

**PROFESSIONAL SERVICES AGREEMENT  
WITH RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY,  
FOR AN ASSESSMENT OF READINESS OF  
SANTA FE COUNTY  
FOR IMPLEMENTATION OF THE  
SUSTAINABLE LAND DEVELOPMENT CODE**

**THIS AGREEMENT** is made and entered into on this 30<sup>th</sup> day of April, 2013, by and between Santa Fe County (hereinafter referred to as the "County"), a political subdivision of the state of New Mexico, and Rutgers, The State University Of New Jersey (hereinafter referred to as the "Contractor"), a specifically chartered New Jersey Educational Institution having its principal address located at ASB III, 2<sup>ND</sup> Floor, 3 Rutgers Plaza, New Brunswick, New Jersey 08901-8559, (hereinafter referred to as the "Contractor").

**WHEREAS**, the Santa Fe County Growth Management Department, Planning Division is nearing completion of its comprehensive Sustainable Land Development Code (SLDC);

**WHEREAS**, the SLDC requires development and implementation of public facilities regulations, adoption of levels of service, financing public facilities, a capital improvement plan (CIP), and initiating development agreements and developing impact fees;

**WHEREAS**, in relation to the County's Sustainable Growth Management Plan in 2009 the Contractor provided a financial analysis, capital improvement plan and sprawl analysis pursuant to Research Agreement No. 28-0126-LG/JS between Contractor and the County;

**WHEREAS**, Contractor's services are needed by the County and Contractor will continue, use, and build upon the research and analyses previously performed and completed pursuant to Research Agreement No. 28-0126-LG/JS;

**WHEREAS**, as provided at NMSA 1978, § 13-1-126 of the NM Procurement Code and Paragraph 42 of the Santa Fe County Purchasing Regulations and Policy Manual, the Purchasing Manager has made a written determination that Contractor's services are the sole source for the analysis and research services required by the County;

**WHEREAS**, the Contractor is a qualified entity that can provide analyses, research, recommendations pertaining to the County's adoption and implementation of the SLDC;

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

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

**1. SCOPE OF WORK**

The Contractor shall:

- A. Review and analyze the SLDC with an emphasis on Chapter 12 (Adequate Public Facilities and Financing) and other sections of the SLDC which relate to adequate public facilities, levels of service, financing and a capital improvements plan. Deliverable: Contractor shall provide a written analysis/report on sections of the SLDC which related to adequate public facilities, levels of services and the like.
- B. Interview County department directors, the County Manager, the County Attorney and other appropriate County staff to determine the readiness level for implementation of SLDC growth management. Deliverable: Contractor shall provide a written summary of implementation readiness levels for key County departments or divisions.
- C. Facilitate meetings with appropriate County Department directors and staff to discuss potential and capacity for implementation of the SLDC growth management elements, including adequate public facilities, levels of service, financing and capital improvements plan. Deliverable: Contractor shall provide a written summary describing the meetings held with County departments and staff to discuss necessary courses of action by County departments or divisions and staff.
- D. Complete and provide a final written report that identifies steps that must be undertaken in order to implement the SLDC growth management elements including determining lead develop role and responsibilities for executing tasks. Deliverable: Provide a final written report identifying and describing what Santa Fe County needs to do to implement the SLDC growth management elements.

**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 shall not exceed Twenty-Five Thousand Dollars and No Cents (\$25,000.00) exclusive of NM gross receipts tax. Any New Mexico gross receipt tax levied on the amounts payable under this Agreement shall be paid by the County to the Contractor.
  - 2) The compensation as stated herein is based on the Contractor's fees as indicated in the attached Schedule of Deliverables - Scope of Work, attached hereto as Exhibit A.

- 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 in writing.
- 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). The County has the option to extend this Agreement at the same price, terms and conditions for a period of one (1) additional year upon the approval of Santa Fe County. The County may exercise this option by submitting a written notice to Contractor that the Agreement will be extended an additional year. The notice must be submitted to Contractor at least sixty (60) days prior to expiration of the initial Agreement.

**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.

**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

**21. 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.

**22. 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: Katherine Miller  
Santa Fe County Manager  
102 Grant Avenue  
Santa Fe, New Mexico 87501

and,  
Robert Griego, Planning Manager  
Santa Fe Growth Management Department  
Planning Division  
102 Grant Avenue  
Santa Fe, New Mexico 87501

To the Contractor: Attn: D. Dee Evans  
Assistant Director of Grants and Contracts  
Office of Research & Sponsored Programs  
Rutgers, The State University of New Jersey  
ASB III, 2nd Floor, 3 Rutgers Plaza  
New Brunswick, New Jersey 08901

**23. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES**

The Contractor hereby represents and warrants that 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.

**24. FACSIMILE SIGNATURES**

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

**25. LIMITATION OF LIABILITY**

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

**26. 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.
- B. Automobile Insurance. The Contractor shall procure and maintain during the life of this Agreement an automobile insurance policy with liability limits in amounts not less than \$450,000 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policy 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.
- C. Workers' Compensation Insurance. The Contractor shall comply with the provisions of the Workers' Compensation Act.
- D. Commercial General Liability. Contractor shall provide commercial general liability insurance covering claims for injuries to members of the public or damage to property of other arising out of any negligent act or omission of any of its employees or agents with \$1,000,000 combined single limits.

**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**

A. 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.

B. The parties agree that the Contractor is an instrumentality of the State of New Jersey and is subject to the New Jersey Tort Claims Act, NSJA 59:101 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:**

  
Katherine Miller  
Santa Fe County Manager

4.30.13  
Date

**Approved as to Form:**

  
Stephen C. Ross  
Santa Fe County Attorney

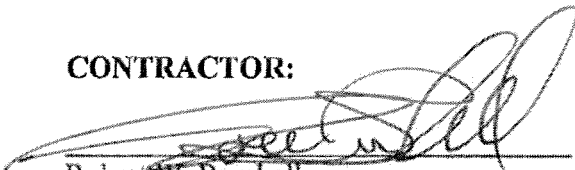
4-23-13  
Date

**Finance Department Approval:**

  
Teresa Martinez  
Santa Fe County Finance Director

4/23/13  
Date

**CONTRACTOR:**

  
Robert W. Burchell  
Principal Investigator

4-25-13  
Date

# **EXHIBIT A**

**Santa Fe County Sustainable Land Development Code:  
Schedule of Deliverables - Scope of Work for Readiness for Implementation**

SCOPE of WORK:

Task 1: Review Chapter 12 of the SLDC and sections of the code which relate to adequate public facilities, levels of service, financing, and capital improvements plan.

<u>Review</u>	<u>Rate/Hr.</u>	<u>Hours</u>	<u>Total</u>	<u>Fringe Rate</u>	<u>Fringe</u>	<u>Total</u>	<u>Inc. Overhead</u>
Burchell	\$100	6	\$600	0.441	\$264.60	\$864.60	@ 20%
Dolphin	\$55	10	\$550	0.073	\$40.15	\$590.15	
Pollack	\$20	8	\$160	0.073	\$11.68	\$171.68	
<b>Report</b>							
Burchell	\$100	12.5	\$1,250	0.441	\$551.25	\$1,801.25	
Dolphin	\$55	20	\$1,100	0.073	\$80.30	\$1,180.30	
Pollack	\$20	14	\$280	0.073	\$20.44	\$300.44	
<b>Total</b>						<b>\$4,908.42</b>	<b>\$5,890.10</b>

Task 1 Deliverable: Summary analysis / report on sections of the code which relate to adequate public facilities, levels of service, and the like. (Due Date: 7 May 2013)

Task 2(1): Interview County department directors, County Managers, County Attorneys, and appropriate staff to estimate the readiness level for implementation of SLDC growth management element. (Due Date: 7 May 2013)

<u>Interview</u>	<u>Rate/Hr.</u>	<u>Hours</u>	<u>Total</u>	<u>Fringe Rate</u>	<u>Fringe</u>	<u>Total</u>	<u>Inc. Overhead</u>
Burchell	\$100	17	\$1,700	0.441	\$749.70	\$2,449.70	@ 20%
Dolphin	\$55	10	\$550	0.073	\$40.15	\$590.15	
Pollack	\$20	10	\$200	0.073	\$14.60	\$214.60	
Travel					Airfare	\$300.00	
					Hotel	\$600.00	
					Meals	\$100.00	
<b>Total</b>						<b>\$4,254.45</b>	<b>\$5,105.34</b>

Task 2(1) Deliverable: Summary of implementation readiness levels for key departments. (Due Date: 10 May 2013)

Task 2(2): Facilitate meeting with all appropriate directors and staff to discuss potential and capacity for implementation of the SLDC growth management elements including adequate public facilities, levels of service, financing, and capital improvements plan. (Due Date: 15 May 2013)

<u>Interview</u>	<u>Rate/Hr.</u>	<u>Hours</u>	<u>Total</u>	<u>Fringe Rate</u>	<u>Fringe</u>	<u>Total</u>	<u>Inc. Overhead</u>
Burchell	\$100	15	\$1,500	0.441	\$661.50	\$2,161.50	@ 20%
Dolphin	\$55	10	\$550	0.073	\$40.15	\$590.15	
Pollack	\$20	14	\$280	0.073	\$20.44	\$300.44	
Travel					Airfare	\$300.00	
					Hotel	\$600.00	
					Meals	\$100.00	
<b>Total</b>						<b>\$4,052.09</b>	<b>\$4,862.51</b>

Task 2(2) Deliverable: Provide a facilitated meeting leading to agreement on necessary courses of action by department heads. (Due Date: 23 May 2013)

Task 2(3): Provide a final report that identifies steps that must be undertaken in order to implement the SLDC growth management elements including determining lead development role and responsibilities for executing tasks.

<u>Interview</u>	<u>Rate/Hr.</u>	<u>Hours</u>	<u>Total</u>	<u>Fringe Rate</u>	<u>Fringe</u>	<u>Total</u>	<u>Inc. Overhead</u>
Burchell	\$100	32	\$3,200	0.441	\$1,411.20	\$4,611.20	@ 20%
Dolphin	\$55	10	\$550	0.073	\$40.15	\$590.15	
Pollack	\$20	14	\$280	0.073	\$20.44	\$300.44	
Travel					Airfare	\$300.00	
					Hotel	\$600.00	
					Meals	\$100.00	
<b>Total</b>						<b>\$6,501.79</b>	<b>\$7,802.15</b>
<b>Grand Total</b>							<b>\$23,660.10</b>

Task 2(3) Deliverable: Provide a final report with steps to implement the SLDC elements. (Due Date: 31 May 2013)