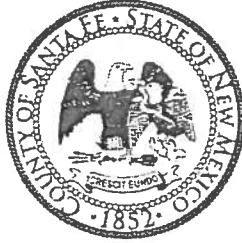


Daniel "Danny" Mayfield
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

DATE: February 12, 2013

TO: Board of County Commissioners

FROM: Bill Taylor, Procurement Manager *BT*

VIA: Adam Leigland, Public Works Director
Mark A. Hogan, Projects & Facilities Director
Marla Doyle, Senior Engineer

RE: *Request approval to award contract #2013-0179-PW/PL to Molzen Corbin Engineers for the Engineering Services for the Old Santa Fe Trail Multimodal Transit Road Improvements and Design of Waterline TL2N, Old Santa Fe Trail and El Gancho Way in amount of \$391,614.49 exclusive of GRT*

BACKGROUND

The subject project will complete the design of a multimodal trail and a waterline extension along the Old Santa Fe Trail from the Santa Fe City limits to El Gancho Way and in El Gancho Way from the Old Santa Fe Trail to the Old Las Vegas Highway.

The proposed multimodal trail is included in the Santa Fe Metropolitan Planning Organization (MPO) area. Old Santa Fe Trail is a popular scenic route for bicyclists, and completion of this project will provide a dedicated paved lane for bicyclists and pedestrians. The design will be ADA accessible as well as context sensitive and will minimize disturbance of the existing ground features, vegetation and drainage facilities.

The waterline extension will provide improved fire protection as well as stub-outs at all cross streets for future expansion of the system.

The Public Works Department and the Purchasing Division issued Request for Proposals (RFP) #2013-0179-PW/PL on December 10, 2012. This solicitation was advertised in the Santa Fe New Mexican and the Albuquerque Journal and posted on the County's Website. Fourteen (14) firms attended the mandatory pre-proposal conference and seven proposals were received in response to the RFP.

All proposals were reviewed by the Purchasing staff to ensure responsiveness. An evaluation committee consisting of four members reviewed, scored and ranked the proposals as follows:

1. Molzen Corbin Engineers
2. Gannett Fleming West, Inc.
3. Sullivan Design Group
4. Santa Fe Engineering
5. Wilson & Company
6. AIO, LLC
7. Occam Consulting

The evaluation committee selected Molzen Corbin Engineers as the most qualified to perform the engineering services for this project.

ACTION REQUESTED

The Purchasing Division requests authorization to enter into Agreement #2013-0179 with Molzen Corbin for the Engineering Services for the Old Santa Fe Trail Multimodal Transit Road Improvements and Design of Waterline TL2N, Old Santa Fe Trail and El Gancho Way in the amount of \$391,614.49 exclusive of GRT.



ENGINEERS JOINT CONTRACT
DOCUMENTS COMMITTEE

**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES
(as modified by Santa Fe County, indicated by strikeout
and underlined text)**

THIS IS AN AGREEMENT effective as of _____, _____, 2013 ("Effective Date") between

Santa Fe County, 102 Grant Avenue, Santa Fe, NM 87504-0276 ("Owner") and

Molzen Corbin and Associates, 2701 Miles Road SE, Albuquerque, NM 87106 ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows: Construction of improvements to the Old Santa Fe Trail Multimodal Transit Road (Old Santa Fe Trail Road) to include bicycle lanes and a waterline.

("Project").

Engineer's services under this Agreement are generally identified as follows: Completion of engineering design of bicycle lanes and a TL2N waterline along a portion of Old Santa Fe Trail to the Old Las Vegas Highway, Santa Fe, New Mexico. Engineer will provide services from design phase through construction of the bicycle lanes and the TL2N waterline.

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 Scope

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER’S RESPONSIBILITIES

2.01 *General*

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer for Basic Services as set forth in Exhibit C. The compensation to be paid to Engineer by Owner for Additional Services beyond or in addition to the services described herein as Basic Services shall be as agreed upon the Engineer and Owner and shall be specified in an amendment to this Agreement. The total compensation including RPR services is Three Hundred Ninety One Thousand Six Hundred Fourteen Dollars and Forty-Nine Centss (\$391,614.49), exclusive of NM GRT.
- C. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 *Commencement*

- A. Engineer is authorized to begin rendering services as of the date indicated in the Notice to Proceed issued by the Owner. ~~Effective Date.~~

3.02 *Time for Completion*

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer’s services is impaired, or Engineer’s services are delayed or suspended, then the time for completion of Engineer’s services, and the rates and amounts of Engineer’s compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project, then the time for completion of Engineer’s services, and the rates and amounts of Engineer’s compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer’s performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 *Invoices*

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 *Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
 - 1. amounts due Engineer will be increased at the rate of 1.50% per month ~~(or the maximum rate of interest permitted by law, if less)~~ from said thirtieth day; and
 - 2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner contests an invoice, Owner shall promptly advise Engineer of the specific basis for doing so, may withhold only that portion so contested, and must pay the undisputed portion.
- D. *Legislative Actions:* If after the Effective Date any governmental entity takes a legislative action that imposes taxes, fees, or charges on Engineer's services or compensation under this Agreement, then the Engineer may invoice such new taxes, fees, or charges as a Reimbursable Expense. ~~to which a factor of 1.0 shall be applied.~~ Owner shall reimburse Engineer for the cost of such invoiced new taxes, fees, and charges; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions of probable Construction Cost are to be made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional generally familiar with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, Owner must employ an independent cost estimator as provided in Exhibit B.

5.02 *Designing to Construction Cost Limit*

- A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F, "Construction Cost Limit," to this Agreement.

5.03 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in collating the various cost categories which comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
 - 1. Engineer and Owner shall comply with applicable Laws and regulations.
 - 2. Prior to the Effective Date, Owner provided to Engineer in writing any and all policies and procedures of Owner applicable to Engineer's performance of services under this Agreement. provided to Engineer in writing. Engineer shall comply with such policies and procedures, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 - 3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. Changes after the Effective Date to these Laws and Regulations, or to Owner-provided written policies and procedures, may be the basis

for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation.

- F. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.
 - G. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition) unless both parties mutually agree to use other general conditions by specific reference in Exhibit J.
 - H. Engineer shall not at any time supervise, direct, control, or have authority over any contractor work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's furnishing and performing of its work.
 - I. Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
 - J. Engineer shall not provide or have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
 - K. Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor, or Supplier, or of any of their agents or employees or of any other persons (except Engineer's own agents, employees, and Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made regarding the Contract Documents, or any application, interpretation, or clarification, of the Contract Documents, other than those made by Engineer.
 - L. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.
- 6.02 *Design Without Construction Phase Services*
- A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, Paragraph A1.05. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction and Owner assumes all responsibility for the application and interpretation of the Contract Documents, review and response to Contractor claims, contract administration, processing Change Orders, revisions to the Contract Documents during construction, construction surety bonding and insurance requirements, construction observation and review, review of payment applications, and all other necessary Construction Phase engineering and professional

services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase engineering or professional services except for those services that are expressly required of Engineer in Exhibit A, Paragraph A1.05.

6.03 *Use of Documents*

- A. All Documents are instruments of service in respect to this Project, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.
- B. Either party to this Agreement may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern. If the parties agree to other electronic transmittal procedures, such are set forth in Exhibit J.
- C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.
- D. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.
- E. Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the Documents and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.

- F. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain insurance its usual insurance coverage for this type of project, as set forth in Exhibit G, "Insurance." ~~Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies and as loss payees on any property insurance policies carried by Owner which are applicable to the Project.~~
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, property damage (other than to the Work itself), motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. ~~Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.~~
- D. ~~Owner and~~ Engineer shall each deliver to Owner the ~~other~~ certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project shall contain provisions to the effect that Engineer's and its Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer or its Consultants, or any insureds, additional insureds, or loss payees thereunder.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 30 days prior written notice has been given to Owner and Engineer and to each other additional insured (if any) to which a certificate of insurance has been issued.
- G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.05 *Suspension and Termination*

A. *Suspension:*

1. By Owner: Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.

2. By Engineer: Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Engineer's performance has been substantially delayed through no fault of Engineer.
- B. *Termination:* The obligation to provide further services under this Agreement may be terminated:
1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
 - b. By Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.
 - 3) Engineer shall have no liability to Owner on account of such termination.
 - c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.05.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
 2. For convenience,
 - a. By Owner effective upon Engineer's receipt of notice from Owner.
- C. *Effective Date of Termination:* The terminating party under Paragraph 6.05.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- D. *Payments Upon Termination:*

1. In the event of any termination under Paragraph 6.05, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.E.
2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.05.D.1, to invoice Owner and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.06 *Controlling Law*

- A. This Agreement is to be governed by the laws of the State of New Mexico. ~~of the state or jurisdiction in which the Project is located.~~

6.07 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.07.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Subcontractor, Supplier, other individual or entity, or to any surety for or employee of any of them.
 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
 3. Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in the Contract Documents.

6.08 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights under law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.08.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights under law.

6.09 *Environmental Condition of Site*

- A. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
- B. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.
- C. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner" "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.10 *Indemnification and ~~Mutual~~ Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and

employees from reasonable claims, costs, losses, and damages arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. ~~This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."~~

- B. ~~Indemnification by Owner: Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations and to the extent (if any) required in Exhibit I, Limitations of Liability.~~
- C. ~~Environmental Indemnification: To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.~~
- D. ~~Percentage Share of Negligence: To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.~~
- E. ~~Mutual Waiver: To the fullest extent permitted by law, Owner and Engineer waives against Owner each other, and the Owner's other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.~~

6.11 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

- C. *Severability*: Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver*: A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims*: To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.
- F. *Submission of Documents to Owner*: All documents and deliverables required in Exhibit A shall be submitted to Owner electronically in PDF and AutoCAD format (current version of AutoCAD and DWG format using state plane coordinates [NMSPCS, NAD 1983] as appropriate.
- F. *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, § 41-4-1, et seq.
- G. *Appropriations and Authorizations*. The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the Santa Fe Board of County Commissioners or the Legislature of the State of New Mexico, if state funds are involved, for performance of this Agreement. If sufficient appropriations and authorizations are not made by the Santa Fe Board of County Commissioners or the Legislature of the State of New Mexico, if state funds are involved, this Agreement shall terminate upon written notice being given by the County to the Engineer. 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 its funds are sufficient for fulfillment of this Agreement shall be final.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following provisions:
 - 1. *Additional Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
 - 2. *Agreement* – This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.

3. *Asbestos* – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
4. *Basic Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
5. *Construction Contract* – The entire and integrated written agreement between Owner and Contractor concerning the Work.
6. *Construction Cost* – The cost to Owner of those portions of the entire Project designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to properties; Owner's costs for legal, accounting, insurance counseling or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.
7. *Constituent of Concern* – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; and (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
8. *Consultants* – Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.
9. *Contract Documents* – Those items so designated in the Construction Contract, including the Drawings, Specifications, construction agreement, and general and supplementary conditions. Only printed or hard copies of the items listed in the Construction Contract are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
10. *Contractor* – The entity or individual with which Owner has entered into a Construction Contract.
11. *Documents* – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.

12. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
13. *Effective Date* – The date on which this Agreement is approved and signed by the parties hereto. ~~The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.~~
14. *Engineer* – The individual or entity named as such in this Agreement.
15. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
16. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
17. *Owner* – The individual or entity with which Engineer has entered into this Agreement and for which the Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
18. *PCBs* – Polychlorinated biphenyls.
19. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-hazardous waste and crude oils.
20. *Project* – The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
21. *Radioactive Material* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
22. *Record Drawings* – Drawings depicting the completed Project, prepared by Engineer as an Additional Service and based solely on Contractor's record copy of all Drawings, Specifications, addenda, change orders, work change directives, field orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
23. *Reimbursable Expenses* – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.
24. *Resident Project Representative* – The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident

Project Representative agreed to by Owner. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.

25. *Samples* – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
26. *Shop Drawings* – All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
27. *Site* – Lands or areas to be indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
28. *Specifications* – That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
29. *Subcontractor* – An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
30. *Substantial Completion* – The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
31. *Supplier* – A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
32. *Total Project Costs* – The sum of the Construction Cost, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner’s costs for legal, accounting, insurance counseling and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.
33. *Work* – The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included:*

- A. Exhibit A, Engineer's Services.
- B. Exhibit B, Owner's Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.
- E. Exhibit E, Notice of Acceptability of Work.
- F. Exhibit F, Construction Cost Limit.
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution.
- I. Exhibit I, ~~Limitations of Liability.~~ – Not Included.
- J. Exhibit J, Special Provisions.
- K. Exhibit K, Amendment to Owner-Engineer Agreement.
- L. Exhibit L, Addendum #1, dated 12/21/12, consisting of 6 pages.

~~*[NOTE TO USER: If an exhibit is not included, indicate "not included" after the listed exhibit item]*~~

8.02 *Total Agreement:*

- A. This Agreement, (together with the exhibits identified above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument based on the format of Exhibit K to this Agreement.

8.03 *Designated Representatives:*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of the respective party whom the individual represents.

8.04 *Engineer's Certifications:*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner :

Engineer:

By: Kathleen S. Holian

By: Adelmo E. Archuleta

Title: Chair, Santa Fe Board of County Commissioners

Title: President

Date

Date

Signed: _____

Signed: _____

ATTEST:

Engineer License or Firm's
Certificate No. _____

State of: _____

Geraldine Salazar, County Clerk

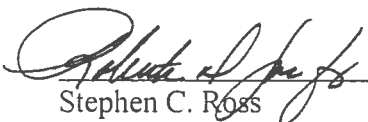
Address for giving notices:

Address for giving notices:

102 Grant Avenue

Santa Fe, NM 87504

APPROVED AS TO FORM:

 2-4-13
Stephen C. Ross
Santa Fe County Attorney

Designated Representative (Paragraph 8.03.A):

Designated Representative (Paragraph 8.03.A):

Title: _____

Phone Number: _____

Facsimile Number: _____

E-Mail Address: _____

Title: _____

Phone Number: _____

Facsimile Number: _____

E-Mail Address: _____

Engineer's Services

Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic and Additional Services as set forth below.

PART 1 – BASIC SERVICES

A1.01 Study and Report Phase

A. Engineer shall:

1. Consult with Owner to define and clarify Owner's requirements for the Project and available data.
2. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B which are not part of Engineer's Basic Services.
3. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by Engineer, including but not limited to mitigating measures identified in the environmental assessment.
4. Identify and evaluate [insert specific number or list here] alternate solutions available to Owner and, after consultation with Owner, recommend to Owner those solutions which in Engineer's judgment meet Owner's requirements for the Project.
5. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and those alternate solutions available to Owner which Engineer recommends. For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a summary of allowances for other items and services included within the definition of Total Project Costs.
6. Perform or provide the following additional Study and Report Phase tasks or deliverables: Geotechnical investigation; survey; evaluation and identify ROW deficiencies and needs; Cultural Resource Survey and Report; prepare plats and legal descriptions for required ROW acquisitions; evaluate existing drainage facilities and design modifications if necessary; identify location of existing utilities and evaluation or propose resolution of the impact on existing utilities; coordinate with other agencies and entities whose facilities maybe impacted by the construction; prepare traffic control plan. [here list any such tasks or deliverables]

7. Furnish 3 review copies of the Report and any other deliverables to Owner within ____ calendar days of the Effective Date and review it with Owner. Within ____ calendar days of receipt, Owner shall submit to Engineer any comments regarding the Report and any other deliverables.
 8. Revise the Report and any other deliverables in response to Owner's comments, as appropriate, and furnish 3 copies of the revised Report and any other deliverables to the Owner within ____ calendar days of receipt of Owner's comments.
- B. Engineer's services under the Study and Report Phase will be considered complete on the date when the revised Report and any other deliverables have been delivered to Owner.

A1.02 *Preliminary Design Phase*

- A. After acceptance by Owner of the Report and any other deliverables, selection by Owner of a recommended solution and indication of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, and upon written authorization from Owner, Engineer shall:
1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.
 2. Provide necessary field surveys and topographic and utility mapping for design purposes. Utility mapping will be based upon information obtained from utility owners.
 3. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.
 4. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in collating the various cost categories which comprise Total Project Costs.
 5. Perform or provide the following additional Preliminary Design Phase tasks or deliverables:
At 30% Design: Conduct a thorough assessment and field inspection of the existing conditions of the project site(s); design and conduct a thorough public input and review process in the consultation with the Owner to obtain constructive input from the stakeholders in this project; complete a Cultural Survey and Report and a Biological Survey and Report; facilitate and assist in any tribal consultations; facilitate and assist in public meetings; provide a description of impacts the work will have on existing intersections; provide schematic designs and probable costs for construction of the proposed designs; and provide one(1) set of the 24" X 36" 30% schematic design. At 60% Design: Review the existing easements and determine where it will be necessary to modify or acquire additional easements to construct the bicycle lanes; provide surveys and legal descriptions of the easements that must be acquired; review the 60% preliminary design in the field with the Owner; present the preliminary design at public meeting organized and facilitated by the Owner; prepare a Stormwater Management Analysis (prepared and sealed by a professional

engineer licensed in the State of New Mexico in compliance with Santa Fe County Flood Damage Prevention and Stormwater Management Ordinance No. 2008-10); provide any pertinent material in order to comply with the requirements for a Joint Application for Department of the Army permit and the NM Water Quality Certification (401/404) and coordinate with the Department of the Army and NM Water Quality Bureau to obtain the permits and certifications; complete an archaeological survey and report of the project areas (such survey must be completed by a qualified archaeologist with a current archaeological survey permit from the NM Historic Preservation Division); assist the Owner with review and approval of the project by the State Historic Preservation Office; prepare a signage plan for the bicycle network with all identification, way finding and regulatory signage; prepare a traffic control plan. [here list any such tasks or deliverables]

6. Furnish five (5) bound review sets ~~copies~~ of the 60% Preliminary Design Phase documents (60% construction plans); each set containing one 24" X 36" and two half-size 11" X 17"; and any other deliverables to Owner within ____ calendar days of authorization to proceed with this phase, and review them with Owner. Within ____ calendar days of receipt, Owner shall submit to Engineer any comments regarding the 60% Preliminary Design Phase documents and any other deliverables.
 7. Revise the Preliminary Design Phase documents and any other deliverables in response to Owner's comments, as appropriate, and furnish to Owner ____ copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within ____ calendar days after receipt of Owner's comments.
 8. Furnish six (6) bound review sets ~~copies~~ of the 90% Preliminary Design Phase documents (90% construction plans); each set containing one 24" X 36" and two half-size 11" X 17"; and any other deliverables to Owner within ____ calendar days of authorization to proceed with this phase, and review them with Owner. Within ____ calendar days of receipt, Owner shall submit to Engineer any comments regarding the 90% Preliminary Design Phase documents and any other deliverables
- B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables have been delivered to Owner.

A1.03 *Final Design Phase*

- A. After acceptance by Owner of the 90% Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other deliverables subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:
1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.

2. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities.
 3. Advise Owner of any adjustments to the opinion of probable Construction Cost known to Engineer.
 4. Perform or provide the following additional Final Design Phase tasks or deliverables: Present the final design at a public meeting organized and facilitated by the Owner; and provide one (1) full-size set of stamped construction plans on Mylar (24" X 36"); one (1) CD with the final stamped construction plans in AutoCAD and PDF format in 24" X 36" and 11" X 17" print sizes; three (3) bound sets of final stamped construction plans (24" X 36"), specifications, cost estimates and accompanying documents as well as electronic copies of the same; three (3) half-size (11" X 17") copies of the final construction plans; engineers estimate; and bid item list. ~~[here list any such tasks or deliverables]~~
 5. Prepare and furnish bidding documents for review by Owner, its legal counsel, and other advisors, and assist Owner in the preparation of other related documents. Within ____ days of receipt, Owner shall submit to Engineer any comments and, subject to the provisions of Paragraph 6.01.G, instructions for revisions.
 6. Revise the bidding documents in accordance with comments and instructions from the Owner, as appropriate, and submit ____ final copies of the bidding documents, a revised opinion of probable Construction Cost, and any other deliverables to Owner within ____ calendar days after receipt of Owner's comments and instructions.
- B. Engineer's services under the Final Design Phase will be considered complete on the date when the submittals required by Paragraph A1.03.A.6 have been delivered to Owner.
- C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.
- D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is no more than two (2). If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

A1.04 *Bidding or Negotiating Phase*

- A. After acceptance by Owner of the bidding documents and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:
1. Assist Owner in advertising for and obtaining bids or proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the bidding documents.
 2. Issue addenda as appropriate to clarify, correct, or change the bidding documents.
 3. Provide information or assistance needed by Owner in the course of any negotiations with prospective contractors.
 4. Consult with Owner as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors for those portions of the Work as to which such acceptability is required by the bidding documents.
 5. If bidding documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by bidders, but subject to the provisions of paragraph A2.02.A.2 of this Exhibit A.
 6. Attend the Bid opening, prepare Bid tabulation sheets, and assist Owner in evaluating Bids or proposals and in assembling and awarding contracts for the Work.
 7. Perform or provide the following additional Bidding or Negotiating Phase tasks or deliverables: Assist Owner to prepare, conduct and attend pre-bid conference; reponse to requests for information and assist with addenda as needed to clarify, correct or change the bidding documents; if needed evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by bidders. ~~here list any such tasks or deliverables~~
- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if Exhibit F is a part of this Agreement).

A1.05 *Construction Phase*

- A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:
1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer as assigned in the Construction Contract shall not be modified, except as Engineer may otherwise agree in writing. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act

on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.

2. *Resident Project Representative (RPR)*: Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D. ~~[If Engineer will not be providing the services of an RPR, then delete this Paragraph 2 by inserting the word "DELETED" after the paragraph title, and do not include Exhibit D.]~~
3. *Selecting Independent Testing Laboratory*: Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, Paragraph B2.01.0.
4. *Pre-Construction Conference*: Participate in a Pre-Construction Conference prior to commencement of Work at the Site.
5. *Schedules*: Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
6. *Baselines and Benchmarks*: As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
7. *Visits to Site and Observation of Construction*: In connection with observations of Contractor's Work while it is in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of Contractor's Work in progress or to involve detailed inspections of Contractor's Work in progress beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.
 - b. The purpose of Engineer's visits to, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of

confidence that the completed Work will conform in general to the Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Engineer shall not, during such visits or as a result of such observations of Contractor's Work in progress, supervise, direct, or have control over Contractor's Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to Contractor's Work, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish or perform the Work in accordance with the Contract Documents.

8. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work (a) is defective under the standards set forth in the Contract Documents, (b) will not produce a completed Project that conforms to the Contract Documents, or (c) will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
9. *Clarifications and Interpretations; Field Orders:* Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. Subject to any limitations in the Contract Documents, Engineer may issue field orders authorizing minor variations in the Work from the requirements of the Contract Documents.
10. *Change Orders and Work Change Directives:* Recommend change orders and work change directives to Owner, as appropriate, and prepare change orders and work change directives as required.
11. *Shop Drawings and Samples:* Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.
12. *Substitutes and "or-equal":* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.
13. *Inspections and Tests:* Require such special inspections or tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. Engineer's

review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Engineer shall be entitled to rely on the results of such tests.

14. *Disagreements between Owner and Contractor:* Render formal written decisions on all duly submitted issues relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution, performance, or progress of Contractor's Work; review each duly submitted Claim by Owner or Contractor, and in writing either deny such Claim in whole or in part, approve such Claim, or decline to resolve such Claim if Engineer in its discretion concludes that to do so would be inappropriate. In rendering such decisions, Engineer shall be fair and not show partiality to Owner or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.
15. *Applications for Payment:* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
 - a. Determine the amounts that Engineer recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe Contractor's Work. In the case of unit price work, Engineer's recommendations of payment will include final determinations of quantities and classifications of Contractor's Work (subject to any subsequent adjustments allowed by the Contract Documents).
 - b. By recommending any payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control Contractor's Work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility

on Engineer to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the Work in progress, materials, or equipment has passed to Owner free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

16. *Contractor's Completion Documents:* Receive, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided under Paragraph A1.05.A.11, and transmit the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. The extent of such review by Engineer will be limited as provided in Paragraph A1.05.A.11.
17. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Project to determine if the Work is substantially complete. If after considering any objections of Owner, Engineer considers the Work substantially complete, Engineer shall deliver a certificate of Substantial Completion to Owner and Contractor.
18. *Additional Tasks:* Perform or provide the following additional Construction Phase tasks or deliverables: Attend and participate in pre construction conference; review and determine acceptability of the contractor's construction schedule and any updates; visit the sites at least once every 30 days during construction to observe the progress of the work and as necessary in response to design related issues; issue necessary clarifications and interpretations of the contract documents as appropriate to the completion of the work; review and approve or take other appropriate action with shop drawings and samples for conformance with the requirements of the contract; evaluate and determine the acceptability of substitute or "as-equal" materials and equipment proposed by the contractor; render formal written decisions on all duly submitted issues relating to the acceptability of the contractor's work or the interpretation of the requirements of the contract documents pertaining to the execution, performance or progress of the contractor's work; promptly after notice from the contractor that contractor considers all the work ready for its intended use; visit the sites with the Owner and contractor to determine if substantial completion is achieved; prepare and deliver to the Owner and contractor a certificate of substantial completion if Engineer considers work to be substantially complete; complete a final inspection of the sites to determine if the completed work is acceptable so that the Engineer may recommend in writing that final payment be issued to the contractor. [~~here list any such tasks or deliverables~~].
19. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to determine if the completed Work of Contractor is acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice in the form attached hereto as Exhibit E (the "Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of

Paragraph A1.05.A.15.b) to the best of Engineer's knowledge, information, and belief and based on the extent of the services provided by Engineer under this Agreement.

- B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in Paragraph A1.03.C, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.
- C. *Limitation of Responsibilities:* Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor or Supplier, or other individuals or entities performing or furnishing any of the Work, for safety or security at the Site, or for safety precautions and programs incident to Contractor's Work, during the Construction Phase or otherwise. Engineer shall not be responsible for the failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

A1.06 *Post-Construction Phase*

- A. Upon written authorization from Owner during the Post-Construction Phase Engineer shall:
 - 1. Together with Owner, visit the Project to observe any apparent defects in the Work, assist Owner in consultations and discussions with Contractor concerning correction of any such defects, and make recommendations as to replacement or correction of defective Work, if any.
 - 2. Together with Owner or Owner's representative, visit the Project within one month before the end of the correction period to ascertain whether any portion of the Work is subject to correction.
 - 3. Perform or provide the following additional Post-Construction Phase tasks or deliverables:
Visit the project sites with the Owner and the contractor approximately one (1) month before the end of the warranty period to ascertain whether any portion of the work is subject to correction; complete "as built" drawings for the project signed and stamped by a civil engineer licensed in the state of New Mexico. ~~[Here list any such tasks or deliverables]~~
- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.

PART 2 – ADDITIONAL SERVICES

A2.01 *Additional Services Requiring Owner's Written Authorization*

A. If authorized in writing by Owner, Engineer shall furnish or obtain from others Additional Services of the types listed below.

1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.
4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those identified in Paragraph A1.01.A.4.
5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
6. Providing renderings or models for Owner's use.
7. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of financial feasibility and cash flow studies, rate schedules, and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing, and assisting Owner in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by Owner.
8. Furnishing services of Consultants for other than Basic Services.
9. Services attributable to more prime construction contracts than specified in Paragraph A1.03.D.
10. Services during out-of-town travel required of Engineer other than for visits to the Site or Owner's office.
11. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner; and

performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.

12. Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by Owner for the Work or a portion thereof.
13. Assistance in connection with Bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required by Exhibit F.
14. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.6, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
15. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor.
16. Providing assistance in responding to the presence of any Constituent of Concern at the Site, in compliance with current Laws and Regulations.
17. Preparing Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor, and furnishing such Record Drawings to Owner.
18. Preparation of operation and maintenance manuals.
19. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, or other dispute resolution process related to the Project.
20. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
21. Assistance in connection with the adjusting of Project equipment and systems.
22. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.
23. Assistance to Owner in developing procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related record-keeping.
24. Overtime work requiring higher than regular rates.
25. Other services performed or furnished by Engineer not otherwise provided for in this Agreement.

A2.02 Additional Services Not Requiring Owner's Written Authorization

A. Engineer shall advise Owner in advance that Engineer is will immediately commence to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice from Owner.

1. Services in connection with work change directives and change orders to reflect changes requested by Owner.
2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.
3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
4. Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work (advance notice not required), (2) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (3) Work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by Contractor.
5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of any part of the Work by Owner prior to Substantial Completion.
6. Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the Work.
7. Services during the Construction Phase rendered after the original date for completion of the Work referred to in A1.05.B.
8. Reviewing a Shop Drawing more than three times, as a result of repeated inadequate submissions by Contractor.
9. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, state, or local safety authorities for similar construction sites.

Owner's Responsibilities

Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in the Drawings and Specifications; and furnish copies of Owner's standard forms, conditions, and related documents for Engineer to include in the Bidding Documents, when applicable.
- B. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.
- C. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 - 1. Property descriptions.
 - 2. Zoning, deed, and other land use restrictions.
 - 3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 - 4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions relating to existing surface or subsurface structures at the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
 - 5. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.
 - 6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.
- D. Give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of the presence at the Site of any Constituent of Concern, or of any other development that affects the

scope or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services, the Work, or in the performance of any Contractor.

- E. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.
- F. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.
- I. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
 - 1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
 - 2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
 - 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the moneys paid.
- J. Place and pay for advertisement for Bids in appropriate publications.
- K. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.
- L. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- M. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.

- N. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.
- O. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment visits to the Project.
- P. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof.
- Q. Provide Engineer with the findings and reports generated by the entities providing services to Owner pursuant to this paragraph.
- R. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- S. Perform or provide the following additional services: *[Here list any such additional services]*.

1. **Compensation for Basic Services (not including Resident Project Representative) (as described in Exhibit A, Part I)**

Decision Question: Which method of compensation is to be used?

	Lump Sum	Standard Hourly Rates	Percentage of Construction Costs	Direct Labor Costs Times a Factor	Direct Labor Costs Plus Overhead Plus a Fixed Fee	Salary Costs Times a Factor
Use This Base Compensation Packet	Packet BC-1	Packet BC-2	Packet BC-3	Packet BC-4	Packet BC-5	Packet BC-6
Include This Appendix	N/A	Appendices 1 and 2	N/A	Appendix 1	Appendix 1	Appendix 1

2. **Compensation for Resident Project Representative (as described in Exhibit A, Paragraph A1.05.A.2, and in Exhibit D)**

Decision Question: Which method of compensation is to be used?

	Lump Sum	Standard Hourly Rates	Percentage of Construction Costs	Direct Labor Costs Times a Factor	Salary Costs Times a Factor
Use This RPR Compensation Packet	Packet RPR-1	Packet RPR-2	Packet RPR-3	Packet RPR-4	Packet RPR-5
Include This Appendix	N/A	Appendices 1 and 2	N/A	Appendix 1	Appendix 1

3. **Compensation for Additional Services (as described in Exhibit A, Part 2)**

Decision Question: Which method of compensation is to be used?

	Standard Hourly Rates	Direct Labor Costs Times a Factor	Salary Costs Times a Factor
Use This Additional Services Compensation Packet	Packet AS-1	Packet AS-2	Packet AS-3
Include This Appendix	Appendices 1 and 2	Appendix 1	Appendix 1

Example: If Basic Services (other than RPR) will be compensated using Lump Sum; RPR services using Direct Labor Times a Factor; and Additional Services using Standard Hourly Rates; then use Packet BC-1; Packet RPR-4; Packet AS-1; and Appendices 1 and 2 to form Exhibit C.

SUGGESTED FORMAT
(for use with E-500, 2008 Edition)

This is **EXHIBIT C**, consisting of _____ pages, referred to
in and part of the Agreement between Owner and Engineer
for Professional Services. dated _____, _____.

Payments to Engineer for Services and Reimbursable Expenses
COMPENSATION PACKET BC-1: Basic Services – Lump Sum

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER’S RESPONSIBILITIES

C2.01 Compensation for Basic Services (other than Resident Project Representative) – Lump Sum Method of Payment

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A for the engineering services for the Multimodal Transit Road Improvements, except for services of Engineer’s Resident Project Representative, if any, as follows:

1. A Lump Sum amount of \$ 194,568.39 exclusive of NM GRT, based on the following estimated distribution of compensation:
 - a. Study and Report Phase (30% Preliminary \$ 36,515.00
Design Completion)
 - b. Preliminary Design Phase (60% \$ 34,835.00
Completion)
 - c. Final Design Phase \$ 19,345.00
 - d. Bidding and Negotiating Phase \$ 6,795.00
 - e. Construction Phase \$ 25,465.00
 - f. Post-Construction Phase \$ 3,385.00
 - g. Survey (topo) \$ 2,518.50
 - h. Reimbursables \$ 3,231.50
 - i. Surveying \$ 19,060.80
 - j. Subsurface Utility Engineering \$ 5,033.60
 - k. Geotechnical Investigation \$ 17,600.00
 - l. Environmental Services \$ 10,783.99

m. Drainage Analysis/Design 404 Certification, 401 Permit \$ 10,000.00

B. Owner shall pay Engineer for Basic Services set forth in Exhibit A for the engineering services for the design of the TL2N Waterline, except for services of Engineer's Resident Project Representative, if any, as follows:

1. A Lump Sum amount of \$ 115,134.10 exclusive of NN GRT, based on the following estimated distribution of compensation:

a. <u>Study and Report Phase (30% Completion of Preliminary Design)</u>	\$ 19,115.00
b. <u>Preliminary Design Phase (60% Completion)</u>	\$ 19,732.50
c. <u>Final Design Phase</u>	\$ 7,622.50
d. <u>Bidding and Negotiating Phase</u>	\$ 4,605.00
e. <u>Construction Phase</u>	\$ 11,505.00
f. <u>Post-Construction Phase</u>	\$ 4,200.00
g. <u>Survey (Topo Mapping)</u>	\$ 2,518.50
h. <u>Reimbursables</u>	\$ 2,329.00
i. <u>Surveying (Mapping of existing ROW)</u>	\$ 7,009.20
j. <u>Subsurface Utility Engineering</u>	\$ 10,531.40
k. <u>Geotechnical Investigation</u>	\$ 9,900.00
l. <u>Environmental Services</u>	\$ 6,066.00
m. <u>Drainage Analysis/Design 404 Certification, 401 Permit</u>	\$ 10,000.00

2.

2. Engineer may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the Owner.

3. The Lump Sum includes compensation for Engineer's services and services of Engineer's Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.
 4. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the percentage of the total services actually completed during the billing period.
- C. *Period of Service:* The compensation amount stipulated in Compensation Packet BC-1 is conditioned on a period of service not exceeding 24 months. If such period of service is extended, the compensation amount for Engineer's services shall be appropriately adjusted.

COMPENSATION PACKET RPR-1: Resident Project Representative – Lump Sum

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

C2.04 *Compensation for Resident Project Representative Basic Services – Lump Sum Method of Payment*

A. Owner shall pay Engineer for Resident Project Representative Basic Services as follows:

1. *Resident Project Representative Services:* For services of Engineer's Resident Project Representative for the engineering services for the Multimodal Transit Road Improvements, if any, under Paragraph A1.05 of Exhibit A, the Lump Sum amount of \$ 40,956.00, exclusive of NM GRT. The Lump Sum includes compensation for the Resident Project Representative's services, and for the services of any direct assistants to the Resident Project Representative. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses related to the Resident Project Representative's Services.
2. *Resident Project Representative Schedule:* The Lump Sum amount set forth in Paragraph C2.04.A.1 above is based on ~~full-time RPR services for two (2) months, on an eight-hour workday Monday through Friday over a ____ day construction schedule. Modifications to the schedule shall entitle Engineer to an equitable adjustment of compensation for RPR services.~~
3. *Resident Project Representative Services:* For services of Engineer's Resident Project Representative for the engineering services for the design of the TL2N Waterline, under Paragraph A1.05 of Exhibit A, the Lump Sum amount of \$ 40,956.00, exclusive of NM GRT. The Lump Sum includes compensation for the Resident Project Representative's services, and for the services of any direct assistants to the Resident Project Representative. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses related to the Resident Project Representative's Services.
4. *Resident Project Representative Schedule:* The Lump Sum amount set forth in Paragraph C2.04.A.1 above is based on RPR services for two (2) months.

This is **EXHIBIT D**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services**, dated _____.

~~[Note to User: Delete this Exhibit D if Engineer will not be providing Resident Project Representative Services under Paragraph A1.05.A.2]~~

Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

Article 1 of the Agreement is supplemented to include the following agreement of the parties:

D1.01 Resident Project Representative

- B. Engineer shall furnish a Resident Project Representative ("RPR") to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree.
- C. Through RPR's observations of Contractor's work in progress and field checks of materials and equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, during such RPR field checks or as a result of such RPR observations of Contractor's work in progress, supervise, direct, or have control over Contractor's Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for security or safety at the Site, for safety precautions and programs incident to any contractor's work in progress, or for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's performing and furnishing of its work. The Engineer (including RPR) neither guarantee the performances of any contractor nor assumes responsibility for Contractor's failure to furnish and perform the Work in accordance with the Contract Documents. In addition, the specific terms set forth in Paragraph A1.05 of Exhibit A of the Agreement are applicable.
- D. The duties and responsibilities of the RPR are as follows:
 - 1. *General:* RPR is Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions. RPR's dealings in matters pertaining to the Contractor's work in progress shall in general be with Engineer and Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
 - 2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with Engineer concerning acceptability.

3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
4. *Liaison:*
 - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the intent of the Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
5. *Interpretation of Contract Documents:* Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.
6. *Shop Drawings and Samples:*
 - a. Record date of receipt of Samples and approved Shop Drawings.
 - b. Receive Samples which are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
 - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by Engineer.
7. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.
8. *Review of Work and Rejection of Defective Work:*
 - a. Conduct on-Site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to Engineer whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made;

and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection, or approval.

9. *Inspections, Tests, and System Start-ups:*

- a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.
- b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
- d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to Engineer.

10. *Records:*

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all change orders, field orders, work change directives, addenda, additional Drawings issued subsequent to the execution of the Construction Contract, Engineer's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, weather conditions, data relative to questions of change orders, field orders, work change directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
- c. Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- d. Maintain records for use in preparing Project documentation.
- e. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.

11. *Reports:*

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.

- b. Draft and recommend to Engineer proposed change orders, work change directives, and field orders. Obtain backup material from Contractor.
 - c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
 - d. Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Constituent of Concern.
12. *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.
13. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.
14. *Completion:*
- a. Participate in visits to the Project to determine Substantial Completion, assist in the determination of Substantial Completion and the preparation of lists of items to be completed or corrected.
 - b. Participate in a final visit to the Project in the company of Engineer, Owner, and Contractor, and prepare a final list of items to be completed and deficiencies to be remedied.
 - c. Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work (Exhibit E).

E. Resident Project Representative shall not:

- 1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
- 2. Exceed limitations of Engineer's authority as set forth in this Agreement.
- 3. Undertake any of the responsibilities of Contractor, Subcontractors or Suppliers.

4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work.
5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept shop drawing or sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy the Project in whole or in part.

This is **EXHIBIT E**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services**, dated _____.

NOTICE OF ACCEPTABILITY OF WORK

PROJECT:

OWNER:

CONTRACTOR:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:

ENGINEER:

NOTICE DATE:

To: _____
Owner

And To: _____
Contractor

From: _____
Engineer

The Engineer hereby gives notice to the above Owner and Contractor that the completed Work furnished and performed by Contractor under the above Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated _____, _____, and the terms and conditions set forth in this Notice.

By: _____

Title: _____

Dated: _____

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work ("Notice") is expressly made subject to the following terms and conditions to which all those who receive said Notice and rely thereon agree:

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the professional judgment of Engineer.
3. This Notice is given as to the best of Engineer's knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor's work) under Engineer's Agreement with Owner and under the Construction Contract referred to in this Notice, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement and Construction Contract.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract referred to in this Notice, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Contract Documents.

This is **EXHIBIT F**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services**, dated _____.

Construction Cost Limit

Paragraph 5.02 of the Agreement is supplemented to include the following agreement of the parties:

F5.02 *Designing to Construction Cost Limit*

- A. Owner and Engineer hereby agree to a Construction Cost limit in the amount of \$_____.
- B. A bidding or negotiating contingency of _____ percent will be added to any Construction Cost limit established.
- C. The acceptance by Owner at any time during Basic Services of a revised opinion of probable Construction Cost in excess of the then established Construction Cost limit will constitute a corresponding increase in the Construction Cost limit.
- D. Engineer will be permitted to determine what types and quality of materials, equipment and component systems are to be included in the Drawings and Specifications. Engineer may make reasonable adjustments in the scope, extent, and character of the Project to the extent consistent with the Project requirements and sound engineering practices, to bring the Project within the Construction Cost limit.
- E. If the Bidding or Negotiating Phase has not commenced within three months after completion of the Final Design Phase, or if industry-wide prices are changed because of unusual or unanticipated events affecting the general level of prices or times of delivery in the construction industry, the established Construction Cost limit will not be binding on Engineer. In such cases, Owner shall consent to an adjustment in the Construction Cost limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the Final Design Phase and the date on which proposals or Bids are sought.
- F. If the lowest bona fide proposal or Bid exceeds the established Construction Cost limit, Owner shall (1) give written approval to increase such Construction Cost limit, or (2) authorize negotiating or rebidding the Project within a reasonable time, or (3) cooperate in revising the Project's scope, extent, or character to the extent consistent with the Project's requirements and with sound engineering practices. In the case of (3), Engineer shall modify the Contract Documents as necessary to bring the Construction Cost within the Construction Cost Limit. Owner shall pay Engineer's cost to provide such modification services, including the costs of the services of its Consultants, all overhead expenses reasonably related thereto, and Reimbursable Expenses, but without profit to Engineer on account of such services. The providing of such services will be the limit of Engineer's responsibility in this regard and, having done so, Engineer shall be entitled to payment for services and expenses in accordance with this Agreement and will not otherwise be liable for damages attributable to the lowest bona fide proposal or bid exceeding the established Construction Cost limit.

Insurance

Paragraph 6.04 of the Agreement is supplemented to include the following agreement of the parties.

G6.04 Insurance

A. The Engineer shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Engineer from claims set forth below which may arise out of or result from the Engineer's operations under the Contract and for which the Engineer may be legally liable, whether such operations be by the Engineer, Engineer's consultants or subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

1. Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
2. Claims for damages because of bodily injury, occupational sickness or disease, or death of the Engineer's employees;
3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Engineer's employees;
4. Claims for damages insured by usual personal injury liability coverage;
5. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting there from;
6. Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
7. Claims for bodily injury or property damage arising out of completed operations;
8. Claims involving contractual liability insurance applicable to the Engineer's obligations under Paragraph 6.10.A.

The insurance required by this section shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

B. The limits for Workers' Compensation and Employer's Liability insurance shall be as follows:

1. Workers' Compensation:
 - a. State: Statutory
 - b. Applicable Federal (e.g. Longshoremen's): Statutory
2. Employer's Liability: \$500,000 per Accident
\$500,000 Disease, Policy Limit

\$500,000 Disease, Each Employee

- C. The limits for Commercial General Liability Policy, including coverage for Premises-Operations, Independent Contractors' Protective, Products-Completed Operations, Contractual Liability, Personal Injury and Broad Form Property Damage (including coverage for Explosion, Collapse and Underground hazards), shall be as follows:

\$1,050,000 Each Occurrence

\$2,100,000 General Aggregate

\$2,100,000 Personal and Advertising Injury

\$2,100,000 Products-Completed Operations Aggregate

1. The policy shall be endorsed to have the General Aggregate apply to this Project only.
2. The Contractual Liability insurance shall include coverage sufficient to meet the obligations in Paragraph 6.10.A.
3. Products Completed Operations insurance shall be maintained for a minimum period of at least one (1) year after final payment.

- D. Automobile Liability insurance (owned, non-owned and hired vehicles) for bodily injury and property damage shall be \$2,000,000 Each Accident.

- E. Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this section shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Engineer with reasonable promptness in accordance with the Engineer's information and belief.

- F. 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 Engineer shall increase the maximum limits of any insurance required herein.

- G. The Owner shall be listed on Engineer's general liability policy as provided in Paragraph 6.04.A.

- A. The limits of liability for the insurance required by Paragraph 6.04.A and 6.04.B of the Agreement are as follows:

1. By Engineer:

a. Workers' Compensation: _____ Statutory

b. Employer's Liability _____

- 1) Each Accident: _____ \$ _____
2) Disease, Policy Limit: _____ \$ _____
3) Disease, Each Employee: _____ \$ _____

~~e. General Liability~~

- 1) Each Occurrence (Bodily Injury and Property Damage): _____ \$ _____
2) General Aggregate: _____ \$ _____

~~d. Excess or Umbrella Liability~~

- 1) Each Occurrence: _____ \$ _____
2) General Aggregate: _____ \$ _____

~~e. Automobile Liability - Combined Single Limit (Bodily Injury and Property Damage):~~

Each Accident _____ \$ _____

~~f. Professional Liability~~

- 1) Each Claim Made _____ \$ _____
2) Annual Aggregate _____ \$ _____

~~g. Other (specify): _____ \$ _____~~

2. By Owner:

a. Workers' Compensation: _____ Statutory

~~b. Employer's Liability~~

- 1) Each Accident _____ \$ _____
2) Disease, Policy Limit _____ \$ _____
3) Disease, Each Employee _____ \$ _____

~~e. General Liability~~

- 1) General Aggregate: _____ \$ _____
2) Each Occurrence (Bodily Injury and Property Damage): _____ \$ _____

~~d. Excess Umbrella Liability~~

- 1) Each Occurrence: _____ \$ _____
2) General Aggregate: _____ \$ _____

~~e. Automobile Liability Combined Single Limit (Bodily Injury and Property Damage):~~

Each Accident: \$ _____

~~f. Other (specify): _____ \$ _____~~

~~B. Additional Insureds:~~

- ~~1. The following persons or entities are to be listed on Owner's general liability policies of insurance as additional insureds, and on any applicable property insurance policy as loss payees, as provided in Paragraph 6.04.B:~~

~~a. _____
Engineer~~

~~b. _____
Engineer's Consultant~~

~~c. _____
Engineer's Consultant~~

- ~~2. During the term of this Agreement the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner's general liability and property policies of insurance.~~
- ~~3. .~~

This is **EXHIBIT H**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

Dispute Resolution

Paragraph 6.08 of the Agreement is amended and supplemented to include the following agreement of the parties:

~~[NOTE TO USER: Select one of the two alternatives provided]~~

H6.08 Dispute Resolution

- A. *Mediation:* If informal discussion or negotiation is unsuccessful to resolve a dispute, Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation. ~~by [insert name of mediator, or mediation service].~~ Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) ~~the parties may mutually agree to a dispute resolution of their choice,~~ or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

[or]

- ~~A. *Arbitration:* All Disputes between Owner and Engineer shall be settled by arbitration in accordance with the [here insert the name of a specified arbitration service or organization] rules effective at the Effective Date, subject to the conditions stated below. This agreement to arbitrate and any other agreement or consent to arbitrate entered into in accordance with this Paragraph H6.08.A will be specifically enforceable under prevailing law of any court having jurisdiction.~~

- ~~1. Notice of the demand for arbitration must be filed in writing with the other party to the Agreement and with the [specified arbitration service or organization]. The demand must be made within a reasonable time after the Dispute has arisen. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such Dispute would be barred by the applicable statute of limitations.~~
- ~~2. All demands for arbitration and all answering statements thereto which include any monetary claims must contain a statement that the total sum or value in controversy as alleged by the party making such demand or answering statement is not more than \$_____ (exclusive of interest and costs). The arbitrators will not have jurisdiction, power, or authority to consider, or make findings (except in denial of their own jurisdiction) concerning any Dispute if the amount in controversy in such Dispute is more than \$_____ (exclusive of interest and costs), or to render a monetary award in response thereto against~~

~~any party which totals more than \$ _____ (exclusive of interest and costs). Disputes that are not subject to arbitration under this paragraph may be resolved in any court of competent jurisdiction.~~

- ~~3. The award rendered by the arbitrators shall be in writing, and shall include: (i) a precise breakdown of the award; and (ii) a written explanation of the award specifically citing the Agreement provisions deemed applicable and relied on in making the award.~~
- ~~4. The award rendered by the arbitrators will be consistent with the Agreement of the parties and final, and judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to appeal or modification.~~
- ~~5. If a Dispute in question between Owner and Engineer involves the work of a Contractor, Subcontractor, or consultants to the Owner or Engineer (each a "Joinable Party"), and such Joinable Party has agreed contractually or otherwise to participate in a consolidated arbitration concerning this Project, then either Owner or Engineer may join such Joinable Party as a party to the arbitration between Owner and Engineer hereunder. Nothing in this Paragraph H6.08.A.5 nor in the provision of such contract consenting to joinder shall create any claim, right, or cause of action in favor of the Joinable Party and against Owner or Engineer that does not otherwise exist.~~

This is **EXHIBIT J**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

Special Provisions

Paragraph(s) ____ of the Agreement is/are amended to include the following agreement(s) of the parties:

This is **EXHIBIT K**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

AMENDMENT TO OWNER-ENGINEER AGREEMENT

Amendment No. _____

1. *Background Data:*

- a. Effective Date of Owner-Engineer Agreement: _____
- b. Owner: _____
- c. Engineer: _____
- d. Project: _____

2. *Description of Modifications:*

[NOTE TO USER: Include the following paragraphs that are appropriate and delete those not applicable to this amendment. Refer to paragraph numbers used in the Agreement or a previous amendment for clarity with respect to the modifications to be made. Use paragraph numbers in this document for ease of reference herein and in future correspondence or amendments.]

- a. Engineer shall perform or furnish the following Additional Services:
- b. The Scope of Services currently authorized to be performed by Engineer in accordance with the Agreement and previous amendments, if any, is modified as follows:
- c. The responsibilities of Owner are modified as follows:
- d. For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional or modified compensation:
- e. The schedule for rendering services is modified as follows:
- f. Other portions of the Agreement (including previous amendments, if any) are modified as follows:

[List other Attachments, if any]

5. Agreement Summary (Reference only)

- a. Original Agreement amount: \$ _____
- b. Net change for prior amendments: \$ _____
- c. This amendment amount: \$ _____
- d. Adjusted Agreement amount: \$ _____

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is _____.

OWNER:

ENGINEER:

By: _____

By: _____

Title: _____

Title: _____

Date Signed: _____

Date Signed: _____

Daniel "Danny" Mayfield
Commissioner, District 1

Virginia Vigil
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathleen Holian
Commissioner, District 4

Elizabeth Stefanics
Commissioner, District 5

Katherine Miller
County Manager

December 21, 2012

SANTA FE COUNTY
RFP# 2013-0179-PW/PL
ENGINEERING SERVICES FOR THE OLD SF TRAIL MULTIMODAL
TRANSIT ROAD IMPROVEMENTS AND DESIGN OF WATERLINE
TLN2, OLD SF TRAIL AND EL GANCHO WAY

ADDENDUM #1

Dear Proponents,

This addendum is issued to reflect the following immediately. It shall be the responsibility of interested Offerors to adhere to any changes or revisions to the RFP as identified in this Addendum No. 1. This documentation shall become permanent and made part of the departmental files.

ATTACHMENT: PRE-PROPOSAL SIGN IN SHEET

On December 17, 2012 Santa Fe County held the pre-proposal conference for the above referenced Request for Proposals (RFP). Listed below are questions asked at the conference and received via email.

Question #1- What is the construction budget?

Answer #1- The construction budget is not available at this time.

Question #2- Does the 20 page limit only include the Response to the Evaluation Factors? Would the letter of transmittal, table of contents, proposal summary, preference certificates and campaign disclosure form be excluded from the 20 page limit?

Answer #2- Yes that is correct.

EXHIBIT

- Question #3- On page 6.C Services and Deliverables does not include the Study and Report Phase; will that be required?*
- Answer #3- A stand alone study or report is not required; the Engineer shall provide reports as necessary during the course of the work, for example a report on property acquisitions required. These may be presented in various formats, as long as they convey the required information.*
- Question #4- What is the schedule for the multimodal transit portion of the design? What is the anticipated date for the issuance of the Notice to Proceed?*
- Answer #4- The multimodal trail design must be substantially completed and billed by May 31, 2013. It is anticipated that the Notice to Proceed will be issued no later than February 15, 2013.*
- Question #5- What is the funding source for multimodal transit and the waterlines?*
- Answer #5- The multimodal trail is funded by the New Mexico Department of Transportation and the waterline is funded by General Obligation Bond funds.*
- Question #6- Does the NMDOT grant identify any specific scope?*
- Answer #6- The DOT funds may be used for the multimodal trail design. The funds may also be used for survey and property acquisition.*
- Question #7- Will a topographical survey be required?*
- Answer #7- Survey sufficient to complete the scope of work is required. The 2009 Morris survey will be provided to the selected Engineer, it shall be the Engineer's responsibility to use and/or update this survey as necessary to complete the scope of work required.*
- Question #8- Will a subsurface and/or location survey be required?*
- Answer #8- A substructure investigation shall be completed sufficient to complete the scope of work and ensure that there are no conflicts with the improvements to be constructed under the scope of work.*
- Question #9- What is the background on this project; what has caused the delay in its completion?*
- Answer #9- The DOT funds were reverted back to the State in 2008 but have been re-issued this year with the original expiration date of June 2013.*

Question #10- Is the waterline funded separately from the multimodal transit; is there a timeline for the completion of the waterline design?

Answer #10- The waterline is funded separately from the multimodal trail. Although time is of the essence in completing the waterline design, it is not subject to the May 31, 2013 completion requirement.

Question #11- Will the City be reviewing the design?

Answer #11- Yes.

Question #12- What is the total length of the project?

Answer #12- The multimodal trail is approximately 5,800 lf,

Question #13- Will 11 X 17 size pages be counted as one or two pages?

Answer #13- They will be counted as one page.

Question #14- The deadline for the multimodal transit/bicycle lanes portion of the project is May 31, 2013. The overall scope of work makes reference to the submittal of one package (plans, specifications, estimate). Because of the critical date of the bicycle lane project, are we to assume that we need to have the Utility improvements portion ready by 5/31/13 as well, to maintain one plans/specs/estimate? Or is it possible, that a separate plans submittal may be required for the Utility portion? Also, how does that affect the number of plan review? Based on the 5/31/13 deadline, and assuming the NTP can be expedited, it is possible to complete both designs concurrently.

Answer #14- For purposes of the preparing a proposal, please assume that work that is common to both portions of the project shall proceed immediately but that the plans for the multimodal trail and waterline portions of the project will be completed and processed separately. The waterline portion of the project is not subject to the May 31, 2013 completion requirement.

Question #15- In considering the RFP for the Old Santa Fe Trail, there is concern about the schedule, given the need to coordinate with the public and other agencies. If the design is delayed due to factors beyond the engineer's control, is there any possibility of extending the May 31st deadline?

Answer #15- Work to be funded by the DOT funding shall be completed by May 31, 2013.

- Question #16- Do the 5 foot bicycle lanes run along Old Santa Fe Trail from 150 south of Mountain Cloud Zen to the Old Santa Fe Trail/El Gancho Way intersection and end there or does the bike lanes extend along both sides of El Gancho Way from Old Santa Fe Trail to Old Las Vegas Highway? The scope of work is unclear.*
- Answer #16- Please note your understanding of the exact limits of the project in your proposal. The exact limits will be clarified during negotiation. Your interpretation of the exact limits of the project in your proposal will not impact the selection process.
- Question #17- If bike lanes are desired along El Gancho Way, does the County want lanes on both the north and south sides of the road, or just one path?*
- Answer #17- For purposes of preparing your proposal, please assume that bike lanes are to be on both sides of the road. This will be clarified during negotiation and will not impact the selection process.
- Question #18- With respect to the location of the bicycle lanes, are they to be immediately adjacent to the roadway (i.e. combination shoulder/bike lanes) or is there to be green space between the edge of Old Santa Fe Trail pavement (10 feet clear between road and bike lanes, for example)?*
- Answer #18- They shall be immediately adjacent to the roadway.
- Question #19- Are there any comfort/water stations along the multimodal path (will we need utilities: water, sewer, elec. for comfort stations)?*
- Answer #19- These are not anticipated at this time.

Please add this Addendum #1 to the original bid documents and refer to bid documents, hereto as such. This and all subsequent addenda will become part of any resulting contract documents and have effects as if original issued. All other unaffected sections will have their original interpretation and remain in full force and effect.

Bidders are reminded that any questions or need for clarification must be addressed to Pamela Lindstam, Senior Procurement Specialist at plindsta@santafecounty.org.

**ENGINEERING SERVICES FOR OLD SF TRAIL MULTIMODAL TRANSIT
AND DESIGN OF WATERLINE TL2N**

Pre-Bid Proposal Conference

RFP#2013-0179-PW/PL

DECEMBER 17, 2012

10:00 A.M. (MST)

NAME	ORGANIZATION	PHONE #	FAX #	EMAIL
Marla Doyle	SFC	992-6759		Phindstafai@santafeconsulting.com
Marla Doyle	SFC	986-6237		mdoyle@santafeconsulting.com
CHRY Funkhouser	MARRON	898-8848		gfunkhouser@marrovinc.com
Richard Rott	Louis Berger Group	989-7788 EXT 4093		rrotto@buisberger.com
Ivan Tewino	Louis Berger Group	989-7788		itrujillo@louisberger.com
Mary Ann McIntire	Morris Surveying Engineering	438-9100		Maryann@morrisurvey.com
RECHAP PROJECTS	RECHAP PROJECTS	438-9100		Sam@morrisurvey.com
Faith Okuma	Summings Skala	670-3586		faith@thesummings.com
Jim Buckman	Parsons Brinckerhoff	505 221-5357		brinckman@pbworld.com
Jeff Fredine	Parsons Brinckerhoff	878-6581		fredinej@pbworld.com
Donnie Duveman	Wilson & Company	348-4000		dmduveman@wilsonco.com
Donnie Duveman	Wilson & Company	948-5214		duveman@wilsonco.com
SWT W. RIVERS	SFC	992-9867		srivers@santafeconsulting.com
Rusty Tambasco	Santa Fe Engineering Consultants	982-2845		rusty@santafeengineering.com

**ENGINEERING SERVICES FOR OLD SF TRAIL, MULTIMODAL TRANSIT
AND DESIGN OF WATERLINE TL2N**

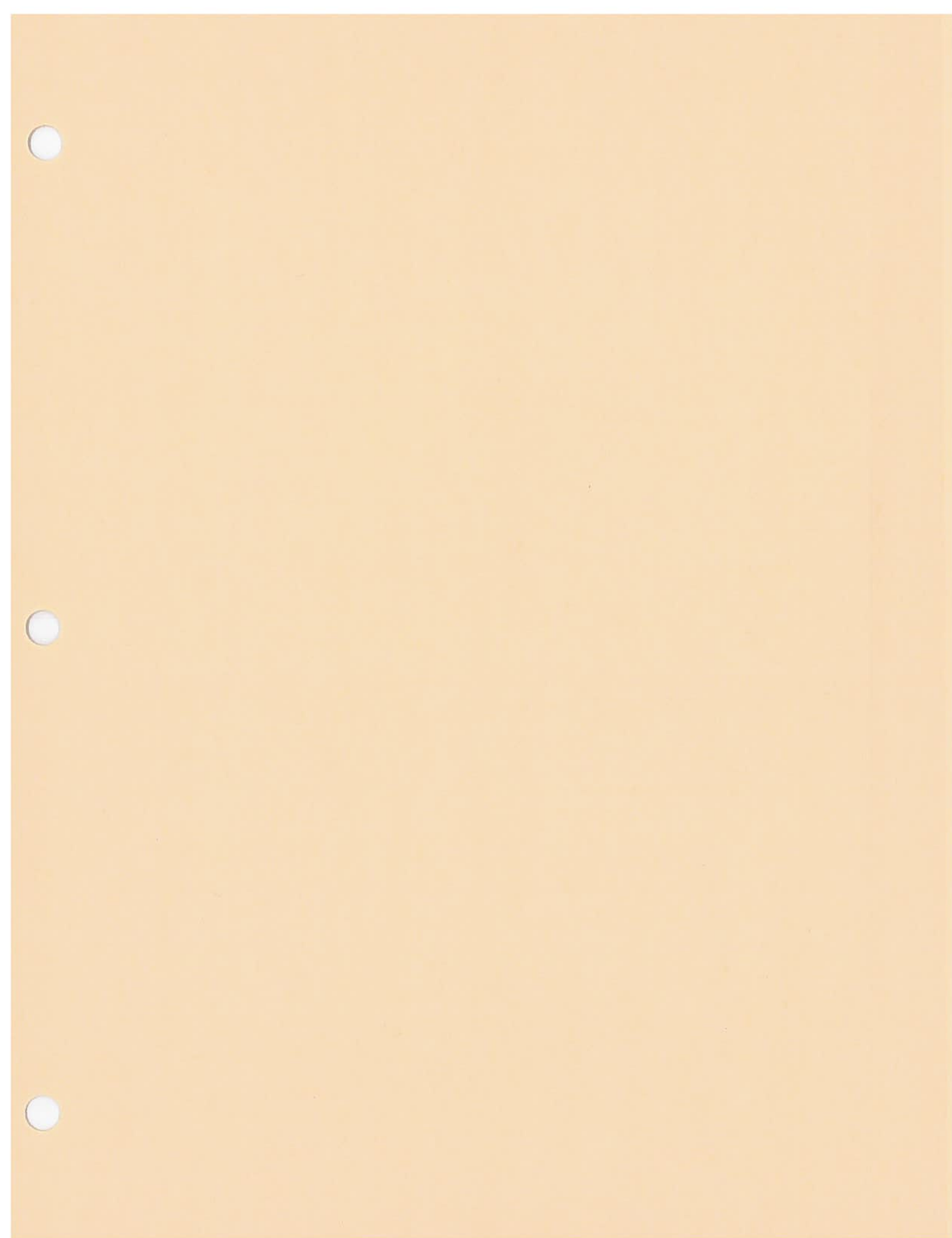
Pre-Bid Proposal Conference

RFP#2013-0179-PW/PL

DECEMBER 17, 2012

10:00 A.M. (MST)

NAME	ORGANIZATION	PHONE #	FAX #	EMAIL
JACK SULLIVAN, PE	Sullivan Design Group, Inc	(505) 982-4481	(505) 982-4483	jssantaf@earthlink.net
JOE D. SANCHEZ	Advisory Inspection & Operations Co., LLC	505-577-7870		jsanchez@aioilc.com
George Herrera	Gunnitt Flaming West	505-820-7020	820-7109	gherrera@gnfnet.com
STEVE MORROW	MOLLEN CORBIN	505-440-8470	242-0673	smorrow@mollescabin.com
Abiel Carrillo	Molten Corbin	505 242 5700	242 0673	acarrillo@mollescabin.com
JOSEPH CHIRTO	RME Surveying & Eng'g	505-474-9219	505-424-4601	joechto@rmesf.com
DANIEL MARSALEONE	SULLIVAN DESIGN GROUP, INC	(505) 982-4481	(505) 982-4483	DANIELSD@EARTHLINK.NET
Carlos Ruiz	Oceam Eng.	505-690-3019	505-275-0222	cruiz@oceam.pro
JEROME A. MAREZ	HDR Eng.	505-830-5400	505-830-5454	JEROME.MAREZ@HDRINC.COM
CHRIS RODRIGUEZ	HDR Eng.	505-830-5400	505-830-5454	CHRIS.RODRIGUEZ@HDRINC.COM



Daniel "Danny" Mayfield
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

Date: January 17, 2013

To: Santa Fe County Board of County Commissioners *for 1/24/13*

From: Adam Leigland, Public Works Director *1/23/13*
Bill Taylor, Purchasing Manager

Re: *Request Approval of Agreement #2013-0014-PW/MS Northeast and Southeast Connector Alignment and Corridor Study to Occam Consulting Engineers, Inc. in the amount of \$388,214.91, exclusive of GRT (Public Works/Adam Leigland and Purchasing/Bill Taylor)*

Issue:

The Public Works Department Road Division and Purchasing Division solicited an Invitation for Bid (IFB) #2013-0014 for *Northeast and Southeast Connector Alignment and Corridor Study* in accordance Section 13-1-120 NMSA 1978. The Public Works Department requests authorization and approval to enter into Agreement #2013-0014-PW/MS with the highest rated offeror Occam Consulting Engineers, Inc.

Background:

The Santa Fe County Purchasing Division conducted an Invitation for Bid (IFB) pursuant to 13-1-120 NMSA 1978. According to Section 13-1-104 NMSA 1978, the IFB was advertised in the Legal Section of the New Mexican and the Albuquerque Journal. Proposals were accepted from the following firms:

Occam Consulting Engineers, Inc. (Santa Fe, New Mexico)
The Louis Berger Group (Santa Fe, New Mexico)
Gannett Fleming West (Santa Fe, New Mexico)

Action Requested:

The Public Works Department requests authorization and approval to enter into Agreement #2013-0014-PW/MS with the highest rated Offeror, Occam Consulting Engineers, Inc. for the Northeast Southeast Connector Alignment and Corridor Study.

delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

ARTICLE 4 – PAYMENTS TO ENGINEER

4.01 *Methods of Payment for Services of Engineer*

A. Owner shall pay Engineer for services rendered under this Agreement as follows:

Lump Sum

1. A Lump Sum amount of Three Hundred Eighty Eight Thousand Two Hundred Fourteen dollars and Ninety One cents (\$388,214.91), exclusive of NM GRT.
2. Appropriate amounts are incorporated in the Lump Sum to account for labor, overhead, profit, Reimbursable Expenses, and Engineer's Consultants' charges, if any.
3. The portion of the Lump Sum amount billed monthly for Engineer's services will be based upon Engineer's estimate of the proportion of the total services actually completed during the billing period to the Lump Sum.

{OR}

~~Standard Hourly Rates~~

- ~~1. An amount equal to the cumulative hours charged to the Assignment by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class for all services performed on the Assignment, plus Reimbursable Expenses, estimated to be \$ _____, and Engineer's Consultants' charges, if any, estimated to be \$ _____. The total compensation under Paragraph 4.01.A.1 is estimated to be \$ _____.~~
- ~~2. Engineer's Reimbursable Expenses Schedule and Standard Hourly Rate Schedule are attached to this Agreement as Exhibits C and D, respectively. Engineer's Consultants' charges and specified Reimbursable Expenses shall be subject to an administrative factor, if so noted in Exhibit C, and the total shall be payable by Owner.~~
- ~~3. The amounts billed monthly for Engineer's services will be based on the cumulative hours charged to the Assignment during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer's Consultants' charges, if any, incurred during the billing period.~~

{OR}

Direct Labor Costs Times a Factor

1. ~~An amount equal to Engineer's Direct Labor Costs times a factor of _____ for the services of Engineer's employees engaged on the Assignment, plus Reimbursable Expenses, estimated to be \$ _____, and Engineer's Consultants' charges, if any, estimated to be \$ _____. The total compensation under Paragraph 4.01.A.1 is estimated to be \$ _____.~~
2. ~~Engineer's Reimbursable Expenses Schedule is attached to this Agreement as Exhibit C. Engineer's Consultants' charges and specified Reimbursable Expenses shall be subject to an administrative factor, if so noted in Exhibit C, and the total shall be payable by Owner.~~
3. ~~The amounts billed monthly for Engineer's services will be based on the applicable Direct Labor Costs charged to the Assignment by Engineer's employees during the billing period multiplied by the above designated Factor, plus Reimbursable Expenses and Engineer's Consultants' charges, if any, incurred during the billing period.~~
4. ~~Direct Labor Costs means salaries and wages paid to employees but does not include payroll-related costs or benefits.~~
5. ~~The Direct Labor Costs factor includes the cost of customary and statutory benefits including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation, and holiday pay applicable thereto; the cost of general and administrative overhead, which includes salaries and wages of principals and employees engaged in business operations not directly chargeable to projects, plus indirect operating costs, including but not limited to, business taxes, legal expense, rent, utilities, office supplies, insurance, and other operating costs; plus operating margin or profit.~~

[End of Compensation Options]

ARTICLE 5 – GENERAL CONSIDERATIONS

5.01 *Standard of Care*

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services.

5.02 *Insurance*

- A. Engineer will maintain insurance coverage for Workers' Compensation, General Liability, Professional Liability, and Automobile Liability and will provide certificates of insurance to Owner upon request. See B.5.26 of Exhibit B.

5.03 Indemnification and Allocation of Risk

- A. *Indemnification by Engineer.* To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, Owner's officers, directors, partners, agents, consultants, and employees from and against any and all claims, costs, losses, and damages (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project Assignment, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, partners, employees, or Consultants. The indemnification provision of the preceding sentence is subject to the limitation provisions agreed to by Owner and Engineer in this Article 5, if any.
- B. *Indemnification by Owner. Intentionally omitted.* ~~To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer, Engineer's officers, directors, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Assignment, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, partners, agents, consultants, or employees, or others retained by or under contract to the Owner with respect to this Agreement or to the Assignment.~~
- C. *Environmental Indemnification.* ~~In addition to the indemnity provided under Paragraph 5.03.B of this Agreement, and to the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other disputes resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern (as more fully defined in EJCDC Document No. E-500) at, on, or under any site owned or controlled by Owner, or any property under study, provided that (i) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property, including the loss of use resulting therefrom, and (ii) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.~~
- D. *Percentage Share of Negligence.* ~~To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.~~

- E. ~~*Mutual Waiver.*~~ To the fullest extent permitted by law, ~~Owner and Engineer waives against Owner, Owner's each other, and the other's~~ employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project Assignment.

5.04 *Limit of Liability* Intentionally omitted.

- A. ~~To the fullest extent permitted by law, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, partners, employees, agents, and Consultants, or any of them, to Owner and anyone claiming by, through, or under Owner, for any and all injuries, losses, damages and expenses whatsoever arising out of, resulting from, or in any way related to the Assignment or this Agreement from any cause or causes including but not limited to the negligence, professional errors or omissions, strict liability, or breach of contract or warranty, express or implied, of Engineer or Engineer's officers, directors, partners, employees, agents, or Consultants, or any of them, shall not exceed the total amount of \$_____.~~

5.05 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner each shall designate a specific individual as a representative with respect to the services to be performed or furnished by Engineer and the responsibilities of Owner under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Assignment on behalf of each respective party.

ARTICLE 6 – CONTENT OF AGREEMENT

6.01 *Exhibits*

The following Exhibits are incorporated herein by reference:

- A. Exhibit A, "Further Description of Services, Responsibilities, Time, and Related Matters." consisting of _____ pages.
- B. Exhibit B, "Standard Terms and Conditions," consisting of _____ pages.
- ~~[Note to User: Include one or both of the following if applicable.]~~
- C. ~~Exhibit C, "Reimbursable Expenses Schedule," consisting of _____ pages.~~
- D. ~~Exhibit D, "Standard Hourly Rates Schedule," consisting of _____ pages.~~

6.02 *Total Agreement*

- A. This Agreement together with the Exhibits identified in Paragraph 6.01 constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER: Santa Fe County

ENGINEER: Occam Consulting Engineers, Inc.

By: Kathleen S. Holian

By: Carlos O. Ruiz

Title: Chair or the Santa Fe Board of County Commissioners

Title: Vice President

Date Signed: _____

Date Signed: 1/18/2013

ATTEST:

Engineer License or Firm's Certificate No.: _____

Geraldine Salazar, County Clerk

State of: _____

Address for giving notices:

Address for giving notices:

102 Grant Avenue

Santa Fe, NM 87504-0276

Approved as to form:

Designated Representative (Paragraph 5.05):

Stephen C. Ross 1-11-13
Stephen C. Ross, Santa Fe County Attorney

Department of Finance

Teresa C. Martinez
Teresa C. Martinez, Director

Designated Representative (Paragraph 5.05):

Name: _____

Name: _____

Title: _____

Title: _____

Phone Number: _____

Phone Number: _____

Facsimile Number: _____

Facsimile Number: _____

E-Mail Address: _____

E-Mail Address: _____

SUGGESTED FORMAT
(for use with E-525, 2004 Edition)

This is **EXHIBIT A**, consisting of _____ pages, referred to in and part of the Agreement between Owner and Engineer for Study and Report Phase Professional Services, dated _____, _____.

Further Description of Services, Responsibilities, Time, and Related Matters

Specific articles of the Agreement are amended and supplemented to include the following agreement of the parties:

A.1.01 *Engineer's Services*

A. Engineer shall:

1. Consult with Owner to define and clarify Owner's requirements for the Project Assignment and available data.
2. Advise Owner as to the necessity of Owner providing data or services which are not part of Engineer's services, and assist Owner in obtaining such data and services.
3. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction relevant to the Project Assignment.
4. Identify and evaluate at least two (2) alternate solutions available to Owner and, after consultation with Owner, recommend to Owner those solutions which, in Engineer's judgment, meet Owner's requirements.
5. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and those alternate solutions available to Owner which Engineer recommends. For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a summary of allowances for other items and services included within the definition of Total Project Costs set forth in Paragraph B.5.12.D.
6. Perform or provide the following additional tasks or deliverables: ____

A. GENERAL INFORMATION AND BACKGROUND

Two previous studies conducted by the New Mexico Department of Transportation (I-25 Corridor Study) and Santa Fe County (Future Transportation Network Study of the Santa Fe Community College Region) examined the County's existing road network capacity and projected future growth within the Community College District and projected traffic conditions

in the County's urbanizing area. The study concluded that over the next ten years there will be a need to remediate congestion on NM 14 and Richards Avenue, provide improved public safety access to Eldorado and the Community College District, and reduce the heavy dependence on Richards Avenue and I-25 by providing multiple, alternative, and more direct links between City and Community College District destinations.

Based on these findings one of the priority projects recommended in the County's Sustainable Growth Management Plan is the construction of a proposed southeast connector road between Rabbit Road and East Chili Line Road in the Rancho Viejo Subdivision with the planned future construction of an east access road to the Santa Fe Community College from the proposed southeast connector.

This project would accommodate travel demand and improve the performance of the region-wide road network and substantially increase the carrying capacity for the priority growth areas within the Community College District road network by dispersing and thinning out traffic across the network's arterial and collector roadways, and reduce the travel times to and from the Community College District.

The primary purpose of this project study is to provide recommendations for construction of new facilities including:

- Need for drainage crossings,
- Need for modal improvements,
- Vertical and horizontal alignments,
- Preliminary right-of-way recommendations,
- Environmental documentation in accordance with the National Environmental Policy Act (NEPA) and potential mitigation of impacts, and
- Multi-modal system recommendations.

B. EXISTING AND PRESENT CONDITIONS

The existing corridor is an undeveloped area surrounded by numerous subdivisions and community facilities such as the Santa Fe Community College, Institute of American Indian Art Campus, Santa Fe Public Schools, churches and commercial businesses. This project would accommodate travel demands and improve the performance of the region-wide road network and substantially increase the carrying capacity for the priority growth areas within the Community College District road network by dispersing and thinning out traffic which burdens Richards Avenue.

C. STANDARDS APPLICABLE TO THE SCOPE OF WORK

All work accomplished under this contract shall be in accordance with the AASHTO "A Policy on the Geometric Design of Highway and Streets, 2011", FHWA Policy, the most recent New Mexico Department of Transportation Survey ("NMDOT") Handbook and other NMDOT manuals, standards, guidelines, standard specifications and standard procedures. This work involves the development and preparation of a Project Study Report. The Project study shall be conducted in

accordance with the latest edition of the NMDOT Location Study Procedures, A Guidebook for Alignment and Corridor Studies.

The work performed by the Engineer shall incorporate imperial units in accordance with the Guidelines for Geometric & Roadway Design and Surveying.

Receipt of any work or services submitted by the Engineer to the County or contract termination does not constitute County approval and will not relieve the Engineer of the responsibility for subsequent corrections of any errors and omissions and the clarification of any ambiguities. The Engineer shall make all necessary revisions or corrections resulting from errors and/or omissions on the part of the Engineer without additional compensation.

Santa Fe County may provide review of the Engineer's work for conformity with County procedures and contract terms only. Review by Santa Fe County does not include detailed review or checking of design components and related details or the accuracy with which such is depicted.

Although effort has been made to fully describe the Scope of Work it is anticipated that changes may be required during the course of the Project to accommodate input from the public, other agencies within the County and outside of the County. Changes to the Scope of Work that may be required to provide a complete project shall be negotiated and authorized by an amendment to the Agreement as they are identified.

All project reports, such as the Alignment Study Report, which will be used as references during the development of the Project shall be bound and labeled on the spine of the report as well as on the cover. Each report shall be bound with project identification, including control number and route location, clearly printed on the spine of the report. This is intended to ease the retrieval of information. The Roads Project Manager should be consulted before reports are bound.

D. Public Involvement

The Public Involvement Plan ("PIP") must be submitted to the Santa Fe County Roads Project Manager prior to the first public information meeting. The PIP is expected to be an evolving document and process, specific to the project phases (Phase I-A, I-B and I-C). The PIP should contain specific consideration of the potential project issues, initial identification of the various "stakeholders" and their issues of concern, techniques for communicating with them, and possible methods for addressing concerns. At the end of Phase I, the PIP will be evaluated and updated as necessary to proceed into subsequent project phases. The PIP should include: a brief project description, planning history/background information, community profile, discussion of anticipated issues, known or likely impacts (positive and negative), objectives and goals (including approaches to resolution of issues), public outreach activities, identification of need for a citizen advisory committee and how those members will be selected, agency coordination activities, coordination with elected officials & community representatives, and mailing list.

The Engineer is required to attend two (2) meetings in Phase I-A, one (1) meeting in Phase I-B and if needed one (1) meeting in Phase I-C. This level of effort typically involves several public information meetings, coordination with community stakeholders, agency coordination, and at least one public hearing. The Engineer shall be responsible for the implementation and cost of all public meeting coordination including advertisement of the meetings, arrangement and cost for

required recording equipment; news media coordination; providing and arranging for the meeting facilities; responding to agency and public comments; preparation of handouts, exhibits and displays; coordination of meetings; preparation of reports of all meetings and contacts; preparation of transcripts and summaries of public meetings; and any coordination with the general public, property owners, or agency involvement that may be required before or after the public meetings. Property owner contacts shall be conducted in the field by arranging to meet with owners at their respective parcels. An overview of the Project will be discussed and include preliminary access, drainage, and fencing issues. Also, the specifics on how the property owner's access, fencing, gates, drainage, etc., will be affected by the Project are to be discussed.

E. CONTEXT SENSITIVE SOLUTIONS/CONTEXT SENSITIVE DESIGN APPROACH AND PLAN

The County is committed to a Context Sensitive Design (CSD) approach for project development in the location study phase, which when successfully implemented will result in a Context Sensitive Solution (CSS) to the transportation need. A detailed assessment of the level of effort needed in this approach and a consequent CSD/CSS plan will be developed by the Engineer after initial public involvement takes place so that the best tools and methods can be deployed for the application. The goal of CSD/CSS is to encourage an open, interdisciplinary framework in which project teams can develop roadway designs that fully consider the aesthetic, historic, cultural, community environmental, and scenic values along with considerations of safety and mobility – the essence of CSD/CSS.

A successful CSD/CSS project includes: consultation with a full range of stakeholders, efficient use of resources, value is added to the community, integration of multi-modal needs, effective decision-making and implementation and outcomes that reflect community values and are sensitive to environmental resources. This results in project solutions that are safe and financially feasible. For background information on Context Sensitive Design, the Engineer is referred to NCHRP Report 480, "A Guide to Best Practices for Achieving Context Sensitive Solutions", Transportation Research Board (TRB), 2002. An additional reference is Flexibility in Highway Design published by the FHWA. This design guide illustrates how it is possible to make highway improvements while preserving and enhancing adjacent lands and communities. Flexibility in Highway Design urges highway designers to explore options beyond those used in "A Policy on the Geometric Design of Highways and Streets" (the AASHTO Green Book).

The Engineer is responsible for the development and approval of a CSD Plan. The CSD Plan is to be submitted within 30 days of the initial public involvement meeting and is to follow this outline:

Context Sensitive Public Involvement Plan for Location Study Projects

1. Goals of Collaboration with the Community

- a.) Provide safety for users and community
- b.) Address community and social issues
- c.) Maintain environmental harmony
- d.) Promote livability
- e.) Create lasting value for community
- f.) Use agency and community resources effectively

2. Analyses of the Project Background Context

- a.) Environmental
- b.) Historic
- c.) Land Use
- d.) Transportation
- e.) Community
- f.) Visual
- g.) Economic
- h.) Public Health
- 3. Modal Considerations and Connectivity**
 - a.) Motorized vehicles
 - b.) Transit
 - c.) Pedestrian
 - d.) Bicycle
- 4. Opportunities to Express Local Values**
 - a.) Functional classification
 - b.) Design speed
 - c.) Traffic calming
 - d.) Gateway & Place-making treatments
 - e.) Structural aesthetics
- 5. Scale the Solution to the Problem**
 - a.) Affordability
 - b.) Supported by community
 - c.) Can be implemented in a reasonable time period
- 6. The Design Approach**
 - a.) Use flexibility found in design guidelines
 - b.) Project-specific communication strategy
 - c.) Graphic of the decision-making process
 - d.) Multi-disciplinary study team
 - e.) Identification of stakeholders and public
 - f.) Summary of location context
 - g.) Identification of issues
 - h.) Consensus on purpose and need definition
 - i.) Consensus on evaluation criteria
 - j.) Alternatives development
 - k.) Investigation of environmental and cultural impacts of the alternatives
 - l.) Alternatives screening against evaluation criteria
 - m.) Preferred Alternatives
 - n.) Mitigation measures for impacts
 - o.) Document decisions
 - p.) Track and meet all commitments

The CSD Plan should also include a preliminary identification of potential stakeholders, the issues, and their significance to the project development process. This effort is ongoing throughout the project development process, with new issues added and clarification or resolution documented.

Issue	Stakeholder Group	Key People	Type of Impact	Significance of Outcome
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Issue	Stakeholder Group	Key People	Type of Impact	Significance of Outcome
Right Of Way Impact	MPO, NMDOT, SF Southern, SF Public Schools, SF Community College, SF Archdiocese, Rancho Viejo Oshara Village, Subdivisions and others	MPO, NMDOT, SF Southern, SF Public Schools, SF Community College, SF Archdiocese, Rancho Viejo Oshara Village, Subdivisions and others	Amount of Property Owners in which R-O-W May need acquiring	May affect alignment for proposed improvements.
Increased traffic, noise, light pollution and degrade scenic views	MPO, NMDOT, SF Southern, SF Public Schools, SF Community College, SF Archdiocese, Rancho Viejo Oshara Village, Subdivisions and others	MPO, NMDOT, SF Southern, SF Public Schools, SF Community College, SF Archdiocese, Rancho Viejo Oshara Village, Subdivisions and others	Noise; aesthetics/visual; light/glare; community values.	Potential for increased traffic noise, light pollution and impacts to homeowner's.
Access issues, impacts to cultural resources.	MPO, NMDOT, SF Southern, SF Public Schools, SF Community College, Rancho Viejo Oshara Village, Subdivisions SF Archdiocese, and others	Team, Cultural Resource Representatives	Access; cultural resources; community values.	May affect support for proposed improvements.
Potential drainage issues. Traffic impacts to local streets during construction.	MPO, NMDOT, SF Southern, SF Public Schools, SF Community College, SF Archdiocese, Rancho Viejo Oshara Village, Subdivisions and others	Team, MPO, NMDOT, SF Southern, SF Public Schools, SF Community College, SF Archdiocese, Rancho Viejo Oshara Village, Subdivisions and others	Drainage; safety; congestion; increased maintenance.	Local Govt. should be informed of improvements made
Access Issues Loss of access/visibility during construction.	MPO, NMDOT, SF Southern, SF Public Schools, SF Community College, SF Archdiocese Rancho Viejo Oshara Village, Subdivisions, and others	MPO, NMDOT, SF Southern, SF Public Schools, SF Community College, SF Archdiocese, Rancho Viejo Oshara Village, Subdivisions and others	Negative business impacts.	Improvements may have both temporary and permanent effect on local business.
Incorporation Of Alternate Modes of Travel,	Bicycle and Pedestrian Advocacy Groups, MPOs	Team and MPO, NMDOT, SF Southern, SF Public Schools, SF	Multi-modal Mobility	Less congestion Improved safety

Issue	Stakeholder Group	Key People	Type of Impact	Significance of Outcome
Including Transit, Bicycle, and Pedestrian.		Community College, SF Archdiocese, Rancho Viejo Oshara Village, Subdivisions and others		
Aesthetic issues	Local government planning dept	Planning representative	Quality of life	Better quality of life
Construction traffic safety, traffic design	Law enforcement	Law enforcement	Accidents, congestion	Improved safety & traffic operation

Early stakeholder involvement is of importance and can insure that all issues that may impact a project are brought forth at the earliest possible stage to resolve important issues in a timely manner. The CSD Plan shall identify the stakeholder participants and their roles in the decision-making process and outline sources and methods used to gather stakeholder comment and recommendations and submit them for review by the Project Management Team.

The Project Management Team should be identified within 30 days of the notice to proceed. The Engineer shall consult on a regular basis with the stakeholder team created by the NMDOT, the Santa Fe Community College District community and the County of Santa Fe and other important stakeholders. The Engineer shall define how stakeholders' comments and recommendations are to be transmitted to the Project Management Team and define to the participants the processes involved in developing the project purpose and need, the identification of alternatives, the screening of alternatives, the development of evaluation and rating criteria, the screening and rating of those alternatives, and other project development activities.

F. COORDINATION

The Engineer will be responsible for all coordination necessary to accomplish the work and services required by this Agreement. This responsibility shall include coordination with all property owners and federal, state, county, schools and other agencies having jurisdiction or interest in the Project. This will include obtaining approvals and/or concurrence on all work that is to be completed by the Engineer including Engineer's subcontractors and consultants.

This responsibility shall also include obtaining all initial informal (verbal) approvals. For any required formal (written) approvals, the Engineer will provide Santa Fe County with all required data and draft letters of transmittal. In the event the Engineer is not successful in obtaining informal approvals, the Engineer shall promptly notify Santa Fe County in writing, and Santa Fe County will assist in resolving the matter. In addition to the above, the Engineer shall be responsible for:

- Scheduling all study team activities,
- Making distribution of reports and documents,
- Writing study reports,
- Writing study team meeting reports,
- Performing property owner interviews and documenting the interviews, and

- Being the focal point, for the flow of all study activity, including subcontractor work.
- Providing periodic presentations to Santa Fe County Public Works management, (i.e., Public Works Director, Transportation and Solid Waste Division Director), local agencies, etc.

G. ENGINEER'S DUTIES AND RESPONSIBILITIES IN DETAIL

The Engineer shall be responsible for all studies, analysis, coordination, and all engineering necessary to complete the corridor and alignment study and report. The Engineer will have full latitude and complete responsibility for developing this Project through completion of the final report(s) and deliverables.

(1) The Engineer shall perform study and report services in three (3) phases. The services phases and services include, but are not limited to, the following:

Phase I-A: Location/ Corridor Study: Initial evaluation of at least two (2) alternatives each for the Northeast Connector and the Southeast Connector:

- Public involvement program (minimum two (2) meetings),
- Inventory of existing conditions,
- Preliminary geotechnical services and report,
- Transportation needs analysis,
- Existing environmental conditions,
- Identify all variable alternative alignments,
- Initial engineering analysis, and
- Initial evaluation of alternatives report.

Phase I-B: Detailed Evaluation of Alternatives.

- Public involvement program (minimum one (1) meeting),
- Detailed inventory of existing conditions,
- Detailed transportation needs analysis,
- Detailed existing environmental conditions,
- Identify all variable alternative alignments,
- Initial engineering analysis,
- Preliminary value engineering, and
- Detailed evaluation of alternatives report

Phase I-C: Environmental Investigations and Documentation (minimum two (2) meetings.

- Conduct environmental and cultural resource investigations,
- Prepare environmental and cultural resource documentation,
- Public involvement program, including public hearing,
- Agency coordination,
- Draft Environmental Impact Statement (DEIS),
- Final Environmental Impact Statement (FEIS), and
- Record of Decision (ROD).

(2) Phases I-A and I-B: Location surveying and mapping.

The Engineer shall provide a controlled aerial photography, computer mapping services, location survey, and digitized cross-sections. All surveying shall be performed under the direct supervision of a New Mexico Registered Professional Land Surveyor.

1) Photogrammetry.

The Engineer shall be responsible for preparing data needed to develop computer mapping described below, with photogrammetry.

2) Computer mapping.

Mapping limits should extend from the intersection of Dinosaur Trail/Richards Avenue northeast to Rabbit Road and from Rabbit Road southeast to Chili Line Road East. The eastern and western boundary for mapping should be 300 feet beyond the proposed alignment limits; computer mapping software used should be compatible with the County's mapping and design software.

3) Graphics file.

Provide a graphics file covering the complete Project. The graphics file shall contain all digital terrain modeling (DTM), break lines, planimetric, topographic, alignment data, and approximate locations of existing right-of-ways. The contour map scale should equal the horizontal scale used on the plan and profiles; elect the scales accordingly.

Contour interval should be a one-foot (1') interval. The Engineer shall extract cross-sections throughout the Project area. The major focus for cross-sections may occur at drainages, structures, and major side roads.

4) Planimetric plan and profile sheet files.

Provide plan and profile sheets ("P&P" sheets) with planimetric and topographic data at a horizontal scale of 1" = 100' and a vertical scale of 1" = 10'. Provide planimetric and topographic coverage for 300 feet left and right of each roadway on a 24" X 36" size sheet. Provide baselines for all turnouts and side roads. It may be necessary to place angle points along the baseline to define the turnouts and side roads. Along major side roads, provide P&P sheets with planimetric and topographic data on both sides of side road centerline for 500 feet.

5) Surface model files.

Provide contour maps at a scale of 1" = 100' with one foot contour intervals unless an alternate scale is recommended by the Roads Project Manager. Maps shall meet the US National Map Accuracy Standards. The County will provide the Engineer with photogrammetry information in order to complete the requirements for surface model files for Phase I.

6) Turnout & side road profile sheet files.

Provide turnout and side road profile sheets at a scale of 1" = 10' horizontal and 1" = 10' vertical for 200 feet of profile left and right of mainline centerline and 500 feet of profile for major side roads on 24" X 36" sheet for the preferred alignment.

7) Major side road cross-section files.

Provide cross-sections at 100 foot intervals for turnouts and at all breaks for at least 200 feet left and right of side road baselines for the preferred alignment.

8) Survey notes sheet file.

Provide a survey notes/control sheet file; the survey notes sheet shall be appropriately incorporated into the final plan set to be used for construction of the Project.

9) Reference Stakes

The centerline of survey or centerline of construction, as appropriate, shall be staked at 500 foot station pluses and at all PC's and PT's of curves. If the actual alignment cannot be staked or because of safety measures, the alignment may be staked on a parallel offset line.

10) Sheet boundaries or reference marks.

On all electronic files transmitted to Santa Fe County wherein P&P or other sheets are extracted, the sheet boundaries or reference marks shall be left intact and shall remain in place as invisible or phantom lines. This is done to allow the exact duplication of coordinates when extracting and printing the P&P sheets.

11) Provide preliminary property ownership layout maps. These maps may be prepared by research/investigation of County records. Maps shall be prepared at the same scale as the planimetric P&P sheets.

12) Right-of-Way recommendations and monumentation maps.

Make recommendations regarding right-of-way acquisitions that may be necessary for each proposed alternative.

13) Geotechnical Services.

The Engineer shall provide geotechnical recommendations and preliminary geotechnical reports. The preliminary geotechnical report will be submitted as part of the Alignment Study. Santa Fe County may elect that the Engineer provides geotechnical services as defined below.

a) Preliminary Geotechnical Report.

The following activities shall be conducted during Phase I-A – Initial Evaluation of Alternatives Study for the development of the preliminary geotechnical report.

b) Field Reconnaissance.

Determine the nature, range and extent of major geologic units. A field reconnaissance of the alignment options shall be performed. The following tasks should be performed:

- Geologic literature search,
- Compilation of a preliminary geologic map,
- Briefing of geologic conditions impacting the alignment study, and
- Perform initial geophysical testing (seismic refraction) if necessary.

c) Field Geologic Mapping.

Topographic base maps and aerial photographs shall be utilized along with supplemental information gathered by backhoe pits or borings to develop geologic mapping of the alignments. Critical structural units and the nature of surficial geologic contacts that may be obscure shall be identified.

d) Preliminary Geotechnical Report.

The Preliminary Geotechnical Report shall document the results of the Phase I geotechnical activities. The preliminary geologic and geotechnical study of the corridors with recommendations regarding the impacts, effects and possible mitigation measures associated with highway construction throughout the Project areas, shall be provided for use in the detailed evaluation of alternatives. Three (3) copies of this report shall be submitted to Santa Fe County in conjunction with the initial Location/Alignment Study Report.

(3) Phase I-C Environmental Documentation and Processing Phase.

To complete the environmental investigation documentation process, subsequent circulation, and public hearing, in accordance with the NMDOT Location Study Procedures, FHWA Technical Advisory T 6640.8A, 23 CFR Part 771 and other applicable guidelines and regulations.

The following are the minimum services to be provided by the Engineer:

- Environmental and cultural resource investigations (to be completed Phase I-C,
- Environmental and cultural resource documentation, including if necessary an individual 4(f) evaluation,
- Agency coordination and public involvement,
- Preparation and distribution of DEIS, including if appropriate, identification of recommended alternative,
- Public hearing(s),
- Preparation and distribution of FEIS, including identification of preferred alternative, transcript of public hearing, public and agency comments, and responses to comments, and
- ROD, including identification of a selected alternative.

This phase includes the preparation of a Draft Environmental Documentation (DED) and circulation of the document for agency and public review and comment. Review comments may result in changes to the design concept and scope of a proposed action and/or the addition of commitments to mitigate adverse impacts. Review comments, changes to the proposed action, project commitments, and information pertaining to the public and agency review process are included in the Final Environmental Documentation (FED) and Finding of No Significant Impact (FONSI). All of the above documents are submitted to NMDOT / FHWA for review and approval.

1) Environmental Document

The environmental document summarizes the environmental investigations, agency coordination, and public involvement. The effort must be commensurate with the potential for environmental impacts. It is anticipated that an Environmental Assessment (EA) will be the appropriate level of effort required. The DEA, FEA, and FONSI shall be developed using the format outlined in FHWA Technical Advisory T6640.8A, 23 CFR Part 771 and other applicable guidelines and regulations. Submittal of an environmental document to Santa Fe County, which is incomplete as determined the Roads Project Manager, will not be reviewed. Submittal of an environmental document that is considered to be complete shall be reviewed once and comments made to the Engineer. A complete environmental document shall have a comprehensive discussion of purpose and need, alternatives as appropriate, environmental investigations, assessment of impacts, and appropriate mitigation as necessary. The Engineer shall provide ten (10) hard copies and ten (10) electronic copies on CD of the approved DEA, FEA, and FONSI to Santa Fe County. The Engineer shall also produce sufficient copies of the DEA, FEA, and FONSI and mail them for appropriate public and agency review of the document.

2) FEA and FONSI

The FEA and FONSI shall be submitted to the Roads Project Manager. The FEA shall contain copies of the public involvement handouts and written comments. It shall also contain the DEA circulation list, responses to verbal and written comments and the public involvement summary and transcript, changes to the proposed action, project commitments, and information pertaining to the public and agency review process. All studies, commitments and recommendations must be summarized and finalized (cultural resources, agency permits, etc.). The FONSI shall identify the selected alternative, document the justification for the decision, and specify environmental commitments and mitigation.

3) Environmental Investigations

Note: At the determination of the County, some of the environmental and cultural resource investigations may be required during the Phase I portion of the alignment study.

The environmental investigations will include, if appropriate, surveys and analyses in the following areas:

- Biological surveys conducted by qualified biologists including a biological survey report and biological evaluation for threatened and endangered species and, if necessary, an official Biological Assessment and Evaluation for Endangered Species Act compliance regulatory agency review and approval.
- Wetland determination and delineation including, if necessary, a Wetland Delineation Report for regulatory agency review and approval; wetland mitigation plan, if appropriate.
- Clean Water Act Section 404 investigations, analysis, and permit application, if necessary.
- Section 4(f) determination and evaluation including, if necessary, an official 4(f) Determination Report for agency and FHWA review and approval including avoidance options, alternative evaluations and measures to minimize harm.
- A visual impact assessment including, if necessary, a separate Visual Impact Assessment Report for County review and approval;
- A noise analysis including, if necessary, a separate Noise Analysis Report for County review and approval.
- An air quality analysis including, if necessary, a separate Air Quality Analysis Report for Santa Fe County review and approval, and
- Other surveys, investigations, and analyses may be required as appropriate to the Project.

Environmental investigations must include analyses of all issues mandated by the National Environmental Policy Act (NEPA) as well as other state and federal environmental legislation, including Executive Orders on Wetlands, Floodplains, and Environmental Justice. The environmental investigations shall include evaluations of all appropriate alignment and typical section alternatives, including the no-build option and avoidance options. Environmental investigations will also include, as appropriate, measures to minimize harm, enhancement measures and measures to mitigate impacts.

The environmental investigations will include a cultural resources survey and preparation of a final report that meets all federal and state requirements. Four (4) copies of the final Cultural Resources Survey Report shall be submitted to Santa Fe County. A qualified archaeologist must conduct the cultural resources survey. Cultural resource investigations shall include Historic Building Inventories and Tribal Consultations, if applicable, as required by the National Historic Preservation Act, Section 106.

All environmental reports submitted to Santa Fe County are subject to County approval before investigations are accepted as complete. Based on engineering, cost, environmental and right-of-way impacts, the Engineer shall determine recommend and obtain Santa Fe County's concurrence on the preferred alternative(s) for the Northeast Connector and the Southeast Connector to be used for location approval in the environmental document and for final design.

4) Agency Coordination.

Agency coordination will include any agency with management responsibilities, all agencies with sensitive resource responsibilities and any agency that may have permit authority for Project activities. The Engineer will determine and coordinate the environmental and cultural resource impacts and mitigation measures of the alternatives examined, including the consequences of the no-build alternative. The appropriate local, county, and state agencies, the public and other interested agencies will be contacted to insure that the community and governmental concerns are identified and considered for inclusion in the design development of the project. The Engineer shall be responsible for all coordination that is required to provide a satisfactory public involvement plan and environmental document. This responsibility further includes coordination with agencies that may have jurisdiction or interest in the project, local elected officials, coordination with property owners, members of the design team and preparation and distribution of minutes of meetings and interviews.

(4) Deliverables

1) Electronic submittal of deliverables.

All survey mapping data shall be created and submitted to Santa Fe County in Auto Cad Version 10. Computer mapping performed for the Public Works Department are to be created and submitted in an Auto Cad Version 10, data format **ONLY**. All drawings shall be produced by computer, utilizing Auto Cad Version 10 Software adhering to the standards set by the County for the use of that software. All design related data files must be produced using the Auto Cad Version 10 design software products. This shall include all geometry files (.alg) and surface files (.dtm). Electronic files will only be accepted on CD-ROM. Data is not to be compressed by any software.

2) Provide one (1) hard copy (a full size & a half set) and an electronic copy of all planimetric P&P sheets, contour maps, preliminary property ownership layout maps, and turnout and side road profile sheets to Carlos Vigil, Public Works Road Projects at (505) 992-3010.

3) Provide five (5) copies of preliminary geotechnical and foundation reports to the County.

4) Provide fifteen (15) hard copies and ten (10) electronic copies on CD of the signed DEA, FEA, and FONSI to Santa Fe County, plus additional copies needed for agency review. Provide ten (10) hard copies and ten (10) electronic copies of the Draft Environmental Impact Statement (DEIS), Final Environmental Impact Statement (FEIS) and the Record of Decision (ROD) to the County.

5) Provide five (5) copies of a draft report addressing all Items within Phase I-A, I-B and I-C to be reviewed by the County and NMDOT for comment and approval. The County and NMDOT have thirty (30) days for review and comment.

- 6) Provide ten (10) copies of a concise report summarizing the major findings along with the recommendations of the initial evaluation of alternatives and the detailed evaluation of alternatives study.
- 7) Engineer's estimates: Provide a preliminary engineer's estimate for construction costs for all alternatives proposed for the Northeast Connector and the Southeast Connector.

H. OWNER'S DUTIES AND RESPONSIBILITIES

Owner shall provide:

- A. A Roads Project Manager to serve as an engineering liaison for the Project.
- B. Traffic analysis including forecasts and accident data.
- C. Review of the Alignment Study Report.
- D. Review of preliminary drainage reports.
- E. Photogrammetry Information (Phase I-A for preliminary study)
- F. Review of environmental documentation and mitigation measures.
- G. Review bridge or structural design (if required).
- H. Review geotechnical recommendations.
- I. Review of final geometry, traffic control, and permanent signing, signalization and lighting.

Owner will also provide review of the Engineer's work for conformity with Santa Fe County procedures and contract terms only. Review by the Santa Fe County Public Works Department does not include detailed review or checking of design components and related details of accuracy with which such is depicted. Public Works Department's receipt of the Engineer's work product, reports, studies, etc. does not constitute County approval.

A.2.01 Owner's Responsibilities

- A. Owner shall do the following in a timely manner, so as not to delay the services of Engineer:
 1. Provide all criteria and full information as to Owner's requirements for the Assignment, including anticipated funding sources and any project budgetary requirements.
 2. Furnish to Engineer all existing studies, reports, and other available data pertinent to the Assignment, obtain or authorize Engineer to obtain or provide additional reports and data as required, and furnish to Engineer services of others as required for the performance of Engineer's services.
- B. Engineer shall be entitled to use and rely upon all such information and services provided by Owner or others in performing Engineer's services under this Agreement.
- C. Access. Owner shall arrange for safe access to and make all provisions for Engineer and its Consultants to enter upon public and private property as required for Engineer to perform services under this Agreement.

- D. Owner shall bear all costs incident to compliance with its responsibilities pursuant to this paragraph A.2.01.

A.3.01 *Times for Rendering Services*

- A. The time period for the performance of Engineer's services shall be 12 months. with milestones established as follows:

~~_____ [State milestones]~~

- B. Furnish _____ review copies of the Report to Owner within _____ days of the Effective Dates of this Agreement and review it with Owner.
- C. ~~Revise the Report in response to Owner's and other parties' comments, as appropriate, and furnish _____ final copies of the revised Report to the Owner within _____ days after completion of reviewing it with Owner.~~
- D. Engineer's services under this Agreement will be considered complete when all deliverables set forth in Exhibit A are submitted to Owner.

A.4.01 *Construction and Project Budgets*

- A. Owner has established the following budgets: None established.

~~[Fill in any construction or project budgetary requirements of Owner, such as cost of a contemplated facility to be constructed. Fill in "none" if budgetary requirements have not been established.]~~

SUGGESTED FORMAT
(for use with E-525, 2004 Edition)

This is **EXHIBIT B**, consisting of _____ pages, referred to in
and part of the Agreement between Owner and Engineer for
Study and Report Phase Professional Services dated
_____, _____.

Standard Terms and Conditions

The Agreement is amended and supplemented to include the following agreement of the parties:

ARTICLE 4 OF THE AGREEMENT IS MODIFIED AS FOLLOWS:

*[Note to Users: Paragraph B.4.02.A below is not applicable if compensation to
Engineer is a Lump Sum.]*

B.4.02. Other Provisions Concerning Payment

A. ~~Not applicable. Estimated Compensation Amounts.~~

- ~~1. If Engineer has provided in this Agreement estimates of the amounts that will become payable, then such estimates are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.~~
- ~~2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that a compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof. Promptly thereafter Owner and Engineer shall review the matter of services remaining to be performed and compensation for such services. Owner shall either agree to such compensation exceeding said estimated amount or Owner and Engineer shall agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed the estimated amount when such services are completed.~~

B. Adjustments

1. Engineer's compensation is conditioned on time to complete the Assignment not exceeding the time identified in Exhibit A. Should the time to complete the Assignment be extended beyond this period due to reasons not the fault of and beyond the control of Engineer, the total compensation to Engineer shall be appropriately adjusted.
- ~~2. If used, the Standard Hourly Rates Schedule, Reimbursable Expenses Schedule, Direct Labor Costs and the factor applied to Direct Labor Costs will be adjusted annually (as of _____) to reflect equitable changes to the compensation payable to Engineer.~~

- C. *Reimbursable Expenses.* Reimbursable Expenses means the actual expenses incurred by Engineer or Engineer's Consultants directly in connection with the Project Assignment, including the categories and items listed in Exhibit C, and if authorized in advance by Owner, overtime work requiring higher than regular rates.
- D. *For Additional Services.* Owner shall pay Engineer for all services not included in the scope of this Agreement on the basis agreed to in writing by the parties at the time such services are authorized by Owner.
- E. *Invoices.* Invoices will be prepared in accordance with Engineer's standard invoicing practices and will be submitted to Owner by Engineer monthly, unless otherwise agreed. Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice therefore, the amounts due Engineer will be increased at the rate of 1.5~~0~~% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may, after giving thirty (30) seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges.
- F. *Owner's Acceptance.* The Engineer acknowledges and agrees that the Owner 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, the Owner shall tender payment for the accepted items or services. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payment.

ARTICLE 5 OF THE AGREEMENT IS SUPPLEMENTED AS FOLLOWS:

B.5.06 *Dispute Resolution*

- A. The parties agree to resolve disputes first by good faith informal discussion between the parties. If mutual discussions are unsuccessful in resolving a dispute, Owner and Engineer agree that they shall then first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("disputes") to mediation.
- B. If a party alleges a dispute with the other party arising out of or relating to the performance of services under this Agreement, then either party shall have the right to request mediation within 20 days after the claiming party has provided the other party with written notice describing the dispute and the claiming party's position with reference to the resolution of the dispute.
- C. Except as otherwise agreed, the parties shall select a mediator within 30 days of a written request for mediation. The mediator will endeavor to complete the mediation within 30 days thereafter. The parties will share the costs of mediation equally.
- D. No performance obligation under or related to this Agreement shall be interrupted or delayed during any mediation proceeding except upon written agreement of both parties.
- E. The mediator shall not be a witness in any legal proceedings related to this Agreement.

- F. If mediation is not successful in resolving the dispute, then the parties may resolves disputes in the State District Court, First Judicial District in Santa Fe, New Mexico. ~~exercise their rights under law.~~

B.5.07 *Termination of Contract*

Either party may at any time, upon seven days prior written notice to the other party, terminate this Agreement. Upon such termination, Owner shall pay to Engineer all amounts owing to Engineer under this Agreement, for all work performed up to the effective date of termination, plus reasonable termination costs.

B.5.08 *Environmental Condition of Site*

It is acknowledged by both parties that Engineer's scope of services does not include any services related to the presence at any site or property under study of asbestos, PCBs, petroleum, hazardous waste, radioactive materials, or other Constituents of Concern (as fully defined in EJCDC Document No. E-500). In the event Engineer or any other party encounters a Constituent of Concern at a site owned or controlled by Owner, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Assignment affected thereby until Owner: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituent of Concern; and (ii) warrants that the site or property is in full compliance with applicable laws and regulations. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), which are or may be encountered at or near any such site or property in connection with Engineer's activities under this Agreement.

B.5.09 *Patents*

Engineer shall not conduct patent searches in connection with its services under this Agreement and assumes no responsibility for any patent or copyright infringement arising therefrom. Nothing in this Agreement shall be construed as a warranty or representation that anything made, used, or sold arising out of the services performed under this Agreement will be free from infringement of patents or copyrights.

B.5.10 *Ownership and Reuse of Documents*

Except for all Deliverables consisting of reports, applications, and other documents required to be completed by Engineer and submitted to the Owner under the Engineer's Scope of Services, ~~a~~All documents prepared or furnished by Engineer pursuant to this Agreement are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and right of reuse at the discretion of Engineer). Reuse of any such documents by Owner for purposes other than those included in the Assignment shall be at Owner's sole risk.; ~~and Owner agrees to indemnify and hold Engineer harmless from all claims, damages, and expenses, including attorney's fees, arising out of such reuse of documents by Owner or by others acting through Owner.~~

B.5.11 *Use of Electronic Media*

- A. Copies of Documents that may be relied upon by Owner are limited to the printed copies (also known as hard copies) that are signed or sealed by the Engineer. Files in electronic media

format of text, data, graphics, or of other types that are furnished by one party to the other are only for convenience of the recipient. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

- B. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the document creator at the beginning of this Assignment.
- C. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- D. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transfer errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. Engineer shall not be responsible to maintain documents stored in electronic media format after acceptance by Owner.

B.5.12 *Opinions of Probable Costs*

- A. Construction Cost is the cost to Owner to construct the Owner's Project ~~proposed facilities~~. Construction Cost does not include costs of services of Engineer or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or Owner's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with Owner's contemplated project, or the cost of other services to be provided by others to Owner pursuant to this Agreement. Construction Cost is one of the items comprising Total Project Costs.
- B. Engineer's opinions of probable Construction Cost provided for herein are to be made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional generally familiar with the industry. However, since Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over the contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner wishes greater assurance as to probable Construction Cost, Owner shall employ an independent cost estimator.
- C. The services, if any, of Engineer with respect to Total Project Costs, as defined below, shall be limited to assisting the Owner in collating the various cost categories which comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.
- D. Definition of Total Project Costs – The sum of the Construction Cost, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner's costs for legal, accounting, insurance counseling and auditing services, interest and

financing charges incurred in connection with the project, and the cost of other services to be provided by others to Owner.

B.5.13 *Force Majeure*

Engineer shall not be liable for any loss or damage due to failure or delay in rendering any service called for under this Agreement resulting from any cause beyond Engineer's reasonable control.

B.5.14 *Assignment*

Neither party shall assign its rights, interests, or obligations under this Agreement without the express written consent of the other party.

B.5.15 *Independent Contractor*

All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either Owner or Engineer. Engineer's services under this Agreement are being performed solely for Owner's benefit, and no other entity shall have any claim against Engineer because of this Agreement or the performance or nonperformance of services hereunder. Owner agrees to include a provision in all contracts with contractors and other entities involved in this project to carry out the intent of this paragraph.

B.5.16 *Binding Effect*

This Agreement shall bind, and the benefits thereof shall inure to the respective parties thereto, their legal representatives, executors, administrators, successors, and assigns.

B.5.17 *Severability and Waiver of Provisions*

Any provision or part of the Agreement held to be void or unenforceable under any laws or regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

B.5.18 *Survival*

All express representations, indemnifications, or limitations of liability included in this Agreement will survive its completion or termination for any reason.

B.5.19 *Controlling Law*

This Agreement is to be governed by the laws of the State of New Mexico. ~~state in which the Engineer's principal office is located.~~ 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 Engineer

and the Owner 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.

B.5.20 *Notices*

Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail, or by a commercial courier service. All notices shall be effective upon the date of receipt.

✓ B.5.21 *Records.* 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 Engineer 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").

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 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 this Agreement and for a period of six (6) 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.

✓ B.5.22 *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 Owner to the Engineer. Such termination shall be without penalty to the Owner, and the Owner shall have no duty to reimburse the Engineer for expenditures made in the performance of this Agreement. The Owner is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the Owner. The Owner'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 any way or forum, including a lawsuit.

B.5.23 *Release.* Upon its receipt of all payments due under this Agreement, the Engineer releases the Owner, its elected officials, officers, agents and employees from all liabilities, claims, and obligations whatsoever arising from or under or relating to this Agreement.

B.5.24. *Conflict of Interest.* The Engineer 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.

B.5.25. 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.

B.5.26. 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.

B.5.26. Insurance.

- A. General Conditions. The 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. The Engineer 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 Owner by the 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. The County of Santa Fe shall be named as an additional insured on the policy.
- C. Workers' Compensation Insurance. The Engineer 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 Engineer shall increase the maximum limits of any insurance required herein.

B.5.27. Survival. The provisions of following paragraphs shall survive termination of this Agreement: Indemnity, Records, Release, Governing Law, New Mexico Tort Claims Act, Insurance, and Survival.

B.5.28. Conflict of Interest in Suit. The Engineer shall notify the Owner immediately of any demand, suit, or cause of action brought against or involving the Engineer that also involves or pertains to any matters relating to the Owner. If a conflict exists between the interests of the Owner and the Engineer in such demand, suit, or cause of action, or if it is evident at the onset of the defense or litigation that the Engineer objects to the Owner's participation in the Engineer's defense, the Owner may retain its own counsel to represent and defend the Owner's interest.

B.5.29 Amendments. 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 Engineer specifically acknowledges and agrees that the Owner shall not be responsible for any changes to the Scope of Services in this Agreement including Exhibit A of this Agreement unless such changes are set forth in a duly executed written amendment to this Agreement.

B.5.30 Owner's Limitation of Liability. The Owner's liability to the Engineer for any breach of this Agreement by the Owner shall be limited to direct damages and shall not exceed the maximum amount of potential compensation specified in Exhibit C of this Agreement. In no event shall the Owner be liable to the Engineer for special or consequential damages, even if the Owner was advised of the possibility of such damages prior to entering into this Agreement.

