



## **CITY OF SANTA FE**

### **"REQUEST FOR PROPOSALS" (RFP)**

Storm Water Management Improvements,  
Arroyo Chamiso And Santa Fe River

**RFP #14/28/P**

**PROPOSAL DUE:**

**April 9, 2014**

**2:00 P.M.**

**PURCHASING OFFICE**

**CITY OF SANTA FE**

**2651 SIRINGO ROAD**

**BUILDING "H" SANTA FE,**

**NEW MEXICO 87505**

# TABLE OF CONTENTS

Request for Proposals.....	1
Proposal Schedule.....	2
Information to Proponents.....	3
Special Conditions.....	9
Project Description and Scope of Services.....	11
Submittal Requirements.....	22
Evaluation Criteria and Weighted Values .....	25
General Conditions of the Contract .....	28

Attachments:

1. Instructions Relating to Local Preference Certification Form
2. Local Preference Certification Form
3. Work Hour Estimates (Exhibit A)
4. Project Cost Worksheet (Exhibit B)
5. Minimum Wage Ordinance (Exhibit C)
6. NM Department of Workforce Solutions, Wage Rate Determination (Exhibit D)
7. Sample Agreement/Contract (Exhibit E)

**REQUEST FOR PROPOSALS**

**PROPOSAL NUMBER '14/28/P**

Proposals will be received by the City of Santa Fe and shall be delivered to the City of Santa Fe Purchasing Office, 2651 Siringo Road Building "H" Santa Fe, New Mexico 87505 **until 2:00 P.M. local prevailing time, April 9, 2014.** Any proposal received after this deadline will not be considered. This proposal is for the purpose of procuring professional design and construction (design-build) services for the following:

**Storm Water Management Improvements,  
Arroyo Chamiso and Santa Fe River**

The proponent's attention is directed to the fact that all applicable Federal Laws, State Laws, Municipal Ordinances, and the rules and regulations of all authorities having jurisdiction over said item shall apply to the proposal throughout, and they will be deemed to be included in the proposal document the same as though herein written out in full.

The City of Santa Fe is an Equal Opportunity Employer and all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation or national origin. The successful proponent will be required to conform to the Equal Opportunity Employment regulations.

Proposals may be held for sixty (60) days subject to action by the City. The City reserves the right to reject any or all proposals in part or in whole. Proposal packets are available by contacting: Shirley Rodriguez, City of Santa Fe, Purchasing Office, 2651 Siringo Road, Building "H" Santa Fe, New Mexico, 87505, (505) 955-5711.

  
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Robert Rodarte, Purchasing Officer

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## PROPOSAL SCHEDULE

### RFP # '14/28/P

- |    |                                                                                |                                                                                                                                                           |
|----|--------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | Advertisement                                                                  | February 27, 2014                                                                                                                                         |
| 2. | Issuance of RFP'S:                                                             | February 27, 2014                                                                                                                                         |
| 3. | Pre-proposal Conference                                                        | March 12, 2014 at 2:30 p.m.<br>Large Conference Room<br>City of Santa Fe Offices at the<br>Railyard, 500 Market St., Ste. 200                             |
| 4. | Receipt of Proposals:                                                          | April 9, 2014 at 2:00 p.m.<br>local prevailing time.<br>Purchasing Office 2651<br>Siringo Road Bldg., "H"<br>Santa Fe, New Mexico<br>87505 (505) 955-5711 |
| 5. | Evaluation of Proposals:                                                       | April 17, 2014                                                                                                                                            |
| 6. | Interviews (if required):                                                      | April 23, 2014                                                                                                                                            |
| 7. | Recommendation of Award to the<br>City Council via the Public Works Committee: | May 12, 2014                                                                                                                                              |
| 8. | Notice of Award:                                                               | June 3, 2014                                                                                                                                              |

**DATES OF CONSIDERATION BY STAFF SELECTION COMMITTEE, PUBLIC WORKS COMMITTEE, FINANCE COMMITTEE AND CITY COUNCIL ARE TENTATIVE AND SUBJECT TO CHANGE WITHOUT NOTICE.**

## **INFORMATION FOR PROPONENTS**

### **1. RECEIPT OF PROPOSALS**

The City of Santa Fe (herein called "City"), invites firms to submit one original and six copies of the proposal. Proposals will be received by the Purchasing Office, until 2:00 p.m. local prevailing time, April 9, 2014.

The packets shall be submitted and addressed to the Purchasing Office, at 2651 Siringo Road Bldg. "H" Santa Fe, New Mexico 87505. No late proposals will be accepted whether hand delivered, mailed or special delivery. Do not rely on "overnight delivery" without including some lead-time. "Overnight delivery" will be determined to be non-responsive if delivered late, no matter whose fault it is. It is recommended that extra days be included in the anticipated delivery date to ensure delivery is timely. The Purchasing Office is closed 12:00 p.m. to 1:00 p.m. The outside of the envelope should clearly indicate the following information:

Proposal number: '14/28/P

Title of the proposal: Stormwater Improvements, Arroyo Chamiso and Santa Fe River

Name and address of the proponent:

Any proposal received after the time and date specified shall not be considered. No proposing firm may withdraw a proposal within 60 days after the actual date of the opening thereof.

### **2. PREPARATION OF PROPOSAL**

Vendors shall comply with all instructions and provide all the information requested. Failure to do so may disqualify your proposal. All information shall be given in ink or typewritten. Any corrections shall be initialed in ink by the person signing the proposal.

This request for proposal may be canceled or any and all proposals may be rejected in whole or in part, whenever the City of Santa Fe determines it is in the best interest of the City.

### **3. ADDENDA AND INTERPRETATIONS**

No oral interpretation of the meaning of any section of the proposal documents will be binding. Oral communications are permitted in order to make an assessment of the need for an addendum. Any questions concerning the proposal must be addressed prior to the date set for receipt of proposal.

Every request for such interpretations should be in writing addressed to, Purchasing Officer, 2651 Siringo Road Bldg. "H", Santa Fe, New Mexico, 87505 and to be given consideration must be received at least five (5) days prior to the date set for the receiving of proposals.

Any and all such interpretations and any supplemental instruction will be in the form of written addenda to the RFP, which if issued, will be posted on the City's web site not later than three days prior to the date fixed for the receipt of the proposals. Failure of any proposing firm to receive any such addenda or interpretations shall not relieve such firm from any obligation under their proposal as submitted. All addenda so issued shall become part of the contract documents.

The City reserves the right to not comply with these time frames if a critical addendum is required or if the proposal deadline needs to be extended due to a critical reason in the best interest of the City of Santa Fe.

**4. LAWS AND REGULATIONS**

The proposing firm's attention is directed to the fact that all applicable Federal Laws, State Laws, Municipal Ordinances, and the rules and regulations of all authorities having jurisdiction over said item shall apply to the contract throughout. They will be deemed to be included in the contract the same as though herein written out in full.

**5. METHOD OF AWARD**

The proposal is to be awarded based on qualified proposals as per the enclosed rating system and at the discretion and consideration of the city manager and/or governing body of the City of Santa Fe. The selection committee may interview the top three rated proponents; however, contracts may be awarded without such interviews. At its discretion the City reserves the right to alter the membership or size of the selection committee. The City reserves the right to change the number of proponents interviewed.

**6. COMPLIANCE WITH CITY'S MINIMUM WAGE RATE ORDINANCE (LIVING WAGE ORDINANCE)**

A copy of the City of Santa Fe Ordinance No. 2003-8, passed by the Santa Fe City Council on February 26, 2003 is attached. The proponent or bidder will be required to submit the proposal or bid such that it complies with the ordinance to the extent applicable. The recommended Contractor will be required to comply with the Ordinance to the extent applicable, as well as any subsequent changes to the Ordinance throughout the term of this contract.

## **7. RESIDENT and LOCAL PREFERENCE**

### **INTENT AND POLICY**

The city recognizes that the intent of the state resident preference statute is to give New Mexico businesses and contractors an advantage over those businesses, manufacturers and contractors from outside the State of New Mexico. The underlying policy is to give a preference to those persons and companies who contribute to the economy of the State of New Mexico by maintaining businesses and other facilities within the state and giving employment to residents of the state (1969 OP. Att'y Gen. No. 69-42). The city also has adopted a policy to include a local preference to those persons and companies who contribute to the economy of the County of Santa Fe by maintaining businesses and other facilities within the county and giving employment to residents of the county.

With acknowledgment of this intent and policy, the preference will only be applied when bids are received from in-state and county businesses, manufacturers and contractors that are within 5% of low bids received from out-of-state businesses, manufacturers and contractors (13-1-21 (A) -1-21 (F) and 13-4-2 (C) NMSA 1978).

To be considered a resident for application of the preference, the in-state bidder must have included a valid state purchasing certification number with the submitted bid.

Thus it is recommended that in-state bidders obtain a state purchasing certification number and use it on all bids, in order to have the preference applied to their advantage, in the event an out-of-state bid is submitted. In submitting a bid, it should never be assumed that an out-of-state bid will not be submitted.

For information on obtaining a state purchasing certification number, the potential bidder should contact the State of New Mexico General Services Department-Purchasing Office. The process involves a short application and certification by the applicant of the information requested by the state resident preference statute. The certificate is generally issued immediately.

All resident preferences shall be verified through the State Purchasing Office. Applications for resident preference not confirmed by the state Purchasing Office will be rejected. The certification must be under the bidder's business name submitting the bid.

### **NON-APPLICATION-COMPETING IN-STATE BIDDERS**

If the lowest responsive bid and the next responsive bids within 5% of the lowest bid, are all from the state of New Mexico, then the resident preference will not be

applied and the state purchasing certification number will not be considered. To be considered an in-state bidder in this situation, the bidders must meet the definition criteria of Chapter 13-1-21 (A)(1) and Chapter 13-4-2 (A) NMSA 1978. After examining the information included in the bid submitted, the city Purchasing Director may seek additional information of proof to verify that the business is a valid New Mexico business. If it is determined by the city Purchasing Director that the information is not factual and the low responsive bid is actually an out-of-state bidder and not a New Mexico business, then the procedures in the previous section may be applied.

If the bidder has met the above criteria, the low responsive "resident" bid shall be multiplied by .95. If that amount is then lower than the low responsive bid of a "non-resident" bidder, the award will be based taking into consideration the resident preference of 5%.

#### APPLICATION FOR LOCAL PREFERENCE

For the purposes of this section, the terms resident business and resident manufacturer shall be defined as set out in Section 13-1-21 NMSA 1978; the term local as applied to a business or manufacturer shall mean:

Principal Office and location must be stated: To qualify for the local preference, the principal place of business of the enterprise must be physically located within the Santa Fe County Geographic Boundaries. The business location inserted on the Form must be a physical location, street address or such. DO NOT use a post office box or other postal address. Principal place of business must have been established no less than six months preceding application for certification.

The PREFERENCE FACTOR for resident and local preferences applied to bids shall be .95 for resident and .90 for local. The preference for proposals shall be 1.10 for local.

New Mexico Resident Veteran Business Preference: New Mexico law, Section 13-1-22 NMSA 1978, provides a preference in the award of a public works contract for a "resident veteran business". Certification by the NM Department of Taxation and Revenue for the resident veteran business requires the Offeror to provide evidence of annual revenue and other evidence of veteran status.

An Offeror who wants the veteran business preference to be applied to its proposal is required to submit with its proposal the certification from the NM Department of Taxation and Revenue and the sworn affidavit attached hereto as Appendix E.

If an Offeror submits with its proposal a copy of a valid and current veteran resident business certificate, 7%, 8%, or 10% of the total weight of all the evaluation factors used in the evaluation of proposal may be awarded.

The local preference or resident business preference is not cumulative with the resident veteran business preference.

Proposals for Goods and Services. When proposals for the purchase of goods or services pursuant to Section 23 are received, the evaluation score of the proposal receiving the highest score of all proposals from those proponents in the first category listed above shall be multiplied by the Preference Factor. If the resulting score of that proposal receiving the preference is higher than or equal to the highest score of all proposals received, the contract shall be recommended to that proponent receiving the preference. If no proposals are received from proponents in the first category, or if the proposal receiving the preference does not qualify for an award after multiplication by the Preference Factor, the same procedure shall be followed with respect to the next category of proposals listed to determine if a proponent qualifies for award.

Qualifications for Local Preference. The Central Purchasing Office shall have available a form to be completed by all bidders/proponents who desire to apply for the local preference as a local business. The completed form with the information certified by the offeror must be submitted by the bidders/proponents with their bid or proposal to qualify for this preference.

Limitation. No offeror shall receive more than a 10% for local preference pursuant to this section on any one offer submitted. A bidder may not claim cumulative preferences.

Application. This section shall not apply to any purchase of goods or services when the expenditure of federal and/or state funds designated for a specific purchase is involved and the award requirements of the funding prohibit resident and/or local preference(s). This shall be determined in writing by the department with the grant requirements attached to the Purchasing Office before the bid or request for proposals is issued.

Exception. The City Council at their discretion can approve waiving the Local Preference requirements for specific projects or on a case by case basis if it is the City's best interest to do so.

## **8. PROTESTS AND RESOLUTIONS PROCEDURES**

Any proponent, offeror, or contractor who is aggrieved in connection with a procurement may protest to the Purchasing Officer. The protest must be in writing and submitted within fifteen (15) days and requirements regarding protest and resolution of protests are available from the Purchasing Office upon request.

## **SPECIAL CONDITIONS**

**1. GENERAL**

When the City's Purchasing Officer issues a purchase order document in response to the vendor's bid, a binding contract is created.

**2. ASSIGNMENT**

Neither the order, nor any interest therein, nor claim under, shall be assigned or transferred by the vendor, except as expressly authorized in writing by the City Purchasing Officer's Office. No such consent shall relieve the vendor from its obligations and liabilities under this order.

**3. VARIATION IN SCOPE OF WORK**

No increase in the scope of work of services or equipment after award will be accepted, unless means were provided for within the contract documents. Decreases in the scope of work of services or equipment can be made upon request by the City or if such variation has been caused by documented conditions beyond the vendor's control, and then only to the extent, as specified elsewhere in the contract documents.

**4. DISCOUNTS**

Any applicable discounts should be included in computing the proposal submitted. Every effort will be made to process payments within 30 days of satisfactory receipt of goods or services. The City Purchasing Officer shall be the final determination of satisfactory receipt of goods or services.

**5. TAXES**

The price shall include all taxes applicable. The city is exempt from gross receipts tax on tangible personal property. A tax exempt certificate will be issued upon written request.

**6. INVOICING**

(A) The vendor's invoice shall be submitted in duplicate and shall contain the following information: invoice number and date, description of the supplies or services, quantities, unit prices and extended totals. Separate invoices shall be submitted for each and every complete order.

(B) Invoice must be submitted to ACCOUNTS PAYABLE and NOT THE CITY PURCHASING AGENT.

**7. METHOD OF PAYMENT**

Every effort will be made to process payments within 30 days of receipt of a detailed invoice and proof of delivery and acceptance of the products hereby contracted or as otherwise specified in the compensation portion of the contract documents.

**8. DEFAULT**

The City reserves the right to cancel all or any part of this order without cost to the City if the Vendor fails to meet the provisions for this order, and except as otherwise provided herein, to hold the Vendor liable for any excess cost occasioned by the city due to the vendor's default. The Vendor shall not be liable for any excess cost if failure to perform the order arises out of causes beyond the control and with the fault or negligence of the Vendor and these causes have been made known to the City of Santa Fe in written form within five working days of the Vendor becoming aware of a cause which may create any delay; such causes include, but are not limited to, acts of God or the public enemy, acts of the State or of the Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of sub-contractors due to any of the above unless the city shall determine that the suppliers or services to be furnished by the sub-contractor are obtainable from other sources in sufficient time to permit the Vendor to meet the required delivery schedule. The rights and remedies of the City are not limited to those provided for in this paragraph and are in addition to any other rights provided for by law.

**9. NON-DISCRIMINATION**

By signing this City of Santa Fe bid or proposal, the Vendor agrees to comply with the Presidents Executive Order No. 11246 as amended.

**10. NON-COLLUSION**

In signing this bid or proposal, the Vendor certifies they have not, either directly or indirectly, entered into action in restraint of full competition in connection with this bid or proposal submittal to the City of Santa Fe.

**PROJECT DESCRIPTION AND SCOPE OF SERVICES**  
**'14/28/P**

**I. OVERVIEW**

Drainage conditions within portions of the Santa Fe River watershed are severely impacted by development that has altered landscapes over centuries of human activity. In particular, the Santa Fe River and its tributary arroyos are subjected to storm water flows that are amplified and concentrated due to coverage by paved areas and other surfaces that hasten runoff and inhibit infiltration. The amplified flows contribute to erosion, property damage, infrastructure damage and the transport of pollutants. Under these conditions, urban runoff is typically seen, almost exclusively, as a problem rather than a resource. The City of Santa Fe seeks to implement innovative – as well as established – methods that will reduce the detrimental characteristics of storm water runoff and will maximize the potential benefits of local precipitation.

**The purpose of this Request for Proposals (RFP) is to procure professional services for the design and construction of storm water management features at specific locations adjacent to the Arroyo Chamiso and the Santa Fe River.** The project locations are identified in the aerial map views in the Scope of Services section of the RFP, below. The objectives for the construction of the storm water management features include:

- reduction of the destructive forces of storm flows;
- improved soils and ground water conditions to support vegetation;
- improved wildlife habitat;
- improved water quality;
- and enhanced aesthetics of neighborhoods, urban drainages, and open spaces.

The work to be done under the contract includes, but is not limited to, furnishing all labor, materials, equipment and transportation; and performing all work in accordance with the following:

- > Design: The work includes the preparation of design documents for the project sites including construction drawings, construction specifications, and material quantities. The final design documents must be reviewed and approved by the City prior to start of construction activities.
- > Construction: Construct stormwater management features to improve hydrologic conditions and landscape conditions at the sites. Work will consist of all aspects required for the construction of the features and may include excavation, earthwork and grading; demolition and removal of existing structures; construction of new features; seeding and planting.

## **Design Guidelines**

Proposals should describe the proponent's approach for the preparation of design documents; site preparation; implementation of adequate erosion and sediment controls; excavation and grading; installation of suitably-sized and situated materials and structures (such as rock work, basins and swales, mulching and plantings); grading and stabilization of slopes; reclamation of disturbed areas with native vegetation and materials that are consistent with local ecological conditions; and all other activities needed for the preparation of the design documents and the construction of the storm water management improvements.

Design and construction of the storm water improvements should employ the principles and practices of "green infrastructure" and "low impact development."

## **Definitions:**

**Green infrastructure:** "Green infrastructure is the interconnected network of open spaces and natural areas — greenways, wetlands, parks, forest preserves, and native plant vegetation — that naturally manages stormwater, reduces the risk of floods, captures pollution, and improves water quality. In cities and other urbanized areas, that network can be extended by means of rain gardens, green roofs, tree planting, permeable pavement, and other landscape-based drainage features. They restore, protect, and mimic natural hydrologic functions within the built environment." (The preceding definition is from the American Planning Association). Green infrastructure techniques mimic natural processes in order to infiltrate, evaporate, and/or reuse stormwater. Green infrastructure uses soils, topography, and vegetation in a way that minimizes the impacts of human development to improve hydrology and water quality in urban environments.

**Low impact development (LID):** " LID is an approach to land development (or re-development) that works with nature to manage stormwater as close to its source as possible. LID employs principles such as preserving and recreating natural landscape features, minimizing effective imperviousness to create functional and appealing site drainage that treat stormwater as a resource rather than a waste product. There are many practices that have been used to adhere to these principles such as bioretention facilities, rain gardens, vegetated rooftops, rain barrels, and permeable pavements. By implementing LID principles and practices, water can be managed in a way that reduces the impact of built areas and promotes the natural movement of water within an ecosystem or watershed" (Definition from US Environmental Protection Agency).

Suggested reference documents for the design solutions sought by the City are listed below. The suggested reference documents are accessible (by purchase or download) via a search for the publications on the internet. This list should not be interpreted to restrict or limit the range of design solutions that may be appropriate based upon actual conditions at the project locations.

1. *Green Infrastructure for Southwestern Neighborhoods*; Watershed Management Group
2. *An Introduction to Erosion Control*; Bill Zeedyk and Jan-Willem Jansens
3. *Erosion Control Field Guide*; Craig Sponholtz and Avery C. Anderson
4. *Let the Water Do the Work: Induced Meandering, an Evolving Method for Restoring Incised Channels*, Revised February, 2012; Bill Zeedyk and Van Clothier
5. *Technical Supplement 14P, Gullies and Their Control, Part 654, National Engineering Handbook*; US Department of Agriculture
6. *Technical Supplement 14K, Streambank Armor Protection with Stone Structures, Part 654, National Engineering Handbook*; US Department of Agriculture
7. *Technical Supplement 14G, Grade Stabilization Techniques, Part 654, National Engineering Handbook*; US Department of Agriculture
8. *Technical Supplement 14C, Stone Sizing Criteria, Part 654, National Engineering Handbook*; US Department of Agriculture

### **Special Instructions for Construction Activities**

Proposals shall describe the proponent's approach for the implementation of the final, city-approved designs. Construction activities will include, but are not limited to, site preparation, implementation of adequate erosion and sediment controls, excavation and grading, installation of structures, grading and stabilization of slopes, and all other aspects as outlined in the final design.

The Contractor shall be responsible for determining and providing for the methods of ingress and egress, and the location for storage of materials and equipment, etc., prior to beginning work. The Contractor shall hold a preconstruction meeting on site with the designated city staff (as designated by the City of Santa Fe Public Works Department) to inspect site conditions and to plan work activities prior to initiating any work on the project sites. The Contractor shall secure the approval of the designated city staff at the preconstruction meeting for the particular methods of ingress and egress, and the location for storage of materials and equipment, etc., prior to beginning work.

The Contractor shall coordinate the work schedules with the designated city staff before the Contractor begins work on the contract. No work requiring the presence of the designated city staff shall be done at night, on weekends, or on Federal/State holidays, except in case of emergency and/or with written permission of the designated city staff. Written permission shall be sought at least two days in advance of the desired work day(s).

## II. SCOPE OF SERVICES

### A. Design and Construction Services

The selected Contractor shall:

1. Evaluate existing conditions. Evaluate existing drainage and hydrology, drainage areas, soil conditions, vegetation, channel and bank conditions, existing utilities, property ownership, patterns of use by the public, topography, adjacent roadways, culverts, bridges, etc.
2. Work with City staff to determine property ownership. The Contractor shall have primary responsibility to determine ownership and obtain and/or confirm any necessary right of entry and access to do the work.
3. Determine the level of effort required for environmental assessments and shall prepare any appropriate environmental clearance documents. Prepare required land use, environmental, cultural and/or biological reports as appropriate, including permit application submittals.

Reports, as may be required, must be prepared by qualified environmental and natural resource personnel (archeologists, biologists, etc.). The Contractor will select the logical extent for addressing land use and environmental concerns on a sufficiently broad scope. All environmental, cultural, or biological reports shall be prepared in accordance with applicable guidelines and regulations.

4. Obtain any permits and permissions that may be required. The Contractor must comply with applicable codes, laws and standards, including but not limited to those in force under: the City of Santa Fe, Santa Fe County, New Mexico Environment Department, Federal Emergency Management Agency, Army Corps of Engineers, and other federal or local agency requirements as appropriate.
5. The Contractor will be responsible for all coordination necessary to accomplish the work. This responsibility shall include coordination with the public, property owners, governmental agencies, utility owners, etc.

This responsibility shall include obtaining all formal and informal approvals. For any required formal (written) approvals, the Contractor will provide the City with all required data and draft/final draft letters of transmittal. In the event the Contractor is not successful in obtaining

formal or informal approvals, the Contractor shall promptly notify the City in writing, and the City will assist in resolving the matter.

The appropriate agencies, the public and other interested groups will be contacted to ensure that the community and governmental concerns are identified and considered for inclusion in the design and construction of the project. The Contractor shall be responsible for all coordination that is required to provide satisfactory neighborhood awareness and public involvement as necessary.

In addition to the above, the Contractor shall be responsible for:

- Scheduling all design reviews
- Writing design review reports
- Writing design team meeting reports (minutes)
- Producing and distributing all reports, plans and documents
- Performing property owner interviews and documenting the interviews
- Providing monthly progress reports for design, utilities, environmental, right-of-way, and construction
- Providing periodic progress presentations to City staff and elected officials (e.g., Public Works Director, Roadway and Trails Engineering Division Director, City Council, City Committees, etc.)
- Scheduling, facilitating and documenting weekly construction progress meetings, and distributing the notes therefrom.

6. The Contractor will provide construction services to include the following:

a. Mobilization

This work shall consist of the preparatory operations, including the movement of personnel and equipment to the project site(s) and the establishment of any facilities necessary to begin work. The Contractor is responsible for identifying, obtaining and securing any staging areas that may be requested or required by the Contractor.

For each of the program sites, the Contractor shall develop and adhere to a work schedule for mobilization, construction and demobilization. The work schedule shall be submitted to the City for review and approval prior to mobilization and the start of construction activities.

b. Construction of the Storm water Management Features

Implementation of the final design documents (as approved by the City of Santa Fe) including site preparation; implementation of

adequate erosion and sediment controls; excavation and grading; installation of suitably-sized and situated materials and structures (such as rock work, basins and swales, mulching and plantings); grading and stabilization of slopes; reclamation of disturbed areas with native vegetation and materials that are appropriate for local ecological conditions; and all other activities needed for the construction of the stormwater management features.

c. Erosion Control and Sediment Control

Erosion and sediment control shall be performed as may be required under City Land Use Code, the National Pollutant Discharge Elimination System, applicable Storm Water Pollution Prevention Plans (SWPPP), applicable Clean Water Act Section 404 Dredge and Fill Permits (404 Permit) and Section 401 Certification for the construction activities. All measures shall be instituted in accordance with the applicable permits. The Contractor shall be responsible for obtaining the applicable permit(s) and shall be responsible for complying with provisions of the permit(s).

Any work performed within established arroyo or river channels shall be performed in accordance and compliance with the 404 Permit(s) issued by the US Army Corps of Engineers. A copy of the 404 Permit will be kept on site during construction activities. The Contractor shall have a responsible person on site to supervise erosion and sediment control requirements.

Erosion and sediment control may include the installation, maintenance, and removal of all sediment control devices, such as silt fence, needed for adequate erosion and sediment control of construction staging areas and temporary stockpiles as necessary during all phases of the project, and any additional sediment and erosion control measures required by a 404 Permit and SWPPP. All sediment and erosion controls shall be inspected daily to ensure that the controls are properly functioning.

Erosion and sediment control will also consist of the grading, raking, seeding and mulching of all disturbed areas that are disturbed during construction. The Contractor shall seed project areas disturbed by construction activities. Application rates, seed mix, and application timing shall be determined as part of the 404 Permit application and SWPPP compliance; or according to plans submitted by the Contractor and approved by the City.

The Contractor shall stay within the limits of grading shown on the final design documents, and minimize disturbance within the working area wherever possible. It is the responsibility of the Contractor to prevent any mud and surface debris accumulation beyond the limit of grading. The Contractor is responsible for daily clean-up of the work site.

All perimeter controls and erosion and sediment control structures and devices shall be maintained throughout the life of the project, conforming to the detailed sequence of construction, or as directed by the City, 404 Permit and SWPPP.

The Contractor shall plan construction activities and staging to minimize operation of equipment in running or standing water. Channel crossings shall be limited to areas within the limits of grading and subject to approval by the designated city staff.

d. Restoration, Reclamation, Demobilization

The Contractor shall clean, grade, and stabilize stockpile and construction and staging areas.

All disturbed areas shall be graded, scarified and stabilized with seed and mulch prior to leaving the site.

Temporary structures, such as silt fencing, will be removed once the site is stabilized and as described in the approved SWPPP.

Demobilize all equipment from the project area(s).

B. Labor, Supplies, Equipment, Materials

The Contractor shall provide all labor, supervision, supplies, tools, equipment and materials appropriate for the implementation of the projects.

C. Coordination with City of Santa Fe Staff

1. Upon selection of the Contractor an initial meeting will be held with the City and Contractor to establish agreements for effective coordination between the two parties.
2. Regular meetings will be scheduled for coordination, to review progress and upcoming, planned activities, and to make any timely modifications to work plans.

3. City departments, divisions and programs that the Contractor may be asked to work with include the Public Works Dept., the Parks Division, Streets and Drainage, Storm Water Management, and Constituent Services.
4. City staff will review work plans and design documents. If extensive technical review is required, the City may back-charge the contractor for review services.

D. Reporting Requirements

1. Daily work completed will be documented using a Contractor's daily log book.
2. Contractor shall prepare a summary, monthly progress report that shall include the periodic invoice, work hour reports, summaries of work performed. Submittal of digital photos of work in progress and completed, while not required, is also desirable.

E. Applications for Payment

Applications for Payment shall include:

- a. An itemized invoice;
- b. A brief description of the Contractor's activities; project milestones; design documents completed; a description of the structures constructed; and descriptions and quantities of supplies and materials utilized and installed over the period of time covered by the invoice.

## F. Project Locations, Work Sites



### **The Arroyo Chamiso Project Sites**

Three storm drains: one from the north side, draining from Ruta Corta and Bellamah Drive; two from the south side, draining from Camino del Bosque



**Santa Fe River Project Site**

Bank erosion and gully formation on south side river bank in vicinity of (across from) Calle Don Jose and Santa Fe River Road. Arrows on the map view show approximate locations of gully formation. Correct locations to be determined in the field.



**Santa Fe River Project Site**  
Drainage off of Camino Rio to steep gully into Santa Fe River

## **PROPOSAL SUBMITTAL REQUIREMENTS**

### **SUBMITTAL PACKET**

One original plus five copies of the proposal packet shall be submitted. The proposal should be as concise as possible. The submittal should include the Contractor's work team members' names and a detailed staff work-hour estimate for each project phase for all services to be performed. The work-hour estimate will be used to evaluate the proponents' level of understanding of the described project(s), the completeness of level of effort proposed to accomplish the work and the amount of work to be performed by the Contractor versus sub-contractors or sub-consultants (if any).

### **PROJECT COST SUMMARY**

Provide worksheetd showing a breakdown of program labor, materials and construction costs and fees. Include labor hours and rates, administrative costs, etc. See Exhibit B for sample worksheets.

The worksheet will be used to evaluate the proponents' level of understanding of the work and value of the service provided.

### **STATEMENT OF QUALIFICATIONS**

Proposals shall provide responses to the following items to describe the Contractor organization's structure, capabilities, specialties, experience, and local knowledge.

#### **Organizational Data**

1. Official Name of Business/Organization
2. Types of services provided
3. Legal Form
  - a. Not-for-Profit, individual, partnership, corporation, joint venture, or other;
  - b. Date of establishment under current name;
  - c. Former names, locations, dates;
  - d. Names, titles, addresses of executive director and board members;
  - e. Categories in which business/organization is legally qualified to do business in New Mexico.
4. Organization Size – State the current number and type of regular, full time employees in office or facility that would be performing the work for this project. How long have these employees been with the organization?
5. Facilities – Describe the office or facility that would be performing the work for this project. Describe field facilities and equipment available for use on this project. State the location of each.

## **Workload**

Describe the organization's current workload (particularly in the office that will manage this project). Provide names, locations, and clients for each project. List those in your organization who are assigned to these projects that will also be assigned to the proposed work.

## **Knowledge of Local Conditions**

Demonstrate recent knowledge and experience with City Public Works Department, neighborhoods, local boards and commissions, community awareness, historic sensitivity, local design practices, local construction methods, conditions & seasonal requirements, and cost estimating in the general project area.

## **Experience**

Discuss recent experience of the organization and project team on projects similar to the type of work proposed. List particular projects, their completion dates in comparison to original schedule, costs vs. budget, owner/client, and references (including telephone numbers). Include photographs of completed projects. Describe your firm's expertise and familiarity with procedural and regulatory requirements on these kinds of projects. If the proposing contractor is going to use other consulting businesses/organizations to accomplish parts of the work, list the business/organization, its location, the licensed professional at the business/organization who would be responsible for the work and their area of expertise.

## **Project Team and Related Experience**

1. Present the organizational chart for the Contractor's team, the names of the specific team members, with their assigned tasks and qualifications, and the percent of time they will be assigned to the project.
2. Describe the management plan for coordinating staff schedules and supervisory schedules for delivery of the program activities safely, on schedule and within budget.
3. Should the organization be invited for a personal interview, the City requires the principal and key personnel, who will be assigned to the project, be present, be introduced, and participate in the interview

## **Project Team Approach to Meet Project Objectives**

Describe your team's approach for addressing the City's overall project objectives and design guidelines. Describe your team's approach for the successful integration of the design and construction components of the project.

## **RESUMES**

For sake of uniformity, submit the resumes of key members of the Contractor's project team, including subcontractors if any, using the following format:

- Name and Title

- Specialized Professional Competence
- Current Responsibilities
- Representative Project Assignments with Contractor
- Representative Project Assignments for Other Identified Employers
- Professional Background, Education

### **PROPOSAL FORM**

For uniformity of review and evaluation of proposals, use the following format in preparing your proposal:

- A. Table of Contents
- B. Work Hour and Fee Proposal Worksheet
- C. Statement of Qualifications (Organization Data, Work Load, Knowledge of Local Conditions, Experience including past experiences on similar projects, Project Team Description & Organizational Chart, Approach to the project)
- D. Any Additional Pertinent Information
- E. Resumes
- F. Liability Insurance Certificate(s) and Bonds

The proposal shall be limited to 20 pages for item “A” through “D”. The smallest acceptable font size is 12 point with nominal 1” margins and normal line spacing. Bear in mind that there is a practical limit to how much material selection team members can review in a limited time. Label each item clearly.

**NOTE: PROPOSALS NOT CONFORMING TO THE SUBMITTAL REQUIREMENTS MAY BE CONSIDERED NON-RESPONSIVE AND MAY NOT EVALUATED.**

## EVALUATION CRITERIA & WEIGHTED VALUES

RFP# '14/28/P

**PROJECT:** Stormwater Management Improvements, Arroyo Chamiso and Santa Fe River

**NAME OF CONTRACTOR ORGANIZATION:** \_\_\_\_\_

**EVALUATION CRITERIA:**

The contractor selection will be based upon evaluation of the proposal and the contractor firm relative to the evaluation criteria.

Proposal Component	Weighted Value	Evaluation Points (1 = low, 10 = High)	Total Score	Max Score
<p><b>Work Hour and Fee Proposal:</b> Consider the values of the overall fee, wage rates, administrative costs and cost of work delivered. Is all information provided, e.g., wage rate unit costs, administrative costs, materials and construction costs, overhead if any?</p>	20			200
<p><b>Organizational Data:</b> Is the information complete? Consider organization's longevity, stability and legal status. Size of organization? Type of facilities?</p>	10			150
<p><b>Workload:</b> Consider current workload, organizational capacity, and ability of organization to take on new work.</p>	10			100
<p><b>Knowledge of Local Conditions:</b> Are the organization, staff and board of directors familiar with local neighborhood issues, project sites, local design and construction practices? Consider familiarity with the City of Santa Fe Public Works, environmental and regulatory requirements.</p>	15			150

<b>Experience, Organization and Staff:</b> Consider the degree to which the organization/team has a demonstrated a history of providing relevant services safely and of good quality. Consider degree to which identified staff/team members possess relevant skills and experience. Consider history of team members' experience collaborating on similar projects?	20			
<b>Project Approach:</b> Consider the quality and thoroughness of the team's approach to ensure that the work and the integration of the design and construction activities address the City's objectives for the project.	15			
<b>Overall Quality of Proposal:</b> Is the required information included. Are the proponent's experience, approach and capabilities conveyed well?	10			
<b>Total Score</b>	100			1000
Multiply the Total Score by factor of 1.08 if company has an approved local preference certification form included with proposal:				1080

Please do not minimize the importance of an adequate response in any area.

**SELECTION COMMITTEE EVALUATOR**

**SIGNATURE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**PRINTED NAME:** \_\_\_\_\_

**DEPARTMENT & DIVISION:** \_\_\_\_\_

## **EVALUATION COMMITTEE MEMBERS**

The committee may consist of representatives from the following departments/divisions:

1. Finance Department
  - Purchasing Division or Representative
2. Public Works Department
  - Parks Division Representative
  - Storm Water Division Representative
  - Streets and Drainage Division Representative
  - Roadway and Trails Engineering Division
3. Planning and Land Use Department
  - Inspections & Enforcement or Other
4. Public Utilities Department

At its discretion, the City reserves the right to alter the membership and size of the committee.

Scores of the evaluation committee members will be totaled to determine the top rated firms.

If interviews are conducted for the top two or three rated firms, those scores totaled from the evaluation committee members from the interview evaluations will determine the final top rated firm, unless other tangible extenuating circumstances are documented.

Unless noted elsewhere in this RFP, the same evaluation form will be used to determine the interview scores.

GENERAL CONDITIONS  
OF THE  
CONTRACT

## NOTICE

This document has been prepared by the Public Works Department and Contract Compliance staff of the City of Santa Fe for use in construction projects.

## DOCUMENT

### GENERAL CONDITIONS OF THE CONTRACT FOR DESIGN - BUILD

(THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES;  
CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH  
RESPECT TO ITS COMPLETION OR MODIFICATION.)

### TABLE OF ARTICLES

1.	CONTRACT DOCUMENTS	9.	PAYMENTS AND COMPLETION
2.	ADMINISTRATION – PUBLIC WORKS DEPARTMENT PARKS, TRAILS AND WATERSHED DIVISION	10.	PROTECTION OF PERSONS AND PROPERTY
3.	OWNER	11.	INSURANCE
4.	CONTRACTOR	12.	CHANGES IN THE WORK
5.	SUBCONTRACTORS	13.	UNCOVERING AND CORRECTION OF WORK
6.	WORK BY OWNER OR BY SEPARATE CONTRACTORS	14.	TERMINATION OF THE CONTRACT
7.	MISCELLANEOUS PROVISIONS	15.	EQUAL OPPORTUNITY
8.	TIME	16.	MINIMUM WAGE RATES

## ARTICLE 1

### CONTRACT DOCUMENTS

#### 1.1 DEFINITIONS

##### 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Owner-Contractor Agreement, the Conditions of the Contract (General and Other Conditions), all Addenda issued prior to and all Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a written interpretation issued by the Owner's Representative, or (4) a written order for a minor change in the work issued by the Owner's Representative.

##### 1.1.2 THE CONTRACT

The Contract Documents form the Contract for the design-build services. This Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification as defined in Subparagraph 1.1.1. Nothing contained in the Contract Documents shall create any contractual relationship between the Owner and any Subcontractor or Sub-subcontractor.

##### 1.1.3 THE WORK

The work comprises the design and completed construction required by the Contract Documents, and includes design specifications, and all labor necessary to produce such design and construction, and all materials and equipment incorporated or to be incorporated in such design and construction.

##### 1.1.4 THE PROJECT

The Project is the total design and construction of which the work performed under the Contract Documents may be the whole or a part.

#### 1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 One original set of the Contract Documents shall be signed by the Owner and the Contractor.

1.2.2 By executing the Contract, the Contractor represents that he has visited the site(s), familiarized himself with the local conditions under which the work is to be performed, and correlated his observations with the requirements of the Contract Documents.

1.2.3 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. Work not covered in the Contract Documents will not be required unless it is consistent therewith and is

reasonably inferable therefrom as being necessary to produce the intended results. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings. In the event of a conflict between the Contract Documents, the more stringent requirements shall govern.

## ARTICLE 2

### ADMINISTRATION

#### **2.1 ADMINISTRATION OF THE CONTRACT – PUBLIC WORKS DEPARTMENT, ROADWAY AND TRAILS ENGINEERING DIVISION**

2.1.1 The City's River and Watershed Coordinator will provide administration of the Contract, as the Owner's Representative during construction, through closeout.

#### **2.2 CONSTRUCTION PHASE - ADMINISTRATION OF THE CONSTRUCTION CONTRACT**

2.2.1 The Construction Phase will commence with the approval of the design documents to be prepared by the Contractor.

2.2.2 The Owner's Representative shall provide administration of construction as required and defined in the Conditions of the Contract. The extent of the Owner's Representative's duties and responsibilities and the limitations of his or her authority thereunder shall not be modified without the Owner's written consent.

2.2.3 The Owner's Representative shall be the representative of the Owner during the Construction Phase, and shall advise and consult with the Owner. Instructions to the Contractor shall be forwarded only through the Owner's Representative as approved by the Owner. The Owner's Representative shall have authority to act on behalf of the Owner only to the extent provided in the Contract Documents and any amendments thereto.

2.2.4 The Owner's Representative, as a representative of the Owner, shall visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by the Owner and the Owner's Representative (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Owner's Representative shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Owner's Representative shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

2.2.5 The Owner's Representative shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety

precautions and programs in connection with the Work, for the acts or omissions of the Contractor, Subcontractors, or any other persons performing any of the Work, or for the failure of any of them to carry out the Work in accordance with the Contract Documents.

- 2.2.6 The Owner's Representative shall determine, certify, and make recommendations to the Owner for payment of the amounts owing to the Contractor subject to the Owner's approval, based on observations at the Site and on evaluations of the Contractor's Applications for Payment. The Owner's Representative shall issue Certificates for Payment in such approved amounts as provided in the Contract Documents.
- 2.2.7 The issuance of a Certificate and recommendation for payment shall constitute representation by the Owner's Representative to the Owner, based on the Owner's Representative's observations at the Site as provided in Subparagraph 2.5.4 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated; that the quality of the Work is substantially in accordance with the Contract Documents, including the approved design documents, (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent test required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to Payment); and that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment shall not be representation that the Owner's Representative has made any examination to ascertain how and for what purpose the Contractor has used the money paid on account of Contract Sum.
- 2.2.8 The Owner's Representative, shall render interpretations of the documents necessary for the proper execution or progress of the Work with reasonable promptness on written request of either the Owner or the Contractor, and shall render written decisions, within a reasonable time, on all claims, disputes and other matters in question between the Owner and the Contractor relating to the execution or progress of the Work or the interpretation of the Contract Documents.
- 2.2.9 Interpretations and decisions of the Owner's Representative shall be consistent with the requirements and intent of the Contract Documents and shall be in written or graphic form.
- 2.2.10 The Owner's Representative's decisions in matters relating to artistic effect shall be final if consistent with the requirements of the Contract Documents.
- 2.2.11 The Owner's Representative shall have authority to reject Work that does not conform to the Contract Documents and the approved design documents. Where rejected Work is not promptly corrected, the Owner's Representative may recommend to the Owner that the Work shall stop. Whenever, in the Owner's Representative's reasonable opinion, it is necessary or advisable for the implementation of the intent of the Contract Documents, the Owner's Representative will have authority to require special inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work be then fabricated, installed, or completed.
- 2.2.12 The Owner's Representative shall review the Contractor's submittals, such as shop drawings, product data, and samples, but only for the limited purpose of checking for conformance with the design concept of the Work and with the information given in the Contract Documents, and, for each submittal, the Owner's Representative shall designate, in

writing, that the Owner's Representative (1) takes no exception to the submittal, (2) rejects the submittal, (3) require corrections as noted by the Owner's Representative and/or Landscape Architect, (4) requires revision and re-submittal to the Owner's Representative and the Landscape Architect, (5) requires the Contractor to submit the specified item, or, (6) approves as corrected in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay. The Owner's Representative's review of the Contractor's submittals shall not relieve the Contractor of any of his obligations set forth in the General Conditions of the Contract, including but not limited to conformance with the Contract Documents. The Owner's Representative's approval of a specific item shall not indicate approval of an assembly of which the item is component.

- 2.2.13 All Change Orders, defined in the Conditions of the Contract for Construction, shall be prepared by the Owner's Representative. Such Change Orders shall not become effective or binding on the Owner or Contractor until signed by the Owner and others whose signatures are required therein. Approval in writing by the Owner of a completed Change Order modifies this contract to the extent indicated. No Work which could reasonably be expected to alter the contract price or materially alter the Project shall be undertaken until the Owner has approved a completed Change Order which outlines the desired change.
- 2.2.14 Upon prior notice to the Owner, the Owner's Representative, , shall conduct observations to determine the dates of Substantial Completion and Final Completion. The Owner's Representative shall receive and forward to the Owner for the Owner's review written warranties, as built drawings, and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a final Certificate for Payment.
- 2.2.15 The extent of the duties, responsibilities, and limitation of authority of the Owner's Representative as the Owner's Representative during construction shall not be modified or extended without written consent of the Owner.
- 2.2.16 Should the Owner's Representative, his staff, or consultants direct the Contractor or his Subcontractors to undertake work for which additional compensation could reasonably be expected, and if such work is not: a) an emergency endangering life and property, b) required by the Contract Documents, or c) required by approved Change Orders (signed by the Owner's Representative, the Owner, and the Contractor), payment for such work, if accomplished without written authorization, shall not be borne by the Owner.
- 2.2.17 As part of the Contractor's Basic Services, the Contractor shall modify the original reproducible drawings delineating recorded built conditions of the Project or record documents compiled from the records of the Contractor showing significant changes in the Work. This set of documents shall also include record documents, showing actual location of the Work.
- 2.2.18 The Owner's Representative shall at all times have access to the Work, whether it be in preparation or progress.

### **ARTICLE 3**

#### **OWNER**

### **3.1 DEFINITION**

3.1.1 The Owner is the person or entity identified as such in the Owner-Contractor Agreement and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term "Owner" means the Owner or his authorized representative.

### **3.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

3.2.1 The Owner shall, at the request of the Contractor, at the time of execution of the Owner-Contractor Agreement, furnish to the Contractor reasonable evidence that he has made financial arrangements to fulfill his obligations under the Contract. Unless such reasonable evidence is furnished, the Contractor is not required to execute the Owner-Contractor Agreement or to commence the work.

3.2.2 This article is intentionally blank.

3.2.3 Except as provided in Subparagraph 4.7.1, the Owner shall secure and pay for necessary easements required for the construction.

3.2.4 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the work.

3.2.5 This article is intentionally blank.

3.2.6 The Owner shall forward all instructions to the Contractor through the Owner's Representative.

3.2.7 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to work by Owner or by Separate Contractors, Payments and Completion, and Insurance in Articles 6, 9 and 11 respectively.

### **3.3 OWNER'S RIGHT TO STOP THE WORK**

3.3.1 If the Contractor fails to correct defective work as required by Paragraph 13.2 or persistently fails to carry out the work in accordance with the Contract Documents, the Owner, by a written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Contractor to stop the work, or any portion thereof, until the cause of such order has been eliminated; however, this right of the Owner to stop the work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Subparagraph 6.1.3.

### **3.4 OWNER'S RIGHT TO CARRY OUT THE WORK**

3.4.1 If the Contractor defaults or neglects to carry out the work in accordance with the Contract Documents and fails within seven days after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, after seven days following receipt by the Contractor of

an additional written notice and without prejudice to any other remedy he may have, make good such deficiencies. In such case, an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Owner's Representative's additional services made necessary by such default, neglect or failure. Such action by the Owner and the amount charged to the Contractor are both subject to the prior approval of the Owner's Representative. If the payments then or thereafter due to the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

## ARTICLE 4

### CONTRACTOR

#### 4.1 DEFINITION

4.1.1 The Contractor is the person or entity identified as such in the Owner-Contractor Agreement and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term "Contractor" means the Contractor or his authorized representative.

#### 4.2 REVIEW OF CONTRACT DOCUMENTS

**4.2.1 The Contractor shall carefully study and compare the Contract Documents and shall at once report to the Owner's Representative any error, inconsistency or omission he may discover. The Contractor shall not be liable to the Owner or the Owner's Representative for any damage resulting from any such errors, inconsistencies or omissions in the Contract Documents.**

#### 4.3 SUPERVISION AND CONSTRUCTION PROCEDURES

4.3.1 The Contractor shall supervise and direct the work, using his best skill and attention. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the work under the contract.

4.3.2 The Contractor shall be responsible to the Owner for the acts and omissions of his employees, Subcontractors and their agents and employees, and other persons performing any of the work under a contract with the Contractor.

4.3.3 The Contractor shall not be relieved from his obligations to perform the work in accordance with the Contract Documents either by the activities or duties of the Owner's Representative in his administration of the Contract, or by inspections, tests or approvals required or performed by persons other than the Contractor.

#### 4.4 LABOR AND MATERIALS

4.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the

proper execution and completion of the work, whether or not incorporated or to be incorporated in the work.

- 4.4.2 The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on the work any unfit person or anyone not skilled in the task assigned to him.

#### **4.5 WARRANTY**

- 4.5.1 The Contractor warrants to the Owner and Owner's Representative that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all work will be of good quality, free from faults and conforming to these requirements. Substitutions not properly approved and authorized, may be considered defective. If required by the Owner's Representative, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions in Paragraph 13.2.
- 4.5.2 The Contractor shall and hereby does warrant and guarantee all workmanship, labor, and materials performed and supplied by him or his Subcontractors for a period of one (1) year from the date of completion as evidenced by the date of the Owner's Representative's Final Certificate of Payment of this Contract. This also includes all labor required for replacing materials or equipment found to be defective within the one (1) year period. All guarantees for a longer period of time required by the work sections of these Specifications shall be secured by the Contractor from Subcontractors and delivered to the Owner's Representative and are hereby warranted by the Contractor as much as if countersigned by him.
- 4.5.3 The Contractor shall and hereby does warrant and guarantee all asphalt and concrete installed for roadway and trail paving, curb and gutter, including all workmanship, labor, and materials performed and supplied by him or his Subcontractors for a period of two (2) years from the date of completion as evidenced by the date of the Owner's Representative's Final Certificate of Payment of this Contract. This also includes all labor required for replacing roadway and trail paving, curb and gutter found to be defective within the two (2) year period. All guarantees for a longer period of time required by the work sections of these Specifications shall be secured by the Contractor from Subcontractors and delivered to the Owner's Representative and are hereby warranted by the Contractor as much as if countersigned by him.

#### **4.6 TAXES**

- 4.6.1 The Contractor shall pay all sales, consumer gross receipts tax, use and other similar taxes for the work or portions thereof provided by the Contractor which are legally enacted at the time Bids are received, whether or not yet effective.

#### **4.7 PERMITS, FEES AND NOTICES**

- 4.7.1 The Contractor shall secure and pay for all permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the work which are customarily secured after execution of the Contract.
- 4.7.2 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the work.
- 4.7.3 It is not the responsibility of the Contractor to make certain that the Contract Documents are in accordance with applicable laws, statutes, building codes and regulations. If the Contractor observes that any of the Contract Documents are at variance therewith in any respect, he shall promptly notify the Owner's Representative in writing, and any necessary changes shall be accomplished by appropriate Modification.
- 4.7.4 If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Owner's Representative, he shall assume full responsibility therefore and shall in turn notify the Owner's Representative of such action.

#### **4.8 ALLOWANCES**

- 4.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by these allowances shall be supplied for such amounts and shall be supplied for such amounts by such persons as the Owner may direct, but the Contractor will not be required to employ persons against whom he makes a reasonable objection.
- 4.8.2 Unless otherwise provided in the Contract Documents:
  - A. These allowances shall cover the cost to the Contractor, less any applicable trade discount of the materials and equipment required by the allowance delivered at the site, and all applicable taxes;
  - B. The Contractor's costs for unloading and handling on the site, labor, installations costs, overhead, profit and other expenses contemplated for the original allowance shall be included in the Contract Sum and not in this allowance;
  - C. Whenever the cost is more than or less than the allowance, the Contract Sum shall be adjusted accordingly by Change Order, the amount of which will recognize changes, if any, in handling costs on the site, labor, installation costs, overhead, profit and other expenses.

#### **4.9 SUPERINTENDENT**

- 4.9.1 The Contractor shall employ a competent Superintendent and necessary assistants who shall be in attendance at the project site during the progress of the work. The Superintendent shall represent the Contractor, and all communications given to the Superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be so confirmed on written request in each case.

#### **4.10 PROGRESS SCHEDULES**

- 4.10.1 The Contractor shall, within fourteen (14) days after the effective date of Notice to Proceed, furnish five copies of a preliminary progress schedule describing his operations for the three hundred (300) day contract period. The preliminary progress schedule shall be a bar graph or an arrow diagram showing the items the Contractor intends to commence and complete the various work stages, operations, and contract means planned to be started during the three hundred (300) day contract period.
- 4.10.2 Unless otherwise specified in the Special Provisions, the Contractor shall submit for approval by the Owner's Representative, within thirty (30) days after the effective date of Notice to Proceed, five copies of a progress schedule. The critical-path-type analysis shall include as a minimum: a computer printout or list of activities; and a brief written explanation of the proposed schedule.
- 4.10.3 The written explanation shall contain sufficient information to describe the construction methods to be used and to enable the Owner's Representative to evaluate the schedule and supporting analysis for validity and practicability. If the schedule or written explanation is not accepted by the Owner's Representative, the Contractor shall resubmit the rejected items within ten (10) days after rejection.
- 4.10.7 The analysis may employ the use of an electric computer or may consist of a non-computer analysis if the latter is suitable to analyze the number of activities required. The adequacy of the system selected shall be acceptable to the Owner's Representative.
- 4.10.8 The Contractor shall submit to the Owner's Representative monthly progress status reports on dates directed by the Owner's Representative.

If the noted starting dates or duration delay the scheduled project completion date, the delay shall be named. Reasons for the delay shall be given with an explanation of the Contractor's proposed corrective action. The Contractor shall also note each activity completed during the report period.

- 4.10.9 The Contractor shall prosecute the work in accordance with the latest progress schedule. Deviations therefrom shall be submitted to the Owner's Representative for review. In the event that the progress of items is delayed, the Contractor shall revise his planning to include additional forces, equipment, shifts or hours necessary to meet the Contract completion date. All additional cost resulting therefrom will not be borne by the Owner.

#### **4.11 DOCUMENTS AND SAMPLES AT THE SITE**

- 4.11.1 The Contractor shall maintain at the site, for the Owner, one record copy of all Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record all changes made during construction, and approved Shop Drawings, Product Data and Samples. These shall be available to the Owner's Representative and shall be delivered to him for the Owner upon completion of the work.

#### **4.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

- 4.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the work by the Contractor or any Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the work.
- 4.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate a material, product or system for some portion of the work.
- 4.12.3 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the work will be judged.
- 4.12.4 The Contractor shall review, approve and submit, with reasonable promptness and in such sequence as to cause no delay in the work or in the work of the Owner or any separate Contractor, all Shop Drawings, Product Data and Samples required by the Contract Documents.
- 4.12.5 By approving and submitting Shop Drawings, Product Data and Samples, the Contractor represents that he has determined and verified all materials, field measurements, and field construction criteria related thereto, or will do so, and that he has checked and coordinated the information contained within such submittals with the requirements of the work and of the Contract Documents.
- 4.12.6 The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Owner's Representative's approval of Shop Drawings, Product Data or Samples unless the Contractor has specifically informed the Owner's Representative in writing of such deviation at the time of submission and the Owner's Representative has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples by the Owner's Representative's approval thereof.
- 4.12.7 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data or Samples, to revisions other than those requested by the Owner's Representative on previous submittals.
- 4.12.8 No portion of the work requiring submission of a Shop Drawing, Product Data or Sample shall be commenced until the submittal has been approved by the Owner's Representative as provided in Subparagraph 2.2.13. All such portions of the work shall be in accordance with approved submittals.

#### **4.13 USE OF SITE**

- 4.13.1 The Contractor shall confine operations at the site(s) to areas permitted by law, ordinances, permits and the Contract Documents and shall not reasonably encumber the site with any materials or equipment.
- 4.13.2 The Contractor shall hold and save the Owner free and harmless from liability of any nature or kind arising from use, trespass or damage occasioned by third persons.

#### **4.14 CUTTING AND PATCHING OF WORK**

- 4.14.1 The Contractor shall be responsible for all cutting, fitting, patching or grading that may be required to complete the work or to make its several parts fit together properly.
- 4.14.2 The Contractor shall not damage or endanger any portion of the work or the work of the Owner or any separate contracts by cutting, patching or otherwise altering any work, or by excavation. The Contractor shall not cut or otherwise alter the work of the Owner or any separate Contractor except with the written consent of the Owner and of such separate Contractor. The Contractor shall not unreasonably withhold from the Owner or any separate Contractor his consent to cutting or otherwise altering the work.

#### **4.15 CLEANING UP**

- 4.15.1 The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. At the completion of the work, he shall remove all his waste materials and rubbish from and about the Project as well as all his tools, construction equipment, machinery and surplus materials.
- 4.15.2 If the Contractor fails to clean up at the completion of the work, the Owner may do so as provided in Paragraph 3.4, and the cost thereof shall be charged to the Contractor.
- 4.15.3 The Contractor shall be solely responsible for performance of the following clean up:
- A. Debris: Regardless of the nature of the debris, it shall be immediately cleared from the work area. Each trade shall cooperate with other trades in the removal of debris and in keeping a clean job throughout.
  - B. Cleaning of All Painted, Decorated, and Stained Work: The Contractor shall remove all marks, stains, finger prints, and other soil or dirt from all painted, decorated, and stained work.
  - C. Removal of all Temporary Protections: The Contractor shall remove all temporary protections and shall clean all floors, furnishings and structures at completion.
  - D. Cleaning and Clearing of Irrigation System: The Contractor shall clean and clear extraneous materials and debris from irrigation improvements.
  - E. Removal of all Spots, Soils, and Other Contaminants for Paved Surfaces: The Contractor shall remove all spots, soil and debris from all paved surfaces and shall wash the same upon completion.
  - F. Cleaning of all Fixtures and Equipment: The Contractor shall clean all fixtures and equipment, removing all stains, paint, dirt, and dust.

#### **4.6 COMMUNICATIONS**

- 4.16.1 The Contractor shall forward all communications to the Owner through the Owner's Representative.

#### **4.17 ROYALTIES AND PATENTS**

4.17.1 The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified; but if the Contractor has reason to believe that the design, process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the Owner's Representative.

#### **4.18 INDEMNIFICATION**

4.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner and the Owner's Representative and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself), including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission by the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such negligence shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph 4.18.

4.18.2 In any and all claims against the Owner or the Owner's Representative or any of their agents or employees by an employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph 4.18 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

4.18.3 The obligation of the Contractor under this Paragraph 4.18 shall not extend to the liability of the Owner's Representative, his agents or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs, or specifications.

### **ARTICLE 5**

#### **SUBCONTRACTORS**

##### **5.1 DEFINITION**

5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform any of the work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Subcontractor or his authorized representative. The term "Subcontractor" does not include any separate Contractor or his Subcontractors.

5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform any of the work at the Site.

## **5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK**

5.2.1 Unless otherwise required by the Contract Documents, the Contractor, as soon as practicable after the award of the Contract, shall furnish to the Owner and the Owner's Representative in writing the names of the persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each of the principal portions of the work. The Owner's Representative will promptly reply to the Contractor in writing stating whether or not the Owner or the Owner's Representative, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or the Owner's Representative to reply promptly shall constitute notice of no reasonable objection.

5.2.2 The Contractor shall not contract with any such proposed person or entity to whom the Owner or the Owner's Representative has made reasonable objection under the provisions of Subparagraph 5.2.1. The Contractor shall not be required to contract with anyone to whom he has a reasonable objection.

## **5.3 SUBCONTRACTUAL RELATION**

5.3.1 By an appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the Owner and the Owner's Representative. Said agreement shall preserve and protect the rights of the Owner and the Owner's Representative under the Contract Documents with respect to the work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the Contractor-Subcontractor agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with his Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Paragraph 5.3, and identify to the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Documents available to his Subcontractors.

## **ARTICLE 6**

### **WORK BY OWNER OR BY SEPARATE CONTRACTORS**

## **6.1 OWNER'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS**

6.1.1 The Owner reserves the right to perform work related to the Project with his own forces, and to award separate contracts in connection with other portions of the Project or other

work on the site under these or similar Conditions of the Contract. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, he shall make such claim as provided elsewhere in the Contract Documents.

- 6.1.2 When separate contracts are awarded for different portions of the Project or other work on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.
- 6.1.3 The Owner will provide for the coordination of the work of his own forces and of each separate Contractor with the work of the Contractor, who shall cooperate therewith as provided in paragraph 6.2.

## **6.2 MUTUAL RESPONSIBILITY**

- 6.2.1 The Contractor shall afford the Owner and the separate Contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall connect and coordinate his work with theirs as required by the Contract Documents.
- 6.2.2 If any part of the Contractor's work depends for proper execution or results upon the work of the Owner or any separate Contractor, the Contractor shall, prior to proceeding with the work, promptly report to the Owner's Representative any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acceptance of the Owner's or the separate Contractor's work as fit and proper to receive his work, except as to defects which may subsequently become apparent in such work by others.
- 6.2.3 Any costs caused by defective or ill-timed work shall be borne by the party responsible thereof.
- 6.2.4 Should the Contractor wrongfully cause damage to the work or property of the Owner, or to other work on the site, the Contractor shall promptly remedy such damage as provided in Subparagraph 10.2.5.
- 6.2.5 Should the Contractor wrongfully cause damage to the work or property of any separate Contractor, the Contractor shall upon due notice promptly attempt to settle with such other Contractor by agreement, or otherwise to resolve the dispute. If such separate Contractor sues or initiates an arbitration proceeding against the Owner on account of any damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor, who shall defend such proceedings at the Contractor's expense, and if any judgment or award against the Owner arises therefrom, the Contractor shall pay or satisfy it and shall reimburse the Owner for all attorneys' fees and court or arbitration costs which the Owner has incurred.

## **6.3 OWNER'S RIGHT TO CLEAN UP**

- 6.3.1 If a dispute arises between the Contractor and separate Contractors as to their responsibility for cleaning up as required by Paragraph 4.15, the Owner may clean up and

charge the cost thereof to the Contractors responsible therefor as the Owner's Representative shall determine to be just.

## ARTICLE 7

### MISCELLANEOUS PROVISIONS

#### **7.1 GOVERNING LAW**

7.1.1 The Contract shall be governed by the law of the State of New Mexico.

7.1.2 The Owner and the Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any moneys due or to become due to him thereunder, without the previous written consent of the Owner.

#### **7.2 WRITTEN NOTICE**

7.2.1 Written notice shall be deemed to have been dully served if delivered in person to the individual or member of the firm or entity or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified mail to the last business address known to him who gives the notice.

#### **7.3 CLAIMS FOR DAMAGES**

7.3.1 Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the other party or of any of his employees, agents or others for whose acts he is legally liable, claim shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

#### **7.4 PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND**

7.4.1 The Contractor to whom the Contract is awarded shall furnish and pay for reputable and approved Performance and Labor and Material Payment Bonds, each for a minimum of 2% of the Contract Sum. Bonds shall be executed on standard AIA forms.

#### **7.5 RIGHTS AND REMEDIES**

7.5.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

7.5.2 No action or failure to act by the Owner, the Owner's Representative, or the Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

## **7.6 TESTS**

7.6.1 This work shall consist of compaction testing, material testing, and other testing in accordance with the approved design documents. If the Contract Document, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the work to be inspected, tested or approved, the Contractor shall give the Owner's Representative timely notice of its readiness so the Owner's Representative may observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests or approvals. Tests specifically called for by design documents shall be made by a professional testing laboratory acceptable to the Owner's Representative, and the Contractor shall employ same and pay all charges in connection therewith. Records of tests shall be delivered to the Owner's Representative in duplicate on acceptable forms.

7.6.2 If the Owner's Representative determines that any work requires special inspection, testing, or approval which Subparagraph 7.6.1 does not include, he will, upon written authorization from the Owner, instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as provided in Subparagraph 7.6.1. If such special inspection or testing reveals a failure of the work to comply with the requirements of the Contract Documents, the Contractor shall bear all costs thereof, including compensation for the Owner's Representative's additional services made necessary by such failure; otherwise the Owner shall bear such costs, and an appropriate Change Order shall be issued.

## **7.7 INTEREST**

7.7.1 The Owner will not pay interest on payments due and unpaid under the Contract Documents.

# **ARTICLE 8**

## **TIME**

### **8.1 DEFINITIONS**

8.1.1 Unless otherwise provided, the Contract Time is the period of time allotted in the Contract Documents for Substantial Completion of the work as defined in Subparagraph 8.1.3, including authorized adjustments thereto.

8.1.2 The date of commencement of the work is the date established in a Notice to Proceed. If there is no Notice to Proceed, it shall be the date of the Owner-Contractor Agreement or such other date as may be established therein.

- 8.1.3 The date of Substantial Completion of the work or designated portion thereof is the date certified by the Owner's Representative and approved by the Owner when construction is sufficiently complete, in accordance with the Contract Documents, so the Owner can occupy or utilize the work or designated portion thereof for the use for which it is intended.
- 8.1.4 The term "day" as used in the Contract Document shall mean calendar day unless otherwise specifically designated.

## **8.2 PROGRESS AND COMPLETION**

- 8.2.1 All time limits stated in the Contract Documents are the essence of the Contract.
- 8.2.2 The Contractor shall begin the work on the date of commencement as defined in Subparagraph 8.1.2. He shall carry the work forward expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

## **8.3 DELAYS AND EXTENSIONS OF TIME**

- 8.3.1 If the Contractor is delayed at any time in the progress of the work by any act or neglect of the Owner or the Owner's Representative or by any employees of either, or by any separate Contractor employed by the Owner or by changes ordered in the work, or by labor disputes, fire, unusual delay in unavoidable casualties, or any causes beyond the Contractor's control or by delay authorized by the Owner pending arbitration, or by any other cause which the Owner's Representative determines may justify the delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner's Representative may determine.
- 8.3.2 Any claim for extension of time shall be made in writing to the Owner's Representative not more than twenty days after the commencement of the delay; otherwise it shall be waived. In the case of a continuing delay, only one claim is necessary. The Contractor shall provide an estimate of the probable effect of such delay on the progress of the work.
- 8.3.3 If written agreement is made stating the dates upon which interpretations shall be furnished, then no claim for delay shall be allowed on account of failure to furnish such interpretations until fifteen days after written request is made for them, and not then unless such claim is reasonable.
- 8.3.4 This Paragraph 8.3 does not exclude the recovery of damages for delay by either party under other provisions of the Contract Documents.

# **ARTICLE 9**

## **PAYMENTS AND COMPLETION**

### **9.1 CONTRACT SUM**

- 9.1.1 The Contract Sum is stated in the Owner-Contractor Agreement and including authorized adjustments thereto, is the total amount payable by the Owner to the Contractor for the performance of the work under the Contract Documents.

## **9.2 SCHEDULE OF VALUES**

- 9.2.1 Before the first Application for Payment, the Contractor shall submit to the Owner's Representative a schedule of values allocated to the various portions of the work, prepared in such form and supported by such data to substantiate its accuracy as the Owner's Representative may require. This schedule, unless objected to by the Owner's Representative, shall be used only as a basis for the Contractor's Applications for payment.
- 9.2.2 A separate schedule of values shall be prepared and submitted for each of the project sites identified in the Request for Proposals.

## **9.3 APPLICATIONS FOR PAYMENT**

- 9.3.1 At least ten days before the date for each progress payment established in the Owner-Contractor Agreement, the Contractor shall submit to the Owner's Representative an itemized Application for Payment, notarized if required, supported by such data substantiating the Contractor's right to payment as the Owner or the Owner's Representative may require.
- 9.3.2 Unless otherwise provided in the Contract Documents, payments will be made on account of materials or equipment not incorporated in the work but delivered and suitably stored at the site; and, if approved in advance by the Owner payments may similarly be made for materials or equipment suitably stored at some other location agreed upon in writing. Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials or equipment or otherwise protect the Owner's interest, including applicable insurance and transportation to the site for those materials and equipment stored off the site.
- 9.3.3 The Contractor warrants that title to all work, materials and equipment covered by an Application for Payment will pass to the Owner either by incorporation in the construction or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interest or encumbrances hereinafter referred to in this Article 9 as "liens"; and that no work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing work at the site or furnishing materials or equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

## **9.4 CERTIFICATES FOR PAYMENT**

- 9.4.1 The Owner's Representative will, within seven days after the receipt of the Contractor's Application for Payment, either issue a Certificate for Payment to the Owner with a copy to the Contractor for such amount as the Owner's Representative determines is properly

due, or notify the Contractor in writing of his reasons for withholding a Certificate as provided in Subparagraph 9.6.1.

- 9.4.2 The issuance of Certificate for Payment will constitute a representation by the Owner's Representative to the Owner, based on his observations at the site and the data comprising the Application for Payment, that the work has progressed to the point indicated; that, to the best of his knowledge, information and belief, the quality of the work is in accordance with the Contract Documents (subject to an evaluation of the work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents correctable prior to completion, and to any specific qualifications stated in his Certificate); and that the Contractor is entitled to payment in the amount certified. However, by issuing a Certificate for Payment, the Owner's Representative shall not thereby be deemed to represent that he has made exhaustive or continuous on-site inspections to check the quality or quantity of the work or that he has reviewed the construction means, methods, techniques, sequences or procedures, or that he has made any examination to ascertain how or for what purpose the Contractor has used the moneys previously paid on account of the Contract Sum.

## **9.5 PROGRESS PAYMENTS**

- 9.5.1 After the Owner's Representative has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents.
- 9.5.2 The Contractor shall promptly pay each Subcontractor upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's work, the amount to which said Subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of such Subcontractor's work. The Contractor shall, by an appropriate agreement with each Subcontractor, require each Subcontractor to make payment to his Subcontractors in similar manner.
- 9.5.3 The Owner's Representative may, on request and at his discretion, furnish to any Subcontractor, if practicable, information regarding the percentages of completion or the amounts applied for by the Contractor and the action taken thereon by the Owner's Representative on account of work done by such Subcontractor.
- 9.5.4 Neither the Owner nor the Owner's Representative shall have any obligation to pay or to see to the payment of any moneys to any Subcontractor except as may otherwise be required by law.
- 9.5.5 No Certificate for progress payment, no progress payment, nor any partial or entire use of occupancy of the Project by the Owner shall constitute an acceptance of any work not in accordance with the Contract Documents.

## **9.6 PAYMENT WITHHELD**

- 9.6.1 The Owner's Representative may decline to certify payment and may withhold his Certificate in whole or in part, to the extent necessary to reasonably protect the Owner, if

in his opinion he is unable to make representations to the Owner as provided in Subparagraph 9.4.2.

9.6.2. If the Owner's Representative is unable to make representations to the Owner, as provided in Subparagraph 9.4.2 and to certify payment in the amount of the Application, he will notify the Contractor as provided in Subparagraph 9.4.1. If the Contractor and Owner's Representative cannot agree on a revised amount, the Owner's Representative will promptly issue a Certificate for Payment for the amount for which he is able to make such representations to the Owner. The Owner's Representative may also decline to certify payment, or because of subsequently discovered evidence or subsequent observations, he may nullify the whole or any part of any Certificate for Payment previously issued, to such extent as may be necessary in his opinion to protect the Owner from loss because of:

- A) Defective work not remedied;
- B) Third party claims filed or reasonable evidence indicating probable filing of such claims;
- C) Failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- D) Reasonable evidence that the work cannot be completed for the unpaid balance of the Contract Sum;
- E) Damage to the work of another Contractor;
- F) Reasonable evidence that the work will not be completed within the Contract Time; or,
- G) Failure to carry out the work in accordance with the Contract Documents.

9.6.2 When the above grounds in Subparagraph 9.6.1 are removed or remedied, payment shall be made for amounts withheld because of them.

## **9.7 FAILURE OF PAYMENT**

9.7.1 If the Owner's Representative does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents any amount certified by the Owner's Representative, then the Contractor may, upon seven additional days' written notice to the Owner and the Owner's Representative, stop the work until payment of the amount owing has been received. The Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, which shall be effected by appropriate Change Order in accordance with Paragraph 12.3.

## **9.8 SUBSTANTIAL COMPLETION**

- 9.8.1 When the Contractor considers that the work, or a designated portion thereof which is acceptable to the Owner, is substantially complete as defined in Subparagraph 8.1.3, the Contractor shall prepare for submission to the Owner's Representative a list of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all work in accordance with the Contract Documents. When the Owner's Representative, with the Owner, on the basis of an inspection determines that the work or designated portion thereof is substantially complete, he will then prepare a Certificate of Substantial Completion Form (AIA Document G704-1978 or similar form) which shall establish the Date of Substantial Completion, shall state the responsibilities of the Owner and the Contractor for security and maintenance, and the time within which the Contractor shall complete the items listed therein. Warranties required by the Contract Documents shall commence on the date of Final Completion of the work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Contractor and the Owner for their written acceptance of the responsibilities assigned to them in such Certificate.
- 9.8.2 Upon Substantial Completion of the work or designated portion thereof and upon application by the Contractor and certification by the Owner's Representative, the Owner shall make payment, reflecting adjustment in retainage, if any, for such work or portion thereof, as provided in the Contract Documents.

## **9.9 FINAL COMPLETION AND FINAL PAYMENT**

- 9.9.1 Upon receipt of written notice that the work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner's Representative will promptly make such inspection and, if he finds the work acceptable under the Contract Documents and the Contract fully performed, he will promptly issue final Certificate for Payment stating that, to the best of his observations and inspections, the work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in said Final Certificate, is due and payable. The Owner's Representative's Final Certificate of payment will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment as set forth in Subparagraph 9.9.2 have been fulfilled.
- 9.9.2 Neither the final payment nor the remaining retained percentage shall become due until the Contractor submits to the Owner's Representative (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the work for which the Owner or his property might in any way be responsible have been paid or otherwise satisfied, (2) consent of surety, if any, to final payment, and (3) if required by the Owner, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the Contract, to the extent and in such form as may be designed by the Owner. If any Subcontractor refuses to furnish a release or waiver required by the Owner the Contractor may furnish a bond satisfactory to the Owner to indemnify him against any such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all moneys that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

- 9.9.3 If, after Substantial Completion of the work, final completion thereof is materially delayed through no fault of the Contractor or by the issuance of Change Orders affecting final completion, and the Owner's Representative so confirms, the Owner shall, upon application by the Contractor and certification by the Owner's Representative and without terminating the Contract, make payment of the balance for that portion of the work fully completed and accepted. If the remaining balance for work not fully completed or corrected is less than the retainage stipulated in the Contract Document, and if bonds have been furnished as provided in Paragraph 7.5, the written consent of the surety to the payment of the balance due for that portion of the work fully completed and accepted shall be submitted by the Contractor to the Owner's Representative prior to certification of such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.
- 9.9.4 The making of final payment shall constitute a waiver of all claims by the Owner except those arising from:
- A) Unsettled liens;
  - B) Faulty or defective work appearing after Substantial Completion;
  - C) Failure of the work to comply with the requirements of the Contract Documents; and
  - D) Terms of any special warranties required by the Contract Documents.
- 9.9.5 The acceptance of final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the final Application for Payment.

## **ARTICLE 10**

### **PROTECTION OF PERSONS AND PROPERTY**

#### **10.1 SAFETY PRECAUTIONS AND PROGRAMS**

- 10.1.1 The Contractor shall be responsible in initiating, maintaining and supervising all safety precautions and programs in connection with the work.

#### **10.2. SAFETY OF PERSONS AND PROPERTY**

- 10.2.1 The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

- 10.2.1.1 All employees on the work and all other persons who may be affected thereby;
- 10.2.1.2 All the work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any of his Subcontractors or Sub-subcontractors; and
- 10.2.1.3 Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

- 10.2.2 The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.
- 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and progress of the work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.
- 10.2.4 When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.
- 10.2.5 The Contractor shall promptly remedy all damage or loss (other than damage or loss insured under paragraph 11.3) to any property referred to in Clauses 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, any Subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the Contractor is responsible under clauses 10.2.1.2 and 10.2.1.3, except damage or loss attributable to the acts or omissions of the Owner or the Owner's Representative or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to his obligations under Paragraph 4.18.
- 10.2.6 The Contractor shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's Superintendent unless otherwise designated by the Contractor in writing to the Owner and the Owner's Representative.
- 10.2.7 The Contractor shall not load or permit any part of the work to be loaded so as to endanger its safety.

### **10.3 EMERGENCIES**

- 10.3.1 In any emergency affecting the safety of persons or property, the Contractor shall act, at his reasonable discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided in Article 12 for changes in the work.

**ARTICLE 11**

**INSURANCE**

**11.1 CONTRACTOR’S LIABILITY INSURANCE**

- 11.1.1. The Contractor shall carry insurance to protect the City of Santa Fe from and against all claims, demands, actions, judgments, costs, expenses and liabilities which may arise or result directly or indirectly from or by reasons of loss, injury or damage related to the Project. The Contractor shall file with the City of Santa Fe current certificates evidencing public liability insurance with limits as provided in the New Mexico Tort Claims Act, Section 41-4-19 NMSA 1978, and as that section or successors section may be amended from time to time. The contractor shall also carry such insurance as it deems necessary to protect it from all claims under any workmen's compensation law in effect that may be applicable to the Contractor. All insurance required by this Agreement shall be kept and remain in full force and effect for the entire life of this Agreement.
- 11.1.2. The insurance coverage shall include worker's compensation, employers liability, comprehensive general liability (Premises-Operations, independent contractors, products and completed operations, broad form property damage, contractual liability, explosion and collapse hazard, underground Hazard, personal injury) comprehensive automobile liability (owned and hired), excess liability (umbrella form), and all-risk builder's risk.
- 11.1.3. All insurance coverage must be maintained for the entire life of the Project. Products and completed operations coverage shall be maintained for a minimum period of one (1) year after final payment.
- 11.1.4. A valid certificate of insurance must be submitted to the Owner prior to issuance of a Notice-to-Proceed.

Type of Required Coverage	Minimum Limits of Liability
Workman’s compensation (including accident and occupational disease coverage)	Statutory
Employer’s Liability	\$100,000
Comprehensive General Liability (including endorsements providing broad form property damage coverage, personal injury coverage, and contractual assumption of liability coverage for all liability the Contractor has assumed under his Contract).	Bodily injury liability: \$1,000,000 each occurrence; \$2,000,000 aggregate. Property damage liability: \$1,000,000 each occurrence; \$2,000,000 aggregate.
Auto Liability (including non-owned auto coverage)	Bodily injury liability: \$1,000,000 each person; \$2,000,000 each occurrence. Property damage liability: \$1,000,000 each occurrence

11.1.5 Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the work. These Certificates shall contain a provision that coverage afforded under the policies will not be canceled until at least thirty days prior written notice has been given to the Owner. The Contractor shall furnish one (1) copy of each of the Certificates of insurance herein required for each copy of the Contract.

## **11.2 OWNER'S LIABILITY INSURANCE**

11.2.1 The Owner shall be responsible for purchasing and maintaining his own liability insurance and, at his option, may purchase and maintain such insurance as will protect him against all claims which may arise from operations under the Contract.

## **11.3 PROPERTY INSURANCE**

11.3.1 The Contractor shall maintain traditional course of construction insurance upon the work at the site for at least the actual cash value thereof. The traditional course of construction insurance shall cover the interests of the Owner, the Contractor, Subcontractors, and Sub-subcontractors in the work. The insurance shall insure against at least the following perils: fire extended coverage, vandalism, malicious mischief, and flood insurance with a deductible of no more than \$25,000. The Contractor shall bear the cost of such insurance and include its cost in the Contractor's fees.

11.3.2 Any loss insured under Subparagraph 11.3.1 is to be adjusted with the Owner and made payable to the Owner as trustee for the insured, as their interests may appear subject to the requirements of any applicable mortgage clause. The Owner shall deposit the proceeds in a separate account and shall distribute them in accordance with such agreement as the parties in interest, including the Owner, may reach. The Contractor shall pay each Subcontractor a just share of any insurance proceeds which the Contractor receives and shall require by written agreement signed by the Subcontractor that the Subcontractor will make payments to his Sub-subcontractors in a similar manner. If after such loss no other special agreement is made, replacement of damaged work shall be covered by an appropriate order.

11.3.3 To the extent permitted under their respective property insurance policies, the Owner and the Contractor hereby waive all rights, each against the other, for damages caused by fire or other perils to the extent covered by Insurance obtained pursuant to this Article 11 or any other property insurance applicable to the work, except such rights as they may have to the proceeds of such Insurance held by the Owner as trustee. The Owner or the Contractor, as appropriate, shall require the Owner's Representative, other Contractors, Subcontractors, and Sub-subcontractors to similarly waive rights of subrogation or property insurers.

11.3.4 If the Owner finds it necessary to occupy use of any portion of the work prior to Substantial Completion, such occupancy or use shall not commence prior to the time mutually agreed to by the Owner and the Contractor and, if required by the applicable insurance or self insurance coverage not prior to the time the builder's risk property insurer has consented to such occupancy or use. The Contractor's consent to such occupancy or use shall not be unreasonably withheld.

## **11.4 LOSS OF USE INSURANCE**

- 11.4.1 The Owner, at his option, may purchase and maintain such insurance as will insure him against loss of use of his property due to fire or other hazards, however caused.

## **ARTICLE 12**

### **CHANGES IN THE WORK**

## **12.1 CHANGE ORDERS**

- 12.1.1 A Change Order is a written order to the Contractor signed by the Owner's Representative and the Contractor and approved in writing by the Owner. A Change Order may be issued only after the execution of the Contract and shall be the only means used to order changes in the work for which the Contractor requires additional compensation, changes to the Contract Time, or changes to the Contract Sum. Minor changes in the work for which the Contractor requires no additional compensation or time shall be executed in accordance with the provision of Subparagraph 12.3.1.
- 12.1.2 The Owner, without invalidating the Contract, may order changes in the work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and the Contract Time being adjusted accordingly. All such changes in the work shall be authorized by Change Order and shall be performed under the applicable conditions of the Contract Documents.
- 12.1.3 The cost or credit to the Owner resulting from a change in the work shall be determined in one or more of the following ways:
- A) By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
  - B) By unit prices stated in the Contract Documents or subsequently agreed upon;
  - C) By cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
  - D) By the method provided in Subparagraph 12.1.4.
- 12.1.4 If none of the methods set forth in Clauses 12.1.2 or 12.1.3 is agreed upon, the Contractor, provided he receives a written order signed by the Owner, shall promptly proceed with the work involved. The cost of such work shall be determined by the Owner's Representative on the basis of the reasonable expenditures and savings of those performing the work attributable to the change, including, in the case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, the Contractor shall keep and present, in such form as the Owner's Representative may prescribe, an itemized accounting together with appropriate supporting data for inclusion in a Change Order. Unless otherwise provided in the Contract Documents, cost shall be limited to the following: cost of materials, including sales tax and cost of delivery; cost of labor, including social security, old age and unemployment insurance, and fringe benefits, required by agreement or custom, workers' or workmen's compensation insurance; bond premiums; rental value of equipment and machinery; and the additional costs of supervision and field office personnel directly attributable to the change.

Pending final determination of cost to the Owner payments on account shall be made on the Owner's Representative's Certificate for payment. The amount of credit to be allowed by the Contractor to the Owner for any deletion or change which results in a net decrease in the Contract Sum will be the amount of the actual net cost as confirmed by the Owner's Representative. When both additions and credits covering related work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any, with respect to that change.

- 12.1.5 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order that application of the agreed unit prices to the quantities of work proposed will cause substantial inequity to the Owner or the Contractor, the applicable unit prices shall be equitably adjusted.
- 12.1.6 By submission of a Bid, the Contractor agrees and binds himself to the following method of calculating Change Order costs. The Owner also agrees to the following method of calculating the cost of any changes to the Contract. With each proposal for a change in the amount of the Contract, the Contractor shall submit an itemized breakdown of all increases or decreases in the cost of the Contractor's and all Subcontractor's and Sub-subcontractor's work to include at least the following detail in the general order listed:
  - A) Material quantities and unit costs;
  - B) Labor amounts and hourly rates (identified with specific items of material to be placed or operation to be performed);
  - C) Costs inherent in use of Contractor/Sub-subcontractor owned equipment;
  - D) Equipment rental, if any;
  - E) Workmen's compensation and public liability insurance;
  - F) General administration, overhead, supervision, project insurance and profit, based on the following schedule:

<u>Subtotal before Applying the Percentage Shown</u>	<u>\$500 &amp; Less</u>	<u>Over \$500</u>
Contractor for work performed by his own forces	22%	19%
Contractor for work performed by Subcontractor	10%	8%
Subcontractor for work performed by his own forces	18%	15%
Subcontractor for work performed by Sub-subcontractor	10%	8%
Sub-subcontractor for work performed by his own forces	18%	15%

- G) Employment taxes under FICA and FUTA; and
- H) State gross receipts tax (Contractor only).

12.1.7 The quotation for work under a Change Order shall be binding for sixty (60) days from the date submitted by the Contractor.

## **12.2 CONCEALED CONDITIONS**

12.2.1 Should concealed conditions encountered in the performance of the work below the surface of the ground or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Contract Documents, or should unknown physical conditions below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in work of the Character provided for in this Contract, be encountered, the Contract Sum shall be equitably adjusted by Change Order upon verified claim by either party made within twenty days after the first observance of the conditions.

12.2.2 If the Contractor wishes to make a claim for an increase in the Contract Sum, he shall give the Owner's Representative written notice thereof within twenty days after the occurrence of the event giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute the work, except in an emergency endangering life or property, in which case the Contractor shall proceed in accordance with Paragraph 10.3. No such claim shall be valid unless so made. If such claims are justified and the Owner authorizes an increase in the Contract Sum, the Owner and the Contractor shall proceed to negotiate the amount of the adjustment in the Contract Sum. If the Owner and the Contractor cannot agree on the amount of the adjustment in the Contract Sum, it shall be determined by the Owner's Representative. Any change in the Contract Sum resulting from such claim shall be authorized by Change Order.

12.2.3 If the Contractor claims that additional cost is involved because of, but not limited to, (1) any written interpretation, (2) any order by the Owner to stop the work pursuant to Paragraph 3.3 where the Contractor was not at fault, (3) any written order for a minor change in the work issued pursuant to Paragraph 12.3.1 or (4) failure of payment by the Owner pursuant to Paragraph 9.7, the Contractor shall make such claims as provided in Subparagraph 12.2.2.

## **12.3 MINOR CHANGES IN THE WORK**

12.3.1 The Owner's Representative will have authority to order minor changes in the work not involving an adjustment in the Contract Sum or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and the Contractor. The Contractor shall carry out such written orders promptly.

### **ARTICLE 13**

#### **UNCOVERING AND CORRECTION OF WORK**

## **13.1 UNCOVERING OF WORK**

- 13.1.1 If any portion of the work should be covered contrary to the request of the Owner's Representative or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Owner's Representative, be uncovered for his observation and shall be replaced at the Contractor's expense.
- 13.1.2 If any portion of the work has been covered which the Owner's Representative has not specifically requested to observe prior to being covered, the Owner's Representative may request to see such work and it shall be uncovered by the Contractor. If such work is found to be in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such work is found to be not in accordance with the Contract Documents, the Contractor shall pay such costs unless it is found that this condition was caused by the Owner or a separate Contractor as provided in Article 6, in which case the Owner shall be responsible for the payment of such costs.

## **13.2 CORRECTION OF WORK**

- 13.2.1 The Contractor shall promptly correct all work rejected by the Owner's Representative as defective or as failing to conform to the Contract Documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected work, including compensation for the Owner's Representative's additional services made necessary thereby.
- 13.2.2 If, within one year after the Date of Substantial Completion of the work or designated portion thereof or within one year after acceptance by the Owner of designated equipment or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the Owner to do so unless the Owner has previously given the Contractor a specific written acceptance of such condition. This obligation shall survive termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.
- 13.2.3 The Contractor shall remove from the site all portions of the work which are defective or non-conforming and which have not been corrected under Subparagraphs 4.5, 13.2.1 and 13.2.2, unless removal is specifically waived in writing by the Owner.
- 13.2.4 If the Contractor fails to correct defective or non-conforming work as provided in Subparagraph 4.5.1, 13.2.1 and 13.2.2, the Owner may correct it in accordance with Paragraph 3.4.
- 13.2.5 If the Contractor does not proceed with the correction of such defective or non-conforming work within a reasonable time fixed by written notice from the Owner's Representative, the Owner may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten days thereafter, the Owner may upon ten additional days' written notice sell such work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor

including compensation for the Owner's Representative's additional services made necessary thereby. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

13.2.6 The Contractor shall bear the cost of making good all work of the Owner or separate Contractors destroyed or damaged by such correction or removal.

13.2.7 Nothing contained in this Paragraph 13.2 shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including Paragraph 4.5 hereof. The establishment of the time period of one year after the Date of Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the Contractor to correct the work and has no relationship to the time within which his obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to his obligations other than specifically to correct the work.

### **13.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK**

13.3.1 If the Owner prefers to accept defective or non-conforming work, he may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect a reduction in the Contract Sum where appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## **ARTICLE 14**

### **TERMINATION OF THE CONTRACT**

#### **14.1 TERMINATION BY THE CONTRACTOR**

14.1.1 If the work is stopped for a period of thirty days under an order of court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Contractor or a Sub-contractor or their agents or employees or any other persons performing any of the work under a contract with the Contractor, or because the Owner's Representative has not issued a Certificate for payment as provided in Paragraph 9.7, or because the Owner has not made payment thereon as provided in paragraph 9.7, then the Contractor may, upon seven additional days' written notice to the Owner and the Owner's Representative, terminate the Contract and recover from the Owner payment for all work executed and for any proven loss sustained upon any materials, equipment, tools, construction equipment and machinery, including reasonable profit and damages.

#### **14.2 TERMINATION BY THE OWNER**

14.2.1 If the Contractor is adjudged bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if he

persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if he fails to make prompt payment to Subcontractors for material or labor, or persistently disregards laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of the Contract Documents, then the Owner, upon certification by the Owner's Representative that sufficient cause exists to justify such action, may without prejudice to any right or remedy and after giving the Contractor and his surety, if any, seven days written notice, terminate the employment of the Contractor and take possession of the site and of all material, tools, construction equipment and machinery thereon owned by the Contractor and may finish the work by whatever method he may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the work is finished.

- 14.2.2 If the unpaid balance of the Contract Sum exceeds the costs of finishing the work, including compensation for the Owner's Representative's additional services made necessary thereby, and any damages sustained by the Owner as a result of the Contractor's breach, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or to the Owner, as the case may be, shall be certified by the Owner's Representative upon application, in the manner provided in paragraph 9.4 and this obligation to the Contractor or to the Owner, as the case may be, shall be certified by the Owner's Representative upon application, in the manner provided in Paragraph 9.4 and this obligation for payment shall survive the termination of the Contract.
- 14.2.3 In the event that the Project is abandoned by the Owner, the Owner may terminate this contract at any time by giving at least seven (7) days notice to the Contractor. In the event of termination, all work completed shall become the property of the Owner. The Contractor shall be entitled to receive compensation for actual work satisfactorily completed hereunder, including reimbursable expense authorized by the Owner which are then due.
- 14.2.4 In the event the Contractor fails to perform the work in accordance with the Contract Documents, the Owner may terminate the Contract after giving the Contractor five (5) working days notice.

## **ARTICLE 15**

### **EQUAL OPPORTUNITY**

- 15.1 The Contractor shall maintain policies of employment as follows:
  - 15.1.1 The Contractor, all Subcontractors, and all Sub-subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. The Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated without discrimination during employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous place, available

to employees and applicants for employment, notices setting forth the policies of non-discrimination.

- 15.1.2 The Contractor, all Subcontractors, and all Sub-subcontractors shall, in all solicitation or advertisements for employees placed by them or on their behalf, state that all qualified applicant will receive consideration for employment without regard to race, religion, color, sex, or national origin.

## **ARTICLE 16**

### **MINIMUM WAGE RATES**

- 16.1 The project is subject to New Mexico **Wage Decision # SF-14-0174 A** and the City of Santa Fe's Minimum Wage Ordinance both attached to this Request for Proposals.

## INSTRUCTIONS RELATING TO LOCAL PREFERENCE CERTIFICATION FORM

1. **All information must be provided.** A 10% local preference may be available for this procurement. To qualify for this preference, an offeror **must** complete and submit **the local preference certification form with its offer**. If an offer is received without the form attached, completed, notarized, and signed or if the form is received without the required information, the preference will not be applied. **The local preference form or a corrected form will not be accepted after the deadline for receipt of bids or proposals.**
2. **Local Preference precedence over State Preference:** The Local Preference takes precedence over the State Resident Preference and only one such preference will be applied to any one bid or proposal. If it is determined that the local preference applies to one or more offerors in any solicitation, the State Resident Preference will not be applied to any offers.
3. **Principal Office and location must be stated:** To qualify for the local preference, the principal place of business of the enterprise must be physically located within the Santa Fe County Geographic Boundaries. The business location inserted on the Form must be a physical location, street address or such. **DO NOT use a post office box or other postal address. Principal place of business must have been established no less than six months preceding application for certification.**
4. **Subcontractors do not qualify:** Only the business, or if joint venture, one of the parties of the joint venture, which will actually be performing the services or providing the goods solicited by this request and will be responsible under any resulting contract will qualify for this preference. A subcontractor may not qualify on behalf of a prime contractor.
5. **Definition:** The following definition applies to this preference.

A local business is an entity with its Principal office and place of business located in Santa Fe County.

A Principal office is defined as: The main or home office of the business as identified in tax returns, business licenses and other official business documents. A Principal office is the primary location where the business conducts its daily operations, for the general public, if applicable. A temporary location or movable property, or one that is established to oversee a City of Santa Fe project does not qualify as a Principal office.

**Additional Documentation:** If requested a business will be required to provide, within 3 working days of the request, documentation to substantiate the information provided on the form. Any business which must be registered under state law must be able to show that it is a business entity in good standing if so requested.

# LOCAL PREFERENCE CERTIFICATION FORM

RFP/RFB NO: \_\_\_\_\_

Business Name: \_\_\_\_\_

Principal Office: \_\_\_\_\_  
Street Address City State Zip Code

City of Santa Fe Business License # \_\_\_\_\_ (Attach Copy to this Form)

Date Principal Office was established: \_\_\_\_\_ (Established date must be six months before date of Publication of this RFP or RFB).

## CERTIFICATION

I hereby certify that the business set out above is the principal Offeror submitting this offer or is one of the principal Offerors jointly submitting this offer (e.g. as a partnership, joint venture). I hereby certify that the information which I have provided on this Form is true and correct, that I am authorized to sign on behalf of the business set out above and, if requested by the City of Santa Fe, will provide within 3 working days of receipt of notice, the necessary documents to substantiate the information provided on this Form.

Signature of Authorized Individual: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

Subscribed and sworn before me by \_\_\_\_\_ this \_\_\_\_\_, day of \_\_\_\_\_

My commission expires \_\_\_\_\_

Notary Public

SEAL

**RESIDENT VETERANS PREFERENCE CERTIFICATION**

\_\_\_\_\_ (NAME OF CONTRACTOR) hereby certifies the following in regard to application of the resident veterans' preference to this procurement.

**Please check one box only:**

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is less than \$1M allowing me the 10% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$1M but less than \$5M allowing me the 8% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$5M allowing me the 7% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

I agree to submit a report or reports to the State Purchasing Division of the General Services Department declaring under penalty of perjury that during the last calendar year starting January 1 and ending on December 31, the following to be true and accurate:

In conjunction with this procurement and the requirements of this business application for a Resident Veteran Business Preference/Resident Veteran Contractor Preference under Sections 13-1-21 or 13-1-22 NMSA 1978, which awarded a contract which was on the basis of having such veterans preference, I agree to report to the State Purchasing Division of the General Services Department the awarded amount involved. I will indicate in the report the award amount as a purchase from a public body or as a public works contract from a public body as the case may be.

I understand that knowingly giving false or misleading information on this report constitutes a crime.

I declare under penalty of perjury that this statement is true to the best of my knowledge. I understand that giving false or misleading statements about material fact regarding this matter constitutes a crime.

\_\_\_\_\_  
(Signature of Business Representative)\*

\_\_\_\_\_  
(Date)

\*Must be an authorized signatory of the Business.

The representation made by checking the above boxes constitutes a material representation by the business. If the statements are proven to be incorrect, this may result in denial of an award or un-award of the procurement.

SIGNED AND SEALED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2012.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:  
\_\_\_\_\_

Exhibit A

Work Hour Estimates

## EXHIBIT A

<b>WORK-HOUR ESTIMATES</b> <b>Design and Construction</b> <b>Stormwater Management Improvements</b>	
Activity	Estimated Work-Hours
<b>Phase I – Design</b>	
1. Evaluate Existing Conditions	
2. Determine/Confirm Property Ownership and Access	
3. Determine Environmental and Permit Requirements	
4. Obtain/Maintain Required Permits and Authorizations	
5. Project Coordination	
<b>Total for Phase I – Design Services</b>	
<b>Phase II – Construction</b>	
1. Mobilization	
2. Construction of Stormwater Improvements	
3. Erosion and Sediment Control	
4. Restoration, Reclamation, Demobilization	
5. Coordination	
<b>Total for Phase II – Construction Services</b>	
<b>Total Estimated Contractor-Hours</b>	

Work-hours are for estimating purposes. Final Fee will be negotiated if the City elects to use the services.

Exhibit B

Project Cost Summary

## EXHIBIT B

### CITY OF SANTA FE, NEW MEXICO PUBLIC WORKS DEPARTMENT

PROJECT COST SUMMARY PART 1 - GENERAL				
1. NAME OF PROJECT:		2. CIP #: 455A		
3. NAME OF CONTRACTOR:		4. DATE OF PROPOSAL:		
5. ADDRESS OF CONTRACTOR:		6. TYPE OF SERVICE TO BE FURNISHED: A. WORK ELEMENT (by project phase):		
PART 2 - COST SUMMARY BASIC SERVICES				
7. DIRECT LABOR (specify categories)	ESTIMATED HOURS	HOURLY RATE	ESTIMATED COST	TOTALS
DIRECT LABOR TOTAL:				
8. OVERHEAD (specify cost pool)	RATE	X BASE	ESTIMATED COST	
OVERHEAD TOTAL:				
9. FEE OR PROFIT (show rate and base)				
SUPPLEMENTAL SERVICES				
10. SUBCONTRACTS (Identify & purpose)			ESTIMATED COST	
SUBCONTRACTOR TOTAL:				
11. SPECIAL EQUIPMENT	RATE	ESTIMATED HOURS	ESTIMATED COST	
EQUIPMENT TOTAL:				
12. TRAVEL			ESTIMATED COST	
A. transportation:				
B. per diem:				
TRAVEL TOTAL:				
13. OTHER REIMBURSABLE COST			ESTIMATED COST	
OTHER REIMBURSABLE TOTAL:				
SUBTOTAL ITEMS 7-12:				
14. GROSS RECEIPTS TAX				
15. TOTAL PRICE				
16. SIGNATURE OF PREPARER		OWNER'S REVIEW BY		ENGINEERING PROJECT MANAGEMENT DIVISION



## Exhibit C

### Minimum Wage Ordinance, City of Santa Fe Ordinance No. 2003-8

City of Santa Fe

# Living Wage Ordinance

*Ordinance Number §28-1-28-1.12DSFCC 1987*

**Purpose:**

The City of Santa Fe Living Wage Ordinance was adopted to establish minimum hourly wages.

**Who it affects:**

- All profit and nonprofit businesses required to have a business license or business registration with the City of Santa Fe.

**Compliance:**

- Affected businesses are required to pay employees an hourly wage of \$10.66 effective March 1, 2014.
- Beginning January 1, 2009, and each year thereafter, the minimum wage shall be adjusted upward by an amount corresponding to the previous year's increase, if any, in the Consumer Price Index for the Western Region for Urban Wage Earners and Clerical Workers.
- For workers who customarily receive more than \$100 per month in tips or commissions, any tips or commissions received and retained by a worker shall be counted as wages and credited toward satisfaction of the minimum wage provided that, for tipped workers, all tips received by such workers are retained by the workers, except that the pooling of tips among workers shall be permitted.
- The value of health care benefits and child care shall be considered as an element of wages.
- Nonprofit organizations whose primary source of funds is from Medicaid waivers are *exempt*.

**Prohibitions against retaliation and circumvention:**

- It shall be unlawful for any business, employer or employer's agent or representative to take any action against an individual in retaliation for exercising or communicating rights under this ordinance. This includes retaliation against individuals who mistakenly but in good faith allege noncompliance with the ordinance.
- Taking adverse action against an individual within 60 days of the individual's assertion of or communication of information regarding rights raises a rebuttable presumption of retaliation for assertion of rights.
- It shall be unlawful for any business or employer to intentionally circumvent the requirements of this ordinance by contracting portions of its operations or leasing portions of its property.

**Enforcement and Remedies:**

- **Administrative Enforcement**—The city manager, or his/her designee, is authorized, as appropriate and as resources permit, to enforce this ordinance.
- **Criminal Penalty**—A person violating this ordinance shall be guilty of a misdemeanor and, upon conviction, for each offense may be subject to fines and imprisonment as set forth in Section 1-3 SFCC 1987. A person violating any of the requirements of this ordinance shall be guilty of a separate offense for each day or portion thereof and for each worker or person to whom any such violation occurred.
- **Other Remedies**—The city, any individual aggrieved by a violation of this ordinance, or any entity the members of which have been aggrieved by a violation of this ordinance, may bring a civil action in a court of competent jurisdiction to restrain, correct, abate or remedy any violation of this ordinance and, upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, reinstatement, the payment of any wages due and an additional amount as liquidated damages equal to twice the amount of any wages due, injunctive relief, and reasonable attorney's fees and costs.

**Nonexclusive Remedies and Penalties**—The remedies provided in this section are not exclusive, and nothing in this ordinance shall preclude any person from seeking any other remedies, penalties, or relief provided by law.

**Posting and Publication:**

- Any business subject to the provisions of this ordinance shall as a condition to obtaining and holding a City of Santa Fe business license or registration, post and display in a prominent location next to its business license or registration on the business premises a notice, in English and Spanish, that the business is in compliance with the provisions of this ordinance and post the text of this notice. Failure to comply with this section shall be construed a violation of this ordinance and, in addition, shall be considered grounds for suspensions, revocation, or termination of the business license or registration.

**For more information, please contact: Constituent Services at 505-955-6949 Email: [constituentservices@santafenm.gov](mailto:constituentservices@santafenm.gov)**

## Ordenanza Respecto al Sueldo Mfimo

Ordenanza Numero §28-1 28-1.12 SFCC 1987

**Propósito:**

La ordenanza respecto al Sueldo Mfimo fue adoptada por la municipalidad de Santa Fe con el fin de establecer un sueldo mfmimo que determinadas empresas tienen que pagar.

**A Quién Afecta la Ordenanza:**

• A toda empresa con o sin fines de lucro se requiere que tenga una licencia comercial o estar registrada con la municipalidad de Santa Fe.

**Cómo Se Tiene que Cumplir lo que Dispone la Ordenanza:**

- A partir del día primero de marzo del 2014, las empresas que tienen que pagar el sueldo mfmimo tienen la obligación de pagar un sueldo de \$10.66 a la hora.
- A partir del día primero de enero del 2009, y cada año que sigue, el sueldo mfmimo será ajustado de acuerdo con la inflación.
- Para trabajadores/as que regularmente reciben propinas o comisiones que sumen más de \$100 por mes, todas esas propinas o comisiones que reciban contarán como si fueran sueldo y serán acreditadas para satisfacer la ordenanza, siempre y cuando los trabajadores se queden con todas sus propinas. También se permitirá acreditar propinas que se juntan y se comparten.
- El valor de beneficios de seguro médico y de cuidado de niños se considerará como parte del sueldo mfmimo.
- Las organizaciones sin fines de lucro que reciben la mayoría de sus fondos de (*Medicaid*) no tienen que pagar el sueldo mfmimo de la ciudad.

**Se Prohíben Represalias o Evasiones:**

- Es en contra de la ley que una empresa o persona que emplea trabajadores o que el apoderado o persona que representa a la empresa tome represalias en contra del trabajador porque él o ella ejerce sus derechos o comunica sus derechos a otra persona. También es en contra de la ley tomar represalias contra un trabajador que erróneamente, pero de buena fe, alega que la empresa no ha cumplido con la ordenanza.
- Se presume como represalia, tomar cualquier acción dentro de los 60 días después de que un individuo quiso ejercer sus derechos.
- Es en contra de la ley que un empresario o empleador intencionalmente trate de evadir los requisitos de esta ordenanza contratando parte de su negocio a otra empresa o rentando partes de su propiedad, con el fin de no cumplir con la ordenanza.

**Remedios Legales Para Implementar la Ley:**

- Medidas Administrativas - El Administrador de la ciudad o su representante está autorizado a hacer cumplir la ordenanza hasta donde los recursos lo permitan.
- Castigo Judicial - El empleador que no cumpla con esta ordenanza será condenado por cada infracción. Pudiera estar sujeto a multas o encarcelamiento según dispone la sección 1-3 del Código Civil de Santa Fe de 1987. El empleador que no cumpla cualquiera de los requisitos en esta ordenanza será culpable de una infracción por cada trabajador afectado, por cada día o parte del día que no se cumpla la ordenanza.
- Otros Recursos Judiciales - La Municipalidad de Santa Fe, cualquier individuo o cualquier grupo de individuos que han sido afectados porque no se cumplió la ordenanza, podrán presentar una queja en la corte civil que tiene jurisdicción para restringir, corregir, suprimir, o remediar toda infracción de esta ordenanza. La persona que gane el caso tiene derecho a un remedio legal o equitativo que sea adecuado para remediar la violación. Los remedios incluyen y sin limitar, que lo/la vuelvan a emplear, que le paguen el sueldo que le deben más una cantidad por daños determinados que son el igual a doble cantidad del sueldo que le deben, protección judicial y cuotas razonables que cobra el abogado más costos del caso.

**Remedios Legales, Daños y Perjuicios No Exclusivos** Los remedios legales en esta sección no son exclusivos. Eso quiere decir que esta ordenanza no prohíbe que el trabajador trate de plantear otros remedios en la corte, demandar por daños y perjuicios que la ley permite.

**Colocación de Anuncios y Publicación de los Anuncios:**

- Como condición para obtener y mantener una licencia o registro comercial toda empresa tendrá que colocar en un lugar prominente al lado de su licencia o registro en el lugar de trabajo este aviso en inglés y en español indicando que el negocio esta cumpliendo con la ordenanza y con el texto de este aviso. Si la empresa no cumple lo que esta sección ordena se considerará como violación a esta ordenanza y se podrá suspender, revocar o dar por terminada la licencia o registro de la empresa.

Para obtener más información, favor de comunicarse con la oficina de: *Constituent Services* al número 505-955-6949 o por correo electrónico a: [constituentservices@santafemn.gov](mailto:constituentservices@santafemn.gov).

Exhibit D

NM Department of Workforce Solutions, Wage Rate Determination

SUSANA MARTINEZ  
GOVERNOR



CELINA BUSSEY  
SECRETARY

JOHN SANCHEZ  
LT. GOVERNOR

STATE OF NEW MEXICO  
DEPARTMENT OF WORKFORCE SOLUTIONS  
625 Silver Ave SW Suite 410  
Albuquerque, NM 87102  
Telephone (505) 841-4405  
Fax (505) 841-4420

## PUBLIC WORKS PROJECT REQUIREMENTS

As a participant in a Public Works project valued at more than \$60,000 in the State of New Mexico, the following list addresses many of the responsibilities that are assigned by statute to each project stakeholder.

### Contracting Agency

- Ensure that all contractors/prime contractors wishing to bid on a Public Works project when the project is \$60,000 or more are actively registered with the Labor Relations Division, Labor Enforcement Fund (LEF) prior to bidding.
- Provide completed Notice of Award (NOA) and Sub-Contractor list to Labor Relations Division promptly after the project is awarded.
- Provide updates to the Sub-Contractor list to the Labor Relations Division

### General Contractor

- Provide to the Contracting Agency within 3 (Three) days of award a complete sub-contractor list and Statements of Intent (SOI) to pay Prevailing Wages for each contractor.
- Ensure that all sub-contractors wishing to bid on a Public Works project when their portion is over \$60,000 are actively registered with the Labor Relations Division prior to bidding.
- Submit bi-weekly certified payrolls to the owner/contracting agency.
- Make certain NM Apprenticeship and Training Fund payments are to be paid either to an approved Apprenticeship program or to the Labor Relations Division.
- Confirm the Wage Rate poster, provided by the Labor Relations Division, is displayed at the job site in an easily accessible place.
- Make sure, when a project has been completed, the Affidavits of Wages Paid (AWP) is sent to the Contracting Agency.

### Sub-Contractor

- Ensure that all sub-contractors wishing to bid on a Public Works project when their portion is over \$60,000 are actively registered with the Labor Relations Division prior to bidding.
- Submit bi-weekly certified payrolls to the General Contractor(s).
- Make certain NM Apprenticeship and Training Fund payments are to be paid either to an approved Apprenticeship program or to the Labor Relations Division.

### Additional Information

Reference material and forms for these requirements are available through the following New Mexico Workforce Solutions Web Link. [www.dws.state.nm.us/new/Labor\\_Relations/publicworks.html](http://www.dws.state.nm.us/new/Labor_Relations/publicworks.html).

## **Additional Information**

Additional information, requirements, and documents on these topics can be found through the Public Works web pages.

- Labor Enforcement Fund (LEF)
- Weekly Certified Payroll
- Public Works Apprenticeship and Training Fund (PWAT)
- Forms: Statement of Intent (SOI), Affidavit of Wages Paid (AWP)
- Prevailing Wage Rates (Base Rates, Fringe, and Apprenticeship Contributions)

## **CONTACT INFORMATION**

Contact us for any questions relating to Public Works Projects.

Kim Kew at [kim.kew@state.nm.us](mailto:kim.kew@state.nm.us) or 505-841-4405  
Otis Caddy [LynnO.Caddy@state.nm.us](mailto:LynnO.Caddy@state.nm.us) 505-841-4406  
Stacey Lowrey [Stacey.Lowrey@state.nm.us](mailto:Stacey.Lowrey@state.nm.us) 505-841-4412

**New Mexico Department of Workforce Solutions  
Public Works**

625 Silver Ave SW, Suite 410, Albuquerque, NM 87102  
Phone: (505)-841-4400 fax to: (505) 841-4423 or Email to: [public.works@state.nm.us](mailto:public.works@state.nm.us)

**Wage Decision # SF-14-0174 A**

**NOTIFICATION OF AWARD (NOA)**

**THIS WAGE DECISION # EXPIRES FOR BIDS ON**

06/03/14

**Description and Location of Work: Storm water improvements Arroyo Chamiso and Santa Fe River  
construct earthen and rock-lined ditches, channels and basins**

City of Santa Fe

County of Santa Fe

**REMINDER for Agency Conducting BID Process: If bids are NOT submitted before new wage rates go into effect, a NEW wage decision WILL be required.**

After the Contracting Agency awards this project the Wage Rate Poster and the Wage Rate Packet, excluding this NOA and Subcontractor List, must be delivered to the **GENERAL/PRIME CONTRACTOR**. The Contracting Agency or its agent must complete this form (including the next page listing all of the subcontractors including all tiers of subcontractors) and fax or mail it to the address above. **If the project is canceled**, this form must be completed by the Contracting agency conducting the bid process and the wording "Cancelled" written on the form and send to the Labor Relations Division. Failure to submit the NOA in a timely manner is a violation of paragraph 11.1.2.9.B (3) of the Public Works Minimum Wage Act Policy Manual.

General/Prime Contractor Company Name: \_\_\_\_\_ License#: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Project Contact's name: \_\_\_\_\_ E-Mail: \_\_\_\_\_

Approximate Date Work to Start: \_\_\_\_\_

Estimated Completion Date: \_\_\_\_\_

Estimated Cost of Project: \_\_\_\_\_

Bid Opening Date: \_\_\_\_\_

Note: The General/Prime Contractor **MUST** mail/fax in their Statement of Intent to Pay Prevailing Wages to the Contracting Agency or its agent before beginning work on the project. Each Subcontractor (and all tiers of subcontractors) **MUST** also mail/fax their Statement of Intent to Pay Prevailing Wages to the General/Prime Contractor 3 days after award of project. After work on the project is completed **and before, final payment**, is made to subcontractors and all tiers of subcontractors, the contractor and sub-contractors must mail/fax their Affidavit of Wages paid to the Contracting Agency for final payment.

**Signature for Contracting Agency (or agent)** \_\_\_\_\_

**Printed Name** \_\_\_\_\_

**Email address for Contracting Agency (not agent)** \_\_\_\_\_ **Required Field**

**Date** \_\_\_\_\_

# SUBCONTRACTOR LIST

**DO NOT** list suppliers or professional services (such as surveyors)  
**INCLUDE** individual subcontractor dollar amount for project

Email to: public.works@state.nm.us or fax to: (505) 841-4423

Please include **2nd & 3rd Tier** subcontractors. Make extra copies of form if necessary.  
**Wage Decision. # SF-14-0174 A**

*General Contractor:* \_\_\_\_\_

Company Name: \_\_\_\_\_  
Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
E-Mail Address: \_\_\_\_\_ License No.: \_\_\_\_\_  
Phone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_ Sub \_\_\_\_\_ 2<sup>nd</sup> TIER \_\_\_\_\_ 3<sup>rd</sup> TIER \_\_\_\_\_  
(To Whom) (To Whom)  
Work to be performed: \_\_\_\_\_ Start Date: \_\_\_\_\_ Amount (\$): \_\_\_\_\_

---

Company Name: \_\_\_\_\_  
Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
E-Mail Address: \_\_\_\_\_ License No.: \_\_\_\_\_  
Phone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_ Sub \_\_\_\_\_ 2<sup>nd</sup> TIER \_\_\_\_\_ 3<sup>rd</sup> TIER \_\_\_\_\_  
(To Whom) (To Whom)  
Work to be performed: \_\_\_\_\_ Start Date: \_\_\_\_\_ Amount (\$): \_\_\_\_\_

---

Company Name: \_\_\_\_\_  
Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
E-Mail Address: \_\_\_\_\_ License No.: \_\_\_\_\_  
Phone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_ Sub \_\_\_\_\_ 2<sup>nd</sup> TIER \_\_\_\_\_ 3<sup>rd</sup> TIER \_\_\_\_\_  
(To Whom) (To Whom)  
Work to be performed: \_\_\_\_\_ Start Date: \_\_\_\_\_ Amount (\$): \_\_\_\_\_

---

Company Name: \_\_\_\_\_  
Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
E-Mail Address: \_\_\_\_\_ License No.: \_\_\_\_\_  
Phone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_ Sub \_\_\_\_\_ 2<sup>nd</sup> TIER \_\_\_\_\_ 3<sup>rd</sup> TIER \_\_\_\_\_  
(To Whom) (To Whom)  
Work to be performed: \_\_\_\_\_ Start Date: \_\_\_\_\_ Amount (\$): \_\_\_\_\_

---

Company Name: \_\_\_\_\_  
Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
E-Mail Address: \_\_\_\_\_ License No.: \_\_\_\_\_  
Phone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_ Sub \_\_\_\_\_ 2<sup>nd</sup> TIER \_\_\_\_\_ 3<sup>rd</sup> TIER \_\_\_\_\_  
(To Whom) (To Whom)  
Work to be performed: \_\_\_\_\_ Start Date: \_\_\_\_\_ Amount (\$): \_\_\_\_\_

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Company Name: \_\_\_\_\_  
Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
E-Mail Address: \_\_\_\_\_ License No.: \_\_\_\_\_  
Phone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_ Sub \_\_\_\_\_ 2<sup>nd</sup> TIER \_\_\_\_\_ 3<sup>rd</sup> TIER \_\_\_\_\_  
(To Whom) (To Whom)  
Work to be performed: \_\_\_\_\_ Start Date: \_\_\_\_\_ Amount (\$): \_\_\_\_\_

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Storm water improvements Arroyo Chamiso and Santa Fe River: WAGE DECISION #: SF-14-0174 A  
 construct earthen and rock-lined ditches, channels and basins

<b>TYPE "A" - STREET, HIGHWAY, UTILITY &amp; LIGHT</b>		<b>ENGINEERING</b>
<i>Effective January 1, 2014</i>		
<b>Trade Classification</b>	<b>Base Rate</b>	<b>Fringe Rate</b>
Bricklayer/Blocklayer/Stonemason	17.74	0.26
Carpenter/Lather	15.99	0.44
Cement Mason	15.52	0.26
Ironworker	21.77	6.03
Painter (Brush/Roller/Spray)	17.56	0.44
<b>Electricians (outside)</b>		
Groundman	26.79	11.03
Equipment Operator	29.61	11.03
Lineman/Wireman or Tech	30.20	11.03
Cable Splicer	31.38	11.03
Plumber/Pipefitter	28.30	4.07
<b>Laborers</b>		
Group I	13.73	0.35
Group II	14.03	0.35
Group III	14.43	0.35
<b>Operators</b>		
Group I	15.74	0.26
Group II	15.94	0.26
Group III	16.52	0.26
Group IV	16.54	0.26
Group V	16.53	0.26
Group VI	16.69	0.26
Group VII	16.74	0.26
Group VIII	16.89	0.26
Group IX	17.39	0.26
Group X	18.19	0.26
<b>Truck Drivers</b>		
Group I	13.32	0.26
Group II	13.52	0.26
Group III	13.72	0.26
Group IV	13.92	0.26

**NOTE: SUBSISTENCE AND INCENTIVE PAY DO NOT APPLY TO TYPE "A" CONSTRUCTION.**

Exhibit E

Sample Agreement/Contract

FOR RFP PURPOSES ONLY

CITY OF SANTA FE  
CAPITAL IMPROVEMENTS PROGRAM

AGREEMENT BETWEEN  
OWNER AND CONTRACTOR

CIP PROJECT # 455A

**STORM WATER MANAGEMENT IMPROVEMENTS,  
ARROYO CHAMISO AND SANTA FE RIVER**

This Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 2014, by and between the CITY OF SANTA FE, herein known as the Owner, and *To Be Determined*, herein known as the Contractor.

For the following:

PROJECT: Storm Water Management Improvements, Arroyo Chamiso and Santa Fe River

PROJECT NO.: CIP #455A

DISTRIBUTION:

OWNER

CONTRACTOR (Copy)

\_\_\_\_\_

\_\_\_\_\_

## RECITALS

WHEREAS, the Owner, through its Governing Body, is authorized to enter into a Contract for design-build services 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, design and construction of this Project was approved by the Governing Body of the City of Santa Fe at its meeting of \_\_\_\_\_, 2014.

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 Request for Proposals (RFP) and Scope of Work in RFP # to be determined, 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 CIP Project # 455A, Storm Water Management Improvements, Arroyo Chamiso and Santa Fe River (RFP # to be determined).

The work designated as Storm Water Management Improvements, Arroyo Chamiso and Santa Fe River, consists of, but is not limited to: design and construction of storm water management features to reduce erosion, improve water infiltration, and improve hydrologic conditions at the sites. Work will consist of all aspects required for the design and construction of the features and may include excavation, earthwork and grading; demolition and removal of existing structures; construction of new features; seeding and planting.

Contractor shall provide all equipment, labor, supervision and materials, and shall be responsible for verifications of all conditions, measurements and dimensions for the project.

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

### ARTICLE 3 TIME OF COMMENCEMENT AND CONTRACT TIME/SUBSTANTIAL COMPLETION

The work to be performed under this Contract shall be commenced no later than ten (10) consecutive calendar days after the date of written Notice to Proceed. Substantial Completion shall be achieved in the contract time which is no later than three hundred (300) calendar days after the date of written Notice to Proceed, except as hereafter extended by valid written Change Order by the Owner. This Agreement may be terminated by the Owner upon thirty (30) days written notice 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 of amount to be determined (\$tbd). The Contractor agrees that if it ever receives a partial or total refund of Gross Receipt Taxes (GRT) it will transmit the refund to the City immediately. The GRT amount of [\$ \_\_\_\_\_] is [\$ \_\_\_\_\_]% of Base Bid and is being paid by the Owner to the Contractor so that the Contractor can

pay the GRT to the New Mexico Taxation and Revenue Department (NMTRD). It is not compensation for services rendered. The Contractor agrees to timely remit this GRT to NMTRD.

The Contract Sum is determined as follows:

Base Fee	\$
Gross Receipts Tax (8.1875%)	\$
Base Fee plus NMGRT	\$
Total Contract Sum	\$

#### 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, products, 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 of substantial completion or any extension in the Contract thereof, the Contractor agrees to pay the Owner the amount of Two Hundred and Fifty Dollars (\$250.00) per consecutive calendar day that passes until substantial 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, 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 (if applicable), 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 fourteen (14) days after the effective date of Notice to Proceed, prepare and submit three (3) copies of a progress schedule covering project operations for the three hundred (300) day Contract period. The progress schedule shall be used to control the timing and sequences of the project. All work shall be done in accordance with the progress schedule. A written statement of explanation shall be submitted with the progress schedule. All costs incurred by the contractor to implement the progress schedule shall be borne by the Contractor, and are part of their 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 insurance requirements including the Contractor's General Comprehensive Liability Insurance requirements appear in the Request for Proposals. 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. This Agreement may be terminated for any reason by the Owner by providing thirty (30) days advance written notice to the Contractor.
- 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.
- 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 sufficient appropriations and authorization are not made by the Owner, 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 is in compliance 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 and Trails Engineering Division  
P.O. Box 909  
Santa Fe, New Mexico 87504-0909

CONTRACTOR:

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 one original, which shall be deemed the original agreement, and shall be maintained on file by the City Clerk of the City of Santa Fe.

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, incorporated by 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, incorporated by 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 signed by all parties.

OWNER:  
CITY OF SANTA FE

\_\_\_\_\_  
DAVID COSS, MAYOR  
DATE:\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
YOLANDA Y. VIGIL  
CITY CLERK

