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Gregory S. Shaffer
County Manager

February 5, 2025

SANTA FE COUNTY
IFB NO. 2025-0161-PW/TS
CONSTRUCTION SERVICES FOR
ARROYO HONDO TRAIL SEGMENTS #2 & #3
ADDENDUM NO. 1

Dear Proponents,

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

Attachment A: Santa Fe County Construction Agreement

Please add this Addendum No. 1 to the original proposal documents and refer to proposal documents, hereto as such. This and all subsequent addenda will become part of any resulting contract documents and have effects as if original issued. All other unaffected sections will have their original interpretation and remain in full force and effect. Responders are reminded that any questions or need for clarification must be addressed to Timothy Sintas, Procurement Specialist Senior at tsintas@santafecountynm.gov.

AGREEMENT BETWEEN SANTA FE COUNTY AND FOR THE



SANTA FE COUNTY
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 will render this document null and void.]

Hereafter "County":

Gregory S. Shaffer, County Manager
Santa Fe County
PO Box 276
Santa Fe, New Mexico 87504-0276
TELEPHONE: 505-986-6200

Hereafter "Contractor":

TELEPHONE:
E-MAIL ADDRESS:

Hereafter "Architect"

NAME:
ADDRESS:

TELEPHONE:
E-MAIL ADDRESS:

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SAMPLE

RECITALS

WHEREAS, in accordance with NMSA 1978, Section 13-1-103, the County issued Invitation for Bid (IFB) No. to procure construction services for the re-build of the; and

WHEREAS, the Contractor submitted its bid Date in response to IFB No.
; and

WHEREAS, the County is authorized to enter into a contract for the project pursuant to NMSA 1978, Section 13-1-100;’ and

WHEREAS, the Contractor is a licensed contractor of the State of New Mexico; and

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

ARTICLE 1 THE CONTRACT DOCUMENTS

1.1 CONTRACT DOCUMENTS

- a) Agreement between County and Contractor
- b) General Conditions of the Construction Contract
- c) Conditions of the Work of the Construction Contract
- d) Bid Sheets
- e) Addenda and Modifications issued
before and after execution of this Agreement
- f) Architect’s drawings and plans

Attachment A
Attachment B

1.2 CERTIFICATES AND DOCUMENTATION

The following certificates and documentation are attached as exhibits:

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 agrees to perform the Work required by the Contract Documents for the following:

**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 last signature by the parties.

3.2 TIME OF COMMENCEMENT

The Work will commence no later than ten Days after the date of written Notice to Proceed issued by the County to the Contractor.

3.3 SUBSTANTIAL COMPLETION

The Contractor shall achieve Substantial Completion of the Work no later than XXX Days from the date of the Notice to Proceed. A Certificate of Substantial Completion will be issued by the County to the Contractor as adjusted by any Change Order.

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 \$100.00 will be assessed per each Day that expires after the date for Substantial Completion 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 mutually agreed between the Contractor and the County that the date of beginning and the time for completion as specified in this Agreement are *essential conditions* of this contract and it is further mutually understood and agreed that the Work must be commenced on the date specified in the Notice to Proceed.

- B. The Contractor agrees that the Work will be prosecuted regularly, diligently and uninterruptedly at such rate of progress as will insure full completion within the time specified. The Contractor acknowledges that the time for the completion of the Work 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 neglects, fails or refuses to complete the Work within the time specified, the Contractor understands and agrees to pay to the County the amount specified in above, not as a penalty but as liquidated damages for each and every Day that this contract is in default after the time stipulated for completion of the Work.
- D. The amount is fixed and agreed upon by and between the Contractor and the County because of the impracticability and 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 reasonable damages which the County would sustain and the amount will 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 will be of the essence of this contract. Provided that the Contractor will 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 will 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 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; and
 - 4. Unforeseen supply chain disruptions and unavailability of specified materials.
- F. Provided further, that the Contractor will, within ten days from the beginning of such delay, unless the County grants 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 will 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 will be in accordance with Paragraph 10 (Amendments – Change Orders) of the General Conditions. Unless otherwise agreed to by the parties, an amendment will 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 CONTRACT SUM

The County shall pay the Contractor in current funds for the performance and completion of the Work an agreed upon contract sum of \$, exclusive of NM GRT.

4.2 CONTRACT AMOUNT

The contract sum is determined as follows:

Base bid	\$
Total contract sum	\$, <i>exclusive</i> 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 will make progress payments on account of the contract sum for the period ending the last day of the month as follows:

- A. No later than 21 days following receipt by the County of an undisputed Application for Payment, 100% of the portion of the contract sum properly allocable to labor, materials, and equipment incorporated in the Work and 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 determines for all incomplete Work and unsettled claims as provided in the Contract Documents (NMSA 1978, Section 57-28-5).

- B. When making payments, the County, Contractor or subcontractor will not retain, withhold, hold back or in any other manner not pay amounts owed for work performed and completed. For additional information regarding retainage and the Prompt Payment Act (refer to NMSA 1978, Section 57-28-5).

- C. Contractor and subcontractors will make prompt payment to their subcontractors and suppliers for amounts owed for work performed on the project within 7 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 7 days after receipt of an undisputed request for payment, the Contractor or subcontractor will pay interest to its subcontractors and suppliers beginning on the 8thd day after payment was due, computed at 1.5% of the undisputed amount per month or fraction of a month until payment is issued. These payment provisions apply to the Contractor and all tiers of contractors, subcontractors and suppliers.
- 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 will thereupon become the sole property of the County, but this provision will 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 will, 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 will be resumed, in accordance with the terms of this contract, but in no event will 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 will be deemed the agent of the Contractor, and any payment so made by the County will be considered as a payment made under the contract by the County to the Contractor and the County will not be liable to the Contractor for any such payments made in good faith.

6.1 CONTRACTOR'S PAYMENT INSTRUCTIONS

- A. Prior to the commencement of the Work, the Contractor shall provide in writing to the County Contractor's specific instructions regarding how the County will make any payment(s) to the Contractor under this Agreement, including ACH, wire, or other manner of payment. The Contractor will also identify the Contractor's point of contact for all

payments made under this Agreement. Any change, modification or adjustment to the Contractor’s point of contact or the Contractor’s initial payment instructions, must be noticed in writing to the County before the change, modification or adjustment is implemented. The County will confirm in writing to the Contractor’s point of contact, the County’s receipt of the notice and the County and Contractor’s point of contact will confirm the change, modification or adjustment and confirm the date that the change, modification or adjustment will be implemented. The County will not be liable for any fraud, including cybercrime, that may result in the procedure used to issue payment(s) to the Contractor.

**ARTICLE 6
FINAL PAYMENT**

6.1 FINAL PAYMENT

The entire unpaid balance of the contract sum will be paid by the County to the Contractor within 30 Days after notification of the County by the Architect 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 this Agreement has been fully performed and a final Certificate for Payment has been issued by the Architect. In addition, the Contractor agrees to 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 operates as a release to the County of all claims and all liability to the Contractor for all things done or furnished in connection with the Work and for every act and neglect of the County and others relating to or arising out of the Work. No payment, however, final or otherwise, will 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 of last signature by the parties.

SANTA FE COUNTY

Gregory S. Shaffer
Santa Fe County Manager

Approved as to form:

Jeff Young
Santa Fe County Attorney

Date

CONTRACTOR -

Signature and title

Date

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

1.0 DEFINITIONS

- 1.1** *Application for Payment* means 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* means a written document between the County and the Contractor signed by the Architect, County and Contractor authorizing a change in the Work or an adjustment in the contract sum or the contract time. A change order may be provided with 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* means each and every day shown on the calendar beginning and ending at midnight.
- 1.4** *Contract Period* means 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* means a person, firm or corporation with whom the contract is entered into with the County.
- 1.6** *Construction Documents* are all drawings, specifications and addenda associated with a specific construction project.
- 1.7** *Construction Schedule* is the schedule in form satisfactory to the County, showing the proposed dates of commencement and completion of each of the various subdivisions of the Work required by the Contract Documents and the anticipated amount of each monthly payment that will become due to the Contractor in accordance with the progress schedule.
- 1.8** *Day* means a Calendar Day of 24 hours measured from midnight to the next midnight.
- 1.9** *Labor and Material Payment Bond* is 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 *Contract Sum Agreement (See Stipulated Sum Agreement)*

1.11 *Contract Sum Bid* means 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 *Contract Sum contract* is a written contract between the County and Contractor wherein the County agrees to pay the Contractor a specified sum of money for completions of work or services.

1.13 *Payment Bond* means 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* is 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 contract.

1.15 *Progress Payment* is a payment from the County to the Contractor determined by calculating the difference between completed Work and materials stored and a predetermined schedule of values or unit costs. (see Schedule of Values, Unit Costs).

1.16 *Progress Schedule* means 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* means a list of items to be completed or corrected, prepared by the Architect and County, checked and augmented as required by the Contractor. Note: The failure to include any item on such list does not relieve the Contractor of the responsibility to complete all items of the Work in accordance with the Contract Documents.

1.18 *Schedule of Values* means a statement furnished by the Contractor to the Architect and 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* means services performed, workmanship, and material furnished or utilized in the performance of services.

- 1.20** *Stipulated Sum agreement* means a written agreement in which a specific amount is set forth as the total payment for completing the contract (see Contract 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* means 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* means a predetermined price for a measurement or quantity of work to be performed within a specific contract. The designated unit price includes 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/ County 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 or more hours on a Saturday, Sunday or County-recognized Holiday, the Architect/ County may charge a Working Day.
- 1.25** *Work on (at) the project* means 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. 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 will be valid or enforceable unless incorporated in this Agreement.
- 2.2** Relationship of Contract Documents. The Contract Documents are complementary, and any requirement of one Contract Document will 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 will 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 services form part of this contract and the provisions thereof will 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 will 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 must furnish a performance bond in an amount at least equal to 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 must provide payment bond in an amount not less than 100% of the contract sum 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 will 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 become dissatisfied with any surety or sureties, then upon the Performance or Payment Bonds, the Contractor will 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 must be paid by the Contractor. No further payments will be due nor made until the new surety or sureties have been furnished.
- 4.4 Labor and Material Bond. The Contractor must provide a 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 will 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 will be used according to such recognized meanings. In the event of a conflict, the more stringent meaning will govern.
- 5.2 Gender, Singular/Plural. Words of any gender used in this Agreement will construed to include any other gender, and words in the singular number will 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, the terms “Agreement” and “contract” have the same meaning and are interchangeable.

6. COMPLIANCE WITH APPLICABLE LAW, CHOICE OF LAW

- 6.1 This Agreement will 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 must 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 will 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 will be federal and state district courts of New Mexico.
- 6.5 Pursuant to NMSA 1978, Section 13-1-191, reference is hereby made to the criminal laws of New Mexico, including NMSA 1978, Sections 30-14-1, 30-24-2, and 30-41-1 through 3, which prohibit bribes, kickbacks, and gratuities, violation of which constitutes a felony. Further, the Procurement Code, NMSA 1978, Section 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation.

New Mexico Tort Claims Act. Liability on the part of the County is governed by the New Mexico Tort Claims Act, NMSA 1978, Section 41-1-1. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort

Claims Act. 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.

- 6.6** Provision Required by Law Deemed Inserted. Each and every provision of law and clause required by law to be inserted in this contract will be deemed to be inserted herein and the contract will 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 will be amended to make such insertion or correction.

7. EFFECTIVE DATE AND TERM

- 7.1** This Agreement will 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 will 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** The Contractor shall achieve Substantial Completion in accordance with the Agreement Between County and Contractor, Article 3 - Effective Date, Time of Commencement and Substantial Completion, unless the term of this Agreement is 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 will give the breaching party written notice of termination specifying the grounds for the termination. The termination will be effective 30 days from the breaching party's receipt of the notice of termination, during which time the breaching party will have the right to cure the breach. If, however, the breach cannot with due diligence be cured within 30 days, the breaching party will 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 must specify the effective date of termination, which will not be less than 15 days from the Contractor's receipt of the notice. The County will pay the Contractor for acceptable work performed before the effective date of termination but will not be liable for payment of 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 10 days after the serving of such notice upon the Contractor, such violation or delay will cease and satisfactory arrangement of correction be made, the contract will, upon the expiration of said 10 days, cease and terminate. In the event of any such termination, the County must immediately serve notice thereof upon the Surety and the Contractor and the Surety has the right to take over and perform the contract. Provided, however, that if the Surety does not commence performance thereof within 10 days from the date of the mailing to such Surety of notice of termination, the County may take over the Work and prosecute the same to completion by contract or by force account and at the expense of the Contractor and the Contractor and its Surety will be liable to the County for any excess cost occasioned the County for completion of the Work, and in such event the County may take possession of and utilize in completing the work, such materials, appliances, as may be on the site of the Work.

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 will terminate upon written notice by the County to the Contractor. Such termination will be without penalty to the County, and the County will not be obligated to reimburse the Contractor for expenditures and work performed after the date of termination. 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 is 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 to allow for additions, deletions, and revision as specified in Article 2 (the Work) of this Agreement.

11. INDEMNIFICATION

11.1 The Contractor agrees to indemnify and hold harmless the County and its elected officials, agents, and employees from any losses, liabilities, damages, demands, suits, causes of action, judgments, and legal costs 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's obligations under this section will 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, must be presented in the form of a written request accompanied by supporting data to the Architect for formal decision, with a copy to the other party. Such formal decision of the Architect is binding upon the Contractor and the County unless either or both notify each other and the County in writing within 15 days of their receipt of the decision that they are unwilling to abide by the Architect'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 fails to provide a written decision or a reasonable schedule to issue a written decision within 10 days after the County or the Contractor has presented its request, that party may consider itself aggrieved and may proceed to exercise its rights.

12.2 A settlement agreement signed by the County and the Contractor will 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 this contract, or unless otherwise agreed in writing, the Contractor will carry on the Work and maintain its progress during any dispute resolution proceedings, and the County will 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, NMSA 1978, Section 13-4C-1, of any claim before such decision become final and binding. The request for mediation must be submitted in writing to the other party. Timely submission of the request will stay the effect of Paragraph 12.1.

13.2 The County and Contractor agree to participate in the mediation process in good faith. Unless the parties agree otherwise before the mediation is scheduled, the mediation must be completed within 60 days of filing of the request for mediation. The mediation will 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 will be resolved through litigation in state district court. The parties agree that the exclusive forum for such litigation will be the State of New Mexico District Court for the First Judicial District, 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 NMRA 1-004.

14. INSURANCE

14.1 The Contractor must not commence the Work under this contract until it has obtained all the insurance required under this paragraph and such insurance has been approved by the County, nor will 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 must furnish the County with certificates showing the type, amount, class of operations covered, effective dates and date of expiration of policies. Such certificates will 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 must submit evidence of insurance as is required herein. Policies of insurance must be written by companies authorized to write such insurance in New Mexico.

14.4 General Liability Insurance, Including Automobile. The Contractor must maintain 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 must 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. Santa Fe County must be named additional insured on the policy.

14.5 Subcontractor's General Liability Insurance, Including Automobile. The Contractor will require each of its subcontractors to procure and to maintain 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 will comply with the provisions of the Workers' Compensation Act, NMSA 1978, Section 52-1-1. The Contractor must maintain 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 must 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 required under subparagraphs 14.4 and 14.5 hereof must provide adequate protection for the Contractor and its 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 Contractor is required to maintain Builder's Risk Insurance (fire and extended coverage) on a 100% 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 must 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 does not release the Contractor from its obligation to complete, according to Plans and Specifications, the project covered by this contract, and the Contractor and its Surety will 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, Section 41-4-1, the Contractor will 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 must 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 will be 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 will 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 must not subcontract any portion of the Work or services to be performed under this Agreement without prior written approval of the County.

15.3 The Contractor will maintain detailed time records which indicate the date, time and nature of services rendered. These records will be subject to inspection by the County and the State Auditor. The County has the right to audit billings both before and after payment. Payment under this Agreement will 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, will have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for the Work to be performed. Further, the Contractor will 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, will become directly or indirectly interested personally in this contract. 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, will be or 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 will 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 must 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 will be void.

18. SUBCONTRACTING

18.1 The Contractor must not subcontract any portion of the Work to be completed under this Agreement without the advance written approval of the County. Any attempted

subcontracting without the County's advance written approval will be void.

- 18.2** Contractor must provide to the County a listing of subcontractors within ten days of the contract award. Contractor must adhere to all provisions of the Subcontractor's Fair Practices NMSA 1978, Section 13-4-31.
- 18.3** Contractor must provide to the County completed Non-Collusion Affidavit of Subcontractor form and Certification of Subcontractor Regarding Equal Employment Opportunity form for all subcontractors listed.
- 18.4** The Contractor will be 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.
- 18.5** The Contractor will 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.
- 18.6** Nothing contained in this contract creates any contractual relation between any subcontractor and the County.
- 18.7** All work performed for Contractor by a subcontractor will be pursuant to a written contract between the Contractor and the subcontractor which specifically binds the subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of the County. Any contract between Contractor and a subcontractor, including a supplier to the Contractor, will provide that any remedy or claim for nonpayment of sums due or owing to the subcontractor or supplier for work performed or materials provided is against the Contractor and not the County, subject to any remedy or rights subcontractor (or supplier) may have under the Contractor's Performance Bond and NMSA 1978, Section 13-4-19, the Little Miller Acts.

19. PERSONNEL

- 19.1** All Work performed under this Agreement will 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) must not be employees of or have any contractual relationships with the County and (ii) must 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 must be in writing and 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 Public Works
 Attn:
 424 NM Highway 599
 Santa Fe, New Mexico 87507

To the Contractor:

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

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, legal fees that the Contractor may have.

22. WAIVER

No provision of this Agreement will be deemed to have been waived by either party unless the waiver is in writing signed by the party making the waiver and addressed to the other party; nor will 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 will not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition thereof.

23. CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and the County waive claims against each other for consequential damages arising out of or related to this Agreement, regardless whether such claims are brought under contract, tort, statutory, strict liability or any other legal theories. This mutual waiver includes:

1. Damages incurred by the County for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
2. Damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit expect anticipated profit arising directly from the Work.

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. 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 will carry out the Work in accordance with the additional detail drawings and instructions. The Contractor and Architect 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 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. Upon receipt of additional instructions or drawings, the Contractor shall inform the County whether the additional instructions or drawings will result in an increase, decrease, or no change, in the contract sum.

2. SHOP OR SETTING DRAWINGS

2.1 The Contractor will submit to the Architect and the County one copy of each shop or setting drawing prepared in accordance with the schedule predetermined as aforesaid. After examination of such drawings by the Architect and the return thereof, the Contractor will make corrections to the drawings as have been indicated and furnish the Architect and the County with corrected drawings. If required, the Contractor will furnish additional copies of the corrected drawings. Regardless of corrections made in or approval given to such drawings by the Architect and County, the Contractor will be responsible for the accuracy of such drawings and for their conformity to the Contract Documents and Plans and Specifications, unless the Contractor notifies the Architect and County in writing of any deviations at the time the Contractor furnishes the drawings.

3. MATERIALS, SERVICES AND FACILITIES

3.1 It is understood that except as otherwise specifically stated in the Contract Documents, the Contractor will 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, will be performed without additional expense to the County.

4. CONTRACTOR'S TITLE TO MATERIALS

4.1 No materials or supplies for the work will 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 it has good title to all materials and supplies used by it 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 will be subject to adequate inspection and testing in accordance with accepted standards. The laboratory or inspection agency will be selected by the County. The County will pay for all laboratory inspection service direct, and not as a part of this Agreement.
- 5.2** Materials of construction, particularly those upon which the strength and durability of the structure may depend, will 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 and County, of equal substance and function. It will not be purchased or installed by the Contractor without the Architect and County's written approval.

7. PATENTS

- 7.1** The Contractor agrees to 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 this 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 will 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 will 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 agree to 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 will 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 will 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 will, in good workmanlike manner, do and perform the 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 within the time 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 and all supplemental plans and drawings, and in accordance with the directions of the Architect and County as given from time to time during the progress of the Work. The Contractor will furnish, erect, maintain, and remove such construction plans and such temporary works as may be required.
- 9.2 The Contractor will observe, comply with, and be subject to all terms, conditions, requirements, and limitations of this contract and specifications, and shall do, carry on, and complete the Work to the satisfaction of the Architect and County.

10. WEATHER CONDITIONS

- 10.1 In the event of temporary suspension of work, or during inclement weather, or whenever the Architect and County 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 and County, any work or materials 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 will be removed and replaced at the expense of the Contractor.

11. PROTECTION OF WORK AND PROPERTY-EMERGENCY

- 11.1 The Contractor will at all times safely guard the County's property from injury or loss. The Contractor will safely guard and protect its own work, and that of adjacent property from damage. The Contractor will replace or make good any such damage, loss or injury unless such is caused directly by errors contained in this contract or by the County.

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 and the County, in a diligent manner. The Contractor will notify the Architect and County immediately thereafter. Any claim for compensation by the Contractor due to such extra work must be promptly submitted to the Architect and County for approval.

11.3 Where the Contractor has not taken action but has notified the Architect and County of an emergency threatening injury to persons or to damage to the Work or any adjoining property, the Contractor will act as instructed or authorized by the Architect and the County.

11.4 The amount of reimbursement claimed by the Contractor on account of any emergency action will 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 will be permitted to inspect the Work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records.

13. REPORTS, RECORDS AND DATA

13.1 The Contractor must submit to the County such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data as the County may request.

14. SUPERINTENDENT BY CONTRACTOR

14.1 At the site of the Work the Contractor will employ a construction superintendent or foreman who will be authorized to act for the Contractor. The representative will be acceptable to the Architect and County and will continue in that capacity unless the representative ceases to be on the Contractor's payroll. The superintendent must be an individual who can be continued in that capacity for the particular job involved unless he or she ceases to be on the Contractor's payroll.

15. CHANGES IN THE WORK

15.1 No changes in the Work will be made without having prior written approval of the County. Charges or credits for the Work will be determined by one or more, or a combination of the following methods:

- A. Unit bid prices previously approved.
- B. An agreed contract 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 10% of the actual cost of the work. The fee will be compensation to cover the cost of supervision, overhead, bond, profit and any other general expenses.

16. EXTRAS

16.1 Without invalidating this 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 will be paid for at the price stipulated in the proposal, and no claims for any extra work or materials will be allowed unless the work is ordered in writing by the Architect and County and the price is stated in such order.

17. INSPECTION OF SERVICES

17.1 The Contractor must maintain an inspection system acceptable to the County. Complete records of all inspections performed by the Contractor must be maintained and made available to the County for as long as this contract requires.

17.2 The County has the right to inspect and test all services called for by this contract, to the extent practicable at all times and places during the term of this contract. The County will 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 will furnish, and require subcontractors to furnish, at no increase in the contract sum, 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 Documents, the County may require the Contractor to perform the services again in conformity with Contract Documents and at no increase in the contract sum. 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 the Contract Documents and reduce the contract sum to reflect the reduced value of the services performed, if appropriate.

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 Documents, 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 this contract for default.

18. CORRECTION OF WORK

18.1 All work, all materials, whether or not incorporated in the Work, all processes of manufacture, and all methods of construction must be at all times and places subject to the inspection of the Architect and the County who will 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 will be reconstructed, made good, replaced and/or corrected, as the case may be, by the Contractor at its own expense. Rejected material will immediately be removed from the site. If, in the opinion of the Architect and the 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 will be reduced by such amount as in the judgment of the Architect and County is equitable.

19. WARRANTY OF CONSTRUCTION

19.1 In addition to any other warranties in this contract, the Contractor warrants the Work will conform to the Contract Documents and the completed Work will be free of any defect in equipment, material, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

19.2 This warranty will continue for a period of one 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 will continue for a period of one year from the date the County takes possession.

19.3 The Contractor will remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor will 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 Documents or any defect of equipment, material or workmanship.

19.4 The Contractor will 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 year from the date of repair or replacement.

19.5 The County will 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 will have the option 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

will 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 will 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 does 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 will immediately give notice to the Architect and County of such conditions before they are disturbed. The Architect and 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 is allowed unless the same was done in pursuance of a prior written order of the Architect and approved by the County and a written change order signed by the parties. When the Work is performed under the terms of General Conditions, the Contractor must furnish satisfactory bills, payrolls and vouchers covering all items of cost, and when requested by the County, give the County access to the accounts.

22. CONSTRUCTION SCHEDULE AND PERIODIC ESTIMATES

22.1 Immediately after execution and delivery of this contract, and before the first partial payment is made, the Contractor will 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 will 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 completed Work for the purpose of

making partial payment. 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 sum.

- 22.2** The Contractor shall, within five days after the effective date of Notice to Proceed, prepare and submit five copies of a progress schedule covering project operations. This progress schedule will 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 will be used to control the timing and sequences of the project. The Work will be done in accordance with the CPM Planning and Scheduling. A written statement of explanation must be submitted with the progress schedule. All costs incurred by the Contractor to implement the CPM will be borne by the Contractor.

23. ASSIGNMENTS

- 23.1** The Contractor must 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 must 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 are subject to prior claims of all persons, firms and corporations of services rendered or materials supplied for the performance of the Work.

24. MUTUAL RESPONSIBILITY OF CONTRACTORS

- 24.1** If as a result of Contractor's act of neglect, a third party asserts a claim against the County, the County will notify the Contractor, who will indemnify the County against such claim.

25. SEPARATE CONTRACT(S)

- 25.1** The Contractor agrees to 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, will keep informed of the progress and the detail work of other contractors and will notify the County immediately of lack of progress or defective workmanship on the part of other contractors or subcontractors. Failure of the 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 will be construed as acceptance by the Contractor of the status of the work of others as being satisfactory for proper coordination with the Contractor's Work.

26. ARCHITECT'S AUTHORITY

- 26.1** The Architect and County will give all orders and directions contemplated under this contract relative to the execution of the Work. The Architect and County will 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 will decide all questions which may arise in relation to the Work and the construction thereof. The Architect and County's estimates and decisions will be final and conclusive, except as herein otherwise expressly provided. In case any question arises between the parties relative to said contract or specifications, the determination or decision of the Architect and County will be a condition precedent to the right of the Contractor to receive any money or payment for Work under this Agreement affected in any manner or to any extent by such question.
- 26.2** The County and the Architect will 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 will be adjusted and determined by the Architect and the 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 will 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 will be adjusted accordingly. The adjustment in contract price will 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 will be included in the applicable sections of this contract.

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 the 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 will 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 and County, not to cut or otherwise alter the work of any other contractor or subcontractor.

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, and such increase or diminution will not void this contract, nor will 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 must obtain all lands and rights-of-way necessary for the completion of the Work.

31. GENERAL WARRANTY

- 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, constitutes 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 must remedy any defects in the Work and pay for any damage to other work resulting therefrom, which may become apparent within one 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 will 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 will be admitted to any share or part of this contract.

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, will 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, will 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 and the County, 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 _____, 202__, with the
COUNTY for the 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 a 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 _____, 2024.

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 _____, 202__, with the COUNTY for, 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:
 - (3) Complete the Contract in accordance with its terms and conditions, or
 - (4) 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 _____, 2024.

CONTRACTOR – PRINCIPAL (signature)

By: _____
(Printed name and title)

NOTARY PUBLIC (seal)

My Commission expires: _____

SURETY (signature)

(Printed name and title)

NOTARY PUBLIC (seal)

My Commission expires: _____

SURETY’S Authorized New Mexico Agent

EXHIBIT E

ASSIGNMENT OF ANTITRUST CLAIMS

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

FIRM NAME:

PROJECT:

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

Owner:	<u>Santa Fe County</u>	Owner's Project No.:	<u>CN # S100630 & S100640</u>
Engineer:	<u>OTAK</u>	Engineer's Project No.:	<u>20307</u>
Contractor:	_____	Contractor's Project No.:	_____
Project:	<u>Arroyo Hondo Trail Segments #2& #3</u>		
Contract Name:	<u>PW 2025-0161-PWTS</u>		
Effective Date of Contract:	_____		

Owner hereby notifies Contractor that the Contract Times under the above Contract will commence to run on _____ pursuant to T/LPA Section 100s

On that date, Contractor shall start performing its obligations under the Contract Documents. No Work will be done at the Site prior to such date.

In accordance with the Agreement:

1.01 Due to funding, the Bidder agrees that the Work for the Base Bid will be **substantially complete 330 Consecutive Calendar Days from, and ready for final payment 360 Consecutive Calendar days from the date of the Notice to Proceed.** Before starting any Work at the Site, Contractor must comply with the following:

Owner: _____

By (*signature*): _____

Name (*printed*): _____

Title: _____

Date Issued: _____

Copy: Engineer

EXHIBIT I

CHANGE ORDER

PROJECT:

CONTRACTOR
CHANGE ORDER NO:

PROJECT NO:

Contractor Telephone:
Contractor e-mail:
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. Signature of the Contractor indicates its agreement herewith, including any adjustment in the contract sum or contract time.

Original contract sum:
Net change by previously authorized Change Orders \$0.00
The contract sum will be increased/decreased/unchanged by this Change Order: \$0.00
The contract sum including this Change Order:
The contract time will be increased/decreased/unchanged by days.
The date of Substantial Completion is:

CHANGE ORDER SIGNATURE PAGE

APPROVED

SANTA FE COUNTY By: _____ Date: _____

Approved as to form:
By: _____ Date: _____

CONTRACTOR By: _____ Date: _____

ARCHITECT By: _____ Date: _____

EXHIBIT J

CERTIFICATE OF SUBSTANTIAL COMPLETION

SANTA FE COUNTY – PUBLIC WORKS

Public Works Director or designee (name): _____

CONTRACTOR: _____

Contractor Purchase Order Number: _____

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 and the 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 the County.

Contractor

Signature

Print Name

Date

Accepted by Santa Fe County

Signature (Public Works Director or Designee) Print Name Date

PUNCH LIST

A list of items (Punch List) to be completed or corrected, verified by the 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 _____ (#) items.

The Work performed under this contract has been reviewed and found to be substantially complete by the Project Director and the Director of Public Works who has 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 County 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)