

TRI-PARTY CONSTRUCTION AGREEMENT

This TRI-PARTY CONSTRUCTION AGREEMENT ("Agreement") made this _____ day of _____ 2018 by and between _____ ("General Contractor"), _____ ("Subcontractor"), and _____, ("Developer").

General Contractor, Subcontractor and Developer may hereinafter be collectively referred to as the "Parties" and individually, a "Party".

RECITALS

A. Developer, as owner therein, and General Contractor, as contractor therein, are parties to that certain _____ (*Contract*) dated _____, (collectively the "Contract") pertaining to the construction of certain infrastructure improvements identified as City of Albuquerque Project No. _____ (herein, the "Work") associated with that development known as _____ (Project Name) located at _____, Albuquerque, NM.

B. Pursuant to the Contract, the stipulated sum to be paid to General Contractor by Developer for the Work is _____ Dollars (\$_____), which sum is not to be exceeded absent a change directive from Developer or a change order approved and executed in accordance with the Contract.

C. Pursuant to that proposal by and between General Contractor and Subcontractor dated _____, a copy of which is attached hereto as Exhibit A (the "Subcontract"), General Contractor has subcontracted the Work (including all materials, labor and equipment required for completion of the Work) to Subcontractor.

D. The Parties now wish to set forth their understandings in regard to the Work to be performed by Subcontractor and their respective obligations and agreements in regard thereto.

AGREEMENT

In consideration of the Contract, the foregoing recitals and the agreements made herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. The Subcontract does not and shall not be construed to create a contractual relationship of any kind between the Developer and Subcontractor, nor between any other persons or parties other than the General Contractor and Subcontractor. Notwithstanding the foregoing, in accordance with the requirements of the Contract, both General Contractor and Subcontractor acknowledge and agree that, pursuant to the Subcontract, Subcontractor is and shall be deemed bound to the General Contractor by the terms of the Contract, and assumes toward the General Contractor all the obligations and responsibilities, including, without limitation, completion of the Work in the manner and within the time frames set forth within the Contract and the responsibility for the safety of the Subcontractor's Work, which the General Contractor, by the Contract, assumes toward the Developer.

2. Pursuant to the Subcontract, Subcontractor agrees to complete the Work to be performed under the Contract for a total lump sum price of \$_____ (“Subcontract Sum”).

3. General Contractor shall be solely responsible for the Work and Subcontractor's performance thereof and shall pay Subcontractor for the proper performance of the Work per the terms and conditions of the Subcontract.

4. Subcontractor: (a) agrees that it shall not look to Developer for payment of the Subcontract Sum; (b) acknowledges that such Work is within the scope of the Subcontract with General Contractor; and (c) will look only to General Contractor for payment of the Work per the terms and conditions of the Subcontract.

5. Developer shall be responsible only for payments to General Contractor in accordance with the Contract, as may be further adjusted in accordance with the terms thereof.

6. General Contractor agrees that it shall be solely responsible for any difference between the stipulated sum of the Contract, as may be adjusted in accordance with the terms thereof, and the Subcontract Sum, as may be adjusted in accordance with the terms of the Subcontract.

7. Nothing herein shall amend, alter or modify the Contract nor the responsibilities of Developer or General Contractor thereunder. In the event of a conflict between this Agreement and the terms and provisions of the Contract, as may be amended from time to time, the terms and provisions of the Contract shall control and govern as between the Developer and General Contractor.

8. This Agreement may be executed in counterpart and, when counterparts of this Agreement have been executed and delivered by all of the Parties as provided in this Section 8, this Agreement shall be fully binding and effective, just as if the Parties had executed and delivered a single counterpart of this Agreement. Without limiting the manner in which execution of this Agreement may be accomplished, execution by the Parties may be effected by email or facsimile transmission of a signature page of this Agreement executed by such Party. This Agreement shall not be binding upon or effective as to either Developer, General Contractor or Subcontractor until it has been executed by all of the Parties hereto.

