

CITY OF SANTA FE

PROFESSIONAL SERVICES CONTRACT

THIS AGREEMENT is made and entered into by and between the City of Santa Fe, New Mexico, hereinafter referred to as the "City," and Sites Southwest LLC, hereinafter referred to as the "Contractor," and is effective as of the date set forth below upon which it is executed by the Parties.

IT IS AGREED BETWEEN THE PARTIES:

1. **Scope of Work.**

A. The Contractor shall perform engineering services for the City in connection with the design of storm repairs within the Santa Fe River (downstream of Ricardo Bridge) (the "project") an comprise the following tasks thereunder:

- 1) Existing condition assessment
- 2) Environmental permitting
- 3) Final design and engineering services of construction documents
- 4) Bidding and construction phase services

B. **Performance Measures.**

Contractor shall substantially perform the following Performance Measures: As detailed in Exhibit "A" attached hereto and incorporated herein.

2. **Compensation.**

A. The City shall pay to the Contractor in full payment for services satisfactorily Performed per deliverables such compensation not to exceed forty-nine thousand nine hundred forty-nine dollars and sixty-two cents (\$49,949.62), including gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling (\$4,214.50) shall be paid by the City to the Contractor. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed fifty-four thousand one hundred sixty four dollars and forty-two cents (\$54, 164.12). This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the City when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.**

B. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the City. All invoices MUST BE received by the City no

later than thirty (30) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

B. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the City. All invoices MUST BE received by the City no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.)

C. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the City finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the City that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the City shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

3. **Term.**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY. This Agreement shall terminate three (3) years from the date of signature unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

4. **Termination.**

A. **Termination.** This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the City's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the City is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the City or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of City funds or due to the Appropriations paragraph herein. **THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE City's OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.**

B Termination Management. Immediately upon receipt by either the City or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the City; 2) comply with all directives issued by the City in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the City shall direct for the protection, preservation, retention or transfer of all property titled to the City and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the City upon termination and shall be submitted to the City as soon as practicable.

5. Appropriations.

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City Council, this Agreement shall terminate immediately 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. If the City proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

6. Status of Contractor.

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. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the City unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

7. 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 prior written approval of the City.

8. Subcontracting.

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the City.

9. Release.

Final payment of the amounts due under this Agreement shall operate as a release of the City, its officers and employees from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

10. 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.

11. Product of Service – Copyright.

All materials developed or acquired by the Contractor under this Agreement shall become the property of the City and shall be delivered to the City no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

12. Conflict of Interest; Governmental Conduct Act.

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

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978.

C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the City relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the City if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the City and notwithstanding anything in the Agreement to the contrary, the City may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this section.

13. Amendment.

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the City proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

14. Merger.

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

15. Penalties for violation of law.

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

16. Equal Opportunity Compliance.

The Contractor agrees to abide by all federal and state laws and rules and regulations, and Santa Fe City Code, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

17. Applicable Law.

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

18. Workers Compensation.

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the City.

19. Professional Liability Insurance. 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.

20. Other Insurance

If the services contemplated under this Agreement will be performed on or in City facilities

or property, Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the City as additional insured.

A. Workers Compensation (including accident and disease coverage) at the statutory limit. Employers liability: \$100,000.

B. Comprehensive general liability (including endorsements providing broad form property damage, personal injury coverage and contractual assumption of liability for all liability the Contractor has assumed under this contract). Limits shall not be less than the following:

- a. Bodily injury: \$1,000,000 per person /\$1,000,000 per occurrence.
- b. Property damage or combined single limit coverage: \$1,000,000.
- c. Automobile liability (including non-owned automobile coverage): \$1,000,000.
- d. Umbrella: \$1,000,000.

C. Contractor shall maintain the above insurance for the term of this Agreement and name the City as an additional insured and provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

21. Records and Financial Audit.

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the City. The City shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments

22. Indemnification.

The Contractor shall defend, indemnify and hold harmless the City from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the City.

23. 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.

24. Invalid Term or Condition.

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

25. Enforcement of Agreement.

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

26. 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 City: Melissa A. McDonald, Public Works Department, River Watershed and Trails Division, PO Box 909, Santa Fe NM 87505

To the Contractor: Sites Southwest 121 Tijeras NE STE 3100, Albuquerque, NM 87102

27. Authority.

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.

CITY OF SANTA FE:



ERIC J. LITZENBERG, CITY MANAGER

DATE:

2/21/19

CONTRACTOR:

Sites Southwest LLC

See Following Sheet →

GEORGE RADNOVICH, PRESIDENT

DATE:

CRS# 02-351711-005

Registration # 19-001119373

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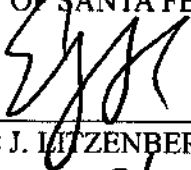
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CITY OF SANTA FE:


ERIC J. LITZENBERG, CITY MANAGER


DATE: 2/21/19

CONTRACTOR:
Sites Southwest LLC


GEORGE RADNOVICH, PRESIDENT

DATE: 2-22-19
CRS# 02-351711-005
Registration # 19-001119373

ATTEST:


YOLANDA Y. VIGIL
CITY CLERK

APPROVED AS TO FORM:

 2/12
ERIN K. MCSHERRY, CITY ATTORNEY

APPROVED:


MARY MCCOY, FINANCE DIRECTOR

22401.572960
Business Unit Line Item



February 5, 2019

Ms. Melissa McDonald
River and Watershed Coordinator
City of Santa Fe, Public Works Department

RE: Request for Quote: Professional Services for Repair of Flood Damage to Boulder Bank Protection and Grade Control Structures on the Santa Fe River

Dear Ms. McDonald:

Sites Southwest (SSW) is pleased to provide this Statement of Qualifications and Quote to provide Professional Services for repairing a damaged Boulder Cross Vane on the Santa Fe River under New Mexico's CES procurement program. We look forward to the opportunity to continue our collaborative partnership with City of Santa Fe as we move forward on this unique and highly successful project.

Having served as project manager for the master planning and development of Phase 1, 2, and 3 Construction Documents for the river trail and channel restoration work between Camino Alire and Camino Carlos Rael, Sites Southwest's team leader, Bob Oberdorfer, is eminently familiar with the work that has been accomplished in reviving the Santa Fe River, as well as the specific requirements of this repair project. For this effort, SSW has teamed with Santa Fe-based William J. Miller Engineers (WJM), who also have a good deal of experience along the Santa Fe River, and are currently engaged in other bank protection work within this reach. Furthermore, WJM Engineers prepared a damage assessment report documenting needed repair work due to rare high-volume, low-probability storm flows experienced during the summer of 2018 in the reach between the Ricardo trail bridge and the storm drain outfall below Calle Don Jose.

Project Team

With his extensive project-specific knowledge and construction oversight experience, SSW landscape architect **Bob Oberdorfer** will lead the design effort and assist with the on-site evaluation of existing conditions relative to the original design intent. **Bill Miller** and **John Critchfield** of WJM will provide existing conditions damage assessment, hydraulic engineering support, and design suggestions for modifying or supplementing the existing grade control and bank protection structures. Both Sites Southwest and Riverbend Engineering will provide additional technical and administrative support as needed during the course of the project.

Understanding of the Project

As you are well aware, the current configuration of the Santa Fe River channel is the result of a multi-year design and analysis process based on geomorphologic principles promoted by local stream and arroyo

restoration guru Bill Zeedyk, following concepts originally established by Natural Channel Design pioneer Dave Rosgen. Nineteen boulder crossvanes were installed along the river within the initial 1.5-mile project area, along with extensive stretches of boulder bank protection and other related structures intended to help guide and constrain the river channel, while improving its viability as a "Living River."

Since completion of the primary restoration work in 2012, most of the rock work and revegetation plantings had performed as anticipated – until the channel was inundated by runoff from a massive storm in July of last year, resulting in flows categorized as somewhere between a 500- and 1000-year event. In their *Santa Fe River Flood Damage Assessment Report*, dated December 10, 2018, WJM identified 12 locations that suffered damage from those flows. One of those – the Ricardo desilting basin – needs only routine maintenance to remove excessive quantities of sediment from the road rundown to restore its function. The other 11 sites will be addressed as part of this project.

Approach to Performing Services

In order to qualify under the Corps of Engineers Nationwide 404 Permit as a maintenance project, no substantial changes can occur to the configuration of the river channel. As such, no major changes are proposed to any of the bank protection or grade control structures. In locations where shortcomings of the original design have been identified (such as the crossvane spacing below the Ricardo bridge), potential modifications will be evaluated and any recommended changes will be approved by the City of Santa Fe (and USACE/NMED, as necessary) prior to completion of the design. All of the structural repairs will be digitally modelled using HEC-RAS software to determine potential scour depths and related structural stability as part of the design process.

Proposed Scope of Work

- 1. Existing Conditions Assessment** – Sites Southwest and WJM Engineers staff will visit each site with representatives of the City to evaluate the existing grade control and bank protection structures, assess the damage, and discuss repair and/or modification options.
- 2. Environmental Permitting** – Once the existing structure evaluation is complete, we will determine the need for any environmental permitting that may be required. If it is determined that rebuilding the existing structures in the same configuration (albeit more securely) is all that is required, no additional permitting will be required, since it will essentially be a maintenance operation. If, however, additional protections are deemed necessary (e.g. the addition of higher or broader bank protection, or a second grade control structure of some sort), the existing Corps of Engineers 404 permit / EPA 401 certification will need to be updated. SSW and WJM staff would discuss any additional effort needed to prepare those updates with the City and determine an appropriate plan of approach.

Since any work accomplished under this project will not change the shape or elevation of the river channel, no change to the effective floodplain will result, and thus no amendment or re-submittal of that CLOMR is anticipated.

- 3. Conceptual Design and Analysis** – The Sites Southwest team will develop preliminary conceptual designs for repair, enhancement, and/or modification of the grade control and bank protection structures and subject those preliminary designs to testing via computerized hydraulic modeling, in order to assess

their stability and ensure that any proposed design does not change the hydraulic profile of the river. The recommended conceptual design option and modeling results will be provided to the City for review and approval by the Engineering Department and Floodplain Manager.

4. Preliminary Design Development – Upon authorization by the City project manager, we will prepare design drawings for the approved structure(s) to the 60% level, including plans, sections, and details as needed to convey design intent. A preliminary cost estimate will also be developed, utilizing bid results from the original Phase 3 construction project (adjusted to account for current market conditions) and other recent work of a similar nature, and necessary specifications will be outlined. If the approved design includes the need for additional boulders to match the ones used in the existing structures, we will contact local rock suppliers to evaluate availability and costs for those materials prior to completion of the design. Digital copies of the design drawings, cost estimate, and outline specifications will be submitted to the City for review upon completion of this phase. One printed set will be brought to review meetings for markup of recommended changes.

5. Final Construction Documents – After review and approval of the preliminary design, we will finalize the plans, specifications, and estimate for the work and provide digital review copies of each at the 95% completion level. Following review and comments on that submittal, the Sites Southwest team will make final edits and issue a bid set of full construction documents for signatures. Final deliverables will be made in both hard copy (paper or mylar) and digital (PDF and/or AutoCAD) formats.

6. Bidding Services – The Sites Southwest team will assist the City in preparation of supporting bid documents as needed, including developing an advertisement for bids, making plan sets available to bidders and various plan rooms, attendance at the pre-bid meeting, answering contractor questions, issuance of addenda, evaluation of bids, and recommendation for award. Prior to receipt of bids, Sites Southwest will contact capable contractors – especially smaller local contractors and river restoration specialists – to inform them of the project and encourage them to submit bids.

Cost Breakdown

See attached fee spreadsheet.