EJCDC

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

(modified by Santa Fe County as indicated by strikeout and underlined text)

THIS IS AN AGREEMENT effective as of Nov. 28, 2012 ("Effective Date") between

Santa Fe County, a political subdivision of the State of New Mexico ("Owner") and

Loris and Associates, Inc., 2528 Trail Ridge Dr. East, Lafayette, CO 80026 ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows: The complete design in four (4) separate phases of the Arroyo Hondo Trail within the Santa Fe Community College District, Santa Fe, New Mexico.

("Project").

Engineer's services under this Agreement are generally identified as follows: Design the Arroyo Hondo Trail system to be constructed in phases.

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 *Scope*

A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A and as more fully detailed by the Engineer in Appendix 1 to Exhibit A.

ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 *General*

A. Owner shall have the responsibilities set forth herein and in Exhibit B.

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B. Owner shall pay Engineer as set forth in Exhibit C.

C. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 *Commencement*

A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 *Time for Completion*

A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Exhibit A, and are hereby agreed to be reasonable.

B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

C. If Owner authorizes changes in the scope, extent, or character of the Project, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.

E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 *Invoices*

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

4.02 *Payments*

A. *Application to Interest and Principal*: Payment will be credited first to any interest owed to Engineer and then to principal.

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B. *Failure to Pay*: If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:

1. amounts due Engineer will be increased at the rate of 1.5~~0~~% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and

2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.

C. *Disputed Invoices:* If Owner contests an invoice, Owner shall promptly advise Engineer of the specific basis for doing so, may withhold only that portion so contested, and must pay the undisputed portion.

D. *Legislative Actions:* If after the Effective Date any governmental entity takes a legislative action that imposes taxes, fees, or charges on Engineer's services or compensation under this Agreement, then the Engineer may invoice such new taxes, fees, or charges as a Reimbursable Expense. ~~to which a factor of 1.0 shall be applied.~~ Owner shall reimburse Engineer for the cost of such invoiced new taxes, fees, and charges; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

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

5.02 *Designing to Construction Cost Limit*

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

5.03 *Opinions of Total Project Costs*

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

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ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

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

B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.

C. *Consultants:* Engineer may employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner. The Owner approves the Contractor's team to include subconsultants: Souder Miller & Associates, 1201 Parkway Drive, Santa Fe, NM 87507; Geo-Test, 3204 Richards Lane, Santa Fe, NM 87507-2921; Rosemary Romero Consulting, 1350 San Juan Drive, Santa Fe, NM 87505; Design Office, 1300 Luisa St. Suite 24, Santa Fe, NM 87505; Parametrics; Devin Kennemore; Townsend Archaeological Consultants; William F. Brewster; and John Carmody (construction management).

D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

E. *Compliance with Laws and Regulations, and Policies and Procedures*:

1. Engineer and Owner shall comply with applicable Laws and regulations.

2. Prior to the Effective Date, Owner provided to Engineer in writing any and all policies and procedures of Owner applicable to Engineer's performance of services under this Agreement. provided to Engineer in writing. Engineer shall comply with such policies and procedures, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.

3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. Changes after the Effective Date to these Laws and Regulations, or to Owner-provided written policies and procedures, may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation.

F. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with

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the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.

G. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition) unless both parties mutually agree to use other general conditions by specific reference in Exhibit J.

H. Engineer shall not at any time supervise, direct, control, or have authority over any contractor work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's furnishing and performing of its work.

I. Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

J. Engineer shall not provide or have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.

K. Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor, or Supplier, or of any of their agents or employees or of any other persons (except Engineer's own agents, employees, and Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made regarding the Contract Documents, or any application, interpretation, or clarification, of the Contract Documents, other than those made by Engineer.

L. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design Without Construction Phase Services*

A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, Paragraph A1.05. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction and Owner assumes all responsibility for the application and interpretation of the Contract Documents, review and response to Contractor claims, contract administration, processing Change Orders, revisions to the Contract Documents during construction, construction surety bonding and insurance requirements, construction observation and review, review of payment applications, and all other necessary Construction Phase engineering and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase engineering or professional services except for those services that are expressly required of Engineer in Exhibit A, Paragraph A1.05.

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6.03 *Use of Documents*

A. All Documents are instruments of service in respect to this Project, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.

B. Either party to this Agreement may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern. If the parties agree to other electronic transmittal procedures, such are set forth in Exhibit J.

C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.

D. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.

E. Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the Documents and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) ~~Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and~~ (34) such limited license to Owner shall not create any rights in third parties.

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

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6.04 *Insurance*

A. Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.

B. Owner shall procure and maintain insurance as set forth in Exhibit G, "Insurance." ~~Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies and as loss payees on any property insurance policies carried by Owner which are applicable to the Project.~~

C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, property damage (other than to the Work itself), motor vehicle damage and injuries, and other insurance necessary to protect Owner's ~~and Engineer's~~ interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.

D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.

E. ~~All policies of property insurance relating to the Project shall contain provisions to the effect that Engineer's and its Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer or its Consultants, or any insureds, additional insureds, or loss payees thereunder~~.

F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 30 days prior written notice has been given to Owner and Engineer and to each other additional insured (if any) to which a certificate of insurance has been issued.

G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.05 *Suspension and Termination*

A. *Suspension*:

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

2. By Engineer: Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Engineer's performance has been substantially delayed through no fault of Engineer.

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B. *Termination*: The obligation to provide further services under this Agreement may be terminated:

1. For cause,

a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

b. By Engineer:

1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or

2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.

3) Engineer shall have no liability to Owner on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.05.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience,

a. By Owner effective upon Engineer's receipt of notice from Owner.

C. *Effective Date of Termination*: The terminating party under Paragraph 6.05.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. *Payments Upon Termination*:

1. In the event of any termination under Paragraph 6.05, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.E.

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2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.05.D.1, to invoice Owner and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.06 *Controlling Law*

A. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.

6.07 *Successors, Assigns, and Beneficiaries*

A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.07.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Subcontractor, Supplier, other individual or entity, or to any surety for or employee of any of them.

2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

3. Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in the Contract Documents.

6.08 *Dispute Resolution*

A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights under law.

B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.08.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights under law.

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6.09 *Environmental Condition of Site*

A. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.

B. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.

C. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.

D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days notice.

F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner" "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.10 *Indemnification and Mutual Waiver*

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

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B. *Indemnification by Owner*: ~~Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations and to the extent (if any) required in Exhibit I, Limitations of Liability.~~

C. *Environmental Indemnification*: To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

D. *Percentage Share of Negligence*: To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.

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

6.11 *Miscellaneous Provisions*

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

B. *Survival*: All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

C. *Severability*: Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

D. *Waiver*: A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

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E. *Accrual of Claims:* To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following provisions:

1. *Additional Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.

2. *Agreement* – This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.

3. *Asbestos* – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

4. *Basic Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.

5. *Construction Contract* – The entire and integrated written agreement between Owner and Contractor concerning the Work.

6. *Construction Cost* – The cost to Owner of those portions of the entire Project designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to properties; Owner's costs for legal, accounting, insurance counseling or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.

7. *Constituent of Concern* – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; and (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

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8. *Consultants* – Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.

9. *Contract Documents* – Those items so designated in the Construction Contract, including the Drawings, Specifications, construction agreement, and general and supplementary conditions. Only printed or hard copies of the items listed in the Construction Contract are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

10. *Contractor* – The entity or individual with which Owner has entered into a Construction Contract.

11. *Documents* – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.

12. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.

13. *Effective Date* – The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.

14. *Engineer* – The individual or entity named as such in this Agreement.

15. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

16. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

17. *Owner* – The individual or entity with which Engineer has entered into this Agreement and for which the Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.

18. *PCBs* – Polychlorinated biphenyls.

19. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-hazardous waste and crude oils.

20. *Project* – The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

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21. *Radioactive Material* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

22. *Record Drawings* – Drawings depicting the completed Project, prepared by Engineer as an Additional Service and based solely on Contractor's record copy of all Drawings, Specifications, addenda, change orders, work change directives, field orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.

23. *Reimbursable Expenses* – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.

24. *Resident Project Representative* – The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phases as indicated in Appendix 1 to Exhibit A. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative agreed to by Owner. ~~The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.~~

25. *Samples* – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

26. *Shop Drawings* – All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

27. *Site* – Lands or areas to be indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.

28. *Specifications* – That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

29. *Subcontractor* – An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

30. *Substantial Completion* – The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

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31. *Supplier* – A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.

32. *Total Project Costs* – The sum of the Construction Cost, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner's costs for legal, accounting, insurance counseling and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.

33. *Work* – The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included:*

A. Exhibit A, Engineer's Services.

B. Exhibit B, Owner's Responsibilities.

C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses and for Additional Services by Engineer's Consultants.

D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative. NOT INCLUDED

E. Exhibit E, Notice of Acceptability of Work.

F. Exhibit F, Construction Cost Limit.

G. Exhibit G, Insurance.

H. Exhibit H, Dispute Resolution.

I. Exhibit I, Limitations of Liability –NOT INCLUDED.

J. Exhibit J, Special Provisions.

K. Exhibit K, Amendment to Owner-Engineer Agreement.

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

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8.02 *Total Agreement:*

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

8.03 *Designated Representatives:*

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

8.04 *Engineer's Certifications:*

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

1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;

2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;

3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

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

Owner: SANTA FE COUNTY	Engineer: LORIS AND ASSOCIATES, INC.
By: Liz Stefanics	By: Peter J. Loris
Title: Chair, Santa Fe Board of County Comissioners	Title: President
Date Signed: 11/27/2012	Date Signed: 11/21/12
	Engineer License or Firm's NM #194000

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Certificate No. _____
State of: _____
Federal Tax ID: 841085345

Address for giving notices:

102 Grant Avenue

Santa Fe, NM 87504-0276

Address for giving notices:

2528 Trailridge Drive East

Layfayette, CO 80026

ATTEST:

Valerie Espinoza 11/28/2012

Valerie Espinoza, County Clerk Date

COUNTY CLERK SANTA FE COUNTY NEW MEXICO VALERIE ESPINOZA

Finance Department

Teresa Martinez 11/5/12

Teresa Martinez Date

Approved as to form:

11-13-12

Stephen C. Ross Date
Santa Fe County Attorney

Designated Representative (Paragraph 8.03.A):

Title:

Phone Number:

Facsimile Number:

E-Mail Address:

Designated Representative (Paragraph 8.03.A):

Scott Belonger, P.E.

Title: Project Manager

Phone Number: 303-444-2073 x 603

Facsimile Number: 303-444.0611

E-Mail Address: SBELONGER@LORISANDASSOCIATES.COM

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

Engineer's Services

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

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

PART 1 – BASIC SERVICES

A1.01 *Study and Report Phase*

A. Engineer shall:

1. Consult with Owner to define and clarify Owner's requirements for the Project and available data. The Engineer's scope for Owner's Project shall encompass the following:

   1. Incorporation of a trailhead next to the Ranch Viejo Fire Station.

   2. Design a trail from the Santa Fe County/NM 599 Rail Runner station to the Rancho Viejo Fire Station trailhead, including crossing of NM 14 and connection to the Turquoise Trail Subdivision and Turquoise Trail Business Park.

   3. Design a trail from the Rancho Viejo Fire Station trailhead northeast to connect with the La Pradera Trail along Dinosaur Trail.

   4. Design a connection to the NMDOT NM 14/I-25 interchange.

   5. Design a trail from the Rancho Viejo Fire Station trailhead east to Richards Avenue including connections to the La Entrada Phase I Subdivision and in particular the P2 Active Park noted on the Final Development Plan and and connections to the Amy Biehl Community School.

   6. Design a trail connecting the Arroyo Hondo Trail to the Santa Fe Community College, to the Spur Trail and to the Rancho Viejo Trails along Richards Avenue.

   7. Design of an approximately 1 acre trailhead at the corner of Old Dinosaur Trail with connections to the La Pradera Trails.

   8. Design a trail north from the La Entrada Subdivision along the east side fo the Vista Ocasa Subdivision, east throught the Petchesky Ranch and north along Richards Avenue to the intersection of Dinosaur Trail and Richards Avenue.

   9. Design a trail connection to the Oshara Village.

2. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B which are not part of Engineer's Basic Services.

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3. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by Engineer, including but not limited to mitigating measures identified in the environmental assessment.

4. Conduct a thorough assessment and field inspection of the existing conditions of the project site.

5. Design and conduct a thorough public input and review process in consultation with the Santa Fe County staff to obtain constructive input from the shakeholders in the Owner's Project.

6. Identify and evaluate possible ~~[*insert specific number or list here*]~~ alternate solutions available to Owner and, after consultation with Owner, recommend to Owner those solutions which in Engineer's judgment meet Owner's requirements for the Project.

7. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and those alternate solutions available to Owner which Engineer recommends. For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a summary of allowances for other items and services included within the definition of Total Project Costs.

8. Perform or provide the following additional Study and Report Phase tasks or deliverables: Layout the proposed trail in the field and flag the centerline of the trail alignment with whiskers every 25 feet, or other suitable method approved by the Owner; review the marked trail layout with the Owner. ~~[*here list any such tasks or deliverables*]~~

9. ~~Furnish ___ review copies of the Report and any other deliverables to Owner within ___ calendar days of the Effective Date and review it with Owner. Within ___ calendar days of receipt, Owner shall submit to Engineer any comments regarding the Report and any other deliverables.~~

10. Revise the Report and any other deliverables in response to Owner's comments, as appropriate, and furnish ___ ~~copies of~~ the revised Report and any other deliverables to the Owner. ~~within ___ calendar days of receipt of Owner's comments.~~

11. Engineer's deliverables shall be one (1) set of the schematic designs (24" X 36") and an electronic copy of the same in both 24" X 36" and 11" X 17" formats.

B. Engineer's services under the Study and Report Phase will be considered complete on the date when the revised Report and any other deliverables have been delivered to Owner.

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A1.02 *Preliminary Design Phase*

A. After acceptance by Owner of the Report and any other deliverables, selection by Owner of a recommended solution and indication of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, and upon written authorization from Owner, Engineer shall:

1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.

2. Provide necessary field surveys and topographic and utility mapping for design purposes. Utility mapping will be based upon information obtained from utility owners.

3. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.

4. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in collating the various cost categories which comprise Total Project Costs.

5. Perform or provide the following additional Preliminary Design Phase tasks or deliverables: Review the existing easements and determine where it will be necessary to modify or acquire additional easements to achieve a sustainable trail and completed Project; provide surveys and legal descriptions of the easements that must be acquired; complete a topographic survey of the Project area with 1 ft contour intervals (the surveyor must comply with NMAC 12.8.2 Minimum Standards for Surveying in N.M. and Santa Fe County's digital submission requirements); review the preliminary design in the field with the Owner; present the preliminary plan design in the field with the Owner; present the preliminary plan at a regularly scheduled meeting of the County Open Land, Trails and Parks Advisory Committee (COLTPAC); present the preliminary design at a public meeting organized and facilitated by the Owner; prepare a Stormwater Management Analysis (the analysis must be prepared and sealed by a professional engineer licensed in the State of New Mexico in compliance with the Santa Fe County Flood Damage Prevention and Stormwater Management Ordinance 2008-10); design all arroyo crossings (bridges, culverts or low water crossings) in compliance with all federal, state and local regulations including US Army Corps of Engineers, NM Environment Department and the Santa Fe County Stormwater Management Ordinance 2008-10; prepare a Santa Fe County Floodplain Development Premit application in accordance with Santa Fe Ordinance 2008-10 as as required in FEMA 44 CFR Section 60.3 and submit on FEMA's application forms; assist Open Space and Trails Staff in resolving any issues in obtaining permits required for the Owner's Project. ~~[*here list any such tasks or deliverables*]~~

6. Assist Open Space and Trails Staff in presenting the Project design to the Santa Fe County Technical Review Team and resolving any issues in complying with the Santa Fe County Land Development Code in order to obtain the required land use approvals and permits.

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7. Prepare Joint Application for Department of the Army Permit and NM Water Quality Certification (401/404) and coordinate with the Department of the Army and NM Water Quality Bureau to obtain the permit and certification.

8. Complete a Phase I archaeological survey and report of the Project area. The survey must be completed by qualified archaeologist with a current archaeological survey permit fromt the New Mexico Historic Preservation Division. Assist the Open Space and Trails Staff with review and approval of the Project by the State Historic Preservation Office.

9. Complete any and all National Environmental Policy Act requirements necessary for construction of the Owner's Project.

10. Prepare a signage plan for the Arroyo Hondo Trail network will all identification, way finding and regulatory signage. The signage plan should readily identify the trail as a Santa Fe County Open Space facility and provide "branding" and a cohesive theme for the trail.

11. At 60% completion provide five (5) bounds sets of the 60% complete construction plans (24" X 36") and accompanying documents and two (2) half-size (11" X 17") sets of the construction plans as well as electronic copies of the same.

12. At 90% completions provide six (6) bound sets of the 90% complete construction plans (24" X 36") and accompanying documents and two (2) half-size (11" X 17") sets fo the construction plans as well as electronic copies of the same.

13. ~~Furnish ___ review copies of the Preliminary Design Phase documents and any other deliverables to Owner within ___ calendar days of authorization to proceed with this phase, and review them with Owner. Within ___ calendar days of receipt, Owner shall submit to Engineer any comments regarding the Preliminary Design Phase documents and any other deliverables.~~

14. ~~Revise the Preliminary Design Phase documents and any other deliverables in response to Owner's comments, as appropriate, and furnish to Owner ___ copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables. within ___ calendar days after receipt of Owner's comments~~.

B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables have been delivered to Owner.

A1.03 *Final Design Phase*

A. After acceptance by Owner of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other deliverables subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:

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1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.

2. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities.

3. Advise Owner of any adjustments to the opinion of probable Construction Cost known to Engineer.

4. Perform or provide the following additional Final Design Phase tasks or deliverables: Present the final design at a public meeting organized and facilitated by Santa Fe County. ~~[*here list any such tasks or deliverables*]~~

5. Submit one (1) full-size set of stamped construction plans on Mylar (24" X 36"), one (1) DVD with the final stamped construction plans in AutoCAD and in PDF format in both 24" X 36" and 11" X 17" print sizes, three (3) bond sets of final stamped construction plans (24" X 36"), specifications, cost estimates and accompanying documents as well as electronic copies of the same, and three (3) half-size copies of the final construction plans (11" X 17").

6. Prepare and furnish bidding documents for review by Owner, its legal counsel, and other advisors, and assist Owner in the preparation of other related documents. Within __10__ days of receipt, Owner shall submit to Engineer any comments and, subject to the provisions of Paragraph 6.01.G, instructions for revisions.

7. Revise the bidding documents in accordance with comments and instructions from the Owner, as appropriate, and submit __5__ final copies of the bidding documents, a revised opinion of probable Construction Cost, and any other deliverables to Owner within __10__ calendar days after receipt of Owner's comments and instructions.

B. Engineer's services under the Final Design Phase will be considered complete on the date when the submittals required by Paragraph A1.03.A.6 have been delivered to Owner.

C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.

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~~D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is _____. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.~~

A1.04 *Bidding or Negotiating Phase*

A. After acceptance by Owner of the bidding documents and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:

1. Assist Owner in advertising for and obtaining bids or proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the bidding documents.

2. Issue addenda as appropriate to clarify, correct, or change the bidding documents.

3. Provide information or assistance needed by Owner in the course of any negotiations with prospective contractors.

4. Consult with Owner as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors for those portions of the Work as to which such acceptability is required by the bidding documents.

5. If bidding documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by bidders, but subject to the provisions of paragraph A2.02.A.2 of this Exhibit A.

6. Attend the Bid opening, prepare Bid tabulation sheets, and assist Owner in evaluating Bids or proposals and in assembling and awarding contracts for the Work.

7. Perform or provide the following additional Bidding or Negotiating Phase tasks or deliverables: Not applicable. [*here list any such tasks or deliverables*]

B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if Exhibit F is a part of this Agreement).

A1.05 *Construction Phase*

A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:

1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer as assigned in the Construction Contract shall not be modified, except as Engineer may otherwise agree in writing. All of Owner's

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instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.

2. *Resident Project Representative (RPR):* Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Appendix 1 to Exhibit A. ~~Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D. [If *Engineer will not be providing the services of an RPR, then delete this Paragraph 2 by inserting the word "DELETED" after the paragraph title, and do not include Exhibit D.*]~~

3. *Selecting Independent Testing Laboratory:* Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, Paragraph B2.01.0.

4. *Pre-Construction Conference:* Participate in a Pre-Construction Conference prior to commencement of Work at the Site.

5. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.

6. *Baselines and Benchmarks:* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.

7. *Visits to Site and Observation of Construction:* In connection with observations of Contractor's Work while it is in progress:

   a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of Contractor's Work in progress or to involve detailed inspections of Contractor's Work in progress beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.

   b. The purpose of Engineer's visits to, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an

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

8. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work (a) is defective under the standards set forth in the Contract Documents, (b) will not produce a completed Project that conforms to the Contract Documents, or (c) will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

9. *Clarifications and Interpretations; Field Orders:* Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. Subject to any limitations in the Contract Documents, Engineer may issue field orders authorizing minor variations in the Work from the requirements of the Contract Documents.

10. *Change Orders and Work Change Directives:* Recommend change orders and work change directives to Owner, as appropriate, and prepare change orders and work change directives as required.

11. *Shop Drawings and Samples:* Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.

12. *Substitutes and "or-equal":* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.

13. *Inspections and Tests:* Require such special inspections or tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests,

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

14. *Disagreements between Owner and Contractor*: Render formal written decisions on all duly submitted issues relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution, performance, or progress of Contractor's Work; review each duly submitted Claim by Owner or Contractor, and in writing either deny such Claim in whole or in part, approve such Claim, or decline to resolve such Claim if Engineer in its discretion concludes that to do so would be inappropriate. In rendering such decisions, Engineer shall be fair and not show partiality to Owner or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

15. *Applications for Payment:* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:

    a. Determine the amounts that Engineer recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe Contractor's Work. In the case of unit price work, Engineer's recommendations of payment will include final determinations of quantities and classifications of Contractor's Work (subject to any subsequent adjustments allowed by the Contract Documents).

    b. By recommending any payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control Contractor's Work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to

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

16. *Contractor's Completion Documents:* Receive, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided under Paragraph A1.05.A.11, and transmit the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. The extent of such review by Engineer will be limited as provided in Paragraph A1.05.A.11.

17. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Project to determine if the Work is substantially complete. If after considering any objections of Owner, Engineer considers the Work substantially complete, Engineer shall deliver a certificate of Substantial Completion to Owner and Contractor.

18. *Additional Tasks:* Perform or provide the following additional Construction Phase tasks or deliverables: Not applicable. [*here list any such tasks or deliverables*].

19. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to determine if the completed Work of Contractor is acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice in the form attached hereto as Exhibit E (the "Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of Paragraph A1.05.A.15.b) to the best of Engineer's knowledge, information, and belief and based on the extent of the services provided by Engineer under this Agreement.

20. Provide one (1) full-size set of the stamped as-built plans on Mylar (24" X 36") and one (1) DVD with "as-built" stamped construction plans in AutoCAD and PDF formats in both 24" X 36" formats in both 24" X 36" and 11" X 17" print sizes.

B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in Paragraph A1.03.C, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.

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C. *Limitation of Responsibilities:* Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor or Supplier, or other individuals or entities performing or furnishing any of the Work, for safety or security at the Site, or for safety precautions and programs incident to Contractor's Work, during the Construction Phase or otherwise. Engineer shall not be responsible for the failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

A1.06 *Post-Construction Phase*

A. Upon written authorization from Owner during the Post-Construction Phase Engineer shall:

1. Together with Owner, visit the Project to observe any apparent defects in the Work, assist Owner in consultations and discussions with Contractor concerning correction of any such defects, and make recommendations as to replacement or correction of defective Work, if any.

2. Together with Owner or Owner's representative, visit the Project within one month before the end of the correction period to ascertain whether any portion of the Work is subject to correction.

3. Perform or provide the following additional Post-Construction Phase tasks or deliverables: Complete a one-year warranty inspection and report.~~*[Here list any such tasks or deliverables]*~~

B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.

C. All deliverables described above shall be submitted to the Owner electronically in PDF and AutoCAD formats (current version of AutoCAD in DWG format using the state plane coordinates [NMSPCS, NAD 1983]) as appropropriate.

PART 2 – ADDITIONAL SERVICES

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

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

1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.

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3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.

4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those identified in Paragraph A1.01.A.4.

5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.

6. Providing renderings or models for Owner's use.

7. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of financial feasibility and cash flow studies, rate schedules, and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing, and assisting Owner in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by Owner.

8. Furnishing services of Consultants for other than Basic Services.

9. Services attributable to more prime construction contracts than specified in Paragraph A1.03.D.

10. Services during out-of-town travel required of Engineer other than for visits to the Site or Owner's office.

11. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.

12. Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by Owner for the Work or a portion thereof.

13. Assistance in connection with Bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required by Exhibit F.

14. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.6, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.

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15. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor.

16. Providing assistance in responding to the presence of any Constituent of Concern at the Site, in compliance with current Laws and Regulations.

17. Preparing Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor, and furnishing such Record Drawings to Owner.

18. Preparation of operation and maintenance manuals.

19. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, or other dispute resolution process related to the Project.

20. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.

21. Assistance in connection with the adjusting of Project equipment and systems.

22. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.

23. Assistance to Owner in developing procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related record-keeping.

24. Overtime work requiring higher than regular rates.

25. Other services performed or furnished by Engineer not otherwise provided for in this Agreement.

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

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

1. Services in connection with work change directives and change orders to reflect changes requested by Owner.

2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.

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3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.

4. Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work (advance notice not required), (2) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (3) Work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by Contractor.

5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of any part of the Work by Owner prior to Substantial Completion.

6. Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the Work.

7. Services during the Construction Phase rendered after the original date for completion of the Work referred to in A1.05.B.

8. Reviewing a Shop Drawing more than three times, as a result of repeated inadequate submissions by Contractor.

9. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, state, or local safety authorities for similar construction sites.

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Engineer's Work Plan

Engineer's design will be performed according to Santa Fe County, USFS, and AASHTO requirements. The design drawings, specification and cost estimates will be prepared according to NMDOT format as applicable to meet federal funding requirements. The Engineer's Work Plan is summarized as follows:

Project Scoping

To be completed in consultation with Santa Fe County to meet its objectives.

Study and Report Phase (30% Design)

Project Kick-off – Engineer and Engineer's consultants will meet with the County to attend a project Kick-off meeting to discuss project disciplines and the approach for each. The meeting will also establish project design and construction budgets as well as milestones for design and construction.

Initial Assessment

Right to Enter – The County will obtain permission to enter all private properties within the study limits.

Study Area Topography – Engineer's consultant will obtain existing 1' or 2' contour mapping from the County.

Right of Way – Engineer's consultant will identify ROWs, easements and property boundaries in the study limits using existing mapping from the Office of the Assessor. The boundaries will be overlain on the Study Area Topography and Google Earth satellite imagery.

Initial Alignment Review – Engineer, Engineer's consultant and the County will use Google Earth to visit all alignment options and discuss pros and cons of each location and its alignment options. This will be done digitally after the Kick-off meeting rather than on the ground because much of the site is inaccessible.

Alignment Assessment (Field) – Engineer and Engineer's consultant will provide field visits to absorb the particulars of the location, to develop alignment ideas and to identify opportunities and constraints.

Alignment Assessment (Office) – Engineer will perform additional office assessments of trail layout using existing aerial topography of Google Earth. Engineer's consultant will establish drainage criteria for potential arroyo crossings and other drainage locations. Engineer's consultant will also identify environmental issues to be addressed when preparing alignment options. Environmental issues to be addressed will include cultural and biological resources which will require clearance for any arroyo construction. Survey activities are recommended at a time when trail location is more finalized.

Engineer's consultant will begin initial NEPA correspondence with agency correspondence.

Public process.
Engineer and Engineer's consultants will present at a public meeting (organized and facilitated by the County) to obtain feedback from the public. This public meeting #1 will be held on the evening of the Kick-off Meeting. A questionnaire will be used to obtain feedback from meeting attendees. A Survey Monkey internet questionnaire will be developed by the Engineer to be placed on the Santa Fe County website. Goals of the meeting and questionnaire are to identify user groups (cyclists, equestrians, commuters, recreational users, etc); tread material type (concrete, asphalt and soft surface); and to gauge interest in having separate trail facilities for various trail users. Engineer will analyze and summarized meeting and questionnaire comments.

Engineer's consultants and Santa Fe County will perform one-on-one meetings with critical stakeholders. Engineer's consultants will take and distribute meeting notes.

Trail Layout.
Field Layout – Engineer will spend four days in the field to establish and flag alignment options (using colored survey whiskers). Proposed locations for structures and drainage facilities will also be identified. Previous field and office studies by Engineer and Engineer's consultant will be considered in the layout. Potential future secondary trail locations will be cursorily reviewed in the field.

County review – On the fifth day Engineer will field-review the alignment options with the County. Necessary adjustments will be made as deemed appropriate.

Cross Section Difficulty Level Analysis – Engineer will develop typical sections based on Engineer's Difficulty Level analysis method. The analysis will determine lengths and costs of various types of trail section including brides and underpasses.

Design Review – The schematic design, cost estimates, drainage studies and environmental studies will be submitted to the County for review in the form of a Preliminary Design Report. The County will select a preferred alignment option for the various trail components.

60% Design Phase

Trail alignment modification – Engineer will modify the main line trail alignment as necessary based on the County's review of the schematic design. Engineer will not locate or design any secondary trails.

Topographic Survey – Engineer's consultant will obtain field survey (100 feet wide) of the County's Preferred Alignment and establish survey control, benchmarks, contact for

utility locations, survey pursuant to 2007 NM Minimum Standards for Surveying (NMAC 12.8.2).

Existing Right-of Way – Engineer's consultant will plot ROW based on legal descriptions from the Office of the Assessor of all parcels the trail will cross.

Environmental – Engineer will coordinate with the Army Corps of Engineers and NM Water Quality Certification to submit permit applications. Engineer's consultant will also prepare a Phase 1 Archaeological study and studies required for NEPA permitting. Engineer will assist the County with SHPO permitting.

Hydraulics & Drainage – Engineer's consultant will perform a drainage analysis of the Preferred Alignment. Engineer's consultant will obtain any maps or models of the Arroyo Hondo floodplain that have been prepared by FEMA. Using the existing model, Engineer's consultant will prepare an evaluation of installation of a structure into the arroyo or other crossing. The existing roadway culverts at NM 14 and the abandoned I-25 ramps may be used to avoid the cost of bridge crossings. Engineer's consultant will use hydraulic models to analyze two (2) bridge/drainage structure locations. If needed Engineer's consultant may complete hydraulic analysis of additional structures for additional compensation upon mutual agreement of the Engineer and County and appropriate amendment of this Agreement. Engineer's consultant will modify the existing hydraulic model at NM 14 culvert to determine the feasibility of using the existing culvert as a trail underpass. Engineer services do not include the design of drainage control features at the NM 14 crossing. If needed Engineer's consultant will complete additional underpass analyses for drainage control features at NM 14 crossing for additional compensation upon mutual agreement of the Engineer and County and appropriate amendment of this Agreement. It is assumed that a grade separated crossing of the existing abandoned I-25 ramp will not be required. Engineer's consultant will also provide drainage calculations and culver sizing as needed for minor drainage crossings throughout the project.

Geotechnical – Engineer's consultant will perform a geotechnical investigation to obtain foundation design requirements throughout the site. Engineer's consultant will provide twenty-eight deep borings at bridges, underpasses and/or retaining walls. They will also provide 15 shallow borings to evaluate soils for trail tread design. The actual number of required borings will be determined at the end of the Schematic Design Phase and Engineer's compensation adjusted upon mutual agreement of the Engineer and County and appropriate amendment of this Agreement.

Trail, Bridge and Road Crossings – Engineer will prepare a preliminary design and cost estimate of the main trail.

Stormwater – Engineer will prepare a Stormwater Management Analysis. The Stormwater Management Analysis will adhere to requirements of Santa Fe County

Ordinance No. 2008-10, Article 5 "Stormwater Management Analysis and Design Criteria."

Wayfinding – Engineer's consultant will prepare alternative designs for Santa Fe County Open Space trail branding. Signage will include trailhead kiosk signs, internal wayfinding signs, and regulatory signs. Engineer's consultant will also provide a sign location plan.

Proposed ROW – Engineer will identify ROW requirements. Engineer's consultant will perform legal descriptions and exhibits for required acquisitions or easements. Engineer assumes that eleven parcels from eight owners will be required.

Office Review Meeting – Engineer and Engineer's consultant will attend a design review meeting in Santa Fe County.

Field Review Meeting – Engineer will review the design in the field with Santa Fe County.

COLTPAC – Engineer and Santa Fe County will present the design to COLTPAC

Public Meeting #2 – Engineer and Engineer's consultant will present the design at a public meeting.

Santa Fe County Technical Review Team – Engineer and Engineer's consultant will assist in presenting the project.

Santa Fe County Land Development Code – Engineer and Engineer's consultant will resolve issues related to land use permits and certifications.

90% Design Phase

Trail, Bridge and Road Crossings – Engineer will prepare 90% design.

Topographical Study – Engineer's consultant will perform up to two days of supplemental surveying if needed.

Environmental – Engineer's consultant will perform follow-permitting activities as required.

Stormwater Management Plan – Engineer's consultant will prepare a Stormwater Management Plan. Engineer's consultant will provide BMPs for use by the construction contractor to prepare the Stormwater Pollution Prevention plan.

Wayfinding – Engineer's consultant will prepare a wayfinding signage plan indicating location and type of sign. Engineer's consultant will also prepare sign production details.

Proposed ROW – Engineer's consultant will update easement descriptions if needed.

Cost Estimate and Specifications – Engineer and Engineer's consultant will prepare Cost Estimate and Specifications (environmental requirements).

Public Involvement – Engineer and Engineer's consultant will participate as necessary in public meeting #3 to present the design at a public meeting.

100% Design Completion

Engineer will prepare four (4) separate bid packages for procurement of a contractor for construction when funding becomes available. Engineer's design and cost estimates will be broken into logical sections that can be divided into separate bid packages.

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

Owner's Responsibilities

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

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

A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in the Drawings and Specifications; and furnish copies of Owner's standard forms, conditions, and related documents for Engineer to include in the Bidding Documents, when applicable.

B. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.

C. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:

1. Property descriptions.

2. Zoning, deed, and other land use restrictions.

3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.

4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions relating to existing surface or subsurface structures at the Site, or hydrographic surveys, with appropriate professional interpretation thereof.

5. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.

6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.

D. Give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of the presence at the Site of any Constituent of Concern, or of any other development that affects the

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

E. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.

F. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.

G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.

H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.

I. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:

   1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.

   2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.

   3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the moneys paid.

J. Place and pay for advertisement for Bids in appropriate publications.

K. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.

L. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.

M. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.

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N. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.

O. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment visits to the Project.

P. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof.

Q. Provide Engineer with the findings and reports generated by the entities providing services to Owner pursuant to this paragraph.

R. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.

S. Perform or provide the following additional services: *[Here list any such additional services]*.

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

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

Payments to Engineer for Services and Reimbursable Expenses
COMPENSATION PACKET BC-1: Basic Services and Fees for Additional Services of Engineer's Consultants– Lump Sums

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

ARTICLE 2 – OWNER'S RESPONSIBILITIES

C2.01 *Compensation for Engineer's Basic Services and Additional Services of Engineer's Consultants (other than Resident Project Representative) – Lump Sum Method of Payment*

A. Owner shall pay Engineer for Basic Services and Additional Service of Engineer's Consultants as set forth in Exhibit A, except for services of Engineer's Resident Project Representative, if any, as follows:

1. A Lump Sum amount of $ 569,996.00 based on the following estimated distribution of compensation, exclusive of GRT:

a.	Conceptual Design ~~Study and Report Phase~~	$ 71,180 .00
b.	Preliminary Design Phase	$ 81,735.00
c.	Final Design Phase	$ 116,765.00
d.	Construction (Engineering, RPR, As-builts)	$ 107,920.00
e.	Reimburseables	$ 31,241.00
f.	Engineer's Consultants: Conceptual Design	$ 41,398.00
g.	Preliminary Design Phase (Consultants)	$ 88,357.00
h.	Final Design Phase (Consultants)	$ 31,400.00
	TOTAL:	**$ 569,996.00**

~~i. Bidding and Negotiating Phase $_____~~

~~j. Construction Phase $_____~~

~~k. Post-Construction Phase $_____~~

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

3. The Lump Sum includes compensation for Engineer's services and services of Engineer's Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.

4. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the percentage of the total services actually completed during the billing period.

5. Owner shall pay Engineer for all Reimbursable Expenses at the rates set forth in Appendix 1 to this Exhibit C.

B. Period of Service: The compensation amount stipulated above ~~in Compensation Packet BC-1~~ is conditioned on a period of service not exceeding _____ months. If such period of service is extended, the compensation amount for Engineer's services shall be appropriately adjusted.

C2.03 *Other Provisions Concerning Payment*

~~A. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of _____.~~

B. Factors. The external Reimbursable Expenses and Engineer's Consultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.

C. ~~Estimated~~ Compensation Amounts:

1. ~~Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.~~

2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice, Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend the Engineer's services during the negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the

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compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered hereunder.

D. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

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This is **Appendix 1 to EXHIBIT C**~~, consisting of _____ pages,~~ referred to in and part of the **Agreement between Owner and Engineer for Professional Services** ~~dated _____, _____~~.

Reimbursable Expenses Schedule

Current agreements for engineering services stipulate that the Reimbursable Expenses are subject to review and adjustment per Exhibit C. Reimbursable expenses for services performed on the date of the Agreement are:

~~Fax~~	~~$_____/page~~
~~8"x11" Copies/Impressions~~	~~_____/page~~
~~Blue Print Copies~~	~~_____/sq. ft.~~
~~Reproducible Copies (Mylar)~~	~~_____/sq. ft.~~
~~Reproducible Copies (Paper)~~	~~_____/sq. ft.~~
~~Mileage (auto)~~	~~_____/mile~~
~~Field Truck Daily Charge~~	~~_____/day~~
~~Mileage (Field Truck)~~	~~_____/mile~~
~~Field Survey Equipment~~	~~_____/day~~
~~Confined Space Equipment~~	~~_____/day plus expenses~~
~~Resident Project Representative Equipment~~	~~_____/month~~
~~Specialized Software~~	~~_____/hour~~
~~CAD Charge~~	~~_____/hour~~
~~CAE Terminal Charge~~	~~_____/hour~~
~~Video Equipment Charge~~	~~_____/day, $_____/week, or $_____/month~~
~~Electrical Meters Charge~~	~~_____/week, or $_____/month~~
~~Flow Meter Charge~~	~~_____/week, or $_____/month~~
~~Rain Gauge~~	~~_____/week, or $_____/month~~
~~Sampler Charge~~	~~_____/week, or $_____/month~~
~~Dissolved Oxygen Tester Charge~~	~~_____/week~~
~~Fluorometer~~	~~_____/week~~
~~Laboratory Pilot Testing Charge~~	~~_____/week, or $_____/month~~
~~Soil Gas Kit~~	~~_____/day~~
~~Submersible Pump~~	~~_____/day~~
~~Water Level Meter~~	~~_____/day, or $_____/month~~
~~Soil Sampling~~	~~_____/sample~~
~~Groundwater Sampling~~	~~_____/sample~~
~~Health and Safety Level D~~	~~_____/day~~
~~Health and Safety Level C~~	~~_____/day~~
~~Electronic Media Charge~~	~~_____/hour~~
~~Long Distance Phone Calls~~	~~at cost~~
~~Mobile Phone~~	~~_____/day~~
~~Meals and Lodging~~	~~at cost~~

~~***[Note to User: Customize this Schedule to reflect anticipated reimbursable expenses on this specific Project]***~~

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Mileage	$0.41/ mile
Hotel	$100.00/night
Meals & Incidentals	$60.00/day
Airfare	$300.00/trip
Gas	$50.00/trip
Transportation to airport	$50.00/trip
Airport Parking	$10.00/day
Rental Car	$50.00/day

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

NOTICE OF ACCEPTABILITY OF WORK

PROJECT:

OWNER:

CONTRACTOR:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:

ENGINEER:

NOTICE DATE:

To: _____
Owner

And To: _____
Contractor

From: _____
Engineer

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

By: _____

Title: _____

Dated: _____

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CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

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

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.

2. This Notice reflects and is an expression of the professional judgment of Engineer.

3. This Notice is given as to the best of Engineer's knowledge, information, and belief as of the Notice Date.

4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor's work) under Engineer's Agreement with Owner and under the Construction Contract referred to in this Notice, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement and Construction Contract.

5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract referred to in this Notice, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Contract Documents.

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

Construction Cost Limit

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

F5.02 *Designing to Construction Cost Limit*

A. Owner and Engineer hereby agree to a Construction Cost limit in the amount of $_____.

B. A bidding or negotiating contingency of _____ percent will be added to any Construction Cost limit established.

C. The acceptance by Owner at any time during Basic Services of a revised opinion of probable Construction Cost in excess of the then established Construction Cost limit will constitute a corresponding increase in the Construction Cost limit.

D. Engineer will be permitted to determine what types and quality of materials, equipment and component systems are to be included in the Drawings and Specifications. Engineer may make reasonable adjustments in the scope, extent, and character of the Project to the extent consistent with the Project requirements and sound engineering practices, to bring the Project within the Construction Cost limit.

E. If the Bidding or Negotiating Phase has not commenced within three months after completion of the Final Design Phase, or if industry-wide prices are changed because of unusual or unanticipated events affecting the general level of prices or times of delivery in the construction industry, the established Construction Cost limit will not be binding on Engineer. In such cases, Owner shall consent to an adjustment in the Construction Cost limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the Final Design Phase and the date on which proposals or Bids are sought.

F. If the lowest bona fide proposal or Bid exceeds the established Construction Cost limit, Owner shall (1) give written approval to increase such Construction Cost limit, or (2) authorize negotiating or rebidding the Project within a reasonable time, or (3) cooperate in revising the Project's scope, extent, or character to the extent consistent with the Project's requirements and with sound engineering practices. In the case of (3), Engineer shall modify the Contract Documents as necessary to bring the Construction Cost within the Construction Cost Limit. Owner shall pay Engineer's cost to provide such modification services, including the costs of the services of its Consultants, all overhead expenses reasonably related thereto, and Reimbursable Expenses, but without profit to Engineer on account of such services. The providing of such services will be the limit of Engineer's responsibility in this regard and, having done so, Engineer shall be entitled to payment for services and expenses in accordance with this Agreement and will not otherwise be liable for damages attributable to the lowest bona fide proposal or bid exceeding the established Construction Cost limit.

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

Insurance

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

G6.04 *Insurance*

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

1. By Engineer:

a. Workers' Compensation: Statutory

b. Applicable Federal: Statutory

c. Employer's Liability --

1) Each Accident: $500,000.00
2) Disease, Policy Limit: $500,000.00
3) Disease, Each Employee: $500,000.00

d. Commercial General Liability –Including coverage for Premises and Operations, Independent Contractor's Protective, Products-Completed Operations, Contractual Liability, Personal Injury and Broad Form Property Damage (including coverage for Explosion, Collapse and Underground Hazards):

4) Each Occurrence (Bodily Injury and Property Damage): $1,050,000.00
5) General Aggregate: $2,100,000.00

6) The policy shall be endorsed to have the General Aggregate apply to this Project only.
7) The Contractual Liability insuance shall include coverage sufficient to meet the obligation in
8) Products-Completed Operations insurance shall be maintained for a minimum period of one (1) year after final payment.

B. The insurance required above shall be written for not less than the limits of liability specified above or required by law whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the services until date of final payment and temination of any coverge required to be obtained after final payment (Products-Completed Operations coverage). Certificates of insurance acceptable to Owner shall be filed

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with the Owner prior to commencement of the Engineer's services. The certificates and insurance policies required herein shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment.

e. Excess or Umbrella Liability --

7) Each Occurrence: $_____
8) General Aggregate: $_____

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

Each Accident $2,000,000.00

g. Professional Liability –

9) Each Claim Made $_____
10) Annual Aggregate $_____

h. Other (specify): $_____

2. By Owner:

3. Owner Santa Fe County will provide and maintain General Liability and Automobile Liability insurance as typically provided for this type of project and activity.

a. Workers' Compensation: Statutory

~~b. Employer's Liability --~~

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

~~c. General Liability --~~

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

~~d. Excess Umbrella Liability --~~

~~1) Each Occurrence: $_____~~

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~~2) General Aggregate: $_____~~

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

~~Each Accident: $_____~~

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

B. *Additional Insureds:*

1. The following persons or entities are to be listed on Owner's general liability policies of insurance as additional insureds, and on any applicable property insurance policy as loss payees, as provided in Paragraph 6.04.B: No additional insureds or loss payees will be listed on Owner's general liability policy or property insurance policy.

~~a.~~ _____
~~Engineer~~

~~b.~~ _____
~~Engineer's Consultant~~

~~c.~~ _____
~~Engineer's Consultant~~

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

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

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

Dispute Resolution

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

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

H6.08 *Dispute Resolution*

A. *Mediation*: Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation pursuant to the New Mexico Public Works Mediation Act, 13-4C-1 et seq. ~~by *[insert name of mediator, or mediation service]*~~. Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by the District Court of the First Judicial District, Santa Fe, New Mexico. ~~a court of competent jurisdiction.~~

[or]

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

1. ~~Notice of the demand for arbitration must be filed in writing with the other party to the Agreement and with the [*specified arbitration service or organization*]. The demand must be made within a reasonable time after the Dispute has arisen. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such Dispute would be barred by the applicable statute of limitations.~~

2. ~~All demands for arbitration and all answering statements thereto which include any monetary claims must contain a statement that the total sum or value in controversy as alleged by the party making such demand or answering statement is not more than $_____ (exclusive of interest and costs). The arbitrators will not have jurisdiction, power, or authority to consider, or make findings (except in denial of their own jurisdiction) concerning any Dispute if the amount in controversy in such Dispute is more than $_____ (exclusive of interest and costs), or to render a monetary award in response thereto against~~

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

3. ~~The award rendered by the arbitrators shall be in writing, and shall include: (i) a precise breakdown of the award; and (ii) a written explanation of the award specifically citing the Agreement provisions deemed applicable and relied on in making the award.~~

4. ~~The award rendered by the arbitrators will be consistent with the Agreement of the parties and final, and judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to appeal or modification.~~

5. ~~If a Dispute in question between Owner and Engineer involves the work of a Contractor, Subcontractor, or consultants to the Owner or Engineer (each a "Joinable Party"), and such Joinable Party has agreed contractually or otherwise to participate in a consolidated arbitration concerning this Project, then either Owner or Engineer may join such Joinable Party as a party to the arbitration between Owner and Engineer hereunder. Nothing in this Paragraph H6.08.A.5 nor in the provision of such contract consenting to joinder shall create any claim, right, or cause of action in favor of the Joinable Party and against Owner or Engineer that does not otherwise exist.~~

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

~~Limitations of Liability~~

~~Paragraph 6.10 of the Agreement is supplemented to include the following agreement of the parties:~~

~~A. *Limitation of Engineer's Liability*~~

~~[***NOTE TO USER: Select one of the three alternatives listed below for I6.10 A.1***]~~

1. ~~*Engineer's Liability Limited to Amount of Engineer's Compensation:* To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants, to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants shall not exceed the total compensation received by Engineer under this Agreement.~~

~~[or]~~

1. ~~*Engineer's Liability Limited to Amount of Insurance Proceeds:* Engineer shall procure and maintain insurance as required by and set forth in Exhibit G to this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied, of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultantss (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Engineer by Engineer's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Engineer's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal). If no such insurance coverage is provided with respect to Owner's Claims, then the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants to Owner and anyone claiming by, through, or under Owner for any and all such uninsured Owner's Claims shall not exceed $_____ [*or*]~~

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1. ~~*Engineer's Liability Limited to the Amount of $_____:* Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants, to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants shall not exceed the total amount of $_____.~~

~~***[NOTE TO USER: If appropriate and desired, include I6.10.A.2 below as a supplement to Paragraph 6.10, which contains a mutual waiver of damages applicable to the benefit of both Owner and Engineer]***~~

2. ~~*Exclusion of Special, Incidental, Indirect, and Consequential Damages:* To the fullest extent permitted by law, and notwithstanding any other provision in the Agreement, consistent with the terms of Paragraph 6.10. the Engineer and Engineer's officers, directors, members, partners, agents, Consultants, and employees shall not be liable to Owner or anyone claiming by, through, or under Owner for any special, incidental, indirect, or consequential damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to any such damages caused by the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warrantyexpress or implied of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants, and including but not limited to:~~

~~***[NOTE TO USER: list here particular types of damages that may be of special concern because of the nature of the project or specific circumstances, e.g., cost of replacement power, loss of use of equipment or of the facility, loss of profits or revenue, loss of financing, regulatory fines, etc. If the parties prefer to leave the language general, then end the sentence after the word "employees"]***~~

~~***[NOTE TO USER: the above exclusion of consequential and other damages can be converted to a limitation on the amount of such damages, following the format of Paragraph I6.10.A.1 above, by providing that "Engineer's total liability for such damages shall not exceed $_____."]***~~

~~***[NOTE TO USER: If appropriate and desired, include I6.10.A.3 below]***~~

3. ~~*Agreement Not to Claim for Cost of Certain Change Orders:* Owner recognizes and expects that certain Change Orders may be required to be issued as the result in whole or~~

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~~part of imprecision, incompleteness, errors, omissions, ambiguities, or inconsistencies in the Drawings, Specifications, and other design documentation furnished by Engineer or in the other professional services performed or furnished by Engineer under this Agreement ("Covered Change Orders"). Accordingly, Owner agrees not to sue or to make any claim directly or indirectly against Engineer on the basis of professional negligence, breach of contract, or otherwise with respect to the costs of approved Covered Change Orders unless the costs of such approved Covered Change Orders exceed _____% of Construction Cost, and then only for an amount in excess of such percentage. Any responsibility of Engineer for the costs of Covered Change Orders in excess of such percentage will be determined on the basis of applicable contractual obligations and professional liability standards. For purposes of this paragraph, the cost of Covered Change Orders will not include any costs that Owner would have incurred if the Covered Change Order work had been included originally without any imprecision, incompleteness, error, omission, ambiguity, or inconsistency in the Contract Documents and without any other error or omission of Engineer related thereto. Nothing in this provision creates a presumption that, or changes the professional liability standard for determining if, Engineer is liable for the cost of Covered Change Orders in excess of the percentage of Construction Cost stated above or for any other Change Order. Wherever used in this paragraph, the term Engineer includes Engineer's officers, directors, members, partners, agents, employees, and Consultants.~~

~~***[NOTE TO USER: The parties may wish to consider the additional limitation contained in the following sentence.]***~~

> ~~Owner further agrees not to sue or to make any claim directly or indirectly against Engineer with respect to any Covered Change Order not in excess of such percentage stated above, and Owner agrees to hold Engineer harmless from and against any suit or claim made by the Contractor relating to any such Covered Change Order.]~~

~~***[NOTE TO USER: Many professional service agreements contain mutual indemnifications. If the parties elect to provide a mutual counterpart to the indemnification of Owner by Engineer in Paragraph 6.10.A, then supplement Paragraph 6.10.B by including the following indemnification of Engineer by Owner as Paragraph I6.10.B.]***~~

~~B. *Indemnification by Owner*: To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or~~

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~~omission of Owner or Owner's officers, directors, members, partners, agents, employees, consultants, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.~~

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

Special Provisions

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

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

AMENDMENT TO OWNER-ENGINEER AGREEMENT
Amendment No. _____

1. *Background Data:*

   a. Effective Date of Owner-Engineer Agreement: _____

   b. Owner: _____

   c. Engineer: _____

   d. Project: _____

2. *Description of Modifications:*

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

a. Engineer shall perform or furnish the following Additional Services:

b. The Scope of Services currently authorized to be performed by Engineer in accordance with the Agreement and previous amendments, if any, is modified as follows:

c. The responsibilities of Owner are modified as follows:

d. For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional or modified compensation:

e. The schedule for rendering services is modified as follows:

f. Other portions of the Agreement (including previous amendments, if any) are modified as follows:

[List other Attachments, if any]

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5. Agreement Summary (Reference only)
   a. Original Agreement amount: $_____
   b. Net change for prior amendments: $_____
   c. This amendment amount: $_____
   d. Adjusted Agreement amount: $_____

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

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

OWNER:	ENGINEER:
_____	_____
By: _____	By: _____
Title: _____	Title: _____
Date Signed: _____	Date Signed: _____

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