

**PROFESSIONAL SERVICE AGREEMENT
BETWEEN SANTA FE COUNTY AND GOLDER ASSOCIATES, INC.
TO PROVIDE HYDROLOGY SERVICES**

THIS AGREEMENT is made and entered into this 14th day of January 2015, by and between Santa Fe County, hereinafter referred to as the "County" and Golder Associates, Inc., whose principal place of business is located at 5200 Pasadena Ave. N.E., Suite C, Albuquerque, New Mexico hereinafter referred to as the "Contractor".

WHEREAS, in the central portion of the County the Santa Fe River Watershed covers approximately 285 square miles and has a 46-mile river course starting in the western slope of the Sangre de Cristo Mountains and terminating at the Rio Grande below Cochiti Lake; and

WHEREAS, Santa Fe County is seeking to improve its understanding of the relationship between spring discharge and groundwater levels in the lower Santa Fe Watershed through the measurement of the volume and level of surface and groundwater at key locations within the Watershed; and

WHEREAS, pursuant to NMSA 1978, Sections 13-1-112 and 13-1-117, competitive, sealed proposals were solicited via a formal request for proposals, RFP No. 2015-0004-PW/PL for professional hydrology services to plan, design and implement a surface and groundwater monitoring program in the La Cienega Creek, Guicu Creek, Alamo Creek and Cieneguilla section of the Santa Fe River; and

WHEREAS, based upon the evaluation criteria established within the request for proposals for the purposes of selecting the most qualified offeror, the County has determined the Contractor as the most responsive and highly rated offeror; 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

This project proposes a phased planning and design document for installation of groundwater and surface water monitoring and recording devices in approximately 10 locations along the Cieneguilla section of the Santa Fe River, La Cienega Creek, Arroyo Hondo, Guicu Creek and Alamo Creek. Once the monitoring equipment is successfully installed, data will be downloaded on the monthly basis and posted on the County Webpage for public viewing. The County and other governmental and private entities can compare this data with findings of previous studies, to evaluate seasonal variation and improve our understanding of the relationship between groundwater levels and spring discharge. By better understanding the available water supply, stream restoration and other changes in the watershed that promote water conservation and impact stream flow can be measured for effectiveness.

The professional hydrology services and design may include, but are not limited to, the

following tasks:

Task 1 - Project Administration

- a) Coordinate with appropriate state and federal agencies as necessary.
- b) Prepare submittals and progress reports to NMFA for grant administration.
- c) Provide construction services to install the recommended monitoring equipment.

Task 2- Planning

- a) Work with County Hydrologist to conceptually design a surface and groundwater monitoring network in the La Cienega / Cieneguilla area. Various sites have been tentatively selected to measure spring discharge directly and indirectly based on location and availability of easements and /or landowner permission. Conceptual design shall consider a study duration of twenty (20) years and have an measurement accuracy of ± 0.01 feet.
- b) Perform hydrologic and hydraulic analysis of proposed sites for design purposes.
- c) Participate in three (3) public meetings, if needed.
- d) Deliverable will be a planning document that proposes location(s), specifies equipment, develops estimates of operation and maintenance cost, feasibility, considers future integration with other existing monitoring networks, SCADA and data output that can be easily reviewed and posted onto the internet.

Task 3- Project Scoping Phase 1

- (a) Work with County staff and the public to finalize location(s) and type of equipment.
- (b) Verify easements and obtain permission from land owners for installation of equipment.
- (c) Conduct soil testing, as needed.
- (d) Obtain all necessary permits for construction and installation of monitoring equipment. This will include the preparation of any and all documents required for submittals, application fees and all necessary correspondence.
- (e) Complete a topographic survey with one (1) foot contour intervals of streambeds, if required to design monitoring equipment.

Task 4- Construction Services Phase 1

- a) Obtain necessary temporary easements for construction and equipment staging area.
- b) Provide traffic control as required.
- c) Staking as required.
- d) All necessary soil testing.
- e) Provide power, water and necessary equipment to construction site.

Task 5- Data Processing

- a) Set up an Operational Manual for the collection and post processing of water data.
- b) Set up standard, easy to read report on water levels and discharge in Excel or Access to import collected data which can be easily exported for a daily, weekly, monthly or annual reporting period.

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 written amendments to this Agreement.

3. COMPENSATION AND INVOICING

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 and all costs and expenses shall be in accordance with Exhibit A.
- 2) The total amount payable to the Contractor under this Agreement shall not exceed Fourteen Thousand Nine Hundred dollars ~~(\$14,900.00)~~ ^{LLK} \$16,131.60 exclusive of NM gross receipts tax. Any New Mexico gross receipts tax levied on the amounts payable under this Agreement shall be paid by the County to the Contractor.
- 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 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 contractual items or services for which payment is sought. 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 items or services. Within thirty (30) days of the issuance of a written certification accepting the contractual items or services, the County shall tender payment for the accepted items or services. In the event the County fails to tender payment within thirty (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 become effective on the date first written above and shall terminate two (2) years later, unless earlier terminated pursuant to Section 5 (Termination) or Section 6 (Appropriations and Authorizations). The County has the option to renew on the same terms and conditions for an additional two (2) years. In no event shall this Agreement exceed a term of four (4) years.

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 thirty (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 thirty (30) days, the breaching party shall have a reasonable time to cure the breach, provided that, within thirty (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.

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 I (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.

B. Contractor shall comply with the requirements of Santa Fe County Ordinance 2014-1 (Establishing a Living Wage).

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 federal and 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 (6) 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 (6) 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: Clay Kilmer
 Senior Hydrogeologist
 Golder Associates, Inc.
 5200 Pasadena Avenue, NE, Suite C
 Albuquerque, NM 87113

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 New Mexico State to do the work 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

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 and automobile insurance policy with liability limits in amounts not less than \$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. The County of Santa Fe shall be a named 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. 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 last date of signature below.

SANTA FE COUNTY:


Katherine Miller
Santa Fe County Manager

12.21.15
Date

APPROVED AS TO FORM


Gregory S. Shaffer
Santa Fe County Attorney


12-15-15
Date

FINANCE DEPARTMENT

Carole H. Jaramillo
Santa Fe County Finance Director

Date

CONTRACTOR:


(Signature)

1/14/16
Date

Clay Kilmer
(Print Name)

Sr. Hydrogeologist
(Print Title)

Exhibit A
Proposed Scope and Costs - Stream Gauge

Cost Estimate- RFP 2015-0004-PW/PL - Golder Associates Inc.				Team Member Labor Costs						Total Labor Costs	Total Hours	Direct Expenses	County Budget-Max Cost						
				Golder Associates		West Consultants, Inc.		ACL Consul.											
				Todd Stein	Bob Newcomer	Jeff Clark	Clay Kilmer	Brian Wahlin	Bert Clemmens	Steven Gustafson	Amy Lewis	Travel	Equipment and Supplies						
Task 1	Professional Services- Single Stream Gauge Design																		
1.1	Site Reconnaissance																		
1.2	Hydraulic Analysis for location and size																		
1.3	30% Design and Cost Est																		
1.4	30% Design Review Meeting																		
1.5	90% Design and Cost Est																		
1.6	90% Design Review Meeting																		
1.7	Review of Bid Documents																		
Max budget estimated at 15% of cost of construction for a single gauge inclusive of instrumentation at a cost of \$30,000																			\$5,936
Task 2	Construction Services - Single Stream Gauge																		
2.1	Pre-Construction Meeting																		
2.2	One site visit during construction																		
2.3	Review billing / change order																		
2.4	Final Site Visit- Construction Close out																		
Max budget estimated at 5% of cost of construction for a single gauge inclusive of instrumentation at a cost of \$30,000																			\$1,792
Max budget for professional and construction service for a single stream gauge exclusive of GRT.																			\$7,728
Task 3	Additional Services																		
1.1	Coordinate with appropriate state and federal agencies as necessary.																		
1.2	Prepare submittals and progress reports to NMFA for grant administration																		
5.1	Set up an Operational Manual for the collection and post processing of water data.																		
	Set up standard easy to read report on water levels and discharge in Excel or Access to import collected data which can be easily exported for a daily, weekly, monthly or annual reporting period.																		
5.2	Soil Testing																		\$
Gross Receipt Tax \$																			555.45
Grand Total \$																			8,283.45

Exhibit A
Proposed Scope and Costs - Groundwater Monitoring Well

Cost Estimate- RFP 2015-0004-PW/PL - Golder Associates Inc.		Team Member Labor Costs										Total Labor Costs	Direct Expenses		Total Expenses	County Budget- Max Cost
		Golder Associates					West Consultants, Inc.			ACL Consult.						
		Todd Stein	Bob Newcomer	Jeff Clark	Brian Wahlin	Bert Clemmens	Steven Gustafson	Amy Lewis								
Task 1	Professional Services- Monitoring Well Design															
1.1	Site Reconnaissance	305				1218										
1.2	Geohydrologic analysis	305														
1.3	30% Design and Cost Est (prepare well specs/bid package)	1218	357	158	1218											
1.4	30% Design Review Meeting															
1.5	90% Design and Cost Est															
1.6	90% Design Review Meeting															
1.7	Review of Bid Documents (single review and final prep)	1218			305											
Max budget estimated at 15% of cost of construction for a single shallow monitoring well with instrumentation at a cost of \$40,000																
Task 2	Construction Services - Single Monitoring Well															
2.1	Pre-Construction Meeting															
2.2	One site visit during construction (Well construction oversight)	305			1218											
2.3	Review billing / change orders															
2.4	Prepare drilling and well installation report (single sheet lithologic log and completion details, letter transmittal)	420		158												
2.5	Final Site Visit- Construction Close out															
Max budget estimated at 5% of cost of construction for a single shallow monitoring well with instrumentation at a cost of \$40,000																
Max budget for design, construction oversight and reporting for a single shallow monitoring well exclusive of GRT.																
Task 3	Additional Services															
3.1	Purchase and programming of automated groundwater level and temp sensor/logger.															
3.2	Prepare submittals and progress reports to NMFA for grant administration															
3.3	Set up an Operational Manual for the collection and post processing of water data.															
3.4	Set up standard easy to read report on water levels and discharge in Excel or Access to import collected data which can be easily exported for a daily, weekly, monthly or annual reporting period.															
3.5	Installation and training with County Hydrologist in the o&m of automated monitoring system.															
														Gross Receipt Tax	\$ 603.97	
														Grand Total	\$ 9,006.97	

