

**ACTION SHEET
ITEM FROM FINANCE COMMITTEE MEETING OF 01/19/16
FOR CITY COUNCIL MEETING OF 01/27/16**

ISSUE:

7. Request for Approval of Bid No. 16/18/B – On-Call Roadway & Trails Construction Services and Construction Agreement. (James Martinez)
- GM Emulsion, LLC
 - EMCO, LLC
 - Century Club Construction

FINANCE COMMITTEE ACTION:

Approved as Consent item.

FUNDING SOURCE:

SPECIAL CONDITIONS OR AMENDMENTS

STAFF FOLLOW-UP:

VOTE	FOR	AGAINST	ABSTAIN
COUNCILOR TRUJILLO	X		
COUNCILOR RIVERA	X		
COUNCILOR LINDELL	X		
COUNCILOR MAESTAS	X		
CHAIRPERSON DOMINGUEZ			

4-13-15

City of Santa Fe, New Mexico

memo

DATE: January 8, 2016
TO: Finance Committee
VIA: Oscar Rodriguez, Finance Department Director



Isaac J. Ping, P.E. – Public Works Department Director

John J. Romero, P.E. – Engineering Division Director

David D. Quintana, P.E. – Engineering Supervisor

FROM: James A. Martinez, E.I.T., Project Administrator



ITEM & ISSUE:

ITEM A). BID NUMBER '16/18/B – RECOMMENDATION OF AWARD AND APPROVAL OF A CONSTRUCTION AGREEMENT FOR ON CALL ROADWAY & TRAILS CONSTRUCTION SERVICES IN AN AMOUNT NOT TO EXCEED \$4,000,000.00 EXCLUSIVE OF NEW MEXICO GROSS RECEIPTS TAX WITH:

- GM EMULSION, LLC.
- EMCO, LLC.
- CENTURY CLUB CONSTRUCTION

ITEM B). APPROVAL TO AWARD THREE (3) CONTRACTS FOR THE ON CALL SERVICES FOR A TWO-YEAR PERIOD, WITH AN OPTION TO RENEW FOR TWO ADDITIONAL YEARS, ON A YEAR BY YEAR BASIS - AGREEMENTS NOT TO EXCEED FOUR (4) YEARS.

BACKGROUND & SUMMARY:

A request for bids was advertised on November 23, 2015 for On Call Roadway and Trails Construction Services. Seven bids were received on December 7, 2017, Two bidders were found to be non-responsive, two bidders qualified for local preference, and one qualified with veteran preference. The bids were reviewed for completeness and accuracy and upon review were reasonable. The lowest qualified bidder is GM Emulsion of Santa Fe with a base bid amount of \$3,574,110.75, exclusive of New Mexico Gross Receipts Tax. The second lowest qualified bidder is EMCO, LLC of Santa Fe with a base bid amount of \$3,688,409.00, exclusive of New Mexico Gross Receipts Tax. The Third lowest qualified bidder was Century Club Construction of Albuquerque with a base bid amount of \$3,907,810.30, exclusive of New Mexico Gross Receipts Tax. GM Emulsion, LLC and EMCO, LLC qualified for the 10% local preference bringing the bid amounts to \$3,216,699.68 and \$3,319,568.10, exclusive of New Mexico Gross Receipts Tax.

Century Club Construction qualified for the 7% veteran preference bringing the bid amounts to \$3,634,263.58, exclusive of New Mexico Gross Receipts Tax. A tabulation of the accepted bids is attached.

The construction services utilized under this contract include various public works projects that may involve roadway improvements such as sidewalk, curb, gutter and ADA curb ramp installation; drainage system improvements; street maintenance and trail construction. These contracts would be utilized as needed, over a two-year period, with an option to renew for two additional years. These agreements are not to exceed four years.

Availability of funds for these services will be identified and budgeted, as needed, for each individual Capital Improvement Project. Execution of these Construction Agreements does not constitute a promise to purchase any amount of said work.

RECOMMENDED ACTION:

The Public Works Department recommends the following:

- Item A). Approval of the Construction Agreements to provide On Call Roadway and Trails Construction Services in an amount not to exceed \$4,000,000 per contract, excluding NMGRS with:
- GM Emulsion, LLC.
 - EMCO, LLC.
 - Century Club Construction
- Item B). Approval to award three (3) contracts for On Call Services for a two-year period, with an option to renew for two additional years, on a year by year basis – Agreements not to exceed four (4) years.

Attachments: GM Emulsion, LLC. - Construction Agreement
GM Emulsion, LLC. - Summary of Contract Form
EMCO, LLC. - Construction Agreement
EMCO, LLC. - Summary of Contract Form
Century Club Construction - Construction Agreement
Century Club Construction - Summary of Contract Form
Bid Tabulation Sheet

B.1. CONSTRUCTION AGREEMENT

CITY OF SANTA FE
CAPITAL IMPROVEMENTS PROGRAM

AGREEMENT BETWEEN
OWNER AND CONTRACTOR

On Call Roadway & Trails Construction Services RFB#'16/18/B

This Agreement is entered into this _____ day of _____, 2016, by and between the
CITY OF SANTA FE, herein known as the Owner, and
_____, herein known as the Contractor.

For the following:

PROJECT: On Call Roadway & Trails Construction Services

OWNER City of Santa Fe, Public Works Department
Roadway & Trails Engineering Division
P.O. Box 909
Santa Fe, New México 87504-0909

DISTRIBUTION:

OWNER
CONTRACTOR GM Emulsion, LLC
ENGINEER _____

Revised July 2009

RECITALS

WHEREAS, the Owner, through its Governing Body, is authorized to enter into a construction Contract for the project; and

WHEREAS, the Owner has let this Contract according to the established State and Local Purchasing procedures for contracts of the type and amount let; and

WHEREAS, construction of this Project was approved by the Governing Body of the City of Santa Fe at its meeting of _____, 2016.

The OWNER and the CONTRACTOR agree:

ARTICLE 1
THE CONTRACT DOCUMENTS

The Contract Documents consist of: this Agreement, the Conditions of the Contract (General, Supplementary, and other Conditions), the Drawings, the Specifications, all Addenda issued prior to and all Modifications issued after execution of this Agreement. These documents form the Contract, and all are as fully a part of the Contract as if attached to this Agreement or repeated herein.

ARTICLE 2
THE WORK

The Contractor shall perform all the work required by the Contract Documents for On Call Roadway & Trails Construction Services. (Bid Number '16/18/B).

The work designated as On Call Roadway & Trails Construction Services consists of, but is not limited to: construction of new pavement, multiuse trail sections, related improvements for pedestrians / bicyclists, and other trail users, as described in the Contract Documents.

Contractor shall be responsible for verifications of all conditions, measurements, and dimensions for bidding.

Contractor shall be responsible for all permits, fees, and State inspections associated with the construction.

ARTICLE 3
TIME OF COMMENCEMENT AND PROJECT COMPLETION

The work to be performed under this Contract shall be commenced not later than ten (10) consecutive calendar days after the date of written Notice to Proceed. Physical Completion of the entire work described in the Contract Documents, except as hereafter extended by valid written Change Order signed by the Owner, shall be achieved no later than 30 weather working Days from the issuance of the Notice to Proceed issued to the Contractor.

ARTICLE 4
CONTRACT SUM

The Owner 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, the Contract Sum shall not exceed Four Million Dollars and 00/100 cents (\$4,000,000.00).

The Contract Sum is determined as follows:

Base Bid	\$ <u>\$3,574,110.75</u>
Gross Receipts Tax (8.3125%)	\$ <u>\$297,097.89</u>
<i>Base Bid plus NMGR</i>	\$ <u>\$3,871,207.89</u>

ARTICLE 5
PROGRESS PAYMENTS

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

Not later than twenty-one (21) days following the end of the period covered by the Application for Payment, one hundred percent (100%) of the portion of the Contract Sum properly allocable to labor, materials, and equipment incorporated in the work and one hundred percent (100%) of the portion of the Contract sum properly allocable to materials and equipment suitably stored at the site or some other location agreed upon in writing for the period covered by the Application for Payment, less the aggregate of previous payments made by the Owner; and upon substantial completion of the entire work, a sum sufficient to increase the total payments to one hundred percent (100%) of the Contract sum, less such amounts as the Owner shall determine for all incomplete work and unsettled claims as provided in the Contract documents.

ARTICLE 6
LIQUIDATED DAMAGES

Should the Contractor neglect, refuse, or otherwise fail to complete the work within the Contract Time for Physical Completion or any extension in the Contract thereof, the Contractor agrees to pay the Owner the amount specified in section 108.8 Liquidated Damages in the 2014 Edition (NMDOT SSHBC), per consecutive calendar day that passes until Physical Completion and acceptance or until voided pursuant to the provisions of the General Conditions of the Contract, not as a penalty, but as liquidated damages for such breach of the Contract.

ARTICLE 7
FINAL PAYMENT

Final payment, constituting the entire unpaid balance of the Contract sum, unless it is a disputed payment, shall be paid by the Owner to the Contractor within twenty-one (21) calendar days, after all deficiencies to the Contract document that were noted during the Substantial Completion Inspection and listed on the attachment to the Certificate of Substantial Completion have been corrected, and provided the Contract has been fully performed and a final Certificate for Payment has been issued by the Owner. In addition, the Contractor shall provide to the Owner a certified statement of Release of Lien (AIA Document G706A or approved form), Consent of Surety, Warranty from Prime Contractor, Warranties from Suppliers and Manufacturers, training sessions, equipment/operating manuals, and as-built drawings.

ARTICLE 8
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 90 day Contract period. This

progress schedule shall be of the type generally referred to as a Critical Path Method (CPM), Critical Path Schedule (CPS), and Critical Path Analysis (CPA), and other similar designations. The CPM shall be used to control the timing and sequences of the project. All work shall be done in accordance with the CPM Planning and Scheduling. A written statement of explanation shall be submitted with the progress schedule. All costs incurred by the contractor to implement the CPM shall be borne by the Contractor, and are part of their Contract (See Article 4.10, Progress Schedules of Section 00700, General Conditions of the Contract).

ARTICLE 9 GENERAL AND SPECIAL PROVISIONS

- 9.1 This Agreement shall be governed exclusively by the provisions hereof and by the laws of the State of New Mexico, as the same from time to time exist.
- 9.2 Terms used in this Agreement which are defined in the Conditions of the Contract shall have the meanings designated in those Conditions.
- 9.3 The Contractor shall defend, indemnify, and hold harmless the Owner against any and all injury, loss, or damage, including, without limitation, costs of defense, court costs and attorney's fees, arising out of the acts, errors, or omissions of the Contractor.
- 9.4 An enumeration of the Contractor's General Comprehensive Liability Insurance requirements appears in the General Conditions of the Contract for construction. Insurance requirements are also described in the Instructions to the Bidder section of the Project Manual. Contractor shall maintain adequate insurance in at least the maximum amounts, which the Owner could be liable under the New Mexico Tort Claims Act and shall provide proof of such insurance coverage to the City. It is the sole responsibility of the Contractor to be in compliance with the law.
- 9.5 This Agreement shall not become effective until: (1) approved by the Governing Body; and (2) signed by all parties required to sign this Agreement.
- 9.6 The Contractor and the Contractor's agents and employees are independent contractors performing professional and technical services for the Owner and are not employees of the Owner. The Contractor and the Contractor's agents and employees shall not accrue leave, retirement, insurance, bonding, use of Owner's vehicles, or any other benefits afforded to employees of the Owner as a result of this Agreement.
- 9.7 The Contractor shall not subcontract any portion of the services to be performed under this Agreement without prior written approval of the Owner. The Contractor shall make prompt payment to their subcontractors and suppliers for amounts owed for work performed on the construction project within seven days after receipt of payment from the Owner, contractor or subcontractor. If the contractor of subcontractor fails to pay the contractor's or subcontractor's subcontractor and suppliers by first-class mail or hand delivery within seven days of receipt of payment, the contractor of subcontractor shall pay interest to the subcontractors and suppliers beginning on the eighth day after payment was due, computed at one and one-half percent of the undisputed amount per month or fraction of a month until payment is issued. These provisions apply to all tiers of contractors, subcontractors and suppliers.
- 9.8 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 Owner, the Department of Finance and Administration and the State Auditor. The Owner shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Owner to recover excessive illegal payments.
- 9.9 The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Owner for the performance of this Agreement. If the Owner does not make sufficient appropriations and authorization, this Agreement shall terminate upon written notice being given by the

Owner to the Contractor. The Owner's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

9.10 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.

9.11 The Contractor hereby warrants that the Contractor complies with the Americans with Disabilities Act, 29 CFR 1630.

9.12 The Contractor, upon final payment of the amounts due under this Agreement, releases the Owner, the Owner's officers and employees, and the City of Santa Fe 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.

9.13 The Contractor agrees not to purport to bind the Owner to any obligation not assumed herein by the Owner, unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

9.14 Notices. Any and all notices provided for hereunder shall be in writing and shall be deemed delivered, given and received when (i) personally delivered, or (ii) 5 days after the same are deposited in the United States mail, postage prepaid, registered or certified mail return receipt requested, addressed to the applicable party at the address indicated below for such party or at such other address as may be designated by either party in a written note to the other party.

OWNER	City of Santa Fe, Public Works Department Roadway & Trails Engineering Division P.O. Box 909 Santa Fe, New México 87504-0909
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CONTRACTOR	GM Emulsion, LLC <hr/> 3607 Constellation Dr. #C <hr/> Santa Fe, NM 87507
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New Mexico License# 370602

9.15 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.

9.16 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.

9.17 This document shall be executed in no less than three (3) counterparts, each of which shall be deemed an original.

9.18 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.

9.19 Separability. If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby.

9.20 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 the performance by the other party in strict accordance with the terms hereof. Further, the waiver by any party of 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.

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

9.22 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.

9.23 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 meaning. In the event of a conflict, the more stringent meaning shall govern.

9.24 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.

9.25 Pursuant to Section 13-1-191, NMSA 1978, reference is hereby made to the Criminal Laws of New Mexico (including Sections 30-14-1, 30-24-2, and 30-41-1 through 30-41-3, NMSA 1978) which prohibit bribes, kickbacks, and gratuities, violation of which constitutes a felony. Further, the Procurement Code (Sections 13-1-28 through 13-1-199, NMSA 1978) imposes civil and criminal penalties for its violation.

9.26 By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the Owner and the Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

9.27 Pursuant to Section 13-4-11. NMSA 1978, Reference is hereby made to the Minimum Wage on Public Works; weekly payments; posting wage scale; withholding funds.

ARTICLE 10 NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, 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.

This Agreement is entered into as of the day and year first written above.

OWNER:
CITY OF SANTA FE

JAVIER M. GONZALES, MAYOR

DATE: _____

ATTEST:

YOLANDA Y. VIGIL
CITY CLERK

APPROVED AS TO FORM:

Kelley Brennan 10/6/16
KELLEY BRENNAN, CITY ATTORNEY

APPROVED:

OSCAR RODRIGUEZ, DIRECTOR
FINANCE DEPARTMENT

Business Unit/Line Item

CONTRACTOR:
NAME OF CONTRACTOR

By: _____
Signature

Print Name and Title of Signer

Date: _____

NM Taxation & Revenue CRS No.:

City of Santa Fe Business Reg. No.:

Client#: 177280

GMEMULSI

ACORDTM

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

8/05/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER HUB International Ins Svcs Inc PO Box 5080 Santa Fe, NM 87502 505 982-4296 / CA Lic# 0757776	CONTACT NAME: Michelle Lovato
	PHONE (A/C, No, Ext): 505-992-1873 FAX (A/C, No): 866-621-0427 E-MAIL ADDRESS: michelle.lovato@hubinternational.com
INSURED GM Emulsion LLC 47 Paseo de Martinez Santa Fe, NM 87507	INSURER(S) AFFORDING COVERAGE INSURER A : AMCO Insurance Company NAIC # 19100
	INSURER B : Builders Trust of New Mexico 999999
	INSURER C :
	INSURER D :
	INSURER E :
	INSURER F :

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> PD Ded: \$500 GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC			ACPLA07254425929	04/12/2015	04/12/2016	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS			ACPBAA7254425929	04/12/2015	04/12/2016	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$0			ACPCAA7254425929	04/12/2015	04/12/2016	EACH OCCURRENCE \$7,000,000 AGGREGATE \$7,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			5752	01/01/2015	01/01/2016	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$2,000,000 E.L. DISEASE - EA EMPLOYEE \$2,000,000 E.L. DISEASE - POLICY LIMIT \$2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
For Information Purposes only.

CERTIFICATE HOLDER City of Santa Fe 200 Lincoln Ave. Santa Fe, NM 87504	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>Robert A. Mackowski</i>
---	--



**City of Santa Fe
Summary of Contracts, Agreements, & Amendments**

Section to be completed by department for each contract or contract amendment

- | | | | | |
|---|--------------------------|--------------------------|-----------------------------|-------------------------------------|
| 1 | FOR: ORIGINAL CONTRACT | <input type="checkbox"/> | CONTRACT AGREEMENT | <input checked="" type="checkbox"/> |
| | MAINTENANCE AGREEMENT | <input type="checkbox"/> | LICENSE AGREEMENT | <input type="checkbox"/> |
| | LEGAL SERVICES AGREEMENT | <input type="checkbox"/> | MEMORANDUM OF UNDERSTANDING | <input type="checkbox"/> |
| | MEMORANDUM OF AGREEMENT | <input type="checkbox"/> | JOINT POWERS AGREEMENTS | <input type="checkbox"/> |
| | GRANT AGREEMENTS | <input type="checkbox"/> | CHANGE ORDERS | <input type="checkbox"/> |

2 Name of Contractor GM Emulsion, LLC.

- 3 Complete information requested Plus GRT
 Inclusive of GRT

Original Contract Amount: Not to exceed \$4M

Termination Date: _____

- Approved by Council Date: January 27, 2015
 or by City Manager Date: _____

Contract is for: 16/18/B On Call Roadway & Trails Construction Services

Amendment # _____ to the Original Contract# _____

Increase/(Decrease) Amount \$ _____

Extend Termination Date to: _____

- Approved by Council Date: _____
 or by City Manager Date: _____

Amendment is for: _____

- 4 History of Contract & Amendments: (option: attach spreadsheet if multiple amendments) Plus GRT
 Inclusive of GRT

Amount \$ _____ of original Contract# _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Total of Original Contract plus all amendments: \$ _____



**City of Santa Fe
Summary of Contracts, Agreements, & Amendments**

- 5 **Procurement Method of Original Contract:** (complete one of the lines)
 RFP RFQ Sole Source Other RFB# '16/18/B
- 6 **Procurement History:** N/A
 example: (First year of 4 year contract)
- 7 **Funding Source:** Various **BU/Line Item:** Various
- 8 **Any out-of-the ordinary or unusual issues or concerns:**

 (Memo may be attached to explain detail.)
- 9 **Staff Contact who completed this form:** James Martinez *Jm* Phone # 955-6953
Division Contract Administrator: Christine Gomez *CCG*
Division Director: John J. Romero
Department Director: Isaac J. Pino *Isaac J. Pino*
- # **Certificate of Insurance attached.** (if original Contract)
- # **Description of your efforts to reduce the cost of the contract including information on efforts to obtain other quotes for the contracted activity:** Procured through request for bids; use of lowest three qualified bidders.
- # **Prior year's contract amount?:** N/A
- # **Describe service impact from an ongoing commitment to the contractor:** N/A
- # **Why staff cannot perform the work?:** Heavy construction needs for various upcoming projects
- # **If extending contract, why?:** N/A
- # **Was a Santa Fe company awarded contract? If not, why?:** Yes
- # **Has the contract been approved as to form by City Attorney's Office?:** Yes.
- # **Is this for City Manager or Council approval?:** Yes, City Council

To be recorded by City Clerk:

Contract # _____

Date of contract Executed (i.e., signed by all parties): _____

Note: If further information needs to be included, attach a separate memo.

Comments:

B.1. CONSTRUCTION AGREEMENT

CITY OF SANTA FE
CAPITAL IMPROVEMENTS PROGRAM

AGREEMENT BETWEEN
OWNER AND CONTRACTOR

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CITY OF SANTA FE, herein known as the Owner, and
_____, herein known as the Contractor.

For the following:

PROJECT: On Call Roadway & Trails Construction Services

OWNER City of Santa Fe, Public Works Department
Roadway & Trails Engineering Division
P.O. Box 909
Santa Fe, New México 87504-0909

DISTRIBUTION:

OWNER
CONTRACTOR
ENGINEER

EMCO of Santa Fe, LLC

Revised July 2009

RECITALS

WHEREAS, the Owner, through its Governing Body, is authorized to enter into a construction Contract for the project; and

WHEREAS, the Owner has let this Contract according to the established State and Local Purchasing procedures for contracts of the type and amount let; and

WHEREAS, construction of this Project was approved by the Governing Body of the City of Santa Fe at its meeting of _____, 2016.

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The Contract Sum is determined as follows:

Base Bid	<u>\$ 3,688,411.00 .</u>
Gross Receipts Tax (8.3125%)	<u>\$ 306,599.16 .</u>
<i>Base Bid plus NMGR</i>	<u>\$ 3,995,010.16 .</u>

ARTICLE 5
PROGRESS PAYMENTS

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

Not later than twenty-one (21) days following the end of the period covered by the Application for Payment, one hundred percent (100%) of the portion of the Contract Sum properly allocable to labor, materials, and equipment incorporated in the work and one hundred percent (100%) of the portion of the Contract sum properly allocable to materials and equipment suitably stored at the site or some other location agreed upon in writing for the period covered by the Application for Payment, less the aggregate of previous payments made by the Owner; and upon substantial completion of the entire work, a sum sufficient to increase the total payments to one hundred percent (100%) of the Contract sum, less such amounts as the Owner shall determine for all incomplete work and unsettled claims as provided in the Contract documents.

ARTICLE 6
LIQUIDATED DAMAGES

Should the Contractor neglect, refuse, or otherwise fail to complete the work within the Contract Time for Physical Completion or any extension in the Contract thereof, the Contractor agrees to pay the Owner the amount specified in section 108.8 Liquidated Damages in the 2014 Edition (NMDOT SSHBC), per consecutive calendar day that passes until Physical Completion and acceptance or until voided pursuant to the provisions of the General Conditions of the Contract, not as a penalty, but as liquidated damages for such breach of the Contract.

ARTICLE 7
FINAL PAYMENT

Final payment, constituting the entire unpaid balance of the Contract sum, unless it is a disputed payment, shall be paid by the Owner to the Contractor within twenty-one (21) calendar days, after all deficiencies to the Contract document that were noted during the Substantial Completion Inspection and listed on the attachment to the Certificate of Substantial Completion have been corrected, and provided the Contract has been fully performed and a final Certificate for Payment has been issued by the Owner. In addition, the Contractor shall provide to the Owner a certified statement of Release of Lien (AIA Document G706A or approved form), Consent of Surety, Warranty from Prime Contractor, Warranties from Suppliers and Manufacturers, training sessions, equipment/operating manuals, and as-built drawings.

ARTICLE 8
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 90 day Contract period. This

progress schedule shall be of the type generally referred to as a Critical Path Method (CPM), Critical Path Schedule (CPS), and Critical Path Analysis (CPA), and other similar designations. The CPM shall be used to control the timing and sequences of the project. All work shall be done in accordance with the CPM Planning and Scheduling. A written statement of explanation shall be submitted with the progress schedule. All costs incurred by the contractor to implement the CPM shall be borne by the Contractor, and are part of their Contract (See Article 4.10, Progress Schedules of Section 00700, General Conditions of the Contract).

ARTICLE 9 GENERAL AND SPECIAL PROVISIONS

9.1 This Agreement shall be governed exclusively by the provisions hereof and by the laws of the State of New Mexico, as the same from time to time exist.

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

9.3 The Contractor shall defend, indemnify, and hold harmless the Owner against any and all injury, loss, or damage, including, without limitation, costs of defense, court costs and attorney's fees, arising out of the acts, errors, or omissions of the Contractor.

9.4 An enumeration of the Contractor's General Comprehensive Liability Insurance requirements appears in the General Conditions of the Contract for construction. Insurance requirements are also described in the Instructions to the Bidder section of the Project Manual. Contractor shall maintain adequate insurance in at least the maximum amounts, which the Owner could be liable under the New Mexico Tort Claims Act and shall provide proof of such insurance coverage to the City. It is the sole responsibility of the Contractor to be in compliance with the law.

9.5 This Agreement shall not become effective until: (1) approved by the Governing Body; and (2) signed by all parties required to sign this Agreement.

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

9.7 The Contractor shall not subcontract any portion of the services to be performed under this Agreement without prior written approval of the Owner. The Contractor shall make prompt payment to their subcontractors and suppliers for amounts owed for work performed on the construction project within seven days after receipt of payment from the Owner, contractor or subcontractor. If the contractor of subcontractor fails to pay the contractor's or subcontractor's subcontractor and suppliers by first-class mail or hand delivery within seven days of receipt of payment, the contractor of subcontractor shall pay interest to the subcontractors and suppliers beginning on the eighth day after payment was due, computed at one and one-half percent of the undisputed amount per month or fraction of a month until payment is issued. These provisions apply to all tiers of contractors, subcontractors and suppliers.

9.8 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 Owner, the Department of Finance and Administration and the State Auditor. The Owner shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Owner to recover excessive illegal payments.

9.9 The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Owner for the performance of this Agreement. If the Owner does not make sufficient appropriations and authorization, this Agreement shall terminate upon written notice being given by the

Owner to the Contractor. The Owner's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

9.10 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.

9.11 The Contractor hereby warrants that the Contractor complies with the Americans with Disabilities Act, 29 CFR 1630.

9.12 The Contractor, upon final payment of the amounts due under this Agreement, releases the Owner, the Owner's officers and employees, and the City of Santa Fe 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.

9.13 The Contractor agrees not to purport to bind the Owner to any obligation not assumed herein by the Owner, unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

9.14 Notices. Any and all notices provided for hereunder shall be in writing and shall be deemed delivered, given and received when (i) personally delivered, or (ii) 5 days after the same are deposited in the United States mail, postage prepaid, registered or certified mail return receipt requested, addressed to the applicable party at the address indicated below for such party or at such other address as may be designated by either party in a written note to the other party.

OWNER	City of Santa Fe, Public Works Department Roadway & Trails Engineering Division P.O. Box 909 Santa Fe, New México 87504-0909
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CONTRACTOR	<u>EMCO of Santa Fe, LLC</u> <u>3810 Oliver Rd.</u> <u>Santa Fe, NM 87507</u> <u>New Mexico License# 374873</u>
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9.15 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.

9.16 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.

9.17 This document shall be executed in no less than three (3) counterparts, each of which shall be deemed an original.

9.18 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.

9.19 Separability. If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby.

9.20 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 the performance by the other party in strict accordance with the terms hereof. Further, the waiver by any party of 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.

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

9.22 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.

9.23 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 meaning. In the event of a conflict, the more stringent meaning shall govern.

9.24 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.

9.25 Pursuant to Section 13-1-191, NMSA 1978, reference is hereby made to the Criminal Laws of New Mexico (including Sections 30-14-1, 30-24-2, and 30-41-1 through 30-41-3, NMSA 1978) which prohibit bribes, kickbacks, and gratuities, violation of which constitutes a felony. Further, the Procurement Code (Sections 13-1-28 through 13-1-199, NMSA 1978) imposes civil and criminal penalties for its violation.

9.26 By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the Owner and the Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

9.27 Pursuant to Section 13-4-11, NMSA 1978, Reference is hereby made to the Minimum Wage on Public Works; weekly payments; posting wage scale; withholding funds.

ARTICLE 10 NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, 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.

This Agreement is entered into as of the day and year first written above.

OWNER:
CITY OF SANTA FE

JAVIER M. GONZALES, MAYOR

DATE: _____

ATTEST:

YOLANDA Y. VIGIL
CITY CLERK

APPROVED AS TO FORM:

Kelley Brennan 10/6/10

KELLEY BRENNAN, CITY ATTORNEY

APPROVED:

OSCAR RODRIGUEZ, DIRECTOR
FINANCE DEPARTMENT

Business Unit/Line Item

CONTRACTOR:
NAME OF CONTRACTOR

By: _____
Signature

Print Name and Title of Signer

Date: _____

NM Taxation & Revenue CRS No.:

City of Santa Fe Business Reg. No.:



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

1/11/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Daniels Insurance, Inc.-Santa Fe 805 St. Michaels Drive Santa Fe NM 87505	CONTACT NAME: PHONE (A/C, No, Ext): (505) 982-4302 FAX (A/C, No): (505) 989-9186 E-MAIL: ADDRESS:													
	<table border="1"> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A: Mountain States Mutual Casualt</td> <td>14648</td> </tr> <tr> <td>INSURER B:</td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Mountain States Mutual Casualt	14648	INSURER B:		INSURER C:		INSURER D:		INSURER E:		INSURER F:
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INSURER D:														
INSURER E:														
INSURER F:														
INSURED EMCO of Santa Fe, LLC P.O. Box 38 Espanola NM 87532	(505) 474-7094													

COVERAGES **CERTIFICATE NUMBER: Cert ID 18692** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			CPP025481703	12/31/2015	12/31/2016	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Empl Benefits Liab \$ 1,000,000
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS			BAP025480903	12/31/2015	12/31/2016	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			UMB025527803	12/31/2015	12/31/2016	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below Y/N N/A			WCV025526403	1/1/2016	1/1/2017	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
A	Scheduled Equipment			CPP025481703	12/31/2015	12/31/2016	\$10,000 Ded 4,187,490
A	Leased/Rented Equipment			CPP025481703	12/31/2015	12/31/2016	\$10,000 Ded 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 All operations of the insured per policy conditions. Liability: Continental United States; Work Comp: NM

CERTIFICATE HOLDER City of Santa Fe 500 Market Street Santa Fe NM 87501	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

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**City of Santa Fe
Summary of Contracts, Agreements, & Amendments**

Section to be completed by department for each contract or contract amendment

- | | | | | |
|---|--------------------------|--------------------------|-----------------------------|-------------------------------------|
| 1 | FOR: ORIGINAL CONTRACT | <input type="checkbox"/> | CONTRACT AGREEMENT | <input checked="" type="checkbox"/> |
| | MAINTENANCE AGREEMENT | <input type="checkbox"/> | LICENSE AGREEMENT | <input type="checkbox"/> |
| | LEGAL SERVICES AGREEMENT | <input type="checkbox"/> | MEMORANDUM OF UNDERSTANDING | <input type="checkbox"/> |
| | MEMORANDUM OF AGREEMENT | <input type="checkbox"/> | JOINT POWERS AGREEMENTS | <input type="checkbox"/> |
| | GRANT AGREEMENTS | <input type="checkbox"/> | CHANGE ORDERS | <input type="checkbox"/> |

2 Name of Contractor EMCO of Santa Fe, LLC.

3 Complete information requested Plus GRT

Inclusive of GRT

Original Contract Amount: Not to exceed \$4M

Termination Date: _____

Approved by Council Date: January 27, 2015

or by City Manager Date: _____

Contract is for: 16/18/B On Call Roadway & Trails Construction Services

Amendment # _____ to the Original Contract# _____

Increase/(Decrease) Amount \$ _____

Extend Termination Date to: _____

Approved by Council Date: _____

or by City Manager Date: _____

Amendment is for:

4 History of Contract & Amendments: (option: attach spreadsheet if multiple amendments) Plus GRT

Inclusive of GRT

Amount \$ _____ of original Contract# _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Total of Original Contract plus all amendments: \$ _____



**City of Santa Fe
Summary of Contracts, Agreements, & Amendments**

5 Procurement Method of Original Contract: (complete one of the lines)
 RFP RFQ Sole Source Other RFB# '16/18/B

6 Procurement History: N/A
 example: (First year of 4 year contract)

7 Funding Source: Various BU/Line Item: Various

8 Any out-of-the ordinary or unusual issues or concerns:

 (Memo may be attached to explain detail.)

9 Staff Contact who completed this form: James Martinez *JM* Phone # 955-6953
 Division Contract Administrator: Christine Gomez *CCG*
 Division Director: John J. Romero
 Department Director: Isaac J. Pino *Isaac J. Pino*

Certificate of Insurance attached. (if original Contract)

Description of your efforts to reduce the cost of the contract including information on efforts to obtain other quotes for the contracted activity: Procured through request for bids; use of lowest three qualified bidders.

Prior year's contract amount?: N/A

Describe service impact from an ongoing commitment to the contractor: N/A

Why staff cannot perform the work?: Heavy construction needs for various upcoming projects

If extending contract, why?: N/A

Was a Santa Fe company awarded contract? If not, why?: Yes

Has the contract been approved as to form by City Attorney's Office?: Yes.

Is this for City Manager or Council approval?: Yes, City Council

To be recorded by City Clerk:

Contract # _____

Date of contract Executed (i.e., signed by all parties): _____

Note: If further information needs to be included, attach a separate memo.

Comments:

B.1. CONSTRUCTION AGREEMENT

CITY OF SANTA FE
CAPITAL IMPROVEMENTS PROGRAM

AGREEMENT BETWEEN
OWNER AND CONTRACTOR

On Call Roadway & Trails Construction Services RFB#16/18/B

This Agreement is entered into this _____ day of _____, 2016, by and between the
CITY OF SANTA FE, herein known as the Owner, and
_____, herein known as the Contractor.

For the following:

PROJECT: On Call Roadway & Trails Construction Services

OWNER City of Santa Fe, Public Works Department
Roadway & Trails Engineering Division
P.O. Box 909
Santa Fe, New México 87504-0909

DISTRIBUTION:

OWNER
CONTRACTOR
ENGINEER

Century Club Construction, LLC

Revised July 2009

RECITALS

WHEREAS, the Owner, through its Governing Body, is authorized to enter into a construction Contract for the project; and

WHEREAS, the Owner has let this Contract according to the established State and Local Purchasing procedures for contracts of the type and amount let; and

WHEREAS, construction of this Project was approved by the Governing Body of the City of Santa Fe at its meeting of _____, 2016.

The OWNER and the CONTRACTOR agree:

ARTICLE 1
THE CONTRACT DOCUMENTS

The Contract Documents consist of: this Agreement, the Conditions of the Contract (General, Supplementary, and other Conditions), the Drawings, the Specifications, all Addenda issued prior to and all Modifications issued after execution of this Agreement. These documents form the Contract, and all are as fully a part of the Contract as if attached to this Agreement or repeated herein.

ARTICLE 2
THE WORK

The Contractor shall perform all the work required by the Contract Documents for On Call Roadway & Trails Construction Services. (Bid Number '16/18/B).

The work designated as On Call Roadway & Trails Construction Services consists of, but is not limited to: construction of new pavement, multiuse trail sections, related improvements for pedestrians / bicyclists, and other trail users, as described in the Contract Documents.

Contractor shall be responsible for verifications of all conditions, measurements, and dimensions for bidding.

Contractor shall be responsible for all permits, fees, and State inspections associated with the construction.

ARTICLE 3
TIME OF COMMENCEMENT AND PROJECT COMPLETION

The work to be performed under this Contract shall be commenced not later than ten (10) consecutive calendar days after the date of written Notice to Proceed. Physical Completion of the entire work described in the Contract Documents, except as hereafter extended by valid written Change Order signed by the Owner, shall be achieved no later than 30 weather working Days from the issuance of the Notice to Proceed issued to the Contractor.

ARTICLE 4
CONTRACT SUM

The Owner 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, the Contract Sum shall not exceed Four Million Dollars and 00/100 cents (\$4,000,000.00).

The Contract Sum is determined as follows:

Base Bid	\$ 3,907,810.30 .
Gross Receipts Tax (8.3125%)	\$ 324,836.73 .
<i>Base Bid plus NMGRT</i>	<u>\$ 4,232,647.03 .</u>

ARTICLE 5
PROGRESS PAYMENTS

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

Not later than twenty-one (21) days following the end of the period covered by the Application for Payment, one hundred percent (100%) of the portion of the Contract Sum properly allocable to labor, materials, and equipment incorporated in the work and one hundred percent (100%) of the portion of the Contract sum properly allocable to materials and equipment suitably stored at the site or some other location agreed upon in writing for the period covered by the Application for Payment, less the aggregate of previous payments made by the Owner; and upon substantial completion of the entire work, a sum sufficient to increase the total payments to one hundred percent (100%) of the Contract sum, less such amounts as the Owner shall determine for all incomplete work and unsettled claims as provided in the Contract documents.

ARTICLE 6
LIQUIDATED DAMAGES

Should the Contractor neglect, refuse, or otherwise fail to complete the work within the Contract Time for Physical Completion or any extension in the Contract thereof, the Contractor agrees to pay the Owner the amount specified in section 108.8 Liquidated Damages in the 2014 Edition (NMDOT SSHBC), per consecutive calendar day that passes until Physical Completion and acceptance or until voided pursuant to the provisions of the General Conditions of the Contract, not as a penalty, but as liquidated damages for such breach of the Contract.

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ARTICLE 8
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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 90 day Contract period. This

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9.4 An enumeration of the Contractor's General Comprehensive Liability Insurance requirements appears in the General Conditions of the Contract for construction. Insurance requirements are also described in the Instructions to the Bidder section of the Project Manual. Contractor shall maintain adequate insurance in at least the maximum amounts, which the Owner could be liable under the New Mexico Tort Claims Act and shall provide proof of such insurance coverage to the City. It is the sole responsibility of the Contractor to be in compliance with the law.

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Owner to the Contractor. The Owner's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

9.10 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.

9.11 The Contractor hereby warrants that the Contractor complies with the Americans with Disabilities Act, 29 CFR 1630.

9.12 The Contractor, upon final payment of the amounts due under this Agreement, releases the Owner, the Owner's officers and employees, and the City of Santa Fe 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.

9.13 The Contractor agrees not to purport to bind the Owner to any obligation not assumed herein by the Owner, unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

9.14 Notices. Any and all notices provided for hereunder shall be in writing and shall be deemed delivered, given and received when (i) personally delivered, or (ii) 5 days after the same are deposited in the United States mail, postage prepaid, registered or certified mail return receipt requested, addressed to the applicable party at the address indicated below for such party or at such other address as may be designated by either party in a written note to the other party.

OWNER	City of Santa Fe, Public Works Department Roadway & Trails Engineering Division P.O. Box 909 Santa Fe, New México 87504-0909
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CONTRACTOR	Century Club Construction, LLC <hr/> 8201 Golf Course Rd. NW #D3-295 <hr/> Albuquerque, NM 87120 <hr/> New Mexico License# 375798
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9.15 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.

9.16 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.

9.17 This document shall be executed in no less than three (3) counterparts, each of which shall be deemed an original.

9.18 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.

9.19 Separability. If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby.

9.20 **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 the performance by the other party in strict accordance with the terms hereof. Further, the waiver by any party of 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.

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

9.22 **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.

9.23 **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 meaning. In the event of a conflict, the more stringent meaning shall govern.

9.24 **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.

9.25 Pursuant to Section 13-1-191, NMSA 1978, reference is hereby made to the Criminal Laws of New Mexico (including Sections 30-14-1, 30-24-2, and 30-41-1 through 30-41-3, NMSA 1978) which prohibit bribes, kickbacks, and gratuities, violation of which constitutes a felony. Further, the Procurement Code (Sections 13-1-28 through 13-1-199, NMSA 1978) imposes civil and criminal penalties for its violation.

9.26 By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the Owner and the Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

9.27 Pursuant to Section 13-4-11, NMSA 1978, Reference is hereby made to the Minimum Wage on Public Works; weekly payments; posting wage scale; withholding funds.

ARTICLE 10 NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, 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.

This Agreement is entered into as of the day and year first written above.

OWNER:
CITY OF SANTA FE

JAVIER M. GONZALES, MAYOR

DATE: _____

ATTEST:

YOLANDA Y. VIGIL
CITY CLERK

APPROVED AS TO FORM:

[Signature] 10/6/16

KELLEY BRENNAN, CITY ATTORNEY

APPROVED:

OSCAR RODRIGUEZ, DIRECTOR
FINANCE DEPARTMENT

Business Unit/Line Item

CONTRACTOR:
NAME OF CONTRACTOR

By: _____
Signature

Print Name and Title of Signer

Date: _____

NM Taxation & Revenue CRS No.:

City of Santa Fe Business Reg. No.:



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
12/2/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
DOWNEY & COMPANY
 6565 AMERICAS PARKWAY NE
 SUITE 750
 ALBUQUERQUE NM 87110

INSURED
 Century Club Construction, LLC
 3201 Golf Course Rd NW
 Suite D3 #295
 Albuquerque NM 87120

CONTACT NAME: Susan Vance
 PHONE (A/C, No, Ext): 505.881.0300 x107 FAX (A/C, No): 505.881.0908
 E-MAIL ADDRESS: svance@downeyandco.com

INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A:	Charter Oak Fire Insurance Co	
INSURER B:	Phoenix Insurance Co	
INSURER C:	Travelers Property Casualty Co	
INSURER D:	New Mexico Security Insurance	
INSURER E:		
INSURER F:		

COVERAGES CERTIFICATE NUMBER: 2015 Multi Century Club REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

ISR TR	TYPE OF INSURANCE	ADDITIONAL INSURER	SUBROGATION	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY			DT-CO-0E189746-COF-15	01/25/2015	01/25/2016	EACH OCCURRENCE	\$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 300,000
							MED EXP (Any one person)	\$ 10,000
							PERSONAL & ADV INJURY	\$ 1,000,000
							GENERAL AGGREGATE	\$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG	\$ 2,000,000
	<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC							\$
3	AUTOMOBILE LIABILITY			DT-810-0E189746-PHX-15	01/25/2015	01/25/2016	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS						BODILY INJURY (Per person)	\$
	<input checked="" type="checkbox"/> HIRED AUTOS		<input checked="" type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS				BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR			DTSM-CUP-0E189746-TIL-15	01/25/2015	01/25/2016	EACH OCCURRENCE	\$ 2,000,000
	<input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE						AGGREGATE	\$ 2,000,000
	<input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000							\$
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			76530.105	11/27/2015	11/27/2016	<input checked="" type="checkbox"/> WC STATUTORY LIMITS	OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)		<input type="checkbox"/> Y/N				E.L. EACH ACCIDENT	\$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	\$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
CITY OF SANTA FE IS RECOGNIZED AS ADDITIONAL INSURED PER POLICY PROVISIONS. 30 DAY NOTICE OF CANCELLATION EXCEPT FOR NON-PAYMENT OF PREMIUM

CERTIFICATE HOLDER CITY OF SANTA FE	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE Susan Vance/SJV <i>Susan J. Vance</i> 31



**City of Santa Fe
Summary of Contracts, Agreements, & Amendments**

Section to be completed by department for each contract or contract amendment

- | | | | | |
|---|--------------------------|--------------------------|-----------------------------|-------------------------------------|
| 1 | FOR: ORIGINAL CONTRACT | <input type="checkbox"/> | CONTRACT AGREEMENT | <input checked="" type="checkbox"/> |
| | MAINTENANCE AGREEMENT | <input type="checkbox"/> | LICENSE AGREEMENT | <input type="checkbox"/> |
| | LEGAL SERVICES AGREEMENT | <input type="checkbox"/> | MEMORANDUM OF UNDERSTANDING | <input type="checkbox"/> |
| | MEMORANDUM OF AGREEMENT | <input type="checkbox"/> | JOINT POWERS AGREEMENTS | <input type="checkbox"/> |
| | GRANT AGREEMENTS | <input type="checkbox"/> | CHANGE ORDERS | <input type="checkbox"/> |

2 Name of Contractor Century Club Construction, LLC.

3 Complete information requested Plus GRT

Inclusive of GRT

Original Contract Amount: Not to exceed \$4M

Termination Date: _____

Approved by Council Date: January 27, 2015

or by City Manager Date: _____

Contract is for: 16/18/B On Call Roadway & Trails Construction Services

Amendment # _____ to the Original Contract# _____

Increase/(Decrease) Amount \$ _____

Extend Termination Date to: _____

Approved by Council Date: _____

or by City Manager Date: _____

Amendment is for:

4 History of Contract & Amendments: (option: attach spreadsheet if multiple amendments) Plus GRT

Inclusive of GRT

Amount \$ _____ of original Contract# _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Total of Original Contract plus all amendments: \$ _____



**City of Santa Fe
Summary of Contracts, Agreements, & Amendments**

- 5 Procurement Method of Original Contract: (complete one of the lines)
 RFP RFQ Sole Source Other RFB# '16/18/B
- 6 Procurement History: N/A
 example: (First year of 4 year contract)
- 7 Funding Source: Various BU/Line Item: Various
- 8 Any out-of-the ordinary or unusual issues or concerns:

 (Memo may be attached to explain detail.)
- 9 Staff Contact who completed this form: James Martinez *J.M.* Phone # 955-6953
 Division Contract Administrator: Christine Gomez *CCG*
 Division Director: John J. Romero
 Department Director: Isaac J. Pino *Isaac J. Pino*
- # Certificate of Insurance attached. (if original Contract)
- # Description of your efforts to reduce the cost of the contract including information on efforts to obtain other quotes for the contracted activity: Procured through request for bids; use of lowest three qualified bidders.
- # Prior year's contract amount?: N/A
- # Describe service impact from an ongoing commitment to the contractor: N/A
- # Why staff cannot perform the work?: Heavy construction needs for various upcoming projects
- # If extending contract, why?: N/A
- # Was a Santa Fe company awarded contract? If not, why?: Yes
- # Has the contract been approved as to form by City Attorney's Office?: Yes.
- # Is this for City Manager or Council approval?: Yes, City Council

To be recorded by City Clerk:

Contract # _____

Date of contract Executed (i.e., signed by all parties): _____

Note: If further information needs to be included, attach a separate memo.

Comments: