



LOS ALAMOS

**INCORPORATED COUNTY OF LOS ALAMOS
SERVICES AGREEMENT**

This **SERVICES AGREEMENT** (this "Agreement") is entered into by and between the **Incorporated County of Los Alamos**, an incorporated county of the State of New Mexico ("County"), and **Mountain Capital Partners, LLC**, a Colorado corporation ("Contractor"), to be effective for all purposes July 2, 2018 ("Effective Date").

WHEREAS, the County Purchasing Agent determined in writing that the use of competitive sealed bidding was either not practical or not advantageous to County for procurement of the Services and County issued Request for Proposals No. 18-32 (the "RFP") on January 14, 2018, requesting proposals for an experienced and certified contractor for the design and construction of a bicycle flow trail ("Services") for the Bayo Canyon Flow Trail Project ("Project") as described in the RFP; and

WHEREAS, Contractor timely responded to the RFP by submitting a response dated February 8 2018 ("Contractor's Response"); and

WHEREAS, based on the evaluation factors set out in the RFP, Contractor was the successful Offeror for the services listed in the RFP; and

WHEREAS, Contractor shall provide the Services, as described below, to County.

NOW, THEREFORE, for and in consideration of the premises and the covenants contained herein, County and Contractor agree as follows:

SECTION A. SERVICES:

1. **Task Orders.** All Services shall be assigned via Task Order by County, as needed. The purpose of issuing a Task Order is to ensure that the scope of Services, deliverables, cost and schedule are well understood and managed for each task and subtask performed by Contractor. At its sole discretion, and subject to Contractor's acceptance, County may issue one Task Order for a complete project, one or more phases of a project, or one or more subtask within a phase of the project. Upon County's request for a proposal for a task, Contractor shall respond with a draft Task Order including scope of Services, deliverables, cost and schedule, for County's consideration. Compensation for Services shall be proposed in accordance with the Fee Schedule set out in Exhibit "A," attached hereto and incorporated herein for all purposes. Preparation and work performed to prepare each of the proposals shall be considered as incidental to this Agreement and not compensable.

County shall review the proposed Task Order and address any concerns. If County and Contractor are unable to agree, County reserves the right to offer the Services to another qualified contractor in conformity with the Los Alamos County Procurement Code. If County and Contractor agree, both parties may execute a Task Order.

Task Orders shall be numbered sequentially and shall specify the scope of Services, deliverables, number of site visits, the maximum amount payable, and the schedule for completing the task. The Task Order may be as detailed as County finds necessary to ensure that the scope of Services, deliverables, cost and schedule are well understood and managed for each task and subtask performed by Contractor. The compensation set out on the Task Order shall be a maximum not to exceed amount, exclusive of New Mexico Gross Receipts Tax (NMGRT), and shall not be exceeded without justification made in writing by Contractor and approved by County prior to continuing the Task Order.

Upon execution of a Task Order by the parties, Contractor is authorized to begin the task, County is entitled to delivery of the Services stated on the Task Order, and Contractor is entitled to payment for rendering of those Services in an amount not to exceed the maximum amount of the approved Task Order. Contractor shall prepare and maintain a detailed Project Tracker in Microsoft Project or similar program for each approved Task Order. The Project Tracker shall include the tasks, milestones, phases, and the costs. Contractor shall provide a current Project Tracker with all payment requests.

If Contractor is unable to complete the Task Order for an amount less than or equal to the maximum amount or with the schedule, then Contractor shall promptly notify County, setting forth in detail the reasons, supporting information, and proposed adjustment to the Task Order. The Task Order will be adjusted only upon the written agreement of the County after a finding that a change to the Task Order is necessary and justifiable. Contractor's failure to reasonably estimate the cost of completing the task in the first instance shall not be a justification for modifying the Task Order. In no event shall the total of the maximum amount for all approved Task Orders exceed the maximum amount of set forth in this Agreement.

2. **Design Services.** Contractor shall complete Design Services as assigned by Task Order by County. Design Services shall include Contractor's analysis and surveying of a proposed alignment. Contractor shall perform the following Design Services:
 - a. Contractor shall review and analyze and survey the Project's existing seven (7) mile flagged trail corridor proposed alignment to include feasibility, safety and functionality for a "green" level International Mountain Biking Association (IMBA) mountain bike flow trail.
 - b. Design of this Project shall consider existing topographical conditions and the potential for conflicts with other users of the County's trail systems. In the event that these considerations present obstacles to completion, Contractor shall provide suggestions for alternative route(s) and at County's request shall provide the same Design Services for such alternative route(s).
 - c. Within the timeframe set out in the Task Order, Contractor shall develop a schematic design of the trail with the number of and type of planned trail features. Contractor shall provide a recommendation of trail difficulty signage, way-finding signage, and general safety concerns in this schematic design. Contractor shall submit the final design in Keyhole Markup Zipped (KMZ), Keyhole Markup Language (KML), and Shapefile (SHP) formats.
3. **Construction Phase.**
 - a. **General.** Contractor shall complete construction of the trail as assigned by Task Order by County. Contractor shall utilize its own equipment and supplies necessary for trail development at no additional cost to County.

- b. **Additional work that may be assigned by Task Order.** As assigned by County by Task Order, Contractor shall perform the following Tasks during the Construction Phase of the Project:
- i. **Training of County Staff.** If training of County staff is assigned by Task Order by County, County understands that progress may be delayed and the daily target goal of three hundred (300) feet of tread path may not occur within the initial time frame and the Task Order may require an amendment to reflect a new deadline.
 - ii. **Additional Resources.** If additional resources are needed for infrastructure along the trail, the additional resources may be assigned via written Task Order for each item. Once County and Contractor agree on the fee, schedule, scope, and deliverables, both parties shall execute the Task Order. Examples of possible infrastructure along the trail that may be needed are as follows:
 - a) Wooden features;
 - b) Hand-railing;
 - c) Retaining walls;
 - d) Trail kiosks;
 - e) Water drains/culverts; or
 - f) Any additional material needed.

SECTION B. TERM: The term of this Agreement shall commence July 2, 2018, and shall continue through July 1, 2019, unless sooner terminated, as provided herein. At County's sole option, this Agreement may be renewed for up to three (3) consecutive one-year periods, unless sooner terminated, as provided therein.

SECTION C. COMPENSATION:

1. **Amount of Compensation.** County shall pay compensation for performance of the Services in a total amount not to exceed EIGHTY THOUSAND DOLLARS (\$80,000.00), which amount does not include applicable NMGRT. Compensation shall be paid in accordance with the rate schedule set out in Exhibit "A," attached hereto and made a part hereof for all purposes.
 - a. Design Phase shall be paid at a flat rate of FOUR HUNDRED DOLLARS (\$400.00) per day. Schematic design shall be completed and delivered to County for ZERO (\$0.00) charge. The schematic design shall be included in in the Design Phase.
 - b. Upon assignment by County through Task Order, Contractor shall construct trail tread path at the rate identified in Exhibit "A." Contractor's fee includes professional trail builder(s), equipment and any additional supplies that are necessary for the trail development, (i.e., fuel, hand tools, grease and upkeep of equipment).
2. **Monthly Invoices.** Contractor shall submit itemized monthly invoices to County's Project Manager showing amount of compensation due, amount of any NMGRT, and total amount payable. Payment of undisputed amounts shall be due and payable thirty (30) days after County's receipt of the invoice.

SECTION D. TAXES: Contractor shall be solely responsible for timely and correctly billing, collecting and remitting all NMGRT levied on the amounts payable under this Agreement.

SECTION E. STATUS OF CONTRACTOR, STAFF, AND PERSONNEL: This Agreement calls for the performance of services by Contractor as an independent contractor. Contractor is not an agent or employee of County and will not be considered an employee of County for any purpose. Contractor, its agents or employees shall make no representation that they are County employees, nor shall they create the appearance of being employees by using a job or position title on a name plate, business cards, or in any other manner, bearing County's name or logo. Neither Contractor nor any employee of Contractor shall be entitled to any benefits or compensation other than the compensation specified herein. Contractor shall have no authority to bind County to any agreement, contract, duty or obligation. Contractor shall make no representations that are intended to, or create the appearance of, binding County to any agreement, contract, duty, or obligation. Contractor shall have full power to continue any outside employment or business, to employ and discharge its employees or associates as it deems appropriate without interference from County; provided, however, that Contractor shall at all times during the term of this Agreement maintain the ability to perform the obligations in a professional, timely and reliable manner.

SECTION F. STANDARD OF PERFORMANCE: Contractor agrees and represents that it has and will maintain the personnel, experience and knowledge necessary to qualify it for the particular duties to be performed under this Agreement. Contractor shall perform the Services described herein in accordance with a standard that meets the industry standard of care for performance of the Services.

SECTION G. DELIVERABLES AND USE OF DOCUMENTS: All deliverables required under this Agreement, including material, products, reports, policies, procedures, software improvements, databases, and any other products and processes, whether in written or electronic form, shall remain the exclusive property of and shall inure to the benefit of County as works for hire; Contractor shall not use, sell, disclose, or obtain any other compensation for such works for hire. In addition, Contractor may not, with regard to all work, work product, deliverables or works for hire required by this Agreement, apply for, in its name or otherwise, any copyright, patent or other property right and acknowledges that any such property right created or developed remains the exclusive right of County. Contractor shall not use deliverables in any manner for any other purpose without the express written consent of County.

SECTION H. EMPLOYEES AND SUB-CONTRACTORS: Contractor shall be solely responsible for payment of wages, salary or benefits to any and all employees or contractors retained by Contractor in the performance of the Services. Contractor agrees to indemnify, defend and hold harmless County for any and all claims that may arise from Contractor's relationship to its employees and subcontractors.

SECTION I. INSURANCE: Contractor shall obtain and maintain insurance of the types and in the amounts set out below throughout the term of this Agreement with an insurer acceptable to County. Contractor shall assure that all subcontractors maintain like insurance. Compliance with the terms and conditions of this Section is a condition precedent to County's obligation to pay compensation for the Services and Contractor shall not provide any Services under this Agreement unless and until Contractor has met the requirements of this Section. County requires Certificates of Insurance or other evidence acceptable to County that Contractor has met its obligation to obtain and maintain insurance and to assure that subcontractors maintain like insurance. Should any of the policies described below be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. General Liability Insurance and Automobile Liability Insurance shall name County as an additional insured.

- 1. General Liability Insurance:** ONE MILLION DOLLARS (\$1,000,000.00) combined single limit per occurrence; TWO MILLION DOLLARS (\$2,000,000.00) aggregate.
- 2. Workers' Compensation:** In an amount as may be required by law. County may immediately terminate this Agreement if Contractor fails to comply with the Worker's Compensation Act and applicable rules when required to do so.
- 3. Automobile Liability Insurance for Contractor and its Employees:** ONE MILLION DOLLARS (\$1,000,000.00) combined single limit per occurrence; TWO MILLION DOLLARS (\$2,000,000.00) aggregate on any owned, and/or non-owned motor vehicles used in performing Services under this Agreement.
- 4. Professional Liability Insurance:** \$1,000,000. Professional Liability shall provide coverage for Services provided hereunder during the term of this Agreement and for a period of at least five (5) years thereafter.

SECTION J. RECORDS: Contractor shall maintain, throughout the term of this Agreement and for a period of six (6) years thereafter, records that indicate the date, time, and nature of the services rendered. Contractor shall make available, for inspection by County, all records, books of account, memoranda, and other documents pertaining to County at any reasonable time upon request.

SECTION K. APPLICABLE LAW: Contractor shall abide by all applicable federal, state and local laws, regulations, and policies and shall perform the Services in accordance with all applicable laws, regulations, and policies during the term of this Agreement. In any lawsuit or legal dispute arising from the operation of this Agreement, Contractor agrees that the laws of the State of New Mexico shall govern. Venue shall be in the First Judicial District Court of New Mexico in Los Alamos County, New Mexico.

SECTION L. 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 the obligations of Contractor under this Agreement, with regard to race, color, religion, sex, age, ethnicity, national origin, sexual orientation or gender identity, disability or veteran status.

SECTION M. INDEMNITY: Contractor shall indemnify, hold harmless and defend County, its Council members, employees, agents and representatives, from and against all liabilities, damages, claims, demands, actions (legal or equitable), and costs and expenses, including without limitation attorneys' fees, of any kind or nature, arising from Contractor's performance hereunder or breach hereof and the performance of Contractor's employees, agents, representatives and subcontractors.

SECTION N. FORCE MAJEURE: Neither County nor Contractor shall be liable for any delay in the performance of this Agreement, nor for any other breach, nor for any loss or damage arising from uncontrollable forces such as fire, theft, storm, war, or any other force majeure that could not have been reasonably avoided by exercise of due diligence.

SECTION O. NON-ASSIGNMENT: Contractor may not assign this Agreement or any privileges or obligations herein without the prior written consent of County.

SECTION P. LICENSES: Contractor shall maintain all required licenses including, without limitation, all necessary professional and business licenses, throughout the term of this

Agreement. Contractor shall require and shall assure that all of Contractor's employees and subcontractors maintain all required licenses including, without limitation, all necessary professional and business licenses.

SECTION Q. PROHIBITED INTERESTS: Contractor agrees 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 its services hereunder. Contractor further agrees that it will not employ any person having such an interest to perform services under this Agreement. No County Council member or other elected official of County, or manager or employee of County shall solicit, demand, accept or agree to accept a gratuity or offer of employment contrary to Section 31-282 of the Los Alamos County Code.

SECTION R. TERMINATION:

- 1. Generally.** County may terminate this Agreement with or without cause upon ten (10) days prior written notice to Contractor. Upon such termination, Contractor shall be paid for Services actually completed to the satisfaction of County at the rate set out in Section C. Contractor shall render a final report of the Services performed to the date of termination and shall turn over to County originals of all materials prepared pursuant to this Agreement.
- 2. Funding.** This Agreement shall terminate without further action by County on the first day of any County fiscal year for which funds to pay compensation hereunder are not appropriated by County Council. County shall make reasonable efforts to give Contractor at least ninety (90) days advance notice that funds have not been and are not expected to be appropriated for that purpose.

SECTION S. NOTICE: Any notices required under this Agreement shall be made in writing, postage prepaid to the following addresses, and shall be deemed given upon hand delivery, verified delivery by telecopy (followed by copy sent by United States Mail), or three (3) days after deposit in the United States Mail:

County:

Open Space Specialist
Incorporated County of Los Alamos
101 Camino Entrada, Building 5
Los Alamos, New Mexico 87544

Contractor:

Mark S. Seiter, CEO
Mountain Capital Partners, LLC
2615 Main Avenue
Durango, Colorado 81301

SECTION T. INVALIDITY OF PRIOR AGREEMENTS: This Agreement supersedes all prior contracts or agreements, either oral or written, that may exist between the parties with reference to the services described herein and expresses the entire agreement and understanding between the parties with reference to said services. It cannot be modified or changed by any oral promise made by any person, officer, or employee, nor shall any written modification of it be binding on County until approved in writing by both County and Contractor.


SECTION U. CAMPAIGN CONTRIBUTION DISCLOSURE FORM: A Campaign Contribution Disclosure Form was submitted as part of Contractor's Response and is incorporated herein by reference for all purposes. This Section acknowledges compliance with Chapter 81 of the Laws of 2006 of the State of New Mexico.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date(s) set forth opposite the signatures of their authorized representatives to be effective for all purposes on the date first written above.

ATTEST *by fm*


NAOMI D. MAESTAS
COUNTY CLERK

INCORPORATED COUNTY OF LOS ALAMOS

BY:  _____
HARRY BURGESS
COUNTY MANAGER
5/19/18
DATE

Approved as to form:



J. ALVIN LEAPHART
COUNTY ATTORNEY

MOUNTAIN CAPITAL PARTNERS, LLC, A COLORADO CORPORATION


BY:  _____
MARK S. SEITER, CEO
CFO
7-6-18
DATE

Exhibit "A"
Compensation Rate Schedule
AGR18-32

TASK	FEE
Design Phase. Schematic design shall be delivered to County at ZERO (\$0.00) charge. The schematic design shall be included in the consultation component in the design phase.	\$400.00 per day
Construction Phase.	In general, the daily rate is \$600 per day for the trail construction based upon 300 feet per day. Otherwise the rate of trail construction is \$2.02 per linear foot.
Training of County Staff	\$75.00 an hour (\$600.00 per day)
Total Not to Exceed	\$80,000.00*

*Exclusive of NMGR