

**PROFESSIONAL SERVICE AGREEMENT
BETWEEN SANTA FE COUNTY AND
HORROCKS ENGINEERS
FOR RACETRACK SUBDIVISION DRAINAGE
AND ROAD IMPROVEMENTS**

THIS AGREEMENT is made and entered into this 13th day of October 2017, by and between **SANTA FE COUNTY**, hereinafter referred to as the "County" and **HORROCKS ENGINEERS** whose principal address is 6100 Uptown Blvd., Suite 105, Albuquerque, New Mexico 87110, hereinafter referred to as the "Contractor".

WHEREAS, pursuant to Section 13-1-125, NMSA 1978 (small purchase), the County issued a Letter of Interest No. 2018-0069-PW/MAM for these services; and

WHEREAS, the County requires the services of an engineer to complete a drainage and road improvement study through the construction administration phase for a project at the Racetrack Subdivision in 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

Santa Fe County has a road project for which engineering design and construction administration is needed. The road and drainage improvement project is within the Racetrack Subdivision (Camino Largo, Camino Mocho and Calle Corto) located in La Cieneguilla, Santa Fe County, New Mexico.

A. The Contractor's engineering services will consist of the study and report, preliminary design, final design/bidding documents, bidding and negotiating, construction administration and post construction phases. Contractor's engineering services for this project include, without limitation, the following basic and additional engineering services:

1. Study and Report Phase.
2. Preliminary and Design Phase.
3. Final Design Phase and Construction Documents.
4. Bidding and Negotiation Phase.
5. Construction Administration Services.
6. Additional Services may include:
 - a. Storm Drainage to 100 year Storm,
 - b. Grading and plans,
 - c. Surveying,
 - d. Easement documentation,
 - e. Archaeological, and
 - f. Data recovery.

B. The Contractor's tasks and costs for this project are as follows:

BASIC SERVICES	Cost (includes subs)
Task 1 and Task 2 Study and Report Phase and Initial Construction Plans and Drainage	\$ 20,732.00
Task 3 Final Construction Plans, Specs	\$ 14,556.00
Task 4 Bidding and Negotiation	\$ 732.00
Task 5 Construction Administration	\$ 2,928.00
Post Construction	\$ 4,754.00
Total Basic Services:	\$ 43,702.00
ADDITIONAL SERVICES	
Design Survey and Setup	
Convert GIS to surface and CAD	\$ 1,156.00
Determine Sheet Layout	\$ 1,230.00
Set Up Sheets	\$ 1,882.00
Survey Control and Field Work	\$ 5,654.00
Obtain & Produce Utility Maps	\$ 2,670.00
Easement Location, write description, provide exhibit	\$ 2,584.00
Total Additional Services:	\$ 15,176.00
TOTAL SERVICES AMOUNT:	\$ 58,878.00, exclusive of NM grt

C. The parties agree that all tasks set forth above 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 and Invoicing) of this Agreement, and for no other cost, amount, fee or expense.

D. 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.

2. 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.

- 2) The total amount payable to the Contractor under this Agreement shall not exceed **\$58,878.00**, exclusive of New Mexico gross receipts tax. Contractor's costs and fees shall be as detailed on Appendix A, attached hereto (Fee Estimate).
- 3) No direct costs shall be paid by the County under this Agreement. All costs of travel, per diem, living or printing expenses for the Contractor shall be the sole responsibility of the Contractor.
- 4) 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.
- 5) Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payment.

3. 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 year later, unless earlier terminated pursuant to Section 5 (Termination) or Section 6 (Appropriations and Authorizations). The County has the option to extend this Agreement at the same price, terms and conditions for one additional year. The County may exercise this option by submitting a written notice to Contractor that the Agreement will be extended an additional year. The notice must be submitted to Contractor at least 60 days prior to expiration of the term of the Agreement.

4. 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 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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 state district courts of New Mexico, located in Santa Fe County.

19. 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.

20. 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.

21. 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.

22. 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 Public Works Department
	Attn: Public Works Director
	102 Grant Avenue
	P.O. Box 276
	Santa Fe, New Mexico 87504-0276

To the Contractor: HORROCKS ENGINEERS
 Attn: Habib Abi-Khalil, P.E.
 6100 Uptown Blvd., Suite 105
 Albuquerque, New Mexico 87110

23. 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.

24. FACSIMILE SIGNATURES

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

25. NO THIRD-PARTY BENEFICIARIES

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

26. 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. Santa Fe County 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.

27. 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.

28. 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.

29. CAMPAIGN CONTRIBUTION DISCLOSURE FORM

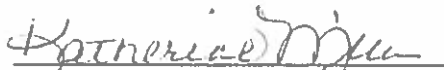
The Contractor agrees to compute and submit simultaneous with execution of this Agreement a Campaign Contribution Disclosure form approved by the County.

30. 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.

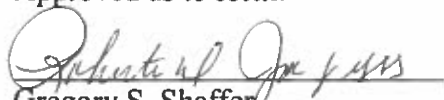
IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of last signature by the parties below.

SANTA FE COUNTY


Katherine Miller
County Manager

10-13-17
Date

Approved as to form:


Gregory S. Shaffer
County Attorney

10-6-17
Date

Finance Department:


Don D. Moya
Finance Director

10.10.17
Date


CONTRACTOR:

(Signature)

Date

(Print name and title)

Finance Department:



Don D. Moya
Finance Director

10-10-17
Date

CONTRACTOR:



(Signature)

10/12/17
Date

BRYAN E. FOOTE, VP
(Print name and title)

APPENDIX A

SANTA FE COUNTY - RACETRACK SUBDIVISION DRAINAGE AND ROAD IMPROVEMENTS UPDATED Fee Estimate - Horrocks Engineers - September 29, 2017

	Activity	Total Cost Incl Subs	Subconst Cost	Horrocks Hours	Sr Principal Engineer	Sr Engineer II	Assoc. Engineer	Drainage Eng	Drainage QC	GIS	CAD1	CAD2	Admin
					\$183	\$188	\$144	\$120	\$144	\$126	\$91	\$72	\$53
ADDITIONAL SERVICES	Design Survey & Setup												
	Convert GIS to surface & CAD	\$1,156		10			2			4	4		
	Determine Sheet Layout	\$1,230		10	2		4					4	
	Set Up Sheets	\$1,882		18	2		4				4	8	
	Survey Control & Field Work	\$5,654	\$5,000	4	2		2						
	Obtain & Produce Utility Maps	\$2,670		22	2		12					8	
	Easment Location, write description, provide exhibit	\$2,584	\$2,200	3			1	2					
	Subtotal	\$15,176											
TASK 1	Study and Report Phase												
	Prepare Opinion of Probable Construction Cost, including contingencies, Engineering, & other costs	included below											
	Subtotal	\$0											
TASK 2, 3	Drainage												
	Evaluate Drainage Report	\$360		3				3					
	Ascertain Onsite Drainage Data for Design	\$648		5			2	3					
	Design Drainage System: Structures, Pipes, Ponds	\$1,854		14	2		2	10					
	Subtotal	\$2,862											
TASK 2	Initial Construction Plans												
	Kickoff Meeting	\$1,548		10	4		4	2					
	Develop Typical Section	\$1,086		8	2		4					2	
	Develop Alignments	\$864		6			6						
	Develop Profiles	\$1,296		10			8					2	
	Develop Typical Driveway and Roadway Tie-In	\$1,662		12	2		8					2	
	Designs on to Plan Sheets	\$1,440		14			6					8	
	Details	\$1,950		16	2		8					6	
	Produce and Submit Preliminary Plan Set	\$3,748		38	4		10					16	8
	Engineer's Estimate	\$1,806		12	2		10						
	Review Meeting Incl Compile Comments	\$2,470		18	4		8	4					2
	Subtotal	\$17,870											
TASK 3	Final Construction Plans, Specs, Estimate												
	Plan Edits from Meeting	\$2,670		26	2		8					16	
	Specs and Bid Package	\$2,826		18	6		12						
	Conduct complete QC of Plans, Specs, Estimate	\$6,156		44	4	12	8		8			12	
	Assemble and Produce Final Deliverables	\$2,904		18	8		10						
	Schedule for Subsequent Engineering Services	included											
	Subtotal	\$14,556											
TASK 4	Bidding and Negotiation Phase												
	Assist in Bid Opening and Compiling Bid Tabs	\$732		4	4								
	Subtotal	\$732											
TASK 5	Construction Administration Services												
	Review Submittals, Answer RFIs, Attend Precon Mtg	\$2,928		16	16								
	Subtotal	\$2,928											
	Post Construction Phase												
	Project Closeout, incl. Asbuilts, Punchlist & FNA	\$3,290		22	14						8		
	1 Year Warranty Inspection	\$1,464		8	8								
	Subtotal	\$4,754											
Total Project Amount		\$58,878		389	92	12	139	24	8	4	16	84	10

Basic Services \$43,702
Additional Services \$15,176

Assumptions:

Utility QL "D" for info on plans

(1) Review Meeting

(1) Kickoff Meeting

County will provide GIS-level Survey and we will supplement with Control and Critical Additional Points for Drainage Easement Acquisition and Discussions with Property Owner to be completed by County

(1) Typical Section to be applied to all 3 roadways

Assume right of way to be determined by Fenceline or provided by County

Use APWA Standard Specifications or County Standards

No traffic studies will be completed

No pedestrian facilities are to be included

Signs will be limited to replacement of what exists

No replacement of roadside features is planned: fences, mailboxes, landscaping, etc

Driveways will be a standard graded tie-in that applies to all driveways; no custom driveway tie-in plans will be produced

Roadway improvements are limited to paving approximate existing horizontal & vertical roads w/ minor smoothing. No major re-grading anticipated

Sight Distance Triangles at driveways and intersections will not be evaluated

Does not Include work on Paseo Real

Does not Include NMGR

Drainage Easement work for Exhibit and plat