

Henry P. Roybal  
Commissioner, District 1

Miguel M. Chavez  
Commissioner, District 2

Robert A. Anaya  
Commissioner, District 3



Kathy Holian  
Commissioner, District 4

Liz Stefanics  
Commissioner, District 5

Katherine Miller  
County Manager

## MEMORANDUM

**DATE:** November 29, 2016

**TO:** Board of County Commissioners

**FROM:** Mark Hogan, Projects and Facilities Director  
Bill Taylor, Procurement Manager

**VIA:** Katherine Miller, County Manager  
Michael Kelley, Public Works Department Director  
Jeffrey Trujillo, ASD Director

**ITEM AND ISSUE: BCC Meeting November 29, 2016**

Approval of Amendment No. 1 to Agreement 2016-0104-PW/BT Between Santa Fe County and Spears/Horn Architects in the Amount of \$420,134.23, Exclusive of NMGRT for Additional Design Services for the New County Administration Building and Restoration/Renovation of the Old Administration Building and Authorizing the County Manager to Sign the Purchase Order. (Mark Hogan, Property and Facilities Director, Bill Taylor, Purchasing Division)

**ISSUE:**

The original maximum allowable construction cost (MACC) for project No. 2016-0104-PW/BT was increased an additional \$6,000,000.00. The design fees required are based on a fee scale or percentage of the MACC. Therefore, when the MACC increases, the design fees must be increased to compensate the Design Team accordingly for the additional design services.

This increase in fee requires a contract amendment and approval by the Board of County Commissioners, pursuant to Resolutions 2012-57 and 2014-143.

**BACKGROUND:**

On March 8, 2016 the BCC approved the Agreement No. 2016-0104-PW/BT between Santa Fe County and Spears Horn Architects for professional design services regarding the renovation of the old administration building at 102 Grant Avenue and the new county administrative office complex at 100 Catron Street.

At the September 13, 2016 Study Session the BCC approved additional allocation of Project Funds to increase project budget from \$32,000,000.00 to \$38,000,000.00 to include:

- Restoration of the old administration building to its original, pre-1976, design as well as the necessary building renovations that are required.

- Increase of the square footage of the New Office Complex Building in order to accommodate those departments that are to be dislocated by the restoration and renovation at the old administration building.
- Accommodation of as much county fleet parking, at the new office complex, as possible.

This Amendment will increase the Professional Design Fees commensurate with the increase in project scope and requirements.

**ACTION REQUESTED:**

Approval of Amendment No. 1 to Agreement 2016-0104-PW/BT between the County and Spears/Horn Architects in the amount of \$420,134.23, exclusive of NMGRT for Additional Design Services, authorizing the County Manager to sign the purchase order.

**Attachments:** Amendment #1 to Agreement No. 2016-0104-PW/BT Between Santa Fe County and Spears Horn Architects.

**EXHIBIT C**  
**AMENDMENT TO AGREEMENT**  
**BETWEEN SANTA FE COUNTY AND ARCHITECT**  
**FOR PROFESSIONAL ARCHITECTURAL BASIC SERVICES**

In accordance with Part A Paragraph 5 Architect's BASIC SERVICES and Part B. Paragraph 1, SCOPE OF WORK, where applicable, to the Agreement Between the County and Architect, the Architect is authorized to provide the following additional Basic Services and Additional Services.

PROJECT NAME: Renovations and restoration of County Administrative Office Complex (100 Catron Street) and County Administration Building (102 Grant Avenue), Santa Fe, NM.

PROJECT NUMBER: Agreement No. 2016-0104-PW/BT

PROJECT LOCATION: 100 Catron St. and 102 Grant Avenue  
Santa Fe, NM

Owner-requested additional Basic Services and Additional Services:

1. Increase available square footage of in the design of the County Administrative Office Complex (100 Catron Street) and adjust construction time.
2. Provide for additional fleet parking areas at County Administrative Office Complex (100 Catron Street) to include below-grade parking.
3. Design historic restoration of portions of the County Administration Building including landscaping restoration (102 Grant Avenue).
4. Reimbursables associated with additional services.
5. EXHIBIT A to Agreement No. 2016-0104-PW/BT is replaced with the attached revised EXHIBIT A (COMPENSATION AND SCHEDULE).

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**Justification for additional Basic Services and Additional Services:**

The above described architectural and engineering changes are Owner-requested changes to the Architect's A/E services under Agreement No. 2016-0104-PW/BT. The MACC under Agreement No. 2016-0104-PW/BT has been increased from \$22,500,000 to \$27,839,100.

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Additional Basic Services, exclusive of NMgrt:	\$1,684,267.97
Reimbursables	\$ 42,343.39
Additional Services	\$ 274,158.00
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<b>Total (new contract sum)</b>	<b>\$2,000,769.36</b>
	<b>(exclusive of NM grt)</b>

SIGNATURE PAGE

SANTA FE COUNTY

\_\_\_\_\_  
Miguel M. Chavez, Chair  
Santa Fe County Board of County Commissioners

ATTESTATION:

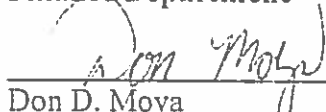
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Geraldine Salazar  
Santa Fe County Clerk

Approved as to form

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


Date: 11-10-16

Finance Department

  
\_\_\_\_\_  
Don D. Moya  
Interim Finance Director

Date: 11/17/16

ARCHITECT

  
\_\_\_\_\_  
Signature

Date: 17 NOV. 2016

JAMES HORN  
\_\_\_\_\_  
Print Name

**EXHIBIT A (revised by Amendment No. 1)  
COMPENSATION AND SCHEDULE**

PROJECT NAME: Renovations and restoration of County Administrative Office Complex (100 Catron Street) and County Administration Building (102 Grant Avenue), Santa Fe, NM.

PROJECT NUMBER: Agreement No. 2016-0104-PW/BT

PROJECT LOCATION: 100 Catron St. and 102 Grant Avenue, Santa Fe, NM

BASIC SERVICES			Date to be completed
Programming Phase	10%	\$168,426.80	20 weeks
Schematic Phase	15%	\$252,640.20	20 weeks
Design Development Phase	20%	\$252,640.20	18 weeks
Construction Document Phase	25%	\$505,280.39	36 weeks
Bidding and Negotiations Phase	3%	\$75,792.01	8 weeks (each phase)
Construction Phase	22%	\$421,066.99	112 weeks
Project Closeout Weeks	3%	\$0.00	2 weeks (each phase)
11 Month Inspection Phase	2%	\$8,421.34	1 week (each phase)
<b>Total Basic Services Amount</b>	<b>100%</b>	<b>\$1,684,267.97</b>	

**REIMBURSABLES**

(Est. @ 2.33% of \$1,684,267.97)	\$39,243.39
(Historic Structures Report expenses)	\$ 3,100.00

<b>Total (not-to-exceed):</b>	<b>\$42,343.39</b>
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**ADDITIONAL SERVICES**

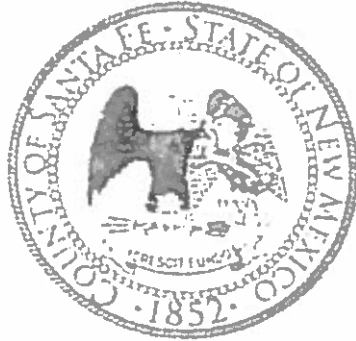
LEED Consultant	\$44,000.00
MEP LEED Services	\$26,592.00
Landscape LEED Services	\$ 4,000.00
Architecture LEED Services	\$ 8,000.00
USBGC/ GBCI LEED Registration Fee	\$ 5,000.00 (est)
102 Grant Ave. As-built documentation	\$25,000.00
Advanced Security Design	\$15,000.00
Survey (Easements & Utilities)	\$ 8,000.00
Geotechnical Investigation	\$14,200.00
Historic Structures Report	\$39,816.00
Information Technology (IT)	\$41,000.00
Furniture, Fixtures and Equipment (FF&E)	TBD
Analysis of existing conditions & assessment for restoration	\$19,000.00
Traffic study	\$12,550.00
Parking/ ramp design	\$12,000.00

<b>Total Additional Services Amount</b>	<b>\$274,158.00</b>
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<b>TOTAL SERVICES AMOUNT</b>	<b>\$2,000,769.36</b>
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**AGREEMENT BETWEEN SANTA FE COUNTY AND  
ARCHITECT  
FOR PROFESSIONAL ARCHITECTURAL SERVICES**



**SANTA FE COUNTY  
ADMINISTRATIVE SERVICES DEPARTMENT**

**PURCHASING DIVISION**

2013 EDITION, Part A of Two Parts

Changes, additions, deletions and/or any modifications other than those agreed upon execution of this contract without the written consent of Santa Fe County shall render this document null and void.

**PROJECT:** New County Administration Building

**PROJECT LOCATION:** 100 Catron Street, Santa Fe, NM

**THIS AGREEMENT** is made and entered into on this 8<sup>th</sup> day of March, 2016, by and between SANTA FE COUNTY (hereinafter referred to as the "County"), a New Mexico political subdivision, and James Horn Architects, an Architectural Firm licensed to do business in the State of New Mexico, (hereinafter referred to as the "Architect").

Hereinafter "County":

Santa Fe County  
PO Box 276  
102 Grant Avenue  
Santa Fe, New Mexico 87504-0276  
TELEPHONE: 505-986-6200

Hereinafter "Architect":

Spears Horn Architect  
1334 Pacheco Street  
Santa Fe, New Mexico 87505  
Attn: James Horn  
TELEPHONE: 505-983-6966

## RECITALS

WHEREAS, Santa Fe County needs architectural services for the design of a new County Administration Building and renovation of the existing County Administration Building; and

WHEREAS, pursuant to NMSA 1978, Section 13-1-112, competitive sealed proposals were solicited through a formal Request for Proposal (RFP No. 2016-0104-PW/BT) for these professional services; and

WHEREAS, based upon the evaluation criteria stated in the RFP for the purpose of determining the most qualified offeror, the County has determined the Architect as the most responsive and highest 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, in consideration of the premises and mutual obligations herein, the parties hereto do mutually agree as follows:

### 1. PURPOSE OF THIS AGREEMENT

The purpose of this Agreement for architectural services is for the design of a new County Administration Building and the renovation of the existing County Administration Building (the Project). The Architect will provide a completed Consultant List on the form indicated in Exhibit E, attached hereto, if the Architect plans to use consultants or subcontractors for this Project. The County will send the Architect a notice to proceed with the assignment using the Authorization to Proceed form (Attachment 1).

### 2. SCOPE OF WORK

A. The scope of services will consist of a design for new construction of a new County Administration Building and renovation and improvements of the existing County Administration Building. This project typically has limited budget and such design tasks must be accomplished in the most cost effective manner possible with concise planning to accommodate budget restraints.

B. Architectural services may include without limitation, the following:

- 1) *Evaluation & Planning Services*
  - Programming
  - Functional relationships/flow diagrams



- Existing facilities surveys
- Conditions assessments
- Marketing studies
- Economic feasibility studies
- Project financing
- Site analysis, selection and development planning
- On-site and off-site utility studies
- Environmental studies and reports
- Zoning review

2) *Design Services*

- Code review
- Civil design
- Landscape design
- Architectural design
- Interior design
- Structural design
- Mechanical design
- Electrical design
- Solar design
- Leeds and sustainable design
- Materials research and specifications
- Cost Estimating
- Architectural renderings/models

3) *Bidding and Negotiation Services*

- Bidding documents
- Attendance pre-bid conference
- Addenda/responding to bidder inquiries
- Bidding/Negotiation
- Analysis of alternates and substitutions
- Bid evaluation

4) *Contract Administration Services*

- Submittal services
- Review of Pay Applications
- On-site inspection of work
- Testing and inspection administration
- Supplemental documentation

- Quotation requests/change orders
- Contract cost accounting
- Furniture & equipment installation administration
- Interpretations & decisions
- Project close-out

5) *Facility Administration Services*

- Maintenance and operational programming
- Startup assistance
- Record drawing
- Warranty review
- Post contract evaluation

**3. BASIS FOR COMPENSATION**

The fee for basic services is based on a percentage of the Maximum Allowable Construction Cost (MACC) of \$22,500,000 as may be adjusted by building type, design complexity, and scope of work. The MACC for the purpose of calculating the fee for basic services is not adjusted at the time of construction contract award. If, at any time, the MACC and/or the percentage are changed by amendment, the basic services fee shall be adjusted as appropriate. No fee adjustment shall be made for phases already completed.

**4. COMPENSATION, INVOICING, AND SET-OFF**

- A. In consideration of its obligations under this Agreement the Architect shall be compensated as follows:
- B. 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 (Compensation and Schedule) and Attachment 2 (Architect's Hourly Rate Fee).
- 1) The total amount payable to the Architect under this Agreement, exclusive of gross receipts tax, shall not exceed **One Million Five Hundred Eighty Thousand Six Hundred Thirty-Five Dollars and Thirteen Cents (\$1,580,635.13)**. Any New Mexico gross receipts tax levied on the amounts payable under this Agreement shall be paid by the County to the Architect;
  - 2) 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.

- C. The Architect shall submit a written request for payment, on the form attached hereto as Exhibit B (Architect Pay Request form), when payment is due under this Agreement within each phase of services. 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 the County has issued a written certification accepting the contractual items or services. Within 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 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.
- D. 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.
- E. Payment under the Agreement shall not foreclose the right of the County to recover excessive or illegal payment.
- F. The Architect shall submit, with its billings at the completion of an assigned project, certification that payment has been made to all consultants, suppliers, and others for materials and services required by this Agreement.
- G. No deductions or withholdings shall be made from the Architect's compensation on account of penalty, liquidated damages, or other sums withheld from payments to Contractors, or on account of the cost of changes in the Work other than those for which the Architect may be legally liable in accordance with this Agreement.
- H. In the event the County receives Notice from any person, Consultant, Sub consultant, or other third party, that the Architect has failed to pay such person(s) for Work performed in accordance with Agreements, the Architect shall, at the request of the County, and in no more than ten calendar days, provide all documentation the County believes necessary to determine whether such payment is due, or reasons for non-payment of disputed amounts. In the event the County determines the claim to be valid and payment is due, or in the absence of

aforementioned documentation, the County may authorize direct payment of any unpaid bills, withholding from the Architect's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such claims until satisfactory documentation is furnished that all liabilities have been fully discharged or reasons for non-payment of disputed amounts are provided by the Architect. In no event shall these provisions be construed to impose any obligation upon the County to the Architect.

- I. In the event of termination or suspension of a project due to the fault of parties other than the Architect, the Architect shall be compensated for services performed to the date of termination.

## 5. BASIC SERVICES

The Architect shall perform professional services including Basic architectural services including landscaping architecture and interior architectural design services. The Architect shall represent that all tasks will be performed in accordance with generally acceptable professional standards and further represent that the advice and consultation provided shall be within the Architect's authority and capacity. The Architect shall comply with the regulations, laws, ordinances and requirements of all levels of government applicable to any assigned project.

The services to be provided during each phase listed herein includes all consulting services required by the Architect to provide the professional architectural services incidental to the design and construction of a project. The intent of this Agreement is to design completely functional and operational facilities within the identified scope of work and cost limitation.

The Architect's Basic Services shall consist of the following:

- A. Programming Phase. This phase involves the collection of facts, identifying concepts, analyzing the site and determining the proper operational needs of the agency. Based on the data provided by the County and pursuant to consultation with the County, the Architect shall prepare a document that defines the scope of the project. The programming document shall reflect the limits of the maximum allowable construction costs (MACC) and provide an estimated duration for construction.
  - 1) The Architect shall include in the program document the results of site investigation and the field verification of any information provided by the County.
  - 2) The County shall work with the Architect to ensure that the information required by the County is made available to the Architect. This information and other requests concerning organization of functions shall be provided in the form of a written memorandum.

- 3) The County shall schedule a meeting between the Architect and the County's Department representative to define the relationship among all parties. The Architect shall advise the County, in writing, of any information required which has not been provided by the County and/or any conflicts between the established program requirements, and the MACC.
- 4) The Architect shall obtain the approval of the County, in writing, of the Program Phase before commencing work on the Schematic Design Phase. The Architect shall provide written confirmation, to be transmitted with the Program Document to the County, that the Architect has visited the site, familiarized itself with the local conditions under which the work is to be performed, correlated its observations with current code requirements and life safety needs, and has a clear understanding of existing conditions for a project.

B. Schematic Phase. Upon completion of the Programming Phase the Architect shall produce studies consisting of drawings and other documents necessary to illustrate the general planning concepts, probable architectural, engineering, and building systems, materials and preliminary alternatives, a breakdown of the budget on current area, volume, or other unit costs, and the approximate dimensions of the programmed areas. The number of iterations of such studies produced shall be sufficient to accomplish and demonstrate a design concept for a project that is satisfactory to the County. The Architect shall incorporate in the Schematic Design Drawings and documents the provisions of Green Building Standards and current State-adopted Building Code and current ASHRAE 90.1 are incorporated herein by reference. Where applicable, the provisions of these documents shall apply. The Architect shall brief, and obtain the written approval from the County for the Schematic Design Drawing and documents. This review and approval shall include the life cycle costs. The Architect shall obtain the written approval of the County of one of the proposed design schemes, as modified by any comment during review, before commencing work on the Design Development Phase.

- 1) The Architect shall provide a feasibility report as part of this phase on the energy sources other than fossil fuels for the heating and air conditioning of the proposed building, if applicable.
- 2) The Architect shall request site survey data from the County.
- 3) The responsibility for bringing a project within the MACC and compliance with construction directives remains with the Architect. Should the Architect at any time conclude that the budget and the scope

of the work to be accomplished are incompatible, the County shall be notified immediately in writing, with proposed recommendations to reconcile the incompatibility.

C. Design Development Phase. Upon completion of the Schematic Phase, the Architect shall prepare the Design Development Documents consisting of drawings, outline specifications, and other documents to fix and describe the size and character of the entire project as to civil, structural, mechanical, plumbing, and electrical systems materials and such other design essentials as may be appropriate. Additionally, these documents shall identify design features, program modifications, the probable Project Schedule, equipment installed in a project or furnishings required, and a statement that identifies the need for any additional data, surveys, or tests. The Architect shall provide sufficient, alternative design solutions on major design features to allow the County to ascertain that the recommended design achieves practical programmatic and economic solutions, within the limitations of the authorized program, schedule, and budget; include staffing and occupancy considerations provided by the County. The Architect shall acquire the approval, in writing, of the County of all documents associated with the Design Development Phase before commencing work on the Construction Documents Phase.

- 1) The Architect shall submit to the County for review and written approval a refined statement of Probable Construction Cost at the completion of the Design Development Phase. Should the Architect conclude, at any time, that the budget and the scope of work to be accomplished are incompatible; the County shall be notified immediately in writing, with proposed recommendations to reconcile the incompatibility.
- 2) Should the County initiate or require a material change from the approved Design Development Documents and there is no fault or responsibility of the Architect related to the County's initiation or requirement of the change, the Architect's efforts implementing said change(s) shall be compensated as an Additional Service and the schedule of delivery of the Architect's services shall be equitably adjusted if/as appropriate.

D. Construction Document Phase. Upon the completion of the Design Development Phase, the Architect shall prepare and complete the Construction Documents based upon information contained in the Design Development drawings and other documents approved by the County. These Construction Documents shall provide the detailed requirements for the construction of an entire project.

- 1) The Construction Documents shall include written and graphic elements indicating contracting requirements, specifications and contract drawings. If Architect is to provide professional design services, layouts of

equipment or certifications related to systems, materials or equipment that are not included in these Construction Documents, the Architect shall clearly define and identify such services and specify all performance and design criteria that such services must satisfy within the Construction Documents. The County or the Architect shall not be responsible for the adequacy of the performance or design criteria specified by the Architect and required by the Construction Documents.

- 2) In preparing the Construction Document, the Architect shall, as directed by the County, prepare the necessary bidding information, bidding forms, and the project manual, which shall include the Conditions of the Contract for Construction (general, supplementary, and other conditions of the contract), and the Standard Form of Agreement between County and Contractor. The Architect shall incorporate in the Invitation for Bid (IFB) documents the provisions for Index to Bidding as provided as Exhibit H.
- 3) The IFB shall be prepared by the Architect as directed by the County, and shall include the bid date, location and time, which shall be prepared by the County and Architect and submitted to the County's Purchasing Division during the Bidding Phase. The Architect shall assist the County in filing the required documents for the approval of any governmental or other authorities having jurisdiction over a project assignment.
- 4) Construction Drawings: In addition to the electronic CAD files, PDF files and related electronic documents, the Architect shall provide three (3) full drawing sets to the County. Hand-drawn drawings, when approved in advance by the County, shall be prepared non-glossy polyester film 3-ml thickness minimum. Standard sheet sizes may be architectural sizes 24" x 36" or 30" x 42".
- 5) Electronic Data: The County requires that final Construction Documents and Specifications are prepared using computer technology in the formats prescribed in paragraph 12 (Software Requirements).
- 6) Only materials and systems available at the time of this Agreement or reasonably believed to become available prior to the expiration of the Construction Contract shall be specified in the Contract Documents. The Bidding or RFP Documents shall include a list of those items (or categories of items) for which shop drawings or submittals are required.
- 7) The Architect shall furnish Bidding Documents to the County bearing the approval of the following:

- a. N.M. Construction Industries Division, Regulation and Licensing Department,
  - b. Santa Fe County Technical Review Division,
  - c. If applicable: Occupational Health and Safety Bureau; Environmental Protection Division; Environment Department,
  - d. If applicable: Health Facility Licensing and Certification Bureau; Health Improvement Division; Department of Health,
  - e. If applicable: N.M. Environment Department; N.M. Energy, Minerals and N.M. Natural Resources Department and N.M. Department of Information Technology and Infrastructure Voice Radio (IVR).
- 8) The Architect shall provide a signature-approval block on the front sheet of the drawings and specifications for the following and obtain signatures of the following:
- a. Santa Fe County,
  - b. Utility companies (as appropriate),
  - c. Design Professional Certification: Project meets as a minimum – current ASHRAE 90.1 requirements,
  - d. Department of Information Technology, IVR (as appropriate).
- 10) Project Wage Determination: The Architect shall, as directed by the County, request from the State of New Mexico Labor and Industrial Division, Workforce Solutions a minimum wage rate determination for the Project pursuant to Section 13-1-11, NMSA 1978. The Architect shall provide the Division a description of the project, an estimate of construction cost, an approximate bid or proposal opening date, and any other pertinent information required by the Labor and Industrial Division. The Architect shall include a wage rate determination in the Bidding or RFP Documents. Federally funded projects will required both state and federal wage rates.
- 11) Upon completion of the Construction Documents, the Architect shall brief the County on the Bidding Documents, specifically addressing previous County concerns and requirements. At this briefing, the Architect shall furnish the County a final and detailed statement of Probable Construction Cost, including an updated Project Schedule. The Architect shall pay any fees incurred in the preparation of the detailed cost estimate provided by the Architect.
- 12) The responsibility of bringing a project within the MACC and compliance with construction directives remains with the Architect. Should the



Architect at any time conclude that the budget and the scope of work to be accomplished are incompatible; the County shall be notified immediately in writing, with proposed recommendations to reconcile same.

- 13) The Architect shall return all original documents and drawings provided by the County to the County upon the County's request, but in no case later than when the Construction Documents Phase has been completed. Payment for the Construction Documents Phase will not be made to the Architect until the County has received said documents and drawings.
- 14) The Architect shall acquire the approval, in writing, of the County of all documents, and any and all bid alternates, associated with the Construction Documents Phase before commencing work on the Bidding Phase.

E. Bidding and Negotiation Phase. The Architect, following the County's written approval of the Bidding Documents, shall assist the County in obtaining bids and in awarding and preparing contracts for construction, as directed by the County. The finalized Invitation for Bid for Construction shall be prepared by the County and forwarded to the Architect for bidding purposes and the County shall issue a purchase order authorizing the advertisement for a project.

- 1) The Architect shall provide sets of Bidding Documents as required to the County, and sets as appropriate to all Bidders requesting documents for bidding purposes. Prime bidders shall be defined as General Contractors, who will be allowed no more than three sets; major subcontractors as listed in the form, or other suppliers.
- 2) The Architect shall, as directed by the County, provide an additional number of documents to be placed in plan rooms as well as in the Architect's office for review by prospective Bidders.
- 3) The Architect shall also make sets available to other prospective parties as requested. The Architect may charge the cost of reproduction to the party requesting the documents.
- 4) The Architect shall clarify and answer any questions about the Bidding Documents, as directed by the County, during the bidding process and shall issue Addenda as required to all Bidders, and the County.
- 5) All Addenda, including all revised drawings and sections, must be approved by the County prior to distribution. The Architect shall allow

sufficient time for County to review and accept each addendum.

- 6) The Architect shall provide assistance to the County to identify the apparent successful bidder(s) and shall provide written recommendation to accept or reject the bids.
- 7) The Architect shall not discuss with bidders, news media, etc., any presumption of award until the award is decided by the County.

F. Construction Phase-Administration of the Construction Contract. The Construction Phase will commence with the award of the contract for construction and continue until the eleven month inspection and report is submitted by the contractor and approved by the County.

- 1) The Architect shall provide administration of the construction contract as required and defined in the Conditions of the Contract for Construction. The extent of the Architect's duties and responsibilities and the limitations of its authority thereunder shall not be modified without the County's written consent.
- 2) The Architect shall be the representative of the County during the Construction Phase and shall advise and consult with the County. Instructions to the Contractor shall be forwarded only through the Architect. The Architect shall have authority to act on behalf of the County only to the extent provided in the Contract Documents and any amendments thereto.
- 3) The Architect shall at all times have access to the Work, whether it is in preparation or progress.
- 4) The Architect shall submit to the County, for approval, a list of critical inspection points based upon the construction schedule furnished by the Contractor. The Architect shall make periodic visits to the site at such times as appropriate during the progress of the Work for the purposes of notifying the County on the progress and condition of the Work and adequately represent the County. Additionally, the Architect shall familiarize itself with the progress and quality of the Work and determine if the Work is proceeding substantially in accordance with the Contract Documents. On the basis of on-site observations, the Architect shall endeavor to guard the County against defects and deficiencies in the construction. Should the Architect determine that any portion of the Work varies from the requirements of the Contract Documents, the Architect shall immediately notify the Contractor and the County of the nature of the work required to correct such non-compliance.

- 5) The Architect shall provide a minimum of weekly on-site observation during the construction phase in an attempt to guard the County against defects and deficiencies in the construction, in addition to critical inspections and other reviews and evaluations required by the progress of the Work. The results of all on-site observations shall be documented in field reports submitted to the County within seven days of each such site visit.
- 6) The Architect shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, for acts or omissions of the Contractor, subcontractors, or any other persons performing any of the Work, or for the failure of any of them to carry out the Work in accordance with the Contract Documents.
- 7) The Architect shall determine, certify, and make recommendations to the County for payment for the amounts owing to the Contractor subject to the County's approval, based on observations at the site and evaluations of the Contractor's Applications for Payment. The Architect shall issue Certificates for Payment in such approved amounts as provided in the Contract Documents.
- 8) The issuance of a Certificate and recommendation for payment shall constitute representation by the Architect to the County, based on the Architect's observations at the site as provided in subparagraph 4) above and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated; that the quality of the Work is substantially in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications state in the Certificate for Payment); and that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment shall not be a representation that the Architect has made any examination to ascertain how and for what purpose the Contractor has used the money paid on account of the Contract Sum.
- 9) The Architect shall render interpretations of the documents necessary for the proper execution or progress of the Work with reasonable promptness on written request of either the County or the Contractor, and shall render written decisions within a reasonable time on all claims, disputes, and

other matters in questions between the County and the Contractor relating to the execution or progress of the Work or the interpretation of the Contract Documents.

- 10) Interpretations and decisions of the Architect shall be consistent with the requirements and intent of the Contract Documents and shall be in written or graphic form.
- 11) The Architect's decisions in matters relating to artistic effect shall be final if consistent with the requirements of the Contract Documents.
- 12) The Architect shall have authority to reject work that does not conform to the Contract Documents. Where rejected Work is not promptly corrected, the Architect shall recommend to the County that the Work shall stop. Whenever, in the Architect's professional opinion, it is necessary or advisable for the implementation of the intent of the Contract Documents, the Architect will have authority to require special inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work be then fabricated, installed, or completed.
- 13) The Architect shall review the Contractor's submittals, such as shop drawings, product data, and samples, but only for conformance with the design concept of the Work and with the information given in the Contract Documents; and, for each submittal, the Architect shall designate in writing that the Architect:
  - a. Takes no exception to this submittal
  - b. Rejects the submittal
  - c. Requires corrections as noted by the Architect
  - d. Requires revisions and resubmitted to the Architect
  - e. Requires the Contractor to submit the specified item
  - f. Approves as corrected

Such action shall be taken with reasonable promptness so as to cause no delay. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

- 14) Necessary professional services or construction required to repair or overcome problems caused by the Architect's errors, omissions, inadequacies, or changes not authorized by the County in the preparation of the documents or design shall be the responsibility of the Architect or its consultants, without additional cost to the County.
- 15) All Change Orders, defined in the Conditions of the Contract for

Construction, shall be prepared by the Architect. Such Change Orders shall not become effective or binding on the County or Contractor until signed by the County and others whose signatures are required therein. Attached in Exhibit G and incorporated into this Agreement by reference is a copy of the Change Order form. Using this form, the Change Order shall be initiated by the party requesting a change. Approval in writing by the County of a completed Change Order modifies this Contract for construction to the extent indicated. No Work that could reasonably be expected to alter the contract price or materially alter the Project shall be undertaken until the County has approved a completed Change Order that outlines the desired change. Any deviation from the above described Change Order process shall be considered a material breach of this Contract. The County reserves the right to seek remedy from the Architect for Change Orders made necessary due to the Architect's errors and omissions.

- 16) Upon prior notice to the County, the Architect shall make observations to determine the Dates of Substantial Completion and Final Completion. The Architect shall obtain and forward to the County for the County's review of written warranties and related documents required by the Contract Documents and assembled by the Contractor. The Architect shall then issue a final Certificate for Payment.
- 17) The extent of the duties, responsibilities, and limitations of authority of the Architect as the County's representative during construction shall not be modified or extended without written consent of the County and the Architect.
- 18) Should the Architect, its staff, or its consultants direct the Contractor, or its Subcontractors to undertake work for which additional compensation could reasonably be expected, and if such work is not:
  - a. An emergency endangering life and property
  - b. Required by the Contract Documents
  - c. Required by approved Change Orders (signed by the Architect, the County and the Contractor

Payment for such work, if accomplished without written authorization, shall not be borne by the County and shall constitute adequate grounds for dismissal or other action against the Architect.

- 19) As part of the Architect's Basic Services, the Architect shall modify the original reproducible drawings and the Project Manual, delineating recorded built conditions of the Project or record documents compiled

from the records of the Contractor and the Architect, showing all changes in the Work. This set of Documents shall also include record documents showing actual location of all Work.

- 20) **Record Drawings:** Record Drawings and documents are to be delivered to the County within 30 days following Substantial Completion of a project by the Architect. Record Drawings shall be produced by the Architect and shall consist of a set of reproducible drawing sheets, based on a Mylar format, specifications on 8 ½" x 11" paper and shall provide all the As-Builts conditions documented by the Contractor for a project. The Architect shall also provide to the County a set of PDF drawing files and CAD drawing files formatted on CD-ROM with file format to follow the standard utilized by the County at the time of this Agreement. The CD-ROM files shall duplicate the conditions documented on the Mylar Record Drawings. Further, the Architect shall deliver three sets of the operations and maintenance manuals, hard copy and electronic, training videos, written warranties and related documents.
- G. **Project Closeout.** Upon receipt of written notice that construction is ready for final inspection and work is found acceptable for final payment. The Architect shall provide "as built" drawings in hard copy and electronic form following completion of a project.
- H. **11 Month Inspection Phase.** The Architect shall submit to the County its recommendations regarding the completion of all construction contracts. The Architect shall obtain from the Contractor all releases, waivers of lien, guarantees, warranties, maintenance data, bonds, and acknowledge receipt of the Contractor's record drawings. The Architect shall obtain and deliver to the County a signed receipt for all materials turned over.
- 1) The Architect shall attend one design process analysis meeting to assess implementation of sustainable design and construction requirements into the project and review any lessons learned from the overall effort.
  - 2) The Architect shall, 11 months after substantial completion of a project, schedule a meeting between the Architect, Architect's consultants and the County to evaluate the building and its operations, inspect architectural systems, and endeavor to discover defects in materials, equipment, and workmanship and the project's completion. The Architect shall provide a written report of this activity to the County within seven calendar days. The County, through the Architect, shall notify affected Contractor of any corrective action noted in the report.
- I. Attached as Exhibit C and incorporated into this Agreement by reference is a

copy of the Architect's Basic Services Amendment form. This form shall be used if there is any amendment to the Architect's Basic Services as described above in this Agreement.

## 6. PROJECT REPRESENTATION BEYOND BASIC SERVICES

If the County and the Architect agree that more extensive representation for observation of the Site than that described in subparagraph E.F.5 shall be provided, the Architect shall, upon written authorization of the County, provide one or more Project Representatives to assist the Architect in carrying out such responsibilities at the site.

- A. Subject to County's approval, the Architect's Project Representative shall be selected, employed, and directed by the Architect. The Architect shall be compensated therefore as mutually agreed between the County and the Architect as set forth in an approved amendment to this Agreement, which shall, in addition, describe the duties, responsibilities, and limitations of authority of such Project Representative(s).
- B. Through the observations of such Project Representative(s), the Architect shall provide further protection for the County against defects and deficiencies in the Work to determine that the Work is carried out in conformance with the plans and specifications; but the furnishing of such project representation shall not diminish the rights, responsibilities, or obligations of the Architect as described in this Agreement.
- C. The County reserves the right to designate a County Representative in lieu of the Architect's Project Representative to provide additional site representation for the County beyond that provided by the Architect. If the County elects to provide a County Representative in lieu of a Project Representative, this subsection shall not diminish the rights, responsibilities, or obligations of the Architect established in this Agreement. The County Representative's duties and limits of authority shall be established so as not to conflict with those of the Architect. The Architect shall cooperate with the County Representative in the performance of its duties.
- D. The County reserves the right to employ an independent cost consultant to provide value and cost architectural or engineering services on the Project. If a cost consultant is retained, an amendment to this Agreement will be required identifying the duties and limits of authority of the cost consultant. The Architect shall cooperate with the cost consultant in the performance of the cost consultant's duties.

## 7. ADDITIONAL SERVICES

Additional Services of the Architect are services that are in addition to but not included in Basic Services, provided that the Architect is not obligated to perform, furnish or incur such services as a part of the Architect's Basic Services. These services may be identified as part of the Architect's fee proposal and included with the lump sum fee as such. These services shall be provided when authorized in advance in writing by the County, and they shall be paid for by the County as outlined below. Attached as Exhibit D and incorporated into this Agreement by reference is a copy of the Architect's Additional Services Amendment form. Additional Services may include, but are not limited, to the following:

- A. Providing financial feasibility or other special studies.
- B. Providing planning surveys, site evaluations, environmental impact studies, or comparative studies of prospective sites other than those services required under Basic Services to provide a complete and operable facility.
- C. Providing Services related to future facilities, systems, and equipment that are not intended to be constructed during the Construction Phase.
- D. Making revisions in drawings, specifications, or other documents when such revision are inconsistent with written approvals or instructions previously given and are due to causes beyond the control or not the responsibility of the Architect. This does not apply to revisions necessary for final approval of Programming, Schematic Design Studies, and Statement of Project Scope, and Design Development Documents, or to revisions necessary to bring the Project within the designated MACC. The Architect shall receive written authorization from the County before commencing work on any change or alteration to the Contract Documents.
- E. Preparing drawings, specifications, and supporting data and providing other services in connection with Change Orders, provided that the adjustment in the Basic Compensation resulting from the adjusted Construction Cost is not for work which should have been provided pursuant to Basic Services and provided that such Change Orders are required because of causes not related to the actions or responsibilities of the Architect.
- F. Conducting investigations, surveys, valuations, inventories, or detailed appraisals of existing facilities when such work is not covered by this Agreement.
- G. Providing consultation concerning replacement of any Work damaged by fire or other cause during construction and furnishing services as may be required in connection with the replacement of such Work.
- H. Providing tests, inspections, and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and



water pollution, and tests for hazardous materials.

- I. Providing all required work for design, selection, and preparation of contract documents, and bidding for the procurement of furniture, fixtures, and related equipment. Following installation of furniture, fixtures, and equipment, Architect shall inspect the installation and prepare a list for items requiring correction. Upon notification from the installer that all corrections have been made, Architect shall again inspect the site to confirm that corrections were properly done and authorize final payment of the furniture, fixtures and equipment.
- J. Payments for additional services of the Architect shall be a negotiated lump sum, excluding additional services of consultants.
- K. Payments for additional services of consultants, including but not limited to the additional structural, civil, landscape, interior design, mechanical, and electrical services, shall be computed by applying a multiple not to exceed of 1.10 times the amounts billed to the Architect for such services. The Architect shall provide to the County for approval, hourly rates for consultants and its employees detailed by professional levels prior to incurring any liability for Additional Services. NM grt will be added as a separate item in the pay request.

## 8. MEETINGS

The Architect shall be attendance at, and record minutes of, all meetings required by this Agreement throughout the course of a project as set forth herein. The Architect shall initiate additional meetings germane to the Agreement when authorized, in writing, to the County. The Architect shall distribute copies of meeting minutes to participants and other interested parties as directed by the County within seven calendar days. The Architect consultants shall attend each meeting as appropriate or as requested by the County.

## 9. MONTHLY PROGRESS REPORTS

- A. The Architect shall submit monthly progress reports of design/construction activities to the County. Failure to submit monthly reports may result in delay to the Architect's progress payments. The report shall include:
  - 1) Activities completed and items pending since last report,
  - 2) Projected progress,
  - 3) Comparison of schedule to actual progress, and
  - 4) Decisions or information required.

- B. The Architect shall request from the County the following:
- 1) Information sufficient for the Architect to develop program criteria including the County's goals, objectives, and needs, and the organizational chart of individuals, furnishings, and equipment for a project.
  - 2) To the extent practicable and reasonable, the Architect shall incorporate the County's requests into the documents for construction; however, the Architect is responsible solely to the County for the types of material incorporated into the construction, the size of the facilities constructed, and to design within the MACC.
  - 3) A list (by manufacturer and model number) of special equipment (other than 110 volt, 60HZ, requiring less than 10 amps) that requires utility services, including, but not limited to, telecommunication equipment such as data transmission and computer lines that shall be designated by the County's Information Technology Division.

#### 10. FURNISHINGS AND EQUIPMENT

The Architect shall provide dimensional, color finish, power, etc., information necessary to specify any moveable furnishings and equipment not included in a project. Dimensional furniture plans shall incorporate and coordinate the requirements for electrical, communications, and data based on use and equipment, as well as the location of HVAC control devices and access panels. The Architect shall be compensated with Additional Services for any design and specification related to movable furnishings, fixtures and equipment requested by the County beyond that described above, provided that the Architect is not obligated to perform, furnish or incur such services as part of Basic Services.

#### 11. TELECOMMUNICATIONS EQUIPMENT

Telecommunications and/or radio equipment for County facilities generally falls under the jurisdiction of the County's Information Technology Division. The County will instruct the Architect when and/or where outlets, conduits, wiring, etc., are to be included in the Project. The Architect shall coordinate with utility companies and other agencies.

#### 12. SOFTWARE REQUIREMENTS

- A. Drawing Formats. All CAD drawings shall be supplied in PDF format as well as in DWG format and be readable by the County-supported CAD desktop software (Autodesk AutoCAD). "Readable" means the ability to open a file without any errors (such as proxy, font substitution, etc.) and with objects, layers, and other

file properties remaining intact.

- B. Other formats. File formats for word processor documents, spreadsheet documents, or slide presentations shall be those used by the Microsoft family of office software such as Word, Excel, and PowerPoint. Contact the County for the version. Macros may be included with these documents provided they are virus free, their function is explained next to the Code, and they are not write protected.
- C. Graphics shall be submitted in TIF, GIF, JPG, CALS or PDF file format (compressed image formats only). This option is intended for photos, conceptual sketches, etc., and not to indicate that raster file drawings will be accepted in place of AutoCAD DWG files.
- D. Data file formats for projects that employ information contained in a database or spreadsheet shall be those used by one of the following: Oracle, Microsoft Access, Microsoft SQL, or Microsoft Excel. All linkages of non-graphical data with graphic elements, relationships between database tables, and report format shall be maintained. All database tables shall conform to the structure and field naming guidance provided by the County. The Architect shall conform database file format preference with the County prior to issuance of database files.
- E. File formats for project management documents shall be either that used by Microsoft Project or hard copy. Confirm file format with County. Save project files with baseline.
- F. Deliverables integrating multiple file formats may be submitted as a PDF (version 4 or later) in addition to the base file structure. Examples include reports, photographs, and manuals created by using a variety of software packages and file formats. Confirm deliverable format preference with the County.
- G. Building Information Modeling (BIM). Projects and project teams are encouraged to utilize 3D object model and other building information model technology and software applications (including during project stages of planning, design, construction, and handover to space management and facility operations and maintenance). Outputs from these applications are acceptable as deliverables to the County, provided that 2D output is also submitted that fully complies with all provisions herein.

### 13. KEY PERSONNEL AND CONSULTANTS

The Architect's key personnel and consultants designated for a project shall remain assigned for the duration of a project. Any substitutions of the Architect's key personnel and consultants

require written notification to the County and prior written consent of the County. The County may require substitution of any personnel or consultants provided that the County has first notified the Architect in writing and allowed a reasonable period for adjustments and/or corrections.

#### **14. GEOTECHNICAL ENGINEERING**

The Architect shall, during the Schematic Design Phase, submit to the County a statement of necessary geotechnical or soils engineering services that will be required. If the Architect does not believe the services of a Geotechnical Engineer are required for a project, a written notice of such shall be provided to the County stating same. Geotechnical engineering and any necessary surveys shall be County-provided, as Additional Services or a reimbursable expense.

#### **15. CIVIL ENGINEERING**

The Architect shall, during the Schematic Design Phase, submit to the County a statement of need and extent of civil engineering required for the project to protect new and existing structures on or around the site from adverse conditions. Extensive civil engineering, or civil engineering work outside of the immediate site proposed for a project, shall be Additional Services or a reimbursable expense.

#### **16. STANDARD OF CARE**

The Architect represents that its officers, agents, employees and consulting professionals and subcontractor possess the experience, knowledge, and character necessary to qualify them individually for the services to be performed by them under this Agreement. All services shall be performed in accordance with the standards of their respective profession. Such affirmation by consultants, sub consultants, subcontractors, joint ventures, and agents shall not be construed as a diminution of the Architect's liability and responsibilities to the County.

#### **17. APPLICATION OF PROFESSIONAL SEALS**

Final technical reports and all bidding documents shall contain a legible seal, signature, date and license expiration date of the design professional responsible for the document or under whose supervision the document was prepared. For project manuals and technical reports the seal shall be provided by the design professional responsible for the overall coordination of a project. If more than one design professional has responsibility for portions of the work, additional seals may be provided on the cover, or on a separate signature sheet immediately following the table of contents.

#### **18. REVIEW PROCESS**

The Architect shall submit documents for review as required by the Agreement. The Architect shall provide five sets of review documents to the County for each review. Following the

reviews, the Architect shall respond to the County's Project Manager in writing to all review comments and questions within 14 calendar days.

## 19. SITE

The physical location on which a project is built, including all land acquired for a project or associated with a project, including surface drainage, wells, transmission lines, easements, rights-of-ways, roadway and existing facilities that may be directly or in directly affected by a project or that might affect a project.

## 20. TIME

The Architect shall perform Basic and Additional Services as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. The Architect shall submit, for the County's approval and as part of this Agreement, a Schedule of Performance of the Architect's services and shall include allowances for periods of time required for the County's review and approval of submissions and for approvals of authorities having jurisdiction over a project. This schedule, when approved by the County, shall not, except for reasonable cause not within the control of the Architect, be exceeded by the Architect. Failure of the Architect to perform within a schedule except through authorized extensions shall constitute a basis for termination and/or withholding of payment until schedule compliance is achieved by the Architect.

## 21. REIMBURSABLES

Reimbursable expenses are those in addition to Basic Services compensation and are the actual, incidental expenditures made by the Architect or its employees in the interest of a project. The Architect shall incur no expenses for which the Architect is entitled reimbursement until the County gives written approval. Reimbursable expenses shall include, but not limited to, the following:

- A. Expenses of transportation when traveling in connection with a project. Such expenses are limited to per diem and mileage rates are set forth in the Per Diem and Mileage Act, Section 10-8-1 to 10-8-8, NMSA 1978 and DFA Rule 95-1 as amended, except that the County shall authorize such travel in advance.
- B. Expenses of fees paid for securing approvals of authorities having jurisdiction over a project.
- C. The Architect shall charge Bidders or Offerors a deposit fee equal to the full cost of reproduction of drawings, specifications, and other documents required by the County to solicit bids or proposals and execute the Construction Contract. This fee shall be completely refunded if the documents are returned in usable condition within the time frame specified in the Invitation for Bid or Request for Proposals. All forfeited fees shall be returned to the County.

- D. Construction documents and specifications will be printed by the lowest quote received from print rooms specified by the County. All reproduction required must be approved in writing by the County prior to request. This expense shall be paid by the County for the initial Bidding and by the Architect for subsequent Biddings. All other reproductions as may be required for the County's review or for the office use of the Architect and the Architect's consultants shall be provided as part of the Architect's Basic Compensation.
- E. Reimbursable expenses, if allowed by this Agreement, shall be compensated at direct cost not to exceed the reimbursable amounts as indicated in Exhibit A of this Agreement, unless otherwise modified by written amendment.

**22. OWNER'S RESPONSIBILITIES**

- A. The County may designate, in writing, a representative authorized to act in its behalf, however, authority for final approval of the Project Phase Documents, the Contract Documents, or any Change Order is retained by the County. The County shall examine documents submitted by the Architect and shall render decisions promptly to avoid unreasonable delay in the progress of the Architect's services.
- B. The County may designate a Project Manager for the project who shall be the County's primary representative in the administration of this Agreement. The Architect will report to the County's Project Manager. All correspondence from the Architect shall be communicated to the Project Manager.
- C. The County shall ensure review in writing of each project phase and shall notify the Architect of the accord.
- D. The County shall furnish a legal description and certified land survey of the site, giving, as applicable grades and lines of streets, alleys, pavements, and adjoining property; rights-of-ways, restrictions, easements, encroachments, zoning, deed restrictions, boundaries, and contours of the site; locations, dimensions, and complete data pertaining to existing buildings, other improvements, and trees, and full information concerning available service and utility lines both public and private, above and below grade, including inverts and depths.
- E. When documents and drawings provided under the above subparagraph are furnished to the Architect, payment of the Construction Document Phase will not be made to the Architect until the County has received all said documents and drawings.
- F. The County reserves the right not to provide certain project-related documents or drawings to the Architect at the County's discretion.

- G. If the County observes or otherwise becomes aware of any fault or defect in a Project or nonconformance with the Contract Documents, prompt written notice thereof shall be given by the County to the Architect.
- H. The County shall furnish required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of the Architect's services and of the Work.

**23. RESPONSIBILITY FOR CONSTRUCTION COST**

- A. When the detailed statement of probable construction cost required by subparagraph 5.D.11 or an evaluation prepared by the Architect indicates that a project exceeds the MACC, the provisions outlined below shall apply:
  - 1) Evaluations of the County's project budget, statements of probable construction cost, and detailed estimates of construction cost prepared by the Architect represents the Architect's best judgment as a design professional familiar with the construction industry. It is recognized, however, that the Architect does not have control over the cost of labor, materials, or equipment; over the Contractor's methods of determining bid prices; or over competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the a project budget proposed, established, or approved by the County, or from any Statement of Probable Construction Cost or other cost estimate or evaluation prepared by the Architect.
  - 2) The MACC may be adjusted by the County at the completion of the Programming Phase, and the design fees shall be modified. The MACC, at the start of the Schematic Design Phase, may only be adjusted based upon modifications to the Scope of Work approved in advance by the County. The Architect shall notify the County in writing at any time the estimated cost of construction is expected to exceed the MACC. The Architect's written notification shall include a detailed explanation and shall provide suggestions for reducing the estimated cost so that it does not exceed the MACC. The County agrees to cooperate with the Architect and permit reasonable and necessary revisions or reductions to the scope of a project. The Architect agrees to revise the drawings and specifications as necessary at no additional expense to the County, if so requested by the County, in order to bring the estimated cost within the MACC.
  - 3) The MACC is established, as a condition of this Agreement, as a fixed limit of Construction Cost for design and bidding purposes. The Architect shall be permitted to determine what materials, equipment, component systems,

and types of construction are to be included in the Bidding or Proposal Documents to bring Construction Cost within the MACC. With the written consent of the County, the Architect may also include in the Bidding or Proposal Document either additive or deductive alternate bids or proposals to adjust the Construction Cost to the fixed limit.

- 4) If bidding or negotiations with potential Contractors have not commenced within two months after the Architect submits Bidding or Proposal Documents to the County, the project budget and/or MACC shall be adjusted to reflect any change in the general level of prices in the construction industry between the date of submission of the Bidding or Proposal Documents to the County and the date on which proposals are sought.
- 5) The MACC, therefore, is established as a condition of this Agreement. When it is exceeded by the lowest bona fide bid, the County may:
  - a. Give written approval of an increase on the MACC, or
  - b. Authorize re-bidding of a project within a reasonable time, and
  - c. Cooperate with the Architect in revising the project scope and, as required, to reduce the Probable Construction Costs.

If the County elects to reduce the Probable Construction Cost, the County shall cooperate with the Architect in revising the quality and scope of a project; and the Architect, without additional charge for services or re-printing of the Drawings and Specifications shall modify the Drawings and Specifications as necessary to bring the Construction Cost within the MACC. The Architect shall then assist the County through the Bidding process (see Subparagraph 5.E).

#### 24. ARCHITECT'S RECORDS AND AUDIT

- A. Records of expenses by the Architect and its consultants pertaining to all services under this Agreement shall be kept on the basis of generally accepted accounting principles and shall be available at mutually convenient times to the County or the County's authorized representative.
- B. The County shall have the right to audit all such records and billings both before and after payment. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payments.
- C. Records of expenses shall be kept by the Architect and its consultants and shall be available to the County until all applicable statutes of limitation have run, and this



provision shall survive and continue beyond the termination of other terms of this Agreement.

- D. These records shall be subject to inspection by the County and shall be maintained for inspection for a period of three years. Billings may be audited both before and after payment; and payment by the County under this Agreement and shall not foreclose the right of the County to recover excessive or illegal payments.

## 25. OWNERSHIP AND USE OF DOCUMENTS

- A. Original construction document drawings, designs, specifications, notes, project manuals, and/or related documents and other work developed in the performance of this Agreement by the Architect shall become the sole property of the County whether the project for which they are made is constructed or not, pursuant to Section 13-1-123, NMSA 1978. The County shall keep these documents on file. The Architect may maintain a complete reproducible set of any and all record documents developed under this Agreement.
- B. All documents, including drawings and specifications prepared by the Architect pursuant to this Agreement are instruments of service in respect to a project. The Architect shall not be liable should the County use the documents, in whole or in part, in the future when the Architect's services are not retained.
- C. The original drawings may be marked by the County or the Architect to designate any restrictions of use of these documents.
- D. Copyright: No reports, maps, or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Architect.

## 26. MAINTENANCE

Ease of maintenance and the ability to repair major items of installed equipment by replacement are essential to all projects. To ensure that these services can be adequately performed after a project is accepted by the County, the Architect shall:

- A. In all relevant Contract Documents, design and provide for all major installed equipment in the project, including but not limited to, removal, access, maintenance, and storage space needs. In addition, all installed equipment systems shall be appropriately identified and labeled to describe the capacities, flows, and other pertinent information related to their maintenance and safe operation;
- B. Specify only equipment that can be readily maintained by the County or other qualified commercial repairman;

- C. Provide Construction Documents that accurately depict the installation of all major items of installed equipment and which provide reasonable detail on all other major systems to be installed;
- D. At the completion of the Schematic, Design Development, and Construction Documents Phases, brief the County on the rationale for the selection of the major mechanical and electrical systems to be specified in the Contract Documents, together with the probable life-cycle costs.

**27. EXHIBITS**

All exhibits, attachments, riders and addenda referred to in this Agreement, including but not limited to, the exhibits referred to in this Agreement, as well as those listed below, are hereby incorporated into this Agreement by reference and made a part hereof as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

Exhibit A	Compensation and Schedule
Exhibit B	Architect's Pay Request
Exhibit C	Amendment for Basic Services
Exhibit D	Amendment for Additional Services
Exhibit E	Listing of Consultants
Exhibit F	Amendment for Consultant Additional Services
Exhibit G	Construction Change Order
Exhibit H	Bidding Index

**28. ATTACHMENTS LIST**

Attachment 1	Authorization to Proceed
Attachment 2	Architect's Hourly Rate Fee Schedule

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

SANTA FE COUNTY

Miguel M. Chavez  
Miguel M. Chavez, Chair  
Santa Fe County Board of Commissioners

3/8/16  
Date



Rebecca Salazar  
Rebecca Salazar,  
Santa Fe County Clerk

3-8-2016  
Date

APPROVED AS TO FORM

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

2/23/16  
Date

FINANCE DEPARTMENT APPROVAL

Carole H. Jaramillo  
Carole H. Jaramillo  
Finance Director

2/25/16  
Date

CONTRACTOR

[Signature]  
Signature

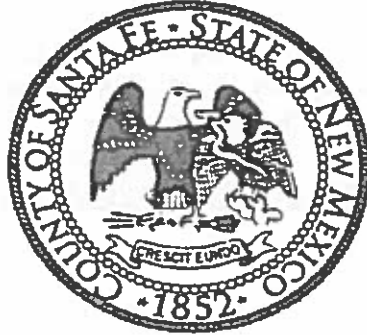
2 MARCH 2016  
Date

JAMES HORNE  
Print Name

PRINCIPAL  
Title



**GENERAL TERMS AND CONDITIONS OF THE AGREEMENT  
BETWEEN SANTA FE COUNTY  
AND ARCHITECT  
FOR PROFESSIONAL ARCHITECTURAL SERVICES**



**SANTA FE COUNTY  
ADMINISTRATIVE SERVICES DEPARTMENT  
PURCHASING DIVISION**

2013 EDITION, PART B of Two Parts

Changes, additions, deletions and/or any modifications other than those agreed upon execution of this contract, without the written consent of Santa Fe County shall render this document null and void.

**1. SCOPE OF WORK**

Architect shall provide the services set forth in Part A Section 2 (Scope of Work) of this Agreement

**2. EFFECTIVE DATE AND TERM**

This Agreement shall, upon due execution by all parties, become effective as of the date first written in Part A and shall terminate four years later, unless earlier terminated pursuant to Section 4 (Termination) or Section 5 (Appropriations and Authorizations) of these General Terms and Conditions, or when the Project is complete. The term of this Agreement shall not exceed four years in total. After the initial year of the term of this Agreement the County will have the option to extend the term for three years not to exceed four years in total. An extension of the term of this Agreement beyond four years shall require the approval of a modified term by the Board of County Commissioners of Santa Fe County in accordance with Ordinance 2012-5.

3. **ADDITIONAL SERVICES**

- A. The parties agree that all tasks set forth in Section 1, (Scope of Work) above and Section 5 (Basic Services) of Part A of the Agreement, shall be completed in full, to the satisfaction of the County, for the amount set forth in Section 4 (Compensation), Invoicing, and Set-Off) of Part A 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 or under a project assignment. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the County and the Architect, shall be incorporated in written amendments to this Agreement using the Exhibits C, D or F forms.

4. **TERMINATION**

- A. Termination of Agreement for Cause. Either party may terminate this 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 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 30 days, the breaching party shall have a reasonable time to cure the breach, provided that, within 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 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 or service performed after the effective date of termination.
- C. Any termination of this Agreement will terminate a project assignment made under this Agreement. In the event of termination, all finished or unfinished documents, data, sketches, calculations, estimates, records, schedules, studies, drawings, maps, models, photographs, reports, and such other information and data accumulated in the performance of services under this Agreement, whether complete or in progress, prepared by the Architect under this Agreement shall become the County's property, and the Architect shall be entitled to receive compensation for actual work

satisfactorily completed hereunder, including reimbursable expenses authorized by the County which are then due.

## 5. APPROPRIATIONS AND AUTHORIZATIONS

This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Santa Fe Board of County Commissioners 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.

## 6. INDEPENDENT CONTRACTOR, SUBCONTRACTING AND PERSONNEL

- A. Independent Contractor. 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.
- B. Subcontracting. The Architect shall not subcontract or delegate any portion of the services to be performed under this Agreement without the advanced written approval of the County. Any attempted subcontracting or delegating without the County's advanced written approval shall be null and void and without any legal effect. The Architect shall use Exhibit E to indicate any subcontractors or consultants to be used for a project assignment.
- C. Personnel.
- 1) All work performed under this Agreement shall be performed by the Architect or under its supervision.
  - 2) 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.

**7. ASSIGNMENT**

The Architect shall not assign or transfer any interest in this Agreement or a project assignment 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 County's advance written approval shall be null and void and without any legal effect.

**8. RELEASE**

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

**9. 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 prior approval from the County.

**10. PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT**

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. To the extent any material is copyrightable; the County shall own such copyright.

**11. CONFLICT OF INTEREST**

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

**12. NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED**

The 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 2 (Scope of Work), Part A of the Agreement unless such changes are set forth in a duly executed written amendment to the Agreement.

**13. ENTIRE AGREEMENT; INTEGRATION**

The 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 the 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 the Agreement.

**14. EXHIBITS AND ATTACHMENTS: INCORPORATION BY REFERENCE**

All exhibits, attachments, riders, and addenda referred to in the Agreement, including but not limited to the Exhibits referred to in this Agreement, as listed in Paragraph 27 EXHIBITS and Paragraph 28 ATTACHMENTS, in Part A of this Agreement, are hereby incorporated into this Agreement by reference and made a part hereof as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

**15. NOTICE OF PENALTIES**

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

**16. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE**

- A. Architect 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, Architect specifically agrees not to discriminate against any person with regard to employment with 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. Architect acknowledges and agrees that failure to comply with this Section shall constitute a material breach of the Agreement.

**17. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW**

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

**18. RECORDS AND INSPECTIONS**

- A. To the extent their books and records relate to (i) their performance of the Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in the Agreement or that was required to be submitted to County as

part of the procurement process, Architect agrees to (i) maintain such books and records during the term of the Agreement for a period of six years from the date of final payment under the Agreement; (ii) allow 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 their books and records relate to (i) their performance of the Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in the Agreement or that was required to be submitted to County as part of the procurement process, Architect 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 the Agreement and for a period of six years from the date of final payment under the subcontract; (ii) to allow 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 with GAAP.

## 19. INDEMNIFICATION

- A. Architect shall indemnify and hold harmless County and its Elected Officials, agents, and employees from any losses, liabilities, damages, causes of action, costs or expenses including attorney's fees, attributable to bodily injury, sickness, disease, or death, or to injury to persons or property including loss of use, caused directly or indirectly by the negligent act or failure to act by Architect, or by Architect's officers, employees, consultants or anyone for whom the Architect is legally liable, or Architect's breach of any representation or warranty made herein.
- B. 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. Architect's obligations under this section shall not be limited by the provisions of any insurance policy Architect is required to maintain under this Agreement.

## 20. SEVERABILITY

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

## 21. NOTICES

Any notice required to be given to either party by the 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

To the Architect: Spears Horn Architects  
Attn: James Horn  
1334 Pacheco Street  
Santa Fe, New Mexico 87505

## 22. 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 NM Secretary of State on Architect's behalf.
- C. Architect is legally registered and licensed to operate as a business in New Mexico and to do the work anticipated by this Agreement and shall maintain such registration and licensure in good standing throughout the duration of the Agreement.

## 23. LIMITATION OF LIABILITY

County's liability to Architect for any breach of this Agreement by County shall be limited to direct damages and shall not exceed the maximum amount of compensation specified in Section 4, (Compensation and Invoicing) Part A, of the Agreement. In no event shall County be liable to Architect for special or consequential damages, even if County was advised of the possibility of such damages prior to entering into the Agreement.

## 24. NO THIRD-PARTY BENEFICIARIES

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

## 25. INSURANCE

- A. General Conditions. 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. Architect shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy and liability limits in amounts not less than \$1,000,000 combined single limits of bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for County by 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 named additional insured on the policy.
- C. Workers' Compensation Insurance. Architect shall comply with the provisions of the Workers' Compensation Act.
- D. Malpractice/Errors and Omissions Insurance. Architect shall procure and maintain during the life of this Agreement professional liability (errors and omissions) insurance with policy limits of not less than \$1,000,000.00 per occurrence, \$2,000,000.00 per aggregate.
- E. 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), Architect shall increase the maximum limits of any insurance required herein.

## 26. 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.

## 27. FACSIMILE SIGNATURES

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

## 28. NEW MEXICO TORT CLAIMS ACT

No provision of the 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.

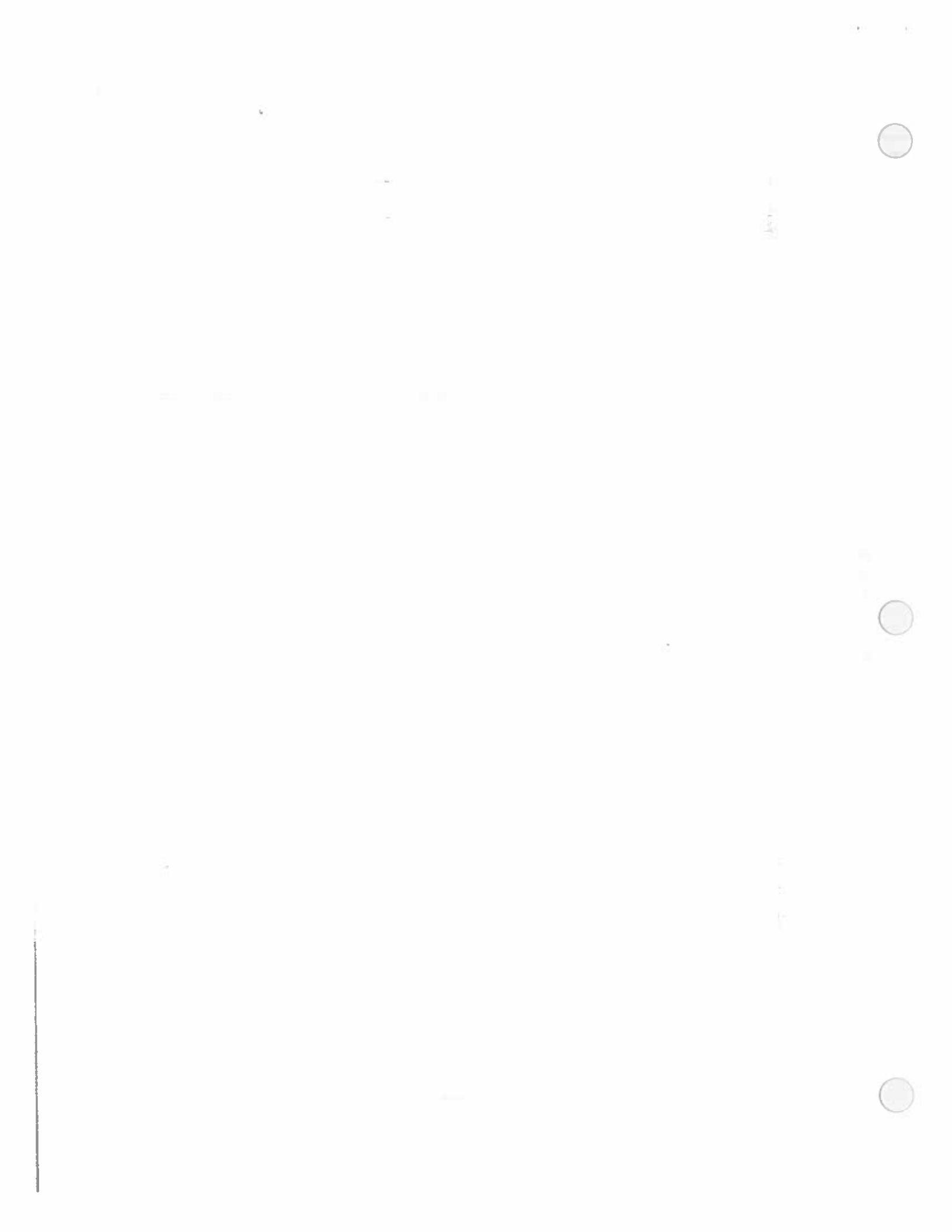
**29. CAMPAIGN CONTRIBUTION DISCLOSURE FORM**

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

**30. SURVIVAL**

The provisions of following paragraphs shall survive termination of the Agreement:

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.



## EXHIBIT A

### COMPENSATION AND SCHEDULE

Project Name: SANTA FE COUNTY ADMINISTRATION BUILDINGS  
 Project Number: 2016-0104-PW/BT  
 Project Location: - NEW BUILDING @ Grant Avenue / Catron Street / Griffin Street  
 - RENOVATED BUILDING @ 102 Grant Avenue

BASIC SERVICES			Date to be completed
Programming Phase	10%	\$136,125.00	6 Weeks
Schematic Phase	15%	\$204,187.50	14 Weeks
Design Development Phase	15%	\$204,187.50	14 Weeks
Construction Document Phase	30%	\$408,375.00	18 Weeks
Bidding and Negotiations Phase	4.5%	\$61,256.20	8 Weeks
Construction Phase	25%	\$340,312.50	104 Weeks (both phases)
Project Closeout	0%	\$0.00	2 Weeks (each phase)
11 Month Inspection Phase	.5%	\$6,806.25	1 Week (each phase)

**Total Basic Services Amount**    100%    \$1,361,250.00 + 323,017.77 = 1,684,267.77

\* Basic Services includes 60 Albuquerque / S.F. trips. Any additional will be included as reimbursable expenses and approved by Santa Fe County.

#### REIMBURSABLES

Estimated at 2.33% of \$1,361,250.00 Fee	\$31,717.13
Historic Structures Report Expenses	\$2,800.00

**Total Reimbursable Amount (Not to exceed)**    \$34,517.13 + 7826.26 = 42,343.39

#### ADDITIONAL SERVICES

LEED Consultant	\$44,000.00
MEP LEED Services	\$26,592.00
Landscape LEED Services	\$4,000.00
Architecture LEED Services	\$8,000.00
USGBC / GBCI LEED Registration Fee	\$5,000.00 (estimated)
102 Grant Ave. As-built documentation	\$25,000.00
Advanced Security Design (cameras, access control, etc.)	\$15,000.00
Survey (Easements & Utilities)	\$8,000.00
Geotechnical Investigation	\$14,200.00
Historic Structures Report	\$35,076.00
Information Technology (I.T.)	T.B.D.
Furniture, Fixtures and Equipment (FF&E)	T.B.D.

**Total Additional Services Amount**    \$184,868.00 + 89,290 = 274,158.00

**TOTAL SERVICES AMOUNT**    \$1,580,635.13

\$2,000,769.30





## EXHIBIT B

### ARCHITECT'S PAY REQUEST FORM

**Architect:** \_\_\_\_\_ **Pay Request Statement No.** \_\_\_\_\_  
**Date:** \_\_\_\_\_ **Project Number:** \_\_\_\_\_  
**Project Name:** \_\_\_\_\_ **Project Location:** \_\_\_\_\_

Basic Services	Contract Sum	Percentage Completed	Completed to date	Less Previous Request	Client Request	Revision (SFC)
Programming Phase	\$	%	\$	\$	\$	
Schematic Phase	\$	%	\$	\$	\$	
Design Development Phase	\$	%	\$	\$	\$	
Construction Document Phase	\$	%	\$	\$	\$	
Bidding and Negotiation Phase	\$	%	\$	\$	\$	
Construction Phase	\$	%	\$	\$	\$	
Project Closeout	\$	%	\$	\$	\$	
11 Month Inspection Phase						
<b>Subtotal</b>						
<b>CONTRACT CHANGES</b>						
<b>REIMBURSABLE *</b>						
Type of Services	\$	%	\$	\$	\$	
Type of Services	\$	%	\$	\$	\$	
Type of Service	\$	%	\$	\$	\$	
Subtotal	\$	%	\$	\$	\$	
<b>ADDITIONAL SERVICES **</b>						
Type of Service	\$	%	\$	\$	\$	
Type of Service	\$	%	\$	\$	\$	
Type of Service	\$	%	\$	\$	\$	
Subtotal	\$	%	\$	\$	\$	
<b>Total</b>	<b>\$</b>	<b>%</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	



### EXHIBIT C

#### AMENDMENT TO AGREEMENT BETWEEN SANTA FE COUNTY AND SPEARS HORN ARCHITECTS FOR PROFESSIONAL ARCHITECTURAL BASIC SERVICES

In accordance with Part A Paragraph 5 Architect's BASIC SERVICES and Part B. Paragraph 1, SCOPE OF WORK, where applicable, to the Agreement Between the County and Architect, the Architect is authorized to provide the following Basic Services (scope of work and maximum compensation).

PROJECT NAME: \_\_\_\_\_

PROJECT NUMBER: \_\_\_\_\_

PROJECT LOCATION: \_\_\_\_\_

LIST SERVICES:

- 1.
- 2.
- 3.
- 4.
- 5.

---

**Justification for Basic Services (Required):**

---

Basic Services Compensation Amount	\$0.00
Reimbursable Amount (If Applicable)	\$0.00
Additional Services Amount	\$0.00
Consultation Services Amount (If Applicable)	\$0.00

---

**Total** **\$0.00**

**SIGNATURE PAGE**

**SANTA FE COUNTY**

\_\_\_\_\_  
Katherine Miller  
Santa Fe County Manager

Date: \_\_\_\_\_

Approved as to form

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

Date: \_\_\_\_\_

**Finance Department**

\_\_\_\_\_  
Carole H. Jaramillo  
Finance Director

Date: \_\_\_\_\_

**ARCHITECT**

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_

\_\_\_\_\_  
Print Name

**EXHIBIT D**

**AMENDMENT TO AGREEMENT  
BETWEEN SANTA FE COUNTY AND SPEARS HORN ARCHITECTS  
FOR PROFESSIONAL ARCHITECTURAL ADDITIONAL SERVICES**

In accordance with Part A Paragraph 7 Architect's ADDITIONAL SERVICES and Part B. Paragraph 1, SCOPE OF WORK, where applicable, to the Agreement Between the County and Architect, the Architect is authorized to provide the following Additional Services (scope of work and maximum compensation).

PROJECT NAME: \_\_\_\_\_

PROJECT NUMBER: \_\_\_\_\_

PROJECT LOCATION: \_\_\_\_\_

**LIST SERVICES:**

- 1.
- 2.
- 3.
- 4.
- 5.

**Justification for Basic Services (Required):**

---

Basic Services Compensation Amount	\$0.00
Reimbursable Amount (If Applicable)	\$0.00
Additional Services Amount	\$0.00
Consultation Services Amount (If Applicable)	\$0.00
<hr/>	
<b>Total</b>	<b>\$0.00</b>

**SIGNATURE PAGE**

**SANTA FE COUNTY**

\_\_\_\_\_  
Katherine Miller  
Santa Fe County Manager

Date: \_\_\_\_\_

Approved as to form

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

Date: \_\_\_\_\_

Finance Department

\_\_\_\_\_  
Carole H. Jaramillo  
Finance Director

Date: \_\_\_\_\_

**ARCHITECT**

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_

\_\_\_\_\_  
Print Name

**EXHIBIT E****LISTING OF CONSULTANTS – PAGE 1 of 2**

**PROJECT NAME: SANTA FE COUNTY ADMINISTRATION BUILDINGS**  
**PROJECT NO: 2016-0104-PW/BT**

<p><b><i>CIVIL</i></b>  <b>HARTMAN AND MAJEWSKI DESIGN GROUP</b>  Dave Aube, PE  120 Vassar Drive SE – Ste 100  Albuquerque, NM 87106  505-998-6430  daube@designgroupnm.com</p>	<p><b><i>ELECTRICAL</i></b>  <b>BRIDGERS &amp; PAXTON</b>  Ilir Mesiti, PE, LEED AP BD + C  4600-C Montgomery Blvd NE  Albuquerque, NM 87109  505-366-8024  imesiti@bpce.com</p>
<p><b><i>LANDSCAPE ARCHITECT</i></b>  <b>DESIGN OFFICE</b>  Claudia Meyer Horn, PLA  1300 Luisa Street – Ste 24  Santa Fe, NM 87505  505-983-1415  chorn@do-designoffice.com</p>	<p><b><i>ESTIMATING</i></b>  <b>HALFORD BUSBY CONSTRUCTION CONSULTANTS</b>  Bill McCauley  17350 SH 249 – Ste 100  Houston, TX 77064  281-920-1100  bmccauley@halfordbusby.com</p>
<p><b><i>STRUCTURAL</i></b>  <b>HEATLY ENGINEERING</b>  Scott Heatly, PE  120 Vassar Drive SE – Ste 200  Albuquerque, NM 87106  505-379-1186  scott@heatlyengrs.com</p>	<p><b><i>PRODUCTION ARCHITECT / ARCHITECT OF RECORD</i></b>  <b>HARTMAN AND MAJEWSKI DESIGN GROUP</b>  Jeff Zellner, AIA, LEED AP  120 Vassar Drive SE - #100  Albuquerque, NM 87106  505-242-6880  jzellner@designgroupnm.com</p>
<p><b><i>MECHANICAL</i></b>  <b>BRIDGERS &amp; PAXTON</b>  Ilir Mesiti, PE, LEED AP BD + C  4600-C Montgomery Blvd NE  Albuquerque, NM 87109  505-366-8024  imesiti@bpce.com</p>	<p><b><i>ARCHITECTURAL PLANNER</i></b>  <b>DONALD J. DWORE, FAIA</b>  Donald J. Dwore, FAIA  53 Stardancer Trail  Santa Fe, NM 87506  505-992-3108  ddwore@gmail.com</p>

## EXHIBIT E

### LISTING OF CONSULTANTS – PAGE 2 of 2

PROJECT NAME: SANTA FE COUNTY ADMINISTRATION BUILDINGS  
PROJECT NO: 2016-0104-PW/BT

<p><b>LEED</b> NORESKO Lisa Logan, LEED AP BD+C 6565 Americas Parkway NE – Ste 200 Albuquerque, NM 87110 505-908-5379 llogan@noresko.com</p>	<p><b>INTERIOR DESIGN</b> HARTMAN AND MAJEWSKI DESIGN GROUP Alana Marrazzo, NCIDQ, EDAC 120 Vassar Drive SE – Ste 100 Albuquerque, NM 87106 505-998-6469 amarrazzo@designgroupnm.com</p>
--	--



**EXHIBIT F**

**AMENDMENT TO AGREEMENT  
BETWEEN SANTA FE COUNTY AND SPEARS HORN ARCHITECTS  
FOR CONSULTANT ADDITIONAL SERVICES**

In accordance with Part B Paragraph 3 Architect's ADDITIONAL SERVICES, where applicable, to the Agreement Between the County and Architect, the Consultant is authorized to provide the following Additional Services (scope of work and maximum compensation).

PROJECT NAME: \_\_\_\_\_

PROJECT NUMBER: \_\_\_\_\_

PROJECT LOCATION: \_\_\_\_\_

**LIST SERVICES:**

- 1.
- 2.
- 3.
- 4.
- 5.

**Justification for Basic Services (Required):**

---

Basic Services Compensation Amount	\$0.00
Reimbursable Amount (If Applicable)	\$0.00
Additional Services Amount	\$0.00
Consultation Services Amount (If Applicable)	\$0.00

---

**Total** **\$0.00**

**SIGNATURE PAGE**

**SANTA FE COUNTY**

\_\_\_\_\_  
Katherine Miller  
Santa Fe County Manager

Date: \_\_\_\_\_

Approved as to form

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

Date: \_\_\_\_\_

Finance Department

\_\_\_\_\_  
Carole H. Jaramillo  
Finance Director

Date: \_\_\_\_\_

**ARCHITECT**

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_

\_\_\_\_\_  
Print Name

**EXHIBIT G**  
**SANTA FE COUNTY**

**CHANGE ORDER**

DISTRIBUTED TO: OWNER  CONTRACTOR  FIELD   
 ARCHITECT  SUBCONTRACTOR  OTHER

PROJECT:  
 CONTRACTOR:

CHANGE ORDER NUMBER:  
 DATE:  
 PROJECT NUMBER:  
 CONTRACT DATE:  
 CONTRACT FOR:

THIS CONTRACT IS CHANGED AS FOLLOWS:

#	COST	DESCRIPTION
1		
2		
3		
4		
5		

The original contract sum: \$  
 Net change by previous Change Orders: \$  
 Contract Sum prior to this Change Oder: \$  
 Contract Sum will be increased by this Change Order in the amount of: \$  
 New Contract sum including this Change Order will be: \$  
 The Contract Time will be increased by ( ) days.  
 The date of Substantial Completion as of the date of this Change Order is:

*GROSS RECEIPTS TAX (GRT) IS NOT ADDED TO THIS CHANGE ORDER*

**ACCEPTED BY:**

**OWNER - SANTA FE COUNTY**

\_\_\_\_\_

\_\_\_\_\_ Date

Approved as to form:

\_\_\_\_\_

\_\_\_\_\_ Date

Gregory S. Shaffer  
Santa Fe County Attorney

Finance Department

\_\_\_\_\_  
Carole H. Jaramillo  
Finance Director

\_\_\_\_\_  
Date

**ARCHITECT**

**CONTRACTOR**

\_\_\_\_\_  
By:

\_\_\_\_\_  
By:

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTACHMENT 1**  
**AUTHORIZATION TO PROCEED**

Date: \_\_\_\_\_

To: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

RE: Authorization to Proceed – (Insert Project Name/Number/Location

Dear \_\_\_\_\_:

As project manager for this project, I am pleased to inform you that (insert architect) has been chosen to provide the architectural services for (insert project). This letter will serve as your Authorization to Proceed with the architectural services for this project. The County would like to schedule a meeting prior to the commencement of services at (insert location). Please contact me to schedule a mutually acceptable date and time. A copy of the purchase order (# \_\_\_\_\_) is attached for your records. Please ensure that all invoices or requests for payments contain this PO number for reference.

If you have any questions, you can contact me at (insert phone number) or by email at (insert email address).

On behalf of Santa Fe County, I would like to thank you for your participation in this solicitation and look forward to working with you and your company on this important County project.

Sincerely,

\_\_\_\_\_  
(Insert Name/Title)

(Insert Department)

Santa Fe County



**ATTACHMENT 2**  
**ARCHITECT**  
**HOURLY RATE FEE SCHEDULE**

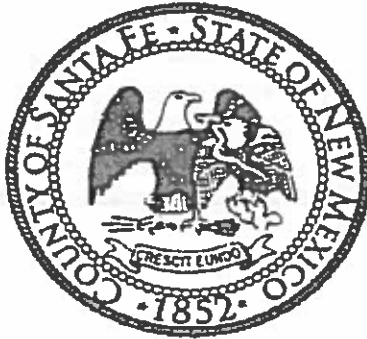
**Spears Horn Architects / The Design Group rates before New Mexico Gross Receipts Tax:**

Principal	\$169
Civil Engineer	\$169
Architect 4	\$141
Architect 3	\$130
Architect 2	\$124
Architect 1	\$90
Project Coordinator	\$120
Programmer / Planner	\$80
Director of Interior Design	\$150
Interior Design Manager	\$100
Interior Design	\$80
Interior Design Assistant	\$47
Designer 4	\$121
Designer 3	\$90
Designer 2	\$68
Designer 1	\$55
Estimator	\$94
Technical Systems Manager	\$100
CADD Designer	\$74
CADD Manager	\$80
Multi-Media Designer	\$87
CADD 4	\$67
CADD 3	\$60
CADD 2	\$59
CADD 1	\$47
Project Administrator	\$87
Project Assistant	\$62





**GENERAL TERMS AND CONDITIONS OF THE AGREEMENT  
BETWEEN SANTA FE COUNTY  
AND ARCHITECT  
FOR PROFESSIONAL ARCHITECTURAL SERVICES**



**SANTA FE COUNTY  
ADMINISTRATIVE SERVICES DEPARTMENT  
PURCHASING DIVISION**

2013 EDITION, PART B of Two Parts

Changes, additions, deletions and/or any modifications other than those agreed upon execution of this contract, without the written consent of Santa Fe County shall render this document null and void.

**1. SCOPE OF WORK**

Architect shall provide the services set forth in Part A Section 2 (Scope of Work) of this Agreement

**2. EFFECTIVE DATE AND TERM**

This Agreement shall, upon due execution by all parties, become effective as of the date first written in Part A and shall terminate four years later, unless earlier terminated pursuant to Section 4 (Termination) or Section 5 (Appropriations and Authorizations) of these General Terms and Conditions, or when the Project is complete. The term of this Agreement shall not exceed four years in total. After the initial year of the term of this Agreement the County will have the option to extend the term for three years not to exceed four years in total. An extension of the term of this Agreement beyond four years shall require the approval of a modified term by the Board of County Commissioners of Santa Fe County in accordance with Ordinance 2012-5.

### 3. ADDITIONAL SERVICES

- A. The parties agree that all tasks set forth in Section 1, (Scope of Work) above and Section 5 (Basic Services) of Part A of the Agreement, shall be completed in full, to the satisfaction of the County, for the amount set forth in Section 4 (Compensation), Invoicing, and Set-Off) of Part A 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 or under a project assignment. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the County and the Architect, shall be incorporated in written amendments to this Agreement using the Exhibits C, D or F forms.

### 4. TERMINATION

- A. Termination of Agreement for Cause. Either party may terminate this 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 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 30 days, the breaching party shall have a reasonable time to cure the breach, provided that, within 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 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 or service performed after the effective date of termination.
- C. Any termination of this Agreement will terminate a project assignment made under this Agreement. In the event of termination, all finished or unfinished documents, data, sketches, calculations, estimates, records, schedules, studies, drawings, maps, models, photographs, reports, and such other information and data accumulated in the performance of services under this Agreement, whether complete or in progress, prepared by the Architect under this Agreement shall become the County's property, and the Architect shall be entitled to receive compensation for actual work

satisfactorily completed hereunder, including reimbursable expenses authorized by the County which are then due.

## 5. APPROPRIATIONS AND AUTHORIZATIONS

This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Santa Fe Board of County Commissioners 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.

## 6. INDEPENDENT CONTRACTOR, SUBCONTRACTING AND PERSONNEL

- A. Independent Contractor. 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.
- B. Subcontracting. The Architect shall not subcontract or delegate any portion of the services to be performed under this Agreement without the advanced written approval of the County. Any attempted subcontracting or delegating without the County's advanced written approval shall be null and void and without any legal effect. The Architect shall use Exhibit E to indicate any subcontractors or consultants to be used for a project assignment.
- C. Personnel.
- 1) All work performed under this Agreement shall be performed by the Architect or under its supervision.
  - 2) 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.

## **7. ASSIGNMENT**

The Architect shall not assign or transfer any interest in this Agreement or a project assignment 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 County's advance written approval shall be null and void and without any legal effect.

## **8. RELEASE**

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

## **9. 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 prior approval from the County.

## **10. PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT**

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. To the extent any material is copyrightable; the County shall own such copyright.

## **11. CONFLICT OF INTEREST**

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

## **12. NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED**

The 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 2 (Scope of Work), Part A of the Agreement unless such changes are set forth in a duly executed written amendment to the Agreement.

## **13. ENTIRE AGREEMENT; INTEGRATION**

The 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 the 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 the Agreement.

#### **14. EXHIBITS AND ATTACHMENTS: INCORPORATION BY REFERENCE**

All exhibits, attachments, riders, and addenda referred to in the Agreement, including but not limited to the Exhibits referred to in this Agreement, as listed in Paragraph 27 EXHIBITS and Paragraph 28 ATTACHMENTS, in Part A of this Agreement, are hereby incorporated into this Agreement by reference and made a part hereof as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

#### **15. NOTICE OF PENALTIES**

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

#### **16. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE**

- A. Architect 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, Architect specifically agrees not to discriminate against any person with regard to employment with 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. Architect acknowledges and agrees that failure to comply with this Section shall constitute a material breach of the Agreement.

#### **17. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW**

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

#### **18. RECORDS AND INSPECTIONS**

- A. To the extent their books and records relate to (i) their performance of the Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in the Agreement or that was required to be submitted to County as

part of the procurement process, Architect agrees to (i) maintain such books and records during the term of the Agreement for a period of six years from the date of final payment under the Agreement; (ii) allow 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 their books and records relate to (i) their performance of the Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in the Agreement or that was required to be submitted to County as part of the procurement process, Architect 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 the Agreement and for a period of six years from the date of final payment under the subcontract;(ii) to allow county or its designee to audit such books and records at reasonable times and upon reasonable not notice; and (iii) to keep such books and records in with GAAP.

## 19. INDEMNIFICATION

- A. Architect shall indemnify and hold harmless County and its Elected Officials, agents, and employees from any losses, liabilities, damages, causes of action, costs or expenses including attorney's fees, attributable to bodily injury, sickness, disease, or death, or to injury to persons or property including loss of use, caused directly or indirectly by the negligent act or failure to act by Architect, or by Architect's officers, employees, consultants or anyone for whom the Architect is legally liable, or Architect's breach of any representation or warranty made herein.
- B. 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. Architect's obligations under this section shall not be limited by the provisions of any insurance policy Architect is required to maintain under this Agreement.

## 20. SEVERABILITY

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

## 21. NOTICES

Any notice required to be given to either party by the 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

To the Architect: Spears Horn Architects  
Attn: James Horn  
1334 Pacheco Street  
Santa Fe, New Mexico 87505

## 22. 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 NM Secretary of State on Architect's behalf.
- C. Architect is legally registered and licensed to operate as a business in New Mexico and to do the work anticipated by this Agreement and shall maintain such registration and licensure in good standing throughout the duration of the Agreement.

## 23. LIMITATION OF LIABILITY

County's liability to Architect for any breach of this Agreement by County shall be limited to direct damages and shall not exceed the maximum amount of compensation specified in Section 4, (Compensation and Invoicing) Part A, of the Agreement. In no event shall County be liable to Architect for special or consequential damages, even if County was advised of the possibility of such damages prior to entering into the Agreement.

## 24. NO THIRD-PARTY BENEFICIARIES

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

**25. INSURANCE**

- A. General Conditions. 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. Architect shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy and liability limits in amounts not less than \$1,000,000 combined single limits of bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for County by 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 named additional insured on the policy.
- C. Workers' Compensation Insurance. Architect shall comply with the provisions of the Workers' Compensation Act.
- D. Malpractice/Errors and Omissions Insurance. Architect shall procure and maintain during the life of this Agreement professional liability (errors and omissions) insurance with policy limits of not less than \$1,000,000.00 per occurrence, \$2,000,000.00 per aggregate.
- E. 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), Architect shall increase the maximum limits of any insurance required herein.

**26. 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.

**27. FACSIMILE SIGNATURES**

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

**28. NEW MEXICO TORT CLAIMS ACT**

No provision of the 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.



**29. CAMPAIGN CONTRIBUTION DISCLOSURE FORM**

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

**30. SURVIVAL**

The provisions of following paragraphs shall survive termination of the Agreement:

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.







Henry P. Roybal  
Commissioner, District 1

Miguel M. Chavez  
Commissioner, District 2

Robert A. Anaya  
Commissioner, District 3



Kathy Holian  
Commissioner, District 4

Liz Stefanics  
Commissioner, District 5

Katherine Miller  
County Manager

## MEMORANDUM

DATE: November 29, 2016

TO: Board of County Commissioners

FROM: Michael Kelley, Public Works Department Director

VIA: Katherine Miller, County Manager

**ITEM AND ISSUE: BCC Meeting November 29, 2016**

**Approval of Agreement No. 2016-0104-A-PW/BT Between Santa Fe County and the New Mexico Department of Cultural Affairs Office of Archaeological Studies to Provide an Archaeological Survey, Testing and Monitoring at the Site for the New County Administration Complex in the Amount of \$640,594.29, Exclusive of NMGRT and Authorizing the County Manager to Sign the Purchase Order. (Mark Hogan, Projects and Facilities Director / Bill Taylor, Purchasing Division)**

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**ISSUE:**

Archaeological surveying, testing and monitoring of the site location of the new County Administration Complex is required prior to and during the demolition and construction of the new facility. These services are provided by the State Office of Archaeological Studies (OAS) and it has been determined that it would be in the best interest of the County and project delivery that the County contract directly with the OAS to provide these services pursuant to NMSA 1978, 13-1-98 (A), Exemptions from the Procurement Code; *procurement of items of tangible personal property or services by a state agency or a local public body from a state agency, a local public body or external procurement unit except as otherwise provided in Sections 13-1-135 through 13-1-137 NMSA 1978;*

The proposed cost for these services are an estimation based on the probability of discovery of artifacts and the inclusion of field and laboratory research required by the State.

**BACKGROUND:**

On November 13 of 2012 Santa Fe County contracted with the Office of Archaeological Studies to perform preliminary testing on the site at 100 Catron St., as part of the required site evaluation effort for the new county office complex. The final report from that study was delivered to the County in 2014 as "*The Results of Archaeological Test Excavations on 1.6 Acres of Land Within LA 144329 in the Griffin / Grant Triangle Historic Neighborhood, Santa Fe, New Mexico.*" That report identified more detailed testing that would be required prior to the demolition of the old First Judicial District Courthouse and site development for the new office building and associated parking. The report provides the estimate for testing, reporting and monitoring. Actual cost of the work may vary depending upon the results of the testing.

Demolition of the existing Old Judicial Complex is anticipated for June, 2017.

**RECOMMENDATION:**

Approval of Agreement No. 2016-0104-A-PW/BT between Santa Fe County and the New Mexico Department of Cultural Affairs Office of Archaeological Studies in the Amount of \$640,594.29, exclusive of NMGRT, authorizing the County Manager to sign the purchase order.

Attachments: Governmental Service Agreement Between Santa Fe County and the State of New Mexico Department of Cultural Affairs Office of Archaeological Studies

**GOVERNMENTAL SERVICE AGREEMENT  
BETWEEN SANTA FE COUNTY AND  
THE STATE OF NEW MEXICO  
DEPARTMENT OF CULTURAL AFFAIRS  
OFFICE OF ARCHAEOLOGICAL STUDIES**

This Governmental Service Agreement (“Agreement”) is made and entered into by and between Santa Fe County (“County”), and the State of New Mexico, Department of Cultural Affairs (“DCA”), collectively the “parties.”

WHEREAS, the Santa Fe County Board of County Commissioners (“County”) desires to create new County Administrative Offices (“Undertaking”) on County owned land located within the City of Santa Fe, Santa Fe County, New Mexico. The Undertaking will include demolition and construction at the Grant Street Complex (“GSC”), renovations at the Old Administration Building (“OAB”), and infrastructure connecting the two locations;

WHEREAS, the Santa Fe County Board of County Commissioners has approved funding for the Undertaking;

WHEREAS, this proposed development by Santa Fe County is subject to the New Mexico Cultural Properties Act, NMSA 1978, Sections 18-6-1 to -17 (as amended) and the New Mexico Prehistoric and Historic Sites Preservation Act, NMSA 1978, Sections 18-8-1 to -8 (1989, as amended through 2004), collectively the “Acts”, and their implementing regulations, 4.10.4, 4.10.7, 4.10.8, 4.10.11, 4.10.12, 4.10.14, 4.10.15, 4.10.16, and 4.10.17 NMAC (the “Regulations”);

WHEREAS, the Office of Archaeological Studies (“OAS”) is a division of DCA and provides archaeological services, including archaeological survey, excavation, monitoring, testing, laboratory analysis, human burial excavation and analysis, collection curation, research, and report writing and production, to state, federal, tribal, municipal, and private clients;

WHEREAS, the County wishes to enter an agreement with DCA under which the County will pay DCA in return for OAS’s archaeological services as described in this Agreement;

WHEREAS, such Agreement is exempt from the Procurement Code pursuant to NMSA 1978, Section 13-1-98(A).

**NOW THEREFORE IT IS MUTUALLY AGREED BETWEEN THE PARTIES** as follows:

**1. PURPOSE OF THE AGREEMENT**

The purpose of this agreement (hereinafter referred to as the “Agreement”) is to provide the County with archaeological services required for the Undertaking, allowing the County to comply with the Acts and the Regulations. These services include archaeological data recovery investigations within the GSC (hereinafter the “Project”) prior to demolition and construction phases of the undertaking as well as monitoring of demolition and construction activities through the period of utility connections, hardscaping, and landscaping associated with the GSC, and with renovations to the OAB, and with possible connections between the GSC and OAD (hereinafter “Monitoring”).

## 2. SERVICES TO BE PROVIDED BY OAS

### A) *Scoping, Regulatory Assessment, Permitting, and Initial Cost Estimation:*

- i) Review the County's descriptions of the Undertaking, known archaeological context of the undertaking, and plans for consultation for compliance with archaeological Acts and Regulations.
- ii) Provide advice to County staff concerning the adequacy of County's consultation plans and the archaeological implications of the undertaking.
- iii) Prepare and submit permit applications for review by the New Mexico Cultural Properties Review Committee and/or the New Mexico Historic Preservation Division according to the Project schedule, as required by the Acts and Regulations.
- iv) Prepare and provide courtesy copies of regulatory documents for County transmittal to the City of Santa Fe Historic Preservation Department.
- v) Based on the state of pre-existing knowledge of the nature of cultural resources in the vicinity of the undertaking and expected compliance requirements, provide County with estimates of the costs associated with archaeological work necessary for compliance with the Acts and Regulations.

### B) *Scheduling:*

- i) Propose a schedule for the archaeological work that will minimize the risk of delay in the County's development plans for the Undertaking and that will accommodate County needs for parking and other uses of the GSC property.
- ii) Submit the work schedule to County for review prior to the demolition phase of the Undertaking.
- iii) Cooperate with County requests to accommodate community and County needs for parking, events, and activities during the period of archaeological investigations.

### C) *Project Components:*

- i) Arrange for surface demolition as needed for archaeological investigations, and document demolition materials in coordination with County needs for recycling and LEED certification.
- ii) Conduct archaeological data recovery investigations of the area of the GSC that have been previously identified as containing potentially significant cultural resources.
- iii) Restore the surface of archaeological investigation areas per County's prior written specifications.



- iv) Conduct archaeological monitoring of areas of the GSC where potentially significant cultural resources are not known to exist within the construction area.
- v) Provide on-call archaeological monitoring services for all utility connections, hardscaping, and landscaping carried out as part of the Project, including the GSC, OCB, and connecting facilities.
- vi) Analyze all artifacts and samples collected from data recovery and monitoring investigations.
- vii) Prepare descriptive and interpretive reports of all findings of the archaeological investigations.
- viii) Submit all collections and records for permanent curation in accordance with the Acts and Regulations.
- ix) Cooperate with the County in public interaction and press relations throughout the Project.

D) *Records:*

- i) All administrative and financial records will be made accessible to County representatives upon request.
- ii) All administrative and financial records will be retained for at least three years following Project completion.

**3) SANTA FE COUNTY RESPONSIBILITIES**

- A) *Management Oversight:* Provide overall management of the Undertaking within which the archaeological Project is carried out.
- B) *Access:* Provide OAS personnel, equipment, and vehicles with access to the work sites within the Project area as well as sufficient work space and space for temporary material stockpiling.
- C) *Scheduling and communication:* Provide coordination between OAS activities and the work of other County contractors involved in the Undertaking, including communication with County employees concerning parking and access to the Project area.
- D) *Utilities and Easements:* Provide OAS with the location(s) of all private utilities within the Project area as well as any easements.

**4) COMPENSATION**

- A) The County shall reimburse OAS for the direct costs of archaeological services rendered, including personnel services, travel, Project-specific supplies and equipment, contractual services, and permit fees, plus an overhead amount of twenty-five percent of direct costs.

OAS personnel and vehicle service rates are identified in Exhibit A, attached hereto and incorporated by reference. Other direct costs shall be specified in the cost estimates for each Project phase.

- B) The County shall also reimburse OAS for the direct costs plus, applicable overhead, for surface demolition and parking restoration conducted prior to and after completion of archaeological investigations of areas within the Project. Non-archaeological demolition and restoration specifications and costs will be submitted to the County for review prior to OAS incurring costs for those services.
- C) OAS will provide the County with cost estimates for phases of the Project for review and approval prior to each phase. Each estimate will consist of a scope of work and a detailed budget, which will be consecutively labeled and attached as an exhibit to this Agreement. The first cost estimate is provided as Exhibit B, attached hereto and incorporated by reference.
- D) OAS will not incur any expenses on behalf of the County in excess of the cost estimates without prior written approval of the County.
- E) OAS reserves the right to substitute personnel and subcontractor service providers as long as the substitutions do not increase the total Project estimated costs as approved by the County.
- F) As cost estimates for Project phases are approved by the County, the County shall encumber funds to cover each estimate. The phases shall consist of:
  - i. Data recovery plan preparation, permitting, and mobilization
  - ii. Field excavation outside of the existing building
  - iii. Parking restoration
  - iv. Field excavation within the existing building
  - v. Monitoring
  - vi. Artifact and sample processing and analysis
  - vii. Report preparation
  - viii. Curation of artifacts and records

Additional phases may be proposed by OAS, subject to the County's written approval, or may be requested by the County.

- G) The OAS shall invoice the County periodically for services rendered.
- H) Within fifteen (15) days of the County's receipt of a detailed, written invoice, the County shall issue a written certification of complete or partial acceptance or rejection of the contractual services for which payment is sought. OAS acknowledges and agrees that the County may not make any payment hereunder unless and until it has issued a written certification accepting the contractual services. Within thirty (30) days of the issuance of a written certification accepting the contractual services, the County shall tender payment for the accepted services. Should the County partially or fully reject any services rendered, it must specify the basis for rejection by citing the applicable provision of this Agreement that justifies the rejection in its written certification.

- I) In the event the County fails to tender payment within thirty (30) days of the written certification accepting the services, or fails to specify a basis for rejection, 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.
- J) In the event OAS breaches this Agreement, the County may, without penalty, withhold any payments due OAS 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. In the event the County breaches this agreement, OAS shall withhold continued services under this Agreement. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payment.

**5) REPRESENTATION**

OAS agrees that it will provide services that meet or surpass applicable standards for archaeological services as defined in the scope of work and permit stipulations issued by regulatory agencies. OAS will provide accurate and complete data collection, documentation, and interpretation and will fully execute the scope of work, but OAS cannot assure a particular outcome from consultations with regulatory agencies. Any deficiencies arising from OAS failure to satisfy the scope of work or permit stipulations will be corrected without additional compensation from the County. OAS is not liable for any damages resulting from delays in the historic preservation consultation process.

**6) TORT CLAIMS ACT**

Neither of the parties shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, §§ 41-4-1 to -30 (1976 as amended through 2016). This paragraph is intended only to define the liabilities between the parties hereto and it is not intended to modify, in any way, the parties' liabilities as governed by common law and the New Mexico Tort Claims Act. The parties, and their "public employees" as defined in the New Mexico Tort Claims Act, do not waive any defense and/or do not waive any limitation of liability pursuant to law by entering this Agreement. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

**7) TERM**

This agreement shall remain in force until June 30, 2020, unless amended or terminated.

**8) TERMINATION**

Either of the parties may terminate this Agreement by providing thirty days' written notice to the other party. By such termination no party may nullify obligations already incurred prior to termination of the Agreement. Upon notice of termination, OAS shall bring all operations to a safe and stable condition, shall complete all primary records and documentation, and shall turn over all records and collections to the County.

## 9) NON-APPROPRIATION CLAUSE

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of the State of New Mexico and the governing bodies of the County and DCA for the performance of this Agreement. If sufficient appropriations and authorization are not made, this Agreement shall terminate immediately upon written notice being given by the terminating Party to the other Party. Any Party's decision as to whether sufficient appropriations are available shall be accepted by the other Party and shall be final.

## 10) COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW

- A) In performing its obligations hereunder, OAS shall comply with all applicable laws, ordinances, and regulations.
- 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.

## 11) AMENDMENTS OR MODIFICATIONS TO AGREEMENT

This Agreement may be amended or modified only with the written consent from both parties.

## 12) BINDING EFFECT

This Agreement shall be binding upon and inure to the benefit of each party and their respective representatives, successors and assigns.

## 13) DISPUTE RESOLUTION

The parties agree to use any and all methods of dispute resolution, up to and including binding arbitration, to resolve any conflicts arising under this Agreement, the expenses of which shall be shared equally. Disputes shall be first discussed by representatives of each party having such the authority, if necessary, to bind the party that they represent. Such representatives shall use their best efforts to amicably and promptly resolve the dispute. If the parties are unable to resolve the dispute through informal mechanisms or mediation within thirty days of the occurrence of the event or circumstances giving rise to the dispute, either party may give notice to the other party that the dispute cannot be resolved. Either party may then pursue available legal remedies. Any litigation regarding the enforcement, effect, or interpretation of the Agreement shall be brought in the State of New Mexico, First Judicial District Court.

## 14) NOTICES

Any notice required by this Agreement shall be given in writing to the persons designated by the parties below. Notice shall be effective when delivered personally to either party, or three days after deposited, postage fully prepaid, registered or certified, in any official receptacle of the U.S. Postal Service.

For OAS:

Eric Blinman, Director  
Office of Archaeological Studies  
PO Box 2087  
Santa Fe, NM 87504-2087

Center for New Mexico Archaeology  
7 Old Cochiti Road  
Santa Fe, NM 87507

Office: (505) 476-4404, cell: (505) 660-2809, [eric.blinman@state.nm.us](mailto:eric.blinman@state.nm.us)

For Santa Fe County:

Brad M. Isaacson, Project Manager  
Projects Division  
Santa Fe County Public Works Department  
PO Box 276  
Santa Fe, NM 87504-0276

901 West Alameda Suite 20-C  
Santa Fe, New Mexico 87501

Office: 505-992-9878, cell: 505-490-2691, e-mail: [bisaacson@santafecountynm.gov](mailto:bisaacson@santafecountynm.gov)

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IN WITNESS WHEREOF, the parties have duly executed this agreement as of the date the late last signature below.

SANTA FE COUNTY

\_\_\_\_\_  
Miguel M. Chavez, Chair  
Santa Fe County Board of County Commissioners

\_\_\_\_\_  
Date

ATTESTATION:

\_\_\_\_\_  
Geraldine Salazar,  
Santa Fe County Clerk

\_\_\_\_\_  
Date

Approved as to form:

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

\_\_\_\_\_  
10-24-16  
Date

Finance Department Approval:

\_\_\_\_\_  
*Don Moyra Carole Jaramillo*  
Carole H. Jaramillo  
Santa Fe County Finance Director

\_\_\_\_\_  
10-28-16  
Date

STATE OF NEW MEXICO, DEPARTMENT OF CULTURAL AFFAIRS

By:

\_\_\_\_\_  
Veronica Gonzales, Cabinet Secretary

\_\_\_\_\_  
Date

\_\_\_\_\_  
Eric Blinman, Office of Archaeological Studies

\_\_\_\_\_  
Date:

As to legal sufficiency:

\_\_\_\_\_  
DCA General Counsel

\_\_\_\_\_  
Date

As to budgetary sufficiency:

\_\_\_\_\_  
Greg Geisler, Chief Financial Officer/ASD Director

\_\_\_\_\_  
Date:

**ATTACHMENT: EXHIBIT A**

**OAS Personnel Service and Vehicle Rates for Archaeological Services**

OAS Personnel Service reimbursement rates are based on State of New Mexico per employee costs for wage, insurances, benefits, leave accruals, and non-DCA employee administrative fees. Hourly reimbursement rates are subject to change by the State of New Mexico. Reimbursement rates will be updated periodically as necessary to recover costs. Rate changes that affect total cost estimates for Project phases will be submitted to County for review and approval. Rates for new hires will be charged at or below the job class rates listed below.

Person or position	Invoice Rates	
	January 2016	
	Straight	Overtime
Arany, Lynne	50.41	50.41
Badner, Jessica	51.11	51.11
Blinman, Eric	69.20	69.20
Coan, Isaiah	38.43	45.92
Cox, Jeffrey	35.37	44.46
Etsitty, Lynette	34.33	42.27
Foster, Vernon	33.54	41.41
Funkhouser, Gary	50.75	50.75
Goodman, Linda	53.11	53.11
Hannaford, Charles	55.66	55.66
Jaquith, Scott	44.14	54.66
Martinez, Melissa	48.07	48.07
McBride, Pamela	58.01	68.99
Moga, Susan	38.69	47.78
Montoya, Richard	42.60	51.70
Moore, James	53.16	53.16
Powell, Judi	42.04	52.15
Stodder, Ann	53.11	64.78
Toll, Mary	38.13	38.13
Turner, Robert	55.66	55.66
Weahkee, Mary	34.36	42.19
Wening, Karen	40.81	49.48
Yount, M. Kathleen	38.54	38.54
Archaeologist A		
Archaeologist O		
Archaeologist B		

OAS Vehicle reimbursement rates are based on State of New Mexico motor pool charges and fuel recovery costs (effective January 2016).

Field vehicle per day: \$25.00

Field vehicle per mile: \$0.25

**ATTACHMENT: EXHIBIT B**  
**OAS Initial Cost Estimate for the County Administrative Offices Project, Grant Street Complex**

This cost estimate is based on the scope of work defined in "Data Recovery Plan for 2.35 Acres of Land with LA 144329 in the Griffin/Grant Triangle Neighborhood, Santa Fe, New Mexico," approved by the New Mexico Cultural Properties Review Committee and State Historic Preservation Office. This data recovery plan defines the known cultural resources within the GSC and the archaeological and research activity that will mitigate the impacts of GSC development on those resources.

OAS cost estimates are based on the expectations of the data recovery plan and the experience of OAS staff in similar situations. They are realistic, but they are subject to amendment as expectations are met or not met during the execution of the data recovery plan. OAS is a not-for-profit enterprise within the State of New Mexico, Department of Cultural Affairs, and the County will only be invoiced for actual costs incurred, up to amounts approved by the County. If OAS anticipates that costs associated with a phase of the Project will exceed an approved estimate, OAS will present an amendment to the County for review and approval prior to OAS incurring costs on behalf of the County.

This initial cost estimate totals six hundred forty thousand six hundred dollars (\$640,600), rounded. Cost categories (Project phases), their definition, and the strengths and weaknesses of the associated cost estimates are described as follows:

*Project administration:* This phase includes administrative costs that are directly related to the Project, including biweekly payroll accounting and invoicing; contractual service procurement and management; supply procurement and accounting; and construction and planning meeting attendance, public meeting presentation preparation and delivery, and coordination efforts with County GSC administrators. This cost estimate will be subject to amendment if costs associated with the *Laboratory analysis and write-up* phase of the project is greater than anticipated and if additional contractual service procurements are needed.

*Data recovery plan preparation:* This phase includes all costs associated with the obtaining necessary permits and approvals for the Project. These costs are not subject to amendment for the GSC portion of the Project. If additional archaeological services are needed for County plans for the OAD, the costs associated with this phase will need to be amended.

*Mobilization:* This phase includes costs associated with preparations for field work. The costs associated with this phase will not need to be amended.

*Exterior area excavation:* This phase includes all anticipated archaeological work outside of the existing Judge Steve Herrera Judicial Complex. The estimate anticipates the level of complexity of archaeological features identified in the data recovery plan. Amendments will be necessary only if unanticipated features or structures are encountered within the Project area.

*Contractual services:* This phase includes contractual services in support of the exterior excavations for a period of three months. Heavy equipment services for site preparation and archaeological trenching are included, but the costs of demolition material recycling and parking restoration are excluded. These non-archaeological contractual services will be presented to the County for review and approval as amendments to this cost estimate.

*Interior excavations:* This phase includes anticipated costs of five crew-weeks of archaeological excavations within the existing Judge Steve Herrera Judicial Complex. This area has not been previously tested to determine the nature and extent of cultural resources that are preserved beneath the on-grade construction of the building and previous buildings that were constructed at this location within the GSC. This effort



estimate anticipates a moderate complexity of archaeological structures and features, and if any additional excavation effort is required, a cost amendment will be prepared and submitted to the County for review and approval. This cost estimate does not include the cost of interior concrete cutting as a contractual service. The scope of work and resulting cost estimate will be submitted to the County for review and approval as an amendment to this cost estimate.

*Demolition monitoring:* This phase assumes that active archaeological monitoring will be required for only thirty (30) days of demolition within the project area. The estimate assumes that a full archaeological crew will be needed for the 30 day period, but crew needs will be dependent on the nature of demolition activities and schedule. Crew costs and travel costs will be responsive the requirements of the demolition contractors activity schedule, and an amendment will be required only if costs exceed this overall total.

*Laboratory analysis and write-up:* Estimating these costs in advance of having artifact and sample quantities from the excavations is problematic. Based on OAS experience, the nature and amount of artifact recovery can result in this phase of projects costing between one and two times total field excavation costs, with an average of close to 1.75 times field costs. The field costs estimated here are approximately two hundred ninety-three thousand dollars (\$293,000), and for the purposes of this initial magnitude estimate, three hundred thousand dollars (\$300,000) is a place holder for the anticipated costs of this phase. OAS will prepare a more fine-grained cost estimate for analysis and write-up once the quantities of artifacts and samples are known at the conclusion of demolition monitoring. That estimate will be presented to the County for review and approval, and the analysis effort will be related to the needs prescribed by the data recovery plan.

*Other costs:* Costs associated with other phases of the Project cannot be estimated at this time. These include the County's needs for monitoring of utility installations and for any monitoring or data recovery associated with the connecting infrastructure between the GSC and the OAB. If the County decides to demolish the late addition to the OAB, archaeology may be required, if only at the level of monitoring. If the County's plans for the OAB involved any significant subsurface construction excavation, the Historic Preservation Division may require the development of a separate data recovery plan.

Archaeology Cost Estimate Detail -- Exhibit B

	Rate	Hours or units	Multiplier	Total	Overhead	Category total	Cumulative
<b>Project administration</b>				11,199.20	2,799.80	13,999.00	13,999.00
Blinman Principal investigator	57.66	8	10	4,612.80			
Powell Accounting	42.04	8	15	5,044.80			
Yount Office administration	38.54	8	5	1,541.60			
				23,996.14	5,999.04	29,995.18	43,994.18
<b>Data recovery plan preparation</b>							
Akins Writing	38.22	6	1	229.32			
Arany Editing	42.01	8	24	8,065.92			
Badner Writing/GIS	42.38	8	15	5,085.60			
Blinman Review	57.66	8	2	922.56			
Coan GIS logistics	38.43	8	1.5	461.15			
Moore Writing	53.16	8	20	8,505.60			
Turner Graphics	45.67	8	1	365.36			
Wening Writing	40.81	2	1	81.62			
Printing	0.15	12	155	279.00			
				2,866.76	716.69	3,583.45	47,577.63
<b>Mobilization</b>							
Coan	38.43	8	1	307.44			
Moga	38.69	8	4	1,238.08			
Moore	53.16	8	1	425.28			
Wening	40.81	8	2	652.96			
Vehicle Days	25.00	1	3	75.00			
Vehicle Mileage	0.25	24	3	18.00			
Field supplies				150.00			
<b>Fieldwork</b>				131,986.88	32,996.72	164,983.60	212,561.23
<b>Exterior area excavations</b>							
Moore Field director	53.16	8	65	27,643.20			
Wening Crew Chief	40.81	8	62	20,241.76			
Moga Crew Chief	38.69	8	61	18,880.72			
Stodder Crew - HR	53.11	8	61	25,917.68			
Weahkee Crew	34.36	8	61	16,767.68			
Coan Crew	38.43	8	61	18,753.84			
Vehicle Days	25.00	2	61	3,050.00			
Vehicle Mileage	0.25	48	61	732.00			
Contract services (3 months only)				8,212.05	2,053.01	10,265.06	222,826.29
Backhoe services				4,015.72			
Fencing 3 months				3,686.33			
Portable toilets				510.00			
Interior excavations				53,262.00	13,315.50	66,577.50	289,403.79
Moore Field director	53.16	8	25	10,632.00			
Wening Crew Chief	40.81	8	25	8,162.00			
Moga Crew Chief	38.69	8	25	7,738.00			
Stodder Crew - HR	53.11	8	25	10,622.00			
Weahkee Crew	34.36	8	25	6,872.00			
Coan Crew	38.43	8	25	7,686.00			
Vehicle Days	25.00	2	25	1,250.00			
Vehicle Mileage	0.25	48	25	300.00			
Concrete cutting				40,952.40	10,238.10	51,190.50	340,594.29
Demolition monitoring							
Moore Field director	53.16	8	30	12,758.40			
Wening Crew Chief	40.81	8	30	9,794.40			
Weahkee Crew	34.36	8	30	8,246.40			
Coan Crew	38.43	8	30	9,223.20			
Vehicle Days	25.00	1	30	750.00			
Vehicle Mileage	0.25	24	30	180.00			
<b>Laboratory analysis and write-up</b>						300,000.00	640,594.29

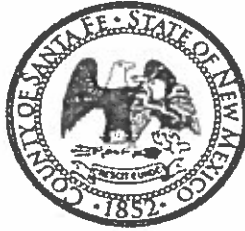




Henry P. Roybal  
Commissioner, District 1

Miguel M. Chavez  
Commissioner, District 2

Robert A. Anaya  
Commissioner, District 3



Kathy Holian  
Commissioner, District 4

Liz Stefanics  
Commissioner, District 5

Katherine Miller  
County Manager

*Office of the County Attorney*

**MEMORANDUM**

**DATE:** November 16, 2016

**TO:** Board of County Commissioners

**FROM:** Rachel Brown, Deputy County Attorney *RSV*  
Cristella Valdez, Assistant County Attorney *CV*

**RE:** Authorization to Publish Title and General Summary of an Ordinance Amending Ordinance No. 1991-6, the Santa Fe Animal Control Ordinance, to Increase Fees; Prohibit Fixed Point Tethering; Conform Rabies Vaccination Requirements to State Law and Regulations; Set Forth a Process for Revocation of Permits Issued; Incorporate the Dangerous Dog Act, NMSA 1978, §§ 77-1A-1 to -6; and Establish Penalty Provisions that Comport with State Law

---

Currently, Santa Fe County Ordinances 1981-7, 1982-7, 1990-8, and 1991-6 and Santa Fe County Resolution 1982-28 (collectively "1991 Ordinance") govern the licensing of animals, prohibited activities involving animals, and the administration of Animal Control Services. On October 25, 2016, the Board of County Commissioner's (BCC) directed, by motion, for the Sheriff's Department to propose amendments to the 1991 Ordinance that would prohibit chaining, increase fees, and bring the 1991 Ordinance into compliance with State law. The following is a list of substantial revisions to sections of the 1991 Ordinance:

**Article 1, Section 1-2 and Article 4, Section 4-1**

The definition of "vaccination" at Article 1, Section 1-2(T) and rabies vaccination requirements at Article 4, Section 4-1 have been revised to address changes to New Mexico Department of Health ("DOH") regulations. The definition of vaccination and rabies vaccination provisions in the 1991 Ordinance require owners to vaccinate their dogs and cats annually. However, under current DOH regulations, a 3 year rabies vaccination is allowed. The proposed revisions address this discrepancy.

### **Article 5, Sections 5-1 and 5-2(A)**

The BCC asked that Bernalillo County's provisions regarding chaining be incorporated into the 1991 Ordinance. Language taken directly from Bernalillo County's animal control ordinance has been inserted in Article 5, Section 5-1 and 5-2(A) to prohibit fixed point tethering.

### **Article 5, Section 5-4**

Proposed amendments to Article 5, Section 5-4 incorporate the Dangerous Dog Act, NMSA 9178, §§ 77-1A-1 to -6. The Dangerous Dog Act sets forth a process for dogs to be declared dangerous or potentially dangerous by a court or by admission of the owner and requirements for keeping such dogs. The Dangerous Dog Act requires payment of a registration fee set by the local animal control authority. A proposed fee has been set forth in Appendix A.

### **Article 7, Section 7-2(A) and Article 9, Section 9-1(G)**

Proposed amendments to Article 7, Section 7-2(A) and Article 8, Section 9-1(G) improve due process for permit holders by establishing procedures for the revocation of permits.

### **Article 11, Section 11-1, Article 6, Section 6-2, and Appendix A**

Pursuant to NMSA 1978, 4-37-3, penalties for violations of a county ordinance shall not exceed a fine of three hundred dollars or imprisonment for ninety days or both. Article 11, Section 11-1; Article 6, Section 6-2; and Appendix A contain penalty provisions that exceed three hundred dollars and ninety days. Accordingly, the proposed revisions address this discrepancy.

### **Fees – Appendix A**

License fees for unaltered dogs are increased from \$10.00 to \$25.00 and fees for altered dogs are increased from \$3.00 to \$10.00.

**THE BOARD OF COUNTY COMMISSIONERS OF  
SANTA FE COUNTY**

**ORDINANCE NO. 2016 – \_\_\_**

**AN ORDINANCE AMENDING ORDINANCE NO. 1991-6, THE SANTA FE COUNTY ANIMAL CONTROL ORDINANCE, TO INCREASE FEES; PROHIBIT FIXED POINT TETHERING; CONFORM RABIES VACCINATION REQUIREMENTS TO STATE LAW AND REGULATIONS; SET FORTH A PROCESS FOR REVOCATION OF PERMITS ISSUED; INCORPORATE THE DANGEROUS DOG ACT, NMSA 1978, §§ 77-1A-1 to -6; AND ESTABLISH PENALTY PROVISIONS THAT COMPORT WITH STATE LAW**

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY THAT ORDINANCE NO. 1991-6 IS HEREBY AMENDED AS FOLLOWS:**

**Section 1.** Article 1, Section 1-2(T) is hereby repealed and replaced with the following:

“T. “vaccination” means the protection provided against rabies by inoculation with anti-rabies vaccine recognized and approved by the U.S. Department of Agriculture, Bureau of Animal Industry, and the State of New Mexico Department of Health pursuant to NMSA 1978, § 77-1-3 as amended.”

**Section 2.** Article 4, Section 4-1, is hereby repealed and replaced with the following:

**“4-1 Rabies Vaccination**

- A. Any owner of a dog, cat, or ferret over the age of three (3) months shall have the dog, cat, or ferret vaccinated as prescribed by NMSA 1978, Section 77-1-3 and New Mexico Department of Health regulations.
- B. Any owner of a dog, cat, or ferret over the age of three (3) months shall exhibit its certificate of vaccination issued by a licensed veterinarian administering the rabies vaccine upon demand by a Sheriff’s Deputy or Animal Services Officer.
- C. Any owner of a dog, cat or ferret over the age of three (3) months shall securely confine the dog, cat, or ferret until it is vaccinated against rabies, which vaccination shall be administered within one week after entry into the County, unless the owner has a certificate of vaccination issued by a veterinarian licensed and practicing either within New Mexico or in another state or foreign country, and the vaccination conforms to the requirements of the State of

New Mexico and this Ordinance. A titer test is not an acceptable alternative to a rabies vaccination.”

**Section 3.** Article 5, Section 5-1, is hereby repealed and replaced with the following:

**“5-1 Dogs Running at Large**

A person owning or having charge, custody, care, or control over a dog, shall keep the dog upon his or her own premises within a secure enclosed pen, or in an area containing a fence or wall of sufficient height surrounding the perimeter of the property.”

**Section 4.** Article 5, Section 5-2(A), is repealed and replaced with the following:

“A. It shall be unlawful to tether a dog as a form of confinement. Fixed point tethering of any dog to stationary objects is permitted in limited circumstances such as picnics or gathering in a park or open space, for emergency purposes to permit an individual to render aide to a human or another animal and only when the owner is immediately present.”

**Section 5.** Article 5, Section 5-4 is repealed and replaced with the following:

**“5-4 Vicious Animals; Dangerous Dogs**

- A. It is unlawful for any person to keep or harbor a known vicious animal in the County. Any attack by a vicious animal or any animal displaying traits of a vicious animal may be repelled by the use of reasonable force. After a judicial determination that an animal is vicious, the court having jurisdiction over the enforcement of this Ordinance, upon hearing of such complaint, may, in addition to any fine or imprisonment which may be imposed for violation hereof, order the Animal Control Officer to have such animal destroyed as set forth in Section 3-4 of this Ordinance.
- B. When an Animal Control Officer has probable cause to believe that a dog is dangerous or potentially dangerous and poses an imminent threat to public safety, the Animal Control Officer may apply for a warrant to seize the dog and petition the court for a declaration that the dog is dangerous or potentially dangerous pursuant to NMSA 1978, § 77-1A-4.
- C. Any owner of a dog declared by a court of competent jurisdiction to be a dangerous or potentially dangerous dog or is deemed dangerous or potentially dangerous by admission of the owner pursuant to the Dangerous Dog Act, NMSA 1978, §§ 77-1A-1 to -



6, shall comply with all the registration and handling requirements as set forth in NMSA 1978, §77-1A-5 and pay the registration fee set forth in Appendix A.”

**Section 6.** Article 6, Section 6-12(A) is repealed and replaced with the following:

“A. Three or more violations of any one or any combination of Section 6 offenses shall constitute an act of cruelty, punishable as set forth in Section 11-1 and Appendix A.”

**Section 7.** Article 7, Section 7-2 is hereby amended to repeal the final sentence of that Section and replace it with the following:

“Revocation of a permit shall follow the procedures set forth in Section 10-1(G).”

**Section 8.** Article 9, Section 9-1, is amended to add the following:

“G. All revocations of permits issued pursuant to this Ordinance shall follow the procedures set forth below:

1. Notice of proposed revocation shall precede any permanent revocation of a permit issued under this Ordinance.
2. The notice of proposed revocation shall specify the following:
  - a. The specific violation or violations alleged, including dates and times of the alleged violation or violations, and any specific section or subsection of this Ordinance or state law that is alleged to have been violated;
  - b. A specific date by which the alleged violations shall be corrected to avoid further revocation proceedings, if the violation is of a nature that may be corrected;
  - c. A warning that failure to correct the violation or request a hearing shall result in revocation of the permit; and
  - d. Procedures for requesting a hearing regarding the alleged violation and proposed revocation of the permit.

3. If the period of time during which the permit holder was allowed to correct the violation passes without correction of the violation, and the permit holder has not requested a hearing as described in this Section, the Animal Control Division shall issue a notice of revocation. The revocation shall be effective thirty (30) days from service of the original notice of proposed revocation.
4. A permit holder may appeal the proposed revocation by requesting a hearing. The request for hearing shall be made within five (5) days of service of the notice of proposed revocation. The request for hearing shall be in writing, sent by certified mail, return receipt requested. The request for hearing shall briefly state the reasons why the permit holder believes the revocation is not justified under the circumstances.
5. The Animal Control Division shall give written notice of the date, time, and place of the hearing to the permit holder. The date of the hearing shall be not less than ten (10) days or more than thirty (30) days from the date of service of the notice of the hearing. The Animal Control Division may designate a County employee other than one employed in the Sheriff's Department or any other suitable individual to be the hearing officer.
6. The hearing officer may uphold, modify, or reverse the permit revocation. In conducting the hearing, the hearing officer shall not be limited by formal rules of evidence; evidence may be considered which is of a type upon which responsible people are accustomed to rely in the conduct of serious affairs. Within fifteen (15) business days of the hearing, the hearing officer shall send written findings and conclusions to the permit holder, by certified mail, return receipt requested. Permit holders may be represented by counsel at the hearing.
7. A person aggrieved by the hearing officer's decision may appeal the decision as by filing a petition for writ of certiorari pursuant to Rule 1-075 NMRA.
8. Notices provided for under this subsection shall be deemed served when the notice is delivered personally or mailed by registered or certified mail, return receipt requested, to the address on record for the permit holder.

9. During the pendency of the appeal, the Animal Control Division may take such action as is deemed appropriate for the health and safety of the animals and the general public, including temporarily suspending the permit and prohibiting the permit holder from operating under the permit pending resolution of the revocation proceeding.
10. A permit holder whose permit has been revoked shall not be eligible to apply for another permit for a period of one year after the revocation of the permit.
11. Upon revocation of a permit, the permit holder shall cease operating under the permit within five (5) days of the effective date of revocation. If necessary, the permit holder shall give away, sell, or surrender all animals previously covered by the permit in compliance with relevant laws, regulations, and in a manner satisfactory to the Animal Control Division.”

**Section 9.** Article 11, Section 11-1 is hereby repealed and replaced with the following:

“11-1 Penalty Clause

Any person who violates any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and, upon conviction of violating this Ordinance, shall be punished by a fine not exceeding \$300 and/or imprisonment for a period not exceeding 90 days. Fines for violations of specific sections of this Ordinance may be set forth in Appendix A. However, the fines set forth in Appendix A shall not preclude punishment by imprisonment as provided in this Section. Each day this Ordinance is violated shall constitute a separate offense.”

**Section 10.** Appendix A is hereby replaced with the document identified as Appendix A attached hereto as Exhibit 1.

**Section 11. EFFECTIVE DATE.** This Ordinance shall take effect thirty days after it is recorded by the County Clerk, pursuant to NMSA 1978, except that Section 3 and Section 4 of this Ordinance shall not take effect until six months after recordation.

**PASSED, APPROVED, AND ENACTED** this \_\_\_\_ day of \_\_\_\_\_, 2016, by the Board of County Commissioners of Santa Fe County.

**BOARD OF COUNTY COMMISSIONERS**

\_\_\_\_\_  
Miguel M. Chavez, Chair

**ATTESTATION:**

\_\_\_\_\_  
Geraldine Salazar, Santa Fe County Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Gregory S. Shaffer, County Attorney

APPENDIX A

LICENSING FEES	
Altered Dogs	\$10.00 annually
Unaltered Dogs	\$25.00 annually
Duplicate Tag	\$5.00
PERMIT FEES	
To operate a cat kennel annually	\$50.00
To operate a Kennel able to house 20 dogs or less	\$50.00
To operate all other Kennels	\$200.00
To keep an exotic animal annually	\$200.00
To keep a potentially dangerous or dangerous dog	\$200.00
IMPOUNDMENT FEES	
1 <sup>st</sup> impoundment	\$10.00
2 <sup>nd</sup> impoundment	\$20.00
3 <sup>rd</sup> impoundment	\$40.00
4 <sup>th</sup> impoundment	\$80.00
Subsequent impoundments	The fee shall be double the previous impoundment
FEE FOR RETRIEVAL OF ANIMAL CARCASS BY ACO - \$50.00	
FINES FOR VIOLATIONS OF THIS ORDINANCE	
No Rabies Vaccination	\$15.00 + proof of vaccination
Restraint of Animals/Running at Large/Trespassing/Nuisance/Disturbing the Peace	
1 <sup>st</sup> Offense in calendar year	\$25.00
2 <sup>nd</sup> Offense in calendar year	\$60.00
3 <sup>rd</sup> Offense and each offense thereafter in calendar year	\$100.00
Neglect/Care/Maintenance	
1 <sup>st</sup> Offense	\$50.00
2 <sup>nd</sup> Offense	\$200.00

APPENDIX A

3 <sup>rd</sup> Offense and each offense thereafter	\$300.00
Cruelty	
1 <sup>st</sup> Offense	\$50.00
2 <sup>nd</sup> Offense	\$200.00
3 <sup>rd</sup> Offense and each offense thereafter	\$300.00
All Other Fines	\$200

- a. In addition to the fines due to the County, the pet owner shall also be responsible for any and all boarding fees accrued at the shelter and the state spay/neuter deposit if applicable



