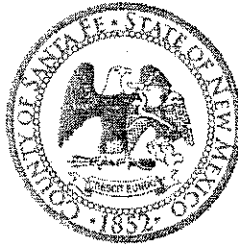


Henry P. Roybal
Commissioner, District 1

Anna Hansen
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Anna T. Hamilton
Commissioner, District 4


Ed Moreno
Commissioner, District 5

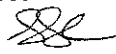
Katherine Miller
County Manager

MEMORANDUM

DATE: *March 5, 2018*

TO: *Board of County Commissioners*

FROM: *Bill Taylor, Procurement Manager* 

VIA: *Katherine Miller, County Manager*
Michael K. Kelley, Public Works Director
Stephanie S. Clarke, Finance Director 

ITEM AND ISSUE: BCC Meeting March 13, 2018

Approval of Multiple Source Award, Multiple Year Contracts Nos. 2018-0058-A-PW/MAM, and 2018-0058-B-PW/MAM to Provide On-Call Material Testing, Sampling and Inspection Services for Existing County Road Improvements and Maintenance Projects; Granting Signature Authority to the County Manager to Sign the Purchase Orders. (Bill Taylor, Purchasing Division)

Issue:

Santa Fe County Purchasing Division on behalf of the Public Works Department issued a Request for Proposals (RFP) No. 2018-0058-PW/MAM to request qualifications and price for on-call material, sampling and inspection services for various road construction and maintenance projects.

It is the intent of the County to establish a multiple source award contracts pursuant to Section 13-1-153 NMSA 1978, for the required services to meet the County's responsibility for maintenance of road infrastructure within the exterior boundaries of Santa Fe County.

Section 13-1-154.1 B., NMSA 1978 establishes the indefinite quantity contracts pursuant to a price agreement for multiple projects under a single request for proposals. The services will be provided at pre-determined hourly rate for services at \$81.00 per hour and at \$87.00 per hour that was published in the RFP and for an indefinite number of road projects that will be identified on an as-needed basis.

The RFP was issued on December 31, 2017 and Proposals were received on January 30, 2018. Three Proposals were received by the following Offerors:

No. 2018-0058-A-PW/MAM Bohannon Huston
No. 2018-0058-B-PW/MAM Horrocks Engineering
Santa Fe Engineering

Albuquerque, NM
Albuquerque, NM
Santa Fe, NM

The County Purchasing Division is requesting contract award to Bohannon Huston and Horrocks Engineering.

BACKGROUND:

The purpose of these services are to enable County projects staff to work directly with the Engineering firms on what exactly is needed for testing and construction observation during road projects. The price agreement would be used for future road construction projects. The agreement will also help assure the quality of road construction projects. Materials testing and construction observation in 2017 accounted for \$75,000. It is estimated that construction observation and materials testing in 2018 will account for \$255,000.00.

ACTION REQUESTED:

Santa Fe County Purchasing Division, on behalf of the Santa Fe County Public Works Department requests the Board of County Commission approve multiple source, multiple year Agreement Nos. 2018-0058-A & B-PW/MAM to provide on-call material testing, sampling and inspection services for existing county road improvements and maintenance projects and granting signature authority to the County Manager to sign the purchase orders.

**PROFESSIONAL SERVICE AGREEMENT
BETWEEN SANTA FE COUNTY AND
BOHANNAN HOUSTON
FOR MATERIAL TESTING AND INSPECTION SERVICES**

THIS AGREEMENT is made and entered into this _____ day of _____ 2018, by and between **Santa Fe COUNTY**, hereinafter referred to as the "County" and **BOHANNAN HUSTON** whose principal address is **7500 Jefferson Street NE, Albuquerque, NM 87109** hereinafter referred to as the "Contractor".

WHEREAS, the County has identified a need for on-call material testing and inspection services to be provided as an indefinite quantity on an as-needed basis for a variety of projects throughout the County as funding becomes available and as specific needs are identified; and

WHEREAS, pursuant to NMSA 1978, Sections 13-1-112 and 13-1-117, competitive sealed proposals were solicited through Request for Proposals No. 2018-0058-PW/MAM, for "On-Call" Material Testing and Inspection Services; and

WHEREAS, the County Procurement Manager determined that a multiple source award would be in the best interest of the County pursuant to NMSA 1978, 13-1-153 and 13-1-154 ((Multiple Source Award); and

WHEREAS, the Contractor clearly demonstrated its ability and qualifications to perform the required services; and

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

NOW, THEREFORE, it is agreed between the parties:

1. SCOPE OF WORK

The Contractor shall provide, without limitation, the following material testing and inspection services.

- A. Contractor shall comply with all federal, state and local laws and ordinances applicable to this work, including the Civil Rights Act. The materials tester will follow all NMDOT minimum testing requirement specifications and Santa Fe County specifications.
- B. The County reserves the right to request a 1 hour response time for field testing services. The County's request will be between the hours of 7:00 am through 5:00 pm, seven days a week.
- C. Testing technicians will be on site and ready to perform the test at the time scheduled and will not be required to "stand by" longer than required. The County reserves the

right to call another testing contractor to provide a requested services if the technician is not at the site within 15 minutes of the scheduled time.

D. All tests conducted in the lab shall be completed by technicians who are certified in accordance with the requirements listed below. Copies of all pertinent testing certifications shall be provided for each testing lab technician or field technician.

1. Sampling and Testing Technicians/Inspectors – At a minimum, shall meet and perform the following:

- a. Sampling and Testing Technician must be familiar with and able to comply with the NMDOT's minimum testing guidelines. Technicians/Inspectors; field testing concrete must be American Concrete Institute (ACI) or New Mexico Technician Training and Certification Program (TTCP) certified, Lab testing concrete must be New Mexico TTCP certified. Sampling and/or testing soils, aggregates, Hot-Mix-Asphalt (HMA)/Warm Mix Asphalt (WMA) and nuclear moisture-density gauge must be certified through New Mexico TTCP.
- b. Technicians/Inspectors must use and complete County accepted NMDOT forms for all activities related to sampling and testing for County road construction projects.
- c. Contractor will:
 - Take field samples and density for soils, backfill, subgrade preparation, base course, and HMA/WMA.
 - Perform concrete sampling and testing and inspect miscellaneous construction items.
 - Run tests for slumps, air voids, unit weight and make cylinders.
 - Perform the following American Association State Highway Transportation Official (AASHTO) test procedures or as modified by the County when necessary:
 - a. T-168 Sampling Bituminous Paving Mixtures
 - b. T-310 Nuclear Moisture Density Testing
 - c. T-248 Reducing Field Samples of Aggregates to Testing
 - Generate computerized project data files, computerized change order lists, item lists and audits list.
 - Field Laboratory Technicians – the Materials Testing Agency shall be responsible for performing tests in an accredited testing laboratory. At a minimum tests shall meet and perform the following Field Laboratory Technicians must be experienced in and able to apply the NMDOT's minimum testing guidelines and test procedures, including but not limited to, soils and asphalt field laboratories, field Laboratory Technicians performing testing for acceptance (including process control tests used for acceptance as set forth in Section 106.16 @ of the New Mexico Department

of Transportation Standard Specification for Highway and Bridge Construction) must be certified by the ACNM/NMDOT New Mexico 10 Technician Training and Certification Program in soils, aggregates, concrete, HMA/WMA.

- Run the required sieve analysis on all construction materials.
- Run proctors on all embankment material, run proctors for all base course, and run binder ignition over extractions, fractured face, liquid limit, sand equivalent, and gyratory compactor for HMA/WMA.
- Ensure that all samples are taken for lab acceptance tests and submit results to the Project Manager within 24 hours after the test is completed. Tests shall be performed the day the material is placed.
- Complete a Field Source book showing quantities and all applicable information.
- Prepare and complete the appropriate County accepted forms related to these activities.
- Perform the following AASHTO test procedures or as modified by the County when necessary:
 - T-2 Sampling of Aggregate
 - T-11 Materials finer than No. 200 Sieve in Mineral Aggregates, by Washing
 - T-27 Sieve Analysis of Fine and Course Aggregate
 - T-30 Mechanical Analysis of Extracted Aggregate
 - T-89 Determining the Liquid Limit of Soils
 - T-90 Determining the Plastic Limit and Plasticity index of Soils
 - T-99 moisture Density Relations of Soils (5.5 lb. Hammer)
 - T- 224 Correction for Coarse Particles in the Soil Compaction Test
 - T-168 Sampling Bituminous Paving Mixtures
 - T-180 Moisture Density Relations of Soil (10 lb. Hammer)
 - T-310 Nuclear Moisture Testing T-248 Reducing Field Samples of Aggregate to Testing Size
 - T-255 total Moisture Content of Aggregate by Drying

e. Inspector – at a minimum, shall meet and perform the following:

- Conduct construction inspections and monitor contract work for compliance with plans, specifications and contract documents.
- Establish and maintain documentation and report requirements based on construction plans and specifications.
- Recommend design improvements for guardrail installation, culverts and lightning.
- Interpret plans, specifications and contract documents to ensure compliance.
- Coordinate with the Contractor and the County to identify and resolve inspection issues.

- Maintain public relations with the general public.
 - Ensure inspection compliance with safety rules and regulations.
 - Determine final pay quantities, prepare change orders, compose letters, prepare explanations for overruns and underruns, prepare comparison/summary reports, prepare a revised structure list and research project documentations.
 - Develop computerized project data files and refine project computer forms.
- f. Inspector (Materials Field) – at a minimum, shall meet and perform the following:
- The Materials field Inspector must have experience in bulk densities, yield calculations, proctors, percent moisture, and the use of a surfacing schedule.
 - Observe the placement of surfacing materials, collect and sign tickets, continuously calculate the placement yield throughout the day, keep a daily yield book showing the overall tonnage run of the various materials for the project, and inspect any miscellaneous items as directed by the County Project Manager.
- g. Inspector (Traffic Control) – at a minimum, shall meet and perform the following:
The Traffic Control Inspector must be ATSA or ACNM certified.
Provide traffic control inspection in strict compliance with the Manual on Uniform Traffic Control Devices (MUTCD). Including the installation and inspection of all traffic control devices on the project.
2. All failing test must be reported immediately to the County Project Manager in charge of the project inspections. Test reports must be delivered in a timely manner.
3. Requesting and scheduling of Contractor's services.
- a. The County shall issue a request for services identifying the type of assignment (short-term or long-term), the classifications needed, the number of personnel required, location of assignment, the anticipated duration of the assignment, required certification and equipment necessary to accomplish the tasks. Upon receiving the County's request, the Contractor shall have 48 hours to furnish resumes of qualified personnel to the County. Failure by the Contractor to meet the specified timeline shall be deemed non-responsive and the County may secure the needed services from a different contractor or vendor.
 - b. The County may issue a request to Contractor for a special request assignment identifying the classification(s) needed, the number of

personnel required, location of assignment, the anticipated duration of the assignment, required certification and equipment necessary to accomplish the tasks. Upon receiving the County's request, the Contractor firm shall have 48 hours in which to have the specials request assignment personnel report for the duty. Failure by the Contractor to meet the specified timeline shall be deemed non-responsive and the County may secure the needed services from a different contractor or vendor.

- c. If the County requests that any of Contractor's personnel be removed and replaced, the Contractor shall provide resumes for new personnel within 24 hours of receiving notice from the County. Contractor shall have a qualified replacement personnel acceptable to the County at the project site within 24 hours. Failure by the Contractor to meet the specified timelines shall be deemed non-responsive and the County may secure the needed services from a different contractor or vendor. , at which point the process returns to the 48 hours as identified in Paragraph 3a. above. As it may be necessary to keep the person to be replaced at the job site until the replacement arrives, the County Project Manager will make the determination as to the exact time of removal.
 - d. If the County requests that personnel be placed on return assignment and the Contractor agrees, upon notice from the County the Contractor shall return personnel to the project within 24 hours.
 - e. The County shall determine when, where, and how long Contractor's personnel are needed. The County Project Manager will determine the activities and the working hours of the personnel, working hours per day and number of days may vary for each project as determined by the Project Manager. The working hours may include hours between 7:00 am to 5:00 pm, 7 days a week.
4. Vehicles, Equipment and Other Materials
- a. Contractor shall provide the sufficient number of trucks and other vehicles necessary for Contractor's personnel to perform assigned duties. Vehicles must come equipped with amber strobe beacon, a nuclear Densometer transportation box, warning placards, and the name and logo of the Contractor clearly displayed on each side of the vehicle.
 - b. Contractor shall supply all hand held calculators, safety equipment, Nuclear Densometers, Nuclear Radiation Monitoring Badges, concrete testing equipment including wheel barrels, shovels, air meters, slump cones, thermometers for asphalt concrete, thermometers, safety vests and any other equipment required to perform assigned work.

c. The Contractor shall ensure that their personnel have sufficient laptop computers for project data and reporting purposes. Laptop computers shall meet the following minimum requirements:

- OS: Windows 7 Pro 64 bit
- Screen: 15.5-inch Diagonal LED-Backlit FHD SVA
- Processor: Intel 5-431M, 2.7 GHz W/vPro
- RAM: 12GB
- Video: Intel HD Graphics 4600-Ram Unified Memory Architecture, 1 VGA, 1DP, 2560x1440 Max Resolution
- Wireless: Intel Proset Wireless Cisco compatibility
- Optical Drive: DVD Multi-burner
- Ports: No Modem

These minimum requirements are the current minimum requirements. If the County's minimum requirements change during the term of this Agreement, they will be provided to the Contractor in writing and the new requirements will be required for all laptops being utilized by augmentation personnel. This requirement will be at no additional charge to the County.

5. The County will require calibrated nuclear moisture-density gauges, computers and cell phones for field personnel. The cost for this equipment and current calibration will be included to the hourly rates paid to the Contractor. All other equipment necessary to perform assigned tasks shall also be included in the hourly rates to be paid to the Contractor for all field personnel. The Contractor must provide proper nuclear moisture-density gauge storage and this will be included in the hourly rates paid to the Contractor.

6. None of Contractor's personnel shall be allowed to work without the proper safety equipment or a valid driver's license. The County will notify the Contractor at the time of request of any special safety training that will be required and any applicable safety training that will be required. The cost for the applicable safety training (i.e. fall protection, confined spaces, etc.) is the responsibility of the Contractor. The County may allow personnel to work if the training has been scheduled and at the discretion of the supervising manager for the County.

2. ADDITIONAL SERVICES

A. The parties agree that all tasks set forth in Section 1 (Scope of Work) of this Agreement shall be completed in full, to the satisfaction of the County, in accordance with professional standards and for the amount set forth in Section 4 (Compensation, Invoicing and Set-Off), of this Agreement, and for no other cost, amount, fee or expense.

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

C. The Contractor shall provide and charge only for those services requested by the County. No services may be contracted except as agreed upon in advance by the parties to this Agreement.

D. Upon execution of this Agreement, the Contractor shall commence work at the County's request and services shall conform to the description of services as set forth herein.

3. COMPENSATION, INVOICING AND SET-OFF

A. In consideration of its obligations under this Agreement the County shall compensate the Contractor based on the rates and costs set forth below:

1. The Contractor agrees to perform billable work at the following hourly rates.

POSITION	HOURLY RATE	OT RATES
SAMPLING AND TESTING TECHNICIANS/INSPECTORS**	\$77.00	\$87.00
FIELD LABORATORY TECHNICIAN*	\$70.50	\$87.00
INSPECTOR, MATERIALS FIELD INSPECTOR AND TRAFFIC CONTROL INSPECTOR**	\$81.00	\$91.00

*rates indicated for these personnel include vehicle, cell phone and computer.

**Rates indicated for these personnel include vehicle, cell phone, nuclear densometer and computer.

Contractor shall ensure that all completed forms from a specific day are accessible to the County's Project Manager at the start of the next working day.

B. The Contractor shall submit a written request for payment to the County when payment is due under this Agreement. Upon the County's receipt of the written request, the County shall issue a written certification of complete or partial acceptance or rejection of the contractual items or services for which payment is sought.

- 1) The County's representative for certification of acceptance or rejection of contractual items and services shall be **Steven Justin Reese, Public Works/Projects Department** (505) 992-6271 or such other individual as may be designated in the absence of the office representative.
- 2) The Contractor acknowledges and agrees that the County may not make any payment hereunder unless and until it has issued a written certification accepting the contractual services or deliverables.

- 3) Within 30 days of the issuance of a written certification accepting the services or deliverables, the County shall tender payment for the accepted items or services. In the event the County fails to tender payment within 30 days of the written certification accepting the items or services, the County shall pay late payment charges of 1.5% per month, until the amount due is paid in full.

C. In the event the Contractor breaches this Agreement, the County may, without penalty, withhold any payments due the Contractor for the purpose of set-off until such time as the County determines the exact amount of damages it suffered as a result of the breach.

D. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payment.

4. EFFECTIVE DATE AND TERM

This Agreement shall, upon due execution by all parties, become effective as of the date last written above and shall terminate four years later, unless earlier terminated pursuant to Section 5 (Termination) or Section 6 (Appropriations and Authorizations). In no event shall the term of this Agreement exceed four years in total.

5. TERMINATION

A. Termination of Agreement for Cause. Either party may terminate the Agreement based upon any material breach of this Agreement by the other party. The non-breaching party shall give the breaching party written notice of termination specifying the grounds for the termination. The termination shall be effective 30 days from the breaching party's receipt of the notice of termination, during which time the breaching party shall have the right to cure the breach. If, however, the breach cannot with due diligence be cured within 30 days, the breaching party shall have a reasonable time to cure the breach, provided that, within 30 days of its receipt of the written notice of termination, the breaching party began to cure the breach and advised the non-breaching party in writing that it intended to cure.

B. Termination for Convenience of the County. The County may, in its discretion, terminate this Agreement at any time for any reason by giving the Contractor written notice of termination. The notice shall specify the effective date of termination, which shall not be less than 15 days from the Contractor's receipt of the notice. The County shall pay the Contractor for acceptable work, determined in accordance with the specifications and standards set forth in this Agreement, performed before the effective date of termination but shall not be liable for any work performed after the effective date of termination.

6. APPROPRIATIONS AND AUTHORIZATIONS

This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Board of County Commissioners of the County and/or, if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Agreement shall terminate upon written notice by the County to the Contractor. Such termination shall be without penalty to the

County, and the County shall have no duty to reimburse the Contractor for expenditures made in the performance of this Agreement. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. The County's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by the Contractor in any way or forum, including a lawsuit.

7. INDEPENDENT CONTRACTOR

The Contractor and its agents and employees are independent contractors and are not employees or agents of the County. Accordingly, the Contractor and its agents and employees shall not accrue leave, participate in retirement plans, insurance plans, or liability bonding, use County vehicles, or participate in any other benefits afforded to employees of the County. Except as may be expressly authorized elsewhere in this Agreement, the Contractor has no authority to bind, represent, or otherwise act on behalf of the County and agrees not to purport to do so.

8. ASSIGNMENT

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the advance written approval of the County. Any attempted assignment or transfer without the County's advance written approval shall be null and void and without any legal effect.

9. SUBCONTRACTING

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

10. PERSONNEL

A. All work performed under this Agreement shall be performed by the Contractor or under its supervision.

B. The Contractor represents that it has, or will secure at its own expense, all personnel required to discharge its obligations under this Agreement. Such personnel (i) shall not be employees of or have any contractual relationships with the County and (ii) shall be fully qualified and licensed or otherwise authorized or permitted under federal, state, and local law to perform such work.

11. RELEASE

Upon its receipt of all payments due under this Agreement, the Contractor releases the County, its elected officials, officers, agents and employees from all liabilities, claims, and obligations whatsoever arising from or under or relating to this Agreement.

12. CONFIDENTIALITY

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

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

A. The County has the unrestricted right to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other material prepared under or pursuant to this Agreement.

B. The Contractor acknowledges and agrees that any material produced in whole or in part under or pursuant to this Agreement is a work made for hire. Accordingly, to the extent that any such material is copyrightable in the United States or in any other country, the County shall own any such copyright.

14. CONFLICT OF INTEREST

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

15. NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED

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

16. ENTIRE AGREEMENT; INTEGRATION

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this written Agreement. No prior or contemporaneous agreement, covenant or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

17. NOTICE OF PENALTIES

The Procurement Code, NMSA 1978, Sections 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.

18. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

A. The Contractor agrees to abide by all federal, state, and local laws, ordinances, and rules and regulations pertaining to equal employment opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, the Contractor specifically agrees not to discriminate against any person with regard to employment with the Contractor or participation in any program or activity offered pursuant to this Agreement on the grounds of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation, or gender identity.

B. The Contractor acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Agreement.

19. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW

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

B. Contractor shall comply with the requirements of Santa Fe County Ordinance 2014-1 (Establishing a Living Wage).

C. This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules. Contractor and the County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be state district courts of New Mexico, located in Santa Fe County.

20. RECORDS AND INSPECTIONS

A. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to the County as part of the procurement process, the Contractor agrees to (i) maintain such books and records during the term of this Agreement and for a period of six years from the date of final payment under this Agreement; (ii) allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with generally accepted accounting principles (GAAP).

B. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to County as part of the procurement process, the Contractor also agrees to require any subcontractor it may hire to perform its obligations under this Agreement to (i) maintain such books and records during the term of this Agreement and for a period of six years from the date of final payment under the subcontract; (ii) to allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with GAAP.

21. INDEMNIFICATION

A. The Contractor shall defend, indemnify, and hold harmless the County and its elected officials, agents, and employees from any losses, liabilities, damages, demands, suits, causes of action, judgments, costs or expenses (including but not limited to court costs and attorneys' fees) resulting from or directly or indirectly arising out of the Contractor's performance or non-performance of its obligations under this Agreement, including but not limited to the Contractor's breach of any representation or warranty made herein.

B. The Contractor agrees that the County shall have the right to control and participate in the defense of any such demand, suit, or cause of action concerning matters that relate to the County and that such suit will not be settled without the County's consent, such consent not to be unreasonably withheld. If a conflict exists between the interests of the County and the Contractor in such demand, suit, or cause of action, the County may retain its own counsel to represent the County's interest.

C. The Contractor's obligations under this section shall not be limited by the provisions of any insurance policy the Contractor is required to maintain under this Agreement.

22. SEVERABILITY

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

23. NOTICES

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the County: **Santa Fe County Public Works/Projects**
 Attn: Steven Justin Reese, Project Manager III
 102 Grant Avenue
 PO Box 276
 Santa Fe, NM 87504-0276

To the Contractor: **BOHANNAN HUSTON**
 Attn: Matt Santistevan, PE
 9500 Jefferson Street NE
 Albuquerque, NM 87109

24. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

The Contractor hereby represents and warrants that:

A. This Agreement has been duly authorized by the Contractor, the person executing this Agreement has authority to do so, and, once executed by the Contractor, this Agreement shall constitute a binding obligation of the Contractor.

B. This Agreement and Contractor's obligations hereunder do not conflict with Contractor's corporate agreement or any statement filed with the New Mexico Secretary of State on Contractor's behalf.

C. Contractor is legally registered and is properly licensed by the New Mexico State to do the work anticipated by this Agreement and shall maintain such registration and licensure in good standing throughout the duration of the Agreement.

25. NO THIRD-PARTY BENEFICIARIES

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

26. INSURANCE

A. General Conditions. The Contractor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.

B. General Liability Insurance, Including Automobile. The Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,000,000.00 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the County by the Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Agreement is an insured contract. The County of Santa Fe shall be a named additional insured on the policy.

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

D. Professional Liability Insurance. The Contractor shall procure and maintain during the life of this Agreement a Professional Liability Insurance.

E. Increased Limits. If, during the life of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended), the Contractor shall increase the maximum limits of any insurance required herein.

27. PERMITS, FEES, AND LICENSES

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

28. NEW MEXICO TORT CLAIMS ACT

No provision of this Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by County or its "public employees" at common law or under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

29. CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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

30. FACSIMILE SIGNATURES

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

31. SURVIVAL

The provisions of following paragraphs shall survive termination of this Contract; INDEMNIFICATION; RECORDS AND INSPECTION; RELEASE, CONFIDENTIALITY, PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT; COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW; NO THIRD-PARTY BENEFICIARIES; SURVIVAL.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of last signature by the parties below.

SANTA FE COUNTY

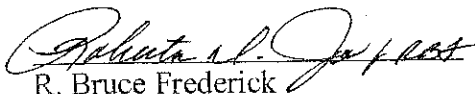
Anna Hansen, Chair
Board of County Commissioners of Santa Fe County

ATTESTATION:

Geraldine Salazar
Santa Fe County Clerk

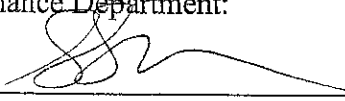
Date

Approved as to form:


R. Bruce Frederick
Santa Fe County Attorney

3/1/18
Date

Finance Department:


Stephanie Schardin Clarke
Finance Director

3/5/18
Date

CONTRACTOR:

(Signature)

Date

(Print name & title)

**PROFESSIONAL SERVICE AGREEMENT
BETWEEN SANTA FE COUNTY AND
HORROCKS ENGINEERS
FOR MATERIAL TESTING AND INSPECTION SERVICES**

THIS AGREEMENT is made and entered into this _____ day of _____ 2018, by and between **Santa Fe COUNTY**, hereinafter referred to as the "County" and **HORROCKS ENGINEERS** whose principal address is **6100 Uptown Blvd NE, Albuquerque, NM 87110** hereinafter referred to as the "Contractor".

WHEREAS, the County has identified a need for on-call material testing and inspection services to be provided as an indefinite quantity on an as-needed basis for a variety of projects throughout the County as funding becomes available and as specific needs are identified; and

WHEREAS, pursuant to NMSA 1978, Sections 13-1-112 and 13-1-117, competitive sealed proposals were solicited through Request for Proposals No. 2018-0058-PW/MAM, for "On-Call" Material Testing and Inspection Services; and

WHEREAS, the County Procurement Manager determined that a multiple source award would be in the best interest of the County pursuant to NMSA 1978, 13-1-153 and 13-1-154 ((Multiple Source Award); and

WHEREAS, the Contractor clearly demonstrated its ability and qualifications to perform the required services; and

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

NOW, THEREFORE, it is agreed between the parties:

1. SCOPE OF WORK

The Contractor shall provide, without limitation, the following material testing and inspection services.

- A. Contractor shall comply with all federal, state and local laws and ordinances applicable to this work, including the Civil Rights Act. The materials tester will follow all NMDOT minimum testing requirement specifications and Santa Fe County specifications.
- B. The County reserves the right to request a 1 hour response time for field testing services. The County's request will be between the hours of 7:00 am through 5:00 pm, seven days a week.
- C. Testing technicians will be on site and ready to perform the test at the time scheduled and will not be required to "stand by" longer than required. The County reserves the

right to call another testing contractor to provide a requested services if the technician is not at the site within 15 minutes of the scheduled time.

D. All tests conducted in the lab shall be completed by technicians who are certified in accordance with the requirements listed below. Copies of all pertinent testing certifications shall be provided for each testing lab technician or field technician.

1. Sampling and Testing Technicians/Inspectors – At a minimum, shall meet and perform the following:

- a. Sampling and Testing Technician must be familiar with and able to comply with the NMDOT's minimum testing guidelines. Technicians/Inspectors; field testing concrete must be American Concrete Institute (ACI) or New Mexico Technician Training and Certification Program (TTCP) certified, Lab testing concrete must be New Mexico TTCP certified. Sampling and/or testing soils, aggregates, Hot-Mix-Asphalt (HMA)/Warm Mix Asphalt (WMA) and nuclear moisture-density gauge must be certified through New Mexico TTCP.
- b. Technicians/Inspectors must use and complete County accepted NMDOT forms for all activities related to sampling and testing for County road construction projects.
- c. Contractor will:
 - Take field samples and density for soils, backfill, subgrade preparation, base course, and HMA/WMA.
 - Perform concrete sampling and testing and inspect miscellaneous construction items.
 - Run tests for slumps, air voids, unit weight and make cylinders.
 - Perform the following American Association State Highway Transportation Official (AASHTO) test procedures or as modified by the County when necessary:
 - a. T-168 Sampling Bituminous Paving Mixtures
 - b. T-310 Nuclear Moisture Density Testing
 - c. T-248 Reducing Field Samples of Aggregates to Testing
 - Generate computerized project data files, computerized change order lists, item lists and audits list.
 - Field Laboratory Technicians – the Materials Testing Agency shall be responsible for performing tests in an accredited testing laboratory. At a minimum tests shall meet and perform the following Field Laboratory Technicians must be experienced in and able to apply the NMDOT's minimum testing guidelines and test procedures, including but not limited to, soils and asphalt field laboratories, field Laboratory Technicians performing testing for acceptance (including process control tests used for acceptance as set forth in Section 106.16 @ of the New Mexico Department

of Transportation Standard Specification for Highway and Bridge Construction) must be certified by the ACNM/NMDOT New Mexico 10 Technician Training and Certification Program in soils, aggregates, concrete, HMA/WMA.

- Run the required sieve analysis on all construction materials.
- Run proctors on all embankment material, run proctors for all base course, and run binder ignition over extractions, fractured face, liquid limit, sand equivalent, and gyratory compactor for HMA/WMA.
- Ensure that all samples are taken for lab acceptance tests and submit results to the Project Manager within 24 hours after the test is completed. Tests shall be performed the day the material is placed.
- Complete a Field Source book showing quantities and all applicable information.
- Prepare and complete the appropriate County accepted forms related to these activities.
- Perform the following AASHTO test procedures or as modified by the County when necessary:
 - T-2 Sampling of Aggregate
 - T-11 Materials finer than No. 200 Sieve in Mineral Aggregates, by Washing
 - T-27 Sieve Analysis of Fine and Course Aggregate
 - T-30 Mechanical Analysis of Extracted Aggregate
 - T-89 Determining the Liquid Limit of Soils
 - T-90 Determining the Plastic Limit and Plasticity index of Soils
 - T-99 moisture Density Relations of Soils (5.5 lb. Hammer)
 - T- 224 Correction for Coarse Particles in the Soil Compaction Test
 - T-168 Sampling Bituminous Paving Mixtures
 - T-180 Moisture Density Relations of Soil (10 lb. Hammer)
 - T-310 Nuclear Moisture Testing T-248 Reducing Field Samples of Aggregate to Testing Size
 - T-255 total Moisture Content of Aggregate by Drying

e. Inspector – at a minimum, shall meet and perform the following:

- Conduct construction inspections and monitor contract work for compliance with plans, specifications and contract documents.
- Establish and maintain documentation and report requirements based on construction plans and specifications.
- Recommend design improvements for guardrail installation, culverts and lightning.
- Interpret plans, specifications and contract documents to ensure compliance.
- Coordinate with the Contractor and the County to identify and resolve inspection issues.

- Maintain public relations with the general public.
 - Ensure inspection compliance with safety rules and regulations.
 - Determine final pay quantities, prepare change orders, compose letters, prepare explanations for overruns and underruns, prepare comparison/summary reports, prepare a revised structure list and research project documentations.
 - Develop computerized project data files and refine project computer forms.
- f. Inspector (Materials Field) – at a minimum, shall meet and perform the following:
- The Materials field Inspector must have experience in bulk densities, yield calculations, proctors, percent moisture, and the use of a surfacing schedule.
 - Observe the placement of surfacing materials, collect and sign tickets, continuously calculate the placement yield throughout the day, keep a daily yield book showing the overall tonnage run of the various materials for the project, and inspect any miscellaneous items as directed by the County Project Manager.
- g. Inspector (Traffic Control) – at a minimum, shall meet and perform the following:
The Traffic Control Inspector must be ATSA or ACNM certified.
Provide traffic control inspection in strict compliance with the Manual on Uniform Traffic Control Devices (MUTCD). Including the installation and inspection of all traffic control devices on the project.
2. All failing test must be reported immediately to the County Project Manager in charge of the project inspections. Test reports must be delivered in a timely manner.
3. Requesting and scheduling of Contractor's services.
- a. The County shall issue a request for services identifying the type of assignment (short-term or long-term), the classifications needed, the number of personnel required, location of assignment, the anticipated duration of the assignment, required certification and equipment necessary to accomplish the tasks. Upon receiving the County's request, the Contractor shall have 48 hours to furnish resumes of qualified personnel to the County. Failure by the Contractor to meet the specified timeline shall be deemed non-responsive and the County may secure the needed services from a different contractor or vendor.
 - b. The County may issue a request to Contractor for a special request assignment identifying the classification(s) needed, the number of

personnel required, location of assignment, the anticipated duration of the assignment, required certification and equipment necessary to accomplish the tasks. Upon receiving the County's request, the Contractor firm shall have 48 hours in which to have the specials request assignment personnel report for the duty. Failure by the Contractor to meet the specified timeline shall be deemed non-responsive and the County may secure the needed services from a different contractor or vendor.

- c. If the County requests that any of Contractor's personnel be removed and replaced, the Contractor shall provide resumes for new personnel within 24 hours of receiving notice from the County. Contractor shall have a qualified replacement personnel acceptable to the County at the project site within 24 hours. Failure by the Contractor to meet the specified timelines shall be deemed non-responsive and the County may secure the needed services from a different contractor or vendor. , at which point the process returns to the 48 hours as identified in Paragraph 3a. above. As it may be necessary to keep the person to be replaced at the job site until the replacement arrives, the County Project Manager will make the determination as to the exact time of removal.
 - d. If the County requests that personnel be placed on return assignment and the Contractor agrees, upon notice from the County the Contractor shall return personnel to the project within 24 hours.
 - e. The County shall determine when, where, and how long Contractor's personnel are needed. The County Project Manager will determine the activities and the working hours of the personnel, working hours per day and number of days may vary for each project as determined by the Project Manager. The working hours may include hours between 7:00 am to 5:00 pm, 7 days a week.
4. Vehicles, Equipment and Other Materials
- a. Contractor shall provide the sufficient number of trucks and other vehicles necessary for Contractor's personnel to perform assigned duties. Vehicles must come equipped with amber strobe beacon, a nuclear Densometer transportation box, warning placards, and the name and logo of the Contractor clearly displayed on each side of the vehicle.
 - b. Contractor shall supply all hand held calculators, safety equipment, Nuclear Densometers, Nuclear Radiation Monitoring Badges, concrete testing equipment including wheel barrels, shovels, air meters, slump cones, thermometers for asphalt concrete, thermometers, safety vests and any other equipment required to perform assigned work.

c. The Contractor shall ensure that their personnel have sufficient laptop computers for project data and reporting purposes. Laptop computers shall meet the following minimum requirements:

- OS: Windows 7 Pro 64 bit
- Screen: 15.5-inch Diagonal LED-Backlit FHD SVA
- Processor: Intel 5-431M, 2.7 GHz W/vPro
- RAM: 12GB
- Video: Intel HD Graphics 4600-Ram Unified Memory Architecture, 1 VGA, 1DP, 2560x1440 Max Resolution
- Wireless: Intel Proset Wireless Cisco compatibility
- Optical Drive: DVD Multi-burner
- Ports: No Modem

These minimum requirements are the current minimum requirements. If the County's minimum requirements change during the term of this Agreement, they will be provided to the Contractor in writing and the new requirements will be required for all laptops being utilized by augmentation personnel. This requirement will be at no additional charge to the County.

5. The County will require calibrated nuclear moisture-density gauges, computers and cell phones for field personnel. The cost for this equipment and current calibration will be included to the hourly rates paid to the Contractor. All other equipment necessary to perform assigned tasks shall also be included in the hourly rates to be paid to the Contractor for all field personnel. The Contractor must provide proper nuclear moisture-density gauge storage and this will be included in the hourly rates paid to the Contractor.

6. None of Contractor's personnel shall be allowed to work without the proper safety equipment or a valid driver's license. The County will notify the Contractor at the time of request of any special safety training that will be required and any applicable safety training that will be required. The cost for the applicable safety training (i.e. fall protection, confined spaces, etc.) is the responsibility of the Contractor. The County may allow personnel to work if the training has been scheduled and at the discretion of the supervising manager for the County.

2. ADDITIONAL SERVICES

A. The parties agree that all tasks set forth in Section 1 (Scope of Work) of this Agreement shall be completed in full, to the satisfaction of the County, in accordance with professional standards and for the amount set forth in Section 4 (Compensation, Invoicing and Set-Off), of this Agreement, and for no other cost, amount, fee or expense.

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

C. The Contractor shall provide and charge only for those services requested by the County. No services may be contracted except as agreed upon in advance by the parties to this Agreement.

D. Upon execution of this Agreement, the Contractor shall commence work at the County's request and services shall conform to the description of services as set forth herein.

3. COMPENSATION, INVOICING AND SET-OFF

A. In consideration of its obligations under this Agreement the County shall compensate the Contractor based on the rates and costs set forth below:

1. The Contractor agrees to perform billable work at the following hourly rates.

POSITION	HOURLY RATE	OT RATES
SAMPLING AND TESTING TECHNICIANS/INSPECTORS**	\$77.00	\$87.00
FIELD LABORATORY TECHNICIAN*	\$70.50	\$87.00
INSPECTOR, MATERIALS FIELD INSPECTOR AND TRAFFIC CONTROL INSPECTOR**	\$81.00	\$91.00

*rates indicated for these personnel include vehicle, cell phone and computer.

**Rates indicated for these personnel include vehicle, cell phone, nuclear densometer and computer.

Contractor shall ensure that all completed forms from a specific day are accessible to the County's Project Manager at the start of the next working day.

B. The Contractor shall submit a written request for payment to the County when payment is due under this Agreement. Upon the County's receipt of the written request, the County shall issue a written certification of complete or partial acceptance or rejection of the contractual items or services for which payment is sought.

- 1) The County's representative for certification of acceptance or rejection of contractual items and services shall be **Steven Justin Reese, Public Works/Projects Department** (505) 992-6271 or such other individual as may be designated in the absence of the office representative.
- 2) The Contractor acknowledges and agrees that the County may not make any payment hereunder unless and until it has issued a written certification accepting the contractual services or deliverables.

- 3) Within 30 days of the issuance of a written certification accepting the services or deliverables, the County shall tender payment for the accepted items or services. In the event the County fails to tender payment within 30 days of the written certification accepting the items or services, the County shall pay late payment charges of 1.5% per month, until the amount due is paid in full.

C. In the event the Contractor breaches this Agreement, the County may, without penalty, withhold any payments due the Contractor for the purpose of set-off until such time as the County determines the exact amount of damages it suffered as a result of the breach.

D. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payment.

4. EFFECTIVE DATE AND TERM

This Agreement shall, upon due execution by all parties, become effective as of the date last written above and shall terminate four years later, unless earlier terminated pursuant to Section 5 (Termination) or Section 6 (Appropriations and Authorizations). In no event shall the term of this Agreement exceed four years in total.

5. TERMINATION

A. Termination of Agreement for Cause. Either party may terminate the Agreement based upon any material breach of this Agreement by the other party. The non-breaching party shall give the breaching party written notice of termination specifying the grounds for the termination. The termination shall be effective 30 days from the breaching party's receipt of the notice of termination, during which time the breaching party shall have the right to cure the breach. If, however, the breach cannot with due diligence be cured within 30 days, the breaching party shall have a reasonable time to cure the breach, provided that, within 30 days of its receipt of the written notice of termination, the breaching party began to cure the breach and advised the non-breaching party in writing that it intended to cure.

B. Termination for Convenience of the County. The County may, in its discretion, terminate this Agreement at any time for any reason by giving the Contractor written notice of termination. The notice shall specify the effective date of termination, which shall not be less than 15 days from the Contractor's receipt of the notice. The County shall pay the Contractor for acceptable work, determined in accordance with the specifications and standards set forth in this Agreement, performed before the effective date of termination but shall not be liable for any work performed after the effective date of termination.

6. APPROPRIATIONS AND AUTHORIZATIONS

This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Board of County Commissioners of the County and/or, if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Agreement shall terminate upon written notice by the County to the Contractor. Such termination shall be without penalty to the

County, and the County shall have no duty to reimburse the Contractor for expenditures made in the performance of this Agreement. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. The County's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by the Contractor in any way or forum, including a lawsuit.

7. INDEPENDENT CONTRACTOR

The Contractor and its agents and employees are independent contractors and are not employees or agents of the County. Accordingly, the Contractor and its agents and employees shall not accrue leave, participate in retirement plans, insurance plans, or liability bonding, use County vehicles, or participate in any other benefits afforded to employees of the County. Except as may be expressly authorized elsewhere in this Agreement, the Contractor has no authority to bind, represent, or otherwise act on behalf of the County and agrees not to purport to do so.

8. ASSIGNMENT

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the advance written approval of the County. Any attempted assignment or transfer without the County's advance written approval shall be null and void and without any legal effect.

9. SUBCONTRACTING

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

10. PERSONNEL

A. All work performed under this Agreement shall be performed by the Contractor or under its supervision.

B. The Contractor represents that it has, or will secure at its own expense, all personnel required to discharge its obligations under this Agreement. Such personnel (i) shall not be employees of or have any contractual relationships with the County and (ii) shall be fully qualified and licensed or otherwise authorized or permitted under federal, state, and local law to perform such work.

11. RELEASE

Upon its receipt of all payments due under this Agreement, the Contractor releases the County, its elected officials, officers, agents and employees from all liabilities, claims, and obligations whatsoever arising from or under or relating to this Agreement.

12. CONFIDENTIALITY

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

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

A. The County has the unrestricted right to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other material prepared under or pursuant to this Agreement.

B. The Contractor acknowledges and agrees that any material produced in whole or in part under or pursuant to this Agreement is a work made for hire. Accordingly, to the extent that any such material is copyrightable in the United States or in any other country, the County shall own any such copyright.

14. CONFLICT OF INTEREST

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

15. NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED

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

16. ENTIRE AGREEMENT; INTEGRATION

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this written Agreement. No prior or contemporaneous agreement, covenant or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

17. NOTICE OF PENALTIES

The Procurement Code, NMSA 1978, Sections 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.

18. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

A. The Contractor agrees to abide by all federal, state, and local laws, ordinances, and rules and regulations pertaining to equal employment opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, the Contractor specifically agrees not to discriminate against any person with regard to employment with the Contractor or participation in any program or activity offered pursuant to this Agreement on the grounds of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation, or gender identity.

B. The Contractor acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Agreement.

19. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW

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

B. Contractor shall comply with the requirements of Santa Fe County Ordinance 2014-1 (Establishing a Living Wage).

C. This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules. Contractor and the County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be state district courts of New Mexico, located in Santa Fe County.

20. RECORDS AND INSPECTIONS

A. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to the County as part of the procurement process, the Contractor agrees to (i) maintain such books and records during the term of this Agreement and for a period of six years from the date of final payment under this Agreement; (ii) allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with generally accepted accounting principles (GAAP).

B. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to County as part of the procurement process, the Contractor also agrees to require any subcontractor it may hire to perform its obligations under this Agreement to (i) maintain such books and records during the term of this Agreement and for a period of six years from the date of final payment under the subcontract; (ii) to allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with GAAP.

21. INDEMNIFICATION

A. The Contractor shall defend, indemnify, and hold harmless the County and its elected officials, agents, and employees from any losses, liabilities, damages, demands, suits, causes of action, judgments, costs or expenses (including but not limited to court costs and attorneys' fees) resulting from or directly or indirectly arising out of the Contractor's performance or non-performance of its obligations under this Agreement, including but not limited to the Contractor's breach of any representation or warranty made herein.

B. The Contractor agrees that the County shall have the right to control and participate in the defense of any such demand, suit, or cause of action concerning matters that relate to the County and that such suit will not be settled without the County's consent, such consent not to be unreasonably withheld. If a conflict exists between the interests of the County and the Contractor in such demand, suit, or cause of action, the County may retain its own counsel to represent the County's interest.

C. The Contractor's obligations under this section shall not be limited by the provisions of any insurance policy the Contractor is required to maintain under this Agreement.

22. SEVERABILITY

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

23. NOTICES

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the County: **Santa Fe County Public Works/Projects**
 Attn: Steven Justin Reese, Project Manager III
 102 Grant Avenue
 PO Box 276
 Santa Fe, NM 87504-0276

To the Contractor: **HORROCKS ENGINEERING**
 Attn: Habib Abi-Khalil, PE
 6100 Uptown Blvd NE, Suite 105
 Albuquerque, NM 87110

24. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

The Contractor hereby represents and warrants that:

A. This Agreement has been duly authorized by the Contractor, the person executing this Agreement has authority to do so, and, once executed by the Contractor, this Agreement shall constitute a binding obligation of the Contractor.

B. This Agreement and Contractor's obligations hereunder do not conflict with Contractor's corporate agreement or any statement filed with the New Mexico Secretary of State on Contractor's behalf.

C. Contractor is legally registered and is properly licensed by the New Mexico State to do the work anticipated by this Agreement and shall maintain such registration and licensure in good standing throughout the duration of the Agreement.

25. NO THIRD-PARTY BENEFICIARIES

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

26. INSURANCE

A. General Conditions. The Contractor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.

B. General Liability Insurance, Including Automobile. The Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,000,000.00 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the County by the Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Agreement is an insured contract. The County of Santa Fe shall be a named additional insured on the policy.

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

D. Professional Liability Insurance. The Contractor shall procure and maintain during the life of this Agreement a Professional Liability Insurance.

E. Increased Limits. If, during the life of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended), the Contractor shall increase the maximum limits of any insurance required herein.

27. PERMITS, FEES, AND LICENSES

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

28. NEW MEXICO TORT CLAIMS ACT

No provision of this Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by County or its "public employees" at common law or under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

29. CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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

30. FACSIMILE SIGNATURES

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

31. SURVIVAL

The provisions of following paragraphs shall survive termination of this Contract; INDEMNIFICATION; RECORDS AND INSPECTION; RELEASE, CONFIDENTIALITY, PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT; COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW; NO THIRD-PARTY BENEFICIARIES; SURVIVAL.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of last signature by the parties below.

SANTA FE COUNTY

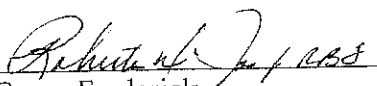
Anna Hansen, Chair
Board of County Commissioners of Santa Fe County

ATTESTATION:

Geraldine Salazar
Santa Fe County Clerk

Date

Approved as to form:

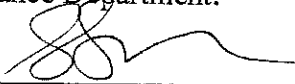


R. Bruce Frederick
Santa Fe County Attorney

3-1-18

Date

Finance Department:



Stephanie Schardin Clarke
Finance Director

3/5/18

Date

CONTRACTOR:

(Signature)

Date

(Print name & title)

