

AGREEMENT BETWEEN
THE CITY AND CONTRACTOR

WASTEWATER TREATMENT PLANT
ANAEROBIC DIGESTERS CONTRACT CIP #950

THIS AGREEMENT dated July 25, 2018 is made and entered into by and between the CITY OF SANTA FE, a New Mexico municipal corporation, hereinafter called the "City", and Bradbury Stamm Construction, Inc., hereinafter called the "Contractor". The date of this Agreement shall be the date when it is executed by the City and the Contractor whichever occurs last.

The City and the Contractor agree as follows:

1. **THE CONTRACT DOCUMENTS:** The Contract Documents shall mean the Advertisement for Bids, Information to Bidders, Minimum Wage Rates, Addenda, Bid Bond, Bid Form, Subcontractor Listing, this Construction Contract, Performance Bond, Labor and Material Bond, Notice of Award, Notice to Proceed, General Conditions, Special Conditions, any Supplemental Conditions, Specifications, Plans and Drawings and everything else bound in these documents and are incorporated and made a part of this Construction Contract.
2. **SCOPE OF WORK:** The work under this Contract is located at the City of Santa Fe's Wastewater Treatment Plant at 73 Paseo Real, Santa Fe, NM. The work consists of furnishing all equipment, labor, and materials for construction of the **Paseo Real Wastewater Treatment Plant Anaerobic Digesters C.I.P # 950** in accordance with the Contract Documents. The work consists of the construction of 2 new anaerobic digesters, associated equipment building, power cogeneration equipment including biogas conditioning system, and the installation of a new belt filter press for biosolids dewatering. Project includes reinforced structural concrete, steel digester covers, masonry, precast concrete roof, miscellaneous metals, process equipment, plumbing, HVAC, electrical, instrumentation and controls, painting, demolition of existing concrete structures, excavation, backfill, yard piping, sidewalks and asphalt as specified and/or shown within the Contract documents.
3. **STANDARD OF PERFORMANCE – LICENSES:**
 - A. The Contractor represents that it possesses the experience and knowledge necessary to perform the services described under this agreement.
 - B. The Contractor agrees to obtain and maintain throughout the term of this Agreement, all applicable professional, contractor and business licenses required by law, for itself, its employees, agents, representatives and subcontractors.

4. **CONTRACT PRICE:**

A. The City shall pay to the Contractor in full payment for services rendered, a sum not to exceed thirteen million eight hundred sixty nine thousand one hundred fifty six dollars and twenty five cents (\$13,869,156.25), inclusive of applicable New Mexico Gross Receipts Tax.

B. The Contractor shall be responsible for payment of gross receipts taxes levied by the State of New Mexico on the sums paid under this Agreement.

5. **TERM AND EFFECTIVE DATE:** This Agreement shall be effective when signed by the City and shall terminate three hundred (300) calendar days from the start date specified in the Notice to Proceed to Substantial Completion, unless sooner pursuant to Article 6 below.

6. **TERMINATION:**

A. This Agreement may be terminated by the City upon 10 days written notice to the Contractor.

(1) The Contractor shall render a final report of the services performed up to the date of termination and shall turn over to the City original copies of all work product, research or papers prepared under this Agreement.

(2) If compensation is not based upon hourly rates for services rendered, the City shall pay the Contractor for the reasonable value of services satisfactorily performed through the date Contractor receives notice of such termination, and for which compensation has not already been paid.

(3) If compensation is based upon hourly rates and expenses, then Contractor shall be paid for services rendered and expenses incurred through the date Contractor receives notice of such termination.

7. **PAYMENT & PROGRESS PAYMENTS:** Based upon Application for Payment submitted to the City by the Contractor in accordance with the approved Schedule of Values, and Certificates for Payment issued by the City, the City shall make progress payments on account of the Contract sum to the Contractor as provided in Section 4 of the Special Conditions for the period ending the last day of the month.

8. **SCHEDULE:** The Contractor shall, after receiving the Notice of Award, prepare and submit a schedule for preparation of shop drawings, submittals for City review and construction tasks and sequences. This Schedule shall be submitted to the City and/or Owner's Representative ten (10) working days before the date of the Pre-Construction Meeting.

9. **LIQUIDATED DAMAGES:** The Contract time for completion of the Work in connection with the Project is of essence to the Construction Contract. Should the Contractor neglect, refuse or fail to complete the Work within the time herein agreed upon, after giving effect to extensions of time agreed to by the City in writing, the Contractor agrees to pay the City, as Liquidated Damages, the amounts listed in the Schedule of Liquidated Damages in Section 15 of the General Conditions.

10. **APPROPRIATIONS:** The terms of this agreement are contingent upon sufficient appropriations and authorization being made by the City for the performance of this agreement. If the City does not make sufficient appropriations and authorization, this Agreement shall

terminate upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

11. **INSURANCE REQUIREMENTS:** See Appendix A for Insurance Requirements.

12. **STATUS OF CONTRACTOR; RESPONSIBILITY FOR PAYMENT OF EMPLOYEES AND SUBCONTRACTORS:**

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

B. Contractor shall be solely responsible for payment of wages, salaries and benefits to any and all employees or subcontractors retained by Contractor in the performance of the services under this Agreement.

C. The Contractor shall comply with City of Santa Fe Minimum Wage, Article 28-1-SFCC 1987, as well as any subsequent changes to such article throughout the term of this contract.

13. **CONFIDENTIALITY:** Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the City.

14. **CONFLICT OF INTEREST:** The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. Contractor further agrees that in the performance of this Agreement no persons having any such interests shall be employed.

15. **INDEMNIFICATION:** The Contractor shall indemnify, hold harmless and defend the City from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from Contractor's performance under this Agreement as well as the performance of Contractor's employees, agents, representatives and subcontractors.

16. **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 sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

17. **THIRD PARTY BENEFICIARIES:** 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

City 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.

18. **RECORDS AND AUDIT:** The Contractor shall maintain, throughout the term of this Agreement and for a period of three years thereafter, detailed records that indicate the date, time and nature of services rendered. These records shall be subject to inspection by the City, the Department of Finance and Administration, and the State Auditor. The City shall have the right to audit the billing both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments.

19. **APPLICABLE LAW; CHOICE OF LAW; VENUE:** Contractor shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the City of Santa Fe. In any action, suit or legal dispute arising from this Agreement, the Contractor agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

20. **AMENDMENT:** This Agreement shall not be altered, changed or modified except by a Contract Change Order executed by the parties hereto.

21. **SCOPE OF AGREEMENT:** This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the services to be performed hereunder, and all such agreements, covenants and understandings have been merged into this Agreement. This Agreement expresses the entire Agreement and understanding between the parties with respect to said services. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

22. **NON-DISCRIMINATION:** During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of services by Contractor hereunder, on the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

23. **SEVERABILITY:** In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

24. **ASSIGNMENT; SUBCONTRACTING:** The Contractor shall not assign or transfer any rights, privileges, obligations or other interest under this Agreement, including any claims for money due, without the prior written consent of the City. The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City.

25. **RELEASE:** The Contractor, upon acceptance of final payment of the amount due under this Agreement, releases the City, its officers and employees, from all liabilities, claims

and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the City to any obligation not assumed herein by the City unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

26. **NOTICES:** Any and all notices provided for hereunder shall be in writing and shall be served by personal delivery or by mail, postage prepaid, to the parties at the following addresses:

CITY City of Santa Fe
 Wastewater Management Division
 73 Paseo Real
 Santa Fe, New Mexico 87507

CONTRACTOR
Bradbury Stamm Construction, Inc.
7110 2nd Street NW
Albuquerque, NM 87107

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.


CITY OF SANTA FE:

CONTRACTOR:
Bradbury Stamm Construction, Inc



ALAN WEBBER, MAYOR

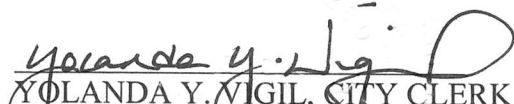
DATE: 8/1/18



NAME & TITLE
Cynthia Schutte, CEO
DATE: 8/3/2018

NM Taxation & Revenue
CRS # 01-107415-00-09
City of Santa Fe Business
Registration # 18-00110079

ATTEST:



YOLANDA Y. VIGIL, CITY CLERK
cc mtg. 7/25/18
APPROVED AS TO FORM:

 6/25

CITY ATTORNEY

APPROVED AS TO FORM:

 07/31/18

FINANCE DIRECTOR

BUSINESS UNIT/LINE ITEM 52468.572960