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**Gregory S. Shaffer**  
County Manager

August 12, 2022

**SANTA FE COUNTY**  
**RFP No. 2022-0168-PW/APS**  
**CONSTRUCTION SERVICES FOR NORTHEAST/SOUTHEAST (NE/SE)**  
**CONNECTOR ROAD PROJECT**  
  
**PHASE II ADDENDUM NO. 1**

Dear Proponents,

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

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***Attachment A: Evaluation Criteria***  
***Attachment B: Sample Agreement***

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**A Pre-Bid meeting is scheduled for Wednesday, August 17, 2022 at 2:00PM via WebEx and an invitation will be sent to the email address provided. *Please forward the WebEx meeting to any members of your team that need to attend.***

Please add this Phase II 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 Amanda Patterson-Sanchez, Procurement Specialist Senior at [apatterson-sanchez@santafecountynm.gov](mailto:apatterson-sanchez@santafecountynm.gov).

## Attachment A

### Evaluation Criteria

#### **1. Project Schedule (200 Points)**

- Provide an estimated project timeline outlining the major tasks, phases, timeframes and milestones necessary to complete the work within the prescribed contract time from receipt of Notice to Proceed. Consideration should be made to accommodate traffic flow to and from the Santa Fe Community College, Santo Nino Regional Catholic School and Amy Biehl Community School.
- The proposed schedule should depict the overall sequence of work, the anticipated project critical path (based on the longest path), reviews by County; and work by suppliers, subcontractors and other involved parties included Cooperation with Utilities (**Note: See Notice to Contractors – Utilities**), as applicable.
- The proposed schedule should be organized using a hierarchical Work Breakdown Structure (WBS), broken down in major phases of the project. The WBS diagram should subdivide the overall project scope to individual construction tasks that are needed to complete the project from start to finish.
- Address the team's availability and capacity to meet the construction schedule including resumes of key personnel that will be assigned to the project.

#### **2. Construction Approach (150 Points)**

- A construction approach narrative shall be provided that describes the proposed overall plan to accomplish the work to include, but not limited to, the overall sequencing, a description and explanation of the Critical Path, proposed means methods, haul routes, staging area(s), and other key assumptions on which the Proposal Scheduled is based.
- Explain the proposed approach to maintain and coordinate traffic for the project. Describe in detail proposed alternative routes and detours, lane closure, incident management, temporary detours, time of delay restrictions, flagging operations and minimum lane widths required to satisfy the project objectives and contract time limits.
- The construction approach shall accommodate the safe and efficient operations for all user including but not limited to Emergency Medical Services (EMS), school buses, transit vehicles, delivery trucks, pedestrians

#### **3. Project Management Plan (150 Points)**

- Discuss the team's management approach to successfully deliver the project on or before the prescribed contract time, including demonstrated understanding of technical and non-technical issues associated with the project, understanding to County's policies and procedures, demonstrated familiarity with Federal, State and Local Agency guidelines and value added by the contractor's proposed approach and schedule.
- Discuss the team's management approach to successfully deliver the project on or before the prescribed contract time, including demonstrated understanding of technical and non-technical issues associated with the project, understanding to County's policies and procedures, demonstrated familiarity with Federal, State and Local Agency guidelines and value added by the contractor's proposed approach and schedule.

- Discuss the internal quality control program to convey the plan to be used to itemized inspections, testing procedures, sampling and testing frequencies and corrective action strategies proposed to control the work.

#### **4. Cost Proposal (300 Points)**

- The company with the lowest cost will receive a total of 300 points. Each succeeding offer will receive a quota of points computed as follows:  

$$\frac{\text{Lowest Offer (\$)}}{\text{Offer (\$)}} \times 300 \text{ Points} = \text{Points Price Evaluation}$$

**Attachment B**

**SAMPLE CONSTRUCTION AGREEMENT**

**AGREEMENT BETWEEN SANTA FE COUNTY AND CONTRACTOR  
FOR NORTHEAST/SOUTHEAST (NE/SE) CONNECTOR PROJECT**



**SANTA FE COUNTY  
PURCHASING DIVISION  
2022 EDITION**

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

Hereafter "County":

Gregory S. Shaffer, County Manager  
Santa Fe County  
102 Grant Avenue  
PO Box 276  
Santa Fe, New Mexico 87504-0276  
TELEPHONE: 505-986-6200  
FAX: 505-995-2740

Hereafter "Contractor":

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
TELEPHONE: \_\_\_\_\_  
E-MAIL ADDRESS: \_\_\_\_\_

Hereafter "Engineer"

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Exhibit F	Certificate of Liability Insurance
Exhibit G	Notice of Contract Award
Exhibit H	Notice to Proceed
Exhibit I	Change Order
Exhibit J	Certificate of Substantial Completion
Exhibit K	Certification of Claim form
Exhibit L	Claim form
Exhibit M	Certificate of Compliance form
Exhibit N	Notice of Intent to Claim form

## **RECITALS**

**WHEREAS**, in accordance with Section 13-1-103 through Section 13-1-110, NMSA 1978, the County issued Request for Proposal No. 2022-0168-PW/APS for construction services for Northeast/Southeast Connector Road Project; and

**WHEREAS**, the Contractor submitted its bid, dated \_\_\_\_\_, 2022 in response to RFP No. 2022-0168-PW/APS; and

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

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

**WHEREAS**, the County agrees to hire the Contractor, and the Contractor agrees to provide construction services as required herein for the project in accordance with the terms and conditions set forth in this Agreement; and

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

## **ARTICLE 1 THE CONTRACT DOCUMENTS**

### **1.1 CONTRACT DOCUMENTS**

The Contract Documents consist of the following:

- Agreement between County and Contractor
  - General Conditions of the Construction Contract
  - Conditions of the Work of the Construction Contract
  - Bid Sheet
  - Addenda and Modifications issued before and after execution of this Agreement
  - New Mexico Department of Transportation Standard Specifications For Highway and Bridge Construction (2019 Ed.)
- Attachment A  
Attachment B

### **1.2 CERTIFICATES AND DOCUMENTATION**

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

- |  |           |
|--|-----------|
| Project Manual                                 | Exhibit A |
| Technical Specifications as listed in Plan Set | Exhibit B |

Labor and Material Payment Bond	Exhibit C
Performance Bond	Exhibit D
Assignment of Antitrust Claims	Exhibit E
Certificate of Liability Insurance	Exhibit F
Notice of Award	Exhibit G
Notice to Proceed	Exhibit H
Change Order	Exhibit I
Certificate of Substantial Completion	Exhibit J
Certification of Claim form	Exhibit K
Claim form	Exhibit L
Certificate of Compliance form	Exhibit M
Notice of Intent to Claim form	Exhibit N

## **ARTICLE 2 THE WORK**

### **2.1 THE WORK**

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

#### **THE WORK**

**2.1.1** The intent of this Agreement or contract is to provide for the construction and completion of the Work to the satisfaction of the County. The Contractor shall furnish experienced supervision and labor and all materials, equipment tools, transportation and supplies required to complete the Work in accordance with the Contract Documents, Plans, Specifications and Terms of this Agreement. *The application of applicable Sections of Division 100 of the NMDOT Standards is as expressly specified in this Agreement and the relevant parts of the Sections of Division 100 are intended to apply solely to the administration of this contract.*

**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 hereto.

**3.2 TIME OF COMMENCEMENT**

The Work shall be commenced no later than ten (10) consecutive Days after the date of the Notice to Proceed issued by the County. (Exhibit H)

**3.3 SUBSTANTIAL COMPLETION**

The Contractor shall achieve Substantial Completion of the entire work no later than \_\_\_\_\_ ( ) Days from the date of the Notice to Proceed, except as may be extended by Change Order. A Certificate of Substantial Completion (Exhibit J) will be issued by the County to the Contractor, as adjusted by any Change Order (Exhibit I).

**3.4 TIME FOR COMPLETION AND LIQUIDATED DAMAGES**

Should the Contractor neglect, refuse, or otherwise fail to complete the Work within the time specified in this Article, the Contractor agrees that Liquidated Damages shall be assessed per each Day that expires after the date of Substantial Completion, as adjusted by any Change Order, and until issuance by the County of a certificate of Substantial Completion in accordance with Article 7 (Effective Date and Term) of the General Conditions.

- A. It is hereby understood and mutually agreed, by and between the Contractor and the County, that the date of beginning and the time for completion as specified in this contract of the Work are *essential conditions* of this contract and it is further mutually understood and agreed that the Work shall be commenced on a date to be specified in the Notice to Proceed. The Contractor shall not commence Work without a Notice to Proceed.
- B. The Contractor agrees that the Work shall be prosecuted regularly, diligently and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the County, that the time for the completion of the Work is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.
- C. If the Contractor shall neglect, fail or refuse to complete the Work within the time specified in the Notice to Proceed or any proper extension thereof granted by the County, then the Contractor does hereby agree, as a part consideration for the awarding of this contract, to pay to the County the amount specified below, not as a penalty but as liquidated damages for such breach of



contract as herein set forth, for each and every Day that the contract shall be in default after the time stipulated in this Agreement for completing the Work.

- D. The Contractor agrees that the following schedule of liquidated damages, unless otherwise specified in this Agreement, represents an amount sufficient to cover estimated average daily County costs if the Contractor does not complete the Work within the contract time and does not operate as a penalty to the Contractor.

Schedule of Liquidated Damages	
Total original contract amount (\$)	Charge(s) per Day
≤\$100,000	\$500
>\$100,000 – \$500,000	\$1,000
>\$500,000 – \$1,000,000	\$1,500
>\$1,000,000 – \$2,000,000	\$2,000
>\$2,000,000 – \$4,000,000	\$2,500
>\$4,000,000 – \$7,000,000	\$3,000
>\$7,000,000 – \$10,000,000	\$4,000
>\$10,000,000	\$5,000

The County will deduct liquidated damages from the next Progress Payment due to the Contractor after the contract time expires and will continue to assess liquidated damages each Progress Payment until the determination of Substantial Completion. If the County directs Extra Work after Substantial Completion, the County will rescind the determination of Substantial Completion and then assess the contract time in accordance with Article 16 of the Conditions of the Work (Extras; Extra Work). If the amount of liquidated damages exceeds the monies due to the Contractor for that Progress Payment then the County will seek reimbursement for any liquidated damages exceeding the dollar amount withheld from the Contractor. If the Contractor has been granted Substantial Completion, but has not satisfied the requirement of Article 37.5 of the Conditions of the Work (Project Closure), the County has the right to continue to assess liquidated damages until Physical Completion. Upon the completion of steps I through VII of Project Closure, the Engineer shall provide a written determination of Physical Completion to the Contractor which stops the further assessment of liquidated damages.

- E. In suits involving the assessment or recovery of liquidated damages, the reasonableness of daily charges will be presumed and the amount assessed will be in addition to every other remedy enforceable at law, in equity, by statute, or under this Agreement. The County does not waive its right to assess liquidated damages under this Agreement by allowing the Contractor to finish the Work after the expiration of the contract time. The Contractor shall complete the Work within the contract time. The County's administrative costs, including engineering, inspection, and supervision, will increase as the time to complete the Work increases.
- F. **Default of Contract.** The County may declare the Contractor in default of this Agreement if the Contractor:

1. Fails to perform the Work with sufficient resources (supervision, workers, equipment or materials) to assure the completion of the Work;
2. Performs the Work unsuitably, or neglects or refuses to remove materials or to correct rejected Work;
3. Fails to begin the Work within the time specified in the Notice to Proceed;
4. Discontinues the Work;
5. Fails to resume discontinued Work after the County issues a request to resume Work;
6. Become insolvent or is declared bankrupt, or files for reorganization under the bankruptcy code, or commits any act of bankruptcy or insolvency, either voluntarily or involuntarily;
7. Allows a final judgement, in a suit filed in connection with this Agreement, to stand unsatisfied for thirty (30) Days;
8. Makes an assignment, in connection with this Agreement, for the benefit of its creditors;
9. Fails to carry on the Work in an Acceptable manner in accordance with this Agreement;
10. Fails to comply with the contract requirements or willfully violates any term or condition of this Agreement;
11. Fails to perform the Work or maintain the project in compliance with Federal and New Mexico Occupational Health and Safety laws and regulations;
12. Fails to observe or comply with Federal and New Mexico laws and regulations, local laws and ordinances;
13. Is debarred or suspended;
14. Communicates that the Contractor may not perform under this Agreement; or
15. Fails to promptly pay a subcontractor or supplier for undisputed Accepted Work in accordance with Article 18 of the General Conditions (Subcontracting).

The complete default process is sequential and consists of the following steps:

1. Notice of Apparent Default;
2. Declaration of Default and Demand for Surety to Complete the Work; and
3. County completion of the Work.

- G. **Notice of Apparent Default.** The Project Manager will provide written notice to the Contractor and the Contractor's Surety specifying the condition in F above that the Contractor violated and the corrective measures to be taken by the Contractor. If the Contractor or Surety does not proceed with the corrective measures within ten (10) Days of the date of written notice, the County, has full power and authority, without violating this Agreement to declare the Contractor in default.
- H. **Declaration of Default and Demand for Surety to Complete the Work.** The written declaration of default is separate from the Notice of Apparent Default in G above and will be addressed to both the Contractor and the Surety. The declaration of default is issued after the time for the Contractor to take corrective measures expires in G above. The declaration of default removes the corrective measures from the Contractor, and will demand compliance by the Surety of the terms, conditions, and obligations contained in the Performance Bond. If the County determines that the Contractor is in default the Surety shall complete the Work at its own expense pursuant to this Agreement and receive the balance of any funds owed to the Contractor.

- I. 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 this contract an additional time is allowed for the completion of the Work, the new time limit fixed by such extension shall be of the essence of this contract. Provided that the Contractor shall not be charged with liquidated damages or any excess cost when the County determines that the Contractor is without fault and the Contractor's reasons for the time extension are acceptable to the County. Provided that the Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the Work is due:
1. To any preference, priority or allocation order duly issued by the County;
  2. To unforeseeable cause beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, or of the public enemy, acts of the County, acts of another contractor in the performance of a contract with the County, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather;
  3. To any delays of subcontractors or suppliers occasioned by any of the causes specified in subsections above.
- J. Provided further, that the Contractor shall, within ten (10) Days from the beginning of such delay, unless the County shall grant a further period of time prior to the date of final settlement of this contract, notify the County in writing of the causes of the delay, who shall ascertain the facts and extent of the delay and notify the Contractor within a reasonable time of its decision in the matter.

### 3.5 AMENDMENTS

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

## ARTICLE 4 CONTRACT SUM

### 4.1 CONTRACT SUM

The County shall pay the Contractor in current funds for the performance of the Work, subject to additions and deductions by Change Order as provided in the Contract Documents, an agreed upon contract sum of (enter dollar amount in words) Dollars (\$0.00 enter dollar amount), *exclusive* of NM GRT.

### 4.2 CONTRACT SUM

**The contract sum is determined as follows:**

(insert data from bid form concerning base bid, alternates, etc.)

Base Bid	\$	
List Alternates, if applicable	\$	
	\$	
	\$	
<b>Total contract sum</b>	\$	, <i>exclusive of</i> NM grt

## ARTICLE 5 PROGRESS PAYMENTS

### 5.1 PROGRESS PAYMENTS; RETAINAGE; MATERIALS STORED (STOCKPILE); PROMPT PAYMENT

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

- A. No later than twenty-one (21) Days following receipt by the County of an undisputed Application for Payment and Accepted Work, 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 Engineer shall determine for all incomplete Work and unsettled claims as provided in the Contract Documents (Section 57-28-5, NMSA 1978). The County will prepare and post Progress Payment based on estimates of the value of the Work performed and materials complete-in-place, and in accordance with subpart H (Stockpile) below and minus price reductions. The County will include monies associated with an Accepted and fully executed change order when the Work is accepted with the next Progress Payment. The Project Manager shall process a Progress Payment regardless of the dollar amount, including zero dollar (\$0.00), owed the Contractor. The County has the authority to withhold Progress Payments in part or in their entirety as part of a suspension.

(1) **Retainage.** The County will make Progress Payments to the Contractor in accordance with A above (Progress Payments). The County will pay 100% of the value of Work performed and materials complete-in-place in accordance with subpart H below (Stockpile), until the sum the Progress Payments made equals ninety-five percent (95%) of the total contract sum as amended by change order. The County will continue to make additional Progress Payments in the sum of zero dollars (\$0.00) after the contract sum as amended by change order equals 95% and until the Contractor completes the Work in an Acceptable manner. The five percent (5%) retained when the Progress Payments equals 95% of the contract sum as amended by change order is the amount considered necessary to protect the interests of the public and the County; those interests include ensuring that the Work is Acceptable, on schedule, in compliance with this Agreement,

and that the Work reaches Substantial Completion and Final Acceptance. Subject to other deductions the amount retained shall be provided to the Contractor in accordance with Article 37.5 of the Conditions of the Work (Project Closure).

- B. When making payments, Contractor or subcontractor(s) shall not retain, withhold, hold back or in any other manner not pay amounts owed for Work performed. For additional information regarding retainage and the Prompt Payment Act (see Section 57-28-5, NMSA 1978).
- C. Contractor and subcontractors shall make prompt payment to their subcontractors and suppliers for amounts owed for Work performed on the construction project within twenty-one (21) Days after receipt of payment from the County, contractor or subcontractor. If the Contractor or subcontractor fails to pay its subcontractor and suppliers by first-class mail or hand delivery within twenty-one (21) Days after receipt of an undisputed request for payment, the Contractor or subcontractor shall pay interest to its subcontractors and suppliers beginning on the 22nd 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 all tiers of contractors, subcontractors and suppliers (see Section 57-28-1, et. seq. NMSA 1978). The payment by the County to the Contractor is not a condition precedent for payment by the Contractor to any subcontractor or supplier. A zero dollar (\$0.00) Progress Payment by the County does not relieve the Contractor from paying a subcontractor or supplier for Accepted Work.
- D. In preparing estimates the material delivered on the site and preparatory work done may be taken into consideration.
- E. All material and work covered by partial payments made shall thereupon become the sole property of the County, but this provision shall not be construed as relieving the Contractor from the sole responsibility for the care and protection of materials and work upon which payments have been made or the restoration of any damaged work, or as a waiver of the right of the County to require the fulfillment of all of the terms of this 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 furnishers of machinery and parts thereof, equipment, power tools, and all supplies, including commissary, incurred in the furtherance of the performance of this contract. The Contractor shall, at the County's request, furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged, or waived. If the Contractor fails so to do, then the County may, after having served written notice on the said Contractor, either pay unpaid bills, of which the County has written notice, direct, or withhold from the Contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the Contractor shall be resumed, in accordance with the terms of this contract, but in no event shall the provisions of this sentence be construed to impose any obligations upon the County to either the Contractor or its Surety. In paying any unpaid bills of the Contractor, the County shall be deemed the agent of the Contractor, and any payment so

made by the County shall be considered as a payment made under the contract by the County to the Contractor and the County shall not be liable to the Contractor for any such payments made in good faith.

- G. Contractor shall not construe any Progress Payment to be an Acceptance of any defective Work or improper material(s). Acceptance of Work by the County for the purposes of Progress Payments does not constitute Final Acceptance of the Work.
- H. Only items identified by the Contractor in its proposal or cost quote as “Materials Stored or Stockpile” are eligible for Stockpile payment. After measurement, partial stockpile payments to the Contractor may be made for item on hand not to exceed 50% of the bid item price under the following conditions:
  - 1. The items will be incorporated into the Work;
  - 2. The items are delivered to the project or to a storage place approved by the County;
  - 3. The delivered items meet the requirements of this contract including Article 5.2 of the Conditions of the Work (Inspection and Testing of Materials, Certificates of Compliance; Inspection of Work; Removal of Unacceptable and Unauthorized Work) and,
  - 4. The Contractor submits certified a paid invoice to the County.
- I. **Non-Conformance.** If the Contractor fails to comply with all material terms and conditions of the Contract Documents and this Agreement, the County may withhold an additional 25% as a Non-Conformance from each Progress Payment and subsequent Progress Payments in addition to retainage until the Contractor fully complies with the Contract Documents and this Agreement. Release of Non-Conformance withholdings shall be processed at the next scheduled Progress Payment after the resolution of the Non-Conformance.
- J. Nothing in this Article prevents the County from withholding application and certification for payment because of the following: unsatisfactory job progress, defective construction not remedied, dispute Work, third party claims filed or reasonable evidence that a claim will be filed, failure of the Contractor to make timely or proper payment for labor, equipment and materials, damage to the County, reasonable evidence that the Work cannot be completed or the unpaid balance of this contract, or for retainage. The Contractor is not entitled to late payment charges, including late payment charges pursuant to § 13-1-158, NMSA 1978, associated with any payment retained under this Article.
- K. **Automatic Non-Conformance.** These items do not follow the Potential Non-Conformance process below. The failure to comply will automatically result in the issuance of a Non-Conformance and withholding of an additional 25% as a Non-Conformance from each Progress Payment. The following items shall be provided in the timeframes in their respective Articles in this Agreement or Sections of the NMDOT Standards:

1. The Certificate of Compliance according to Article 5.2 of the Conditions of the Work (Inspection and Testing of Materials, Certificates of Compliance; Inspection of Work; Removal of Unacceptable and Unauthorized Work) for materials that are required to be Buy America compliant according to Section of the NMDOT Standards.
  2. Schedule submittals within the timeframes in Article 11 of the Conditions of the Work (Construction Schedule and Periodic Estimates); and.
  3. The Contractor's prompt payment to subcontractors for undisputed Accepted Work.
- L. **Potential Non-Conformance.** For all other items of this contract that the Contractor fails to comply with the County will issue a Notice of Potential Non-Compliance. The Notice of Potential Non-Compliance will be issued on the County form and the Contractor shall have five (5) Days after the Progress Payment cutoff date to resolve the issues listed on the form. If the Contractor resolves all issues on the Notice of Potential Non-Compliance within five (5) Days after the Progress Payment cutoff date then no action to withhold the 25% Non-Conformance amount is taken by the County. If the Contractor does not resolve each issue on the Notice of Potential Non-Compliance within five (5) Days after the Progress Payment cutoff date then the County will withhold an additional 25% as a Non-Conformance from each Progress Payment and subsequent Progress Payments in addition to Retainage until the Contractor fully complies with this contract.
- M. For safety items the County will include a timeframe to resolve the issue in the Notice of Potential Non-Conformance that may be other than (5) Days after the Progress Payment cutoff date. If the Contractor fails to resolve the safety issue in the Notice of Potential Non-Compliance, then the County will withhold an additional 25% as a Non-Conformance from each Progress Payment and subsequent Progress Payments in addition to Retainage until the Contractor fully complies with this contract.
- N. **Scope of Payment.** The Contractor shall receive and Accept compensation in accordance with the Contractor's bid or proposal for performing the Work in an Acceptable manner. The compensation associated with the bid shall include the risks, losses, damages and expenses that, when considering the nature of the Work and having exercised pre-bid due diligence, should have been reasonably expected by the Contractor in prosecuting the Work. The Contractor shall receive and Accept compensation provided for in this Agreement as full payment for furnishing all materials and for performing all Work under this Agreement in a complete and acceptable manner subject to Article 6.2 of the Agreement Between County and Contractor for Construction (No Waiver of Legal Rights; Acceptance of Final Payment Constitutes Release). The Contractor's bid item unit price is presumed to be based on its exercise of pre-bid due diligence and considers all risk, loss, damage, or expense of whatever character arising out of the nature of the Work. The County will pay for the approved actual quantities of material incorporated into the Work unless otherwise provided in this Agreement. The County will only pay for pay items listed in this Agreement. Items not included in this Agreement shall be considered incidental, unless otherwise indicated. The County will not pay separately for Work incidental to the completion of a pay item, or pay for the incidental Work under another pay

item; except as provided in Article 37.38 of the Conditions of the Work (Rights in and Use of Materials Found on the Work). Payment for any pay item shall be full compensation for all Work necessary to complete the pay item.

- O. When a contract item specification references another specification to complete the Work, the pay item referenced will not be measured or paid for separately unless otherwise stated in this Agreement. *For example, the specification for contract item "A" refers to specification "B" the pay items in "B" will not be paid for. The payment for "A" will be full compensation for Work as described in the specification for contract item "A."*
- P. **Contractor shall not receive payment for corrective Work.** Corrective Work is Work required by the County to make previously unacceptable Work Acceptable. The County may Accept portions of the Work at an adjusted price in accordance with the relevant pay adjustment provisions of this Agreement. The adjusted price only applies to the specific Accepted portion of the Work.

## **ARTICLE 6 FINAL PAYMENT**

### **6.1 FINAL PAYMENT**

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

### **6.2 NO WAIVER OF LEGAL RIGHTS; ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE**

- A. Upon completion of the Work the County will pay the Final Payment. Payment of the final payment shall not preclude the County from correcting any measurement, estimate, or certificate made before or after completion of this Agreement, nor from recovering from the Contractor or Surety or both, overpayments sustained because the Contractor failed to fulfill the obligations under this Agreement. A waiver on the part of the County of any breach of any part of this Agreement shall not be held to be a waiver of any other subsequent breach. The lack of discovery or rejection of a defect shall not preclude, nor obligate the County to Accept the defect. The Contractor without prejudice to the terms of this Agreement, shall be liable to the County for latent defect, fraud, or such gross mistakes as may amount to fraud, and for warranty and guarantee. The Contractor shall reimburse or refund the County for any overpayment in response to a request for refund or overpayment within thirty (30) Days of the County's request.
- B. The acceptance by the Contractor of Final Payment shall be and shall operate as a release to the County of all claims and all liability to the Contractor for all things done or furnished in



connection with 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, shall operate to release the Contractor or its sureties from any obligations under this contract or the Performance and Payment Bond.

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

**SANTA FE COUNTY**

\_\_\_\_\_  
Anne T. Hamilton, Chair  
Santa Fe County Board of County Commissioners

**ATTESTATION:**

\_\_\_\_\_  
Katharine E. Clark  
Santa Fe County Clerk

\_\_\_\_\_  
Date

Approved as to form:

\_\_\_\_\_  
Jeff Young  
Santa Fe County Attorney

\_\_\_\_\_  
Date

Finance Division:

\_\_\_\_\_  
Yvonne S. Herrera  
Finance Director

\_\_\_\_\_  
Date

**CONTRACTOR:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print name and title

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

**1.0 DEFINITIONS**

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

- 1.1** *Acceptance or Accept, Accepted and Acceptable* The determination by the County that materials and the Work are in compliance with the Contract Documents and the terms and conditions of this contract. The process by which the County determines whether or not the quality of produced material or Work is Acceptable under this Agreement, including sampling, testing, certifications and assessment of test results. Acceptance shall not be construed as a warranty by the County that the Contractor's methods will succeed or will be the most efficient or economical method of accomplishing the Work, nor shall the term be construed that the actual materials used in construction will perform as represented in test results supplied the County by the Contractor.
- 1.2** *Application for Payment* Contractor's written request for payment for completed portions of the work and, for materials delivered or stored and properly labeled for the respective project.
- 1.3** *Change Order* A written document between the County and the Contractor signed by the County and the Contractor authorizing a change in the Work or an adjustment in the contract sum or the contract time. A change order may be signed by the Engineer, provided it has 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. A change order is the only method authorized for changing this contract. A change order may consist of a Field directive or Field sheet.
- 1.4** *Calendar Day* Each and every Day shown on the calendar, beginning and ending at midnight.
- 1.5** *Certificate of Compliance* A certificate, including a signature by a person having legal authority to act for the manufacturer, stating that the procedure, assembly, or material to be incorporated into the project was fabricated in accordance with and meets the applicable terms of the Contract Documents and this Agreement.
- 1.6** *Contract Time* 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 this contract.
- 1.7** *Contractor* is a person, firm or corporation with whom the contract is entered into with the County.

- 1.8 Construction Documents** All drawings, specifications and addenda associated with a specific construction project.
- 1.9 Construction Schedule or Schedule** A schedule in form satisfactory to the County, showing the proposed dates of commencement and completion of each of the various subdivisions of work required under the Contract Documents and the anticipated amount of each monthly payment that will become due the Contractor in accordance with the progress schedule.
- 1.10 Day** The word “Day” means a calendar day of 24 hours measured from midnight to the next midnight.
- 1.11 Labor and Material Payment Bond** A written form of security from a Surety (bonding) company to the County, on behalf of an acceptable prime Contractor or subcontractor, guaranteeing payment to the County in the event the Contractor fails to pay for all labor, materials, equipment, or services in accordance with this contract. (see Performance Bond and Surety Bond).
- 1.12 Contract Sum Agreement (See Stipulated Sum Agreement)**
- 1.13 Contract Sum Bid** A single entry amount to cover all labor, equipment, materials, services, and overhead and profit for completing the construction of a variety of unspecified items of work without the benefit of a cost breakdown.
- 1.14 Contract Sum Contract** A written contract between the County and Contractor wherein the County agrees to pay the contractor a specified sum of money for completing a scope of work consisting of a variety of unspecified items or work.
- 1.15 Field directive or field sheet** A type of Change Order that does not require the Contractor’s signature.
- 1.16 Major Contract Item or Major Item** Any item, excluding mobilization, having bid item price of 10% or more of the total bid amount for this contract, minus the amount bid for mobilization.
- 1.17 NMDOT Standards** The New Mexico Department of Standard Specifications for Highway and Bridge Construction (2019 Ed.)
- 1.18 Payment Bond** A written form of security from a Surety company to the County, on behalf of an acceptable prime contractor or subcontractor, guaranteeing payment to all persons providing labor, materials, equipment, or services in accordance with this contract.
- 1.19 Performance Bond** A written form of security from a Surety company to the County, on behalf of an acceptable prime contractor or subcontractor, guaranteeing the completion of the work in accordance with the terms of this contract.
- 1.20 Progress Payment** A payment from the County to the Contractor determined by calculating the difference between the completed work and materials stored and a predetermined schedule of

values or unit costs. (see Schedule of Values, Unit Costs).

- 1.21 *Progress Schedule*** A pictorial or written schedule (including a graph or diagram) that shows proposed and actual start and completion dates of the various work elements.
- 1.22 *Punch List*** A list of items to be completed or corrected, prepared by the Engineer, 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 work in accordance with the Contract Documents.
- 1.23 *Schedule of Values*** A statement furnished by the Contractor to the Engineer and the County reflecting the portions of the contract sum allotted for the various parts of the work and used as the basis for reviewing the Contractor's Applications for Payment.
- 1.24 *Services*** Includes services performed, workmanship, and material furnished or utilized in the performance of services.
- 1.25 *Stipulated Sum Agreement*** A written agreement in which a specific amount is set forth as the total payment for completing the contract (See contract sum).
- 1.26 *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.
- 1.27 *Unit Price Contract*** A written contract wherein the County agrees to pay the Contractor a specified amount of money for each unit of work successfully completed as set forth in this contract.
- 1.28 *Unit Prices*** A predetermined price for a measurement or quantity of work to be performed within a specific contract. The designated unit price would include all labor materials, equipment or services associated with the measurement or quantity established.
- 1.29 *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 Engineer will determine (between the end of the day and noon of the next day) if the County will charge a Working Day. If the Contractor was able to effectively prosecute Work on a critical path item for six (6) or more hours on a Saturday, Sunday or County-recognized Holiday, the Engineer may charge a Working Day.
- 1.30 *Work on (at) the project*** is work to be performed at the location of the project, including the transportation of materials and supplies to or from the location of the project by employees of the Contractor and any subcontractor.

## **2. CONTRACT AND CONTRACT DOCUMENTS**

- 2.1 Entire Agreement.** This Agreement consisting the General Conditions and Conditions of the Work

represents the entire contract between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto. This Agreement incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this Agreement, and all such conditions, understandings, and agreements have been merged into this written Agreement. No prior condition, agreement, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless incorporated in this Agreement.

- 2.2** Relationship of Contract Documents. The Contract Documents are complementary, and any requirement of one Contract Document shall be as binding as if required by all.
- 2.3** Conflicting Conditions. Any provisions in any of the Contract Documents which may be in conflict or inconsistent with any of the paragraphs in these General Conditions shall be void to the extent of such conflict or inconsistency.

### **3. PLANS, SPECIFICATIONS AND ADDENDA**

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

### **4. CONTRACT SECURITY – BONDS**

- 4.1** Performance Bond. The Contractor shall furnish a performance bond in an amount at least equal to one 100% of the contract sum as security for the faithful performance of this contract. The performance bond and the payment bond may be in one or in separate instruments in accordance with local law.
- 4.2** Payment Bond. The Contractor shall provide payment bond in an amount not less than 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 shall remain in effect until one year after the date when final payment becomes due.
- 4.3** Additional or Substitute Bond. If at any time the County for justifiable cause shall be or become dissatisfied with any Surety or sureties, then upon the Performance or Payment Bonds, the Contractor

shall within five (5) Days after notice from the County so to do, substitute an acceptable bond (or bonds) in such form and sum and signed by such other Surety or sureties as may be satisfactory to the County. The premiums on such bond shall be paid by the Contractor. No further payments shall be deemed due nor shall be made until the new Surety or sureties shall have furnished such an acceptable bond to the County.

- 4.4** Labor and Material Bond. The Contractor shall provide to the County Labor and Material Bond in an amount equal to the required payments by the Contractor to pay specified subcontractors, laborers, and materials suppliers associated with the project.

## **5. TERMS AND MEANINGS**

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

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

## **6. COMPLIANCE WITH APPLICABLE LAW, CHOICE OF LAW**

- 6.1** This Agreement shall be governed exclusively by the provisions hereof and by the laws of the State of New Mexico and applicable ordinances of Santa Fe County.
- 6.2** In performing its obligations hereunder, the Contractor shall comply with all applicable laws, ordinances, and regulations, including Santa Fe County Ordinance 2014-1 (Establishing a Living Wage). Before the start of the Work, the Contractor shall be fully informed and make the necessary contact with municipal, County and state agencies concerning obligation related to all applicable federal, state and applicable County Ordinances and regulations, and all orders and decrees of bodies or tribunal having jurisdiction or authority. The Contractor, subcontractors and suppliers shall at all times observe and comply with all such laws, Ordinances, regulations orders, and decrees; and protect and indemnify the County and its officers, employees and agents against all claims or liability arising from or based on the violation of such law, Ordinances, regulations, orders or decrees, by the

Contractor, its officers, employees or agents, subcontractors or suppliers.

- 6.3** Minimum Wage Rates. The Contractor, all subcontractors and sub-subcontractors warrants and agree to will comply with all applicable provisions of the New Mexico Public Works Minimum Wage Act as outlined in the Bid Documents. Wage rates are not applicable to projects costing less than \$60,000.
- 6.4** This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules. Contractor and the County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be state district courts of New Mexico.
- 6.5** Pursuant to 13-1-191, NMSA 1978, reference is hereby made to the criminal laws of New Mexico, including §30-14-1, §30-24-2, and §30-41-1 through 3, NMSA 1978, which prohibit bribes, kickbacks, and gratuities, violation of which constitutes a felony. Further, the Procurement Code, 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation.
- 6.6** New Mexico Tort Claims Act. By entering into this Agreement, neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred by the County in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, et seq., NMSA 1978, as amended. The County and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act. County employees shall bear no personal liability in carrying out the provisions of this contract or in exercising powers of authority granted to them by this contract, it being understood that in such matters they act solely as agents and representatives of the County. Furthermore, the County and the Contractor specifically agree that the provisions of this Agreement do not make anyone, including any subcontractor or supplier, a third-party beneficiary or authorize anyone not a party to this Agreement to maintain an action for damages under this Agreement.
- 6.7** Provision Required by Law Deemed Inserted. Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

## **7. EFFECTIVE DATE AND TERM**

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

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

## **8. TERMINATION**

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

**8.2** Termination for Convenience of the County. The County may, in its discretion, terminate this Agreement at any time for any reason by giving the Contractor written notice of termination. The notice shall specify the effective date of termination, which shall not be less than fifteen (15) Days from the Contractor's receipt of the notice.

**8.2.1 Submittals and Procedures.** When the County issues a notice for termination effective on a certain date the County will pay:

1. For the actual number of units or items of Work completed at the bid item unit price;
2. For items of Work started but not completed as negotiated and mutually agreed. Negotiated amount shall not exceed the bid item unit price; and
3. For invoices to restock or for invoices for material on hand for Work not yet started. Invoices shall be provided by the Contractor documenting both costs and the County will determine how to proceed, including delivery of the material if needed. For purposes of this section, materials on hand are materials that are ordered and have been manufactured before the date the notice of termination is issued by the County.

After the Contractor receives the termination notice from the County, and no agreement or a partial agreement is reached about the termination costs, then Contractor shall submit any claim for damages or costs within thirty (30) Days of the date of the notice of termination or shall waive such claim. The claim shall be submitted in accordance with Article 12 of the General Conditions (Administrative Remedy; Aggrievement Procedures During Contract Administration) and Article 37.42 of Conditions of the Work (Notice of Intent to Claim). The claim shall be limited to the following costs items:

1. Actual and direct bidding and project investigative costs which are separate and excluded from home office overhead costs;
2. Actual and direct mobilization costs, mobilization paid by the County



exceeding actual and direct mobilization costs may be subject to reimbursement by the Contractor;

3. If Work is stopped in advance of the termination date, idle equipment time using stand-by rental rates at 50% of the Blue Book equipment rental rate, without the cost of operating personnel;
4. If Work is stopped in advance of the termination date, idle labor costs;
5. Unpaid supplier costs;
6. Accounting charges involved in claim preparation;
7. Written and executed agreements for private land usage; and
8. An additional ten percent (10%) of the total of items 2, 3, 4 and 5 to cover home office overhead and salaried labor expenses.

The Contractor shall provide the records required by Article 12.1.1 of the General Conditions (Submittal of the Claim to the Project Manager) to determine the validity and amount of each claim item. Contractor shall not be entitled to recover anticipated loss of profit or any category of damages excluded under Article 12.6 of the General Conditions (Compensation for Claims). Full or partial contract termination does not relieve the Contractor of its contractual responsibilities for the completed Work, nor will it relieve the Surety of its obligation for claims arising out of the completed Work.

**8.3 Termination of Contract; No Fault of Contractor** shall be governed by Section 108.10 of the NMDOT Standards. The term “Department” shall be interpreted as a reference to the “County”, the term “this Contract” shall be interpreted as a reference to this Agreement and the term “Secretary” shall be interpreted as a reference to the County.

## **9. APPROPRIATIONS AND AUTHORIZATIONS**

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

## **10. AMENDMENTS, MODIFICATIONS – CHANGE ORDERS**

This Agreement or Contract Documents may be amended by a Change Order (see Exhibit I) to allow for additions, deletions, and revision as specified in Article 2 (the Work) of the Agreement between the County and Contractor or to amend terms and conditions of this Agreement. No modifications, limitations, waivers or discharge of this Agreement or any of its terms shall bind the County unless

made in a written Change Order signed by the County. A course of performance or course of dealing on this Agreement or any other contract between the County and the Contractor shall not constitute a modification or waiver of this Agreement and shall not give rise to any claims including any cause of action based upon promissory estoppel, estoppel, waiver, or detrimental reliance.

## **11. INDEMNIFICATION; NOTICE OF CLAIM PROCEDURES**

- 11.1** The Contractor shall defend, indemnify, and hold harmless the County and its elected officials, agents, and employees from any losses, liabilities, damages, demands, suits, causes of action, judgments, costs or expenses (including but not limited to court costs and attorneys' fees) resulting from or directly or indirectly arising out of the Contractor's act or omission of its obligations under this Agreement, including but not limited to the Contractor's breach of any representation or warranty made herein.
- 11.2** The Contractor agrees that the County shall have the right to control and participate in the defense of any such demand, suit, or cause of action concerning matters that relate to the County and that such suit will not be settled without the County's consent, such consent can not to be unreasonably withheld. If a conflict exists between the interests of the County and the Contractor in such demand, suit, or cause of action, the County may retain its own counsel to represent the County's interest.
- 11.3** The Contractor shall establish a local contact telephone number for filing any claim. In addition, post the name the Contractor and telephone number at each approach and departure to the project. The Contractor shall ensure that all construction vehicles used for the project have clean, unobstructed license plates, and shall mark vehicles legibly with the appropriate company name. The Contractor shall assign an individual by the date of the pre-construction conference, readily available during normal working hours, to respond to claims from the public for losses alleged to have occurred within the project, whether arising from the Contractor or subcontractor action or inaction. The Contractor shall provide claimants with a written outline of the Contractor's claim procedure, along with a written copy of the Contractor's name, address, and telephone number together with the name and title of the individual assigned to handle claims from the public and provide a copy of the same to the Project Manager. The Contractor shall maintain a status report of claims filed, including the name, address, and telephone number of the claimant, the nature of the claim, pertinent findings regarding the claim, and a statement regarding the resolution of the claim. The Contractor shall provide the status report to the Project Manager upon request.
- 11.4** The Contractor's obligations under this section shall not be limited by the provisions of any insurance policy the Contractor is required to maintain under this Agreement.

## **12. ADMINISTRATIVE REMEDY; AGGRIEVEMENT PROCEDURE DURING CONTRACT ADMINISTRATION**

- 12.1 Administrative Remedy.** This Article governs the administrative remedy procedure to resolve all claims, unless otherwise specified in this Agreement. The administrative remedy procedure is the sole contractual procedure to resolve claims. No claims shall be accorded any level of review unless the procedure below is followed sequentially. The Contractor shall not proceed to the subsequent step

without a written determination from the preceding step. The sequential steps of the process are as follows:

- |          |   |
|----------|---|
| Step I.  | Notice of Intent to Claim;  |
| Step II  | Submittal of the claim to the Project Manager;                          |
| Step III | Engineer review and decision;   |
| Step IV  | Mediation by a mutually agreed upon professional mediator;              |
| Step V   | Litigation in District Court, First Judicial District, Santa Fe County. |

The complete terms of a resolved claim, regardless of the level of the administrative remedy, shall be documented and memorialized by a change order executed by the Contractor and the County. The executed change order shall represent a final agreement to the total additional compensation and time due for any and all Work and items pertaining to the Work associated with the change order. Unless otherwise provided in the terms of the change order, the executed change order shall operate as an accord and satisfaction of the claim and shall operate as a bar to any further claim by the Contractor. Each party shall bear its own attorneys' fees, costs and expert fees. The Engineer and County shall dismiss a Contractor's claim for failure to comply with the time limitations, requirements and procedures set forth in this Article and Article 37.42 of the Conditions of the Work (Notice to Intent to Claim).

**12.1.1 Submittal of the Claim to the Project Manager** (Step II above) shall be governed by Section 105.20.1 of the NMDOT Standards. The term "Department" shall be interpreted as a reference to the "County". The County's Certification of Claim form is attached hereto as Exhibit K. The County's Claim form is attached hereto as Exhibit L.

**12.2** 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 Article 6.2 of the Agreement Between Santa Fe County and Contractor (No Waiver of Legal Rights; Acceptance of Final Payment Constitutes Release), shall be presented in the form of a written request accompanied by supporting data to the Engineer for formal decision, with a copy to the other party. Such formal decision of the Engineer is binding upon the Contractor and the County unless either or both notify each other and the Engineer in writing within fifteen (15) Days of their receipt of the decision that they are unwilling to abide by the Engineer's decision, are thereby aggrieved in connection with the decision, and are separately exercising such rights as either may have under the Contract Documents or by law and regulation. If the Engineer fails to provide a written decision or a reasonable schedule to issue a written decision within ten (10) Days after the County or the Contractor has presented its request, that party may consider itself aggrieved and may proceed to exercise its rights.

**12.3** A settlement agreement or supplemental agreement signed by the County and the Contractor shall supersede and cancel any other dispute resolution proceedings regarding the same matter.

**12.4** Unless work is stopped or payment withheld in accordance with the conditions of this contract, or unless otherwise agreed in writing, the Contractor shall carry on the work and maintain its progress during any dispute resolution proceedings, and the County shall continue to make payments to the

Contractor in accordance with the Contract Documents.

- 12.5** If the Work is suspended by the Project Manager in writing for an unreasonable time (not originally anticipated, customary, or inherent to the construction industry), the Contractor may submit to the Project Manager Notice of Intent to Claim as provided in Article 12 above and Article 37.42 of the Conditions of the Work, which must be accompanied by a propose revised schedule.
- 12.6 Compensation for Claims.** The Contractor is not entitled to late payment charges, including late payment charges pursuant to § 13-1-158, NMSA 1978, associated with any claim or disputed construction services and materials. The County will pay the Contractor to late payment charges as authorized by § 13-1-158, NMSA 1978, for construction services and materials not the subject of a disputed claim or subject to retainage or withheld Progress Payments and that have been certified by the County to have been received and Accepted. The County will pay the Contractor late payment charge on undisputed, qualified, delayed progress payments for certified approved and accepted Work in accordance with Article 5 of the Agreement between Santa Fe County and Contractor (Progress Payments), that are not the subject of a disputed claim. The Contractor is barred from seeking a claim, a remedy, compensation, time, cause of action, or any damages except as provided by Article 12 of the General Conditions (Administrative Remedy; Aggrievement Procedure During Contract Administration), Article 37.42 of the Conditions of the Work (Notice of Intent to Claim), and this paragraph.
- 12.7** The Contractor shall not be entitled to any consequential, indirect, punitive, exemplary, special or incidental damages. When the County determines entitlement the Contractor shall only receive additional compensation and time as provided by Articles 37.48 (Significant Change in the Character of the Work), Article 20 (Subsurface Conditions Found Different) and Article 20.2 (Differing Site Conditions) of the Conditions of the Work, Articles 16 and 16.2 of the Conditions of the Work (Extras; Extra Work) (Payment for Extra Work), Article 37.64 of the Conditions of the Work (Cooperation with Owner of Railroad Right of Way), Article 11 of the Conditions of the Work (Protection of Work; Maintenance During Construction; Property - Emergency), Article 22.2.14 (Determination and Extension of Contract Time), Article 8.3 of the General Conditions (Termination of Contract; No Fault of Contractor), Article 37.11 of the Conditions of the Work (Measurement and Payment), and this paragraph.
- 12.8** Except as otherwise agreed to by the Contractor and the County in a written change order, all claims and causes of action arising out of the performance and administration of this contract shall be governed by this Article including: Claims for Delay, claims for additional compensation and time, contract adjustment, claims seeking extension of contract time, claims seeking delay damages, pass-through subcontractor claims, cause of action for breach of contract, promissory estoppel, equitable estoppel, waiver, detrimental reliance, bad faith breach of contract, breach of the covenant of good faith and fair dealing, or any other cause of action arising out of the performance of the Work or this Agreement. The compensation, time and damages provided for in this paragraph are exclusive, complete, and apply regardless of whether such claims are to be resolved pursuant to the procedures set forth in Article 12.1 of the General Conditions (Administrative Remedy; Aggrievement Procedure During Contract Administration), or any other legal or administrative procedure, whether or not authorized herein, including mediation or appeal.

### **13. DISPUTE RESOLUTION**

- 13.1** Either County or Contractor may request mediation pursuant to the New Mexico Public Works Mediation Act, 13-4C-1 NMSA 1978, of any claim before such decision become final and binding. The request for mediation shall be submitted in writing to the other party. Timely submission of the request shall stay the effect of Article 12.1 above.
- 13.2** County and Contractor shall participate in the mediation process in good faith. The process shall be completed within sixty (60) Days of filing of the request. The mediation shall be governed by the rules for mediation pursuant to the New Mexico Public Works Mediation Act.
- 13.3** If the dispute is not resolved by mediation, the dispute shall be resolved through litigation in the district court. The parties agree that the exclusive forum for such litigation shall be the State of New Mexico District Court for the First Judicial District at Santa Fe, New Mexico. Contractor irrevocably consents to the jurisdiction of said Court and agrees to accept service of a summons and complaint by mail or commercial courier service in accordance with Rule 1-004(E) (3) NMRA.

### **14. INSURANCE**

- 14.1** The Contractor shall not commence the Work under this contract until it has obtained all the insurance required under this Article and such insurance has been approved by the County, nor shall the Contractor allow any subcontractor to commence work on its subcontract until the insurance required of the subcontractor has been so obtained and approved.
- 14.2** Proof of Carriage of Insurance. The Contractor shall furnish the County with certificates showing the type, amount, class of operations covered, effective dates and date of expiration of policies. Such certificates shall also contain substantially the following statement: "Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions".
- 14.3** General Conditions. The Contractor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico. All insurance companies providing policies obtained to satisfy the insurance requirements must have an A.M. Best rating of A-, VII or better.
- 14.4** General Liability Insurance, Including Automobile. The Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,000,000.00 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the County by the Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Agreement is an insured contract. Such insurance shall also include, by its terms or appropriate endorsements, Bodily Injury, Property Damage, Legal liability, Personal Injury, Blanket Contractual, Independent Contractors, Premises, Operations and Products and Completed Operations. Such

insurance shall also include blanket coverage for Explosion, Collapse, and Underground (XCU) hazards. Products and Completed Operations coverage shall be continued for a minimum of eight (8) years from Project Completion. The evidence of insurance shall provide for ten (10) Days' written notice of cancellation for nonpayment of premiums, or 45 days' written notice of cancellation for any other reason, including nonrenewal. Evidence of the insurance that contains the phrase "will endeavor to" preceding all references to provisions of notice by the insurance company shall be unacceptable.. The Santa Fe County shall be a named additional insured on the policy. The Contractor shall not commence the Work until it has complied with this Article and the County has Approved the Contractor's evidence of insurance.

- 14.5** Excess (Umbrella) Liability Insurance. Excess (Umbrella) Liability Insurance. The Contractor shall provide Umbrella or Excess Liability insurance with limits of not less than \$10,000,000 per occurrence, which will provide bodily injury, personal injury, and property damage liability at least as broad as the primary coverages set forth above, including commercial general liability and automobile liability.
- 14.6** Contractor's Pollution Legal Liability Coverage. The Contractor shall provide pollution legal liability coverage of Work under this Agreement. The limit of liability per occurrence shall be at least \$5,000,000 and the total aggregate shall be at least \$10,000,000.
- 14.7** Professional Liability Insurance (Errors and Omissions Liability). The Contractor and/or Subcontractor shall provide Professional Liability Insurance Coverage for the protection of all design and engineering professionals associated with this Agreement. The Contractor will provide contractual Limits of Liability of \$2,000,000 per claim (or occurrence). The Contractor, at its discretion, may elect to allow limits less than those imposed on the Contractor from its Subcontractors; however, the Contractor shall accept the responsibilities and liabilities to satisfy the contract requirements for the Subcontractor, and such limits shall not be less than \$1,000,000 per claim (or occurrence). The policy will have a three (3) year extended reporting period from the Final Acceptance Date with respect to all events that occurred, but were not reported, during the term of the policy. The policy shall protect against any negligent act, error or omission arising out of design or engineering including environmental design or consulting with respect to the Agreement. The policy shall have a retroactive date of no later than the date the first design and/or engineering Activities have been conducted by the design professionals and contractors associated with this Agreement.
- 14.8** Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance. The Contractor shall require each of its subcontractors to procure and to maintain during the life of its subcontract, Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance of the type and in the amounts specified in 14.4 above.
- 14.9** Workers' Compensation Insurance. The Contractor shall comply with the provisions of the Workers' Compensation Act, 52-1-1 to 52-1-70, NMSA 1978. The Contractor shall procure and shall maintain during the life of this contract Workmen's Compensation Insurance as required by applicable State law for all of its employees to be engaged in work at the site of the project under this contract and, in case of any such work sublet, the Contractor shall require the subcontractor

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

- 14.10** Scope of Insurance and Special Hazards. The insurance requirement under subparagraphs 14.4 and 14.5 hereof shall 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.
  
- 14.11** Builder's Risk Insurance (Fire and Extended Coverage). Until the project is completed and accepted by the County, the County, or Contractor at the County's option is required to maintain Builder's Risk Insurance (fire and extended coverage) on a 100% completed value basis on the insurable portion of the project for the benefit of the County, the Contractor, subcontractors as their interests may appear. The Contractor shall not include any costs for Builder's Risk Insurance (fire and extended coverage) premiums during construction unless the Contractor is required to provide such insurance; however, this provision shall not release the Contractor from its obligation to complete, according to plans and specifications, the project covered by the contract, and the Contractor and his Surety shall be obligated to full performance of the Contractor's undertaking.
  
- 14.12** Railroad Protective Insurance. In addition to the above, and if the project affects railroad lines, the Contractor shall furnish evidence to the County that, with respect to the operation the Contractor or any of its subcontractors perform, the Contractor has provided for and on behalf of the Railroad Company, and each Railroad Company when more than one is involved, Railroad Protective Public Liability and Property Damage Insurance provided for a combined single limit of \$5,000,000 per occurrence with an aggregate limit of \$10,000,000 applying separately for each annual period for: (1) all damages arising out of bodily injuries to or death of one or more persons; and (2) all damages arising out of injury to or destruction of property. Unless otherwise stated in this Agreement, the Contractor shall not begin Work in railroad-owned Right of Way (ROW) before entering into an agreement with the railroad. The County is not liable for any additional costs or expenses of the Project resulting from the railroad's reallocation of its labor forces assigned to complete railroad Work in the event of an emergency when the owner of the railroad ROW believes such reallocation is necessary to provide for the immediate restoration of the railroad operations or to protect persons or property on or near any other property owned by the railroad.
  
- 14.13** Increased Limits. If, during the life of this Agreement, the New Mexico State Legislature increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended), the Contractor shall increase the maximum limits of any insurance required herein.

- 14.14** Additional insured. Santa Fe County will be listed as an additional insured on all policies, and proof of coverage must be provided before work begins. Contractor shall maintain adequate insurance in at least the maximum amounts which the County could be liable under the New Mexico Tort Claims Act. It is the sole responsibility of the Contractor to be in compliance with the law.
- 14.15** Full Force and Effect. The commercial general liability, excess (umbrella) liability, contractor's pollution liability and professional liability insurance coverage requirements will remain in full force and effect throughout the term of all warranties or as otherwise required by the Contract Documents, whichever is greater.
- 14.16** No Recourse. There shall be no recourse against the County for payment of premiums or other amounts with respect to the insurance provided by the Contractor, or for deductibles under these policies.
- 14.17** Indemnification. The insurance coverage provided hereunder shall support, but is not intended to limit, the Contractor's indemnification obligations under Article 11 above.

## **15. INDEPENDENT CONTRACTOR**

- 15.1** The Contractor and the Contractor's agents and employees are independent contractors performing professional, technical and construction services for the County and are not employees of the County. The Contractor and the Contractor's agents and employees shall not accrue leave, retirement, insurance, bonding, use of County's vehicles, or any other benefits afforded to employees of the County as a result of this Agreement.
- 15.2** The Contractor shall not subcontract any portion of the services to be performed under this Agreement without prior written approval of the County.
- 15.3** The Contractor shall maintain detailed time records which indicate the date, time and nature of services rendered. These records shall be subject to inspection by the County and the State Auditor. The County shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the County to recover excessive illegal payments.

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

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



- 16.2** No official of the County who is authorized in such capacity and on behalf of the County to negotiate, make, accept or approve, or to take part in negotiating, making accepting or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part hereof. No officer, employee, architect, attorney, engineer or inspector of or for the County who is authorized in such capacity and on behalf of the County to exercise any legislative, executive, supervisory or other similar functions in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the project.
- 16.3** The Contractor warrants that the Contractor presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under this Agreement.

## **17. ASSIGNMENT**

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

## **18. SUBCONTRACTING**

- 18.1** The Contractor shall not subcontract or delegate any portion of the services to be performed under this Agreement without the advance written approval of the County. Any attempted subcontracting or delegating without the County's advance written approval shall be null and void and without any legal effect.
- 18.2** Contractor shall provide to the County a listing of subcontractors within ten (10) Days of contract award.
- 18.3** Contractor shall adhere to all provisions of the Subcontractor's Fair Practices Act 13-4-31 to 13-4-42, NMSA 1978.
- 18.4** Contractor shall provide to the County completed Non-Collusion Affidavit of Subcontractor form and Certification of Subcontractor Regarding Equal Employment Opportunity form for all subcontractors listed.
- 18.5** The Contractor shall not award any work to any subcontractor without prior written approval of the County, which approval will not be given until the Contractor submits to the County a written statement concerning the proposed award to the subcontractor, which statement shall contain such information as the County may require.

- 18.6** The Contractor shall be as fully responsible to the County for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as they are for the acts and omissions of persons directly employed by them.
- 18.7** The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind subcontractors to the Contractor by the terms of the General Conditions and other Contract Documents insofar as applicable to the work of subcontractors and to give the Contractor the same power as regards terminating any subcontract that the County may exercise over the Contractor under any provision of the Contract Documents.
- 18.8** Nothing contained in this contract shall create any contractual relation between any subcontractor and the County.
- 18.9** All work performed for Contractor by a subcontractor or supplier will be pursuant to an appropriate written agreement between Contractor and the subcontractor or supplier which specifically binds the subcontractor or supplier to the applicable terms and conditions of the Contract Documents for the benefit of County. Any contract between Contractor and a subcontractor or supplier shall provide that any remedy or claim for nonpayment of sums due or owing to subcontractor or supplier or services performed or materials provided is against Contractor and not County, subject to any remedy or rights subcontractor or supplier may have under the terms of the Contractor's Performance Bond and Section 13-4-19, NMSA 1978, the New Mexico Little Miller Act.

## **19. PERSONNEL**

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

## **20. NOTICES**

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

To the County: Santa Fe County Public Works  
Attn: , Project Manager  
  
Santa Fe, New Mexico

With a copy to: Santa Fe County  
Attn: , Public Works Director

To the Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

**21. RELEASE**

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

**22. WAIVER**

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

## **CONDITIONS OF THE WORK**

### **1. ADDITIONAL INSTRUCTIONS AND DETAIL DRAWINGS**

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

### **2. SHOP OR SETTING DRAWINGS**

- 2.1** The Contractor shall submit promptly to the Engineer and County two (2) copies of each shop or setting drawing prepared in accordance with the schedule predetermined as aforesaid. After examination of such drawings by the Engineer and the return thereof, the Contractor shall make such corrections to the drawings as have been indicated and shall furnish the Engineer and County with two corrected copies. If requested by the Engineer or the County the Contractor must furnish additional copies. Regardless of corrections made in or approval given to such drawings by the Engineer, the Contractor will be responsible for the accuracy of such drawings and for their conformity to the plans and specifications, unless the Contractor notifies the Engineer and County in writing of any deviations at the time the Contractor furnishes such drawings.
- 2.2** **Plans and Working Drawings** shall be governed by Specifications for Highway and Bridge Construction (2019 Edition) of the NMDOT Standards.

### **3. MATERIALS, SERVICES AND FACILITIES**

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

### **4. CONTRACTOR'S TITLE TO MATERIALS**

- 4.1** No materials or supplies for the work shall be purchased by the Contractor or by any subcontractor subject to any chattel mortgage or under a conditional sale contract or other agreement by which an

interest is retained by the seller. The Contractor warrants that it has good title to all materials and supplies used by it in the work, free from all liens, claims or encumbrances.

**5. INSPECTION AND TESTING OF MATERIALS; CERTIFICATES OF COMPLIANCE; INSPECTION OF WORK; REMOVAL OF UNACCEPTABLE AND UNAUTHORIZED WORK**

- 5.1** All materials and equipment used in the construction of the project shall be subject to adequate inspection and testing by the County in accordance with standards, methods, the Contract Documents and in accordance with accepted standards. The County will pay for all laboratory inspection services, sampling or performance of quality assurance tests and not as a part of this contract. The County will provide test results to the Contractor, as required.
- 5.2** The Contractor shall submit Certificates of Compliance (see Exhibit M) to the County before installing or incorporating materials in the Work and shall ensure each Certificate of Compliance contains all information in the County's Certificate of Compliance form. In addition, documentation required to verify the information on the Certificate of Compliance form shall be submitted with the completed Certificate of Compliance form. Materials inspected and stamped during the manufacturing process by a representative of the County will require the Certificate of Compliance form. The Contractor may provide material purchased in bulk by submitting Certificates of Compliance forms for those materials. Unless otherwise stated in this contract, materials not permanently incorporated into the Work will not require a Certificate of Compliance form. Unless requested in writing by the County's Project Manager, electric items meeting UL (Underwriters Laboratories) approval and underground utility materials meeting ASTM (American Society for Testing and Materials) or AWWA (American Water Works Association) specifications that are so certified or stamped, will not require a Certificate of Compliance form.
- 5.3** Materials of construction, particularly those upon which the strength and durability of the structure may depend, shall be subject to inspection and testing to establish conformance with specifications and suitability for uses intended.
- 5.4** The Contractor shall provide the Project Manager with 48 hour notice for inspection of the Work. Failure by the Contractor to provide the proper notice may result in the County directing the Work performed without inspection to be removed at no cost to the County. The Contractor shall provide the County and Engineer access to the Work and provide all information, equipment, and assistance requested or required to make a complete and detailed inspection of the Work. All materials and each part or detail of the Work shall be subject to inspection by the County.
- 5.5** The Project Manager may direct the Contractor to remove or uncover portions of the finished Work, at any time before Final Acceptance of the Work. The Contractor shall restore the portions of the Work to the standard required by the Contract Documents and this Agreement after the Project Manager's examination. If the examined Work is Acceptable, the County will pay for the removal and restoration as Extra Work under Articles 16 of the Conditions of the Work (Extras; Extra Work) and Article 20.2 of the Conditions of the Work (Differing Site Condition). However, if the examined Work is unacceptable, the Contractor shall remove and restore the Work at no additional cost to the

County.

- 5.6 Action or inaction by the County's inspector shall not relieve the Contractor from any responsibility under this Agreement for Acceptable Work in conformity with the Contract Documents, Plans and Specifications. The failure to properly perform inspections, test or approvals by the County shall not relieve the Contractor from its obligation to perform the Work in strict conformance with this Agreement.
- 5.7 The County may allow a unit of government, another political subdivision, or a railroad corporation to inspect the Work. This inspection shall not make the unit of government, political subdivision, or railroad corporation a party to this Agreement and shall not interfere with the rights of either party.
- 5.8 **Removal of Unacceptable and Unauthorized Work** shall be governed by Section 105.11 of the NMDOT Standards. Work that does not conform to the requirements of this contract shall be unacceptable, unless the Project Manager determines it to be Acceptable under Article 9 of the Conditions of the Work (Contractor's Obligations; Compliance with Contract Documents, Plans and Specifications). Should any defective Work or material be discovered before Final Acceptance, the County will issue a Non-Conformance in accordance with Article 5.1 (I) (Non-Conformance) above.

## 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 Engineer and County, of equal substance and function. It shall not be purchased or installed by the Contractor without the Engineer and County's written approval.

## 7. PATENTS

- 7.1 The Contractor shall hold and save the County and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of 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 shall provide for such use by suitable agreement with the County of such patented or copyrighted design, device or material. It is mutually agreed and understood, that, without exception, the contract price shall include all royalties or costs arising from the use of such design, device or

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

## **8. SURVEYS, PERMITS AND REGULATIONS**

- 8.1** Unless otherwise expressly provided for in the Contract Document or specifications, the County will furnish to the Contactor all surveys necessary for the execution of the Work. The Contractor is required to provide slope staking and quantity verification surveys as part of the Work.
- 8.2** Unless otherwise expressly provided for in the Contract Documents or specifications, the Contractor shall procure and pay all permits, licenses, pay charges, fees, royalties and appropriate taxes, and obtain approvals necessary for the execution of this contract. Prior to beginning Work, the Contractor shall furnish to the County a written list of all permits required for the proper completion of this contract. The list shall clearly identify the type of permit(s) that must be obtained before Work can be started. Copies of fully executed permit shall be furnished the County upon request. The Contactor shall pay all lawful taxes imposed by the state of New Mexico or other political entities.
- 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; COMPLIANCE WITH CONTRACT DOCUMENTS, PLANS AND SPECIFICATIONS**

- 9.1** The Contractor shall and will, in good workmanlike manner, do and perform all Work and furnish all supplies and materials, machinery, equipment, facilities and means, except as herein otherwise expressly specified, necessary or proper to perform and complete all the Work. The Contractor will perform the Work in accordance with the provisions of this contract, the Contract Documents and said Specifications and in accordance with the Plans and drawings covered by this contract any and all supplemental plans and drawings, and in accordance with the directions of the Engineer and the County as given from time to time during the progress of the Work. The Contractor shall furnish, erect, maintain, and remove such construction plans and such temporary works as may be required.

**Coordination of Contract Documents.** In case of a discrepancy, the contract documents will govern in the following order of importance:

- 1. This Agreement No. 2022-0168-PW/APS consisting of the Agreement Between Santa Fe County and the Contractor for Construction Services, General Conditions and Conditions of the Work;
- 2. Addenda to Agreement No. 2022-0168-PW/APS;

3. Notices to contractors;
4. Plans;
5. Supplemental Specifications
6. Standard Specifications; and
7. Standard Drawings.

Dimensions given on the plans or that can be calculated govern over scaled dimensions.

- 9.2 The Contractor shall 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 entire Work to the satisfaction of the Engineer and the County. The Contractor shall monitor the Work at all times, select and manage the means and methods for performing the Work.
- 9.3 Anything that requires approval is considered a submittal by the County. Any submittal required, other than the Critical Path Method schedule, shall be submitted to the County thirty (30) Days before the Work related to the submittal is performed. The Project Manager will have no longer than thirty (30) Days for Acceptance of the submittal, unless otherwise specified herein.
- 9.4 The Contractor shall perform the Work and provide the materials in substantial compliance with the lines, grades, cross sections, dimensions, and material requirements as specified by the Contract Documents, plans and specifications. The County's failure to discover or reject work or materials not in substantial compliance with the Contract Documents, plans and specifications during the Work shall not be considered an Acceptance of the Work or materials, or a waiver of defects. The County's failure to properly perform inspections or tests shall not relieve the Contractor from its obligations to perform the Work and provide materials in substantial compliance with this Agreement and shall not be considered the County's Acceptance of the Work or materials.
- 9.5 If the Project Manager determines that Work or materials are unacceptable, the Contractor shall remove, replace and correct the Work or materials at no additional cost to the County. The Project Manager's determination that the Work or materials are unacceptable shall not form the basis of a claim for additional contract time or additional compensation. If work does not comply or substantially comply with this Agreement, the Project Manager may determine the work is nonetheless Acceptable. If Accepted the Project Manager will, by Change Order, provide an adjustment for work or materials.
- 9.6 **The Contractor shall submit all correspondence to the Project Manager.** The Contractor shall submit in writing a request for information for any project issues, including without limitation, discrepancies in this Agreement, to the Project Manager who will resolve the issues. The determination of the Project Manager will be in writing and delivered to the Contractor's superintendent as soon as reasonably practicable.
- 9.7 If a contract discrepancy is discovered in this Agreement after this contract after award, the Contractor shall, upon discovery, promptly notify in writing the Project Manager. The Contractor shall take no advantage of any discrepancy or error or omission in this Agreement. The Project Manager will resolve the discrepancy in writing before the Contractor proceeds further with performance of the



affected Work.

**9.8 Environmental and Cultural Resources Approval, Hazardous Materials.** The County will obtain the environmental, and cultural resources approval of the project before construction. The County will describe any environmental and cultural resource requirements in this Agreement. The County will also describe any hazardous material in this Agreement.

## **10. WEATHER CONDITIONS**

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

## **11. PROTECTION OF WORK; MAINTENANCE DURING CONSTRUCTION; PROPERTY-EMERGENCY**

**11.1** Until Final Acceptance of the project by the Project Manager, the Contractor shall have the charge and care thereof and shall take every precaution against injury or damage to any part thereof, by the action of the elements or from other causes, whether arising from the execution or from the non-execution of the Work. The Contractor shall rebuild, repair, restore, and make good all injuries or damages to portion of the Work occasioned by the above causes before Final Acceptance, and shall bear the expense thereof except as provided in Article 37.1 (Maintenance of Traffic) and Article 31.1 of the Conditions of the Work (Partial Acceptance).

**11.2** Should the Contractor be delayed in the prosecution of completion of the Work by contractors on contiguous projects, Acts of God such as fire, flood, earthquake, tornado, or other cataclysmic phenomena of nature, epidemic, quarantine restriction, strike, freight embargo, acts of public enemy, acts of governmental authorities, or railroads other than the County, or documented national unavailability of construction materials, for which the Contractor is in no way responsible, then the Contractor maybe entitled to an extension of contract time in accordance with Article 22.2.14 (Determination and Extension of Contract Time) but is not entitled to additional compensation or damages for such delay. For physical damage to the Work resulting from the above unforeseeable causes beyond the control of and without the fault or negligence of the Contractor, the Contractor may be paid pursuant to Article 37.11 of the Conditions of the Work (Measurement and Payment). The Contractor shall not be entitled to non-allowable damages per Article 12.6 of the General Conditions (Compensation for Claims). In the case of suspension of Work, the Contractor shall be responsible, subject to the provisions of Article 37.1 of the Conditions of the Work (Maintenance of Traffic) for the project and shall take such precaution as may be necessary to prevent damage to the project.

**11.3** The Contractor shall at all times safely guard the County's property from injury or loss in connection with this contract. The Contractor shall at all times safely guard and protect its own work, and that

of adjacent property from damage. The Contractor shall replace or make good any such damage, loss or injury unless such is caused directly by errors contained in this contract or by the County, or its duly authorized representatives.

**11.4** The Contractor shall maintain the Work during construction and until the County Accepts the Work, except as otherwise provided in Article 37.1 of the Conditions of the Work (Maintenance of Traffic) and Article 31 of the Conditions of the Work (Acceptance; General Guaranty). This maintenance shall consist of continuous, daily work with adequate equipment and forces so that the roadway and structure are kept in satisfactory condition. The Contractor shall be responsible for maintaining the project free and clear of delirious materials including debris, weather related remnants, snow, loose materials and trash. The County will be responsible for snow removal operations on travel lanes open and utilized by the public. Contractor shall maintain the previous course and subgrade when the plans require the Contractor to place traffic on the unfinished roadway. All maintenance work during construction and before the project is Accepted shall be incidental. The County shall not pay the Contractor an additional amount for this work except in accordance with Article 37.1 of the Conditions of the Work (Maintenance of Traffic) and Article 31 of the Conditions of the Work (Acceptance; General Guaranty).

**11.5 Failure to Maintain Roadway or Structure.** If the Contractor fails to maintain the project in accordance with this Article the Project Manager shall notify the Contractor in writing of the failure. If the Contractor does not take corrective action in timeframe specified by the Project Manager, the Project Manager may issue a written order according to Article 5.1(I) of the Agreement Between County and Contractor for Construction (Non-Conformance) or notice of the Contractor's apparent default in accordance with Article 3.4 (F) of the Agreement Between County and Contractor for Construction (Default of Contract). If the Contractor does not begin maintenance after notice from the Project Manager, the Project Manager may begin maintenance of the project. For corrective actions implemented by the Project Manager the Contractor shall reimburse the County for County incurred costs of such maintenance plus an additional ten percent (10%) for administrative costs.

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

**11.7** Where the Contractor has not taken action but has notified the Engineer and County of an emergency threatening injury to persons or to damage to the work or any adjoining property, the Contractor shall act as instructed or authorized by the Engineer and the County.

**11.8** The amount of reimbursement claimed by the Contractor on account of any emergency action shall be determined in the manner provided in Article 15 of the General Conditions of the Work.

## **12. INSPECTION**

**12.1** The authorized representatives and agents of the County shall be permitted to inspect all Work,

materials, payrolls, records of personnel, invoices of materials, and other relevant data and records.

### **13. REPORTS, RECORDS AND DATA**

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

**13.2** The Contractor, subcontractors and all suppliers shall keep and maintain all documents in a usable format, including communications, books, papers, records, files, accounts, tax records, cost records, reports, schedules, bid documents with backup data, including electronic data, and all other material relating to the project, project compliance, or any claims for five (5) years following Physical Completion of the Work. All of the above materials shall be made available to the County for review, audit, inspection and copying and shall be produced, upon request by the Engineer or County, or an FHWA (Federal Highway Administration) office as directed. The Contractor shall insert the above requirement in each subcontract and shall also include in all subcontracts a clause requiring subcontractors to include the above requirement in any lower-tier subcontract. The Contractor's failure to maintain and timely provide all requested documents to the County waives any claim the basis of which could have, either in whole or in part, been documented or rebutted by such documents.

### **14. SUPERINTENDENT BY CONTRACTOR**

**14.1** At the site of the work the Contractor shall employ a construction Superintendent or foreman who shall have full authority to act for the Contractor and who reads and understands the Contract Documents, Plans and Specifications, and possesses substantial experience in the type of Work being performed. It is understood that such representative shall be acceptable to the Engineer and County and shall be one who can be continued in that capacity for the particular job involved unless it ceases to be on the Contractor's payroll. The Contractor and its Superintendent shall communicate with the Project Manager as the County's contact for all matters related to the project and promptly submit all documentation or notice required by this Agreement to the Project Manager.

### **15. CHANGES IN WORK**

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

- A. Unit bid prices previously approved.
- B. An agreed 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 shall be compensation to cover the cost of supervision, overhead, bond, profit and any other general expenses.

## **16. EXTRAS; EXTRA WORK**

**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 shall be paid for at the price stipulated in the proposal, and no claims for any Extra Work or materials shall be allowed unless the Extra Work is ordered in writing by the County and the Engineer acting officially for the County, and the price is stated in such order.

The Contractor shall provide to the County's Project Manager its proposal associated with the Extra Work before starting the Extra Work. The submission of the proposal shall not be considered Accepted by the County until the Acceptance of the cost proposal is in writing from the County. If the proposal is accepted by the County, then the County will issue a Change Order and allow the Contractor three (3) Days to review and sign the Change Order. If, after the expiration of three (3) Days, the Contractor fails to sign the Change Order the County may process the Change Order unilaterally.

## **16.2 PAYMENT FOR EXTRA WORK**

The County will pay the Contractor for Extra Work resulting from significant changes in the character of the Work, differing site conditions or County ordered Work based on the following order of priority for payment:

1. Bid item unit prices;
2. Negotiated unit prices;
3. Negotiated lump sum; or
4. Force account.

For items of Work performed by the Contractor, the negotiated unit price or negotiated lump sum price shall include all costs associated with the Work. If subcontractors perform work as Extra Work under items 2, 3 or 4, the County may only compensate the Contractor up to an additional ten percent (10%) of the total actual cost of the subcontracted work less than or equal to \$10,000.00 for indirect and administrative costs. If the total cost of the subcontracted work is greater than \$10,000.00 then the County shall only compensate the Contractor \$1,000.00 plus five percent (5%) of the excess over \$10,000.00

The County shall pay for County-ordered work in accordance with this Article.

## **17. INSPECTION OF SERVICES**

- 17.1** The Contractor shall provide and maintain an inspection system Acceptable to the County covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the County during contract performance and for as long afterwards as the Contract requires.
- 17.2** The County has the right to inspect and test all services called for by this contract, to the extent practicable at all times and places during the term of this contract. The County shall perform inspections and tests in a manner that will not unduly delay the Work.
- 17.3** If the County performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.
- 17.4** If any of the services do not conform with the Contract Documents, the County may require the Contractor to perform the services again in conformity with Contract Documents, 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 contract requirements; and reduce the contract sum to reflect the reduced value of the services performed.
- 17.5** If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with Contract 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 incorporated in the Work or not, all processes of manufacture, and all methods of construction shall be at all times and places subject to the inspection of the Engineer and the County who shall be the final judge of the quality and suitability of the work, materials, processes of manufacture, and methods of construction for the purposes for which they are used. Should they fail to meet their approval they shall be forthwith reconstructed, made good, replaced and/or corrected, as the case may be, by the Contractor at its own expense. Rejected material shall immediately be removed from the site. If, in the opinion of the Engineer and County, it is undesirable to replace any defective or damaged materials or to reconstruct or correct any portion of the work injured or not performed in accordance with the Contract Documents, the compensation to be paid to the Contractor hereunder shall be reduced by such amount as in the judgment of the Engineer and County shall be equitable.

## **19. WARRANTY OF CONSTRUCTION**

- 19.1** In addition to any other warranties in this contract, the Contractor warrants that work performed under this contract conforms to the Contract Documents and is free of any defect in equipment, material, or

design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

- 19.2** This warranty shall continue for a period of one (1) year from the date of final Acceptance of the Work. If the County takes possession of any part of the work before final Acceptance, this warranty shall continue for a period of one (1) year from the date the County takes possession.
- 19.3** The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to County-owned or controlled real or personal property, when that damage is the result of the Contractor's failure to conform to contract requirements or any defect of equipment, material, workmanship, or design furnished.
- 19.4** The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for one (1) year from the date of repair or replacement.
- 19.5** The County shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.
- 19.6** If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the County shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.
- 19.7** With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall obtain all warranties that would be given in normal commercial practice; require all warranties to be executed, in writing, for the benefit of the County, if directed by the County; and, enforce all warranties for the benefit of the County, if directed by the County.
- 19.8** In the event the Contractor's warranty under subparagraph 19.4 of this clause has expired, the County may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.
- 19.9** Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the County nor for the repair of any damage that results from any defect in County-furnished material or design.
- 19.10** This warranty shall not limit the County's rights under Article 36 of Conditions of the Work (Final Inspection) 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 Contract Documents, Plans or indicated in the Specifications, the Contractor

shall immediately give notice to the Engineer and County of such conditions before they are disturbed. The Engineer 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 Contract Documents, 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 Article 15 above.

**20.2** Section 104.2.2 (**Differing Site Conditions**) of the NMDOT Standards shall apply to differing site conditions. The Project Manager will adjust this Agreement for differing site conditions in accordance with Article 61.2 of Conditions of the Work (Payment for Extra Work) and will include the costs of delays but exclude anticipated profit in accordance with Article 12.6 of the General Conditions (Compensation for Claims). The County may grant time extension only to the extent the activities on the Critical Path schedule in effect at the time of the delay are impacted. No contract adjustment which result in a benefit to the Contractor will be allowed if a differing site condition could have been discovered or anticipated by the Contractor through the exercise of pre-bid due diligence.

## **21. CLAIMS FOR EXTRA COST**

**21.1** No claim for Extra Work or cost shall be allowed unless the same is approved in writing and in advance by the Engineer and the County. When work is performed under the terms of General Conditions, the Contractor shall furnish satisfactory bills, payrolls and vouchers covering all items of cost and when requested by the County, giving the County access to accounts relating thereto.

## **22. CONSTRUCTION SCHEDULE AND PERIODIC ESTIMATES**

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

### **22.2 Schedule**

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

the progress schedule. All costs incurred by the Contractor to implement the CPM shall be borne by the Contractor.

**22.2.1 Project Schedule and Baseline Schedule** shall be governed by Section 108.3.1 of the NMDOT Standards. The term “Department” shall be interpreted as a reference to the “County” and reference to “the Contract” shall be interpreted as a reference to this Agreement.

**22.2.2 Schedule Format** shall be governed by Section 108.3.2 of the NMDOT Standards.

**22.2.3 CPM Baseline Schedule** shall be governed by Section 108.3.1.1 of the NMDOT Standards.

**22.2.4 CPM Schedule Format** shall be governed by Section 108.3.2.1 of the NMDOT Standards.

**22.2.5 Bar Graph Baseline Schedule** shall be governed by Section 108.3.2.2 of the NMDOT Standards.

**22.2.6 Monthly and Revised Schedules.** For this Article “schedule” refers to the CPM or Bar Graph as required by this contract. The County considers an updated monthly schedule as an update to the Accepted Baseline Schedule when no changes in activities have occurred except for the progression of planned Work. The County considers a revised schedule as a schedule that modifies the Accepted Baseline Schedule. If Accepted the revised schedule becomes the current Baseline Schedule.

**22.2.6.1** Each activity in a monthly or revised schedule shall contain the same information required for the Baseline Schedule. Any updated or revised schedule that exceeds the as let contract time may be Accepted as noted and does not revise the contract, including contract time, unless accompanied by a related change order. The County’s acceptance of an updated or revised schedule does not operate as a waiver of the County’s right to assess liquidated damages. The Contractor shall submit an updated or revised schedule in accordance with Article 22.2.7 of Conditions of the Work (Monthly Schedule Update). If the Contractor fails to submit an Acceptable schedule, the County may take action in accordance with Article 5.1 (I) of the Agreement Between County and Contractor for Construction (Non-Conformance) or the Project Manager may recommend to the County a suspension or debarment by the County Purchasing Division. Failure to timely provide a monthly or revised schedule waives any claim the basis of which would have been documented by an Acceptable monthly or revised schedule.

**22.2.6.2** Float generated on Critical Path activities due to the acceleration of the Contractor’s performance, at the written direction of the Project Manager, shall be for the exclusive use of the County; and float generated on Critical Path activities due to the modification, reduction or elimination of items shall be for the exclusive use of the County. The float generated by a VECP may be split for the mutual use of the County and the Contractor.

**22.2.7 Monthly Schedule Update** shall be governed by Section 108.3.3.1 of the NMDOT Standards.



**22.2.8 Contractor's Independent Duty to Provide Schedule Revisions** shall be governed by Section 108.3.3.2 of the NMDOT Standards. The term "Department" shall be interpreted as a reference to the "County." Reference to "Section 109.11" shall be interpreted as reference to Article 12.6 of the General Conditions (Compensation for Claims). Reference to "Section 105.19" shall be interpreted as reference to Article 37.42 of the Conditions of the Work (Notice of Intent to Claim) and reference to "Section 105.20" shall be interpreted as reference to Article 12.1 of the General Conditions (Administrative Remedy; Aggrievement Procedure During Construction Administration).

**22.2.9 Schedule Revisions at the Request of the County** shall be governed by Section 108.3.3.3 of the NMDOT Standards. The term "Department" shall be interpreted as a reference to the "County."

**22.2.10 Schedule Update and Revision Information** shall be governed by Section 108.3.3.4 of the NMDOT Standards. The term "Superintendent" shall be interpreted as a reference to the Contractor's Superintendent per Article 14.1 of the Conditions of the Work (Superintendent by Contractor).

**22.2.11 Unsatisfactory Progress of Work** shall be governed by Section 108.4 of the NMDOT Standards. The term "Department" shall be interpreted as a reference to the "County."

**22.2.12 Character of Workers** shall be governed by Section 108.5.1 of the NMDOT Standards.

**22.2.13 Methods and Equipment** shall be governed by Section 108.5.2 of the NMDOT Standard. The term "Department" shall be interpreted as a reference to the "County" and "the Contract" shall be interpreted as a reference to this Agreement.

**22.2.14 Determination and Extension of Contract Time** shall be governed by Section 108.6 of the NMDOT Standards. The term "Department" shall be interpreted as a reference to the "County." The County will provide the contract time in the Notice to Proceed, in Working days, Days or Mandatory Completion date.

## **23. ASSIGNMENT**

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

## **24. MUTUAL RESPONSIBILITY OF CONTRACTORS**

**24.1** If, through acts of neglect on the part of the Contractor, any other contractor or any subcontractor shall suffer loss or damage on the Work, the Contractor agrees to settle with such other contractor or

subcontractor by agreement or arbitration if such other contractor or subcontractors will so settle. If such other contractor or subcontractor shall assert any claim against the County on account of any damage alleged to have been sustained, the County shall notify the Contractor, who shall indemnify and save harmless the County against any such claim.

## **25. SEPARATE CONTRACT**

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

## **26. ENGINEER AND COUNTY'S AUTHORITY**

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

**26.2** The Engineer and/ or County shall decide the meaning and intent of any portion of the specifications and of any plans or drawings where the same may be found obscure or be in dispute. Any differences or conflicts which may arise between the Contractor under this contract and other contractors performing work for the County shall be adjusted and determined by the Engineer and/ or 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 shall purchase Allowed Materials as directed by the County on the basis of the lowest and best bid of at least three competitive bids. If the actual sum for purchasing the Allowed Materials is more or less than the Cash Allowance, the contract sum shall be adjusted accordingly. The adjustment in contract price shall be made on the basis of the purchase price without additional charges for overhead, profit, insurance or any other incidental expenses. The cost of installation of the Allowed Materials shall be included in the applicable sections of the Contract Documents and specifications covering the Work.

## **28. USE OF PREMISES AND REMOVAL OF DEBRIS**

**28.1** The Contractor expressly undertakes at its own expense:

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

**29. QUANTITIES OF ESTIMATE**

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

**30. LANDS AND RIGHTS-OF-WAY**

**30.1** Prior to the start of construction, the County shall obtain all lands and rights-of-way necessary for the carrying out and completions of the Work, unless otherwise provided in this Agreement

**31. ACCEPTANCE; GENERAL GUARANTY**

**31.1 Partial Acceptance.** The Contractor may request in writing that the Project Manager inspect a portion of the project at any time during the Work. If the Project Manager finds that portion to be in accordance with this Agreement and the Contract Documents, the Project Manager may Accept that portion as completed, and, without waiving the provisions in Article 9 of the Conditions of the Work (Contractor's Obligations; Compliance with Contract Documents, Plans and Specifications), and Article 37.5 of the Conditions of the Work (Project Closure), the Contractor may be relieved of further responsibility for that portion unless the County discovers latent defects before Final Acceptance of the Work. Such partial Acceptance does not void or alter this Agreement.

**31.2** The County will Accept permanent traffic safety and control devices installed in accordance with this

Agreement (with all ancillary components) and being used by the public upon installation but before completion of the remaining Work. Permanently installed items Accepted on this basis are limited to the following:

1. Guardrail;
2. Impact attenuators;
3. Traffic signals;
4. Signs;
5. Lighting;
6. Raised pavement markers;
7. CWB;
8. Concrete bridge parapet;
9. Bridge railing;
10. Post and cable barrier;
11. Guardrail anchorages;
12. Permanent pavement markings; and,
13. Fence.

All required performance tests and guarantees shall remain applicable.

**31.3** The Contractor shall repair or replace any damage, theft, or vandalism to these items after Acceptance in accordance with Article 16 of Conditions of the Work (Extras; Extra Work). The Contractor shall repair or replace items damages due to the Contractor's negligence or as a result of the Contractor's failure to protect the Work in accordance with Article 9 of Conditions of the Work (Contractor's Obligations; Compliance with Contract Documents, Plans and Specifications), at no additional cost the County. The Contractor shall erect these items in logical construction sequence. The County shall not Accept prematurely constructed items until they may be used for their intended purposes.

**31.4** Final Acceptance. The County will make the Final Acceptance in accordance with Article 36.4 of Conditions of the Work (Physical Completion, Release of Retainage, Final Payment and Final Acceptance).

**31.5** Neither the final certificate of payment nor any provision in the Contract Documents, nor partial or entire occupancy of the premises by the County, shall constitute Acceptance of Work not done in accordance with the Contract Documents or relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The Contractor shall remedy any defects in the work and pay for any damage to other work resulting therefrom, which shall appear within a period of one (1) year from the date of Final Acceptance of the Work unless a longer period is specified. The County will give notice of observed defects with reasonable promptness.

## **32. PROTECTION OF LIVES AND HEALTH**

**32.1** The Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the site, which occur as a result of its prosecution of the Work. The safety provisions of applicable laws and building and

construction codes shall be observed and the Contractor shall take or cause to be taken, such additional safety and health measures as the County may determine to be reasonably necessary.

### **33. INTEREST OF MEMBER**

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

### **34. OTHER PROHIBITED INTERESTS**

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

### **35. USE AND OCCUPANCY PRIOR TO ACCEPTANCE BY COUNTY**

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

A. Secures written consent of the Contractor except in the event, in the opinion of the Engineer, the Contractor is chargeable with unwarranted delay in final cleanup of punch list items or other contract requirements.

(1) **Project Inspection and Development of Punch List** shall be governed by Section 109.10.4 of the NMDOT Standards.

(2) **Notice of Punch List Completion and Request for Final Inspection** shall be governed by Section 109.10.5 of the NMDOT Standards.

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.

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.

### **36. FINAL INSPECTION**

- 36.1** The final inspection by the Project Manager will be scheduled and conducted within five (5) Days of the Contractor's written request for final inspection. If the inspection reveals unacceptable or unsatisfactory Work, the Project Manager shall give the Contractor written instructions for correction and set the time limit for the Contractor to comply with these instructions. Upon the Contractor's correction of the Work, written notification shall be provided to the Project Manager, the Project Manager shall make an additional inspection and notify the Contractor within four (4) Days of the findings. If the Project Manager is satisfied that the Work is complete and Acceptable, that inspection shall constitute the final inspection. The Project Manager shall provide written notification of the final inspection Acceptance to the Contractor within four (4) Days.
- 36.2** The County will Accept the project as soon as practicable after completion and inspection of the Work. Acceptance is final and conclusive, except for the following situations:
1. Latent defects;
  2. Fraud,
  3. Gross mistakes that amount to fraud; or
  4. The County's warranty or guaranty rights.
- 36.3** **Contractor's Submittal of Final Documentation** shall be governed by Section 109.10.7 of the NMDOT Standards. The County shall withhold final payment and no late payment interest shall be due for the withheld payments until the Contractor furnishes all documents required by this contract.
- 36.4** **Physical Completion, Release of Retainage, Final Payment and Final Acceptance** shall be governed by Section 109.10.8 of the NMDOT Standards. The terms "ADE-Construction" and "Department" shall be interpreted as references to the Project Manager. The term "voucher" shall include purchase order. Project closure occurs when the Engineer and the Project Manager sign the final documentation for closure. The County's Notice of Intent to Claim form is attached hereto as Exhibit N.
- 37. ADDITIONAL APPLICATION OF NMDOT STANDARDS**
- 37.1** **Maintenance of Traffic** shall be governed by Section 104.5 of the NMDOT Standards. The Project Manager may direct the Contractor to maintain the pavement surface. The County will pay for this work in accordance with Article 16.2 of Conditions of the Work (Payment for Extra Work).
- 37.2** **Final Cleanup** by the Contractor shall be governed by Section 104.7 of the NMDOT Standards.
- 37.3** **Cooperation with Utilities** shall be governed by Section 105.6 of the NMDOT Standards. The reference to "Section 104.2" shall be interpreted as reference to Article 16 of Conditions of the Work (Extras; Extra Work). The Contractor shall terminate operations in the immediate area of a utility conflict not identified in this Agreement or the Contract Documents and encountered during the Work. The Contractor shall immediately provide written notice to the Project Manager of the conflict. The Contractor shall continue Work in other areas. The Project Manager shall provide written notification to the Contractor when Work may commence in the area of terminated operations. The Contractor shall make requests for additional contract time or compensation in

accordance with Article 20 of Conditions of the Work (Subsurface Conditions Found Different) above. Where utility conflicts not identified in this Agreement or the Contract Documents are present, the Contractor shall provide the Project Manager, on weekly basis, evidence of adequate coordination and cooperation with utilities. Neither additional contract time nor compensation will be provided where the Contractor fails to provide the Project Manager, on a weekly basis, evidence including a telephonic log of communications concerning the Contractor's continued cooperation and coordination activities with utilities.

- 37.4 Duties of the Inspector and Inspector Authority Limitations** shall be governed by Sections 105.9.1 and 105.9.2 of the NMDOT Standards. The term "Department" shall be interpreted as reference to the "County."
- 37.5 Project Closure** shall be governed by Section 109.10 of the NMDOT Standards. The Contractor shall provide written notice to the Engineer and the County of the projected Substantial Completion date. The notice shall be provided a minimum of 30 Days prior to the projected date unless otherwise agreed to by the Project Manager.
- 37.6 Completion Conference** shall be governed by Section 109.10.2 of the NMDOT Standards. Prior to the projected Substantial Completion date, the Engineer and the Project Manager shall conduct a completion conference with the Contractor to review the project and determine conformance with this Agreement and the Contract Documents. The Project Manager and the Contractor will address all outstanding Work needed for Substantial Completion. The Project Manager and the Contractor will agree on the schedule for completion of all Work necessary for Project Closure.
- 37.7 Termination of Contract Time and Determination of Substantial Completion and Rescinding Substantial Completion** shall be governed by Sections 109.10.3 and 109.10.3.1, respectively, of the NMDOT Standards. The term "ADE-Construction" shall be interpreted as "Engineer" and "Department" shall be interpreted as reference to "County." Substantial Completion may also be rescinded by the County when County ordered Work under Article 16 of the Conditions of the Work (Extras; Extra Work) is required.
- 37.8 Load Restrictions** shall be governed by Section 105.12 of the NMDOT Standards.
- 37.9 Change in Haul Route** shall be governed by Section 105.12.2 of the NMDOT Standards.
- 37.10 Change in Allowable Loan Limit** shall be governed by Section 105.12.2.1 of the NMDOT Standards. If the Project Manager allows operations to continue or because of damage to an existing roadways or structures, the County will pay the Contractor for the material used to make the repairs at the ½ of the bid item unit price, or in accordance with Section 109 of the Conditions of the Work (Measurement and Payment) and Article 37.11 below. If an item is not part of this contract, the County will negotiate a new unit price. If a structure or roadway must be repaired, the County may pay the Contractor for hauling repair materials using a rate requested and justified by the Contractor and approved by the Project Manager.
- 37.11 Measurement and Payment** shall be governed by Section 109 of the NMDOT Standards.

- 37.12 Contractor-Furnished Aggregate and Borrow Sources** shall be governed by Section 106.1 of the NMDOT Standards. No tribal land is involved in this project and tribal taxes shall not apply. The term “Department” shall be interpreted as reference to the “County.”
- 37.13 Contractor’s Responsibility for Damage to Environmental and Cultural Resources** shall be governed by Section 107.13 of the NMDOT Standards. The term “Department” shall be interpreted as reference to the “County.”
- 37.14 Environmental and Cultural Resource Approval, Hazardous Materials and Environmental, Cultural Resource and Hazardous Materials Discoveries** and shall be governed by Sections 107.11 and 107.12 of the NMDOT Standards. The term “Department” shall be interpreted as a reference to the “County.” The County will describe in this Agreement any hazardous materials identified and the Contractor shall observe all legal requirements and applicable requirements of Section 107 of the NMDOT Standards that are incorporated into this Agreement. The reference to “Section 104.2.2” shall be interpreted as reference to Article 20.2 of Conditions of the Work (Differing Site Conditions).
- 37.15 Environmental and Cultural Resource Studies and Approvals** shall be governed by Section 107.14.1 of the NMDOT Standards. The terms “Department” and “NMDOT” shall be interpreted as reference to the “County.” No federal lands are involved in this project. Reference to “Section 106.1” shall be interpreted as reference to Article 37.12 of Conditions of the Work.
- 37.16 Commercial Material Sources** shall be governed by Section 107.14.1.1 of the NMDOT Standards.
- 37.17 Parking and Cleaning of Equipment** shall be governed by Section 107.14.2 of the NMDOT Standards. The term “Department” shall be interpreted as reference to the “County”, reference to “the Contract” are interpreted to be references to this Agreement, and reference to “Section 107.14.1” shall be interpreted as reference to Article 37.15 above.
- 37.18 Clean Water Act** shall be governed by Section 107.14.3 of the NMDOT Standards. The term “Department” shall be interpreted as reference to the “County.”
- 37.19 Minimization of Soil Disturbance** shall be governed by Section 107.14.4 of the NMDOT Standards. The term “Department” shall be interpreted as reference to the “County” and reference to “Section 104.6” shall be interpreted as reference to Article 37.38 below.
- 37.20 Air Quality Requirements and Dust Abatement** shall be governed by Section 107.14.5 of the NMDOT Standards.
- 37.21 Noise Abatement** shall be governed by Section 107.14.6 of the NMDOT Standards. The term “the Contract” are interpreted to be references to this Agreement.
- 37.22 Disposal of Materials** shall be governed by Section 107.14.7 of the NMDOT Standards.



- 37.23 Disposal of Other Materials and Debris** shall be governed by Section 107.14.8 of the NMDOT Standards.
- 37.24 Prime Coat, Tack Coat and Soil Sterilants** shall be governed by Section 107.14.9 of the NMDOT Standards.
- 37.25 Noxious Weed Prevention** shall be governed by Section 107.14.10 of the NMDOT Standards.
- 37.26 Hazardous Materials and Hazardous Material Discoveries** shall be governed by Section 107.15 and 107.15.1 of the NMDOT Standards. The term “Department” shall be interpreted as reference to the “County”. The references to “Section 104.2.2” shall be interpreted as reference to Article 20.2 of Conditions of the Work (Differing Site Conditions) and reference to “Section 109.5” shall be interpreted as reference to Article 16.2 of Conditions of the Work (Payment for Extra Work).
- 37.27 Prevention of Forest and Grass Fires** shall be governed by Section 107.16 of the NMDOT Standards.
- 37.28 Use of Explosives** shall be governed by Section 107.17 of the NMDOT Standards.
- 37.29 Protection and Restoration of Public and Private Property** shall be governed by Section 107.18 of the NMDOT Standards. The term “Department” shall be interpreted as reference to the “County”.
- 37.30 Public and Private Reference Marks** shall be governed by Section 107.18.1 of the NMDOT Standards.
- 37.31 Contractor’s Responsibility for Utility Property and Services** shall be governed by Section 107.21 of the NMDOT Standards.
- 37.32 Furnishing Right of Way** shall be governed by Section 107.22 of the NMDOT Standards.
- 37.33 Contractor’s Responsibility for Utility Property and Services** shall be governed by Section 107.21 of the NMDOT Standards.
- 37.34 Contractor’s Responsibility to the Traveling Public** shall be governed by Section 107.27 of the NMDOT Standards. The term “Department” shall be interpreted as a reference to the “County.” Reference to “Section 109.5” shall mean reference to Article 16.2 of Conditions of the Work (Payment for Extra Work).
- 37.35 Subcontracting** shall be governed by Section 108.1 of the NMDOT Standards. The term “Department” shall be interpreted as a reference to the “County.”
- 37.36 Measurement of Quantity and Pay Unit Terminology** shall be governed by Sections 109.1 and 109.1.1 of the NMDOT Standards. The term “Department” shall be interpreted as a reference to the “County.”

- 37.37 Approved Equipment Rental Rates** shall be governed by Section 109.2 of the NMDOT Standards. The term “Department” shall be interpreted as a reference to the “County.”
- 37.38 Rights in and Use of Materials Found on the Work** shall be governed by Section 104.6 of the NMDOT Standards. The reference to “Section 203” shall mean reference to Section 203 of the NMDOT Standards (Excavation, Borrow, and Embankment). Reference to “Section 107” shall be interpreted to be reference to Article 6 of General Conditions (Compliance with Applicable Law; Choice of Law).
- 37.39 Compensation for Overrun/ Underrun Quantities** shall be governed by Section 109.4 of the NMDOT Standards. The term “Department” shall be interpreted as a reference to the “County.”
- 37.40 Force Account; Labor; Bond, Insurance, and Tax; Materials; Equipment; Miscellaneous, Documentation; and Statements** shall all be governed by Sections 109.6, 109.6.1, 109.6.2, 109.6.3, 109.6.4, 109.6.5, 109.6.6 and 109.6.7, respectively, of the NMDOT Standards. In these sections the term “Department” shall be interpreted as a reference to the “County.” In Section 109.6.7 the Contractor shall provide Certificates of Compliance in accordance with Article 5.2 of Conditions of the Work (Inspection and Testing of Materials; Certificates of Compliance; Inspection of Work; Removal of Unacceptable and Unauthorized Work).
- 37.41 Eliminated Items** shall be governed by Section 109.7 of the NMDOT Standards. The term “Department” shall be interpreted as a reference to the “County” and reference to “the Contract” shall be interpreted as this Agreement.
- 37.42 Notice of Intent to Claim** shall be governed by Section 105.19 of the NMDOT Standards. The term “Department” shall be interpreted as a reference to the “County” and a “Supplemental Agreement” may include a change order.
- 37.43 Non Critical Disruption** shall be governed by Section 109.11.1 of the NMDOT Standards.
- 37.44 Delay** shall be governed by Section 109.11.2 of the NMDOT Standards. The term “Department” shall be interpreted as a reference to the “County.” The reference to “Section 107.20” shall mean reference to Article 11 of Conditions of the Work (Protection of Work; Maintenance During Construction; Property - Emergency).
- 37.45 Additional Time for Delay** shall be governed by Section 109.11.2.1 of the NMDOT Standards. The term “Department” shall be interpreted as a reference to the “County.”
- 37.46 Compensation for Delay** shall be governed by Section 109.11.2.2 of the NMDOT Standards. The term “Department” shall be interpreted as a reference to the “County.” The provision in subpart I (innovative bidding approaches) is not an option in the administration of this Agreement and the phrase “or in the escrow bid Documents” in III.2. is not applicable to this Agreement.

- 37.47 Non-Recoverable Damages** shall be governed by Section 109.11.2.3 of the NMDOT Standards. Reference to “Section 109.11” shall be interpreted as reference to Article 12.6 (Compensation for Claims) of this Agreement.
- 37.48 Significant Changes in the Character of the Work** shall be governed by Section 104.2.1 of the NMDOT Standards. The term “Department” shall be interpreted as a reference to the “County.”
- 37.49 Rights In and Use of Materials Found in the Work** shall be governed by Section 104.6 of the NMDOT Standards. The term “Department” shall be interpreted as a reference to the “County” and the term “the Contract” shall mean this Agreement. Reference to “Section 107” shall be interpreted to refer to legal requirements in Article 6 of General Conditions (Compliance with Applicable Law; Choice of Law).
- 37.50 Final Cleanup** shall be governed by Section 104.7 of the NMDOT Standards. The term “Department” shall be interpreted as a reference to the “County” and reference to “the Contract” shall mean this Agreement.
- 37.51 Contractor Convenience** shall be governed by Section 105.1.2 of the NMDOT Standards. The term “Department” shall be interpreted as a reference to the “County.”
- 37.52 Cooperation Between Contractors** shall be governed by Section 105.7 of the NMDOT Standards. Reference to “Section 109.19” shall be interpreted as reference to Articles 11.1 and 11.2 of General Conditions for Construction Services (Indemnification).
- 37.53 Authority and Duties of the Project Manager** shall be governed by Section 105.8 of the NMDOT Standards. The Project Manager is a representative of the County for purposes of administration of this Agreement and completion of the project. The County’s Project Manager has the authorities listed in Section 105.8.1 of the NMDOT Standards, subparts 1 through 5. The term “Department” shall be interpreted as a reference to the “County.”
- 37.54 Duties of the Inspector (Authority and Limitations)** shall be governed by Sections 105.9.1 and 105.9.2 of the MMDOT Standards. The term “Department” shall be interpreted as a reference to the “County.”
- 37.55 New Mexico Gross Receipts Tax** shall be governed by Section 107.2.3 of the NMDOT Standards. The term “Department” shall be interpreted as a reference to the “County.” All of the materials described in this section shall be make available to the County, FHWA, or the state of New Mexico, for audit, inspection, and copying and shall be produced, upon request as directed.
- 37.56 Patented Devised, Materials and Processes** shall be governed by Section 107.5 of the NMDOT Standards. The term “Department” shall be interpreted as a reference to the “County.”
- 37.57 Restoration of Surfaces Opened by Permit** shall be governed by Section 107.6 of the NMDOT Standards. The term “Department” shall be interpreted as a reference to the “County.” Reference to “Section 109.5” shall be interpreted to be reference to Article 16.2 of Conditions of the Work

(Payment for Extra Work) and reference to Section 108.6 shall be interpreted as reference to Article 22.2.14 of Conditions of the Work (Determination and Extension of Time).

- 37.58 Federal Aid Provisions** shall be governed by Section 107.7 of the NMDOT Standards. The term “Department” shall be interpreted as a reference to the “County.”
- 37.59 Sanitary, Health, and Safety Provisions** shall be governed by Section 107.8 of the NMDOT Standards. The term “Department” shall be interpreted as a reference to the “County.”
- 37.60 State and Federal Land-Managing Agencies** shall be governed by Section 107.8.1 of the NMDOT Standards.
- 37.61 Public Convenience and Safety** shall be governed by Section 107.9 of the NMDOT Standards and Article 37.1 of Conditions of the Work (Maintenance of Traffic).
- 37.62 Railroads** shall be governed by Section 107.10 of the NMDOT Standards. Reference to “Section 107.25 shall be interpreted as reference to Article 14 of General Conditions (Insurance).
- 37.63 Notice to the Railroad** shall be governed by Section 107.10.2 of the NMDOT Standards.
- 37.64 Cooperation with Owner of Railroad Right of Way** shall be governed by Section 107.10.3 of the NMDOT Standards. The term “Department” shall be interpreted as a reference to the “County.”
- 37.65 Contractor’s Responsibility for Utility Property and Services** shall be governed by Section 107.21 of the NMDOT Standards.
- 37.66 Subcontracting** shall be governed by Section 108.1 of the NMDOT Standards. The term “Department” shall be interpreted as a reference to the “County.”
- 37.67 Contractor’s Independent Duty to Provide Schedule Revisions** shall be governed by Section 108.3.3.2 of the NMDOT Standards. Reference to “Section 105.20” shall be interpreted as reference to Article 12.1 of General Conditions (Administrative Remedy; Aggrievement Procedure During Construction Administration).
- 37.68 Schedule Revisions at the Request of Department** shall be governed by Section 108.3.3.3 of the NMDOT Standards. The term “Department” shall be interpreted as a reference to the “County.”
- 37.69 Schedule Update and Revision Information** shall be governed by Section 108.3.3.4 of the NMDOT Standards.
- 37.70 Unsatisfactory Progress of Work** shall be governed by Section 108.4 of the NMDOT Standards.
- 37.71 Character of Workers, Methods, and Equipment** shall be governed by Sections 108.5.1 and 108.5.2 of the NMDOT Standards. The term “Department” shall be interpreted as a reference to

the “County.” Reference to “Section 105.19” shall be interpreted as reference to Article 37.42 of the Conditions of the Work (Notice of Intent to Claim).

- 37.72 Default of Contract** shall be governed by Section 108.9 of the NMDOT Standards. The term “Department” shall be interpreted as a reference to the “County.” Reference to “Section 108.1” shall be interpreted as reference to Article 18 of the Agreement Between the County and Contractor for Construction (Subcontracting). Item 13. is modified to read: Is debarred or suspended by an any federal agency.
- 37.73 Department Completion of the Work** shall be governed by Section 108.9.3 of the NMDOT Standards. The term “Department” shall be interpreted as a reference to the “County.” Reference to “Section 108.10” shall be interpreted as reference to Article 8.3 of General Conditions (Termination of Contract; No Fault of Contractor).
- 37.74 Measurement of Quantity and Pay Unit Terminology** shall be governed by Section 109.1 and 109.1.1 of the NMDOT Standards. The term “Department” shall be interpreted as a reference to the “County.”
- 37.75 Supplier Plant Inspection** shall be governed by Section 106.2 of the NMDOT Standards. The term “Department” shall be interpreted as a reference to the “County” and reference to “Contract” shall be interpreted as reference to this Agreement.
- 37.76 Foreign Materials** shall be governed by Section 106.5 of the NMDOT Standards. The term “Department” shall be interpreted as a reference to the “County” and reference to “Contract” shall be interpreted as reference to this Agreement. Reference to Certificate of Compliance shall be interpreted as reference to Article 5 of Conditions of the Work (Inspection and Testing of Material; Certificates of Compliance; Inspection of Work; Removal of Unacceptable and Unauthorized Work). “MTR” means mill test report.
- 37.77 Storage of Materials** shall be governed by Section 106.6 of the NMDOT Standards.
- 37.78 Handling and Transporting Materials** shall be governed by Section 106.7 of the NMDOT Standards. The term “Department” shall be interpreted as a reference to the “County”.
- 37.79 Department-provided Materials** shall be governed by Section 106.8 of the NMDOT Standards. The term “Department” shall be interpreted as a reference to the “County” and reference to “the Contract” shall be interpreted as reference to this Agreement.
- 37.80 Materials Designated by Trade Name** shall be governed by Section 106.9 of the NMDOT Standards. The term “Department” shall be interpreted as a reference to the “County” and reference to “Contract” shall be interpreted as reference to this Agreement.
- 37.81 Equipment and Material Guarantees and Warranties** shall be governed by Section 106.10 of the NMDOT Standards. The term “Department” shall be interpreted as a reference to the “County”.

**37.82 Safety Data Sheets (SDS)** shall be governed by Section 106.11 of the NMDOT Standards.

**37.83 Value Engineering Cost Proposal (VECP)** shall be governed by Section 104.8 of the NMDOT Standards. The term “Department” shall be interpreted as a reference to the “County”. The Contractor is not required to submit its VECP on a County form. For this project the County has the option to value engineer the Contractor’s cost proposal or bid in Phase II of this project.