

**PROFESSIONAL SERVICE AGREEMENT
BETWEEN SANTA FE COUNTY AND LLOYD & ASSOCIATES ARCHITECTS, P.A.,
TO PROVIDE PLANNING & ARCHITECTURAL SERVICES
FOR THE GALISTEO ROAD PROPERTY**

THIS AGREEMENT is made and entered into this 9th day of March 2015, by and between **SANTA FE COUNTY**, hereinafter referred to as the “County” and **LLOYD & ASSOCIATES ARCHITECTS, P.A.**, whose principal place of business is located at 100 N. Guadalupe in Santa Fe, NM, hereinafter referred to as the “Architect”.

WHEREAS, Santa Fe County owns approximately 6.144 acres located at 2600 Galisteo Road, Santa Fe, New Mexico which requires architectural and planning services for site analysis and preliminary development planning; and

WHEREAS, in an effort to obtain these services the County issued Letter of Interest (LOI) No. 2015-0239-HA/BT in accordance with NMSA 1978 Section 13-1-120 through 13-1-124; and

WHEREAS, based upon the evaluation criteria established within the LOI for the purposes of selecting the most qualified offeror, the County has determined the Architect as the most responsive and highly rated offeror; and

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

NOW, THEREFORE, it is agreed between the parties:

1. SCOPE OF WORK

Santa Fe County owns real property consisting of approximately 6.144 acres located at 2600 Galisteo Road, Santa Fe, New Mexico (the “Site”). The Site has infrastructure, including gas, sewer, electricity and water. There is a 14,718 square foot building on the site and three outbuildings used for storage and a caretaker’s residence.

The Architect shall provide a report that includes planning and architectural services for site analysis and a preliminary development plan for the Site. Architect’s services will include, but are not limited to:

A. The completion of a report that includes:

- 1) A description of design considerations and parameters of the Site, including zoning, setbacks, height limitations, density limits, landscape and open space requirements, and parking requirements.

- 2) An analysis and description of current regulations and standards for affordable housing, including requirements of agencies that might be interested in funding a housing project (NMMFA, for example).
 - 3) A map showing existing utilities and analysis of capacities.
 - 4) Description of findings of the Phase 1 Environmental Site Assessment.
 - 5) Proposed conceptual site plans for three (3) options for developing the Site (low density, medium density and high density).
 - 6) Proposed conceptual floor plans showing possible unit layouts, bedroom and bathroom count.
 - 7) Conceptual massing models showing 3-dimensional views of the one development option.
 - 8) Preliminary Cost Estimates for all three options, based upon a per square foot basis for similar building types in this area, plus anticipated site work, landscaping, design fees, and impact fees.
 - 9) A complete analysis of the existing zoning which is R-1 as well as all other Residential Zones from R-1 through R-29 including planned unit developments (PUDs) regarding setbacks, density, height limits, parking, open space, landscape, and other related zoning items.
 - 10) A duration schedule for the zone change process will be detailed which will include the Pre-application meeting, Early Neighborhood Notification (ENN) meeting, formal zone change submittal and list of required drawings. The "duration schedule" will provide the amount of time from start to finish and not a specific date for starting.
- B. Large-format mounted presentation boards illustrating site plans and massing models for all three options.
- C. Traffic Study: Architect will work with Santa Fe Engineering to provide a traffic study. Architect will meet with John Romero, City of Santa Fe Traffic Engineer to provide project parameters pursuant to approved density.
- D. Architect's Services do not include:
- 1) Surveys,
 - 2) Geo-Technical: The number of holes and the location of holes will be determined by the structural engineer once a final development plan is approved. These borings should become part of a building design contract,

- 3) Landscape architecture,
- 4) Civil engineering,
- 5) Detailed renderings.

E. The County shall provide:

- 1) The 2008 Strategic Housing Plan for Santa Fe County and a Phase I Environmental Site Assessment.

2. ADDITIONAL SERVICES

A. The parties agree that all tasks set forth in Section 1 (Scope of Work), of this Agreement shall be completed in full, to the satisfaction of the County, in accordance with professional standards and for the amount set forth in Section 3 (Compensation, Invoicing and Set-off), of this Agreement, and for no other cost, amount, fee or expense.

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

3. COMPENSATION, INVOICING AND SET-OFF

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

- 1) County shall pay to the Architect in full payment for services satisfactorily performed and all costs and expenses shall be in accordance with Exhibit A.
- 2) The total amount payable to the Architect under this Agreement shall not exceed **Thirty-Eight Thousand Dollars (\$38,000.00)**, exclusive of New Mexico gross receipts tax. Any New Mexico gross receipts tax levied on the amounts payable under this Agreement shall be paid by the County to the Architect.
- 3) This amount is a maximum and not a guarantee that the work assigned to be performed by Architect under this Agreement shall equal the amount stated herein. The parties do not intend for the Architect to continue to provide services without compensation when the total compensation amount is reached. The County will notify the Architect when the services provided under this Agreement reach the total compensation amount. In no event will the Architect be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing.

B. The Architect shall submit a written request for payment to the County when payment is due under this Agreement. Upon the County's receipt of the written request, the County shall issue a written certification of complete or partial acceptance or rejection of the contractual items or services for which payment is sought. The Architect 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. In the event the Architect breaches this Agreement, the County may, without penalty, withhold any payments due the Architect for the purpose of set-off until such time as the County determines the exact amount of damages it suffered as a result of the breach.

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

4. 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 5 (Termination) or Section 6 (Appropriations and Authorizations).

5. TERMINATION

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

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

6. APPROPRIATIONS AND AUTHORIZATIONS

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

7. INDEPENDENT ARCHITECT

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

8. ASSIGNMENT

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

9. SUBCONTRACTING

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

10. PERSONNEL

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

B. The Architect represents that it has, or will secure at its own expense, all personnel required to discharge its obligations under this Agreement. Such personnel (i) shall not be employees of or have any contractual relationships with the County and (ii) shall be fully

qualified and licensed or otherwise authorized or permitted under federal, state, and local law to perform such work.

11. RELEASE

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

12. CONFIDENTIALITY

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

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

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

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

14. CONFLICT OF INTEREST

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

15. NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED

This Agreement may not be modified, altered, changed, or amended orally but, rather, only by an instrument in writing executed by the parties hereto. The Architect 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.

16. ENTIRE AGREEMENT; INTEGRATION

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this written Agreement. No prior or contemporaneous

agreement, covenant or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

17. NOTICE OF PENALTIES

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

18. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

A. The Architect agrees to abide by all federal, state, and local laws, ordinances, and rules and regulations pertaining to equal employment opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, the Architect specifically agrees not to discriminate against any person with regard to employment with the Architect or participation in any program or activity offered pursuant to this Agreement on the grounds of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation, or gender identity.

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

19. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW

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

B. Architect shall comply with the requirements of Santa Fe County Ordinance 2014-1 (Establishing a Living Wage).

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

20. RECORDS AND INSPECTIONS

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

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

21. INDEMNIFICATION

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

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

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

22. SEVERABILITY

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

23. NOTICES

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

To the County: Santa Fe County
 Office of the County Attorney
 102 Grant Avenue
 Santa Fe, New Mexico 87501

and,

Santa Fe County
Office of the County Manager
P.O. Box 276
102 Grant Avenue
Santa Fe, New Mexico 87504

To the Architect: Lloyd & Associates Architects, P.A.
100 N. Guadalupe Street
Suite 201
Santa Fe, New Mexico 87501

24. ARCHITECT'S REPRESENTATIONS AND WARRANTIES

The Architect hereby represents and warrants that:

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

B. This Agreement and Architect's obligations hereunder do not conflict with Architect's corporate agreement or any statement filed with the New Mexico Secretary of State on Architect's behalf.

C. Architect is legally registered and is properly licensed by the State of New Mexico to provide the services anticipated by this Agreement and shall maintain such registration and licensure in good standing throughout the duration of the Agreement.

25. FACSIMILE SIGNATURES

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

26. NO THIRD-PARTY BENEFICIARIES

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

27. INSURANCE

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

B. General Liability Insurance, Including Automobile. The Architect 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 one million dollars (\$1,000,000.00)

combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the County by the Architect; 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. Santa Fe County shall be a named additional insured on the policy.

C. Workers' Compensation Insurance. The Architect 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), the Architect shall increase the maximum limits of any insurance required herein.

E. Professional Liability [Errors and Omissions Insurance]. The Architect shall procure and maintain during the life of this agreement professional liability (errors and omissions) insurance, with policy limits of not less than \$500,000.00 per occurrence, \$500,000.00 per aggregate.

28. PERMITS, FEES, AND LICENSES

Architect 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.

29. NEW MEXICO TORT CLAIMS ACT

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

30. CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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

31. APPOINTMENT OF AGENT FOR SERVICE OF PROCESS,

The Architect hereby irrevocably appoints Wayne Lloyd, located at 2223 Paseo de los Chamisos, Santa Fe, N.M. 87505, as its agent upon whom process and writs in any action or proceeding arising out of or related to this Agreement may be served. The Architect acknowledges and agrees that service upon its designated agent shall have the same effect as though the Architect were actually and personally served within the state of New Mexico.

32. SURVIVAL

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

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

SANTA FE COUNTY:

Katherine Miller
Katherine Miller
Santa Fe County Manager

3-6-15
Date

APPROVED AS TO FORM

Gregory S. Shaffer
Gregory S. Shaffer
Santa Fe County Attorney

3/5/15
Date

FINANCE DEPARTMENT

Teresa C. Martinez
Teresa C. Martinez
Santa Fe County Finance Director

3/5/2015
Date

ARCHITECT:

Wayne S. Lloyd
(Signature)

3-9-15
Date

WAYNE S. LLOYD, AIA
(Print Name)

PRESIDENT
(Print Title)

EXHIBIT A

BREAKDOWN OF FEES PER DELIVERABLE:

A. Report:

1. Description of design considerations and parameters of existing site, including zoning, setbacks, height limitations, density limits, landscape and open space requirements, and parking requirements.
2. Analysis and description of current regulations and standards for affordable housing, including requirements of agencies that might be interested in funding the project (NMMFA, for example).
3. Map showing existing utilities and analysis of capacities. **\$ 6,500**
4. Description of findings of existing Phase 1 Environmental Analysis. **\$ 500**
5. Proposed conceptual site plans for three options for developing the site: low density, medium density, high density.
6. Proposed conceptual floor plans showing possible unit layouts, bedroom and bathroom count.
7. Conceptual massing models showing 3-dimensional views of the one development **\$ 15,000**
8. Preliminary Cost Estimates for all three options, based upon a per square foot basis for similar building types in this area, plus anticipated site-work, landscaping, design fees, and impact fees. **\$ 5,000**
9. A complete analysis of the existing zoning which is R-1 as well as all other Residential Zones from R-1 through R-29 including PUD's (planned unit developments) regarding set backs, density, height limits, parking, open space, landscape, and other zoning related items.
10. A duration schedule for the zone change process will be detailed which will include the Pre-application meeting, ENN meeting, formal zone change submittal and list of required drawings. The 'duration schedule' will provide the amount of time from start to finish and not a specific date for starting. **\$ 3,000**

B. Reimbursable expenses: **\$ 1,000**

C. Traffic Study: **\$ 7,000**

Total: \$38,000
Exclusive of GRT

