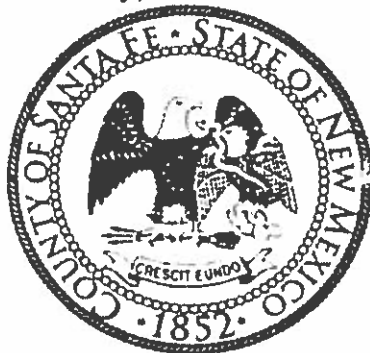


AGREEMENT BETWEEN SANTA FE COUNTY AND ENGINEER FOR PROFESSIONAL ENGINEERING SERVICES

PROJECT: Santa Fe Rail Trail

Contract No. 2016-0019-PW/BT

PROJECT LOCATION Santa Fe County, Rabbit Road to NM 285



SANTA FE COUNTY
ADMINISTRATIVE SERVICES DEPARTMENT
PURCHASING DIVISION
2013 EDITION, Part A of Two Parts

Changes, additions, deletions and/or any modifications other than those agreed upon execution of this contract without the written consent of Santa Fe County shall render this document null and void.

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION.

THIS AGREEMENT is made and entered into on this 29th day of October, 2015, by and between SANTA FE COUNTY (hereinafter referred to as the "(County)"), a New Mexico political subdivision, and Loris and Associates, Inc., a Colorado corporation authorized to do business in the State of New Mexico, hereinafter referred to as the "Engineer".

County:

Engineer:

Katherine Miller, County Manager
Santa Fe County
PO Box 276
Santa Fe, New Mexico 87504-0276
Telephone: 505-986-6200
Fax: 505-985-2740

Peter J. Loris, President
Loris and Associates, Inc.
818 W. South Boulder Road
Louisville, Colorado 80027
Telephone: (303) 444-2073
Fax: (303) 444-0611

RECITALS

WHEREAS, the County requires the services of a professional licensed engineer to complete the construction phase services for Segments 2 and 3 and continue to provide design, bidding and construction phase services for Segment 4 of the County's Santa Fe Rail Trail Project; and

WHEREAS, in accordance with Section 13-1-125 NMSA 1978, of the New Mexico Procurement Code, the County Purchasing Agent issued a sole source determination for this agreement with the Engineer; and

WHEREAS, the County requires the services of the Engineer, and the Engineer is willing to provide these services and both parties wish to enter into this Agreement.

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

1. PROJECT DESCRIPTION

BACKGROUND

In 2009 the County and Contractor entered into Agreement No. 29-0131-CSD/JC to provide for engineering services required for the design and construction of the County's portion of the Santa Fe Rail Trail (the Project), an approximately 12 mile long recreational trail extending from the Rabbit Road in Santa Fe to State Highway 285 near Lamy, New Mexico. Under Agreement 29-0131-CSD/JC the Project was to be completed in six phases or "Segments," subject to funding. The Engineer has completed the engineering services for Segment 1 however there are remaining engineering services to be provided for Segments 2, 3 and 4. Agreement 29-0131-CSD/JC expired in 2013 and the Contractor's services are required to complete Segments 2, 3 and 4. Subject to funding availability, this Agreement also provides for Basic Engineering services to be provided by Engineer for Segments 5 and 6.

A Transportation Alternatives Program (TAP) grant from the Federal Highway Administration administered by the New Mexico Department of Transportation (NMDOT) to construct Segment 4 of the Project was obtained in 2015. The terms and conditions of the TAP grant required the Engineer to perform additional engineering design services and other additional services to meet the requirements of the TAP grant.

The Santa Fe Rail Trail Project will be completed with the completion of Segments 5 and 6 which will complete the trail at NM State Highway 285 near Lamy, New Mexico. The completion of Segments 5 and 6 are subject to availability of funding.

2. SCOPE OF WORK

The project includes engineering design and related services to include:

Segments 2 and 3: Construction Phase: Prepare As-Built Drawings.

Segment 4: Bidding Phase (Bid Assistance: Pre-Bid Meeting, Bid Consultation, Issue Addenda), and Construction Phase (Pre-Construction Meeting, Submittal Review, Construction Observation, Prepare As-Built Drawings).

Additional services for Segment 4: Additional design and engineering services to obtain NMDOT approval for the Project funded by federal funds.

Segments 5 and 6: Basic Engineering Services as described herein.

3. COMPENSATION, INVOICING, AND SET-OFF

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

- 1) County shall pay to the Engineer in full payment for services satisfactorily performed and all costs and expenses shall be in accordance with Exhibit A (Compensation and Schedule).
- 2) The total amount payable to the Engineer under this Agreement, shall not exceed **Seventeen Thousand Eighty-Six Dollars and Sixty-Eight Cents (\$17,086.68)**, exclusive of New Mexico gross receipts tax. Any New Mexico gross receipts tax levied on the amounts payable under this Agreement shall be paid by the County to the Engineer.
- 3) This amount is a maximum and not a guarantee that the work assigned to be performed by Engineer under this Agreement shall equal the amount stated herein. The parties do not intend for the Engineer to continue to provide services without compensation when the total compensation amount is reached. The County will notify the Engineer when the services provided under this Agreement reach the total compensation amount. In no event will the Engineer be paid for services provided in excess of the total compensation amount without this Agreement being amended.

B. The Engineer shall submit a written request for payment, on the form attached hereto as Exhibit B Engineer Pay Request Form, 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 Engineer acknowledges and agrees that the County may not make any payment hereunder unless and until the County has issued a written certification accepting the contractual items or services. Within 30 days of the issuance of a written

certification accepting the contractual items or services, 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 Engineer breaches this Agreement, the County may, without penalty, withhold any payments due the Engineer 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 the Agreement shall not foreclose the right of the County to recover excessive or illegal payment.

4. ENGINEER'S BASIC SERVICES

The Engineer shall provide the following Services:

A. Segments 2 and 3.

- 1) Provide as-built drawings based on red-line drawings prepared by the County.

B. Segment 4.

- 1) Assemble bid documents.
- 2) Attend pre-bid meeting.
- 3) Bid consultation.
- 4) Assist the County with issuing addenda.
- 5) Attend pre-bid conference.
- 6) Review contractor's submittals.
- 7) Review contractor's pay applications.
- 8) Conduct three site visits.
- 9) Consultation during construction.
- 10) Provide as-built drawings based on red-line drawings prepared by the County.

C. Additional Services for Segment 4.

- 1) Preparation of summary of approximate quantities and item tabulation sheets.
- 2) Change in item numbers to meet NMDOT requirements.
- 3) Extensive coordination, drawing displays, to meet NMDOT requirements for ADA compliance.
- 4) Various additional design plan changes to meet NMDOT requirements.

D. Basic Services for Segments 5 and 6.

I. Study and Report Phase.

- 1) The Engineer shall consult with the County to define and clarify the requirements for the Project.
- 2) Advise the County of any need for the County to provide additional data or services which are not a part of the Engineer's Basic Services.
- 3) Identify and analyze requirements of governmental agencies having jurisdiction to approve the portions of the Project designed or specified by the Engineer.
- 4) Prepare draft Study and Report and brief and obtain the written approval of the County for the draft Study and Report, before commencing work on the Preliminary Design, Study and Report Phase.

II. Preliminary Design, Study and Report Phase

- 1) Convene a meeting with the County and other interested parties to review the Project site. Advise County if additional data, reports, or services are necessary and assist County in obtaining such data, reports, or services.
- 2) Develop and complete a Development Plan for the area in schematic form for review with County. The plans shall allow for phased construction if necessary.
- 3) Upon approval of the schematic Development Plan documents by the County, the Engineer will develop and complete preliminary Design Plans and a construction cost estimate within thirty (30) days of authorization to proceed and review with the County. If necessary, revise Preliminary Design Phase documents in response to the County's comments.
- 4) From the approved Scope of Work the Engineer as applicable shall produce a study consisting of drawings and other documents necessary to illustrate the general planning concepts, probable Engineering system, types of materials needed and preliminary alternatives, a breakdown of the budget on current area, volume, or other unit costs, and the approximate dimensions of the project area. The Engineer shall brief and obtain the written approval of the County for the Preliminary Design, Study and Report Phase drawings and documents.
- 5) The Engineer shall obtain written approval from the County for the proposed Preliminary Design as modified by any comment during review before commencing work on the Final Design Phase.

III. Final Design Phase

Upon approval of Preliminary Design Phase documents by the County, the Engineer shall:

- 1) Prepare Final Design Plans, documents, project specifications, and develop a construction cost estimate.
- 2) Prepare a statement that identifies the need for additional data, surveys, or tests.
- 3) Submit to the County for review of written approval a statement of Probable Construction Cost at the completion of the Final Design Phase. Should the Engineer conclude at any time that the budget and Scope of Work to accomplished are incompatible; the County shall be notified immediately in writing with proposed recommendations to reconcile the incompatibility.
- 4) Convene a meeting with the County and other interested parties to review the Final Design Plans, Project Specifications and Cost Estimate. If necessary revise such final Design Phase documents, Project Specifications, and Cost Estimate.
- 5) Upon approval of final Design Phase documents by the County, prepare and deliver Design Phase document, Project Specifications and Cost Estimate.
- 6) Deliver signed/sealed construction drawings and bid documents for submittal for permits.
- 7) Assist the County at all regulatory review meetings, present design, respond to review questions, revise plans if necessary to obtain approvals.
- 8) Provide County with three (3) full sized and three (3) half size sets of the 100% construction plan, electronic copy of the Project specifications and cost estimate. AutoCAD and PDF copies of the construction drawings shall be provided to the County upon request.

IV. Bidding and Negotiating Phase

The Engineer shall:

- 1) If requested, assist the County in obtaining bids or proposals and awarding and preparing contracts for construction.
- 2) Attend pre-bid conference and assist in preparing addenda.
- 3) Assist the County to clarify and answer any questions about the bidding or proposal documents during the bidding or proposal process.
- 4) Identify any changes during the bidding or proposal process that may require addenda.
- 5) Submit all proposed addenda, including all revised drawings and sections, for approval by the County prior to distribution. The Engineer

shall allow sufficient time for County review and acceptance of each addendum.

6) Assist the County to issue addenda as required to all bidders or offerors.

7) Assist the County to identify the apparent successful bidder or proposal and provide written recommendation to accept or reject the bids and/or related proposals.

V. Construction Phase

The Engineer shall:

- 1) Participate in a pre-construction conference.
- 2) Provide a minimum of one (1) weekly or one (1) monthly on site observation(s) during the Construction Phase to protect the County against defects and deficiencies in construction, in addition to critical inspections, reviews and evaluations required by the Scope of Work. The results of all on site observations shall be documented in field reports submitted to the County within seven (7) days of each site visit.
- 3) Determine, certify, and make recommendations to the County for payment of amounts owing to the construction contractor subject to the County's approval, based on observations at the site and on evaluations of the construction contractor's application for payment.
- 4) Assist the County in reviewing change orders.
- 5) Conduct final site visit with the County to determine if completed work is acceptable and issue a Notice of Substantial Completion.
- 6) Finalize "As-Built" plans to include construction contractor's mark-ups and the County's red-lines.

C. Project Closeout and 11 Month Warranty Inspection Phase

- 1) General. The Engineer shall submit to the County recommendations to regarding the completion of the construction. The Engineer shall obtain from the construction contractor as applicable all releases, waivers of lien, guarantees, warranties, maintenance data, bonds, and acknowledgement receipts of any construction contractors record drawing. The Engineer shall obtain and deliver to the County a signed receipt for all materials turned over by the Contractor.
- 2) Eleven Month Inspection and Report. The Engineer shall eleven (11) months after Substantial Completion of the project, schedule a meeting with the County to evaluate the construction site, inspect the Engineer's Design to identify any defects in material products and workmanship. The Engineer shall provide a written report of this activity to the County with

in seven (7) calendar days. The County through the Engineer shall notify the construction contractor of any corrective action noted in the report. The Engineer shall obtain and deliver to the County a signed receipt of all corrective action completed to the satisfaction of the Engineer and County.

5. REIMBURSABLES

- A. Reimbursable expenses are those beyond Basic Services compensation and are the actual expenditures made by the Engineer or its employees, in the interest of the Project. Reimbursable expenses are in accordance with the agreed upon compensation as identified in Exhibit A Compensation and Schedule.
- B. Reimbursable expenses, if allowed by this Agreement, shall be compensated at direct cost not to exceed the reimbursable amounts as indicated in Exhibit A of this Agreement, unless otherwise modified by written amendment.

6. ADDITIONAL SERVICES

- A. Additional Services are services that are in addition to but not included as part of Basic Services, provided that the Engineer is not obligated to perform or furnish such services as part of the Engineer's Basic Services. These Additional Services shall be provided when authorized in advanced in writing by the County, and shall be paid for by the County as provided in paragraph 3 and Exhibit A. Attached as Exhibit D and incorporated into this Agreement is the Amendment for Engineering Additional Services form.
- B. Additional Services may include but are not limited to the following.
 - 1) Subservice geotechnical investigation with associated laboratory testing to include soil borings to determine subsurface profiles, relative strengths, compressibility and other characteristics of the surface layer(s).
 - 2) Survey services for mapping, construction layout and/or to determine Project and surrounding area boundaries.
 - 3) Traffic study that may include volume, movement counts, accident crash data, pedestrian traffic, and parking, sidewalk and walk/bike trail considerations.
 - 4) Drainage Plan to determine the amount of runoff/drainage impacting the Project area and make recommendations accordingly.
 - 5) Storm water management to provide viable flood control, runoff and drainage conveyance options and recommendations for surface treatment plan(s).
 - 6) Environmental Review and as applicable Cultural Resource Study, to include preparation of documentation regarding the mandatory evaluation of physical, social, and economic impacts of the proposed Project area to

ensure compliance with environmental laws and authorities and as required obtain environmental clearance(s) from governmental agencies.

- 7) Feasibility Study to evaluate and analyze the potential of the proposed Project to support recommendations for project implementation.
- 8) Market analysis to determine, develop and recommend conceptual options for future use of the Project site.
- 9) Additional services required by funding source.

7. EXHIBITS LIST

Exhibit A	Compensation and Schedule
Exhibit B	Engineer Pay Request
Exhibit C	Amendment for Basic Services
Exhibit D	Amendment for Additional Services
Exhibit E	Amendment for Consultant Services
Exhibit F	Consultant List

8. ATTACHMENTS LIST

SIGNATURE PAGE

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

SANTA FE COUNTY:

ENGINEER:

Katherine Miller Date 10.29.15
Katherine Miller
Santa Fe County Manager

Peter J. Loris, President
Loris and Associates

APPROVED AS TO LEGAL FORM

Gregory S. Shaffer
Gregory S. Shaffer
Santa Fe County Attorney

Date 9/21/15

Finance Department

Carole H. Jaramilla
Carole H. Jaramilla
Finance Director

Date 10/5/15

SIGNATURE PAGE

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

SANTA FE COUNTY:

Katherine Miller
Santa Fe County Manager

Date _____

ENGINEER:

2/10/15 Date 10/27/15
Peter J. Loris, President
Loris and Associates

APPROVED AS TO LEGAL FORM

Gregory S. Shaffer
Gregory S. Shaffer
Santa Fe County Attorney

Date 9/21/15

Finance Department

Carole H. Jaramila
Carole H. Jaramila
Finance Director

Date 10/3/15



EXHIBIT A COMPENSATION AND SCHEDULE

Services for Segments 2, 3.

- 1) Provide as-built drawings based on red-line drawings prepared by the County.

Services for Segment 4.

- 1) Assemble bid documents.
- 2) Attend pre-bid meeting.
- 3) Bid consultation.
- 4) Assist the County with issuing addenda.
- 5) Attend pre-bid conference.
- 6) Review contractor's submittals.
- 7) Review contractor's pay applications.
- 8) Conduct three site visits.
- 9) Consultation during construction.
- 10) Provide as-built drawings based on red-line drawings prepared by the County

Subtotal lump sum: \$ 7,306.68

Additional Services for Segment 4.

- 1) Preparation of summary of approximate quantities and item tabulation sheets.
- 2) Change in item numbers to meet NMDOT requirements.
- 3) Extensive coordination, drawing displays, to meet NMDOT requirements for ADA compliance.
- 4) Various additional design plan changes to meet NMDOT requirements

Subtotal lump sum: \$ 9,780.00

TOTAL SERVICES AMOUNT	\$17,086.68, exclusive of NM grt
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Services for Segments 5 and 6.

BASIC SERVICES

Date to be Completed
(In lieu of dates duration in weeks may be substituted)

Study and Report Phase	0%	\$0.00	Date or Weeks
Preliminary Design, Study and Report Phase	0%	\$0.00	Date or Weeks
Final Design Phase (Construction Documents)	0%	\$0.00	Date or Weeks
Bidding and Negotiation Phase	0%	\$0.00	Date or Weeks

Exhibit A to Agreement No. 2016-0019-PW/BT

Construction Phase	0%	\$0.00	Date or Weeks
Project Closeout and 11 Month Warranty Inspection Phase	0%	\$0.00	Date or Weeks
Total Basic Services Amount	100%	\$0.000	.
REIMBURSABLES			
N/A		\$0.00	
		\$0.00	
		\$0.00	
Total Reimbursable Amount (Not to exceed)		\$0.00	
ADDITIONAL SERVICES			
N/A		\$0.00	
		\$0.00	
		\$0.00	
Total Additional Services Amount		\$0.00	
CONSULTANT SERVICES			
N/A		\$0.00	
		\$0.00	
		\$0.00	
Total Consultant Services Amount		\$0.00	
TOTAL SERVICES AMOUNT		\$0,000	

EXHIBIT B
ENGINEER PAY REQUEST FORM
SANTA FE COUNTY 102 GRANT AVENUE
P.O. BOX 276 SANTA FE NEW MEXICO 87504-0276

Engineer: _____ Pay Request Statement No. _____
 Date: _____ Work Order No.: _____
 SFC Construction Contract No.: _____ Project Name: _____

Basic Services	Contract Sum	Percentage Completed	Completed to date	Less Previous Request	Current Request	Revision (SFC)
Study and Report Phase	\$	%	\$	\$	\$	
Preliminary Design Phase	\$	%	\$	\$	\$	
Study and Report Phase		%	\$	\$	\$	
Final Design Phase	\$	%	\$	\$	\$	
Bidding and Negotiation Phase	\$	%	\$	\$	\$	
Project Closeout and 11 Month Warranty Inspection	\$	%	\$	\$	\$	
Subtotal	\$	%	\$	\$	\$	
CONTRACT CHANGES						
REIMBURSABLE (If Allowed)*						
Type of Services	\$	%	\$	\$	\$	
Type of Services	\$	%	\$	\$	\$	
Type of Service	\$	%	\$	\$	\$	
Subtotal	\$	%	\$	\$	\$	
ADDITIONAL SERVICES (If Allowed)**						
Type of Service	\$	%	\$	\$	\$	
Type of Service	\$	%	\$	\$	\$	
Type of Service	\$	%	\$	\$	\$	
Type of Service	\$	%			\$	
Subtotal	\$	%	\$	\$	\$	
Total	\$	%	\$	\$	\$	

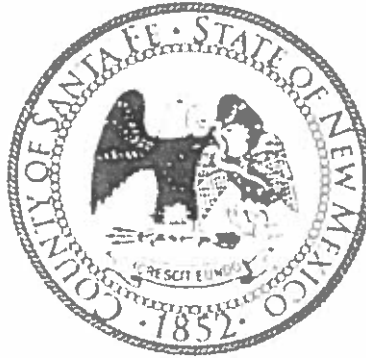
* As per Paragraph 3, A 1). Compensation, Invoicing, and Set-off and Paragraph 5 Reimbursables of Part A of Agreement

**As per Paragraph 6 of Part A of the Agreement and Paragraph B., Part B of Agreement - Additional Services



EXHIBIT C
AMENDMENT TO AGREEMENT BETWEEN SANTA FE
COUNTY AND ENGINEER
FOR PROFESSIONAL ENGINEERING
BASIC SERVICES

PROJECT _____



DISTRIBUTION TO:
Santa Fe County ☐
Engineer ☐
Legal Office ☐
Finance Department ☐
SFC Department ☐

SANTA FE COUNTY
ADMINISTRATIVE SERVICES DEPARTMENT
PURCHASING DIVISION

In accordance with Part A Paragraph 4 Engineer's BASIC SERVICES and Part B. Paragraph 1 SCOPE OF WORK, where applicable, to the Agreement Between the County and Engineer, the Engineer is authorized to provide the following Basic Services (scope of work and maximum compensation).

LIST SERVICES:

Justification for Basic Services (Required):

Basic Services Compensation Amount	\$0.00
Reimbursable Amount (If Applicable)	\$0.00
Additional Services Amount	\$0.00
Consultation Services Amount (If Applicable)	\$0.00
<hr/>	
Total	\$0.00

BASIC SERVICES AMENDMENT SIGNATURE PAGE

SANTA FE COUNTY:

ENGINEER:

By: _____

REVIEWED AS TO LEGAL FORM AND SUFFICIENCY

Santa Fe County Attorney

Finance Department Approval

Finance Director

Department Approval

Name/Title

EXHIBIT D
AMENDMENT TO AGREEMENT BETWEEN SANTA FE
COUNTY AND ENGINEER
FOR PROFESSIONAL ENGINEERING
ADDITIONAL SERVICES

PROJECT _____



DISTRIBUTION TO:
Santa Fe County ☐
Engineer ☐
Legal Office ☐
Finance Department ☐
SFC Department ☐

SANTA FE COUNTY
ADMINISTRATIVE SERVICES DEPARTMENT
PURCHASING DIVISION

In accordance with Part A Paragraph 6 and Part B. Paragraph 3 ADDITIONAL SERVICES, where applicable, to the Agreement Between the County and Engineer, the Engineer is authorized to provide the following Additional Services (scope of work and maximum compensation).

LIST SERVICES:

Justification for Additional Services (Required):

Basic Services Compensation Amount	\$0.00
Reimbursable Amount (If Applicable)	\$0.00
Additional Services Amount	\$0.00
Consultation Services Amount (If Applicable)	\$0.00

Total	\$0.00
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ADDITIONAL SERVICES AMENDMENT SIGNATURE PAGE

SANTA FE COUNTY:

ENGINEER:

By: _____

REVIEWED AS TO LEGAL FORM AND SUFFICIENCY

Santa Fe County Attorney

Finance Department Approval

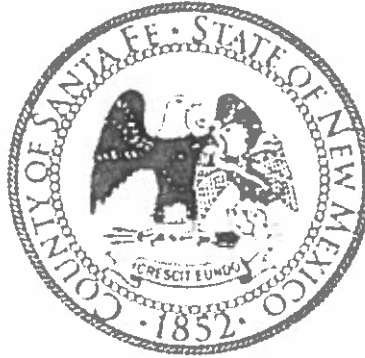
Finance Director

Department Approval

Name/Title

EXHIBIT E
AMENDMENT TO AGREEMENT BETWEEN SANTA FE
COUNTY AND ENGINEER
FOR CONSULTANT
ADDITIONAL SERVICES

PROJECT _____ PROJECT NO. _____



DISTRIBUTION TO:
Santa Fe County ☐
Engineer ☐
Legal Office ☐
Finance Department ☐
SFC Department ☐

SANTA FE COUNTY
ADMINISTRATIVE SERVICES DEPARTMENT
PURCHASING DIVISION

In accordance with PART B. Section 3 ADDITIONAL SERVICES, where applicable, to the Agreement Between the County and Consultant, the Consultant is authorized to provide the following additional services (scope of work and maximum compensation).
LIST SERVICES:

Justification for Additional Services (Required):

Basic Services Compensation Amount	\$0.00
Reimbursable Amount (If Applicable)	\$0.00
Consultation Services Amount (If Applicable)	\$0.00
Additional Services Amount*	\$0.00
<hr/>	
Total New Agreement Amount	\$0.00

CONSULTANT ADDITIONAL SERVICES AMENDMENT SIGNATURE PAGE

SANTA FE COUNTY:
AS APPLICABLE

ENGINEER:
INSERT ENGINEER NAME

By: _____

ATTEST

By: _____

County Clerk

OR

Katherine Miller, County Manager

REVIEWED AS TO LEGAL FORM AND SUFFICIENCY

Santa Fe County Attorney

Finance Department Approval:

Santa Fe County Finance Director

Department Approval

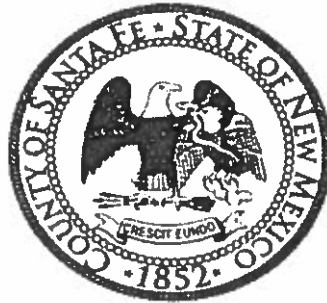
Name/Title

**EXHIBIT F
SANTA FE COUNTY
CONSULTANT LIST**

PROJECT NAME: _____
CONTRACT NO.: _____

<u>CIVIL ENGINEERING SERVICES</u> Company Name: Consultant Name: Address: Ph. No.: Fax No.: E-mail:	<u>LANDSCAPE DESIGN SERVICES</u> Company Name: Consultant Name: Address: Ph. No.: Fax No.: E-mail:
<u>ARCHITECTURAL SERVICES</u> Company Name: Consultant Name: Address: Ph. No.: Fax No.: E-mail:	<u>SURVEYING SERVICES</u> Company Name: Consultant Name: Address: Ph. No.: Fax No.: E-mail:
<u>STRUCTURAL ENGINEERING SERVICES</u> Company Name: Consultant Name: Address: Ph. No.: Fax No.: E-mail:	<u>GEOTECHNICAL SERVICES</u> Company Name: Consultant Name: Address: Ph. No.: Fax No.: E-mail:
<u>MECHANICAL ENGINEERING SERVICES</u> Company Name: Consultant Name: Address: Ph. No.: Fax No.: E-mail:	<u>ESTIMATING SERVICES</u> Company Name: Consultant Name: Address: Ph. No.: Fax No.: E-mail:





**SANTA FE COUNTY
ADMINISTRATIVE SERVICES
DEPARTMENT
PURCHASING DIVISION**

**GENERAL TERMS AND CONDITIONS OF THE
AGREEMENT BETWEEN
SANTA FE COUNTY and ENGINEER
FOR PROFESSIONAL SERVICES**

**2013 Edition, Version 1.0, Part B of the
Agreement**

Changes, additions, deletions and/or any modifications other than those agreed upon execution of this contract, without the written consent of Santa Fe County shall render this document null and void.

(THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION.)

1. SCOPE OF WORK

Engineer shall provide the services set forth in Part A Section 2 (Scope of Work) of this Agreement for the compensation indicated in Exhibit A.

2. EFFECTIVE DATE AND TERM

The Agreement shall, upon due execution by all parties, become effective as of the date first written in Part A and shall terminate one (1) years from such date, unless earlier terminated pursuant to Section 4 (Termination) or Section 5 (Appropriations and Authorizations) of these General Terms and Conditions. The County has the option to extend the term of this Agreement in one-year increments not to exceed a total term of four (4) years.

3. ADDITIONAL SERVICES

- A. The parties agree that all tasks set forth in Section 1, (Scope of Work) above and Section 4 (Engineer's Basic Services) of Part A of the Agreement, shall be completed in full, to the satisfaction of the County, for the amount set forth in Section 3 (Compensation, Invoicing, and Set-Off) of Part A 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 Engineer, shall be incorporated in written amendments to this 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 thirty (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 thirty (30) days, the breaching party shall have a reasonable time to cure the breach, provided that, within thirty (30) days of its receipt of the written notice of termination, the breaching party began to cure the breach and advised then 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 Engineer written notice of termination. The notice shall specify the effective date of termination, which shall not be less than fifteen (15) days from the Engineer's receipt of the notice. The County shall pay the Engineer 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 or service 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 Santa Fe Board of County Commissioners 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 Engineer. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse the Engineer 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 Engineer in any way or forum, including a lawsuit.

6. INDEPENDENT CONTRACTOR, SUBCONTRACTING AND PERSONNEL

- A. Independent Contractor. The Engineer and its agents and employees are independent contractors and are not employees or agents of the County. Accordingly, the Engineer 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 Engineer has no authority to bind, represent, or otherwise act on behalf of the County and agrees not to purport to do so.
- B. Subcontracting. The Engineer 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.
- C. Personnel.
 - 1) All work performed under this Agreement shall be performed by the Engineer or under its supervision.
 - 2) The Engineer 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.

7. ASSIGNMENT

The Engineer 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 County's advance written approval shall be null and void and without any legal effect.

8. RELEASE

Upon its receipt of all payments due under this Agreement, Engineer releases County, its Elected Officials, officers, agents and employees from all liabilities, claims, and obligations whatsoever arising from or under or relating to this Agreement.

9. CONFIDENTIALITY

Any confidential information provided to or developed by the Engineer in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Engineer without prior approval from the County.

10. PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT

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. To the extent any material is copyrightable, the County shall own such copy right.

11. CONFLICT OF INTEREST

Engineer represents that it has no and shall not require any interest, direct or indirect, that would conflict in any manner or degree with the performance of its obligations under the Agreement.

12. NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED

The Agreement may not be modified, altered, changed, or amended orally but, rather, only by an instrument in writing executed by the parties hereto. Engineer specifically acknowledges and agrees that County shall not be responsible for any changes to Section 1, (Scope of Work), Part A of the Agreement unless such changes are set forth in a duly executed written amendment to the Agreement.

13. ENTIRE AGREEMENT; INTEGRATION

The 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 the 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 the Agreement.

14. EXHIBITS AND ATTACHMENTS: INCORPORATION BY REFERENCE

All exhibits, attachments, riders, and addenda referred to in the Agreement, including but not limited to the Exhibits referred to in this Agreement, as listed in Paragraph 7 EXHIBITS LIST and Paragraph 8 ATTACHMENTS LIST, in Part A of this Agreement, are hereby incorporated into this Agreement by reference and made a part hereof as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

15. NOTICE OF PENALTIES

The Procurement Code, Section 13-1-28 through 13-1-199 NMSA 1978 imposes civil and criminal penalties for its violation. In addition, New Mexico criminal statutes felony penalties for bribes, gratuities, and kickbacks.

16. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

- A. Engineer 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, Engineer specifically agrees not to discriminate against any person with regard to employment with Engineer 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. Engineer acknowledges and agrees that failure to comply with this Section shall constitute a material breach of the Agreement.

17. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW

- A. In performing its obligations hereunder, Engineer shall comply with all applicable laws, ordinances, and regulations.
- 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.

18. RECORDS AND INSPECTIONS

- A. To the extent their books and records relate to (i) their performance of the Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in the Agreement or that was required to be submitted to County as part of the procurement process, Engineer agrees to (i) maintain such books and records during the term of the Agreement for a period of six (6) years from the date of final payment under the Agreement; (ii) allow 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 their books and records relate to (i) their performance of the Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in the Agreement or that was required to be submitted to County as

part of the procurement process, Engineer 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 the Agreement and for a period of six (6) years from the date of final payment under the subcontract;(ii) to allow 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 with GAAP.

19. INDEMNIFICATION

- A. Engineer shall defend, indemnify, and hold harmless 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 Engineer's performance or non-performance of its obligations under this Agreement, including but not limited to Engineer's breach of any representation or warranty made herein.
- B. County shall have the right to approve any counsel retained by Engineer to defend any demand, suit, or cause of action in which County is named, such approval not to be unreasonably withheld. Engineer agrees (i) that 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 (ii) that such suit will not be settled without County's consent, such consent not to be unreasonably withheld. If in County's judgment, a conflict exists between the interests of County and Engineer such demand, suit, or cause of action, County may retain its own counsel, whose fees shall be paid by Engineer.
- C. Engineer's obligations under this section shall not be limited by the provisions of any insurance policy Engineer is required to maintain under this Agreement.

20. SEVERABILITY

If any term or condition of the Agreement shall be held invalid or non-enforceable by any court of competent jurisdiction, the remainder of the Agreement shall not be affected and shall be valid and enforceable to the fullest extent of the law.

21. NOTICES

Any notice required to be given to either party by the 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
Office of the County Attorney
102 Grant Avenue

SANTA FE COUNTY
ADMINISTRATIVE SERVICES DEPARTMENT
PURCHASING DIVISION
2013 EDITION SFC and Engineer Agreement Part B of Two Parts
PART A TO THIS AGREEMENT IS Part OF AND INSEPARABLE FROM THIS PART B

Santa Fe, New Mexico 87501

To the Engineer: Attn: Peter Loris, President
 Loris and Associates, Inc.
 818 W. South Boulder Road
 Louisville, Colorado 80027

22. ENGINEER'S REPRESENTATIONS AND WARRANTIES

- A. It is a corporation duly organized and in good standing under the laws of the state of New Mexico.
- B. This Agreement has been duly authorized by the Engineer, the person executing this Agreement has authority to do so, and once executed by the Engineer, this Agreement shall constitute a binding obligation of the Engineer.
- C. This Agreement and Engineer's obligations hereunder do not conflict with Engineer's articles of incorporation or by-laws or any corporate resolution adopted by Engineer.

23. LIMITATION OF LIABILITY

County's liability to Engineer for any breach of this Agreement by County shall be limited to direct damages and shall not exceed the maximum amount of compensation specified in Section 3, (Compensation and Invoicing) Part A, of the Agreement. In no event shall County be liable to Engineer for special or consequential damages, even if County was advised of the possibility of such damages prior to entering into the Agreement.

24. NO THIRD-PARTY BENEFICIARIES

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

25. INSURANCE

- A. General Conditions. Engineer 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. Engineer shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy and liability limits in amounts not less than \$1,000,000 combined single limits of bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for County by Engineer; 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 named additional insured on the policy.

- C. Workers' Compensation Insurance. Engineer shall comply with the provisions of the Workers' Compensation Act.
- D. Malpractice/Errors and Omissions Insurance. Engineer shall procure and maintain during the life of this Agreement professional liability (errors and omissions) insurance with policy limits of not less than \$1,500,000.00 per occurrence, \$2,500,000.00 per aggregate.
- E. 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), Engineer shall increase the maximum limits of any insurance required herein.

26. PERMITS, FEES, AND LICENSES

Engineer 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.

27. FACSIMILE SIGNATURES

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

28. NEW MEXICO TORT CLAIMS ACT

No provision of the 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 Engineer agrees to compute and submit simultaneous and execution of this Agreement a Campaign Contribution Disclosure Form approved by the County.

30. SURVIVAL

The provisions of following paragraphs shall survive termination of the Agreement:
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.**

