

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN SANTA FE COUNTY AND WILLIAM J. MILLER
ENGINEERS**

This Agreement is made as of June 8, 2017 between Santa Fe County, a political subdivision of the state of New Mexico (hereinafter "County"), and William J. Miller Engineers, whose address is 2019 Galisteo Street, Santa Fe, NM 87505 (hereinafter the "Contractor").

RECITALS

WHEREAS, in April 2012, the County entered into Agreement No. 2013-0207-PW/PL with the Contractor to provide engineering services for the vegetative management and bank stabilization of the Rio Quemado, a tributary of the Rio Santa Cruz Reservoir, in Santa Fe County; and

WHEREAS, Agreement No. 2013-0207-PW/PL has reached its four year maximum term and expired April 29, 2017; but the project has not been completed by the Contractor; and

WHEREAS, the County requires the services of the Contractor to perform final design, bidding and construction administration services and the Contractor is willing to provide such services; and

WHEREAS, pursuant to NMSA 1978, 13-1-125 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 the services summarized below and more specifically described in Exhibit A attached hereto.

1. PROJECT MANAGMENT
 - a. Coordination of and communication of public meetings.
 - b. Project Administration.
2. CONSTRUCTION – PHASE II
 - a. Pre-bid conference and bid tabulations.
 - b. Oversight of construction contractor activities.
 - c. Construction administration.
 - d. Prepare record drawings.

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, including all purchase contracts, and make a recommendation regarding bid tabulations.

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 \$ 6,457.69, exclusive of NM grt. Compensation shall be paid and 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 Public Works Department
Attn: Colleen Baker, Project Manager
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:

William J. Miller, President, P.E.
c/o William J. Miller Engineers
2019 Galisteo St.
Santa Fe, New Mexico 87505

Agent for Service: Contractor hereby irrevocable appoints William J. Miller 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: 6.8.17

Approved as to form:


Gregory S. Shaffer
Santa Fe County Attorney

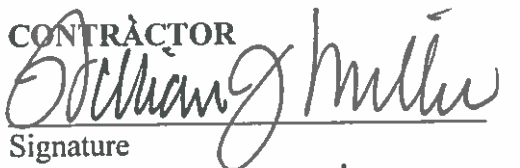
Date: 6-5-17

Finance Department


Don D. Moya
Finance Director

Date: 6-7-17

CONTRACTOR


Signature
William J. Miller, Pres.
(Print Name and title)

Date: 6/7/2017

EXHIBIT A

RIO QUEMADO WATERSHED PROJECT - LOS RANCHOS AND JARAMILLO ACEQUIAS
 Santa Fe County, NM
 April 12, 2017

William J. Miller Engineers, Inc. - Engineering Cost Estimate

Work Summary: Assist with bidding and negotiation of Construction Contract and Construction Phase services for Phase II of the Rio Quemado Watershed Project: Los Ranchos and Jaramillo Acequias

BASIC SERVICES WORK TASKS		TOTAL BASIC SERVICES COST	REIMBURSABLE EXPENSES		TOTAL REIMBURSABLE EXPENSES	TOTAL COST (BASIC SERVICES + REIMBURSABLES)
			Travel	Printing and reproduction		
Project Management						
	Coordination and communication - public meetings	\$455.00				\$455.00
	Project administration	\$167.69				\$167.69
Construction - Phase II						
	Pre-bid conference and bid tabulation	\$850.00				\$850.00
	Oversight of construction contractor activities	\$1,980.00	\$280.00		\$280.00	\$2,260.00
	Construction contract administration	\$1,640.00				\$1,640.00
	Prepare record drawings	\$840.00		\$245.00	\$245.00	\$1,085.00
SUBTOTAL:		\$5,932.69	\$280.00	\$245.00	\$525.00	\$6,457.69
NMGRT:		\$493.15	NMGRT =			
TOTAL (w/ NMGRT):		\$6,425.84	TOTAL (w/ NMGRT):		\$568.64	\$6,994.49

REIMBURSABLE EXPENSES: (not including NMGRT)

Vehicle Mileage (@ \$0.44/mi.): \$280
 Printing and reproduction: \$245

FULLY LOADED LABOR RATES: (not including NMGRT)

Senior Civil Engineer: \$107.50
 Hydrographic Crew Chief: \$95.00
 Staff Civil Engineer: \$75.00
 Field technician / CAD specialist: \$45.00
 Agro-ecologist: \$87.50

OTHER

New Mexico GRT rate: 8.3125%

William J. Miller 4/12/17
 William J. Miller, P.E. Date

