

**PROFESSIONAL SERVICE AGREEMENT
BETWEEN SANTA FE COUNTY AND
AMEC FOSTER WHEELER ENVIRONMENT & INFRASTRUCTURE, INC.**

THIS AGREEMENT is made and entered into this 13th day of October 2015, by and between **SANTA FE COUNTY**, hereinafter referred to as the "County" and **AMEC FOSTER WHEELER ENVIRONMENT & INFRASTRUCTURE, INC.**, whose principal address is 1002 Walnut St., Suite 200, Boulder, CO 80302 hereinafter referred to as the "Contractor".

WHEREAS, the Santa Fe County Fire Department is in need of establishing a Hazard Mitigation Plan for the County as a requirement for qualifying for Federal Emergency Management Administration (FEMA) funding; and

WHEREAS, the Santa Fe County Purchasing Division issued a Request for Proposal (RFP) No. 2016-0060-FD/BT, pursuant to NMSA 1978, 13-1-117.1-3, Procurement of professional services; and

WHEREAS, and the Contractor ranked the most experienced and qualified to provide the County with the services needed in developing and establishing a Hazard Mitigation Plan for Santa Fe County; and

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

NOW, THEREFORE, it is agreed between the parties:

1. SCOPE OF WORK

The Contractor shall provide the following services to develop and write a County, Multi-jurisdictional Hazard Mitigation Plan.

- A. Conduct the necessary research and evaluation needed to complete a written Hazard Mitigation Plan in accordance with 44 CFR 2012.6 and FEMA Local Mitigation Plan Review Tool (2015), for Santa Fe County. Contractor's services shall consist of the following specific tasks:
 - 1. Manage contacts and facilitate meetings with the County representatives and stakeholder groups.
 - a. Outreach and enrollment.
 - (1) Research and complete a list of contacts and contact information for the County. Contractor's preliminary list of stakeholders are to include but are not limited to County representatives from Emergency Management, Fire Department, Sheriff's Office, Public Works, Traffic and Roads, Water Resource Management including rivers and storm and floodplain management, GIS, business groups, civic groups, neighborhood associations, state government agencies, and various Tribes and Pueblos within the boundaries of Santa Fe County.

- (2) Contact stakeholders to invite them to preliminary meeting to share information and provide input for the Hazard Mitigation Plan.
 - b. Compile and synthesize information gained from the stakeholder group meetings. Produce notes and/or flip chart sheet to document the proceedings of the meetings. Transcribe meeting notes and/or flip chart sheets into electronic format. Retain original flip chart sheets and other meeting notes for future reference.
 - c. Create Excel spreadsheet of participants and contact information. All digital work must be submitted in Microsoft Word format, Microsoft Office 2010. All promulgation paperwork must be properly placed in one single document in their respective position within the final document as per FEMA Region VI requirements. Electronic copy will include the entire submittal in Adobe Acrobat file format, including images of the promulgation paperwork.
- B. Update the hazard analysis to include:
 - 1. Identification of all hazards that potentially threaten Santa Fe County.
 - 2. Analysis to determine the degree of threat posed by each hazard for each jurisdiction.
 - 3. Develop profiles of each hazard (e.g. frequency, magnitude, distribution, duration) for each jurisdiction.
 - 4. Sources to document Items 1 and 2 above including historical data and the current THIRA.
- C. Risk assessment must provide sufficient information to enable the participating jurisdictions to identify and prioritize appropriate mitigation actions to enable the jurisdictions to identify and prioritize appropriate mitigation actions to reduce losses from identified hazards. The risk assessment shall include:
 - 1. A description of the type, location and the extent of all natural hazards that can affect Santa Fe County. The plan shall also include information on previous occurrences of hazard events and on the probability of future hazard events.
 - 2. A description of vulnerability to the hazards. The description shall include an overall summary of each hazard and its impact on the community.
- D. Vulnerability assessments shall include:
 - 1. The types and numbers of existing and future buildings, infrastructures and critical facilities located in the identified hazards.
 - 2. An estimate of the potential dollar losses to vulnerable structures and a description of the methodology used to prepare for the estimate.
 - 3. Providing a general description of land use and development trends within each jurisdiction so that mitigation options can be considered in future land use decisions.
- E. Mitigation strategy shall provide the blueprint for reducing the potential losses identified in the risk assessment, based on existing authorities, policies, programs and resources, and its ability to expand on and improve these existing tools, including:
 - 1. A prioritized list of mitigation goals to reduce or avoid long term vulnerabilities to the identified hazards. Prioritization shall include a special emphasis on the extend benefits are maximized according to a cost benefit review of the proposed projects and their associate costs for each jurisdiction.

2. A section that identifies and analyzes a comprehensive range of specific mitigation actions and projects being considered to reduce the effect of each hazard with particular emphasis on new and existing buildings and infrastructure.
- F. Coordinate and facilitate an open public involvement process to include up to four public meetings. In order to develop a comprehensive approach to reducing the effects of hazards the public involvement process shall include:
1. Opportunity for neighboring communities, local and regional agencies involved in hazard mitigation activities, and agencies that have the authority to regulate development, as well as businesses, academia and other private and non-profit interests to be involved in the planning process in each jurisdiction.
 2. Review and incorporation, if deemed appropriate, of relevant plans, studies, reports and technical information.
- G. Coordinate the approval process with the New Mexico Department of Homeland Security and Emergency Management agency. The following guidelines shall be adhered to:
1. Complete the appropriate sections of FEMA Local Review Tool (2015), prior to submittal, and submit the FEMA Local Mitigation Plan Review Tool (2015), prior to submittal, submit the FEMA Local Mitigation Plan Review Tool (2015) with the draft Plan in order to aid in the review process by the State and FEMA.
 - a. A draft Hazard Mitigation Plan must be available to two hard copies and two electronic copies for review by the New Mexico Department of Homeland Security and Emergency Management.
 2. Review the draft Hazard Mitigation Plan based upon multiple reviews from the State and FEMA, producing two sets of replacement pages where comments dictate revision and revisions cause changes to the text of the draft Plan. Revision deliverable will be to FEMA submission guidelines. Revise the FEMA Local Mitigation Plan Review Tool (2015) for each revision.
 3. Coordinate the approval process.
 - a. The final Plan (as evidenced by FEMA's "Approval Pending Adoption" letter), shall be submitted to the State and after FEMA's Approval Pending Adoption letter is received. Submission to the State and FEMA will take the form of the deliverables identified below plus two hard copies and one electronic copy of the promulgation paperwork listed here.
 - b. The final Hazard Mitigation Plan shall be submitted to the Santa Fe County Board of County Commissioners after receipt of the FEMA Approval Pending Adoption letter.
- H. Develop and complete a maintenance plan that includes:
1. A section describing the method and schedule of monitoring, evaluating and updating the Hazard Mitigation Plan within a five-year cycle.
 2. A process by which local governments incorporate the requirements of the Mitigation Plan into other planning mechanisms such as comprehensive or capital improvement plans when appropriate.

Milestones:

1. Create County-wide planning team and identify all pertinent participants from each jurisdiction and other stakeholders relevant toward participation in mitigation planning from each jurisdiction.
2. Update hazard analysis, perform risk and vulnerability assessments, and develop mitigation strategy for each jurisdiction.
3. Complete a draft Hazard Mitigation Plan. Coordinate and facilitate not less than two public meetings. Submit the revised Plan for State and federal review.
4. Revise the draft Hazard Mitigation Plan based on multiple reviews and submit to local, State and federal agencies for final approval and adoption.
5. Final Hazard Mitigation Plan must be adopted by all jurisdictions by resolution. The Contractor will submit the Plan the Santa Fe Board of County Commissioners for review and approval and Plan with all jurisdictions' resolutions will be submitted to the NM State Mitigation Officer for final approval by FEMA.

2. ADDITIONAL SERVICES

A. The parties agree that all tasks set forth in Section 1 (Scope of Work), of this Agreement shall be completed in full, to the satisfaction of the County, in accordance with professional standards and for the amount set forth in Section 3 (Compensation, Invoicing and Set-off), of this Agreement, and for no other cost, amount, fee or expense.

B. The County may from time to time request changes in the scope of work to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the County and the Contractor, shall be incorporated in a written amendment to this Agreement.

3. COMPENSATION, INVOICING AND SET-OFF

A. In consideration of its obligations under this Agreement the Contractor shall be compensated as follows:

- 1) County shall pay to the Contractor in full payment for services satisfactorily performed.
- 2) The total amount payable to the Contractor under this Agreement shall not exceed **Sixty Nine Thousand Four hundred Ninety Dollars and Fifty Cents, (\$69,490.50)** exclusive of New Mexico gross receipts tax.
- 3) This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation

stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. The County will notify the Contractor when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing.

B. The Contractor shall submit a written request for payment to the County when payment is due under this Agreement. Upon the County's receipt of the written request, the County shall issue a written certification of complete or partial acceptance or rejection of the deliverables for which payment is sought.

- 1) The County's representative for certification of acceptance or rejection of contractual items and services shall be Martin A. Vigil, Fire Assistant Chief, Santa Fe County Fire Department, or such other individual as may be designated in the absence of the County representative.
- 2) The Contractor acknowledges and agrees that the County may not make any payment hereunder unless and until it has issued a written certification accepting the contractual services or deliverables.
- 3) Within 30 days of the issuance of a written certification accepting the services or deliverables, the County shall tender payment for the accepted items or services. In the event the County fails to tender payment within 30 days of the written certification accepting the items or services, the County shall pay late payment charges of one and one-half percent (1.5%) per month, until the amount due is paid in full.

C. In the event the Contractor breaches this Agreement, the County may, without penalty, withhold any payments due the Contractor for the purpose of set-off until such time as the County determines the exact amount of damages it suffered as a result of the breach.

D. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payment.

4. EFFECTIVE DATE AND TERM

This Agreement shall, upon due execution by all parties, become effective as of the date first written above and shall terminate one (1) year later, unless earlier terminated pursuant to Section 5 (Termination) or Section 6 (Appropriations and Authorizations). The County has the option to extend the term of this Agreement in one-year increments. In no event shall the term of this Agreement exceed four years in total.

5. TERMINATION

A. Termination of Agreement for Cause. Either party may terminate the Agreement

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

B. Termination for Convenience of the County. The County may, in its discretion, terminate this Agreement at any time for any reason by giving the Contractor written notice of termination. The notice shall specify the effective date of termination, which shall not be less than fifteen (15) days from the Contractor's receipt of the notice. The County shall pay the Contractor for acceptable work, determined in accordance with the specifications and standards set forth in this Agreement, performed before the effective date of termination but shall not be liable for any work performed after the effective date of termination.

6. APPROPRIATIONS AND AUTHORIZATIONS

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

7. INDEPENDENT CONTRACTOR

The Contractor and its agents and employees are independent contractors and are not employees or agents of the County. Accordingly, the Contractor and its agents and employees shall not accrue leave, participate in retirement plans, insurance plans, or liability bonding, use County vehicles, or participate in any other benefits afforded to employees of the County. Except as may be expressly authorized elsewhere in this Agreement, the Contractor has no authority to bind, represent, or otherwise act on behalf of the County and agrees not to purport to do so.

8. ASSIGNMENT

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

9. SUBCONTRACTING

The Contractor shall not subcontract or delegate any portion of the services to be performed under this Agreement without the advance written approval of the County. Any attempted subcontracting or delegating without the County's advance written approval shall be null and void and without any legal effect.

10. PERSONNEL

A. All work performed under this Agreement shall be performed by the Contractor or under its supervision.

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

11. RELEASE

Upon its receipt of all payments due under this Agreement, the Contractor releases the County, its elected officials, officers, agents and employees from all liabilities, claims, and obligations whatsoever arising from or under or relating to this Agreement.

12. 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 County.

13. PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT

A. The County has the unrestricted right to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other material prepared under or pursuant to this Agreement.

B. The Contractor acknowledges and agrees that any material produced in whole or in part under or pursuant to this Agreement is a work made for hire. Accordingly, to the extent that any such material is copyrightable in the United States or in any other country, the County shall own any such copyright. The Contractor shall retain full ability to use in its website any and all information, photos, and digital media that may be gathered through completion of work pursuant to this Agreement.

14. CONFLICT OF INTEREST

The Contractor represents that it has no and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of its obligations under this Agreement.

15. NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED

This Agreement may not be modified, altered, changed, or amended orally but, rather, only by an instrument in writing executed by the parties hereto. The Contractor specifically acknowledges and agrees that the County shall not be responsible for any changes to Section 1 (Scope of Work), of this Agreement unless such changes are set forth in a duly executed written amendment to this Agreement.

16. ENTIRE AGREEMENT; INTEGRATION

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this written Agreement. No prior or contemporaneous agreement, covenant or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

17. NOTICE OF PENALTIES

The Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation. In addition, New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks.

18. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

A. The Contractor agrees to abide by all federal, state, and local laws, ordinances, and rules and regulations pertaining to equal employment opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, the Contractor specifically agrees not to discriminate against any person with regard to employment with the Contractor or participation in any program or activity offered pursuant to this Agreement on the grounds of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation, or gender identity.

B. The Contractor acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Agreement.

19. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW

A. In performing its obligations hereunder, the Contractor shall comply with all applicable laws, ordinances, and regulations.

C. This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules. Contractor and the County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be state district courts of New Mexico, located in Santa Fe County.

20. RECORDS AND INSPECTIONS

A. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to the County as part of the procurement process, the Contractor agrees to (i) maintain such books and records during the term of this Agreement and for a period of six years from the date of final payment under this Agreement; (ii) allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with generally accepted accounting principles (GAAP).

B. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to County as part of the procurement process, the Contractor also agrees to require any subcontractor it may hire to perform its obligations under this Agreement to (i) maintain such books and records during the term of this Agreement and for a period of six years from the date of final payment under the subcontract; (ii) to allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with GAAP.

21. INDEMNIFICATION

A. The Contractor shall defend, indemnify, and hold harmless the County and its elected officials, agents, and employees from any losses, liabilities, damages, demands, suits, causes of action, judgments, costs or expenses (including but not limited to court costs and attorneys' fees) resulting from or directly or indirectly arising out of the Contractor's performance or non-performance of its obligations under this Agreement, including but not limited to the Contractor's breach of any representation or warranty made herein.

B. The Contractor agrees that the County shall have the right to control and participate in the defense of any such demand, suit, or cause of action concerning matters that relate to the County and that such suit will not be settled without the County's consent, such consent not to be unreasonably withheld. If a conflict exists between the interests of the County and the Contractor in such demand, suit, or cause of action, the County may retain its own counsel to represent the County's interest.

C. The Contractor's obligations under this section shall not be limited by the provisions of any insurance policy the Contractor is required to maintain under this Agreement.

22. SEVERABILITY

If any term or condition of this Agreement shall be held invalid or non-enforceable by any court of competent jurisdiction, the remainder of this Agreement shall not be affected and shall be valid and enforceable to the fullest extent of the law.

23. NOTICES

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

To the County: Santa Fe County
Office of the County Attorney
102 Grant Avenue
Santa Fe, New Mexico 87501

To the Contractor: Amec Foster Wheeler Environment & Infrastructure, Inc.
Attn:
Vickie Maranville, Geosciences Group Manager
8519 Jefferson NE
Albuquerque, NM 87113
(505) 821-1801

24. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

The Contractor hereby represents and warrants that:

A. This Agreement has been duly authorized by the Contractor, the person executing this Agreement has authority to do so, and, once executed by the Contractor, this Agreement shall constitute a binding obligation of the Contractor.

B. This Agreement and Contractor's obligations hereunder do not conflict with Contractor's corporate agreement or any statement filed with the New Mexico Secretary of State on Contractor's behalf.

C. Contractor is legally registered and is properly licensed by the State of New Mexico to provide the services anticipated by this Agreement and shall maintain such registration and licensure in good standing throughout the duration of the Agreement.

25. FACSIMILE SIGNATURES

The parties hereto agree that a facsimile signature has the same force and effect as an original for all purposes.

26. NO THIRD-PARTY BENEFICIARIES

26. NO THIRD-PARTY BENEFICIARIES

This Agreement was not intended to and does not create any rights in any persons not a party hereto.

27. INSURANCE

A. General Conditions. The Contractor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.

B. General Liability Insurance, Including Automobile. The Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability policy with \$1,000,000.00 per occurrence and \$1,000,000.00 aggregate products/ completed operations and automobile insurance policy with liability limits in amounts of \$1,000,000.00 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the County by the Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Agreement is an insured contract. Santa Fe County shall be named as an additional insured on the policy.

C. Increased Limits. If, during the life of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended), the Contractor shall increase the maximum limits of any insurance required herein.

28. PERMITS, FEES, AND LICENSES

Contractor shall procure all permits and licenses, pay all charges, fees, and royalties, and give all notices necessary and incidental to the due and lawful performance of its obligations hereunder.

29. NEW MEXICO TORT CLAIMS ACT

No provision of this Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by County or its "public employees" at common law or under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

30. CAMPAIGN CONTRIBUTION DISCLOSURE FORM

The Contractor agrees to compute and submit simultaneous with execution of this Agreement a Campaign Contribution Disclosure Form approved by the County.

31. APPOINTMENT OF AGENT FOR SERVICE OF PROCESS,

The Contractor hereby irrevocably appoints Vickie Maranville, Geosciences Group Manager,

Amec Foster Wheeler E&I, 8519 Jefferson NE, Albuquerque, NM 87113, as its agent upon whom process and writs in any action or proceeding arising out of or related to this Agreement may be served. The Contractor acknowledges and agrees that service upon its designated agent shall have the same effect as though the Contractor were actually and personally served within the state of New Mexico.

32. SURVIVAL

The provisions of following paragraphs shall survive termination of this Contract; INDEMNIFICATION; RECORDS AND INSPECTION; RELEASE, CONFIDENTIALITY, PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT; COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW; NO THIRD-PARTY BENEFICIARIES; SURVIVAL.

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

SANTA FE COUNTY:

for 
Katherine Miller
Santa Fe County Manager

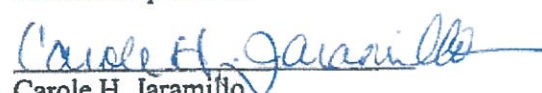
10.9.15
Date

Approved as to form


Gregory S. Shaffer
Santa Fe County Attorney

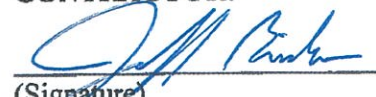
10/10/15
Date

Finance Department


Carole H. Jaramillo
Finance Director

10/7/15
Date

CONTRACTOR:


(Signature)

10-13-15
Date

Jeff Brislawn
(Print Name)

Sr ASSOCIATE

CONTRACTOR.

J. Robert McGregor
(Signature)

10/13/2015
Date

Robert McGregor,
(Print Name)

Principal/ Water Resources
(Print Title)