

**SANTA FE COUNTY
AGREEMENT
WITH WEIL CONSTRUCTION, INC.
REGARDING
GROSS RECEIPTS TAX REFUND AND
COST SEGREGATION ANALYSIS**

THIS AGREEMENT is made and entered into this 25th day of April, 2013⁴ by and between Santa Fe County, hereinafter referred to as “the County”, and Weil Construction, Inc., with a principal address located at 3344 Princeton NE, Albuquerque, New Mexico 87107, hereinafter referred to as “Weil Construction”.

WHEREAS, in 2012 the County entered into a construction contract with Weil Construction under Agreement No. 2012-0268-FD/MS, for the construction of the Southern Regional Headquarters – Edgewood Fire Station;

WHEREAS, Santa Fe County through a cost segregation analysis of certain County construction projects will identify items or property that may be subject to a refund of New Mexico Gross Receipts Tax (NM GRT);

WHEREAS, the County desires to secure the agreement of Weil Construction to reimburse the County in the amount of any refund of NM GRT as a result of a cost segregation analysis completed by Moss Adams, LLP, under Agreement No. 2103-0230-FI/BT and Amendment No.1 to Agreement No.2103-0230-FI/BT for the County’s construction of the Southern Regional Headquarters - Edgewood Fire Station;

WHEREAS, the County requires this agreement with Weil Construction and Weil Construction is willing to agree to such remittance or reimbursement.

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

1. SCOPE OF SERVICES

A. Weil Construction agrees to cooperate with Santa Fe County in a cost segregation analysis to be completed by Moss Adams, LLP, for the purpose of identifying and segregating deductible sales for tangible personal property in order to claim gross receipts tax deductions on Weil Construction’s construction and completion of the Regional Headquarters – Edgewood Fire Station, a construction project completed and paid for by Santa Fe County.

B. Moss Adams, LLP will submit a refund request to the New Mexico Department of Taxation and Revenue for any eligible deductions identified on the Southern Regional Headquarters – Edgewood Fire Station located at 1 Municipal Way, Edgewood, New Mexico. Upon approval and receipt of the refund, Weil Construction will promptly

reimburse Santa Fe County for this overage in NM GRT that was paid to Weil Construction by Santa Fe County.

2. COMPENSATION, INVOICING

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

- 1) The total amount payable to Weil Construction under this Agreement, exclusive of gross receipts tax shall not exceed five hundred dollars (\$500.00) for one (1) year. Any New Mexico gross receipts tax levied on the amounts payable under this Agreement shall be paid by the County to Weil Construction.
- 2) This amount is a maximum and not a guarantee that the work assigned to be performed by Weil Construction under this Agreement shall equal the amount stated herein. The parties do not intend for Weil Construction to continue to provide services without compensation when the total compensation amount is reached. The County will notify Weil Construction when the services provided under this Agreement reach the total compensation amount. In no event will Weil Construction be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing.

B. Weil Construction 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. Weil Construction 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. 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 (1) year later, unless earlier terminated pursuant to Section 4. Termination or Section 5. Appropriations and Authorizations.

4. TERMINATION

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.

Termination for Convenience of the County. The County may, in its discretion, terminate this Agreement at any time for any reason by giving Weil Construction written notice of termination. The notice shall specify the effective date of termination, which shall not be less than fifteen (15) days from the Weil Construction's receipt of the notice. The County shall pay Weil Construction 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.

5. 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 Weil Construction. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse Weil Construction 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 Weil Construction in any way or forum, including a lawsuit.

6. INDEPENDENT PERSONNEL

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

7. ASSIGNMENT

Weil Construction 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.

8. SUBCONTRACTING

Weil Construction 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.

9. PERSONNEL

A. All work performed under this Agreement shall be performed by Weil Construction or under its supervision.

B. Weil Construction 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 nor 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.

10. RELEASE

Upon its receipt of all payments due under this Agreement, Weil Construction 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.

11. CONFLICT OF INTEREST

Weil Construction 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.

12. 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. Weil Construction 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.

13. 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.

14. 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.

15. EQUAL OPPORTUNITY COMPLIANCE

A. Weil Construction agrees to abide by all Federal, State, and local laws, ordinances, and rules and regulations pertaining to equal opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, Weil Construction specifically agrees not to discriminate against any person with regard to employment with Weil Construction 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. Weil Construction acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Agreement.

16. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW

In performing its obligation hereunder, Weil Construction shall comply with all applicable laws, ordinances, and obligations.

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. Weil Construction and the County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be the state district court of New Mexico, located in Santa Fe County.

17. RECORDS AND INSPECTIONS

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, Weil Construction 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”).

18. INDEMNIFICATION

A. Weil Construction 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 Weil Construction’s performance or non-performance of its obligations under this Agreement, including but not limited to the Weil Construction’s breach of any representation or warranty made herein.

B. Weil Construction 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 Weil Construction in such demand, suit, or cause of action, the County may retain its own counsel to represent the County’s interest.

19. 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.

20. NOTICES

All notices required to be given to the County under this Agreement shall be mailed (pre-postage paid) to:

Santa Fe County
102 Grant Avenue
Santa Fe, NM 87504-0276

and,

Teresa C. Martinez
Director
Santa Fe County Finance Department
102 Grant Avenue
Santa Fe, NM 87504-0276

All notices required to be given to Weil Construction under this Agreement shall be mailed (pre-postage paid) to:

Weil Construction
Attn: Chris Weil, President
7110 2nd Street NW
Albuquerque, 87107

21. WEIL CONSTRUCTION'S REPRESENTATIONS AND WARRANTIES

Weil Construction hereby represents and warrants that:

- A. This Agreement has been duly authorized by Weil Construction, the person executing this Agreement has authority to do so, and, once executed by Weil Construction, this Agreement shall constitute a binding obligation of Weil Construction.
- B. This Agreement and Weil Construction's obligations hereunder do not conflict with Weil Construction's corporate agreement or any statement filed with the Public Regulation Commission.

22. LIMITATION OF LIABILITY

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

23. NO THIRD-PARTY BENEFICIARIES

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

24. INSURANCE

- A. General Conditions. Weil Construction 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. Weil Construction 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 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 Weil Construction; 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. Workers' Compensation Insurance. Weil Construction shall comply with the provisions of the Workers' Compensation Act.

D. 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), Weil Construction shall increase the maximum limits of any insurance required herein.

25. PERMITS, FEES, AND LICENSES

Weil Construction 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.

26. NEW MEXICO TORT CLAIMS ACT

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

27. CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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

28. SURVIVAL

The provisions of the following paragraphs shall survive termination of this Agreement; INDEMNIFICATION, RECORDS AND INSPECTION, RELEASE, COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW, NO THIRD-PARTY BENEFICIARIES, NEW MEXICO TORT CLAIMS ACT, INSURANCE, AND SURVIVAL.

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

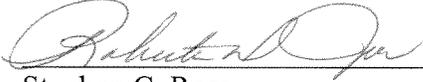
SANTA FE COUNTY



Katherine Miller, Manager

4.25.14
Date

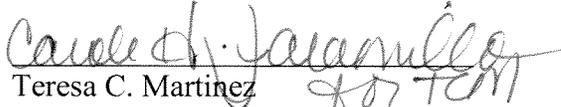
APPROVED AS TO FORM



Stephen C. Ross
Santa Fe County Attorney

12/20/13
Date

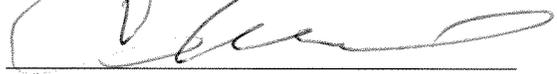
FINANCE DEPARTMENT APPROVAL



Teresa C. Martinez
Santa Fe County Finance Director

12/23/13
Date

WEIL CONSTRUCTION, INC.



(signature and title)

4/15/14
Date

**MASTER SERVICES AGREEMENT ADDENDUM
COST SEGREGATION AND NEW MEXICO GROSS RECEIPTS TAX REFUND CLAIM**

Santa Fe County
Weil Construction, Inc.
December 11, 2013

Scope of Services:

In this Engagement, we will perform the following services:

- Perform a cost segregation analysis, for New Mexico gross receipt tax purposes, incurred with respect to the remodel OR construction of the Southern Region Headquarters – Edgewood Fire Station facility (the “Project”) located in Edgewood, New Mexico.
- Produce a report from our cost segregation study that will provide a breakdown of recommended items subject to a refund of New Mexico gross receipts tax.
- Utilize the results of the cost segregation study to determine the intended use of the property and apply Federal cost segregation principles to identify qualifying property in order to prepare the New Mexico gross receipts tax refund claim.
- Prepare the New Mexico gross receipts tax refund claim and, pursuant to your review and approval, submit to the New Mexico Taxation and Revenue Department (the “Department”).
- Serve as the Weil Construction Inc.’s (“General Contractor”) contact point for the Department, and coordinate communications and conferences.
- Respond to requests from the Department for additional information and documentation, which may require additional research and analysis of published guidance and/or gathering additional documentation to support the refund claim’s position.

Moss Adams shall provide these services in accordance with New Mexico law and all applicable professional standards.

Your Responsibilities:

Upon Engagement acceptance, we will provide you with a list of the required information we will need for this Engagement. The scope of this Engagement is dependent on receiving from you project information that is fully reconciled, accurate, and reliable.

Limitations:

The following limitations apply to our report:

1. Our report is prepared and issued solely for use in determining items eligible for deduction from New Mexico gross receipts tax. The report is confined to the properties identified herein, and may not be used for any other purpose or by anyone other than you. Moss Adams assumes no responsibility for the consequences of extending the conclusions reached in the report to properties or taxpayers not identified herein.
2. We provide no assurance that our report and the conclusions reached therein will not be challenged by the state tax authorities or that such conclusions will be upheld by the courts if challenged by the state tax authorities.
3. The federal and state tax authorities upon whom our report is based are subject to change, and such changes may be retroactively effective and adversely affect the conclusions reached therein. Nothing in our report may be construed as imposing on Moss Adams any obligation or responsibility to inform any

Master Services Agreement Addendum

Cost Segregation and New Mexico Gross Receipts Tax Refund Claim

Santa Fe County

Weil Construction Inc.

12/11/2013

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MSA Applications:

The services set forth in this Addendum are subject to the terms and conditions of the Master Services Agreement between Santa Fe County and Moss Adams and between Weil Construction Inc. and Moss Adams. The applicable Master Services Agreement has the most current date preceding the date of this Addendum or otherwise accompanies this Addendum. Terms not otherwise defined herein shall have the same meaning as set forth in the Master Services Agreement.

ACCEPTED AND AGREED:

This Addendum and the Master Services Agreement set forth the understanding with respect to the tax services described above to be provided by Moss Adams and is effective as of the date set forth herein. The terms and conditions of the Addendum will expire 30 days from the date of issuance if you do not sign and return it to us before such expiration date.

WEIL CONSTRUCTION INC.

Signature: [Handwritten Signature]

Print Name: [Handwritten Name]

Title: [Handwritten Title]

MOSS ADAMS LLP

Signature: [Handwritten Signature]

Print Name: [Handwritten Name]

Title: [Handwritten Title]

ACCEPTED AND AGREED AS TO THE TERMS SET FORTH IN THE "FEE ARRANGEMENT" SECTION:

SANTA FE COUNTY

Signature: [Handwritten Signature]

Print Name: [Handwritten Name]

Title: [Handwritten Title]

Client #618888
v. 3/19/13

Approved as to form
Santa Fe County Attorney

By: [Handwritten Signature]
Date: [Handwritten Date]

[Handwritten Signature]
[Handwritten Date]

**MASTER SERVICES AGREEMENT ADDENDUM
COST SEGREGATION AND NEW MEXICO GROSS RECEIPTS TAX REFUND CLAIM**

Santa Fe County
Weil Construction, Inc.
December 11, 2013

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Master Services Agreement Addendum

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Santa Fe County

Weil Construction Inc.

12/11/2013

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WEIL CONSTRUCTION INC.

Signature: [Handwritten Signature]

Print Name: [Handwritten Name]

Title: [Handwritten Title]

MOSS ADAMS LLP

Signature: [Handwritten Signature]

Print Name: [Handwritten Name]

Title: [Handwritten Title]

ACCEPTED AND AGREED AS TO THE TERMS SET FORTH IN THE "FEE ARRANGEMENT" SECTION:

SANTA FE COUNTY

Signature: [Handwritten Signature]

Print Name: [Handwritten Name]

Title: [Handwritten Title]

Client #618888
v. 3/19/13

Approved as to form

Santa Fe County Attorney

By: [Handwritten Signature]
Date: [Handwritten Date]

[Handwritten Signature]
[Handwritten Date]