

**PROFESSIONAL SERVICE AGREEMENT
BETWEEN SANTA FE COUNTY AND
RIVERBEND ENGINEERING**

THIS AGREEMENT is made and entered into this 10th day of April 2018, by and between **SANTA FE COUNTY**, hereinafter referred to as the “County”, a political subdivision of the state of New Mexico, and **RIVERBEND ENGINEERING** whose principal address is 1309 Rio Grande Blvd. NW, Albuquerque, NM 87104 hereinafter referred to as the “Contractor”.

WHEREAS, the County issued Letter of Interest No. 2018-0230-GM/KE to secure offers from contractors to complete a drainage study and report for the Madrid Open Space, Santa Fe County; and

WHEREAS, the Contractor has demonstrated its ability and qualifications to perform the required professional services needed for this project; 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, without limitation, the following services:

A. Literature review and field inventory

- 1) Compile and review existing studies completed by Abandoned Mine Land Project (AML), the County, and their consultants.
- 2) Complete a detailed supplementary survey of the project reach corridor within the Madrid Open Space to augment the existing County topographic dataset and develop a contour base map for design.
- 3) Complete a stream inventory of the arroyo, as required, to characterize stream morphology, to evaluate stream channel stability, and to determine stream potential. Stream inventory may include geomorphic surveys (dimension, pattern, and profile), pebble count and bar sample collection, and the collection of stream stability indices (vegetation, flow regime, Pfankuch stability rating, etc.).

B. Geomorphic and hydraulic analysis of the channel

- 1) Complete bank assessment for the non-point source consequences of sediment (BANCS) model to predict stream-bank erosion rates and quantities.
- 2) Complete stream channel succession predictions.
- 3) Complete a hydraulic assessment of the existing and proposed channel to determine velocity, shear stress, and stream power relationships.
- 4) Complete sediment modeling to determine competence, entrainment, and transport capacity for the existing and proposed channels.
- 5) Develop channel improvement plans using an appropriate combination of analog, empirical, and analytical methodologies.

C. Hydraulic analysis of the floodplain

- 1) Evaluate the existing conditions flood extents for a range of flows including effective discharge/ bank-full, 2, 5, 10, 25, 50, and 100 year flows.
- 2) Evaluate the proposed conditions flood extents including channel and floodplain improvements for the same range of flows. Floodplain improvements may include the strategic removal and or/ relocation of floodplain impediments such as berms or historical artifacts, the construction of flood protection embankments on the edge of the floodplain, and/or the creation of flood relief diversions to an abandoned/historic reach of the arroyo located along the east side of the project area.

D. Other analysis

- 1) Culvert/road crossing improvement.
- 2) Pedestrian access.
- 3) Integrated low impact drainage design for storm water entering the open space from offsite.
- 4) Utility design coordination.
- 5) Invasive species management and native re-vegetation potential.

E. Feasibility-level design and community outreach

- 1) Based on field inventory and analysis, complete feasibility level plans and costs.
- 2) Feasible alternatives will be evaluated during the preliminary design process and will be presented to the community for review as part of the collaborative process lead by the County.

F. Preliminary Design and Community Outreach

- 1) Based on feedback from the County and community, develop an integrated, holistic preliminary plan and present to the community.
- 2) Other Work Elements.
- 3) Identify all Local Agency, State and Federal permits that will be required as well as right of way needs.
- 4) Identify potential funding sources and agency roles
- 5) Aid the County in developing a phased implementation plan to complete the final design and construction for the entire corridor

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 and in accordance with the schedule and costs described in ATTACHMENT A (Madrid Gulch Cost Proposal), attached hereto.
 - 2) The total amount payable to the Contractor shall not exceed \$52,367.00 excluding NM gross receipts taxes.
 - 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 deliverables for which payment is sought.
- 1) The County's representative for certification of acceptance or rejection of contractual items and services shall be **Maria Lohmann, Planning and Open Space, melohmann@santafecountynm.gov**, (505) 995-2774 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 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 not to 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 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.
- C. The County will provide or make available to Contractor, at no cost to Contractor, such GIS data or digital files as are necessary for Contractor to complete the Scope of Work under this Agreement. Such GIS data files (e.g. shapefile, mosaic, images), if available for the project, will include without limitation GIS data files pertaining to areas within half of a mile on either side of the project reach corridor and any other GIS data or records that the Contractor deems necessary for the Contractor to satisfactorily complete the Scope of Work under this Agreement. Contractor agrees to use the GIS data or digital files solely for purposes of completion of the Scope of Work under this Agreement. Contractor agrees that it shall not release, resell or otherwise distribute any of the GIS data or digital files provided under this Agreement, to any third party without the express written consent of the County. Furthermore, Contractor agrees to provide the County with, or share, at no cost to the County electronic copies of any digital mapping files (aka GIS data) produced by the Contractor under this Agreement. GIS data, if generated for the project, shall be provided by the Contractor in ESRI feature classes file geodatabase or shapefile formats compatible with ArcGIS 10.3.1. All GIS datasets will reference the New Mexico State Plane Coordinate System, Central Zone, NAD1983_HARN in units of U.S. Survey Feet (NAD_1983_HARN_StatePlane_New_Mexico_FIPS_3002_Feet).

Contractor understands and acknowledges that the County assumes no liability for the accuracy of the GIS data or digital files, or errors associated with the GIS data or digital files, or the use of GIS data or digital files provided by the County. Contractor is solely responsible for confirming the accuracy of GIS data or digital files obtained from the County under 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 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 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. To the fullest extent permitted by law, Contractor shall indemnify and hold harmless the County and its elected officials, agents, and employees, from any losses, liabilities, damages, demands, suits, causes of action, judgments, arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are found to be caused by a negligent act, error, or omission of Contractor's officers, directors, members, partners, agents, employees, or sub-consultants in the performance of services 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
 Santa Fe County Planning Dept.
 Attn: Paul Olafson, Planning Projects Manager
 102 Grant Avenue
 P.O. Box 276
 Santa Fe, New Mexico 87504-0276

To the Contractor: Riverbend Engineering
 Attn: Chris Phillips, PE
 1309 Rio Grande Blvd., NE
 Albuquerque, NM 87104

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

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. 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.

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 Riverbend Engineering, Chris Phillips, PE, 1309 Rio Grande Blvd., NE, Albuquerque, NM 87104, 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 of last signature by the parties hereto.

SANTA FE COUNTY



Katherine Miller
Santa Fe County Manager

4-10-18
Date

Approved as to form:



R. Bruce Frederick
Santa Fe County Attorney

4-4-18
Date

Finance Department:



Stephanie Schardin Clarke
Finance Director

4/9/18
Date

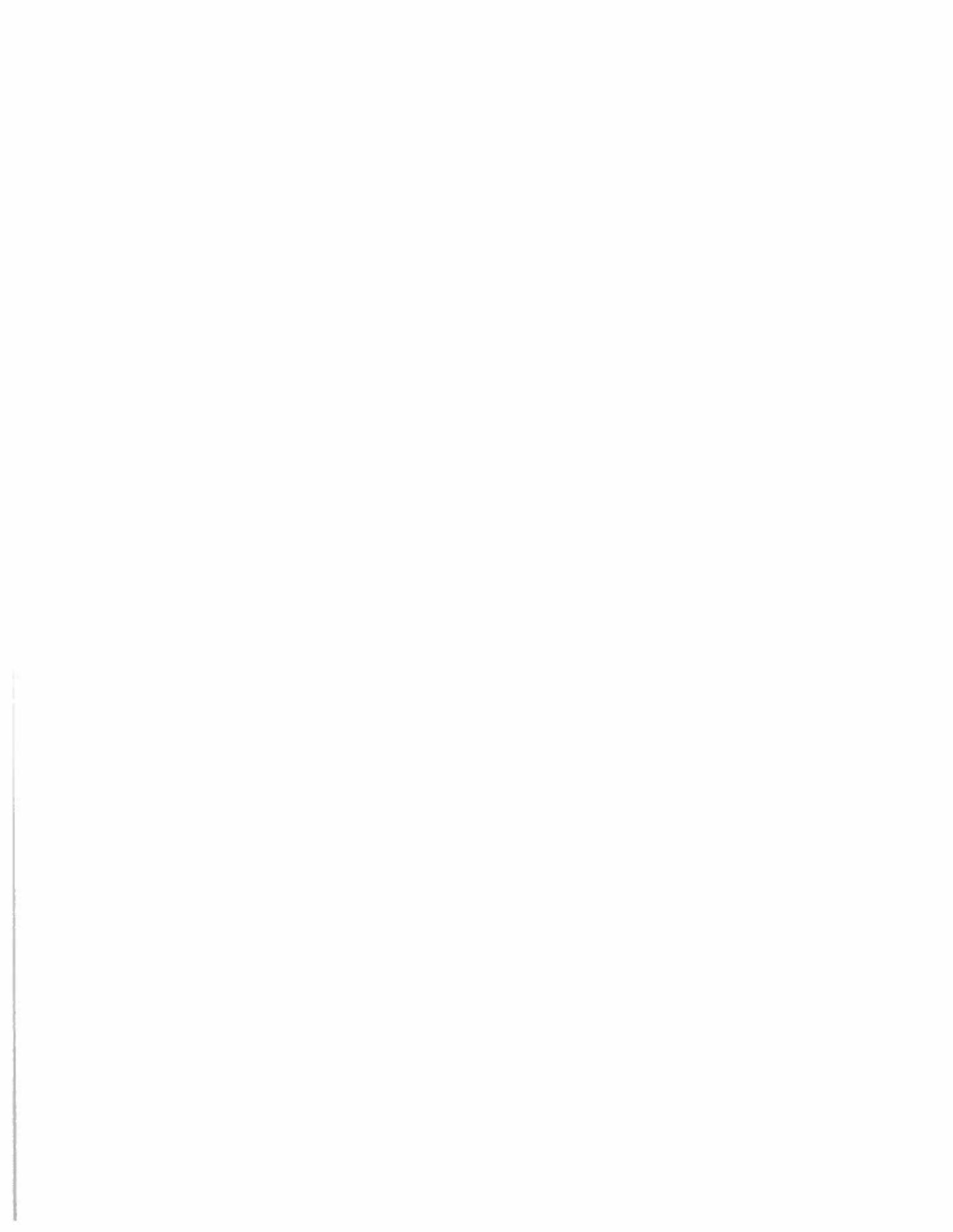
CONTRACTOR:

(Signature)

Date

(Print Name)

(Print Title)



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SANTA FE COUNTY

Katherine Miller
Santa Fe County Manager

Date

Approved as to form:

R. Bruce Frederick
Santa Fe County Attorney

Date

Finance Department:

Stephanie Schardin Clarke
Finance Director

Date

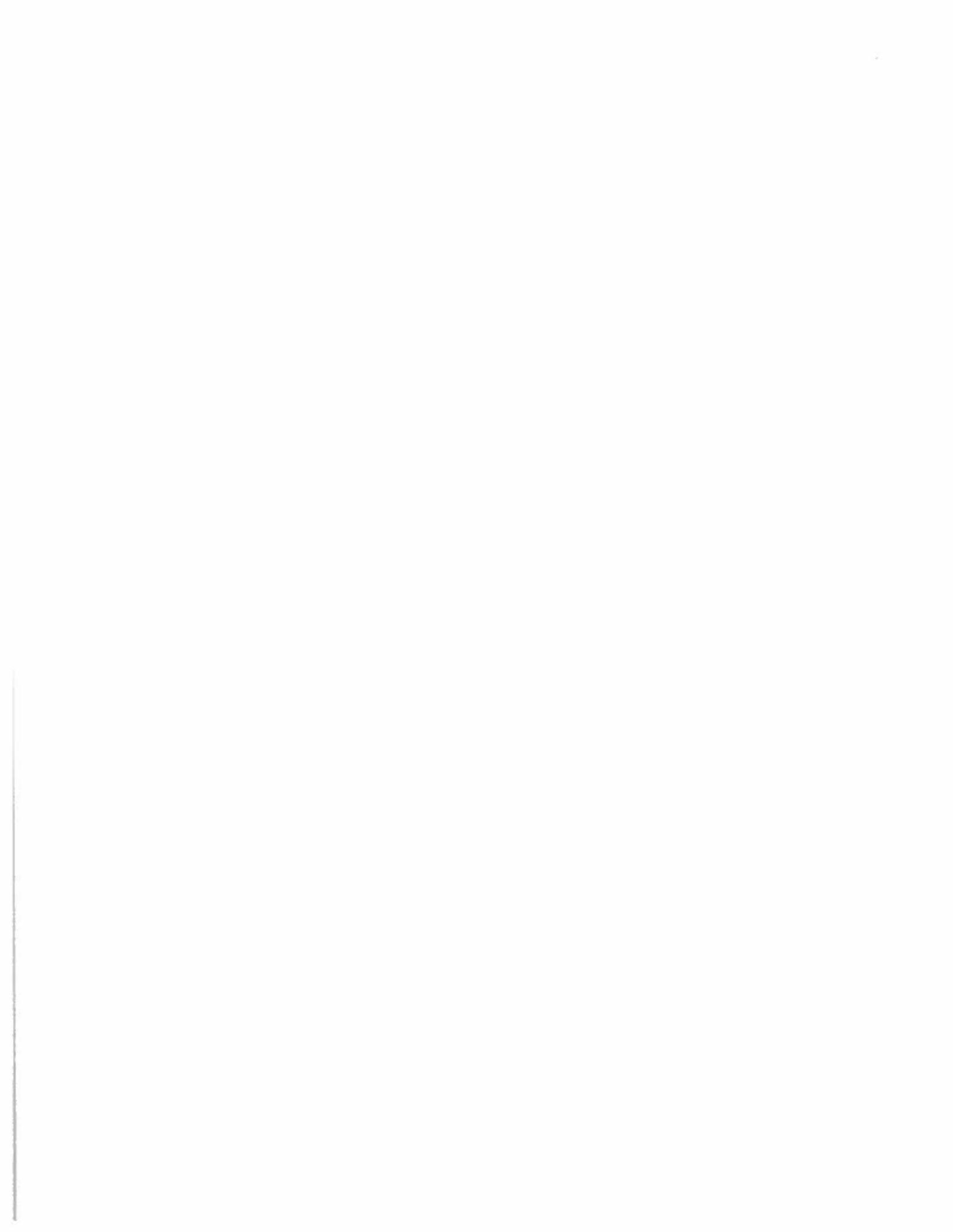
CONTRACTOR:

Chris Phillips
(Signature)

4-9-18
Date

Chris Phillips
(Print Name)

Managing Member
(Print Title)



MADRID GULCH COST PROPOSAL

Revised Date: 2 April 2018

Prepared by: Riverbend Engineering, LLC

NOTES: Mileage based on estimated ~50mi each way from the Riverbend Office to Madrid, NM

#	Task	Senior Engineer (Hours)		Staff Engineer (Hours)		Staff Biologist (Hours)		Junior Engineer (Hours)		Field/CAD Tech (Hours)		Miles*	Labor totals	Mileage Cost
		Chris Phillips	Chris Phillips	Chris Pitcher	Nancy Ramlett	Rickl Garden	Brad Meyer	Brad Meyer						
		Hourly Rate: \$120.00 \$100.00 \$90.00 \$80.00 \$70.00 \$0.43/mi												
1	Literature Review & Field Inventory	12						12				100	\$2,400.00	\$43.00
2	Kickoff meeting with County/ Site visit	6						6				100	\$1,200.00	\$43.00
3	Channel Analysis—Geomorphic & Hydraulic	4		8				24	12				\$4,040.00	
4	Floodplain Analysis—Hydraulic			24				8	24				\$4,720.00	
5	Other Analysis				12							100	\$1,080.00	\$43.00
6	Feasibility Level Design (Deliverable)	6		16				32	40				\$7,680.00	
7	County and Public Review of Documents	4						4				100	\$800.00	\$43.00
8	Public Community Meetings with County	12			6			12	8			200	\$3,500.00	\$8600
9	Revisions of Feasibility Design(s)	2		4				8	8				\$1,840.00	
10	Review of Permitting and Right-of-Ways	2		6				8					\$1,480.00	
11	ID Funding Sources & Agency Roles	2		4									\$640.00	
12	Preliminary Level Design (Deliverable)	10		16			2	40	60			100	\$10,380.00	\$43.00
13	Design analysis report	12		4			12	8	6			100	\$3,980.00	\$43.00
14	Phased Implementation Plan (Deliverable)	4		8				20	20				\$4,280.00	
15	General project management	24					12					100	\$3,960.00	\$43.00
Subtotal for Consulting Services:		100		90	44		182	178				900	\$51,980.00	\$387.00
Project Subtotal:												\$52,367.00		
NM GRT (7.875%):												\$4,123.90		
Total Proposed Project Cost:												\$56,490.90		



