

**PROFESSIONAL SERVICE AGREEMENT
BETWEEN SANTA FE COUNTY AND NM CLERKS, LLC
TO PROVIDE ANALYTICAL AND TECHNICAL SERVICES
FOR THE SANTA FE COUNTY CLERK**

THIS AGREEMENT is made and entered into on this 23rd day of December 2013, by and between **SANTA FE COUNTY** (hereinafter referred to as the “County”), a New Mexico political subdivision, and **NM CLERKS, LLC**, with its principal place of business located at 1420 Carlisle Blvd. NE, Suite 208, Albuquerque, N.M. 87710, hereinafter referred to as the “Contractor”.

WHEREAS, Santa Fe County requires the services of a consultant in order to provide analytical and technical services regarding current election, probate, recording/e-recording, and marriage rules, regulations, legislation and case laws for the Santa Fe County Clerk’s Office;

WHEREAS, the Contractor is the only consulting organization of this type endorsed by the NM Association of Counties and used throughout the State by other County Clerks;

WHEREAS, on October 21, 2013, pursuant to NMSA 1978 13-1-126, Sole Source Procurement, the County’s Purchasing Manager made a Sole Source determination to allow the Contractor to provide these services for the Santa Fe County Clerk’s Office;

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

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

1. SCOPE OF WORK

The Contractor shall provide the following management analyst technical assistance services:

A. Recording:

- 1) Work with the Santa Fe County Clerk on interpretation and application of NM State recordation and public documentation statutes, especially as they relate to uniform application across counties in New Mexico.
- 2) Provide recommendations regarding recording/e-recording issues to the Santa Fe County Clerk.
- 3) Work with NM State Archives and the Santa Fe County Clerk to ensure proper process and compliance with record retention and disaster recovery standards.

- 4) Monitor proposed changes to recording and e-recording processes, the Uniform Real Property Electronic Recording Act (URPERA), and other programs as they impact the work of the Santa Fe County Clerk.

B. Elections:

- 1) Work with the Santa Fe County Clerk on interpretation and application of the NM State Election Code especially as it relates to the Santa Fe County Clerk and uniform application among counties of New Mexico.
- 2) Monitor and comment on proposed changes to the NM State Administrative Code as it relates to the Santa Fe County Clerk and election issues.
- 3) Work with the Santa Fe County Clerk on establishing procedures to implement election related processes.
- 4) Update the Santa Fe County Clerk on changes to the NM Election Code following regular and special sessions of the NM State Legislature.
- 5) Work with the Santa Fe County Clerk and Clerk's Affiliate to identify needed changes to the NM State Election Code and other areas of state laws which impact the work of the Santa Fe County Clerk.

C. Marriage Licenses:

- 1) Work with the Santa Fe County Clerk on marriage license procedures, especially as they relate to the Santa Fe County Clerk and uniform application among NM counties.
- 2) Monitor proposed changes to state domestic relations laws and their impact on the Santa Fe County Clerk.

D. Probate Court Administration:

- 1) Work with the Santa Fe County Clerk on Probate Court Clerk administrative matters, especially as they relate to the Santa Fe County Clerk and uniform application among NM counties.
- 2) Review and advise the Santa Fe County Clerk on use, standardization, and customization of Supreme Court approved forms.
- 3) Monitor proposed changes to the State Probate Code as it impacts the Santa Fe County Clerk.

E. **County Commission Meetings**

- 1) Provide research/consulting services on the NM Open Meetings Act and Inspection of Public Records Act.
- 2) Provide education and training on parliamentary procedure to the Santa Fe County Clerk and other Santa Fe County entities at the request of the Santa Fe County Clerk.
- 3) Work with the Santa Fe County Clerk regarding proper process, content, minutes preparation and management of meetings of the Board of County Commissioners and other public meetings of Santa Fe County.

F. **DELIVERABLES**

The Contractor shall provide the following management analyst deliverables:

- 1) Be available to the Santa Fe County Clerk to research and respond to inquiries by the County Clerk.
- 2) Develop, analyze and evaluate management procedures of the Santa Fe County Clerk.
- 3) Conduct research on rules, regulations, legislation, case law and special projects as requested by the Santa Fe County Clerk.
- 4) Monitor proposed changes to rules and laws and their impact on the Santa Fe County Clerk.
- 5) Assist in and research the public policy development process as it impacts the Santa Fe County Clerk.
- 6) Research and participate in providing support to public boards and commissions at various levels of Santa Fe County government.
- 7) Participate in the study, design, and implementation of administrative procedures for the Santa Fe County Clerk.
- 8) Prepare verbal and written reports as requested by the Santa Fe County Clerk, and testify before public bodies and perform legislative and statistical analysis on issues pertinent to the Santa Fe County Clerk.
- 9) Testify before non-legislative public bodies at various levels of Santa Fe County government.
- 10) Coordinate the work of County Clerks across NM counties, while

recommending appropriate procedures for the Santa Fe County Clerk.

- 11) Facilitate communication among the Santa Fe County Clerk and County Clerks of the various NM counties.

2. COMPENSATION, INVOICING, AND SET-OFF

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

- 1) The total amount payable to the Contractor under this Agreement, exclusive of gross receipts tax shall not exceed twenty five thousand dollars (\$25,000.00). Any New Mexico gross receipts tax levied on the amounts payable under this Agreement shall be paid by the County to the Contractor.
- 2) For services performed and deliverables completed during the term of this Agreement, the County shall pay the Contractor two (2) times during the term of this Agreement, with each payment not to exceed twelve thousand five hundred dollars (\$12,500.00). The Contractor shall submit a request for payment twice during the term with an itemized description of the services and deliverables (written reports) completed for the Santa Fe County Clerk.
- 3) This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. The County will notify the Contractor when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended.

B. The Contractor shall submit a written request for payment to the County when payment is due under this Agreement. Upon the County's receipt of the written request, the County shall issue a written certification of complete or partial acceptance or rejection of the contractual items or services for which payment is sought. The Contractor acknowledges and agrees that the County may not make any payment hereunder unless and until it has issued a written certification accepting the contractual items or services. Within thirty (30) days of the issuance of a written certification accepting the contractual items or services, the County shall tender payment for the accepted items or services. In the event the County fails to tender payment within thirty (30) days of the written certification accepting the items or services, the County shall pay late payment charges of one and one-half percent (1.5%) per month, until the amount due is paid in full.

C. In the event the Contractor breaches this Agreement, the County may, without

penalty, withhold any payments due the Contractor for the purpose of set-off until such time as the County determines the exact amount of damages it suffered as a result of the breach.

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

3. EFFECTIVE DATE AND TERM

This Agreement shall, upon due execution by all parties, become effective as of the date first written above and shall terminate one (1) year later unless earlier terminated pursuant to Section 5 (Termination) or Section 6 (Appropriations and Authorizations) of this Agreement. The County has the option to extend the term of this Agreement for three (3) years in one (1) year increments. In no event shall the term of this Agreement exceed a total of four (4) years. A term extension is dependent on the Contractor's performance and quality of the services and deliverables. In no case will this Agreement, including any and all renewals or extensions, exceed a total of four (4) years in duration from the date of the initial Agreement. The County will exercise this option by submitting a written notice to the Contractor in no less than sixty (60) days prior to the expiration of the initial term of this Agreement, or any extension thereof.

4. ADDITIONAL SERVICES

A. The parties agree that all tasks set forth in Paragraph 1 (Scope of Work) of this Agreement, shall be completed in full, to the satisfaction of the County, for the amount set forth in Section 2 (Compensation, Invoicing, and Set Off) of this Agreement, and for no other cost, amount, fee, or expense.

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

5. TERMINATION

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

B. Termination for Convenience of the County. The County may, in its discretion, terminate this Agreement at any time for any reason by giving the Contractor written notice of termination. The notice shall specify the effective date of termination, which shall not be less

than fifteen (15) days from the Contractor's receipt of the notice. The County shall pay the Contractor for acceptable work, determined in accordance with the specifications and standards set forth in this Agreement, performed before the effective date of termination but shall not be liable for any work performed after the effective date of termination.

6. APPROPRIATIONS AND AUTHORIZATIONS

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

7. INDEPENDENT CONTRACTOR

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

8. ASSIGNMENT

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

9. SUBCONTRACTING

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

10. PERSONNEL

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

B. The Contractor represents that it has, or will secure at its own expense, all personnel required to discharge its obligations under this Agreement. Such personnel (i) shall not be employees of or have any contractual relationships with the County and (ii) shall be fully qualified and licensed or otherwise authorized or permitted under federal, state, and local law to perform such work.

11. RELEASE

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

12. CONFIDENTIALITY

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

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

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

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

14. CONFLICT OF INTEREST

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

15. NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED

This Agreement may not be modified, altered, changed, or amended orally but, rather, only by an instrument in writing executed by the parties hereto. The Contractor specifically acknowledges and agrees that the County shall not be responsible for any changes to Section 1(Scope of Work), of this Agreement unless such changes are set forth in a duly executed written amendment to this Agreement.

16. ENTIRE AGREEMENT; INTEGRATION

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such agreements, covenants and

understandings have been merged into this written Agreement. No prior or contemporaneous agreement, covenant or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

17. NOTICE OF PENALTIES

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

18. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

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

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

19. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW

A. In performing its obligations hereunder, the Contractor 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. Contractor and the County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be state district courts of New Mexico located in Santa Fe County.

20. RECORDS AND INSPECTIONS

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

B. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to County as part of the procurement process, the Contractor also agrees to require any subcontractor it may hire to perform its

obligations under this Agreement to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under the subcontract; (ii) to allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with GAAP.

21. INDEMNIFICATION

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

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

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

22. SEVERABILITY

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

23. NOTICES

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

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

To the Contractor: Daniel A. Ivey-Soto
NM CLERKS, LLC,
1420 Carlisle Blvd. NE
Albuquerque, New Mexico 87110

24. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

The Contractor hereby represents and warrants that:

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

B. Contractor is registered as a single member limited liability company under the laws of the State of New Mexico.

C. Contractor is legally registered and is properly qualified to do the work anticipated by this Agreement and shall maintain such registration in good standing throughout the duration of the Agreement.

25. FACSIMILE SIGNATURES

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

26. NO THIRD-PARTY BENEFICIARIES

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

27. INSURANCE

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

B. General Liability Insurance, Including Automobile. The Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,000,000.00 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the County by the Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Agreement is an insured contract. The County of Santa Fe shall be a named additional insured on the policy.

C. Workers' Compensation Insurance. The Contractor shall comply with the provisions of the Workers' Compensation Act.

D. Increased Limits. If, during the life of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended), the Contractor shall increase the maximum limits of any insurance required herein.

28. PERMITS, FEES, AND LICENSES

Contractor shall procure all permits and licenses, pay all charges, fees, and royalties, and give all notices necessary and incidental to the due and lawful performance of its obligations hereunder.

29. NEW MEXICO TORT CLAIMS ACT

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

30. CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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

31. SURVIVAL

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

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

SANTA FE COUNTY:

for 
Katherine Miller
Santa Fe County Manager

12/23/13
Date

Approved as to Form


Stephen C. Ross
Santa Fe County Attorney

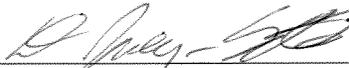
12/17/13
Date

Finance Department


Teresa C. Martinez
Finance Director

12/18/13
Date

CONTRACTOR:



Daniel A. Ivey-Soto
Executive Director
NM Clerks, LLC

12/20/13
Date

FEDERAL IDENTIFICATION NUMBER: 26-3096151