

**PROFESSIONAL SERVICES AGREEMENT BETWEEN SANTA FE COUNTY
AND WATERWAY OF NEW MEXICO, LLC
TO PROVIDE FIRE HOSE TESTING SERVICES**

THIS AGREEMENT is made and entered into on this 2nd day of November 2012, by and between **SANTA FE COUNTY** (hereinafter referred to as the "County"), a political subdivision of the State of New Mexico, and **WATERWAY OF NEW MEXICO, LLC** (hereinafter referred to as the "Contractor").

WHEREAS, the Santa Fe County Fire Department is committed to providing quality and professional fire protection to the residents of Santa Fe County by ensuring the safety and reliability of its fire equipment through annual fire hose testing;

WHEREAS, the Contractor is qualified to perform the fire hose testing service according to the current National Fire Protection Association (NFPA) standards;

WHEREAS, in accordance with Section 13-1-102 NMSA 1978, the County issued Invitation for Bids (IFB) No. 2013-0123-FD/PL for these services;

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

NOW THEREFORE, in consideration of the premises and mutual obligations herein, the parties hereto do mutually agree as follows:

1. SCOPE OF WORK

All fire hose testing will be conducted according to the procedures and requirements listed in the most recent version of the NFPA 1962 Standards. These specifications establish minimum acceptable testing requirements. In addition to the NFPA test standards, the Contractor will also provide the following:

- A. Contractor will coordinate and schedule the service with each District Fire Chief before beginning testing.
- B. Contractor will travel to each regional Fire Region except for stations in which there is 10,000 feet or more of hose that requires testing. In those instances, the contractor shall do the testing at the Fire District location.
- C. Contractor will remove the fire hose from the Department's apparatus and conduct a visual inspection of all hose prior to hydrostatic pressure testing, as specified in the NFPA 1962 Standards, Section 4.6. All hose failing this inspection will be marked with an "OUT OF SERVICE" tag and removed from service, without being pressure tested. The location of the physical problem will be marked on the jacket of the hose. The Contractor shall also indicate whether the hose is repairable or not.

- D. Contractor will conduct a hydrostatic pressure test in accordance with the NFPA 1962 Standards, Section 7. Service test pressures will be specified in the NFPA 1962 Standards, Section 7.1, unless Department specifies lower or higher testing pressures. No hose shall be tested at a pressure higher than 400 psi.
- E. Contractor will provide all hydrostatic testing equipment, including a pressure and volume relief device with adequate capabilities and a maximum setting, not to exceed the service test pressure of the hose being tested.
- F. Contractor will provide and use a safety harnessing system to control hose in the event of a rupture. Hose must be adequately strapped or secured.
- G. Care should be taken to prevent the outer layers of double jacketed hose from becoming wet. Double jacketed hose shall be tested off the ground and not on a wet surface.
- H. Within fifteen (15) days of completing service, contractor will deliver to the Fire Department final test documentation. Documentation is to be provided in both an electronic and paper format, and shall include an inventory report showing date of test, service test pressures, hose diameter, length, identification codes, and pass/fail status for each length of hose. In addition, the Department shall receive a report listing hose by diameter and an aging report listing the age of each length of hose. Contractor shall maintain a copy of this documentation for a period of ten (10) years.
- I. After testing, Contractor will reload all hose on the Department's apparatus according to the Department's instructions.

2. COMPENSATION, INVOICING, AND SET-OFF

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

- 1) County shall pay to the Contractor in full payment for services satisfactorily performed in accordance with the costs indicated on Exhibit A.
- 2) The total amount payable to the Contractor under this Agreement shall not exceed twenty-one thousand nine hundred fifty-nine dollars and twenty-five cents (\$21,959.25) per year exclusive of gross receipts tax. Any New Mexico gross receipts tax levied on the amounts payable under this Agreement shall be paid by the County to the Contractor.
- 3) The County will notify the Contractor if and when the County has paid Contractor the full not-to-exceed amount stated above prior to the

expiration of the term of this Agreement. Absent an approved amendment to the contract amount, Contractor will not be compensated in excess of the not-to-exceed amount stated above for deliverables and services performed.

B. The Contractor shall submit a written request for payment to the County when payment is due under this Agreement. Upon the County's receipt of the written request, the County shall issue a written certification of complete or partial acceptance or rejection of the contractual items or services for which payment is sought. The Contractor acknowledges and agrees that the County may not make any payment hereunder unless and until it has issued a written certification accepting the contractual items or services. Within thirty (30) days of the issuance of a written certification accepting the contractual items or services, the County shall tender payment for the accepted items or services. In the event the County fails to tender payment within thirty (30) days of the written certification accepting the items or services, the County shall pay late payment charges of one and one-half percent (1.5%) per month, until the amount due is paid in full.

C. Delivery and Liquidated Damages. Time is of the essence for purposes of this contract. All damages resulting from late delivery of goods and services shall be the responsibility of the Contractor. All bid items or services are to be delivered F.O.B. Santa Fe County, at a site to be determined by the County at the time a purchase order is released, except specifically set forth herein. In the event of failure of the Contractor to deliver in accordance with this requirement, the Contractor shall be assessed liquidated damages for late delivery in the amount of \$100.00 each day the materials or services are delivered late. At the option of the County, the County may invoke the default provisions of the contract for late performance in addition to the liquidated damages referred to above.

D. In the event the Contractor breaches this Agreement, the County may, without penalty, withhold any payments due the Contractor for the purpose of set-off until such time as the County determines the exact amount of damages, including any liquidated damages of \$100.00 per day as indicated above.

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

3. EFFECTIVE DATE AND TERM

This Agreement shall, upon due execution by all parties, become effective as of the date first written above and shall terminate one year later, unless earlier terminated pursuant to Section 5 (Termination) or Section 6 (Appropriations and Authorizations). The County has the option to extend the contract at the same price, terms and conditions for a period of three (3) additional years. The County may exercise this option by submitting a written notice to Contractor that the Agreement will be extended an additional year. The notice must be submitted to Contractor at least sixty days prior to expiration of the initial Agreement.

4. ADDITIONAL SERVICES

A. The parties agree that all tasks set forth in Paragraph 1, SCOPE OF WORK of this Agreement, shall be completed in full, to the satisfaction of the County, for the amount set forth in Section 2, COMPENSATION, INVOICING, AND SET-OFF, of this Agreement, and for not other cost, amount, fee, or expense.

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

5. TERMINATION

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

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

6. APPROPRIATIONS AND AUTHORIZATIONS

This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Board of County Commissioners of the County and/or, if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Agreement shall terminate upon written notice by the County to the Contractor. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse the Contractor for expenditures made in the performance of this Agreement. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. The County's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by the Contractor in any way or forum, including a lawsuit.

7. INDEPENDENT CONTRACTOR

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

8. ASSIGNMENT

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

9. SUBCONTRACTING

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

10. PERSONNEL

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

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

11. RELEASE

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

12. CONFIDENTIALITY

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

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

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

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

14. CONFLICT OF INTEREST

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

15. NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED

This Agreement may not be modified, altered, changed, or amended orally but, rather, only by an instrument in writing executed by the parties hereto. The Contractor specifically acknowledges and agrees that the County shall not be responsible for any changes to Section 1, "SCOPE OF WORK", of this Agreement unless such changes are set forth in a duly executed written amendment to this Agreement. No amendment to this Agreement that changes the terms or increases or decreases the not-to-exceed compensation is valid unless approved by the Santa Fe County Manager or the Santa Fe County Board of Commissioners.

16. ENTIRE AGREEMENT; INTEGRATION

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

17. NOTICE OF PENALTIES

The Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation. In addition, New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks.

18. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

A. The Contractor agrees to abide by all federal, state, and local laws, ordinances, and rules and regulations pertaining to equal employment opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, the Contractor

specifically agrees not to discriminate against any person with regard to employment with the Contractor or participation in any program or activity offered pursuant to this Agreement on the grounds of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation, or gender identity.

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

19. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW

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

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

20. RECORDS AND INSPECTIONS

A. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to the County as part of the procurement process, the Contractor agrees to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under this Agreement; (ii) allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with generally accepted accounting principles (GAAP).

B. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to County as part of the procurement process, the Contractor also agrees to require any subcontractor it may hire to perform its obligations under this Agreement to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under the subcontract; (ii) to allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with GAAP.

21. INDEMNIFICATION

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

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

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

22. SEVERABILITY

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

23. NOTICES

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

To the County: Santa Fe County
Attn: David Sperling, Fire Chief
102 Grant Avenue
Santa Fe, New Mexico 87501

To the Contractor: Waterway of New Mexico LLC
Attn: Keith Henry
P.O. Box 1182
Moriarty, New Mexico 87035

24. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

The Contractor hereby represents and warrants that:

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

B. This Agreement and Contractor's obligations hereunder do not conflict with Contractor's corporate agreement or any statement filed with the Public Regulation Commission on Contractor's behalf.

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

D. Contractor warrants that the fire hose testing services will be in conformity with the most recent version of the National Fire Protection Association (NFPA) 1962 Standards.

25. FACSIMILE SIGNATURES

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

26. LIMITATION OF LIABILITY

The County's liability to the Contractor for any breach of this Agreement by the County shall be limited to direct damages and shall not exceed the maximum amount of potential compensation specified in Section 2, "COMPENSATION AND INVOICING," of this Agreement. In no event shall the County be liable to the Contractor for special or consequential damages, even if the County was advised of the possibility of such damages prior to entering into this Agreement.

27. NO THIRD-PARTY BENEFICIARIES

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

28. INSURANCE

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

B. General Liability Insurance, Including Automobile. The Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,050,000.00 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the County by the Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Agreement is an insured contract. The County of Santa Fe shall be a named additional insured on the policy.

C. Boiler and Machinery Insurance. The Contractor shall procure and maintain boiler and machinery insurance during the life of this Agreement with coverage of all fire hose testing activities to be performed under this agreement.

D. Workers' Compensation Insurance. The Contractor shall comply with the

provisions of the Workers' Compensation Act.

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

29. PERMITS, FEES, AND LICENSES

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

30. NEW MEXICO TORT CLAIMS ACT

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

31. CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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

32. SURVIVAL

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

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

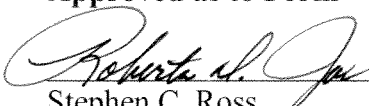
SANTA FE COUNTY:



Katherine Miller
Santa Fe County Manager

11.2.12
Date

Approved as to Form



Stephen C. Ross
Santa Fe County Attorney

10-5-12
Date

Finance Department Approval



Teresa Martinez
Santa Fe County Finance Director

10/25/12
Date

CONTRACTOR:

 _____ 11 October 2012
(Signature) Date

By: Keith Henry
(Print Name)

Its: Owner
(Print Title)

FEDERAL I.D. NUMBER: 90-0843535



BID SHEET

IFB# 2013-0123-FD/PL
Fire Hose Testing Services

Please offer your best price for all hose testing services listed below. Price shall include all costs of labor, travel, equipment, tools, materials, federal tax, permits, licenses, fees and any other items necessary to complete the services. **Include signature at the bottom as stated.** Be advised that award may be made without discussion with bidders on offers received.

Bidder's Organization Name: Waterway of New Mexico

Item #	District	Total Hose Length	Price per Foot	Total Price	Total Written in Words
1	Chimayo	7,500	.19	\$1,425 ⁰⁰	one thousand four hundred twenty five
2	Tesuque	8,100	.19	\$1,539 ⁰⁰	one thousand five hundred thirty nine
3	Pojoaque	9,750	.19	\$1,852 ⁵⁰	one thousand eight hundred fifty two and fifty cents
4	La Puebla	7,200	.19	\$1,368	one thousand three hundred sixty eight
5	Agua Fria	3,500	.19	\$665	six hundred sixty five
6	Madrid	4,825	.19	\$916 ⁷⁵	nine hundred sixteen and seventy five cents
7	Turquoise Trail	7,700	.19	\$1,463	one thousand four hundred sixty three
8	La Cienega	7,500	.19	\$1,425	one thousand four hundred twenty five
9	El Dorado	20,000	.19	\$3,800	three thousand eight hundred
10	Galisteo	2,700	.19	\$513	five hundred thirteen
11	Glorieta Pass	7,500	.19	\$1,425	one thousand four hundred twenty five

Item #	District	Total Hose Length	Price per Foot	Total Price	Total Written in Words
12	Hondo	7,500	.19	\$1425	one thousand four hundred twenty five
13	Stanley	11,300	.19	\$2147	two thousand one hundred forty seven
14	Edgewood	10,500	.19	\$1995	one thousand nine hundred ninety five

TOTAL BID AMOUNT: \$21,959.35

TOTAL BID AMOUNT WRITTEN IN WORDS: twenty one thousand nine hundred fifty nine and twenty five

BIDDER'S SIGNATURE: 

PLEASE NOTE THAT ALL BID AMOUNTS SHALL BE **EXCLUSIVE** OF GROSS RECEIPTS TAX