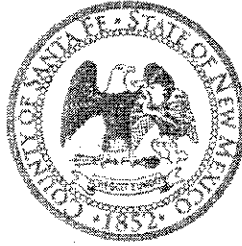


Henry P. Roybal
Commissioner, District 1

Anna Hansen
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Anna T. Hamilton
Commissioner, District 4

Ed Moreno
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

DATE: *July 23, 2018*

TO: *Board of County Commissioners*

FROM: *Bill Taylor, Procurement Manager* *BT*

VIA: *Katherine Miller, County Manager*
Pablo Sedillo, III, Public Safety Director
Stephanie S. Clarke, Finance Director *SSC*

ITEM AND ISSUE: *BCC Meeting July 31, 2018*

Request Authorization for the County Manager to Finalize and Execute Agreement No. 2018-0323-CORR/BT between Santa Fe County and Nations Roof Central, LLC in the Amount of \$2,736,270.00, Excluding NM GRT for the Roof Replacement Project at the Santa Fe County Adult Detention Facility; and Granting Signature Authority to the County Manager to Sign the Purchase Order. (Purchasing/Bill Taylor)

ISSUE:

The existing roof system at the County Adult Detention Facility (ADF) located at 35 Camino de Justicia in Santa Fe New Mexico has now exceeded useful and functional life and requires complete and total replacement. The County Purchasing Division, together with Santa Fe County Public Safety Department contracted with NM Roof Consultants to evaluate and provide design services for the replacement of roof system in its entirety.

On May 6, 2018, Santa Fe Purchasing issued an RFP No. 2018-0323-CORR/BT for construction service to remove and replace the entire roof system at the facility. The County received proposals from the following Offerors:

National Roofing Company, Inc.	Albuquerque, NM
Nations Roof Central, LLC	Rowlett, TX
WCR Construction, LLC	Burnett, TX

National Roofing Company, Inc. submitted the highest ranked proposal; however their cost proposal exceeded the project budget and the Architect's probable cost for construction. The County entered into negotiation with National and requested their best and final offer. After receiving their revised cost proposal, it was determined to be in the County's best interest to terminate negotiations and begin negotiations with the 2nd ranked Offeror, Nations Roof Central, LLC. Their qualifications and cost proposal were accepted to be in the best interest of the County and the public.

BACKGROUND AND DISCUSSION:

The existing roof system is a single-ply EPDM membrane that covers approximately 108,000 square foot area that houses more than 550 residents while awaiting their various court dates. These individuals are to be provided a safe and healthy environment during their stay at the facility. In order to correct the immediate deficiencies, Public Safety Department, Corrections requested a declaration of emergency be made to address the immediate repairs to the roof and also to procure professional design services for the design of the entire roof replacement.

The construction will provide replacement construction services for the existing facility roof systems, skylights, and related adjacent wall and roof-to-wall transitions as described within the RFP and related specifications and bid documents. The new roof system will provide the County up to a 25 year warranty, and possibly longer.

ACTION REQUESTED:

The Purchasing Division requests the BCC authorization for the County Manager to finalize and execute Agreement No. 2018-0323-CORR/IC between Santa Fe County and Nations Roof Central, LLC in the amount of \$2,736,270.00, exclusive of NM GRT for the roof system replacement at the Adult Detention Facility and grant signature authority to the County Manager to sign the purchase order.

Item No.	Scope of Work	National Roofing	Nations Roofing	WCR Construction	Delta National to Low Bid
BB1	Remove existing roof completely and replace with new 3-ply modified bitumen built up roof	\$4,278,986.00	\$2,963,865.00	\$3,068,350.00	44.37%
BB2	Retrofit repair all existing sheet metal collector head/downspouts	\$11,685.00	\$6,395.00	\$17,850.00	82.72%
BB3	Provide new sheet metal through wall scupper, collector head, and downspouts	\$28,291.00	\$2,690.00	\$6,000.00	951.71%
BB4	Install new pre-manufactured self flashing skylights	\$39,719.00	\$43,560.00	\$44,850.00	-8.82%
Deduct Alt 1	Salvage and re-install existing curb mounted skylights	\$238.00	\$31,440.00	\$0.00	
Deduct Alt 2	Exclude veral aluminum foil faced flashing and install granule surfaced cap sheet membrane flashing	\$2,186.00	\$1,865.00	\$5,150.00	
Deduct Alt 3	Install 2-ply heavy duty intrply in lieu of 3-ply standard weight membrane	\$82,641.00	\$81,755.00	\$85,400.00	
Deduct Alt 4	Salvage and re-install existing polyiso insulation board	\$0.00	\$305,240.00	\$170,750.00	
Unit Cost A	Light corrosion rust at deck per square foot deck area	\$1.50	\$3.25	\$3.50	
Unit Cost B	Moderate corrosion rust at deck per square foot deck area	\$2.00	\$3.75	\$3.75	
Unit Cost C	Heavy Corrosion rust at deck per square foot deck area	\$17.00	\$10.50	\$6.00	
Unit Cost D	Retrofit metal deck damaged and unsuitable for reuse per square foot deck area	\$17.00	\$12.75	\$9.00	
Unit Cost E	Reinforce deck with additional fasteners 5 fasteners each	\$20.00	\$8.25	\$23.50	
Unit Cost F	Build up low spots with additional membrane per 25 square feet	\$50.00	\$37.50	\$500.00	
Unit Cost G	Additional traffic panels beyond those in drawing set per 50 lineal feet installed	\$1,500.00	\$1,400.00	\$700.00	
Unit Cost H	General disbonded sealant replacement retrofit per lineal foot installed	\$15.39	\$8.75	\$12.50	
Unit Cost J	Interior protection per square foot at 100 sq. ft. minimum	\$125.00	\$4.50	\$6.15	
Unit Cost K	Pre-engineered plastic dome skylight per each unit skylight, existing curb	\$607.00	\$905.00	\$975.00	
Allowance	HVAC service for reroofing purposes	\$15,000.00	\$15,000.00	\$15,000.00	
Allowance	Repair spray applied fire proofing	\$10,000.00	\$10,000.00	\$10,000.00	
	Total Project Summary Base Bid Only	\$4,358,681.00	\$3,016,510.00	\$3,137,050.00	44.49%
		<i>40 wks</i>	<i>16 wks</i>	<i>16 wks</i>	



SCIENCE - MATERIALS - ART - RESEARCH - TECHNOLOGY

**Bid Proposal Evaluation for Roof System Replacement
Project No. 2018-0323-CORR/IC Santa Fe County Adult
Correctional Facility**

June 13, 2018

Selection Committee
Santa Fe County Public Works Department
P.O. Box 276
Santa Fe, NM 87504-0276
County Buildings - 505-992-3021

To Selection Committee Members and Director of Public Works:

This letter is intended to summarize New Mexico Roof Consultants (NMRC) review of the Request for Proposal documents including Statement of Qualifications for prospective bidders that successfully submitted complete qualifications and pricing sections per the requirements of the subject Request for Qualifications Proposal.

We understand that sealed qualifications-based proposal with price component as prepared by three successful bidding contractors including National Roofing Company, Inc. (NRC) Nations Roof Central, LLC (Nation) and WCR Construction LLC (WCR) have previously been reviewed administratively by Santa Fe County Procurement department for compliance with bid requirements and have been determined to be successful offerors.

As such, NMRC offers the following information to aid with selection of a final qualified roofing contractor to potentially negotiate terms of a contract to perform the work stipulated in the bid documents:

- Organization: National Roofing reports the greatest longevity for an organization that has been in business under the current name which for National Roofing is 41 years
 - Nations Roofing reports 11 year longevity
 - WCR Construction reports 5 years
- Licensing: All three bidding contractors are properly licensed in the State of New Mexico to obligate work under a contract for specific performance criteria as stipulated in the NM Administrative Code (NMAC) Title 14, Chapter 6; all three contractors successfully demonstrate licensure to perform the work stipulated by the bid documents.
 - National Roofing reports multiple active license registrations recorded with NM CID for

performance of General Building (GB98,) Roofing (GS21,) and Miscellaneous Sheet Metal (GS32) all of which appear to be in good standing under business license Number 14145 attached to their license since April, 2001 and originally issued in December 1977

- Nations Roofing reports a license for Roofing (GS21) that is confirmed by NMRC to be active since October, 2007 and originally issued October 2007, as listed under NM license number 354044
- WCR Construction reports a General Building (BG98) license active under license number 393864 originally issued by CID for NM is December 2017. This bidder, WCR, indicated on the Statement of Qualifications that their license is not free of ever being suspended or revoked by CID or any other licensing agency in any other state; however, they did not provide an explanation for any revocation of license.
- Business Registration State of New Mexico: One out of three bidding contractors are licensed with state NM Taxation and Revenue and the Secretary of State. It is required to register a business with the NM Secretary of State and Taxation and Revenue; however, this process may be performed in a timely fashion prior to contractual obligation during a potential contract negotiation phase and may not be a hindrance to proper performance of the contract.
 - National Roofing reports a NM business license with the State of NM Taxation and Revenue dated to 1977, and a City of Santa Fe business license dated January 2018
 - National Roofing reports registration with NM Department of Workforce Solutions.
 - * ○ Nations and WCR do not report registration for business license or Workforce Solutions although these may be obtained within a timely manner
- Two of the three bidding contractors report their firm is free from debarment from public works, federal, state, or local jurisdictions
 - National Roofing and Nations report they are free
 - WCR did not report either way
- Experience: All three bidding contractors report experience with one or more projects similar in complexity with renovating an occupied building of this size used phased construction or sequencing. The particulars for this project include special occupancy housing individuals that are not capable of self-preservation. Such occupancy building types include correctional facilities, hospitals, special needs and senior care facilities:
 - National Roofing reports 50 plus projects performed, and lists examples of 5 projects
 - All five projects reported by National Roofing are with correctional facilities in the State of NM, one of which is reported to be the Chapel only. These projects are reported to have been competitive bid lump sum contracts
 - All five reported projects by National Roofing were noted to have been completed under the required contract duration in days and all five were reported to have been completed for the contracted amount no changes
 - Two projects reported by National Roofing utilized mechanical and/or electrical subcontractors reported to be not more than 15% of the contract work, common for reroofing activities with HVAC systems on the roof
 - Nations reported three projects completed having similar complexity to this RFP
 - Two of the three re-roofing projects are reported to be hospital facilities, similar in nature to this project in that they are special occupancies housing individuals not capable of self preservation, one reported project is not similar in occupancy type to this RFP
 - One of the projects reported to be commercial business for Goodyear Tire
 - Two of three projects reported by Nations were completed over budget, one hospital was 1.25% over budget and the second hospital project was reported to be complete at 17% over budget, no descriptions were provided for cost changes
 - All three projects reported by Nations were completed within the original contract duration in days, no time extensions were reported
 - WCR reports 5 projects similar in complexity to the RFP; however none of the projects are similar to this RFP by nature of occupancy by individuals not capable of self-preservation

- Three projects reported were for school districts
- One project was reported to be the Urenco Uranium Enrichment facilities in Eunice NM, and one project was reported to be an Apple call center
- One out of the five projects reported by WCR was completed on time and on budget
 - One school project was reported to be 212% over budget, the Apple call center was reported to be 110% over budget, two other projects were reported to be over budget less than 5%, no explanation was reported
 - Three of five projects reported by WCR were over the original contract time duration in days, one was completed on time, and one was not reported
- All three contractors list project managers that have primarily performed commercial/industrial reroofing projects over the past 10-years
 - National Roofing project managers listed were identified to have primarily correctional facilities and hospital reroofing experience, both of which are similar to this RFP
 - All three bidding contractors listed personnel were reported to have performed reroofing work on large facilities greater than 100,000 square feet in size/area
- All three bidding contractors report staff/personnel current employees to be similar in size as a medium sized roof shop;
 - National Roofing reports their technician staff capable of performing the work to be 67% larger than Nations
 - National Roofing reports their shop to have a greater number of employed technicians versus Nations and WCR that capable of self-performing non-roof related work such as crane operations
- Regarding insurance and claims history, quality assurance, project scheduling, labor violations, etc., reported in each bidding contractors statement of qualifications, all three bidding contractors report similar conditions except National Roofing
 - National Roofing reports involvement in a lawsuit against a general contractor for nonpayment, which resulted in the building owner filing suit against all trades. National Roofing reports their company was not at fault.
- * ○ Regarding reported management plans required to be submitted as part of the RFP statement of qualifications, all three bidding contractors report capacity and capability to perform the work within the stipulated 16-week contract duration.
 - National Roofing provided an extensive work plan that identified a preferred schedule for completion that is 40-weeks contract duration. Their proposed schedule would complete the project by April 2019.
 - NMRC Architect's estimate for time duration to install a roof of this nature, and confirmed by estimates from the roof system basis of design manufacturer should be 25 squares (2,500 s.f.) per day. A typical roof of this size and type that is not a correctional facility or hospital would be estimated to achieve a work production rate of 50 squares (5,000 s.f.) Per day. The 1,100 square (110,000 s.f.) Santa Fe Adult Correctional Facility is anticipated to require 44-work days using average reroofing crews performing 2,500 s.f. reroofing per day; at four full work days per week, accounting for time to stage equipment and crews, materials, and dispose of waste, NMRC estimates 11-weeks total for reroofing activities, with allowance of 5-weeks to accommodate submittal reviews, mobilization and demobilization, site preparation, weather delays, and unforeseen activities of the facility that may prevent reroofing work.
 - It is not clear by National Roofings work plan why a shop of their size could only complete 6.87-squares (687 s.f.) roof installation per day, although the proposed work plan indicates a substantial reduction in their proposed cost to perform the work may be achieved by

performing reroofing work at this rate.

- Sub-contractor Listing: Two of the three bidding contractors propose use of sub-contractors to perform a portion of the work.
 - It was determined in general that HVAC and electric/gas utilities at the roof are adequate and will likely not require retrofit or modification during progress of the reroofing work, so it is acceptable that none of the three contractors listed mechanical, electrical, or plumbing sub-contractors.
 - Project requirements identify air quality management and testing operations during progress of the reroofing work; only one bidding contractor proposed an industrial hygienist as a subcontractor to perform this work. This work is not typically self-performed as roof contractors do not have experience or qualifications to perform this work. It is recommended that the select successful contractor will require a specialty sub-contractor to perform this work, and any bidding contractor that did not list a specialty sub-contractor will need to confirm this requirement during contract negotiations.
 - National Roofing listed a specialty sub-contractor to perform installation of wood nailers/carpentry work.

Summary Recommendations and Concluding Remarks:

- General Capacity and Performance:

- All three bidding contractors are certified installers for the type of roof system specified as basis of design by the system manufacturer; all three reportedly have extensive history as certified installers for this type of roof as reported to NMRC by the basis of design system manufacturer Siplast;
- All three bidding contractors report work that is similar to the type of roof system specified and the type of special occupancy that is the facility for this RFP (i.e., Hospital, correctional facility, etc.) although two of the three contractors report a greater body of work similar to this RFP, that is National Roofing and Nations Roof;
 - WCR reports a dominant portion of their recent large scale commercial reroofing has been for public schools
- All three bidding roofers report capacity and capability to perform the work in the 16-week timeframe
 - The largest staffed bidding contractor, National Roofing, reports concern with the schedule and proposed a 40-week work schedule
- National Roofing reported the most projects similar in nature to this RFP, and appears to have the best qualifications and most experience, as well as presented a detailed work plan identifying key issues related to work of this type providing NMRC with confidence they can perform this work in accordance with project requirements for long-term durable weatherproof and watertight performance
 - NMRC's previous experience working with National Roofing on projects utilizing the same roof system specified for this RFP has been satisfactory, National Roofing has demonstrated good performance regarding craftsmanship, quality, safety and project management.
 - NMRC does not have work experience with the other two bidding contractors
- National Roofing is the only local New Mexico company, whereas the other two bidding contractors are from the neighboring State of Texas, although they both report successful reroofing projects performed here in the State of New Mexico
- NMRC's opinion is that any of the three bidding contractors could likely produce a well crafted long-term durable roof replacement system, and NMRC would be willing to work with any of the three. However, National Roofing demonstrated by their statement of qualifications that they the more experienced and qualified roofing contractor to perform the work of this RFP. NMRC recommends National Roofing to be considered award for this RFP based on qualifications; however, the price component as proposed by National Roofing is well above the estimated value of this work and must be considered to weigh heavy on any proposed contract negotiations with this company as the bid price by NMRC's opinion does not match the value for the scope

of work.

- Bid Pricing:

- Two of the three bidding contractors proposed pricing for the base bid scope of work that is in-line with NMRC's estimated value of the reroofing work, that is \$3.5 million excluding NMGR;
 - Attached to this Letter of Recommendation is NMRC's bid evaluation tabulation sheet identifying base bid pricing proposed by each of the three bidding contractors.
 - Base bid pricing between each bidding contractor is quite different, whereas alternates and unit costs are generally similar between the three, this indicates a potential difference in understanding of site access and protocol reflecting labor costs between the three bidding contractors.
 - NMRC's budget estimate for this work was established by evaluation of typical pricing for the type of roof system specified with a cost modifier for the type of facility occupancy (i.e., High security detention facility) and project complexity (i.e., limited site access, controlled roof access for security, fully occupied building with interior air quality management protocol, etc.) NMRC has also taken into consideration New Mexico labor shortage and cost of material increases that NMRC has observed to be driving prices the past two years over the duration of the pre-design and design phase for this project. This estimate also included contingency for unknown conditions that may arise during progress of the work that was 6% of the estimated construction cost. These considerations reflect known conditions that informed the budget pricing to be slightly higher than typical reroofing projects of this type.
 - NMRC's opinion is that the original design estimate of probable cost was adequate and bid pricing generally reflected our anticipated concerns.
 - NMRC has observed over the past two years that New Mexico roofing contractors have consistently bid higher prices for reroofing work compared to out-of-state contractors bidding on the same scope of work for the same projects. It is not clear why this condition occurs; however the bid results for this RFP are consistent with that fact. This condition could be a result of lack of qualified trade labor in New Mexico, whereas Texas has a much larger pool of residents to pull into trade/construction work.
 - National Roofing, the only New Mexico resident bidding contractor, has proposed their price that is 44.9% higher than the other two bidding contractors, both of which are from Texas, and which were very nearly the same pricing.
 - The price discrepancy between National Roofing, the highest bid price, and Nations and WCR may be partially explained by National Roofing in their proposal to be due to concern for the schedule. This explanation reflects a potential misunderstanding of the projects specified protocols and existing conditions, which suggests National Roofing raised their pricing for labor only. A comparison of the unit costs and deductive alternates reveals all three bidding contractors to have similar pricing, National Roofing has only deviated significantly in their base bid proposal.

- NMRC Recommendations:

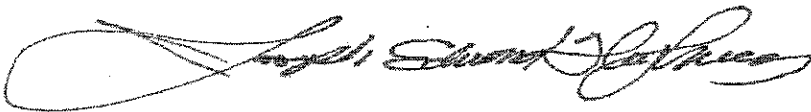
- Based exclusively on work experience and qualifications, NMRC recommends to the selection committee that National Roofing is the best qualified contractor to perform the critical reroofing work for this Project and should be selected for potential contract negotiations:
 - NMRC's opinion is that National Roofing has provided a bid price for base bid scope of work that does not properly align with the specified scope of work and should not be accepted without further price negotiations for base bid work only. Such potential negotiated terms for a best and final price offer

must not alter or modify any portion of the scope of work that may decrease the quality or performance of the specified roof system.

- Negotiable items NMRC recommends that may be discussed with National Roofing as potential value add cost reductions include:
 - Contract duration in days
 - Liquidated damages
 - Access to the site for staging, roof access, dumpster location, trash/debris disposal, and general conditions of the contract
- Other items that must be considered by negotiation of a potential contract with National Roofing must be an industrial hygienist or similar specialty sub-contractor required by specification to perform interior air monitoring during progress of the reroofing work. National Roofing did not specify a sub-contractor listing for this scope of work.
- NMRC does not recommend that deductive alternates NO. 1, NO. 2, or NO. 3 will provide sufficient savings to warrant the potential decrease in roof system performance, therefore neither of these three deductive alternates should be considered for contract negotiations with any of the three bidding contractors. National Roofing provided zero-dollar amount for deductive alternate NO. 4, which would have been the only non-performance related alternate to consider for reduced pricing.
- NMRC recommends that if National Roofing is not willing or capable to reduce their price offering by negotiation of non-performance related contract terms to within acceptable terms for the value of this reroofing work, the second best qualified bidding roof contractor to be considered should be Nations Roof.
- * ■ Nations Roof provided reference for similar types of work through hospitals, although they may have additional experience not mentioned. As part of potential contract negotiations with Nations, they should be required to submit more thorough description of previous projects and past history and experience. Included with this information should be written explanation for minor cost over runs listed in their statement of qualifications.
- * ■ Additional cost negotiations with Nations should include their intention for \$305,240.00 deduct from base bid pricing for deductive alternate No. 4, re-use of existing insulation board; this deduct would make their revised final contract price value to be \$2,658,625.00 while potentially encapsulating the existing insulation board and reducing land-fill waste while reducing installation costs. This price difference expresses a potential 38% reduction of installed reroofing costs based only on base bid pricing with deductive alternate No. 4 per the three bid prices evaluated.

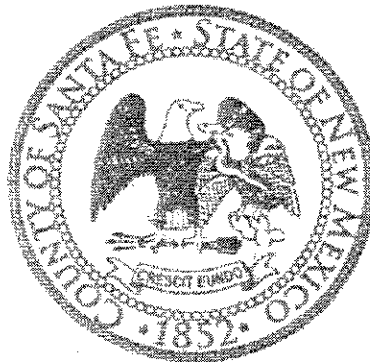
If you have questions or concerns regarding this letter of recommendation based on analysis of bids received from National Roofing, Nations Roof, and WCR Construction, please contact me right away.

Respectfully,



Joseph Hughes
Building Envelope Architect, Technical Director
New Mexico Roof Consultants LLC

**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.]

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":

Nations Roof Central, LLC
2914 Lawing Lane
Rowlett, Texas
75088
TELEPHONE: 972-278-9200
E-MAIL: ddaniel@nationsroof.com

ARCHITECT

NAME: NM Roof Consultants, LLC
ADDRESS: 105 Madeline Ct.
Corrales, New Mexico 87048
ATTN: Joseph Hughes, Architect
TELEPHONE: (505)-450-7828
E-MAIL ADDRESS: jhughes@nmroofconsultants.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	12
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 Mexico	21
6.5	Bribes, Kickbacks and Gratuities	21
6.6	New Mexico Tort Claims Act.....	21
6.7	Provision Required by Law Deemed Inserted	22
7.	Effective Date & Term	22
7.1	Agreement shall become effective.....	22
7.2	Substantial Completion.....	2
8.	Termination.....	22
8.1	Termination of Agreement for Cause.....	23
8.2	Termination for Convenience	23
8.3	Right of the County to Terminate Contract	23
9.	Appropriations & Authorizations	23
10.	Amendments – Change Orders	23
11.	Indemnification.....	23
11.1	Contractor shall indemnify	23
11.2	County shall have right to control and participate in defense of demand or suit	24
11.3	Contractor’s obligations shall not be limited by provisions of insurance policy	24
12.	Aggrievement Procedure During Contract Administration	24
12.1	Claims, Disputes or other matters.....	24
12.2	Settlement Agreement	24
12.3	Contractor shall carry on Work during dispute resolution proceedings	24
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 work.....	2
14.2	Proof of Carriage of Insurance.....	25
14.3	General Conditions	25
14.4	General Liability Insurance, including automobile	25
14.5	Subcontractor’s Public Liability & Property Damage Insurance	25
14.6	Worker’s Compensation Insurance.....	25

14.7	Scope of Insurance and Special Hazards	26
14.8	Builder's Risk Insurance.....	26
14.9	Increased Limits.....	26
14.10	Additional Insured	26
15.	Independent Contractor	26
15.1	Contractor and its agents are independent contractors	26
15.2	Contractor shall not subcontract without written approval	27
15.3	Contractor shall maintain detailed time records	27
16.	Conflict of Interest of Officers or Employees of the Local Jurisdiction	27
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 interest	27
17.	Assignment	27
17.1	Contractor shall not assign or transfer any interest in this Agreement.....	27
18.	Subcontracting.....	28
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 subcontractors	28
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 subcontractors	28
18.7	Contractor shall cause appropriate provisions in all subcontracts.....	28
18.8	Nothing shall create contractual relation between County and subcontractors	28
18.9	New Mexico Little Miller Act.....	28
19.	Personnel.....	29
19.1	All work performed by Contractor	29
19.2	Contractor shall secure all qualified personnel required to perform work	29
20.	Notices	29
20.1	Notice required shall be in writing	29
20.2	Nothing shall preclude the giving of written Notice	29
21.	Release.....	29
22.	Waiver.....	29

CONDITIONS OF THE WORK

1.	Additional Instructions & Detail Drawings.....	31
1.1	Additional instructions & drawings as necessary.....	31
2.	Shop or Setting Drawings.....	31
2.1	Contractor shall submit copies of shop or setting drawing.....	31
3.	Materials, Services and Facilities	31
4.	Contractor's Title to Materials.....	31
4.1	No materials or supplies shall be purchased by subject to chattel mortgage	31
5.	Inspection and Testing of Materials	32
5.1	All material and equipment shall be subject to adequate inspection.....	32
5.2	Materials of construction shall be subject to inspection and testing.....	32
6.	"Or Equal" Clause	32
6.1	To establish a standard.....	32
7.	Patents.....	32
7.1	Patented or Unpatented Invention	32
7.2	License or Royalty Fees.....	32
7.3	Copyrighted Design.....	32
8.	Surveys, Permits and Regulations	33
8.1	County will furnish all surveys	33
8.2	Contractor shall procure and pay all permits, licenses and approvals.....	33
8.3	Contractor shall comply with all laws, ordinances, rules orders & regulations	33
9.	Contractor's Obligations.....	33
9.1	Contractor shall perform all work and furnish all materials, equipment, machinery.....	33
9.2	Contractor shall complete entire work.....	33
10.	Weather Conditions	33
10.1	Temporary suspension of Work.....	33
11.	Protection of Work and Property - Emergency	34
11.1	Contractor shall safeguard County's property	34
11.2	Emergency which threatens loss or injury of property	34
11.3	Contractor shall act as instructed or authorized.....	34
11.4	Reimbursement claimed by Contractor	34
12.	Inspection.....	34

12.1	County shall be permitted to inspect all work, materials, payrolls, records	34
13.	Reports, Records and Data	34
13.1	Contractor shall submit to County schedules, payrolls, reports, estimates	34
14.	Superintendent by Contractor	34
14.1	Contractor shall employ a construction superintendent.....	34
15.	Changes in Work	35
15.1	No changes in Work without written approval	35
16.	Extras	35
16.1	County may order extra Work	35
17.	Inspection of Services	35
17.1	Contractor shall provide inspection system	35
17.2	County has the right to inspect and test all services	35
17.3	Contractor shall furnish all reasonable facilities and assistance.....	35
17.4	If any services do not conform with Contract requirements.....	36
17.5	County may perform the services and charge Contractor.....	36
18.	Correction of Work.....	36
18.1	Work shall be made good if failure to meet County approval.....	36
19.	Warranty of Construction	36
19.1	Warrants that Work conforms with Contract requirements.....	36
19.2	One year warranty.....	36
19.3	Contractor shall remedy any failure to conform.....	36
19.4	Contractor shall restore any Work damaged	37
19.5	County shall notify Contractor of any failure, defect or damage	37
19.6	If Contractor fails to remedy.....	37
19.7	Contractor shall obtain all warranties, executed in writing	37
19.8	Contractor's warranty has expired.....	37
19.9	Defect in County furnished material or design.....	37
19.10	County's rights under the Inspection and Acceptance Clause.....	37
20.	Subsurface Conditions Found Different	37
20.1	Subsurface conditions materially differing from plans and specifications.....	37
21.	Claims for Extra Cost	37
21.1	No claim for extra work or cost.....	37
22.	Construction Schedule and Periodic Estimates	38
22.1	Estimated construction progress schedule.....	38

22.2	Progress Schedule.....	38
23.	Assignments.....	38
23.1	Contractor shall not assign.....	38
24.	Mutual Responsibility of Contractors.....	38
24.1	Acts of Negligence	38
25.	Separate Contract.....	39
25.1	Coordination with other contractors	39
26.	Architect/Engineer's Authority	39
26.1	Orders & Directions to execution of the Work.....	39
26.2	Decisions concerning meaning and intent	39
27.	Stated Allowances	39
27.1	Contract sum for all allowances	39
28.	Use of Premises and Removal of Debris	40
28.1	Contractor undertakes at own expense	40
29.	Quantities of Estimate.....	40
29.1	Increase and decrease of estimated quantities	40
30.	Lands and Right-of-Way	40
30.1	County shall obtain all lands and rights-of way	40
31.	General Guaranty.....	40
31.1	Work not done in accordance with contract documents	40
32.	Protection of Lives and Health	41
32.1	Protection of persons and property	41
33.	Interest of Member	41
33.1	BCC shall not have any share or interest.....	41
34.	Other Prohibited Interests	41
34.1	No County official or others to be personally interested in Contract	41
35.	Use & Occupancy Prior to Acceptance by County	41
35.1	Partial Occupancy by County.....	41
	Attachment A Bid Sheets	42
	Attachment B Addenda and Modifications.....	43
	Exhibit A Project Manual	44
	Exhibit B Technical Specifications	45

Exhibit C	Labor and Material Payment Bond.....	46
Exhibit D	Performance Bond	48
Exhibit E	Assignment of Antitrust Claims	50
Exhibit F	Certificate of Liability Insurance.....	51
Exhibit G	Notice of Contract Award.....	52
Exhibit H	Notice to Proceed	53
Exhibit I	Change Order)	54
Exhibit J	Certificate of Substantial Completion	56

RECITALS

WHEREAS, in accordance with Section 13-1-103 through Section 13-1-110 NMSA 1978, the County issued Request For Proposals (RFP) No. 2018-0323-CORR/IC for construction services for Adult Detention Facility Roof Replacement Project; and

WHEREAS, the Contractor submitted its bid, dated June 1, 2018 in response to RFP No. 2018-0323-CORR/IC; 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 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 to the specifications prepared and provided by the Architect of Record, New Mexico Roof Consultants, LLC, the work shall include, but not limited to:

All Roof Areas - remove and replace existing roof system: remove existing aged single ply EPDM membrane roof system down to roof deck, salvage existing polyisocyanurate foam board insulation for reuse in this project, install new specified system:

- Carefully tear-off of the existing roof system, and reroof with project specified three (3)-ply Styrene-Butadiene-Styrene (SBS) polymer-modified asphalt membrane roof and system, including:
- New mechanically fastened 1/2-inch gypsum-based thermal barrier board secured direct to top of metal roof deck, new heavy duty base sheet fibrous glass mat impregnated asphalt membrane torch-heat fused to thermal barrier board,
- existing polyisocyanurate foam board insulation fully adhered to base sheet in continuous serpentine beads of low-rise foam adhesive,
- new polyisocyanurate foam board insulation fully adhered to underlying foam board in continuous serpentine beads of low rise foam adhesive,
 - a. new 1/4-inch factory primed fiberglass faced gypsum coverboard ,
 - b. new torch-heat fused two (2)-ply SBS polymer-modified asphalt roof membrane with granule surface cap sheet, and new fleece reinforced fluid applied membrane flashings and terminations;
- Remove existing sheet metal coping flashing, remove existing wood nailer boards, install new double wood nailer secured to top of wall, install new prefinished sheet metal coping flashing.
- Retrofit/repair all sheet metal collector head/downspout water management systems.
- Reseal existing sheet metal splice seams and install pop-rivet securement for long term durable watertight performance.
- Install new concrete splash pan run-downs or similar to eliminate scouring and aggregate displacement.

- Retrofit Existing Downspout System:
- Install new, pre-finished sheet metal collector head and downspouts at roof to roof drain scuppers, locations shown on drawings.
- Retrofit new sheet metal scupper liners, stripped into roof membrane using specified reinforced fluid applied flashing system. Mechanically secure new collector head and downspout to direct through wall scupper water to the lower roof area.
- Provide new pre-cast concrete storm water run-down blocks at each downspout to prevent scour of roof membrane. Install blocks over sacrificial protective granule surfaces cap sheet or walk-pad membrane.
- Provide and Install new Through Wall Scupper Collector Head and Downspouts.
- All work area(s) shall be maintained in a neat and workmanlike manner. The contractor shall provide all clean-up for its operations and control of all construction debris. All construction debris shall be removed from the work areas and disposed of at an approved waste disposal site before the end of each work cycle. The owner's trash container for the building shall not be used for disposal of construction debris.

- SECURITY

Security clearances and background checks will be required by the facility for the contractor, its employees and subcontractors and must be obtained prior to commencement of any work at the facility. The contractor must keep required security clearances for workers assigned to perform the work for this project prior to their arrival on site and throughout the duration of the project. The Corrections Department reserves the right to deny security clearance to any employee of the contractor, and/or subcontractor who is in violation of any criteria required for the security clearance. Santa Fe County Corrections Department will obtain and maintain the security clearances.

The Corrections Department reserves the right to provide an escort and/or full time supervision of the contractor, its employees and/or subcontractors during any or all phases of the project if the department feels it is in the best interest to provide these extraordinary security measures.

The Corrections Department reserves the right to escort any and all employees of the contractor and/or subcontractors off its property for any inappropriate conduct or actions that jeopardize the safety, security or well-being of the facility. Inappropriate behavior by the contractor, its employees or subcontractors shall immediately cancel this contract. Any employee of the contractor found in violation of any law while on the Department's property will be prosecuted.

The contractor shall abide by the tool and material control requirements established by SFCADF.

The Contractor shall be responsible for the quality control of all of their own work, as well as the work performed by all specialty subcontractors working on this Restoration, Repair And Retrofit Project for all work identified in all portions of the Project Documents, as part of the Project Contract. This contract shall include Owner provided Quality Assurance Monitoring which may incorporate measures for Quality Control Testing; however, these Owner provided Consultant services shall not relieve the Contractor from responsibility for their own quality control.

Contractor shall maintain on-site supervision continuously to assure on-going quality control for superior quality application.

Each specialty trade sub-contractor's crew personnel must be trained and approved/certified by the System Manufacturers, and have at least five (5) years of experience in projects of similar scope. Sufficient number of successfully trained and experienced personnel and equipment in good working order shall be employed to ensure a weather tight and waterproof, continuous productive operation.

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 twelve (112) 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 **Five Hundred dollars and zero cents, (\$500.00)** 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 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 **Two Million Seven Hundred Thirty-Six Thousand Two Hundred Seventy Dollars \$2,736,270.00**, exclusive of New Mexico gross receipts tax.

4.2 CONTRACT AMOUNT

The Contract sum is determined as follows:

Base Bid 1	Remove existing roof completely and replace with new 3-ply modified bitumen built up roof	\$ 2,963,865.00
Base Bid 2	Retrofit repair all existing sheet metal collector head/downspouts	\$ 6,395.00
Base Bid 3	Provide new sheet metal through wall scupper, collector head, & downspouts	\$ 2,690.00
Base Bid 4	Install new pre-manufactured self flashing skylights	\$ 43,560.00

Deduct Alt. 4	Salvage and re-install existing polyiso Insulation board	\$ 305,240.00
Allowance 1	HVAC service for reroofing purposes	\$ 15,000.00
Allowance 2	Repair spray applied fire proofing	\$ 10,000.00

Total Contract Amount – Base Bids Only **\$ 2,736,270.00, exclusive of NM 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. Contractors and subcontractors shall make prompt payment to their subcontractors and suppliers for amounts owed for work performed on the construction project within 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 days after receipt of an undisputed request for payment, the contractor or subcontractor shall pay interest to its subcontractors and suppliers beginning on the 22nd 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 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

Anna Hansen, Chair
Santa Fe County Board of County Commissioners

ATTESTATION

Geraldine Salazar
Santa Fe County Clerk

Approved as to form:

R. Bruce Frederick
Santa Fe County Attorney

Date

Finance Department:

Stephanie S. Clarke
Finance Director

Date

CONTRACTOR:

Signature

Date

Print Name

Print Title

**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/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 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 sub-subcontractors 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 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 30 days, the breaching party shall have a reasonable time to cure the breach, provided that, within 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 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 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 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 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 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 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 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 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: Nations Roof Central, LLC
2914 Lawing Lane
Rowlett, Texas 75088
Attn: Dustin Daniel, ddaniel@nationsroof.com

- 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/County, in a diligent manner. The Contractor shall notify the Architect/County immediately thereafter. Any claim for compensation by the Contractor due to such extra work shall be promptly submitted to the Architect/County for approval.
- 11.3 Where the Contractor has not taken action but has notified the Architect/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/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/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 B

ADDENDA & MODIFICATIONS

EXHIBIT A

PROJECT MANUAL

EXHIBIT B

TECHNICAL SPECIFICATIONS AS LISTED IN PLAN SET

EXHIBIT C

LABOR AND MATERIAL PAYMENT BOND

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 _____, 20__, with the
COUNTY for the construction services for the (insert project description) 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 (insert project description) 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 the 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 <u> 0 </u> days.	
The date of Substantial Completion as of the date of this Change Order therefore is: <u> 0000 </u>	

CHANGE ORDER SIGNATURE PAGE

APPROVED

SANTA FE COUNTY

By: _____

Date: _____

Approved as to form:

By: _____

Date: _____

R. Bruce Frederick
County Attorney

Finance Department:

By: _____

Date: _____

Stephanie S. Clarke
Finance Director

CONTRACTOR

By: _____

Date: _____

Title: _____

ARCHITECT

By: _____

Date: _____

Title: _____

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)

