

**SANTA FE COUNTY
AMENDMENT NO. 1 TO THE AGREEMENT
WITH WILLIAM J. MILLER ENGINEERS INC.
TO PROVIDE ON-CALL ENGINEERING DESIGN AND RELATED SERVICES**

THIS AMENDMENT is made and entered into this 4th day of November 2014, by and between **Santa Fe County**, hereinafter referred to as "County", a New Mexico political subdivision, and **William J. Miller Engineers Inc.**, hereafter referred to as "the Engineer."

WHEREAS, pursuant to NMSA 1978, Sections 13-1-112, competitive sealed proposals were solicited via a formal Request for Proposal, RFP No. 2014-0030G-PW/PL for on-call civil engineering services; and

WHEREAS, on October 29, 2013, the County and Engineer entered into Agreement No. 2014-0030G-PW/PL consisting of Part A and Part B to provide on-call professional engineering services; and

WHEREAS, pursuant to Part B General Terms and Conditions, Article 12, NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED, of Agreement No. 2014-0030G-PW/PL the Agreement may be amended by an instrument in writing executed by the parties hereto; and

WHEREAS, the County determined that Part A and Part B requires modification to standardize and clarify language, and to provide explicit direction for the duties and responsibilities of the County and Engineer; and

WHEREAS, pursuant to Part B General Terms and Conditions Article 2 EFFECTIVE DATE AND TERM of the Agreement, the parties may renew the term of Agreement No. 2014-0030G-PW/PL for one (1) an additional year; and

WHEREAS, the parties wish to modify provisions of Part A and Part B and extend the term of the Agreement for one (1) year from October 29, 2014 to October 29, 2015.

NOW THEREFORE, BOTH PARTIES AGREE AS FOLLOWS.

The County and Engineer hereby agree to modify Part A and Part B of Agreement No. 2014-0030G-PW/PL as follows.

- I. Part A, Article 3 (Compensation, Invoicing, and Set-off) is amended by inserting the following paragraphs as "F" through "J".
 - F. The Engineer shall submit, with its billings at the completion of the Project, certification that payment has been made to all consultants, suppliers, and others for materials and services required by this Agreement.

- G. No deductions or withholdings shall be made from the Engineer's compensation on account of penalty, liquidated damages, or other sums withheld from payments to Contractors, or on account of the cost of changes in the Work other than those for which the Engineer may be legally liable in accordance with this Agreement.
 - H. In the event the County receives Notice from any person, Consultant, Sub consultant, or other third party, that the Engineer has failed to pay such person(s) for Work performed in accordance with Agreements, the Engineer shall, at the request of the County, and in no more than ten (10) calendar days, provide all documentation the County believes necessary to determine whether such payment is due, or reasons for non-payment of disputed amounts. In the event the County determines the claim to be valid and payment is due, or in the absence of aforementioned documentation, the County may authorize direct payment of any unpaid bills, withholding from the Engineer's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such claims until satisfactory documentation is furnished that all liabilities have been fully discharged or reasons for non-payment of disputed amounts are provided by the Engineer. In no event shall these provisions be construed to impose any obligation upon the County to the Engineer.
 - I. In the event of termination or suspension of the Project due to the fault of parties other than the Engineer, the Engineer shall be compensated for services performed to the date of termination.
 - J. The basis for compensation will be the Maximum Allowable Construction Cost (MACC) as may be adjusted by design complexity, and Scope of Work. The MACC for the purpose of calculating the fee for basic services is not adjusted at the time of construction contract award. If at any time prior to contract award, the MACC and/or the percentage are changed by amendment to the Agreement, the basic services fee shall be adjusted as appropriate. No fee adjustment shall be made for phases already completed.
- II. Part A, Article 5 (Engineer's Basic Services) is amended by inserting the following as subparts "A" and "B":
- A. The Engineer shall perform professional engineering services including study, report, preliminary design, final design, bidding and negotiating, construction related and project closeout and 11 month warranty inspection services. The Engineer shall represent that all tasks will be performed in accordance with generally acceptable professional standards and further represent that the advice and consultation provided shall be within the Engineer's authority and capacity. The Engineer shall comply with the regulations, laws, ordinances and requirements of all levels of

government applicable to any assigned project.

- B. The services to be provided during each phase listed below includes all consulting services required by the Engineer to provide the professional engineering services incidental to the design and construction of the Project. The intent of this Agreement is to provide design and engineer services for completely functional and operational construction projects within the identified scope of work and cost limitation.

III. Part A, Article 6. Reimbursables is supplemented by inserting the following as paragraph C. 1) to 5).

C. (Reimbursable) expenses shall include, but not limited to, the following:

- 1) Expenses of transportation when traveling in connection with the Project. Such expenses are limited to per diem and mileage rates are set forth in the Per Diem and Mileage Act, Section 10-8-1 to 10-8-8, NMSA 1978 and DFA Rule 95-1 as amended, except that the County shall authorize such travel in advance.
- 2) Expenses of fees paid for securing approvals of authorities having jurisdiction over the Project.
- 3) The Engineer shall charge bidders or offerors a deposit fee equal to the full cost of reproduction of drawings, specifications, and other documents required by the County to solicit bids or proposals and execute the Construction Contract as directed by the County. This fee shall be completely refunded if the documents are returned in usable condition within the time frame specified in the Invitation for Bid or Request for Proposals. All forfeited fees shall be returned to the County.
- 4) Construction documents and specifications will be printed by the lowest quote received from print rooms specified by the County. All reproduction required must be approved in writing by the County prior to request. This expense shall be paid by the County for the initial Bidding and by the Engineer for subsequent Biddings. All other reproductions as may be required for the County's review or for the office use of the Engineer and the Engineer's consultants shall be provided as part of the Engineer's Basic Compensation.
- 5) Reimbursable expenses, if allowed by this Agreement, shall be compensated at direct cost not to exceed the reimbursable amounts as indicated in Exhibit A of this Agreement, unless otherwise modified by written amendment.

- IV. Part A, Article 7 (Additional Services) subparagraph B.1) is amended by adding the phrase “beyond Basic Services” after “Project Representative”.
- V. Part A of Agreement No. 2014-0030G-PW/PL is amended by inserting the following as Articles 8 through 22.

8. PROJECT REPRESENTATIVE BEYOND BASIC SERVICES

If the County and the Engineer agree that project representation for observation of the Site is required the Engineer shall, upon written authorization of the County, provide one or more Project Representatives to assist the Engineer in carrying out such responsibilities at the site.

- A. Subject to County’s approval, the Engineer’s Project Representative shall be selected, employed, and directed by the Engineer. The Engineer shall be compensated therefore as mutually agreed between the County and the Engineer as set forth in an approved amendment to this Agreement, which shall, in addition, describe the duties, responsibilities, and limitations of authority of such Project Representative(s).
- B. Through the observations of such Project Representative(s), the Engineer shall provide further protection for the County against defects and deficiencies in the Work to determine that the Work is carried out in conformance with the plans and specifications; but the furnishing of such project representation shall not diminish the rights, responsibilities, or obligations of the Engineer as described in this Agreement.
- C. The County reserves the right to designate a County Representative in lieu of the Engineer’s Project Representative to provide additional site representation for the County beyond that provided by the Engineer. If the County elects to provide a County Representative in lieu of a Project Representative, this subsection shall not diminish the rights, responsibilities, or obligations of the Engineer established in this Agreement. The County Representative’s duties and limits of authority shall be established so as not to conflict with those of the Engineer. The Engineer shall cooperate with the County Representative in the performance of its duties.

9. MEETINGS

The Engineer shall be attendance at, and record minutes of, all meetings required by this Agreement throughout the course of the project as set forth herein. The Engineer shall initiate additional meetings germane to the Agreement when authorized, in writing, to the County. The Engineer shall distribute copies of meeting minutes to participants and other interested parties as directed by the County within seven (7)

calendar days. The Engineer consultants shall attend each meeting as appropriate or as requested by the County.

10. MONTHLY PROGRESS REPORTS

The Engineer shall submit monthly progress reports of design/construction activities to the County. Failure to submit monthly reports may result in delay to the Engineer's progress payments. The report shall include:

- A. Activities completed and items pending since last report,
 - 1) Projected progress,
 - 2) Comparison of schedule to actual progress, and
- B. Decisions or information required.

11. KEY PERSONNEL AND CONSULTANTS

The Engineer's key personnel and consultants designated for this Project shall remain assigned for the duration of the Project. Any substitutions of the Engineer's key personnel and consultants require written notification to the County and prior written consent of the County. The County may require substitution of any personnel or consultants provided that the County has first notified the Engineer in writing and allowed a reasonable period for adjustments and/or corrections.

12. GEOTECHNICAL ENGINEERING

The Engineer shall, during the Study and Report Phase, submit to the County a statement of necessary geotechnical or soils engineering services that will be required. If the Engineer does not believe the services of a Geotechnical Engineer are required for the project, a written notice of such shall be provided to the County stating same. Geotechnical engineering and any necessary surveys shall be County-provided, as Additional Services or a reimbursable expense.

13. STANDARD OF CARE

The Engineer represents that its officers, agents, employees and consulting professionals shall possess the experience, knowledge, and character necessary to qualify them individually for the services to be performed by them under this Agreement. All services shall be performed in accordance with the standards of their respective profession. Such affirmation by consultants, sub consultants, joint ventures, and agents shall not be construed as a diminution of the Engineer's liability and responsibilities to the County.

14. APPLICATION OF PROFESSIONAL SEALS

Final technical reports and all bidding documents shall contain a legible seal, signature, date and license expiration date of the engineering professional responsible for the document or under whose supervision the document was prepared. For project manuals and technical reports the seal shall be provided by the engineering professional responsible for the overall coordination of the project. If more than one engineering professional has responsibility for portions of the work, additional seals may be provided on the cover, or on a separate signature sheet immediately following the table of contents.

15. REVIEW PROCESS

The Engineer shall submit documents for review as required by the Agreement. The Engineer shall provide five (5) sets of review documents to the County for each review. Following the reviews, the Engineer shall respond to the County's Project Manager in writing to all review comments and questions within fourteen (14) calendar days.

16. SITE

The physical location of the Project, including all land acquired for the Project or associated with the Project, including surface drainage, wells, transmission lines, utility location(s), easements, rights-of-ways, roadway and existing facilities that may be directly or indirectly affected by the Project or that might affect the Project.

17. TIME

The Engineer shall perform Basic and Additional Services as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. The Engineer shall submit, for the County's approval and as part of this Agreement, a schedule of performance of the Engineer's services and shall include allowances for periods of time required for the County's review and approval of submissions and for approvals of authorities having jurisdiction over the Project. This schedule, when approved by the County, shall not, except for reasonable cause not within the control of the Engineer, be exceeded by the Engineer. Failure of the Engineer to perform within this schedule except through authorized extensions shall constitute a basis for termination and/or withholding of payment until schedule compliance is achieved by the Engineer.

18. OWNER'S RESPONSIBILITIES

- A. The County may designate, in writing, a representative authorized to act in its behalf, however, authority for final approval of the Project Phase Documents, the Contract Documents, or any Change Order is retained by the County. The County shall examine documents submitted by the

Engineer and shall render decisions promptly to avoid unreasonable delay in the progress of the Engineer's services.

- B. The County may designate a Project Manager for the project who shall be the County's primary representative in the administration of this Agreement. The Engineer will report to the County's Project Manager. All correspondence from the Engineer shall be communicated to the Project Manager.
- C. The County shall ensure review in writing of each project phase and shall notify the Engineer of the accord.
- D. The County shall furnish a legal description and certified land survey of the site, giving, as applicable grades and lines of streets, alleys, pavements, and adjoining property; rights-of-ways, restrictions, easements, encroachments, zoning, deed restrictions, boundaries, and contours of the site; locations, dimensions, and complete data pertaining to existing buildings, other improvements, and trees, and full information concerning available service and utility lines both public and private, above and below grade, including inverts and depths.
- E. When documents and drawings provided under the above subparagraph are furnished to the Engineer, payment of the Construction Document Phase will not be made to the Engineer until the County has received all said documents and drawings.
- F. The County reserves the right not to provide certain project-related documents or drawings to the Engineer at the County's discretion.
- G. If the County observes or otherwise becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents, prompt written notice thereof shall be given by the County to the Engineer.
- H. The County shall furnish required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of the Engineer's services and of the Work.

19. RESPONSIBILITY FOR CONSTRUCTION COST

- A. When the detailed statement of probable construction cost required by subparagraph 4.C.5) or an evaluation prepared by the Engineer indicates that the Project exceeds the MACC, the provisions outlined below shall apply:
 - 1) Evaluations of the County's Project budget, statements of probable construction cost, and detailed estimates of construction cost prepared by the Engineer represents the Engineer's best judgment as a design professional

familiar with the construction industry. It is recognized, however, that the Engineer does not have control over the cost of labor, materials, or equipment; over the Contractor's methods of determining bid prices; or over competitive bidding, market, or negotiating conditions. Accordingly, the Engineer cannot and does not warrant or represent that bids or negotiated prices will not vary from the Project budget proposed, established, or approved by the County, or from any Statement of Probable Construction Cost or other cost estimate or evaluation prepared by the Engineer.

- 2) The MACC may be adjusted by the County at the completion of the Programming Phase, and the design fees may be modified. The MACC, at the start of the Preliminary Design Phase, may only be adjusted based upon modifications to the Scope of Work approved in advance by the County. The Engineer shall notify the County in writing at any time the estimated cost of construction is expected to exceed the MACC. The Engineer's written notification shall include a detailed explanation and shall provide suggestions for reducing the estimated cost so that it does not exceed the MACC. The County agrees to cooperate with the Engineer and permit reasonable and necessary revisions or reductions to the scope of the Project. The Engineer agrees to revise the drawings and specifications as necessary at no additional expense to the County, if so requested by the County, in order to bring the estimated cost within the MACC;
- 3) The MACC is established, as a condition of this Agreement, as a fixed limit of Construction Cost for design and bidding purposes. The Engineer shall be permitted to determine what materials, equipment, component systems, and types of construction are to be included in the Bidding or Proposal Documents to bring Construction Cost within the MACC. With the written consent of the County, the Engineer may also include in the Bidding or Proposal Document either additive or deductive alternate bids or proposals to adjust the Construction Cost to the fixed limit;
- 4) If bidding or negotiations with potential Contractors have not commenced within two months after the Engineer submits Bidding or Proposal Documents to the County, the Project budget and/or MACC shall be adjusted to reflect any change in the general level of prices in the construction industry between the date of submission of the Bidding or Proposal Documents to the County and the date on which proposals are sought;
- 5) The MACC, therefore, is established as a condition of this Agreement. When it is exceeded by the lowest bona fide bid, the County may:
 - a. Give written approval of an increase on the MACC, or
 - b. Authorize re-bidding the Project within a reasonable time, and

- c. Cooperate with the Engineer in revising the Project Scope and, as required, to reduce the Probable Construction Costs.

If the County elects to reduce the Probable Construction Cost, the County shall cooperate with the Engineer in revising the quality and scope of the Project; and the Engineer, without additional charge for services or re-printing of the Drawings and Specifications shall modify the Drawings and Specifications as necessary to bring the Construction Cost within the MACC. The Engineer shall then assist the County through the Bidding process (see Subparagraph 5.D).

20. ENGINEER'S RECORDS AND AUDIT

- A. Records of expenses by the Engineer and its consultants pertaining to all services under this Agreement shall be kept on the basis of generally accepted accounting principles and shall be available at mutually convenient times to the County or the County's authorized representative.
- B. The County shall have the right to audit all such records and billings both before and after payment. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payments;
- C. Records of expenses shall be kept by the Engineer and its consultants and shall be available to the County until all applicable Statutes of Limitations have run, and this provision shall survive and continue beyond the termination of other terms of this Agreement.
- D. These records shall be subject to inspection by the County and shall be maintained for inspection for a period of three (3) years. Billings may be audited both before and after payment. Payment by the County under this Agreement shall not foreclose the right of the County to recover excessive or illegal payments.

21. OWNERSHIP AND USE OF DOCUMENTS

- A. Original construction document drawings, designs, specifications, notes, project manuals, and/or related documents and other work developed in the performance of this Agreement by the Engineer shall become the sole property of the County whether the Project for which they are made is constructed or not, pursuant to Section 13-1-123, NMSA 1978. The County shall keep these documents on file. The Engineer may maintain a complete reproducible set of any and all record documents developed under this Agreement.
- B. All documents, including drawings and specifications prepared by the Engineer pursuant to this Agreement are instruments of service in respect to

the Project. The Engineer shall not be liable should the County use the documents, in whole or in part, in the future when the Engineer's services are not retained.

- C. The original drawings may be marked by the County or the Engineer to designate the restrictions of use of these documents.
- D. Copyright: No reports, maps, or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Engineer.

22. MAINTENANCE

Ease of maintenance and the ability to repair major items of installed equipment by replacement are essential to the Project. To ensure that these services can be adequately performed after the Project is accepted by the County, the Engineer shall:

- A. In all relevant Contract Documents, design and provide for all major installed equipment in the Project, including but not limited to, removal, access, maintenance, and storage space needs. In addition, all installed equipment systems shall be appropriately identified and labeled to describe the capacities, flows, and other pertinent information related to their maintenance and safe operation.
 - B. Specify only equipment that can be readily maintained by the County or other qualified commercial repairman.
 - C. Provide Construction Documents that accurately depict the installation of all major items of installed equipment and which provide reasonable detail on all other major systems to be installed.
 - D. At the completion of the Study and Report, Preliminary Design, and Final Design Phases brief the County on the rationale for the selection of the major mechanical and electrical systems to be specified in the Contract Documents, together with the probable life-cycle costs.
- VI. Part A of Agreement No. 2014-0030G-PL/PW is amended by renumbering "8" and "9" as "23" and "24" respectively
 - VII. Part A of Agreement No. 2014-0030G-PL/PW is amended by inserting into Article 4 (Term) the following as subpart "A".
 - A. By Amendment No. 1, the term of this Agreement is extended for one (1) year from October 29, 2014 to October 29, 2015.

VIII. Part B of Agreement No. 2014-0030G-PL/PW is amended by inserting into Article 2 (Effective Date and Term) the following as subpart "A".

A. By Amendment No. 1, the term of this Agreement is extended for one (1) year from October 29, 2014 to October 29, 2015.

IX. Part B of Agreement No. 2014-0030G-PL/PW is amended by inserting the phrase "including Santa Fe County Ordinance 2014-1 (Establishing a Living Wage)" at the end of Article 17.A. (Compliance with Applicable Law; Choice of Law).

X. All other provisions of Agreement No. 2014-0030G-PW/PL not specifically amended, modified or superseded by this Amendment No. 1 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have duly executed this Amendment No.1 to Agreement No. 2014-0030G-PW/PL as of the date first written above.

SANTA FE COUNTY


Katherine Miller
Santa Fe County Manager

Date: 11.4.14

REVIEWED AS TO LEGAL FORM AND SUFFICIENCY


Gregory S. Shaffer
Santa Fe County Attorney

Date: 10-24-14

FINANCE DEPARTMENT APPROVAL


Teresa C. Martinez
Santa Fe County Finance Director

Date: 10/29/14

ENGINEER: WILLIAM J. MILLER ENGINEERS INC.

William J Miller
Signature

Date: 10/27/2014

WILLIAM J. MILLER
Print Name

PRESIDENT
Print Title