

CITY OF SANTA FE

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into by and between the City of Santa Fe (the "City") and Souder Miller & Associates (the "Contractor"). The date of this Agreement shall be the date when it is executed by the City and the Contractor, whichever occurs last.

1. SCOPE OF SERVICES

A. The Contractor shall provide professional engineering services for the City for CIP 454A - Rail Trail Extension from Alta Vista Street to Pen Road (the "Project"), in accordance with all provisions of its contract with the Cooperative Extension Services (CES) and the attached proposal as outlined in EXHIBIT "A", attached hereto and made a part thereof.

2. STANDARD OF PERFORMANCE; LICENSES

A. The Contractor represents that it possesses the experience and knowledge necessary to perform the services described under this Agreement.

B. The Contractor agrees to obtain and maintain throughout the term of this Agreement, all applicable professional and business licenses required by law, for itself, its employees, agents, representatives and subcontractors.

3. COMPENSATION

A. The City shall pay to the Contractor via its contract with the Cooperative Extension Service in full payment for services rendered a sum not to exceed forty two thousand, eight hundred fifty-four dollars and thirty-two cents (\$42,854.32), exclusive of applicable gross receipts taxes in total for the term of this agreement.

B. The Contractor shall be responsible for payment of gross receipts taxes levied by the State of New Mexico on the sums paid under this Agreement.

C. Payment shall be made by the City to the Cooperative Extension Services upon receipt and approval by the City of detailed statements containing a report of services completed and in accordance with the Unit Rate Schedule, as described in EXHIBIT "A", attached hereto and made a part thereof. Compensation shall be paid only for services actually performed and accepted by the City.

4. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City, this Agreement shall terminate upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

5. TERM AND EFFECTIVE DATE

This Agreement shall be effective when signed by the City, whichever occurs last, and terminate on October 15, 2018 unless terminated sooner pursuant to Article 6 below.

6. TERMINATION

A. This Agreement may be terminated by the City upon 10 days written notice to the Contractor.

(1) The Contractor shall render a final report of the services performed up to the date of termination and shall turn over to the City original copies of all work product, research or papers prepared under this Agreement.

(2) If compensation is not based upon hourly rates for services rendered, the

City shall pay the Contractor for the reasonable value of services satisfactorily performed through the date Contractor receives notice of such termination, and for which compensation has not already been paid.

(3) If compensation is based upon hourly rates and expenses, then Contractor shall be paid for services rendered and expenses incurred through the date Contractor receives notice of such termination.

7. STATUS OF CONTRACTOR; RESPONSIBILITY FOR PAYMENT OF EMPLOYEES AND SUBCONTRACTORS

A. The Contractor and its agents and employees are independent contractors performing professional services for the City and are not employees of the City. The Contractor, and its agents and employees, shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City as a result of this Agreement.

B. Contractor shall be solely responsible for payment of wages, salaries and benefits to any and all employees or subcontractors retained by Contractor in the performance of the services under this Agreement.

C. The Contractor shall comply with City of Santa Fe Minimum Wage, Article 28-1-SFCC 1987, as well as any subsequent changes to such article throughout the term of this contract.

8. 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 City.

9. CONFLICT OF INTEREST

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this

Agreement. Contractor further agrees that in the performance of this Agreement no persons having any such interests shall be employed.

10. ASSIGNMENT; SUBCONTRACTING

The Contractor shall not assign or transfer any rights, privileges, obligations or other interest under this Agreement, including any claims for money due, without the prior written consent of the City. The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City.

11. RELEASE

The Contractor, upon acceptance of final payment of the amount due under this Agreement, releases the City, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the City to any obligation not assumed herein by the City unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

12. INSURANCE

A. The Contractor, at its own cost and expense, shall carry and maintain in full force and effect during the term of this Agreement, comprehensive general liability insurance covering bodily injury and property damage liability, in a form and with an insurance company acceptable to the City, with limits of coverage in the maximum amount which the City could be held liable under the New Mexico Tort Claims Act for each person injured and for each accident

resulting in damage to property. Such insurance shall provide that the City is named as an additional insured and that the City will be notified within 10 days of cancellation for any reason. The Contractor shall furnish the City with a copy of a "Certificate of Insurance" as a condition prior to performing services under this Agreement.

B. Contractor shall also obtain and maintain Workers' Compensation insurance, required by law, to provide coverage for Contractor's employees throughout the term of this Agreement. Contractor shall provide the City with evidence of its compliance with such requirement.

C. Contractor shall maintain professional liability insurance throughout the term of this Agreement providing a minimum coverage in the amount required under the New Mexico Tort Claims Act. The Contractor shall furnish the City with proof of insurance of Contractor's compliance with the provisions of this section as a condition prior to performing services under this Agreement.

13. INDEMNIFICATION

The Contractor shall indemnify, hold harmless and defend the City from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from Contractor's performance under this Agreement as well as the performance of Contractor's employees, agents, representatives and subcontractors.

14. NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico

Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

15. THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the City and the Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

16. RECORDS AND AUDIT

The Contractor shall maintain, throughout the term of this Agreement and for a period of three years thereafter, detailed records that indicate the date, time and nature of services rendered. These records shall be subject to inspection by the City, the Department of Finance and Administration, and the State Auditor. The City shall have the right to audit the billing both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments.

17. APPLICABLE LAW; CHOICE OF LAW; VENUE

Contractor shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the City of Santa Fe. In any action, suit or legal dispute arising from this Agreement, the Contractor agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

18. AMENDMENT

This Agreement shall not be altered, changed or modified except by an amendment in writing executed by the parties hereto.

19. SCOPE OF AGREEMENT

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the services to be performed hereunder, and all such agreements, covenants and understandings have been merged into this Agreement. This Agreement expresses the entire Agreement and understanding between the parties with respect to said services. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

20. NON-DISCRIMINATION

During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of services by Contractor hereunder, on the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

21. SEVERABILITY

In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

22. NOTICES

Any notices required to be given under this Agreement shall be in writing and served by personal delivery or by mail, postage prepaid, to the parties at the following addresses:

City of Santa Fe

Contractor:

River, Watershed & Trails Section
Attn: Leroy N. Pacheco, PE
P.O. Box 909
Santa Fe, New Mexico 87504-0909

Souder Miller & Associates
Attn: Miguel B. Gabaldon Jr.,
2904 Rodeo Park Drive East
Building 100
Santa Fe, New Mexico 87505

23. EXHIBITS

The following Exhibits are attached to and made a part of this agreement:

Exhibit A – Detailed Scope of Work Proposal and Souder Miller & Associates

Contract with the Cooperative Extension Service

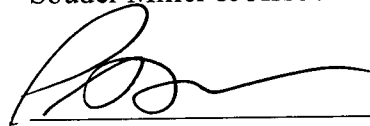
IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.

CITY OF SANTA FE:

CONTRACTOR:

Souder Miller & Associates

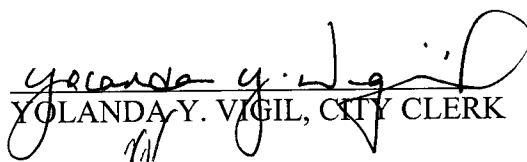

BRIAN K. SNYDER, CITY MANAGER


NAME & TITLE
Peter Faur, Pres. & Mgr.
DATE: 1/2/18

DATE: 12/22/2017

NM Taxation & Revenue
CRS #02-040132-00-9
City of Santa Fe Business
Registration # 17-0031366

ATTEST:

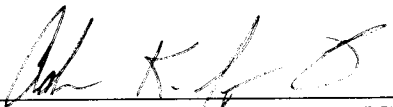

YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:

 11/15

KELLEY A. BRENNAN, CITY ATTORNEY

APPROVED:

 12-19-17

ADAM K. JOHNSON, FINANCE DIRECTOR

426005/572960
Business Unit/Line Item



Souder, Miller & Associates ♦ 2904 Rodeo Park Drive East, Bldg. 100 ♦ Santa Fe, NM 87505
(505) 473-9211 ♦ (800) 460-5366 ♦ fax (505) 471-6675



August 22, 2017

Mr. Leroy N. Pacheco, P.E.
Trails Coordinator
Public Works Department
City of Santa Fe
P.O. Box 909
Santa Fe, New Mexico 87504-0909
lnpacheco@santafenm.gov
(505)955-6853

RE: Construction Observation Services Proposal: CIP 454A - Rail Trail Extension Project (Alta Vista Street to Pen Road)

Dear Mr. Pacheco:

Souder, Miller and Associates (SMA) is pleased to submit our proposal to provide Construction Observation Services for the proposed Rail Trail Extension Project – Alta Vista Street to Pen Road (Project). **We are proposing to contract this work through the Cooperative Education Services (CES) Program, and our proposed costs are based on SMA's currently CES Fee Schedule.** Our CES Contract Number is 2014-015906-003 SMA and our current term date runs through October 15, 2017, with a subsequent contract extension through October 15, 2018 (Enclosed).

The SMA Team for this proposal will consist of Project Manager Miguel B. Gabaldon, Jr., P.E., and Resident Project Representative Michael Vargas. Mr. Gabaldon has 25 years of experience with the New Mexico Department of Transportation (NMDOT) that include 18 years of transportation operations experience. During his time with the NMDOT, Mr. Gabaldon completed construction management services of various local projects in Santa Fe including several phases of the Cerrillos Road Reconstruction Project and various segments of the Rail Runner Trail Project in Santa Fe.

Michael Vargas has over 27 years of experience in public works services with the City of Santa Fe (CSF) that include 15 years in construction management experience. During his time with the CSF, Mr. Vargas completed construction management services on various projects including Arroyo de los Chamisos Trail and Santa Fe River Stabilization Projects.

SMA has teamed with Design Office out of Santa Fe to participate in the project observation and provide for project inspection for all landscaping-related items.

Based on your direction, SMA has prepared a man-hour and fee proposal to provide project construction inspection and documentation services for the Project. The Scope of Work (Scope) for these services is described below.

Construction Observation Services (SMA) – Scope of Work

- Attend Project Pre-Construction Meeting
- Complete construction observation services for duration of Project (120 Working Days) to include the following activities:
 - Be present at Project for every working day (1-hour at beginning of each work day and 1-hour at end of each work day)
 - Complete daily summary report of observations of work activities (1-hour)
- Attend Project "Monthly Meetings" as scheduled
 - Provide monthly summary report for activities observed
- Attend Project Closeout Meeting
- SMA will not be responsible for project materials inspection or testing, or project job site safety responsibility as part of this Scope of Work.

Landscape Construction Inspection (Design Office) – Scope of Work

- A. Construction Meetings/Construction Observation

Design Office will participate in regularly scheduled construction meetings as required for landscape/site related component coordination. Design Office will coordinate construction information with the contractor, review submittals, review shop drawings, review final plant materials at the source, answer RFIs, review Change Order requests, and follow up on questions as needed. Design Office will provide graphic files to the contractor for specialty logo / graphics to be incorporated in the project and coordinate with the installer. Design Office estimates that landscape construction activities will be approximately five (5) weeks.

The proposal includes a pre-construction meeting, five weekly site inspections, and a substantial completion inspection, for a total of (7) site inspections. Field reports will be issued for each site visit and a punch list for the inspection. Any on-site reviews required beyond the noted visits would be an additional service for time and materials for each additional visit.

- B. Project Close-Out

As part of the project close-out, Design Office will conduct a final inspection and will prepare as-built record drawings for landscape-related items based on contractor's as-built field notes. Design Office will participate in the 11-month warranty inspection and provide notes regarding warranty items as necessary.

Construction Observation Services and Landscape Construction Inspection – Fee

The proposed fee for the completion of the Scope of Work defined above is \$42,854.32, excluding Gross Receipt Taxes.

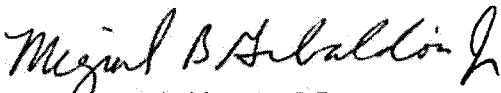
Please see Attachment A for a detailed explanation of these fees.

Mr. Leroy N. Pacheco, P.E.
August 22, 2017
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If you should have any questions or request additional information, please do not hesitate to contact me at 505-490-5337 or via email at miguel.gabaldon@soudermiller.com.

Sincerely,

MILLER ENGINEERS, INC. D/B/A
SOUDER, MILLER & ASSOCIATES



Miguel B. Gabaldon, Jr., P.E.
Senior Engineer

Enc: Attachment A - Professional Services and Expenses Task/Hours/Fee Breakdown
Design Offices Proposal and Fee
Souder, Miller & Associates – Cooperative Education Services Contract
Souder, Miller & Associates – Cooperative Education Services Contract Extension

Cc: David Wilson, P.E., SMA
George Herrera, P.E., SMA

Attachment A

Souder, Miller & Associates

Professional Services and Expenses Task/Hours/Fee Breakdown Related To

Project Description: Rail Trail Extension Project (Alta Vista Street to Pen Road)
Project Number: -
Owner: City of Santa Fe
Date of Submittal: August 21, 2017
Tax Rate on Services: 8.1325% (To be Assessed at Time of Invoice)

TOTALS

PHASE/ CATEGORY OF WORK	Total*
Construction Observation Services and Landscape Construction Inspection	\$ 42,430.02
Cooperative Education Services Contract Fee	\$ 424.30
TOTALS	\$ 42,854.32

* Total does not include GRT

Exhibit 1 to Attachment A
Souder, Miller & Associates
Professional Services and Expenses Task/Hours/Fee Breakdown Related To

RESIDENT PROJECT REPRESENTATIVE SERVICES

Project Description: Rail Trail Extension Project (Alta Vista Street to Pen Road)
Project Number: -
Owner: City of Santa Fe
Date of Submittal: August 21, 2017

Job Description	Principal	Senior Design Manager	Senior Eng./Sur. Mgr. II	Construc. Observer III	Admin III	Mileage	Expenses	Per Diem	Total SMA	Sub Contracts	Total Task
Billing Rate per Unit	\$ 194.00	\$ 174.60	\$ 155.20	\$ 87.30	\$ 67.90	\$ 0.535	\$ 1.00	\$ 142			
Unit	Hrs	Hrs	Hrs	Hrs	Hrs	Mi	Actual	Days	\$	\$	\$
Task											
Project Administration											
Attend Project Pre-Con Meeting			2	2		7			\$ 489		
Attend Project Closeout Meeting	1		2	2	1	7			\$ 751		
Subtotal Hours:	1	0	4	4	1	14	0	0	\$ 1,239	\$ -	
Subtotal Cost:	\$ 194	\$ -	\$ 621	\$ 349	\$ 68	\$ 7	\$ -	\$ -	\$ 1,239		\$ 1,239.39
Resident Project Rep.											
On-Site Construction Observation			5	360		1440	240		\$ 33,214		
Number of Visits = <u>180</u>									\$ -		
Hours per Visit = <u>1</u>									\$ -		
Basis of Visits = Part-Time									\$ -		
Attend Project Montly Progress Mtg	1		5	5	5	35	28		\$ 1,793		
Subtotal Hours:	1	0	10	365	5	1475	268	0	\$ 35,007	\$ -	
Subtotal Cost:	\$ 194	\$ -	\$ 1,552	\$ 31,865	\$ 340	\$ 789	\$ 268	\$ -	\$ 35,007		\$ 35,007.13
Landscape Construction Inspection											
Professional Services			3		1				\$ 534	\$ 5,650	
Subtotal Hours:	0	0	3	0	1	0	0	0	\$ 534	\$ 5,650	
Subtotal Cost:	\$ -	\$ -	\$ 466	\$ -	\$ 68	\$ -	\$ -	\$ -	\$ 534		\$ 6,183.50
Subtotal Cost:	\$ 388.00	\$ -	\$ 2,638.40	\$ 32,213.70	\$ 475.30	\$ 796.62	\$ 268.00	\$ -	\$ 42,430.02		\$ 42,430.02

Total Cost of Resident Project Representative Services: \$ 42,430.02

design office planning . landscape . urbanism
1300 Luisa, Suite 24 Santa Fe, NM 87505 T 505.983.1415

17.August.2017

George Herrera, PE
Souder Miller & Associates
2904 Rodeo Park Drive East, Suite 100
Albuquerque, NM 87505

Proposal for: **Rail Trail | Pen Road to Alta Vista**
Landscape Construction Phase Services

Dear George,

This is a request for approval to complete Professional Services associated with the construction phase of the **Rail Trail | Pen Road to Alta Vista** project as part of your engineering contract with the City of Santa Fe. The area receiving improvements includes a section of the Rail Trail connecting existing trail segments at Pen Road and Alta Vista in the vicinity of the South Capitol Rail Runner station. Based on a conversation in April 2017 regarding improvements to sections of the Rail Trail, design office understands that the following services will be required.

TASK I: Rail Trail Landscape – Construction Phase Services

Based on landscape-related site improvements outlined in the contract documents, the following services are anticipated to be provided by Design Office during the construction phase to review compliance with the contract documents.

A. Construction Meetings / Construction Observation

Design Office will participate in regularly scheduled construction meetings as required for landscape / site related component coordination. Design Office will coordinate construction information with the contractor, review submittals, review shop drawings, review final plant materials at the source, answer RFIs, review Change Order requests, and follow up on questions as needed. Design Office will provide graphic files to the contractor for specialty logo / graphics to be incorporated in the project and coordinate with the installer.

Design Office estimates that landscape construction activities will be approximately five (5) weeks. The proposal includes a pre-construction meeting, five weekly site inspections, and a substantial completion inspection, for a total of (7) site inspections. Field reports will be issued for each site visit and a punch list for the inspection. Any on-site reviews required beyond the noted visits would be an additional service for time and materials for each additional visit.

B. Project Close-Out

As part of the project close-out, Design Office will conduct a final inspection and will prepare as-built record drawings for landscape-related items based on contractor's as-built field notes. Design Office will participate in the 11-month warranty inspection and provide notes regarding warranty items as necessary.

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1300 Luisa, Suite 24 Santa Fe, NM 87505 T 505.983.1415

By signing this request, you are authorizing **design office** to commence services immediately on an hourly basis (\$125/hr – Principal / Landscape Architect, \$85/hr – Landscape Designer) with a fee limit of \$5,500. Any applicable taxes or fees (local, state, or federal) based on gross receipts are assumed to be included in the prime contract with the owner. Expenses (printing, etc.) will be billed at cost not to exceed \$150.

<u>Task I: Landscape Construction Phase Services</u>	<u>\$ 5,500</u>
<u>Subtotal Professional Fees (labor only)</u>	<u>\$ 5,500</u>
<u>Expenses (cap)</u>	<u>\$ 150</u>
<u>Total Fees</u>	<u>\$ 5,650</u>

Please call me at 505.983.1415 if you have any questions regarding this request for additional services.

Sincerely,



Claudia Meyer Horn, ASLA, LEED AP
Principal, **design office**

APPROVED BY CLIENT:

By: _____

Date: _____

Title: _____