. Article 3 "EFFECTIVE DATE AND TERM" is amended by adding the following as subparagraph "B":

B. By Amendment No. 2, the County notifies the Contractor and exercised the County's second option to extend the term of Agreement No. 2014-0002-LG/MS for one (1) year from October 1, 2015 to October 1, 2016.

3. All other provisions of Agreement No. 2014-0002-LG/MS not specifically amended or modified by Amendment No. 1 and this Amendment No. 2 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first written above.

SANTA FE COUNTY:

Robert A. Anaya, Chair
Board of County Commissioners of Santa Fe County

Date

ATTESTATION:

Geraldine Salazar
Santa Fe County Attorney

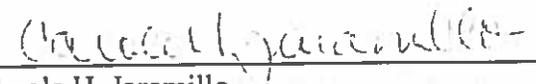
Approved as to form:



Gregory S. Shaffer
Santa Fe County Attorney

9-3-15
Date

FINANCE DEPARTMENT:



Carole H. Jaramillo
Finance Director

9/3/15
Date

CONTRACTOR:

(Signature)

Date

(Print Name)

(Print Title)

Exhibit A-2

To Contract# 2014-0002-LG/MS

Amount to Pay Monthly	Amount to Pay for 12 Months		
\$ 1,202.25	\$ 14,427.00		
\$ 61.92	\$ 743.04		
\$ 195.08	\$ 2,340.96		
\$ 5.33	\$ 63.96		
\$ 5.33	\$ 63.96		
\$ 5.25	\$ 63.00		
\$ 15.25	\$ 183.00		
\$ 4.25	\$ 51.00		
\$ 1,165.17	\$ 13,982.04		
\$ 82.00	\$ 984.00		
\$ 1,844.08	\$ 22,128.96		
\$ 22.75	\$ 273.00		
\$ 2,842.83	\$ 34,113.96		
\$ 84.42	\$ 1,013.04		
\$ 45.00	\$ 540.00		
\$ 17.17	\$ 206.04		
\$ 120.33	\$ 1,443.96		
\$ 48.17	\$ 578.04		
\$ 12.08	\$ 144.96		
\$ 138.00	\$ 1,656.00		
Total	\$ 7,916.66	\$ 94,999.92	

**AMENDMENT NO. 1
TO THE AGREEMENT WITH DANIELS INSURANCE, INC. FOR
INSURANCE BROKER AND CONSULTING SERVICES**

This Amendment is made and entered into as of this 1st day of October, 2014 by and between **Santa Fe County**, hereinafter referred to as "the County", a New Mexico political subdivision, and **Daniels Insurance, Inc.** hereafter referred to as "the Contractor".

WHEREAS, in accordance with Section 13-1-112 NMSA 1978, and 13-1-117 NMSA 1978, competitive sealed proposals were solicited via a formal request for proposals Request for Proposal No. 2014-0002-LG/MS for the provision of the professional services; and

WHEREAS, the County and Contractor entered into Agreement No. 2014-0002-LG/MS on October 1, 2013 for a term of one (1) year and compensation of \$95,000 for the Contractor to provide Insurance Broker services; and

WHEREAS, Agreement 2014-0002-LG/MS has a term of (1) year with an option to extend the term in one (1) year increments. The term of the Agreement is due to expire October 1, 2014 and the County wishes to extend the term for one (1) year; and

WHEREAS, Article 15, "NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED." of Agreement No. 2014-0002-LG/MS allows parties to amend the Agreement by an instrument in writing executed by both parties; and

WHEREAS, both parties wish to extend the term of the Agreement from October 1, 2014 to October 1, 2015; amend the Contractor's Scope of Work to include specific deliverables as described herein; and to increase the Contractor's compensation by \$95,000 for the extended term. With this Amendment No. 1, the total contract sum for Agreement 2014-0002-LG/MS shall not exceed \$190,000.00, inclusive of NM grt; and

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties hereto mutually agree as follows.

1. Article 1. "SCOPE OF WORK" of Agreement 2014-0002-LG/MS is amended by adding the following as subparagraph "G":

G. Fees and Charges for Deliverables

Contractor shall invoice the County for fees or charges associated with any deliverables associated with the insurance broker services and work required and described in this Agreement. Deliverables include without limitation malpractice insurance, insurance premiums, claims, deductibles and any other services associated with the scope of services required in this Agreement.

2. Article 2. "COMPENSATION, INVOICING, AND SET-OFF" is amended by adding the following as subparagraph "(a)":

(a) By Amendment No. 1 to this Agreement, the Contractor's compensation is increased by Ninety Five Thousand Dollars and No Cents (\$95,000.00) for the term of October 1, 2014 to October 1, 2015. The specific monthly payments to the Contractor are as indicated on Exhibit A attached hereto and incorporated by reference.

The total amount payable to the Contractor under this Agreement as amended shall not exceed One Hundred Ninety Thousand Dollars (\$190,000.00), inclusive of NM grt.

3. Article 3 "EFFECTIVE DATE AND TERM" is amended by adding the following as subparagraph "A":

A. By Amendment No. 1, the County notifies the Contractor and exercised the County's first option to extend the term of Agreement No. 2014-0002-LG/MS for one (1) year from October 1, 2014 to October 1, 2015.

4. All other provisions of Agreement No. 2014-0002-LG/MS not specifically amended or modified by this Amendment No. 1 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first written above.

SANTA FE COUNTY:

Katherine Miller
Katherine Miller
Santa Fe County Manager

10.1.14
Date

APPROVED AS TO FORM:

Gregory S. Shaffer
Gregory S. Shaffer
Santa Fe County Attorney

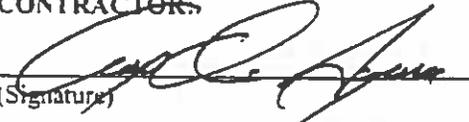
10-1-14
Date

FINANCE DEPARTMENT:

Teresa C. Martinez
Teresa C. Martinez
Santa Fe County Finance Director

10/1/14
Date

CONTRACTOR:


(Signature)

9.29.14
Date


(Print Name)


(Print Title)

FEDERAL IDENTIFICATION NO. 85-0092484

Exhibit A

To Contract# 2014-0002-LG/MS

Amount to Pay Monthly	Amount to Pay for 12 Months	Account Number
\$ 1,166.06	\$ 13,992.72	101-1517-412-7501
\$ 158.03	\$ 1,896.36	101-0489-461-7501
\$ 15.03	\$ 180.36	101-0605-443-7501
\$ 1,167.03	\$ 14,004.36	101-0702-415-7501
\$ 266.03	\$ 3,192.36	204-1611-451-7501
\$ 13.03	\$ 156.36	223-0420-451-7501
\$ 13.03	\$ 156.36	232-0421-461-7501
\$ 10.03	\$ 120.36	232-0474-461-7501
\$ 30.03	\$ 360.36	241-0404-464-7501
\$ 1,592.03	\$ 19,104.36	244-0801-421-7501
\$ 115.03	\$ 1,380.36	245-2101-461-7501
\$ 1,550.03	\$ 18,600.36	246-1201-424-7501
\$ 50.03	\$ 600.36	247-1801-426-7501
\$ 1,266.03	\$ 15,192.36	247-1860-426-7501
\$ 29.85	\$ 358.20	247-1862-426-7501
\$ 58.03	\$ 696.36	247-1863-426-7501
\$ 9.03	\$ 108.36	247-1865-426-7501
\$ 236.21	\$ 2,834.52	247-1870-426-7501
\$ 69.03	\$ 828.36	505-1410-444-7501
\$ 27.03	\$ 324.36	505-1420-445-7501
\$ 76.03	\$ 912.36	517-1930-471-7501
Total	\$ 7,916.66	\$ 94,999.92

**PROFESSIONAL SERVICES AGREEMENT
WITH DANIELS INSURANCE, INC.
FOR INSURANCE BROKER AND CONSULTING SERVICES**

THIS AGREEMENT is made and entered into on this 1st day of October, 2013, by and between **SANTA FE COUNTY** (hereinafter referred to as the "County"), a New Mexico political subdivision, and **DANIELS INSURANCE, INC.** (hereinafter referred to as the "Contractor").

WHEREAS, Santa Fe County requires the services of a qualified licensed insurance firm to provide Insurance Broker and Consulting Services for the County's insurances; and

WHEREAS, pursuant to Section 13-1-112 and 13-1-117 NMSA 1978, competitive sealed proposals were solicited via a formal request for proposals (RFP) #2014-0002-LG/MS, for the provision of the Professional Services; and

WHEREAS, based upon the evaluation criteria established within the request for proposals for the purposes of determining the most qualified Offeror, the County has determined Contractor as the most responsive and highest rated Offeror; and

WHEREAS, the County requires these services and the Contractor is qualified and willing to provide these services and both parties wish to enter into this Agreement.

NOW THEREFORE, in consideration of the premises and mutual obligations herein, the parties hereto do mutually agree as follows:

1. SCOPE OF WORK

The Contractor shall provide full-service Insurance Broker Services to obtain and maintain a competitive public liability insurance program for the County that includes comprehensive public liability insurance and other insurance coverage described herein. The Contractor shall provide the Insurance Broker and Consulting Services that include, but not limited, to the following:

A. Insurance Broker Services

1. Provide access to the worldwide insurance marketplace.
2. Represent the County and not any insurance company.
3. Negotiate on behalf of County with insurance companies and keep County informed of significant developments.
4. Monitor published financial information of County's current insurers and alert County when their status falls below the Contractor's minimum guidelines and/or security committee clearance.

5. Shall not place or broker any business for the County with an insurance carrier that does not have an AM Besting A+ rating. Each carrier's A.M. Best rating will be provided with quotes to the County Risk Manager.
6. Solicit quotes from carriers in New Mexico as well as other national carriers for all insurance coverages.
7. Follow up with insurance carriers for timely issuance of policies and endorsements.
8. Review policies and endorsements for accuracy and conformity to specifications and negotiated coverage.
9. Provide coverage summaries for all new coverages and updates on changes to existing coverage.
10. Review all excess insurance policy documents and secure any necessary corrections on County's behalf.

B. Master County Coverage Document Maintenance and Consulting Services

1. Maintain and provide triplicate copies of all coverage forms.
2. Assist County staff with interpreting coverage document terms and conditions.
3. Maintain, issue, and provide County endorsements as appropriate.
4. Maintain coverage applications and maintain and provide County exposure summaries.
5. Review program coverage in force and make recommendations to County for improvements.
6. Review County competitors' coverage and strategies for needed improvements to County's program.
7. Manuscript needed endorsements as directed by County staff.

C. Underwriting Consulting Services

1. Assist in underwriting renewals with input from County staff in an effort to meet funding target as established by County.
2. Recommend deductibles and/or self-insured retentions as appropriate and as directed by County.

D. County Insurance Coverage Consulting

1. Annually, Contractor will develop a work plan in conjunction with County Staff for each service year.
2. Prepare a written report on each quarter's work which details activities performed under this agreement.

- E. Advise County on Risk Program Design and Maintenance of the following coverages:

- AD&D
- Auto
- Bonds
- Boiler and Machine Insurance
- Builder's Risk
- Crime
- Electronic Data Processing (EDP)
- Employment Practices
- Environmental
- Equipment
- General
- Law Enforcement
- Medical Malpractice (Facility and Mobile Unit)
- Pollution
- Property
- Public Officials Liability
- Tenants Users Liability Insurance Policy (TULIP)
- Umbrella
- Volunteer Firefighter Insurance (VFIS)
- Worker's Compensation Insurance

- F. Risk Services

1. Conduct risk assessments undertaken at the direction of the Risk Management Director, which may involve analysis of current risks, new agencies, programs, changes to Self Insured Retentions (SIR), deductibles, and other similar risk analysis projects.
2. Assistance with data compilations and interpretations.

2. COMPENSATION, INVOICING, AND SET-OFF

A. In consideration of its obligations under this Agreement the Contractor shall be compensated as follows:

- 1) County shall pay to the Contractor in full payment for services satisfactorily performed for an annual rate of Ninety Five Thousand Dollars and No Cents (\$95,000.00), inclusive of GRT.

2) This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. County will notify Contractor if and when County as paid Contractor the full not-to-exceed amount stated above prior to the expiration of the term of this Agreement. Absent an approved amendment to the contract amount, Contractor will not be compensated in excess of the not-to-exceed amount stated above for deliverables and services performed.

B. The Contractor shall submit a written request for payment to the County when payment is due under this Agreement. Upon the County's receipt of the written request, the County shall issue a written certification of complete or partial acceptance or rejection of the contractual items or services for which payment is sought. The Contractor acknowledges and agrees that the County may not make any payment hereunder unless and until it has issued a written certification accepting the contractual items or services. Within thirty (30) days of the issuance of a written certification accepting the contractual items or services, the County shall tender payment for the accepted items or services and withhold unacceptable or disputed amounts. In the event the County fails to tender payment within thirty (30) days of the written certification accepting the items or services, the County shall pay late payment charges of one and one-half percent (1.5%) per month, until the amount due is paid in full.

C. In the event the Contractor breaches this Agreement, the County may, without penalty, withhold any payments due the Contractor for the purpose of set-off until such time as the County determines the exact amount of damages it suffered as a result of the breach.

D. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payment.

3. EFFECTIVE DATE AND TERM

This Agreement shall, upon due execution by all parties, become effective as of the date first written above and shall terminate one (1) year later, unless earlier terminated pursuant to Section 5 (Termination) or Section 6 (Appropriations and Authorizations). The County has the option to extend the contract at the same price, terms and conditions for a period of three (3) additional years in one (1) year increments, upon the approval of the Santa Fe County. The County may exercise this option by submitting a written notice to Contractor that the Agreement will be extended an additional year. The notice must be submitted to Contractor at least sixty (60) days prior to expiration of the initial Agreement.

4. ADDITIONAL SERVICES

A. The parties agree that all tasks set forth in Paragraph 1, SCOPE OF WORK of this Agreement, shall be completed in full, to the satisfaction of the County, for the amount set forth in

Section 2, COMPENSATION, INVOICING, AND SET-OFF, of this Agreement, and for no other cost, amount, fee, or expense.

B. The County may from time-to-time request changes in the Scope of Work to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the County and the Contractor, shall be incorporated in written amendments to this Agreement.

5. TERMINATION

A. Termination of Agreement for Cause. Either party may terminate the Agreement based upon any material breach of this Agreement by the other party. The non-breaching party shall give the breaching party written notice of termination specifying the grounds for the termination. The termination shall be effective thirty (30) days from the breaching party's receipt of the notice of termination, during which time the breaching party shall have the right to cure the breach. If, however, the breach cannot with due diligence be cured within thirty (30) days, the breaching party shall have a reasonable time to cure the breach, provided that, within thirty (30) days of its receipt of the written notice of termination, the breaching party began to cure the breach and advised the non-breaching party in writing that it intended to cure.

B. Termination for Convenience of the County. The County may, in its discretion, terminate this Agreement at any time for any reason by giving the Contractor written notice of termination. The notice shall specify the effective date of termination, which shall not be less than fifteen (15) days from the Contractor's receipt of the notice. The County shall pay the Contractor for acceptable work, determined in accordance with the specifications and requirements set forth in this Agreement, performed before the effective date of termination but shall not be liable for any work performed after the effective date of termination.

6. APPROPRIATIONS AND AUTHORIZATIONS

This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Board of County Commissioners of the County and/or, if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Agreement shall terminate upon written notice by the County to the Contractor. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse the Contractor for expenditures made in the performance of this Agreement. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. The County's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by the Contractor in any way or forum, including a lawsuit.

7. INDEPENDENT CONTRACTOR

The Contractor and its agents and employees are independent contractors and are not employees or

agents of the County. Accordingly, the Contractor and its agents and employees shall not accrue leave, participate in retirement plans, insurance plans, or liability bonding, use County vehicles, or participate in any other benefits afforded to employees of the County. Except as may be expressly authorized elsewhere in this Agreement, the Contractor has no authority to bind, represent, or otherwise act on behalf of the County and agrees not to purport to do so.

8. ASSIGNMENT

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the advance written approval of the County. Any attempted assignment or transfer without the County's advance written approval shall be null and void and without any legal effect.

9. SUBCONTRACTING

The Contractor shall not subcontract or delegate any portion of the services to be performed under this Agreement without the advance written approval of the County. Any attempted subcontracting or delegating without the County's advance written approval shall be null and void and without any legal effect.

10. PERSONNEL

A. All work performed under this Agreement shall be performed by the Contractor or under its supervision.

B. The Contractor represents that it has, or will secure at its own expense, all personnel required to discharge its obligations under this Agreement. Such personnel (i) shall not be employees of or have any contractual relationships with the County and (ii) shall be fully qualified and licensed or otherwise authorized or permitted under federal, state, and local law to perform such work.

11. RELEASE

Upon its receipt of all payments due under this Agreement, the Contractor releases the County, its elected officials, officers, agents and employees from all liabilities, claims, and obligations whatsoever arising from or under or relating to this Agreement.

12. 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 the prior written approval of the County.

13. PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT

A. The County has the unrestricted right to publish, disclose, distribute and otherwise

use, in whole or in part, any reports, data, or other material prepared under or pursuant to this Agreement.

B. The Contractor acknowledges and agrees that any material produced in whole or in part under or pursuant to this Agreement are deliverables belonging to Santa Fe County. Accordingly, to the extent that any such material is copyrightable in the United States or in any other country, the County shall own such copyright.

14. CONFLICT OF INTEREST

The Contractor represents that it has no and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of its obligations under this Agreement.

15. NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED

This Agreement may not be modified, altered, changed, or amended orally but, rather, only by an instrument in writing executed by the parties hereto. The Contractor specifically acknowledges and agrees that the County shall not be responsible for any changes to Section 1, "SCOPE OF WORK", of this Agreement unless such changes are set forth in a duly executed written amendment to this Agreement.

16. ENTIRE AGREEMENT; INTEGRATION

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

17. NOTICE OF PENALTIES

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

18. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

A. The Contractor agrees to abide by all federal, state, and local laws, ordinances, and rules and regulations pertaining to equal employment opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, the Contractor specifically agrees not to discriminate against any person with regard to employment with the Contractor or participation in any program or activity offered pursuant to this Agreement on the grounds of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation, or gender identity.

B. The Contractor acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Agreement.

19. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW

A. In performing its obligations hereunder, the Contractor shall comply with all applicable laws, ordinances, and regulations.

B. This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules. Contractor and the County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be the state district court of New Mexico, located in Santa Fe County.

20. RECORDS AND INSPECTIONS

A. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to the County as part of the procurement process, the Contractor agrees to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under this Agreement; (ii) allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with generally accepted accounting principles (GAAP).

B. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to County as part of the procurement process, the Contractor also agrees to require any subcontractor it may hire to perform its obligations under this Agreement to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under the subcontract; (ii) to allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with GAAP.

21. INDEMNIFICATION

A. The Contractor shall defend, indemnify, and hold harmless the County and its elected officials, agents, and employees from any losses, liabilities, damages, demands, suits, causes of action, judgments, costs or expenses (including but not limited to court costs and attorneys' fees) resulting from or directly or indirectly arising out of the Contractor's performance or non-performance of its obligations under this Agreement, including but not limited to the Contractor's breach of any representation or warranty made herein.

B. The Contractor agrees that the County shall have the right to control and participate in the defense of any such demand, suit, or cause of action concerning matters that relate to the County and that such suit will not be settled without the County's consent, such consent not to be

unreasonably withheld. If a conflict exists between the interests of the County and the Contractor in such demand, suit, or cause of action, the County may retain its own counsel to represent the County's interest.

C. The Contractor's obligations under this section shall not be limited by the provisions of any insurance policy the Contractor is required to maintain under this Agreement.

22. SEVERABILITY

If any term or condition of this Agreement shall be held invalid or non-enforceable by any court of competent jurisdiction, the remainder of this Agreement shall not be affected and shall be valid and enforceable to the fullest extent of the law.

23. NOTICES

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the County: Santa Fe County
 Office of the County Attorney
 102 Grant Avenue
 Santa Fe, New Mexico 87501

To the Contractor: Daniels Insurance, Inc.
 805 St. Michaels Drive
 Santa Fe, New Mexico 87505

24. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

The Contractor hereby represents and warrants that:

- A. It is a Corporation duly organized and in good standing under the laws of the State of New Mexico.
- B. This Agreement has been duly authorized by the Contractor, the person executing this Agreement has authority to do so, and, once executed by the Contractor, this Agreement shall constitute a binding obligation of the Contractor.
- C. This Agreement and the Contractor's obligations hereunder do not conflict with the Contractor's articles of incorporation or by-laws or any corporate resolution adopted by the Contractor.
- D. It will maintain throughout the life of this Agreement, its registration and licensure with the State of New Mexico.

25. FACSIMILE SIGNATURES

The parties hereto agree that a facsimile signature has the same force and effect as an original for all purposes.

26. LIMITATION OF LIABILITY

The County's liability to the Contractor for any breach of this Agreement by the County shall be limited to direct damages and shall not exceed the maximum amount of potential compensation specified in Section 2, "COMPENSATION AND INVOICING," of this Agreement. In no event shall the County be liable to the Contractor for special or consequential damages, even if the County was advised of the possibility of such damages prior to entering into this Agreement.

27. NO THIRD-PARTY BENEFICIARIES

This Agreement was not intended to and does not create any rights in any persons not a party hereto.

28. INSURANCE

A. General Conditions. The Contractor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.

B. General Liability Insurance, Including Automobile. The Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,050,000.00 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Non-hired vehicle insurance coverage will be required for employees, temporary employees, and subcontractor using their personal vehicle. The Contractor will also have an Employee Dishonesty endorsement with their General Liability. Said policies of insurance shall include coverage for all operations performed for the County by the Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Agreement is an insured contract. The County of Santa Fe shall be a named additional insured on the policy.

C. Workers' Compensation Insurance. The Contractor shall comply with the provisions of the Workers' Compensation Act.

D. Increased Limits. If, during the life of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended), the Contractor shall increase the maximum limits of any insurance required herein.

E. Malpractice/Errors and Omissions Insurance. Contractor shall procure and maintain during the life of this Agreement professional liability (errors and omissions) insurance

with policy limits of not less than \$1,500,000.00 per occurrence, \$2,500,000.00 per aggregate.

29. PERMITS, FEES, AND LICENSES

Contractor shall procure all permits and licenses, pay all charges, fees, and royalties, and give all notices necessary and incidental to the due and lawful performance of its obligations hereunder.

30. NEW MEXICO TORT CLAIMS ACT

No provision of this Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by County or its "public employees" at common law or under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

31. CAMPAIGN CONTRIBUTION DISCLOSURE FORM

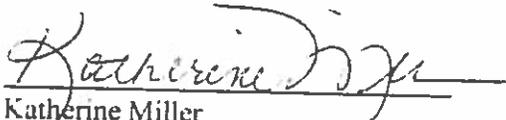
The Contractor agrees to compute and submit simultaneous with execution of this Agreement a Campaign Contribution Disclosure Form approved by the County.

32. SURVIVAL

The provisions of following paragraphs shall survive termination of this Contract; INDEMNIFICATION; RECORDS AND INSPECTION; RELEASE, CONFIDENTIALITY, PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT; COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW; NO THIRD-PARTY BENEFICIARIES; SURVIVAL.

IN WITNESS WHEREOF, the parties have duly executed this Amendment to the Agreement as of the date first written above.

SANTA FE COUNTY:


Katherine Miller
Santa Fe County Manager

9.27.13
Date

Approved as to Form:


Stephen C. Ross
Santa Fe County Attorney

Sept. 5 2013
Date

