

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
SANTA FE COUNTY AND
THE REGENTS OF THE UNIVERSITY OF NEW MEXICO
FOR A FORECAST STUDY AND REPORT**

This Professional Services Agreement (this "Agreement") is made and entered into on this 27th day of January, 2014, between the **Regents of the University of New Mexico**, a constitutionally created entity of the State of New Mexico and an Hispanic serving institution of higher education ("UNM") and **Santa Fe County ("County")** a political subdivision of the State of New Mexico located in Santa Fe, New Mexico, and collectively referred to as the "**Parties**".

RECITALS

WHEREAS, Santa Fe County Growth Management Department, Planning Division, needs to establish land use assumptions for service areas in Santa Fe County in accordance with the Development Fees Act, § 5-8-1 NMSA 1978;

WHEREAS, land use assumptions are required for the adoption of the Capital Improvement Plan (CIP) according to the Development Fees Act;

WHEREAS, Santa Fe County needs to establish the population forecast in five (5) year intervals to the year 2030 for the County and the following study area geographies: Growth Management Areas; Land Use Regulatory Jurisdiction Areas; Sustainable Development Areas; and Utility/Water Service Areas;

WHEREAS, UNM is the qualified entity that can provide a study and report regarding population projections for the County and the study area geographies;

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

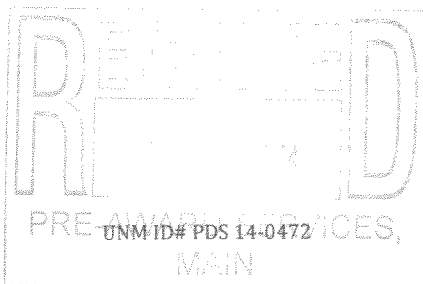
NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS

1. SCOPE OF WORK

- A. The Principal Investigator who will direct the services to be provided by UNM is Adelamar "Dely" Alcantara, Ph.D., Director, Research Associate Professor, Geospatial & Population Studies, School of Architecture & Planning. If the Principal Investigator becomes unable to perform this Agreement for any reason, UNM may appoint a successor Principal Investigator with the County's written approval. Either Party may terminate this Agreement if the Parties cannot agree on an acceptable successor within a reasonable time, pursuant to Section 3.

B. UNM shall:

- 1) Normalize study area geographies.
 - a. Assemble historical Census and intercensal County, tract, and study area geographies from 1990 to 2010.
 - b. Aggregate, tabulate and analyze historical population of the study areas.
 - c. Write summary of methodology and trend analysis results.
- 2) Estimate historical ratios for study area geographies and conduct a time series analysis of the population growth trend for each of the study area geographies.
- 3) Construct the projection models using a time series ratio technique which will be augmented with the use of a Bayesian smoothing technique to fill in data gaps for areas for which no historical data available.
- 4) With input from Santa Fe County planning personnel, the projected population numbers will be evaluated for “reasonableness” based on County’s land use and growth assumptions, UNM will adjust population projections accordingly.
- 5) Tabulate, graph, and map results to show population growth and change over the projection period, 2015 to 2030.
- 6) Write report on results and methodology used in the study. Report will provide detailed tables on the yearly total population projections for Santa Fe County to 2030 for the following study service areas:
 - a. County Sustainable Development Areas (“SDAs”), SDA 1, SDA 2 and SDA 3;
 - b. County Growth Management Areas (4 Growth Management Areas);
 - c. County Land Use regulatory jurisdiction; and,
 - d. County Utility/Water Service Area-SDA 1 minus the southern area of the County.



A. Deliverables:

- 1) Develop and submit tables of historical total population estimates and brief report on results of historical trend analysis.
- 2) Develop and submit tables, graphs and maps of projected total population for the County and all the study service areas.
- 3) Develop and submit draft report including all tables, maps, and summary of methodologies in electronic format.
- 4) Submit final report in electronic format.

2. COMPENSATION AND INVOICING

A. In consideration of its obligations under this Agreement, the County shall pay UNM as follows:

UNM will be compensated by the County in an amount not to exceed **Sixty Thousand Dollars (\$60,000.00)**, exclusive of New Mexico gross receipts tax, if applicable. Compensation shall be paid as follows:

- | | |
|--|------------------|
| a. Upon UNM's completion of tables of historical total population estimates and brief report on results of historical trend analysis: | \$20,000 |
| b. Upon UNM's completion of tables, graphs and maps of projected total population for the County and all the study areas as enumerated in Section 1.B 6 above: | \$20,000 |
| c. Upon UNM's completion of a draft report including all tables, maps and summary of methodologies in electronic format: | \$15,000 |
| d. Upon UNM's completion of the final report in electronic format: | <u>\$ 5,000</u> |
| TOTAL PROJECT COST | \$60,000* |

*The Total Project Cost is inclusive of 20% indirect cost to be paid upon the completion of each deliverable.

B. Payment shall be made upon receipt of a detailed, certified billing invoice and acceptance of the deliverable by the County. Thirty (30) days shall be allowed for

payment after receipt of the invoice and acceptance of the services and deliverables.

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

D. Any New Mexico gross receipts tax levied on the amounts payable under this Agreement, is any, shall be paid by the County to UNM.

E. Upon receipt of invoice, payment shall be made payable to and sent to:

UNM Contract and Grant Accounting Office
1700 Lomas Blvd., N.E., Suite 2100
MSC01 1245, 1 University of New Mexico
Albuquerque, NM 87131-0001
Phone: (505) 277-4721

3. TERM AND TERMINATION

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 this Section or Section 4 of this Agreement.

The period of the agreement may be extended by the mutual written agreement of both Parties. This Agreement may be terminated by either of the Parties hereto upon written notice delivered to the County party not less than thirty (30) days prior to intended date of termination, provided, however, that UNM may terminate this Agreement upon five (5) days notice if any payment due from County is not received before or upon the date due. In the event County terminates this Agreement without cause or for any reason, UNM shall be permitted to complete any deliverables then in process and County shall pay UNM for all costs incurred through the date of termination, including all non-cancelable obligations, even though the obligations may extend beyond the termination date. Termination will not affect the Parties' rights and obligations accrued prior to termination.

4. 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 Santa Fe 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 UNM. Such termination shall be

without penalty to the County, and the County shall have no duty to reimburse UNM 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 UNM in any way or forum, including a lawsuit.

5. LIABILITY

A. As between the Parties, each Party will be responsible for claims of damages arising from personal injury damage to persons or tangible property to the extent they result from negligence of its employees, subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1 et seq. as amended.

B. In the event of breach of this Agreement by UNM, the County's sole and exclusive remedy will be the right to terminate this Agreement in whole or in part, and to recover amounts paid by the County under this Agreement that are equitably related to the breach.

6. PROPRIETARY AND CONFIDENTIAL INFORMATION

If the need to exchange proprietary or confidential information should arise during UNM's performance under this Agreement, the Parties shall take necessary steps to protect disclosure of such information such as executing a Non-Disclosure Agreement.

7. INTELLECTUAL PROPERTY AND RIGHTS IN MATERIALS

A. UNM is the owner or licensee of any processes, know-how, technologies or templates used in producing and completing the deliverables and providing the services hereunder, or any derivatives thereto, during the term of this Agreement. The County shall not have any claims to or rights in such materials, processes, information or technologies owned by or licensed to UNM.

B. The County will retain ownership of all Confidential Information provided to UNM under this Agreement, and will retain ownership of all reports and deliverables generated under this Agreement in either hard copy or electronic form, provided, however that UNM will retain the right to use, publish and disseminate such reports in furtherance of UNM's educational mission. Any such use by UNM will include acknowledgment of the source of data and/or ownership of the report.

C. Nothing in this Agreement grants to either Party any rights or interest in the other Party's Background Intellectual Property. "Background Intellectual Property" means: (a) all works of authorship created outside the scope of this Agreement; and, (b) potentially patentable discoveries, including pending patent applications and issued patents, conceived or first reduced to practice outside the scope of this Agreement.

D. Neither Party will use the names, trademarks or logos of the other Party in any form of advertising or publicity without prior express written authorization from the other Party. UNM may publish in its institutional publications the aggregate amount of the funding to be received under this Agreement listing only County's name and the nature of the activity funded.

8. CONFIDENTIAL INFORMATION

"Confidential Information" means any non-public materials or information of the County which are provided to UNM for performance of the services and deliverables; and, any non-public information of County which is disclosed to UNM in writing and clearly marked "Confidential" or "Proprietary", or if disclosed orally and identified as confidential at the time, is thereafter reduced to writing by County, clearly marked "Confidential" or "Proprietary" and transmitted to UNM within thirty (30) days after oral disclosure. The following shall not be considered Confidential Information: any material or information which: (a) was in UNM's possession on a non-confidential basis prior to receipt from County; (b) is in the public domain or is general or public knowledge prior to disclosure, or after disclosure, enters the public domain or becomes general or public knowledge through no fault of UNM; (c) is properly obtained by UNM from a third party not under a confidentiality obligation to County; (d) is explicitly approved for release by written authorization of County; (e) is or has been developed by UNM independent of UNM's access to County's Confidential Information; or (f) is required by law or court order to be disclosed;

9. NON-DISCLOSURE AND NON-USE

For a period of three (3) years from the date UNM is given access to Confidential Information, UNM will not disclose or use Confidential Information for any purpose except as is expressly authorized by the Agreement. UNM may disclose Confidential Information to its own employees on a need-to-know basis, provided, however, that such employees are advised of the confidentiality and non-use obligations. In no event will UNM disclose Confidential Information to third parties unless it obtains the prior written consent of County.

10. RESPONSE TO INFORMATION REQUESTS

If UNM receives a request under the New Mexico Inspection of Public Records Act, Section 14-2-1 et seq., NMSA 1978 as amended, or a request by other legal process to disclose Confidential Information, UNM will use reasonable efforts to provide prompt notice to County and will reasonably cooperate with County to protect any Confidential Information.

11. 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, the reports and deliverables prepared under or pursuant to this Agreement.
- B. The UNM acknowledges and agrees that the reports and deliverables 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.

12. MODIFICATIONS

No changes, amendments or alterations to this Agreement will be effective unless such changes, amendment or modification is in writing and signed by the Parties.

13. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which constitute one and the same instrument. Facsimile or PDF signatures shall constitute original signatures for all purposes.

14. NOTICES

Any notice given under this Agreement will be in writing and will be effective upon receipt evidenced by: (a) personal delivery; (b) confirmed facsimile transmission; (c) return receipt of postage prepaid registered or certified mail; or (d) delivery confirmation by commercial overnight carrier. All communications will be sent to the addresses set forth below or to such other address designated by a Party by written notice to the other Party in accordance with as follows:

To UNM:

University of New Mexico
Office of Sponsored Projects, Main
MSC01 1247
1 University of New Mexico
Albuquerque, New Mexico 87131-0001
Attn: Manager,
(505) 277-4186
cga@unm.edu

To County:

Santa Fe County
Growth Management Department
Attn: Robert Griego
Planning Division
102 Grant Avenue
Santa Fe, New Mexico 87501

15. WAIVER OF BREACH

No waiver of any right, remedy, power or privilege by any Party under this Agreement shall be effective unless made in writing. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or of any other provision of this Agreement.

16. ASSIGNMENT

This Agreement shall bind, and inure to the benefit of, the Parties and any successors. Neither Party may assign this Agreement without first obtaining the prior written consent of the other Party.

17. THIRD PARTIES

Nothing in this Agreement, express or implied, is intended to confer any rights, rights of enforcement, remedies, claims or interests upon a person not a party to this Agreement.

18. SUBCONTRACTING

UNM may find it necessary to subcontract a portion of the services described in this Agreement and will obtain the written approval of the County prior to the services being performed. No such subcontracting shall relieve UNM from its obligations and liabilities under this Agreement. UNM must not disclose confidential information of

County to a subcontractor unless and until such subcontractor has agreed in writing to protect the confidentiality in the manner required of UNM under this Agreement.

19. RELATIONSHIP OF THE PARTIES

UNM and its agents and employees are independent contractors and are not employees or agents of the County. NM and its employees will not be considered employees of County for any purpose, including, but not limited to, workers' compensation, insurance, bonding or any other benefits afforded to employees of County. Neither Party has any express or implied authority to assume or create any obligation or responsibility on behalf of or in the name of the other Party.

20. CONFIDENTIALITY

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

21. MERGER

This Agreement embodies the entire understanding of the Parties and will supersede all previous or contemporaneous communications, either verbal or written, between the Parties relating to the subject matter hereof. All terms and conditions of any instruments, including terms and conditions appearing on purchase orders issued by County to facilitate payment under this Agreement, are inapplicable to this Agreement, even though they may be issued after the signing of this Agreement.

22. SEVERABILITY

If a court of competent jurisdiction finds any provision of this Agreement legally invalid or unenforceable, such finding will not affect the validity or enforceability of any other provision of this Agreement and the Parties will continue to perform. If the Agreement cannot be performed in the absence of the provision, this Agreement will terminate upon thirty (30) days written notice by one Party to the other Party.

23. EXCLUSION FROM PARTICIPATION IN GOVERNMENT PROGRAMS

Each Party represents that neither it, nor any of its management or any other employees or independent contractors who will have any involvement in the Services performed under this Agreement, have been excluded from participation in any

government program, debarred from or under any other federal program, or convicted of any offense defined in 42 U.S.C. § 1320a-7, and that it, its employees, and independent contractors are not otherwise ineligible for participation in federal programs. Further, each Party represents that it is not aware of any such pending action(s) (including criminal actions) against it or its employees or independent contractors. Each Party shall notify the other Party immediately upon becoming aware of any pending or final action in any of these areas.

24. EXPORT CONTROL

Each Party acknowledges that it will comply with all applicable United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes and other commodities. The transfer of certain technical data and commodities may require a license from the cognizant agency of the United States government and/or written assurances by County that County will not re-export data or commodities to certain foreign countries or nationals thereof without prior approval of the cognizant government agency. County will not disclose export-controlled information to UNM unless and until a plan for the transfer, use, dissemination and control of the information has been approved by UNM's Export Control Office. In the event County inadvertently (i) discloses export-controlled information or (ii) breaches this Section, any deadlines contemplated by the Scope of Work will be adjusted based on the time it takes to address the disclosure.

25. PRECEDENCE

In the event any inconsistencies arise between the terms of this Agreement and the terms of any schedules, task orders, exhibits, attachments or other documents attached hereto, the terms contained in the body of this Agreement shall prevail. Any additional terms or conditions proposed in a subsequent schedule, exhibit, task order, attachment or other document will not become a part of this Agreement unless accepted in writing by the authorized representatives of the Parties. No purchase order, invoice, or any pre-printed terms on the County's purchase order for or invoice will modify the terms of this Agreement.

26. FORCE MAJEURE

Each Party will be excused from performance of the Agreement only to the extent that performance is prevented by conditions beyond the reasonable control of the affected Party. The Party claiming excuse for delayed performance will promptly notify the other Party and will resume its performance as soon as performance is possible.

27. NO THIRD-PARTY BENEFICIARIES

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

28. INSURANCE

UNM represents and certifies that it maintains professional and general liability coverage as provided by the New Mexico Risk Management Division in accordance with the New Mexico Tort Claims Act, Section 41-4-1 et seq., NMSA 1978, as amended.

29. GOVERNING LAW

This Agreement will be construed, interpreted, governed and enforced in accordance with the statutes, judicial decisions and other laws of the State of New Mexico.

30. 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, UNM 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 guidelines under related OMB Circulars.

- 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, UNM 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 guidelines under related OMB Circulars.

31. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW

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

32. HEADINGS

Headings and captions used in this Agreement are for convenience and ease of reference only and will not be used to construe, interpret, expand or limit the terms, conditions or provisions of this Agreement.

33. ENTIRE AGREEMENT

This Agreement represents the entire understanding between the Parties and supersedes any prior agreements or understanding with respect to the subject matter of this Agreement.

34. SURVIVAL

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

35. AUTHORIZED SIGNATORIES

Each Party represents that the individuals signing this Agreement on its behalf are authorized and intend to bind the organization in contract.

IN WITNESS WHEREOF, the Parties have executed this Agreement, intending to be legally bound as of the Effective Date, by their respective duly authorized representatives.

SANTA FE COUNTY

By: Katherine Miller
Printed Name: Katherine Miller
Title: County Manager

Dated: 1.27.14

APPROVED AS TO FORM:

By: Stephen C. Ross
Printed Name: Stephen C. Ross
Title: Santa Fe County Attorney

Dated: 12/18/13

FINANCE DEPARTMENT:

By: Teresa C. Martinez
Printed Name: Teresa C. Martinez
Title: Finance Director

Dated: 12/22/13

REGENTS OF THE UNIVERSITY OF NEW MEXICO, (UNM)

By: Julian Sandoval
Printed Name: Julian Sandoval, Director
Title: Financial Systems and
Restricted Accounting

Dated: 1/13/14

