

**SANTA FE COUNTY
PROFESSIONAL SERVICES AGREEMENT
WITH MOSS ADAMS, LLP
TO PROVIDE FORENSIC EXAMINATION AND
INTERNAL CONTROL CONSULTING SERVICES**

THIS AGREEMENT is made and entered into this 15 day of December, 2010, by and between Santa Fe County, hereinafter referred to as "the County," and Moss Adams, LLP, located at 6100 Uptown Blvd. NE, Suite 400, Albuquerque, New Mexico, hereinafter referred to as "the Contractor."

WHEREAS, pursuant to NMSA 1978, Section 13-1-127 (1984) this is an emergency procurement for the provision of professional services; and

WHEREAS, the County has been made aware of possible criminal irregularities in the Santa Fe County Sheriff's Office and has concerns as to the persons implicated, the monetary value involved and the possible failure of the internal controls of the Sheriff's Office; and

WHEREAS, the County has consulted with the New Mexico Office of the State Auditor to address the need for an immediate forensic examination and internal control consultation of the Sheriff's Office and has received the State Auditor's approval to solicit a firm from the State Auditor's 2010 approved list of accounting firms; and

WHEREAS, the County solicited quotes from four firms and desires to engage the services of the Contractor based on those quotes; and

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

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

1. SCOPE OF WORK

The Contractor shall:

A. Conduct a forensic examination of the Sheriff's Office to determine whether the County has suffered from theft, fraud or embezzlement by former Sheriff Greg Solano or any other person over the preceding six years. If theft, fraud or embezzlement is found, the Contractor must determine a monetary value and detailed extent of the theft, fraud or embezzlement. The forensic examination shall include the following:

- i. a through forensic examination in an effort to establish the extent and monetary value of theft, fraud or embezzlement over the preceding six years;
- ii. identification of funding sources of the items involved;
- iii. analysis of operations, organizational structure, management, policies,

functions and activities of the Sheriff's Office that may have failed to detect the theft, fraud or embezzlement;

iv. review of administrative functions of property and evidence safekeeping including procedures and policies as they relate to these functions;

v. review of former Sheriff Solano's involvement in Region III Drug Task Force and possible theft, fraud or embezzlement related to such; and

vi. assessment of the adequacy of internal control over County-owned property located at the Sheriff's Office and recommendations to improve the internal controls of the Sheriff's Office to prevent theft, fraud or embezzlement.

B. The work will be performed primarily at the Sheriff's Office, the County Finance Division and Contractor's office in Albuquerque, New Mexico.

C. The forensic examination of the Sheriff's Office will be performed in two phases. At a high level, Phase I will be an assessment phase in which Contractor will gather information on available data sources and internal controls, focusing specifically on property, evidence safekeeping, and the Region III Drug Task Force. Contractor will apply data mining and analytical techniques, some of which are highly advanced, to detect unusual coincidences or clusters. Concurrently, interviews with County personnel will be conducted to gain an understanding of what existing controls are in place and where weaknesses might lie. At the completion of Phase I, Contractor will provide a written report and review of all findings discovered during testwork. Contractor will have discussions with representatives of the County to reach a consensus on how to proceed and scoping options for Phase II.

D. Phase II will include a detailed forensic examination of transactions and source documents, along with testwork on the areas identified in Phase I. At the conclusion of Phase II, an exit conference will be held with representatives of the County along with a discussion and review of all findings, prior to the preparation of a final report by the Contractor.

E. The Contractor will work with the County's management to determine and modify the plan and hours to fit specific needs to accomplish the goals of the forensic examination and internal control consultation.

The County shall assist in the investigation by providing documentation of purchases made during the timeframe in review. The Finance Division will work closely with the Contractor to obtain all documentation requested. The Sheriff's Office will provide access to key personnel and areas in question to facilitate the investigation. The New Mexico State Police is the agency charged with the criminal investigation of the matter.

2. COMPENSATION AND INVOICING

A. In consideration of its obligations under this Agreement, the Contractor shall be paid at the hourly rates set forth on Attachment 1, attached hereto, not to exceed \$64,200.00 inclusive of gross receipts tax.

The Contractor shall be paid for mileage at the rates provided in 2.42.2 NMAC. No additional travel expenses for the Contractor are to be paid pursuant to this Agreement.

- B. The Contractor shall submit a written request for payment to the County at such time that the Contractor produces to the County the deliverables and/or progress billings pursuant to the Scope of Work. 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 Contractor 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 Contractor breaches this Agreement, the County may, without penalty, withhold any payments due the Contractor 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.

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 on June 30, 2011, unless earlier terminated pursuant to Section 4. "TERMINATION," of this Agreement.

4. 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 Contractor written notice of termination. The notice shall specify the effective date of termination, which shall not be less than thirty (30) days from the Contractor's receipt of the notice. The County shall pay the Contractor 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. INDEPENDENT CONTRACTOR

The Contractor and its agents and employees are independent contractors and are not employees or agents of the County. Accordingly, the Contractor 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, the Contractor has no authority to bind, represent, or otherwise act on behalf of the County and agrees not to purport to do so. The Contractor shall not be provided offices at the County. All supplies needed for the Contractor's work are Contractor's responsibility.

6. PERSONNEL

- A. All work performed under this Agreement shall be performed by the Contractor or under its supervision.
- B. The Contractor 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.

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 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

The Contractor 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. INDEMNITY

- A. The Contractor 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 Contractor's performance or non-performance of its obligations under this Agreement, including but not limited to the Contractor's breach of any representation or warranty made herein.
- B. The Contractor 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 Contractor in such demand, suit, or cause of action, the County may retain its own counsel to represent the County's interest.
- C. The Contractor's obligations under this section shall not be limited by the provisions of any insurance policy the Contractor is required to maintain under this Agreement.

10. 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 Contractor 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 Contractor also agrees to require any subcontractor 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.

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

12. PERMITS, FEES, AND LICENSES

The Contractor 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.

13. RELEASE

Upon its receipt of all payments due under this Agreement, the Contractor 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.

14. 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 prior written approval of the County.

15. PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHTS

- 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 Contractor 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.

16. CONFLICT OF INTEREST

The Contractor 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.

17. 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 Contractor 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.

18. 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.

19. EQUAL OPPORTUNITY COMPLIANCE

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

20. 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.

21. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW

- A. The Contractor agrees to comply, at all times, with all applicable state and federal laws and regulations and any and all licensure requirements governing its program and facility.
- B. 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. The Contractor

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

22. NOTICE OF PENALTIES

The Procurement Code, NMSA 1978, Section 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.

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. FACSIMILE SIGNATURES

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

25. LIMITATION OF LIABILITY

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

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, § 41-4-1, *et seq.*

27. INSURANCE

- A. General Conditions. The Contractor 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 Contractor 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 Contractor; 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. The Contractor 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 Contractor shall increase the maximum limits of any insurance required herein.
- E. Malpractice/Errors and Omissions Insurance. Contractor shall procure and maintain during the life of this Agreement professional liability or errors and omissions insurance in amounts not less than \$1,000,000 per occurrence, \$2,000,000 per aggregate.

28. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

The Contractor hereby represents and warrants that:

- A. It is a company duly organized and is registered as a limited liability partnership in New Mexico in good standing.
- B. This Agreement has been duly authorized by the Contractor, the person executing this Agreement has authority to do so, and, once executed by the Contractor, this Agreement shall constitute a binding obligation of the Contractor.
- C. This Agreement and the Contractor's obligations hereunder do not conflict with the Contractor's articles of incorporation or by-laws or any corporate resolution adopted by the Contractor.

29. CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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

30. NOTICES

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

Santa Fe County
Legal Department

102 Grant Avenue / P.O. Box 276
Santa Fe, NM 87504-0276

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

MOSS ADAMS, LLP
6100 Uptown Blvd. NE Suite 400
Albuquerque, NM 87110

31. APPOINTMENT OF AGENT FOR SERVICE OF PROCESS

The Contractor hereby irrevocably appoints Jim Thompson, as its general agent for acceptance of services, and 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 Contractor acknowledges and agrees that service upon its designated agent shall have the same effect as though the Contractor were actually and personally served within the state of New Mexico.

32. SURVIVAL

The provisions of following paragraphs shall survive termination of this Contract; INDEMNITY, RECORDS AND INSPECTION, RELEASE, CONFIDENTIALITY, COPYRIGHT, 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 Mills

Santa Fe County Manager

APPROVED AS TO FORM

Stephen C. Ross

Stephen C. Ross
Santa Fe County Attorney

15 December 2010
Date

FINANCE DEPARTMENT APPROVAL

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

12/15/2010
Date

MOSS ADAMS, LLP

[Signature]
(Signature)

12/15/10
Date

James Thompson
(Print name and title)

NEW MEXICO STATE AUDITOR

Corey Martinez 12/15/10
Deputy State Auditor

RECEIVED
DEC 15 2010
STATE AUDITOR

FEDERAL IDENTIFICATION NUMBER: _____

ATTACHMENT 1

Name/Level	Hourly Rate
Jim Thompson, Partner	\$275
Audrey Jaramillo, Senior Manager	\$225
Peter Chew, Senior Manager	\$225
Zhabiz Edwards, Senior	\$135
Staff, to be assigned	\$100