

**PROFESSIONAL SERVICES AGREEMENT
WITH GEO-TEST, INC.
FOR MATERIAL TESTS AND SPECIAL INSPECTION SERVICES**

THIS AGREEMENT is made and entered into this 10th day of February, 2009 by and between Santa Fe County, (hereinafter referred to as "the County"), and Geo-Test, Inc., (hereinafter referred to as "the Contractor"), with its principal place of business located at 8528 Calle Alameda NE, Albuquerque, NM 87113.

WHEREAS, in accordance with NMSA 1978, Section 13-1-112, the County issued a request for proposals to which Contractor successfully responded; and

WHEREAS, the Contractor is amenable to and capable of providing material testing and special inspections services to Santa Fe County in a professional and timely manner.

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES

1. SCOPE OF WORK

The Contractor shall render the following services:

- A. Provide material testing and special inspections per Exhibit "A" for pile and pier foundations, steel, earthwork, concrete, asphalt, and concrete paving.

2. CONDITIONS

- A. Communicate with the General Contractor when test and inspections are to take place. Attend pre-installation conferences to determine schedule for services.
- B. Follow and refer to the specifications and drawings concerning requirements governing work related to testing and inspection services.
- C. Follow the ASTM, AIC, AISC, AWS, LRFD, and NMSHTD guidelines in all testing procedures.
- D. Attend construction meetings for clarification of test results when requested. Attend any meeting (within reason) where necessary to explain test results.
- E. Telephonically, or in person provide verbal and/or written technical information to Owner or Owner's Representative, Architect, and General Contractor when requested.
- F. Submit test results in writing following ASTM, ACI, AISC, AWS, LRFD, NMSHTD, and IBC guidelines within 48 hours of all tests. Notify the Architect, Construction Manager, and General Contractor promptly of irregularities or deficiencies observed.
- G. Conduct and interpret tests and inspections and state in each report whether tested and

inspected work complies with or deviates from requirements. Submit a certified written report of each test, inspection, and similar quality-control activities. Submit copies of test results and reports to Architect, Construction Manager, and General Contractor (2 copies).

- H. Coordinate results at the end of the project with the authority having jurisdiction per the International Building Code, 2006 Edition.

3. **COMPENSATION AND INVOICING**

- A. **Compensation/Payment.** The total compensation to be paid under this Agreement including fees and costs, inclusive of gross receipts tax, shall not exceed \$500,000.00. In consideration of its obligations under this Agreement the Contractor shall be compensated in accordance with the rates as specified in "Exhibit A". All payments under this Agreement are subject to the following provisions.
- B. **Acceptance.** In accordance with NMSA 1978, Section 13-1-158, the using department shall determine if the reports and tests meet specifications, and may accept them if they meet specifications. No payment shall be made for any reports and tests until they have been accepted in writing by the using department. Unless otherwise agreed upon between the using department and the Contractor, within thirty (30) days from the receipt of the reports and tests, the using department shall issue a written certification of complete or partial acceptance or rejection of them. The time period shall begin at the time of receipt of the reports and tests. Unless the using department gives notice of rejection within the specified time period, the reports and tests will be deemed to have been accepted.
- C. **Issuance of Orders.** Only, written, signed and properly executed purchase orders are valid under this Agreement.
- D. **Invoices.** The Contractor may submit invoices for payment no more frequently than monthly. The Contractor's invoice shall be submitted in triplicate, duly certified and shall contain the following information: order number, description of tests and reports, services, quantities, unit prices, extended totals, and applicable taxes.
- E. **Payment of Invoices.** Upon written certification from the County that the reports and tests have been received and accepted, payment shall be tendered to the Contractor within thirty (30) days. If the payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. After the thirtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due to the Contractor at the rate of 1.5% per month. Payment shall be made to the Contractor's designated mailing address.
- F. **Tax Note.** Applicable gross receipts taxes or local option tax(es) shall be

payment of taxes for any money received under this agreement shall be the Contractor's sole responsibility and must be reported under the Contractor's federal and County tax identification number(s).

4. EFFECTIVE DATE AND TERM

This Agreement shall, upon due execution by all parties, become effective as of the date first written above and shall terminate on January 23, 2012, unless earlier terminated pursuant to Section 5. "TERMINATION", of this Agreement. In no event shall the total duration of this Agreement exceed four years from the date first written above.

5. ADDITIONAL SERVICE

The County may from time to time request changes in the scope of work hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the County and the Contractor, shall be incorporated in written amendments to this agreement.

6. 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 ten (10) 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 ten (10) days, the breaching party shall have a reasonable time to cure the breach, provided that, within ten (10) days of its receipt of the written notice of termination, the breaching party (i) began to cure the breach and (ii) 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 ten (10) 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.

7. INDEPENDENT CONTRACTOR

The Contractor and its agents and employees are independent contractors and are not employees or agents of the County. Accordingly, the Contractor and its agents and employees shall not accrue leave, participate in retirement plans, insurance plans, or liability bonding, use County vehicles, or participate in any other benefits afforded to employees of the County. Except as may be expressly authorized elsewhere in this

employees of the County. Except as may be expressly authorized elsewhere in this Agreement, the Contractor has no authority to bind, represent, or otherwise act on behalf of the county and agrees not to purport to do so.

8. PERSONNEL

- A. All work performed under this Agreement shall be performed by the Contractor or under its supervision.
- B. The Contractor represents that it has, or will secure at its own expense, all personnel required to discharge its obligations under this Agreement. Such personnel (i) shall not be employees of nor 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.

9. 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.

10. 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.

11. INDEMNITY

- 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 negligent performance or non-performance of its obligations under this Agreement and shall be limited to the amount of the Contractor's errors and omissions insurance policy required under paragraph 27.
- B. The Contractor agrees (i) 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 (ii) 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, counsel shall be retained to represent the County's interests .

12. RECORDS AND INSPECTIONS

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 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 (6) 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").

13. 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.

14. 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.

15. 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.

16. PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHTS

- 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.

17. 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.

18. NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED

This Agreement may not be modified, altered, changed, or amended orally but, rather, only by an instrument in writing executed by the parties hereto. The Contractor specifically acknowledges and agrees that the County shall not be responsible for any changes to Section 1, "SCOPE OF WORK", of this Agreement unless such changes are set forth in a duly executed written amendment to this Agreement.

19. 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.

20. 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.

21. 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.

22. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW

- A. In performing its obligations hereunder, the Contractor shall comply with all applicable laws, ordinances, and regulations.
- B. This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules. Contractor and the County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be federal and state district courts of New Mexico, located in Santa Fe County.

23. 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.

24. NO THIRD-PARTY BENEFICIARIES

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

25. FACSIMILE SIGNATURES

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

26. 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 2, "COMPENSATION AND INVOICING", 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.

27. 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.

28. INSURANCE

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.

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 \$1,050,000 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.

Workers' Compensation Insurance. The Contractor shall comply with the provisions of the Workers' Compensation Act.

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.

Malpractice/Errors and Omissions Insurance. The Contractor shall procure and maintain during the life of this Agreement professional liability or errors and omissions insurance in amounts not less than \$1 million.

29. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

The Contractor hereby represents and warrants that:

- A. This Agreement has been duly authorized by the Contractor, the person executing this Agreement has authority to do so, and, once executed by the Contractor, this Agreement shall constitute a binding obligation of the Contractor.
- B. This Agreement and Contractor's obligations hereunder do not conflict with Contractor's corporate agreement, charter or any other documents establishing Contractor's authorities and duties.
- C. Contractor is licensed to do business in New Mexico, is in good standing with the New Mexico Public Regulation Commission and has the following New Mexico based agent for service of process; Pat Byers located at 3204 Richards Lane, Santa Fe, New Mexico 87507.

30. AMENDMENT

This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto.

31. 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.

32. NOTICES

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

Santa Fe County
Community Services Department
901 W. Alameda, Suite 20-C
Santa Fe, NM 87501

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

Geo-Test, Inc.
8528 Calle Alameda NE
Albuquerque, NM 8711

33. SURVIVAL

The provisions of paragraphs 10, 11, 14, 20, 21, 23, 25, 26 and 27 shall survive termination of this Contract.

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

SANTA FE COUNTY:

[Signature]
Roman Abeyta, County Manager

2/5/09
Date

APPROVED AS TO FORM:

[Signature]
Stephen C. Ross
Santa Fe County Attorney

2-4-09
Date

FINANCE DEPARTMENT:

[Signature]
Teresa Martinez
Finance Director

2/4/09
Date

CONTRACTOR:

Date

By: _____
(Print Name)

Its: _____
(Print Title)

FEDERAL IDENTIFICATION NUMBER

ATTEST:

[Signature]
VALERIE ESPINOZA
COUNTY CLERK

PSA #29-0042-CSD/HGR

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

SANTA FE COUNTY:



Roman Abeyta, County Manager

2/5/09
Date

APPROVED AS TO FORM:



Stephen C. Ross
Santa Fe County Attorney

2-4-09
Date

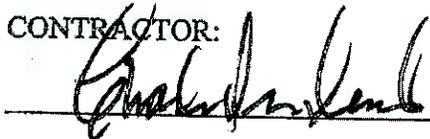
FINANCE DEPARTMENT:



Teresa Martinez
Finance Director

2/4/09
Date

CONTRACTOR:



02/05/09
Date

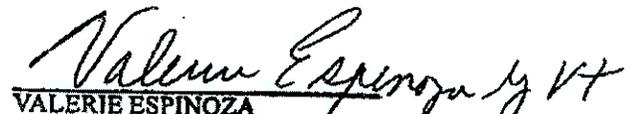
By: Charles M. Miller
(Print Name)

Its: Vice President
(Print Title)

FEDERAL IDENTIFICATION NUMBER

85-0312995

ATTEST:



VALERIE ESPINOZA
COUNTY CLERK