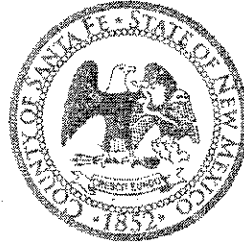


**Henry P. Roybal**  
*Commissioner, District 1*

**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:** *October 31, 2018*

**TO:** *Board of County Commissioners*

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

**VIA:** *Katherine Miller, County Manager  
Michael K. Kelley, Public Works Director  
Phillip (PJ) Montano, Projects Division Director  
Stephanie S. Clarke, Finance Director*

### **ITEM AND ISSUE: BCC Meeting November 13, 2018**

- 1.) Request Approval of Change Order No. 3 to Construction Services Agreement No. 2017-0281-PW/KE between Santa Fe County and KIMO Constructors, Inc. in the Amount of \$614,462.37, Exclusive of GRT for the Santa Fe River Greenway, Section "A" and Authorizing the County Manager to Sign the Purchase Order.
- 2.) Request Approval of Contract Amendment No. 5 to Professional Services Agreement No. 2016-0173-PW/BT between Santa Fe County and Weston Solutions, Inc. in the Amount of \$100,040.00, Exclusive of GRT for the Santa Fe River Greenway, Section "A" Authorizing the County Manager to Sign the Purchase Order. (*Bill Taylor, Purchasing Division and Phillip Montano, Projects Division*)

### **SUMMARY:**

- 1.) Additional construction services in the amount of \$585,675.58 excluding NMGRt are required to repair the damages that occurred to the Santa Fe River Greenway project between Frenchy's Field and Siler Road during the July 23, 2018 flood. Also, \$28,786.79 is needed for the final Over/Under Change Order to close out the original construction project. The total amount for the Change Order is \$614,462.37, exclusive of NMGRt.

A prior change order to Construction Services Agreement No. 2017-0281-PW/KE increased the original Agreement amount from \$3,766,014.50 to \$3,783,569.68. Approval of Change Order No. 3 in the amount of \$614,462.37 will increase the total contract amount to \$4,398,032.05.

- 2.) The County and the Engineer have identified additional engineering costs for preparation of a Damage Assessment and Cost Estimate for flood damages, Construction Oversight of the damage

repairs on an as needed basis and to close out the project, for a total amount of \$100,040.00, exclusive of NM GRT.

Prior change orders to Professional Services Agreement No. 2016-0173-PW/BT have increased Weston's Agreement amount from \$55,193.00 to \$207,342.00. Approval of Contract Amendment No. 5 in the amount of \$100,040.00 will increase the total contract amount to \$307,382.00.

**BACKGROUND:**

1.) In November 2017, the Board approved Santa Fe County Public Works to enter into Construction Services Agreement No. 2017-0281-PW/KE with KIMO Constructors in the amount of \$3,766,014.50 to provide Construction Services for the Santa Fe River Greenway, Section "A" from Frenchy's Field to Siler Road. The change orders to the Agreement are as follows:

Change Order No. 1	\$ 17,555.18 – Quantity adjustment to Bid items
Change Order No. 2	Term Extension- No increase to Compensation
Previous Contract Amt.	\$3,783,569.68
Change Order No. 3	\$ 614,462.37 – Additional construction services for flood damage repairs

**Total Contract Amount \$4,398,032.05, exclusive NM GRT**

The project was 99% constructed until the July flood occurred. Change Order No. 3 is the cost of construction services for restoring the project to pre-flood condition to be conveyed to the City. Included in this Change order is an increase of \$28,786.79 to cover the Over/Unders that resulted from the initial project completion before the flood.

2.) In April 2016, the Board approved Santa Fe County Public Works to enter into Professional Services Agreement No. 2016-0173-PW/BT with Weston Solutions, Inc. in the amount of \$55,193.00 to provide Professional Engineering Services for the Santa Fe River Greenway, Section "A" from Frenchy's Field to Siler Road. The Agreement was then amended as follows:

Amend No. 1	\$ 10,620.00	Additional Design Updates
Amend No. 2	\$108,358.00	Add Construction Oversight Services
Amend No. 3	\$ 33,171.00	Modify Plans to Incorporate Value Engineering
Amend No. 4	\$ 0.00	2 year Extension
Contract Amount	\$ 207,342.00	

Amend No. 5        \$ 100,040.00

**Total Contract Amt. \$307,382.00 exclusive NM GRT**

**No Increase to Term is Necessary**

Amendment No. 5 is to pay for the preparation of a Damage Assessment & Cost Estimate for flood damages (\$11,530.00) and Construction Oversight as needed for the damage repairs (\$27,680.00). Since the project is to be conveyed to the City, staff recommends having some level of engineering

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505-995-2740    www.santafecountynm.gov

oversight during construction to add another level of accountability. The amendment will also replenish the funding used during construction for services to address unforeseen field conditions and a longer construction schedule than anticipated by the engineers (\$60,830.00). This should be the last amendment needed for Weston Solutions to satisfy their contract and close out the project.

**ACTION REQUESTED:**

The Purchasing Division and the Public Works Department are requesting BCC approval of Change Order No. 3 to Construction Services Agreement No. 2017-0281-PW/KE between Santa Fe County and KIMO Constructors, Inc. in the amount of \$614,462.37, exclusive of GRT and approval of Contract Amendment No. 5 to Professional Services Agreement No. 2016-0173-PW/BT between Santa Fe County and Weston Solutions, Inc. in the amount of \$100,040.00, exclusive of GRT for the Santa Fe River Greenway, Section "A" from Frenchy's Field to Siler Road and request signature authority be granted for the County Manager to sign the Purchase Orders and execute the Change Order and Contract Amendment.



## EXHIBIT I

### CHANGE ORDER

PROJECT: Santa Fe River Greenway Project, Frenchy's Field to Siler Road

CONTRACTOR: KIMO Constructors, Inc.

CHANGE ORDER NO: 3

ARCHITECT/ENGINEER: Weston Solutions, Inc.

PROJECT NO: 2017-0281-PW/KE

Contractor Telephone: 505-452-7271

Contractor e-mail: lucas@kimonm.com

ENGINEER'S/ARCHITECT'S PROJECT NO: 13688.005.001

---

#### CHANGE ORDER JUSTIFICATION

This Change Order is necessary to compensate the Contractor, Kimo Constructors, Inc., for construction services to repair damage caused by the July 23, 2018 flood and restore the project to its pre-flood completed state. A small portion of the cost in this Change Order is for the final over and under reconciliation of bid item quantities before the flood damage occurred.

---

The Contractor is directed to make the following changes in this Contract:

Restore the project to its pre-flood conditions according to the original 100% Construction Drawings prepared by Weston Solutions, Inc. and dated February 13, 2018 and as amended by subsequent Field Directives and Change Order #1. This includes but is not limited to rebuilding damaged boulder deflectors and grade control structures, re-grading the channel and slope, replanting vegetation, repairing the swale and trail shoulder and repairing damaged drainage features.

---

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:	\$ 3,766,014.50
Net change by previously authorized Change Orders:	\$ 17,555.18

The Contract Sum prior to this Change Order was:	\$3,783,569.68
--	----------------

The Contract Sum will be <b>increased</b> by this Change Order No. 3 in the amount of	\$ 614,462.37
The new contract Sum including this Change Order will be	\$4,398,032.05



The Contract Time has been increased in Change Order No. to 365 days.

The date of Substantial Completion as of the date of Change Order No. 2 is: March 30, 2019.

**CHANGE ORDER SIGNATURE PAGE**

**APPROVED**

**SANTA FE COUNTY**

By: \_\_\_\_\_  
Anna Hansen, Chair  
Santa Fe County Board of County Commissioners

Attestation:

By: \_\_\_\_\_  
Geraldine Salazar, Santa Fe County Clerk

Date: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_  
R. Bruce Frederick  
County Attorney

Date: \_\_\_\_\_

Finance Department:

By: \_\_\_\_\_  
Stephanie S. Clarke  
Finance Director

Date: \_\_\_\_\_

**CONTRACTOR**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

**ARCHITECT/ENGINEER**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

## **EXHIBIT I**

### **CHANGE ORDER**

PROJECT: Santa Fe River Greenway Project, Frenchy's Field to Siler Road

CONTRACTOR: KIMO Constructors, Inc.

CHANGE ORDER NO: 2

ARCHITECT/ENGINEER: Weston Solutions, Inc.

PROJECT NO: 2017-0281-PW/KE

Contractor Telephone: 505-452-7271

Contractor e-mail: lucas@kimonm.com

ENGINEER'S/ARCHITECT'S PROJECT NO: 13688.005.001

---

#### **CHANGE ORDER JUSTIFICATION**

The Change Order is necessary to provide a one year extension on the term of KIMO Constructors, Inc., Contract No. 2017-0281-PW/KE to allow the Contractor to complete the flood damage repairs and Project Close-Out Services. The Contractor is currently contracted to complete construction on the project by November 17, 2018 followed by a 1 year warranty period at which time there will be a final inspection with the County.

---

The Contractor is directed to make the following changes in this Contract:

Increase the term of Agreement No. 2017-0281-PW/KE by 12 months for a term extension from November 3, 2018 to November 3, 2019.

---

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

---

The Contract amount is not increased by this Change Order No. 2.

The Contract Time will be increased by 365 days.

The date of Substantial Completion as of the date of this Change Order is: March 30, 2019

**CHANGE ORDER SIGNATURE PAGE**

**APPROVED**

**SANTA FE COUNTY**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_  
R. Bruce Frederick  
County Attorney

Date: \_\_\_\_\_

Finance Department:

By: \_\_\_\_\_  
Stephanie S. Clarke  
Finance Director

Date: \_\_\_\_\_

**CONTRACTOR**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

**ARCHITECT/ENGINEER**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_



## EXHIBIT I

### CHANGE ORDER

PROJECT: Santa Fe River Greenway Project

CONTRACTOR: KIMO Constructors, Inc.

CHANGE ORDER NO: 01

ARCHITECT/ENGINEER: Weston Solutions, Inc.

PROJECT NO: 2017-0281-PW/KE

Contractor Telephone: 505-452-7271

Contractor Email: lucas@kimonm.com

ENGINEER'S/ARCHITECT'S PROJECT NO: 13688.005.001

---

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

Based on field conditions, additional items are necessary for construction and quantities for items originally listed in the contract have changed. Several items in the original contract have been removed or are needed in reduced quantities, while other items, including unclassified excavation, hauling and disposing, grout, boulder deflector and bank protection, and boulder sills will need to exceed allowable quantities. This change order is intended to move budget from items no longer needed to items that will exceed original plan quantities to minimize the total increase in the Contract Sum.

---

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

Adjust required item quantities as shown in the attached tables.

---

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

---

The Original Contract Sum:	\$3,766,014.50
Net change by previously authorized Change Orders:	\$0.00
The Contract Sum prior to this Change Order:	\$3,766,014.50
Contract Sum will be <u>increased</u> /decreased/unchanged by this change order in the amount of:	\$17,555.18
The new Contract Sum including this Change Order:	\$3,783,569.68
The Contract Time will be increased/decreased/ <u>unchanged</u> by 0 days	

CHANGE ORDER SIGNATURE PAGE

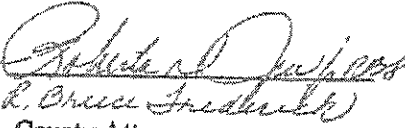
APPROVED

SANTA FE COUNTY

By:   
Katherine Miller  
County Manager

Date: 4/25/18

Approved as to form:

By:   
R. Bruce Frederick  
County Attorney


Date: 4/19/18

Finance Department:

By:   
Finance Director

Date: 4/23/18

CONTRACTOR

By:   
Title: PM

Date: 4/13/18

ARCHITECT/ENGINEER

By: David Cooper  
Title: Project Manager

Date: 4/13/18

# CHANGE ORDER #1 - Quantity Adjustments for Changed Site Conditions

Coverages Included in Proj App 6

Bid Item No.	Description	Bid Item Unit	Bid Item Quantity	Unit Price	Bid Item Value (\$)	Quantity to Date/ New Quantity	Value to Date	Additional Cost
3	UNCLASSIFIED EXCAVATION, INCL. PLACEMENT AND COMPACTION TO NEW GRADES, CIP	CY	13600	18.50	\$455,800.00	68304.99	\$750,592.42	\$394,792.42
4	HAUL AND DISPOSE OF EXCESS CUT ON-SITE OR OFF-SITE, IF REQUIRED	CY	13300	\$7.00	\$93,100.00	16036.39	\$112,256.13	\$19,156.13
16.3	GROUT FOR 84" CMP BOULDER BANK PROTECTION, PLACED IN VOIDS BETWEEN AND BEHIND STONES, CIP	CY	10	\$510.00	\$5,100.00	17	\$8,670.00	\$3,570.00
26	BOULDER DEFLECTOR & BANK PROTECTION STRUCTURES AND 84" CMP BANK PROTECTION, CIP	CY	2270	\$68.00	\$154,360.00	2381.61	\$161,935.88	\$7,575.88
31	BOULDER SILL, CIP (SINGLE LAYER OF BOULDERS)	LF	2528	\$87.00	\$219,240.00	2634	\$229,158.00	\$9,918.00
Total								\$535,112.43

## Expected Additions

Bid Item No.	Description	Bid Item Unit	Bid Item Quantity	Unit Price	Bid Item Value (\$)	New Expected Quantity	Additional Cost
17	18" CMP CULVERT PIPE, INSTALLED	LF	210	\$60.00	\$12,600.00	230	\$1,300.00
18	18" CULVERT PIPE END SECTION, INSTALLED	EA	18	\$720.00	\$12,960.00	20	\$1,440.00
CO#1	RED ROCK RETAINING WALL, CIP, INCLUDING CRUSHED GRAVEL FOOTING AND BACKFILL (WALL FACE AREA)	SF	0	\$65.40	\$0.00	685	\$44,840.10
CO#1	STANDARD CONCRETE DROP INLET WITH GRATE	EA	0	\$4,000.00	\$0.00	2	\$8,000.00
CO#1	PREP AND PAINT 84" CMP CULVERT END SECTIONS	LS	0	\$3,500.00	\$0.00	1	\$3,500.00
CO#1	POWER WASH AND ACID STAIN ROCK AND GROUT SLOPE AT 84" CMP CULVERT	LS	0	\$700.00	\$0.00	1	\$700.00
CO#1	CONCRETE PAD FOR WIRE TRASH BASKET AT GULCH UNDER SILVER BRIDGE	LS	0	\$4,333.59	\$0.00	1	\$4,333.59
CO#1	BOULDER PYRAMID DEFLECTOR STRUCTURES (PAID AT SAME UNIT RATE AS BID ITEM #10)	CY	0	\$68.00	\$0.00	45	\$3,060.00
CO#1	GRADED GRAVEL FILTER FOR PYRAMID DEFLECTOR STRUCTURE (PAID AT SAME UNIT RATE AS BID ITEM #3)	CY	0	\$12.50	\$0.00	15	\$187.50
Total							\$67,261.19

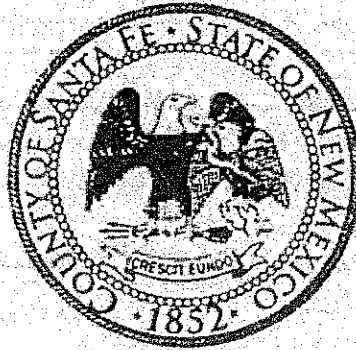
## Deductions

Bid Item No.	Description	Bid Item Unit	Bid Item Quantity	Unit Price	Bid Item Value (\$)	Quantity to Date	New Expected Quantity	Unused Quantity	Cost Reduction
10	MODULAR CMU "GRAVITY" RETAINING WALL, CIP, INCLUDING CRUSHED GRAVEL FOOTING AND BACKFILL (WALL FACE AREA)	SF	685	\$26.00	\$17,810.00	0	0	685.00	\$17,810.00
12.1 B	STRUCTURED CONCRETE RETAINING WALL PROTECTION/RETAINING WALL, CLASS A, WITH INTEGRAL COLOR, EMBEDDED GRAVEL ACCENTS, AND SAND BLAST FINISH, INCLUDING REINFORCING STEEL, SUBGRADE PREP, AND BACKFILL, CIP	CY	300	\$545.00	\$163,500.00	0	140.00	160.00	\$87,200.00
15	SUBSTRUCTURE CONCRETE FOOTING, CLASS A, INCLUDING SUBGRADE PREP AND BACKFILL, CIP	CY	230	\$380.00	\$87,400.00	0	70.00	160.00	\$60,800.00
24	CLASS C BASALT RIPRAP, IMPORTED FOR GRADE CONTROL STRUCTURE APRONS, CIP	CY	620	\$57.00	\$35,340.00	571.1	571.1	48.90	\$2,787.30
25	BOULDER GRADE CONTROL STRUCTURE, GROUTED, CIP INCLUDING GROUT	CY	3671	\$255.00	\$936,105.00	2449.84	2449.84	221.16	\$56,591.80
27	1" TO 3" DIAMETER ROCK SLOPE PLATING, CIP (USING ROCK COLLECTED ON-SITE AND/OR IMPORTED BASALT)	SY	1080	\$28.00	\$30,240.00	764.72	764.72	315.28	\$8,827.84
28	COLLECT, STOCKPILE, AND INSTALL BASALT COBBLES &/OR SMALL BOULDERS, 6-18", FOR SCOUR BASINS, CIP	CY	1150	\$50.00	\$57,500.00	115	115	1035.00	\$51,750.00
29	STACKED CONCRETE SLAB RUNDOWN, CIP (FACE AREA)	SF	300	\$75.00	\$22,500.00	0	0	300.00	\$22,500.00
30	PLACEMENT, STOCKPILE, BOULDERS & COBBLES IN CHANNEL SCOURS	CY	2756	\$20.00	\$55,120.00	0	0	2756.00	\$55,120.00
32	CANYON FOOTER, INCLUDING STONE CONC. RUBBLE FILL, CIP	CY	28	\$193.00	\$5,384.00	0	0	28.00	\$5,384.00
44	UTILITY RELOCATION ALLOWANCE	ALLOW	1	\$10,000.00	\$10,000.00	0.86483	0.86483	0.14	\$1,351.50
Total									\$384,318.44

Net Change \$17,553.18



**AGREEMENT BETWEEN SANTA FE COUNTY AND  
KIMO CONSTRUCTORS, INC.  
FOR CONSTRUCTION SERVICES FOR THE  
SANTA FE RIVER GREENWAY PROJECT**



**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":**

Lucas Lucero, Vice President  
KIMO Constructors, Inc.  
3681 Highway 47  
Bosque Farms, NM 87068  
TELEPHONE: 505-452-7271  
E-MAIL ADDRESS: lucas@kimonm.com

**ARCHITECT [or ENGINEER]**

NAME: D. Sonny Coper  
Weston Solutions, Inc.  
ADDRESS: 3840 Commons Avenue, NE  
Albuquerque, NM 87109  
TELEPHONE: 505-837-6524  
E-MAIL ADDRESS: sonny.cooper@westonsolutions.com

## Table of Contents

	Page No
RECITALS .....	9
Article 1     The Contract Documents .....	9
1.1     Documents .....	9
1.2     Certificates and Documentation .....	9
Article 2     The Work .....	10
2.1     The Work .....	10
Article 3     Effective Date, Time of Commencement, Substantial Completion and Amendments .....	10
3.1     Effective Date .....	10
3.2     Time of Commencement .....	10
3.3     Substantial Completion .....	10
3.4     Time for Completion and Liquidated Damages .....	11
3.5     Amendments .....	12
Article 4     Contract Sum .....	12
4.1     Compensation .....	12
4.2     Contract Sum .....	12
Article 5     Progress Payments .....	12
5.1     Progress Payments .....	12
Article 6     Final Payment .....	14
6.1     Final Payment .....	14
6.2     Acceptance of Final Payment Constitutes Release .....	14
GENERAL CONDITIONS	
1.     Definitions .....	16
1.1     Application for Payment .....	16
1.2     Change Order .....	16
1.3     Calendar Day .....	16
1.4     Contract Period .....	16
1.5     Contractor .....	16
1.6     Construction Documents .....	16
1.7     Construction Schedule .....	16
1.8     Day .....	16
1.9     Labor and Material Payment Bond .....	16
1.10     Lump Sum Agreement .....	17

1.11	Lump Sum Bid.....	17
1.12	Lump Sum Contract.....	17
1.13	Payment Bond.....	17
1.14	Performance Bond .....	17
1.15	Progress Payment.....	17
1.16	Progress Schedule.....	17
1.17	Punch List .....	17
1.18	Schedule of Values .....	17
1.19	Services.....	17
1.20	Stipulated Sum Agreement .....	17
1.21	Subcontractor .....	17
1.22	Unit Price Contract .....	18
1.23	Unit Prices .....	18
1.24	Working Day .....	18
1.25	Work on the Project .....	18
2.	Contract and Contract Documents.....	18
2.1	Entire Agreement.....	18
2.2	Relationship of Contract Documents.....	18
2.3	Conflicting Conditions.....	18
3.	Plans, Specifications and Addenda.....	18
3.1	The plans, specifications and addenda.....	18
3.2	Certificates and Documents Incorporated .....	19
4.	Contract Security - Bonds.....	19
4.1	Performance Bond .....	19
4.2	Payment Bond.....	19
4.3	Additional or Substitute Bond .....	19
4.4	Labor and Material Bond.....	19
5.	Terms and Meanings.....	19
5.1	Words and Phrases .....	19
5.2	Gender, Singular/Plural .....	19
5.3	Captions & Section Headings.....	19
5.4	Interchangeable Terms.....	20
6.	Compliance with Applicable Law, Choice of Law .....	20
6.1	Agreement governed by the laws of the State of New Mexico .....	20
6.2	Contractor shall comply with all applicable laws, ordinances & regulations.....	20
6.3	Minimum Wage Rate.....	20
6.4	Litigation shall be federal and state district courts of New Mexico .....	20
6.5	Bribes, Kickbacks and Gratuities .....	20
6.6	New Mexico Tort Claims Act.....	20
6.7	Provision Required by Law Deemed Inserted .....	20

7.	Effective Date & Term .....	20
7.1	Agreement shall become effective.....	20
7.2	Substantial Completion.....	21
8.	Termination.....	21
8.1	Termination of Agreement for Cause .....	21
8.2	Termination for Convenience .....	21
8.3	Right of the County to Terminate Contract .....	21
9.	Appropriations & Authorizations .....	22
10.	Amendments – Change Orders .....	22
11.	Indemnification.....	22
11.1	Contractor shall indemnify .....	22
11.2	County shall have right to control and participate in defense of demand or suit .....	22
11.3	Contractor's obligations shall not be limited by provisions of insurance policy .....	22
12.	Aggrievement Procedure During Contract Administration .....	22
12.1	Claims, Disputes or other matters.....	22
12.2	Settlement Agreement .....	23
12.3	Contractor shall carry on Work during dispute resolution proceedings .....	23
13.	Dispute Resolution.....	23
13.1	Mediation.....	23
13.2	Mediation Process.....	23
13.3	Litigation.....	23
14.	Insurance.....	23
14.1	Insurance required before contractor commences work .....	23
14.2	Proof of Carriage of Insurance.....	23
14.3	General Conditions .....	24
14.4	General Liability Insurance, including automobile .....	24
14.5	Subcontractor's Public Liability & Property Damage Insurance .....	24
14.6	Worker's Compensation Insurance.....	24
14.7	Scope of Insurance and Special Hazards .....	24
14.8	Builder's Risk Insurance.....	24
14.9	Increased Limits.....	25
14.10	Additional Insured .....	25
15.	Independent Contractor .....	25
15.1	Contractor and its agents are independent contractors .....	25
15.2	Contractor shall not subcontract without written approval .....	25
15.3	Contractor shall maintain detailed time records .....	25



16.	Conflict of Interest of Officers or Employees of the Local Jurisdiction .....	25
16.1	No officer or employee shall have any interest shall have any interest.....	25
16.2	No official of the County shall be interested personally in this contract.....	25
16.3	Contractor warrants no conflict of interest .....	26
17.	Assignment .....	26
17.1	Contractor shall not assign or transfer any interest in this Agreement.....	26
18.	Subcontracting .....	26
18.1	Contractor shall not subcontract without written notice to County.....	26
18.2	Contractor shall provide listing of subcontractors.....	26
18.3	Contractor shall adhere to all provisions of Subcontractor's Fair Practices Act.....	26
18.4	Contractor shall provide Non-Collusion and EEO forms for all subcontractors .....	26
18.5	Contractor shall not award any work without written notice to County.....	26
18.6	Contractor shall be responsible for acts and omissions of subcontractors .....	26
18.7	Contractor shall cause appropriate provisions in all subcontracts.....	26
18.8	Nothing shall create contractual relation between County and subcontractors .....	26
18.9	New Mexico Little Miller Act.....	26
19.	Personnel.....	27
19.1	All work performed by Contractor .....	27
19.2	Contractor shall secure all qualified personnel required to perform work .....	27
20.	Notices .....	27
20.1	Notice required shall be in writing .....	27
20.2	Nothing shall preclude the giving of written Notice .....	27
21.	Release.....	27
22.	Waiver.....	27

#### CONDITIONS OF THE WORK

1.	Additional Instructions & Detail Drawings.....	28
1.1	Additional instructions & drawings as necessary.....	28
2.	Shop or Setting Drawings.....	28
2.1	Contractor shall submit copies of shop or setting drawing.....	28
3.	Materials, Services and Facilities .....	28
3.1	Contractor shall provide .....	28
3.2	Work performed after regular working hours .....	28
4.	Contractor's Title to Materials.....	29

4.1	No materials or supplies shall be purchased by subject to chattel mortgage .....	29
5.	Inspection and Testing of Materials .....	29
5.1	All material and equipment shall be subject to adequate inspection .....	29
5.2	Materials of construction shall be subject to inspection and testing.....	29
6.	"Or Equal" Clause .....	29
6.1	To establish a standard.....	29
7.	Patents.....	29
7.1	Patented or Unpatented Invention .....	29
7.2	License or Royalty Fees.....	29
7.3	Copyrighted Design .....	29
8.	Surveys, Permits and Regulations .....	30
8.1	County will furnish all surveys .....	30
8.2	Contractor shall procure and pay all permits, licenses and approvals.....	30
8.3	Contractor shall comply with all laws, ordinances, rules orders & regulations ....	30
9.	Contractor's Obligations.....	30
9.1	Contractor shall perform all work and furnish all materials, equipment, machinery.....	30
9.2	Contractor shall complete entire work.....	30
10.	Weather Conditions .....	30
10.1	Temporary suspension of Work.....	30
11.	Protection of Work and Property - Emergency .....	30
11.1	Contractor shall safeguard County's property .....	30
11.2	Emergency which threatens loss or injury of property .....	31
11.3	Contractor shall act as instructed or authorized.....	31
11.4	Reimbursement claimed by Contractor .....	31
12.	Inspection.....	31
12.1	County shall be permitted to inspect all work, materials, payrolls, records .....	31
13.	Reports, Records and Data .....	31
13.1	Contractor shall submit to County schedules, payrolls, reports, estimates .....	31
14.	Superintendent by Contractor .....	31
14.1	Contractor shall employ a construction superintendent.....	31
15.	Changes in Work .....	31
15.1	No changes in Work without written approval.....	31
16.	Extras .....	32
16.1	County may order extra Work .....	32

17.	Inspection of Services.....	32
17.1	Contractor shall provide inspection system.....	32
17.2	County has the right to inspect and test all services .....	32
17.3	Contractor shall furnish all reasonable facilities and assistance.....	32
17.4	If any services do not conform with Contract requirements.....	32
17.5	County may perform the services and charge Contractor.....	32
18.	Correction of Work.....	32
18.1	Work shall be made good if failure to meet County approval.....	32
19.	Warranty of Construction .....	33
19.1	Warrants that Work conforms with Contract requirements.....	33
19.2	One year warranty.....	33
19.3	Contractor shall remedy any failure to conform.....	33
19.4	Contractor shall restore any Work damaged .....	33
19.5	County shall notify Contractor of any failure, defect or damage .....	33
19.6	If Contractor fails to remedy.....	33
19.7	Contractor shall obtain all warranties, executed in writing .....	33
19.8	Contractor's warranty has expired.....	33
19.9	Defect in County furnished material or design.....	34
19.10	County's rights under the Inspection and Acceptance Clause.....	34
20.	Subsurface Conditions Found Different .....	34
20.1	Subsurface conditions materially differing from plans and specifications.....	34
21.	Claims for Extra Cost .....	34
21.1	No claim for extra work or cost.....	34
22.	Construction Schedule and Periodic Estimates .....	34
22.1	Estimated construction progress schedule .....	34
22.2	Progress Schedule.....	34
23.	Assignments.....	35
23.1	Contractor shall not assign.....	35
24.	Mutual Responsibility of Contractors.....	35
24.1	Acts of Negligence .....	35
25.	Separate Contract.....	35
25.1	Coordination with other contractors .....	35
26.	Architect/Engineer's Authority .....	35
26.1	Orders & Directions to execution of the Work.....	35
26.2	Decisions concerning meaning and intent .....	36
27.	Stated Allowances .....	36
27.1	Contract sum for all allowances .....	36

28.	Use of Premises and Removal of Debris .....	36
28.1	Contractor undertakes at own expense .....	36
29.	Quantities of Estimate.....	36
29.1	Increase and decrease of estimated quantities .....	36
30.	Lands and Right-of-Way .....	37
30.1	County shall obtain all lands and rights-of way .....	37
31.	General Guaranty.....	37
31.1	Work not done in accordance with contract documents.....	37
32.	Protection of Lives and Health .....	37
32.1	Protection of persons and property .....	37
33.	Interest of Member .....	37
33.1	BCC shall not have any share or interest.....	37
34.	Other Prohibited Interests .....	37
34.1	No County official or others to be personally interested in Contract .....	37
35.	Use & Occupancy Prior to Acceptance by County .....	37
35.1	Partial Occupancy by County.....	37
Attachment A	Bid Sheets .....	39
Attachment B	Addenda and Modifications.....	40
Exhibit A	Project Manual.....	41
Exhibit B	Technical Specifications.....	42
Exhibit C	Labor and Material Payment Bond.....	43
Exhibit D	Performance Bond .....	45
Exhibit E	Assignment of Antitrust Claims .....	47
Exhibit F	Certificate of Liability Insurance.....	48
Exhibit G	Notice of Contract Award.....	49
Exhibit H	Notice to Proceed .....	50
Exhibit I	Change Order .....	51
Exhibit J	Certificate of Substantial Completion .....	53

## RECITALS

**WHEREAS**, in accordance with Section 13-1-111 through Section 13-1-117 NMSA 1978, the County issued a Request for Proposal (RFP) No. 2017-0281-PW/KE for construction services for Santa Fe River Greenway Project; and

**WHEREAS**, the Contractor submitted its bid, dated September 29, 2017 and a Best and Final Offer Dated October 23, 2017 in response to RFP No. 2017-0281-PW/KE; and

**WHEREAS**, the County is authorized to enter into a construction contract for the Project pursuant to Sections 13-1-111, 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 and are part of the Contract Documents:

- Project Manual
- Technical Specifications as listed in Plan Set
- Labor and Material Payment Bond
- Performance Bond
- Assignment of Antitrust Claims
- Certificate of Insurance
- Notice of Award
- Notice to Proceed
- Change Order
- Certificate of Substantial Completion

Exhibit A  
Exhibit B  
Exhibit C  
Exhibit D  
Exhibit E  
Exhibit F  
Exhibit G  
Exhibit H  
Exhibit I  
Exhibit J

## **ARTICLE 2 THE WORK**

### **2.1 THE WORK**

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

The project is to restore an approximate 1 mile length of the Santa Fe River (Section "A") to its original historic and natural condition by the removal of unwanted debris, grading, boulder placements, and installation of native vegetation. The project will also include the construction of approximately 1.1 miles of a 10 foot wide, multi-modal, trail and pedestrian crossing.

Section "A" is that portion of the Santa Fe River between Frenchy's Field and Siler Bridge in Santa Fe, NM, approximately 1 mile in length. The restoration work of Section "A" will include, but is not limited to removal of wasted construction debris, crushed vehicles and other unwanted debris, grading of the channel bed and side slopes, installation of grouted and ungrouted large boulder structures for grade control and erosion control, and installation of native vegetation. A limited number of concrete slabs from on-site debris piles will be collected and subsequently installed as side-channel erosion control structures. The installation of large boulders will require manipulation and placement with heavy equipment in a craftsman-like manner. A Shotcrete bank protection, segmental retaining walls and willow wattles are included in this project. The comprehensive re-vegetation plan includes transplanted willows and cottonwoods. The multimodal trail will be built on the north side of the river for the entire length of the project area or section.

## **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 365 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 \$750.00 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 calendar 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 COMPENSATION**

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 Contract Sum of \$3,766,014.50, exclusive of New Mexico gross receipts tax.

### **4.2 CONTRACT SUM**

The Contract sum is determined as follows:

Base Bid:	\$3,766,014.50
Total Contract Sum:	\$3,766,014.50, 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 business 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 to do so, 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**



Katherine Miller  
Santa Fe County Manager

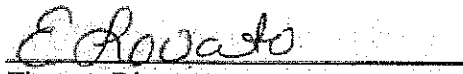
11.2.17  
Date

Approved as to form:

  
Gregory S. Shaffer  
Santa Fe County Attorney


10-25-17  
Date

Finance Department:

  
Finance Director

11-1-17  
Date

CONTRACTOR:

  
Signature

11/3/17  
Date

LUCAS LUCERO  
Print Name

VICE PRESIDENT  
Print Title

**GENERAL CONDITIONS  
TO AGREEMENT BETWEEN SANTA FE COUNTY  
AND KIMO CONSTRUCTORS, INC.  
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 tables 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 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. 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 calendar 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 calendar 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.