

Property and Right-of-Way Acquisition Agreement
between Santa Fe County and Tierra Right of Way Services, Ltd.

Agreement made, as of June 13, 2017 between Tierra Right of Way Services, Ltd., whose principal address is 1575 E. River Road, Suite 201, Tucson, Arizona 85718 (hereinafter the "Contractor") and Santa Fe County, a political subdivision of the State of New Mexico (hereinafter the "County").

RECITALS

WHEREAS, for several years Santa Fe County Open Space and Trails Program, has been working on the acquisition of real property known as the Mt. Chalchihuitl property; and

WHEREAS, the County wishes to acquire the property to protect unique and historic resources and provide recreational opportunities for the public; and

WHEREAS, the County requires the services of a land and right-of-way acquisition professional to complete the acquisition; and

WHEREAS, in accordance with NMSA 1978, Sections 13-1-120 through 13-1-124, in 2013 the County entered into Agreement No. 2013-0244-OS/PL with the Contractor for real property acquisition services; and

WHEREAS, Agreement No. 2013-0244-OS/PL expired on May 14, 2017, however the real property acquisition is not completed and the County requires the Contractor's continued acquisition and right-of-way services for this project; and

WHEREAS, pursuant to NMSA 1978, 13-1-125 (2016 Supp) of the Procurement Code the County wishes to continue to benefit from Contractor's services through a small purchase procurement.

NOW THEREFORE, in consideration of the premises and mutual obligations herein the parties hereto do mutually agree as follows:

Section One
Contractor's Scope of Services

Upon written notice to proceed issued by the County, the Contractor shall provide real property and other related right-of-way acquisition services to facilitate the County's acquisition by purchase of the Mt. Chalchihuitl property. The Contractor's services are summarized below and more specifically described in Exhibit A attached hereto.

1. Real property acquisition services.
Acquisition
 - a. Glockoff: Complete negotiations of acquisition from the property owner.
 - b. Aitken: Complete negotiations of acquisition from the property owner.

Closing Services

- a. Glockoff - purchase and closing.
- b. Aitken - purchase and closing.

Administration and file management

- a. Provide and maintain status reports, schedule and budget.
- b. Participate in project meeting and project communications.
- c. Project and file close-out.

2. Relocation services pursuant to federal requirements

- a. Prepare Relocation Plan per 49 CFR Part 24.
- b. Provide relocation and personal property relocation assistance for two residents and one landlord on the properties.
- c. Review existing documents in the County's project files.

**Section Two
County's Duties**

A. The County's Project Manager shall work with the Contractor and serve as the Contractor's primary contact with the County. The County's duties include review of all documents or agreements prepared by the Contractor that requires execution by the County and property owners, including all purchase contracts, right-of-way agreements, other instruments of conveyance, and make a recommendation if and when eminent domain proceeding may be initiated.

**Section Three
Compensation**

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

1. The County shall pay to the Contractor in full payment for services satisfactorily performed an amount not to exceed \$25,220.00, exclusive of NM grt. Compensation shall be paid for the services performed in accordance with the services and costs described in Exhibit A attached hereto.
2. Any NM grt levied on the amounts payable under this Agreement shall be paid by the County to the Contractor.
3. The compensation stated herein is a maximum and not a guarantee that the services to be performed by the Contractor shall equal the amount stated herein. The County will notify the Contractor when the County has paid the Contractor the full not-to-exceed amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without his Agreement being amended.

4. 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 items and/or services. Within 30 days of the issuance of a written certification accepting items and services, the County shall tender payment for the accepted items and 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.
5. 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.
6. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payment.

Section Four Effective Date and Term

This Agreement shall, upon execution by all parties, become effective as of the date of signature by the County and shall terminate one year from the Effective Date, unless terminated earlier pursuant to Section Five (Termination) or Section Eleven (Appropriations and Authorizations). The County has the option to extend the term of this Agreement on the same terms and conditions stated herein for a period not to exceed four years in total. The County may exercise this option by providing written notice to the Contractor at least 60 days prior to expiration of this Agreement. Under no circumstances shall the term of this Agreement be more than four years in total. Under no circumstances can the compensation under this Agreement exceed \$60,000 over the entire term of this Agreement.

Section Five 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.

Section Six Independent Contractor

The Contractor, its agents, employees and any approved subcontractor(s) 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 the 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.

Section Seven 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.

Section Eight 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.

Section Nine 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 warranties made herein.

- B. The Contractor agrees that the County shall have the right to 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 to the amount of Contractor's insurance coverage required by this Agreement.

Section Ten **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.

Section Eleven **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.

Section Twelve
Permits, Fees and Licenses

The 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.

Section Thirteen
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.

Section Fourteen
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 prior written approval of the County.

Section Fifteen
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.

Section Sixteen
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.

Section Seventeen
No Oral Modifications; Written Amendment 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 One of this Agreement unless such changes are set forth in a duly executed written amendment to this Agreement. No change in the Scope of Work, Contract Time or Contract Compensation shall be

valid and effective unless approved by the Santa Fe Board of County Commissioners or the Santa Fe County Manager.

Section Eighteen
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.

Section Nineteen
Equal Opportunity Compliance

- A. The Contractor agrees to abide by all Federal, State, and local laws, ordinances, and rules and regulations pertaining to equal 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.

Section Twenty
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.

Section Twenty One
Compliance with Applicable Law; Choice of Law

- A. In performing its obligation hereunder, the Contractor shall comply with all applicable laws, County ordinances and other policies or regulations as required by this Agreement.
- B. 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. The Contractor and the County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be the State District Court of New Mexico, located in Santa Fe County.

Section Twenty Two
Notice of Penalties

The Procurement Code, NMSA 1978, Section 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.

Section Twenty Three
No Third Party Beneficiaries

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

Section Twenty Four
Facsimile Signatures

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

Section Twenty Five
Limitation of Liability

The County's liability to the Contractor for any breach of this Agreement by the County shall be limited to direct damages and shall not exceed the maximum amount of potential compensation specified in Section Three of this Agreement. In no event shall the County be liable to the Contractor for special or consequential damages, even if the County was advised of the possibility of such damages prior to entering into this Agreement.

Section Twenty Six
New Mexico Tort Claims Act

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

Section Twenty Seven
Insurance and Bonding

- 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. Workers' Compensation Insurance. The Contractor shall comply with the provisions of the Workers' Compensation Act.
- D. 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.
- E. Professional Liability, Malpractice/Errors and Omissions Insurance. Contractor shall procure and maintain during the life of this Agreement professional liability (errors and omissions) insurance in amounts not less than \$1,000,000.00 per occurrence, \$2,000,000.00 per aggregate.

Section Twenty Eight Contractor's Representations and Warranties

The Contractor hereby represents and warrants:

- 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 the Contractor's obligations hereunder do not conflict with the Contractor's articles of incorporation, by-laws or any corporate agreement or statement filed with the New Mexico Secretary of State.
- D. Contractor is registered and licensed to operate a business in New Mexico.

Section Twenty Nine 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.

Section Thirty Notices

All notices required to be given to the County under this Agreement shall be mailed (pre-postage paid) to:

Santa Fe County Open Space and Trails
Attn: Open Space and Trails Project Director
Santa Fe County
102 Grant Avenue

P.O. Box 276
Santa Fe, New Mexico 87504-0276

All notices required to be given to the Contractor under this Agreement shall be mailed (pre-postage paid) to:

Dwight Ferrick or Mack Dickerson
c/o Tierra Right of Way Services, Ltd.
1575 E. River Road, Suite 201
Tucson, Arizona 85718

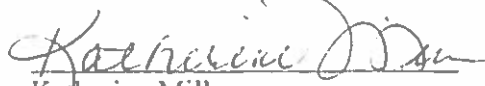
Agent for Service: Contractor hereby irrevocable appoints Susie Rogers, c/o Tierra Right of Way Services, Ltd, a New Mexico resident company located at , Santa Fe, New Mexico, as its agent upon whom process and write in any action or proceeding arising out of or related to this Agreement may be served. The Contractor acknowledges and agrees that service upon its designated agent shall have the same effect as through the Contractor were actually and personally served within the State of New Mexico.

Section Thirty One Survival

The provisions of following paragraphs shall survive termination of this Contract; INDEMNITY, RECORDS AND INSPECTION, RELEASE, CONFIDENTIALITY, COPYRIGHT, COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW, NO THIRD-PARTY BENEFICIARIES, NEW MEXICO TORT CLAIMS ACT, INSURANCE, WARRANTIES, AND SURVIVAL.

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

SANTA FE COUNTY


Katherine Miller,
Santa Fe County Manager

Date: 10-13-17

Approved as to form:


Gregory S. Shaffer,
Santa Fe County Attorney

Date: 6-5-17

Finance Department

Don Moya
Don D. Moya
Finance Director

Date: 6-5-17

CONTRACTOR

Mack Dickerson
Signature

Date: 6/8/17

Mack Dickerson
(Print Name)

Its: Vice-President
(Print Title)

Mt. Chachihuitl Acquisition Project
Project Cost Estimate

5/5/2017

I. LAND ACQUISITION SERVICES

Acquisition

- Glockoff: Complete negotiations of acquisition from property owner.
- Aitken: Complete negotiations of acquisition from property owner.

Closing Services

- Glockoff
- Aitken

Administration and File Management

- Provide and maintain status reports, schedule and budget.
- Participate in project meetings and project communications.
- Project and file close-out.

Labor Classifications

DIR PM

8 16

10 10

2.5 1 6

Total Hours all tasks above: 1.5 53.5

Hourly Rates per classification: \$ 125.00 \$ 95.00

Total Cost by Classification: \$ 187.50 \$ 5,082.50

Total Cost for LAND ACQUISITION SERVICES: \$ 5,270.00 Not including NMIGRT

II. RELOCATION SERVICES

- Relocation Plan, required by 49 CFR Part 24
- Relocation Assistance, Tenant 1 (Trailer occupant) Residential Relocation
- Relocation Assistance, Tenant 2 (Shed occupant) Personal Property Relocation
- Relocation Assistance, Landlord Relocation

Lump sum

\$1,450.00

\$6,500.00

\$4,000.00

\$8,000.00

Total Cost for RELOCATION SERVICES: \$19,950.00 Not including NMIGRT

Assumptions for Relocation Services:

- Lump sum fee includes estimated time, travel expenses and materials.
- Estimate for Relocation Assistance is based on current information available. Once the Relocation Plan is completed, Tierra may need to adjust the costs for the Relocation Assistance based on what is identified in the Relocation Plan.
- For Relocation Assistance of Tenant 1: assumes trailer meets DS&S requirements, can be moved fairly easy and is owned by the tenant. This won't be known until the relocation plan is completed. If trailer doesn't meet DS&S standards, cannot be moved or is not owned by the tenant, a separate cost proposal will be needed to accurately estimate the costs.
- For Relocation Assistance of Tenant 2: assumes no hazardous materials are being stored by this tenant. This won't be known until the relocation plan is completed.

Total Cost for ALL TASKS: \$ 25,220.00 Not including NMIGRT

