PROFESSIONAL SERVICES AGREEMENT WITH MORROW REARDON WILKINSON MILLER, LTD. LANDSCAPE ARCHITECTS TO PROVIDE LANDSCAPE ARCHITECT SERVICES

THIS AGREEMENT is made and entered into on this 8th day of February 2013, by and between **SANTA FE COUNTY** (hereinafter referred to as the "County"), a New Mexico political subdivision, and **MORROW REARDON WILKINSON MILLER, LTD, LANDSCAPE ARCHITECTS**, (hereinafter referred to as the "Contractor").

WHEREAS, Santa Fe County requires a landscape architect to complete final design and construction drawings for two gateway entrances for the Agua Fria Traditional Village located on Agua Fria in Santa Fe County, N.M.;

WHEREAS, in accordance with NMSA 1978 Sections 13-1-120 through 13-1-124, the County issued Request for Qualifications (RFQ) No. 2013-0240-OS/PL for these 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, in consideration of the premises and mutual obligations herein, the parties hereto do mutually agree as follows:

1. SCOPE OF WORK

Project Description

Santa Fe County Public Works Department requires professional landscape architecture services to complete final design and construction drawings for two gateway entrances for Agua Fria Village.

The gateways will be located on Agua Fria Street, the original route of El Camino Real de Tierra Adentro, a federally designated National Historic Trail by the U.S. Congress. The goal of the gateway entrances is to create a perceptual change and visible threshold to communicate to travelers that they are entering a historic village on El Camino Real. The gateways will capture the special character of Agua Fria Village. A secondary goal of the gateways is to calm and slow traffic as it enters the Village.

The County has partnered with the National Park Service for this project. The National Park Service National Trails Office has provided landscape architecture technical assistance to the County to develop conceptual drawings, which will be the basis for this contract and the completion of construction documents. The National Park Service may provide additional technical assistance to the County in review and completion of the construction documents to ensure consistency with the goals and conceptual designs of the gateway entrances.

As part of its partnership with the National Park Service, Santa Fe County has presented the conceptual designs to the Board of County Commissioners, community stakeholders and the Village Association for review and comment.

Project Locations

The project location for Phase 1 is on the north side of Agua Fria Street just east of its intersection with Henry Lynch Road. The location for Phase 2, the project site is yet to be determined but will be on the south side of Agua Fria Street just east of Willy Way. The gateway entrances will be located within the boundary of the Traditional Historic Community of Agua Fria Village and will be permitted through Santa Fe County. Santa Fe County will provide the Contractor with a boundary survey of the easements in which the gateway entrances must be designed.

Services and Deliverables for Phase 1.

A. Provide stamped construction plans and bid documents for the Village Gateway entrance on Agua Fria Street.
B. Meet with staff from Santa Fe County and the National Park Service to review project objectives and conceptual designs.
C. Represent Santa Fe County Open Space and Trails Program at all regulatory review meetings; present design and respond to review questions; revise plans if necessary to obtain approvals.
D. Present the design to the Agua Fria Village Association at one of their regularly scheduled monthly meetings.
E. Obtain all substructure information to ensure that there are no conflicts with any existing utility facilities.
F. Assist Santa Fe County Open Space and Trails Program with permitting process at the County Land Use Department and the New Mexico Construction Industries Division (CID).
G. 100% construction documents shall be completed within 60 days of the issuance of a Notice to Proceed for each phase.
H. Provide bound paper copies of the construction drawings both full (24"x36") and half size (11"x17"), as well as electronic copies of the same in Auto CAD and in PDF format (current version of AutoCAD in DWG format using state plane coordinates [(NMSPCS, NAD 1983)] as appropriate) in both 24"x 36" and 11"x 17" print sizes as needed for review and permitting purposes.

2. COMPENSATION, INVOICING, AND SET-OFF

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

1) County shall pay to the Contractor in full payment for services satisfactorily performed and all costs and expenses shall be in accordance with Attachment A.

2) The total amount payable to the Contractor under this Agreement shall not exceed Nine Thousand Six Hundred Dollars ($9,600.00) exclusive of New Mexico gross receipts tax for the term of this contract. Any New Mexico gross receipts tax levied on the amounts payable under this Agreement shall be paid by the County to the Contractor.

3) This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the County when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those additional services.

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

C. In the event the 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.

3. EFFECTIVE DATE AND TERM

This Agreement shall, upon due execution by all parties, become effective as of the date first written above and shall terminate one (1) year later, unless earlier terminated pursuant to Section 5 (Termination) or Section 6 (Appropriations and Authorizations). The County has the option to extend this Agreement in one (1) year increments for a term not to exceed a total of four (4) years. The County may exercise this option by submitting a written notice to Contractor that the Agreement will be extended an additional year. The notice to extend shall be submitted to Contractor at least sixty (60) days prior to expiration of the initial Agreement or any extension thereof.

4. 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, for the amount set forth in Section 2 (Compensation), 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.

5. TERMINATION

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

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.

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. 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 court 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 (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).

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 (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.

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
Office of the County Attorney
102 Grant Avenue
Santa Fe, New Mexico 87501

and,

Open Space Project Manager
901 W. Alameda, Suite 20-C
Santa Fe, NM 87501

To the Contractor: Morrow Reardon Wilkinson Miller Ltd. Landscape Architects
210 La Veta NE
Albuquerque, New Mexico 87059

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 Public Regulation Commission on Contractor's behalf.

C. Contractor is legally registered and licensed to operate as a business in New Mexico and is properly licensed as a Landscape Architect by the New Mexico Licensing and Regulation Department 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. FACSIMILE SIGNATURES

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

26. NO THIRD-PARTY BENEFICIARIES

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

27. 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 $1,050,000.00 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. 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.

E. Professional Liability [Malpractice/Errors and Omissions Insurance]. The Contractor shall procure and maintain during the life of this agreement professional liability (errors and omissions) insurance, with policy limits of not less than $1,000,000.00 per occurrence, $2,000,000.00 per aggregate.

28. 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.

29. 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.

30. 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.

31. AGENT FOR SERVICE

The Contractor hereby irrevocably appoints, Baker Morrow, a New Mexico resident, located at 1609 Morningside NE, Albuquerque, N.M. 87110, as its agent upon whom process and writs in any action or proceeding arising out of or related to this Agreement may be served. The Contractor acknowledges and agrees that service upon its designated agent shall have the same effect as though the Contractor were actually and personally served within the state of New Mexico.

32. SURVIVAL

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

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

SANTA FE COUNTY:

Katherine Miller
Santa Fe County Manager

2-8-13
Date

Approved as to Form

_____ 2-6-13
Stephen C. Ross — Date
Santa Fe County Attorney

Finance Department Approval:

_____ 2/7/13
Teresa C. Martinez — Date
Santa Fe County Finance Director

CONTRACTOR:

_____ _____
(Signature) — Date

By: _____
(Print Name)

Its: _____
(Print Title)

FEDERAL TAX I.D. NUMBER

_____

Approved as to Form

Stephen C. Ross
Santa Fe County Attorney

2-6-13
Date

Finance Department Approval:

Teresa C. Martinez
Santa Fe County Finance Director

2/7/13
Date

CONTRACTOR:

Baker H. Morrow
(Signature)

02/07/13
Date

By: BAKER H. MORROW, FASLA
(Print Name)

Its: PRESIDENT
(Print Title)

FEDERAL TAX I.D. NUMBER

85-029-8331

Attachment A

Santa Fe County Agua Fria Entrance Gateways Landscape Architectural Services, RFQ# 2013-0240-OS/PL

Fee Estimate // Morrow Reardon Wilkinson Miller, Ltd.

1/30/13

Current Hourly Rates			
Principal Landscape Architect	$ 125/hr	CAD Drafter	$ 80/hr
Project Landscape Architect	$ 105/hr	Clerical	$ 60/hr
Irrigation Designer	$ 95/hr	Inspector (Site Observer)	$ 90/hr

TASK	Principal Landscape Architect Hours	Project Landscape Architect Hours	Irrigation Designer Hours	#REF! Hours	#REF! Hours	Total Hours	Basic Services Amount
PROJECT KICK-OFF							
Kick-off Meeting: Review Scope & Conceptual Design	4	4				8	$ 920
Site Analysis	1	2				3	$ 335
TOTAL (Project Kick-Off)	**5**	**6**	**0**	**0**	**0**	**11**	**$ 1,255**
DESIGN DEVELOPMENT							
55% Design Development	2	4		3	1	10	$ 970
Outline Specifications	0.5	1				1.5	$ 168
Detailed Opinion of Probable Cost	0.5	1				1.5	$ 168
Meeting with Regulatory Review Committee	4	5				9	$ 1,025
Public Meeting with Agua Fria Village Association	4	5				9	$ 1,025
TOTAL (DESIGN DEVELOPMENT)	**11**	**16**	**0**	**3**	**1**	**31**	**$ 3,355**
CONSTRUCTION DOCUMENTS							
95% Phase I Construction Documents	1	4		2		7	$ 705
100% Phase I Construction Documents	1	3		1		5	$ 520
Final Detailed Phase I Opinion of Probable Cost		1			1	2	$ 165
TOTAL (CONSTRUCTION DOCUMENTS)	**1**	**4**	**0**	**2**	**0**	**14**	**$ 1,390**
				Total Hours:		**56**	

CONSTRUCTION ADMINISTRATION (Including 5 meetings @ 5 hours each plus 12 hours for review and production of RFIs, addenda, change orders and pay appliations, hourly at $90.00. We will not charge for mileage or other reimbursables.)	**N.T.E.**	**$ 3,500**
BASIC SERVICES GRAND TOTAL		**$ 6,000**
REIMBURSABLE EXPENSES (printing expenses for review and permit sets only, N.T.E.)		**$ 100.00**