

**PROFESSIONAL SERVICES AGREEMENT WITH  
MILLER ENGINEERING CONSULTANTS TO PROVIDE CIVIL ENGINEERING  
SERVICES FOR THE COUNTY ROAD 55-A ROAD IMPROVEMENT PROJECT**

THIS AGREEMENT is made and entered into as of this 11th day of October, 2013, by and between the **Santa Fe County**, hereinafter referred to as "County", a political subdivision of the State of New Mexico and **Miller Engineering Consultants, Inc.** whose business address is **3500 Comanche NE, Building F, Albuquerque, New Mexico 87107**, hereinafter referred to as "Contractor".

**RECITALS**

**WHEREAS**, Santa Fe County required civil engineering services for County Road 55-A Road Improvement Project;

**WHEREAS**, the County issued Request for Quotes for the services and the Contractor was awarded Santa Fe County Agreement #27-0603-PW on October 12, 2006;

**WHEREAS**, the Contractor provided plans and specifications as a result of Santa Fe County Agreement #27-0603-PW; however Santa Fe County did not have funding to construct the road at that time;

**WHEREAS**, the County recently was allocated funding to reconstruct 2.1 miles of the road;

**WHEREAS**, the County determined that the design specifications and plans require updated information to meet the New Mexico Department of Transportation Standard Specifications For Highway And Bridge Construction 2007 Edition and the Contractor is willing to do the work;

**WHEREAS**, these services have been determined to be a Sole Source pursuant to Section 13-1-126 NMSA 1978 by the Santa Fe County Procurement Manager.

**NOW WHEREAS**, in consideration of the premises and mutual obligation herein, the parties do mutually agree as follows:

**AGREEMENT**

**1. SCOPE OF WORK**

Contractor shall provide the design services to include, but not limited to, the following tasks:

- a. Design kick-off meeting and site visit.

County when the services provided under this Agreement reach the total compensation amount.

- B. Contractor shall submit a written request for payment to County whenever payment is due under this Agreement. Within fifteen (15) days of County's receipt of the written request, County shall issue a written certification of complete or partial acceptance or rejection of the contractual items or services for which payment is sought. Contractor acknowledges and agrees that County may not make any payment hereunder unless and until it has issued a written certification accepting the contractual items or services. Within thirty (30) days of the issuance of a written certification accepting the contractual items or services, County shall tender payment for the accepted items or services. In the event County fails to render payment within thirty (30) days of the written certification accepting the items or services, 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 Contractor breaches this Agreement, County may, without penalty, withhold any payments due Contractor for the purpose of set-off until such time as County determines the exact amount of damages it suffered as a result of the breach.
- D. Payment under this Agreement shall not foreclose the right of County to recover excessive or illegal payment.

### 3. EFFECTIVE DATE AND TERM

This Agreement shall, upon due execution by all parties, become effective as of the date first written above and shall terminate one (1) year later unless earlier terminated pursuant to Section 4. "TERMINATION" and 5. "APPROPRIATIONS AND AUTHORIZATIONS" of this Agreement. The County reserves the option of establishing a one (1) year contract with three (3) year renewal periods for no more than a total of four (4) years. The renewal is dependent on the Contractor's performance of services. In no case will the contract, including any and all renewals thereof, exceed a total of four (4) years in duration from the date of the initial Agreement. The County will exercise this option by submitting a written notice to the Contractor in no less than sixty (60) days prior to the expiration of the initial term of 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 with thirty (30) days, the breaching party shall have a reasonable time to cure the breach, provided that,

**8. SUBCONTRACTING**

Contractor shall not subcontract or delegate any portion of the services to be performed under this Agreement without the advance written approval of County. Any attempted subcontracting or delegating without County's advance written approval shall be null and void and without any legal effect.

**9. PERSONNEL**

- A. All work performed under this Agreement shall be performed by the Contractor or under its supervision.
- B. Contractor represents that it has, or will secure at its own expense, all personnel required to discharge its obligations under this Agreement. Such personnel (i) shall not be employees of nor have any contractual relationships with County and (ii) shall be fully qualified and licensed or otherwise authorized or permitted under federal, state, and local law to perform such work.

**10. RELEASE**

Upon its receipt of all payments due under this Agreement, Contractor 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.

**11. CONFIDENTIALITY**

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

**12. PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHTS**

- A. 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. 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 county, County shall own any such copyright.

- 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.

**19. RECORDS AND INSPECTIONS**

- A. To the extent their books and records relate to (i) their 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, Contractor agrees to (i) maintain such books and records during the term of this Agreement for a period of six (6) years from the date of final payment under this Agreement; (ii) allow County or 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 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, 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 (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 not notice; and (iii) to keep such books and records in with GAAP.

**20. INDEMNIFICATION**

- A. Contractor 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 Contractor’s performance or non-performance of its obligations under this Agreement, including but not limited to Contractor’s breach of any representation or warranty made herein.
- B. County shall have the right to approve any counsel retained by Contractor to defend any demand, suit, or cause of action in which County is named, such approval not to be unreasonably withheld. Contractor 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 Contractor such demand, suit, or cause of action, County may retain its own counsel, whose fees shall be paid by Contractor.

insurance in New Mexico

- b. General Liability Insurance, Including Automobile. Contractor 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 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. County of Santa Fe shall be named additional insured on the policy.
- c. Workers' Compensation Insurance. 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), Contractor shall increase the maximum limits of any insurance required herein.
- e. Malpractice/Errors and Omissions Insurance. Contractor shall procure and maintain during the life of this Agreement professional liability (errors and omissions) insurance with policy limits of not less than \$1,000,000.00 per occurrence, \$3,000,000.00 per aggregate.

**26. PERMITS, FEES, AND LICENSES**

Contractor shall procure all permits and licenses, pay all charges, fees, and royalties, and give all notices necessary and incidental to the due and lawful performance of its obligations hereunder.

**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 this Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by County or its "public employees: at common law or under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

**29. CAMPAIGN CONTRIBUTION DISCLOSURE FORM**

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

**MILLER ENGINEERING CONSULTANTS  
PROJECT BUDGET TEMPLATE**

Client: Santa Fe County, New Mexico  
 Project: County Road 65A  
 Date: August 27, 2013 (Revised)

Man-hour Fee Estimate									
No.	Task	Principal Eng.	Civil Eng.	Sr. Civil Tech.	Civil Tech.	Drafter	Clerical	TOTAL	
1	Project Review/Update Meeting	6		4				10	
2	Review and update of the design of CR65A to coincide with 2007 Edition of the NMDOT Standard Specifications for Highway and Bridge Construction.	4	6	16				26	
3	Meeting with NMDOT to define scope of improvements within NM 14 right of way. Revise drawings to reflect proposed improvements by NMDOT within NM 14 right of way.	6	6	16				30	
4	Incorporate rip rap trapezoidal channel along east side of roadway from Station 10+50 to 11+65 to account for changes to offsite flow path diverted by NMDOT.	4	4	8				16	
5	Revise Drawings to reflect changes proposed by client to include steep slopes seeding in lieu of graded rip rap on the side slopes of the inverted crown section. This will require an amendment to the previous design memorandum.	4		8				12	
6	Develop a phasing plan for the project to accommodate the County's Phase 1 budget.	4	4	16				24	
7	Two Review meetings with the County Review Design Exceptions previously approved by the County	10						10	
8	Reverse Engineer's Opinion of Probable Construction Cost	4	4	16				24	
9	Bid Sheets, Specifications, Notice to Contractors and Supplemental Specifications to be incorporated in the Invitation for Bid solicitations and bid documents provided by Santa Fe County	4	4			16		24	
10	Prepare Bid Tabulation & Letter of recommendation of award	4				4		8	
11	Assist in Bid Negotiations (if required)	8						8	
12	Construction Administration Services: Review of Submittals & shop drawings, answering daily RFI's as required, five site visits, review of pay request applications, pre-final inspection, punch list letter, and final inspection.	28	24					68	
13	Preparation of Record Drawings			16		16		32	
	<b>Total Man-hours</b>	89	52	100	0	16	36	282	
	<b>Hourly Rate</b>	\$ 125.00	\$ 110.00	\$ 75.00	\$ 65.00	\$ 56.00	\$ 49.00		
	<b>Total Cost</b>	\$ 11,000.00	\$ 5,720.00	\$ 7,500.00	\$ -	\$ 890.00	\$ 1,620.00	\$ 26,720.00	
	<b>Total Fee Amount</b>							\$ 26,720.00	
<b>Reimbursable Expenses</b>									
No.	Description	Amount	Unit Price	Cost					
1	Travel	0	\$ 0.35	\$ -					
2	Plan Reproduction	100	\$ 2.00	\$ 200.00					
3	Copies	100	\$ 0.10	\$ 10.00					
	<b>Subtotal Amount</b>			\$ 210.00				\$ 210.00	
<b>Third Party Services (Sub-consultants)</b>									
1									
	<b>Subtotal Amount</b>			\$ -				\$ -	
<b>TOTAL ESTIMATED AMOUNT</b>								\$ 26,930.00	

