

**SANTA FE COUNTY
PROFESSIONAL SERVICES AGREEMENT
WITH STUDIOS SOUTHWEST ARCHITECTS, INC.
FOR CONSULTING SERVICES FOR THE REDEVELOPMENT PLAN
FOR THE OLD JUDICIAL COMPLEX**

THIS AGREEMENT is made and entered into this 16th day of May, 2013 by and between Santa Fe County, a political subdivision of the State of New Mexico hereinafter referred to as the "County" and Studio Southwest Architects, Inc., a New Mexico professional corporation, with a principal address of, 2101 Mountain Road, Albuquerque, New Mexico, 78104, hereinafter referred to as the "Contractor."

WHEREAS, the County requires consulting services of a qualified and professional company to provide consulting services necessary to make recommendations to the County for redevelopment of an existing property that currently houses the Stephen Herrera First Judicial District Court Complex located at 100 Catron Street, Santa Fe, New Mexico 87501, and identified herein as "the site";

WHEREAS, the site is approximately 2.35 acre parcel in downtown Santa Fe, NM and includes the existing court building and parking area. The building includes approximately 60,000 square feet of building area on two levels plus a basement. The site fronts on three streets and includes approximately 100,000 square feet of exterior parking, landscaping and sidewalk/driveway area;

WHEREAS, in accordance with NMSA 1978, §13-1-112 and §13-1-117, the County issued a Request for Proposal (RFP) #2013-0198-PW/BT to which Contractor successfully responded;

WHEREAS, the Contractor is amenable to and capable of providing the consulting services to Santa Fe County in a professional and timely manner;

WHEREAS, the County requires these services and the Contractor is willing to provide the 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:

I. SCOPE OF SERVICES

A. The project will study the property's existing conditions and options for redevelopment including schematic level ideas for structured parking, improved circulation, added area, new mechanical, electrical and data systems as well as preliminary cost projections associated with those improvements.

B. The Contractor will conduct a professional study of current value, local real estate market

conditions, redevelopment options for highest and best use, finance options, as well as projected short and long term return on investment.

C. Deliverables

Project Startup Report

1. Contractor will engage with the County Project Team for startup and organize of the project. Contractor will create and maintain a listing of all Project Manager/Planning Team members and include in Project Startup Report.
2. Contractor will meet with Project Manager/Planning Team members to define project goals. Contractor will prioritize project goals and include in Project Startup Report.
3. Contractor will review the Archaeological Survey and provide summary and recommendations in Project Startup Report.
4. Contractor will procure the services of a Geotechnical Consultant. Contractor will provide the County with the detailed scope of work for the geotechnical consulting services. Contractor will integrate final geotechnical report in project cost analysis.
5. Contractor will provide update on status of Environmental Survey of the existing building and materials and include summary and recommendations in Project Startup Report.

Development Options Report

1. Contractor will provide preliminary space use and design options including schematic level plans, sections and elevations with square footage diagrams of area calculations.
2. Contractor will determine existing site building and grounds suitability and capacity for redevelopment and expansion, to include information regarding sustainable development and LEED (Leadership in Energy and Environmental Design - Green Build) potential.
3. Contractor will provide day lighting analysis in the Report.
4. Contractor will provide preliminary projected development and construction costs in the Report.
5. Contractor will provide a detailed analysis of finance options including public and private funding opportunities and include the results in the Report.
6. Contractor will schedule and conduct work sessions with the Project Manager/Planning Team to develop and recommend conceptual options for future use of the site. The Contractor will prepare Project Report to include the recommended conceptual options.
7. Contractor will provide an analysis of the County's best use options including: full development; limited development; and, rental or sale of property. Contractor will provide a final Project Report and presentation to the Santa Fe Count Board of County Commissioners on recommendations for the best use of the property

8. Contractor will include statement on economic, social and cultural impact on downtown Santa Fe for each option

D. Schedule of Value by Task

The Contractor shall perform all tasks as required in the Schedule of Value by Task attached hereto as Exhibit "A".

E. Summary of Tasks

The Contractor shall perform all tasks as outlined in the Summary of Tasks attached hereto as Exhibit "B".

2. **COMPENSATION AND INVOICING**

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 Ninety Six Thousand Nine Hundred and Thirty Dollars (\$96,930.00), exclusive of GRT. Any New Mexico gross receipts tax levied on the amounts payable under this Agreement shall be paid by the County to the Contractor.
- 2) The Contractor will prepare invoices prepare invoices in accordance with its standard invoicing practices and the terms as described in 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. Contractor is responsible for notifying the County 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 prior to services being provided.

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 year later, unless earlier terminated pursuant to Sections 5 (Termination) or 6 (Appropriations) of this Agreement. The County has the option to renew this Agreement for one (1) additional year. 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. In no event shall the term of this Agreement exceed two (2) years from the effective date of the Agreement without this Agreement being amended in writing.

4. ADDITIONAL SERVICES

A. The parties agree that all services set forth in Section 1 (Scope of Services) of this Agreement shall be completed in full, to the satisfaction of the County, in accordance with industry standards and County Ordinance 1991-6, for the amounts set forth in Section 2 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 Services to be performed hereunder. Such changes, including any increase or decrease in 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 sixty (60) days from the Contractor's receipt of the notice. The County shall pay the Contractor for acceptable services, 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 services performed on or after the effective date of termination.
- C. Termination for Convenience by Contractor. The Contractor may terminate this Agreement at any time by giving the County written notice of termination. The notice shall specify the effective date of termination which shall not be less than sixty (60) days from the County's receipt of the notice and shall be of sufficient advance notice so as to give the County sufficient and reasonable time to secure the services of another contractor, or otherwise make arrangement for continued animal boarding services for animals impounded by the County. In no event shall Contractor's stated effective date of termination for convenience be less than sixty (60) days from the date of the County's receipt of Contractor's written notice.
- D. In the event the County or Contractor terminates pursuant to this Section 5 with an effective date of termination that is a date between the first and last of a month, the compensation to be paid to the Contractor shall be the monthly compensation prorated daily to the day before the stated 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 the County vehicles, or participate in any other benefits afforded to employees of the County. Except as may be expressly authorized elsewhere in this Agreement, the Contractor has no authority to bind, represent, or otherwise act on behalf of the County and agrees not to purport to do so.

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 nor have any contractual relationships with the County and (ii) shall be fully qualified and licensed or otherwise authorized or permitted under federal, state, and local law to perform such work.

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 prior written approval of the County.

13. 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.

14. 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 attorneys' fees) resulting from or directly or indirectly arising out of the Contractor's performance or non-performance of its obligations under this Agreement, including but not limited to the Contractor's breach of any representation or warranty made herein.
- B. The Contractor agrees that the County shall have the right to control and participate in the defense of any such demand, suit, or cause of action concerning matters that relate to the County and that such suit will not be settled without the County's consent, such consent not to be unreasonably withheld. If a conflict exists between the interests of the County and the Contractor in such demand, suit, or cause of action, counsel shall be retained 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.

15. 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.

16. PERMITS, FEES, AND LICENSES

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

17. EQUAL OPPORTUNITY COMPLIANCE

- A. The Contractor 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, 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.

18. 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.

19. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW

- A. In performing its obligation hereunder, the Contractor shall comply with all applicable laws, ordinances, and obligations.
- B. This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules. The Contractor and the County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be the federal and state district courts of New Mexico, located in Santa Fe County.

20. NOTICE OF PENALTIES

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

21. NO THIRD-PARTY BENEFICIARIES

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

22. FACSIMILE SIGNATURES

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

23. NEW MEXICO TORT CLAIMS ACT

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

24. 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 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. The Contractor will be required to carry professional liability (errors and omissions) insurance in the amount of \$1,000,000.00.
- 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), the Contractor shall increase the maximum limits of any insurance required herein

25. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

The Contractor hereby represents and warrants that:

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

26. 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.

27. NOTICES

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

Santa Fe County: Santa Fe County
Santa Fe County Attorney
102 Grant Avenue
Santa Fe, NM 87504-0276

Contractor: Studio Southwest Architects
2101 Mountain Road, Albuquerque
New Mexico, 87104

28. SURVIVAL

The provisions of Sections 6, 8, 10, 14, 18, 21, 23, 26 and 29 shall survive termination of this Contract.

29. 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

Services) of this Agreement unless such changes are set forth in a duly executed written amendment to this Agreement.

30. 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.

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

SANTA FE COUNTY:

Katherine Miller
Katherine Miller
County Manager

5.16.13
Date

APPROVED AS TO FORM

Stephen C. Ross
Stephen C. Ross
Santa Fe County Attorney

4/30/13
Date

FINANCE DEPARTMENT APPROVAL

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

Date

CONTRACTOR:

J. David Dekker

5/14/2013
Date

By: J. David Dekker

Title: Studio Southwest Architects, Inc. Principal

FEDERAL IDENTIFICATION NUMBER

85-0338434

EXHIBIT A

EXHIBIT A

**Redevelopment Plan for Old Judicial Complex - Santa Fe County
Schedule of Values by Task**

	Labor ARC	Labor SSWA	Labor Sites/SW	Labor REC	Labor Engineering	Expenses	Labor + Expenses
Phase 1: Contract Execution and Kickoff							
1.1 Project Organization	\$960.00	\$1,845.00	\$465.00	\$0.00	\$0.00	\$3,750.00	\$7,020.00
	\$960.00	\$1,845.00	\$465.00	\$0.00	\$0.00	\$3,750.00	\$7,020.00
Phase 2: Information / Data Gathering							
2.1 Review / Refine / Update County Needs Assessment	\$9,680.00	\$11,135.00	\$2,025.00	\$3,750.00	\$6,280.00	\$0.00	\$32,870.00
2.2 Identify Long-Term Space Needs / Functional Relationships	\$2,460.00	\$1,200.00	\$0.00	\$0.00	\$0.00	\$0.00	\$3,660.00
2.3 Evaluate Existing Conditions	\$1,210.00	\$535.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1,745.00
2.4 Market Analysis - Data Gathering	\$820.00	\$6,700.00	\$1,195.00	\$0.00	\$6,280.00	\$0.00	\$14,995.00
2.5 Prepare Reports / Workshops	\$0.00	\$360.00	\$0.00	\$3,500.00	\$0.00	\$0.00	\$3,860.00
	\$5,190.00	\$2,340.00	\$830.00	\$250.00	\$0.00	\$0.00	\$8,610.00
Phase 3: Development Options							
3.1 Worksessions with County	\$0.00	\$24,950.00	\$6,880.00	\$11,100.00	\$12,360.00	\$1,750.00	\$57,040.00
3.2 Develop Conceptual Options	\$0.00	\$2,130.00	\$620.00	\$0.00	\$0.00	\$0.00	\$2,750.00
3.3 Analyze Conceptual Options	\$0.00	\$6,310.00	\$0.00	\$0.00	\$3,760.00	\$0.00	\$10,070.00
3.4 Market Analysis for Options	\$0.00	\$2,620.00	\$1,300.00	\$0.00	\$8,600.00	\$0.00	\$12,520.00
3.5 Economic / Community Amenity Analysis	\$0.00	\$2,270.00	\$1,405.00	\$10,500.00	\$0.00	\$0.00	\$14,175.00
3.6 Develop Final Report / Workshops	\$0.00	\$3,660.00	\$2,565.00	\$600.00	\$0.00	\$0.00	\$6,825.00
3.7 Presentation to County Commission	\$0.00	\$6,780.00	\$990.00	\$0.00	\$0.00	\$0.00	\$7,770.00
	\$0.00	\$1,180.00	\$0.00	\$0.00	\$0.00	\$1,750.00	\$2,930.00
Total	\$10,640.00	\$37,930.00	\$9,370.00	\$14,850.00	\$18,640.00	\$5,500.00	\$96,930.00

EXHIBIT B

EXHIBIT B

Study Existing Condition

- Geotechnical Study
- Archaeological Survey
- Materials Testing
- Existing Structure
- Available utilities, locations and capacity for use on the Report.
- Report on Ramifications on Cost versus Timing
-

Study and design options

- Space Use
- Opportunities for expansion
- Day Lighting Conditions for options
- Vertical and Horizontal Circulation
- Mechanical Systems
- Electrical, Data and Communication Systems
- Parking and Access
- Code Analysis for each option
- Cost estimate for each option

Report

- Provide an Executive Summary of draft options
- Provide a summary study of existing conditions
- Provide a summary including Plans and Drawings of Design Options
- Provide a summary of use options
- Provide recommendation for highest and best use and associated development costs