

**SANTA FE COUNTY
PROFESSIONAL SERVICES AGREEMENT
WITH CLIFTON LARSON ALLEN LLP
TO PROVIDE INTERNAL AUDIT SERVICES**

THIS AGREEMENT is made and entered into on this 3rd day of November, 2016, by and between **SANTA FE COUNTY** (hereinafter referred to as the "County"), a New Mexico political subdivision, and **CLIFTON LARSON ALLEN LLP** (hereinafter referred to as the "Contractor"), a New Mexico Business with a principal address located at 500 Marquette NW, Suite 800, Albuquerque, NM 87102 (hereinafter referred to as the "Contractor").

WHEREAS, Santa Fe County Board of County Commissioners, Santa Fe County Audit Committee and Finance Department require the services of an Internal Auditor to provide services to include: operational; financial; and, internal control review of Santa Fe County systems, functions and programs; and

WHEREAS, pursuant to NMSA 1978, Sections 13-1-112 and 13-1-117, competitive sealed proposals were solicited via a formal request for proposal RFP No. 2017-0051-FI/IC, for the provision of professional services; and

WHEREAS, the Contractor is an independent certified public accountant licensed to do business in the State of New Mexico and as required by the RFP that can provide internal audit services as directed by Santa Fe County Board of County Commissioners and Santa Fe County Audit Committee; and

WHEREAS, the County requires the services of the Contractor, and the Contractor is willing to provide these internal audit 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. Contractor shall perform internal audit services including without limitation, operational, financial, and internal control review of systems, functions, and programs as directed by the County.

A. Objectives of Contractor's services:

- 1) To determine whether internal controls over financial and operating data are adequate and effective to provide reasonable assurance that the financial and operating information is accurate and reliable.
- 2) To determine whether internal controls over compliance with laws, regulations, contracts, grants, policies and procedures are adequate and effective to provide reasonable assurance that compliance actually occurs.
- 3) To determine whether internal controls over assets are adequate to provide reasonable assurance that assets exist and are safeguarded against loss or theft.

- 4) To determine whether controls over County operations provide reasonable assurance that County resources are used effectively and efficiently.
- 5) To determine whether controls over operations and programs are adequate and effective to provide reasonable assurance that the operations and programs are being carried out as planned and that the results of operations are consistent with goals and objectives.

B. Deliverables:

- 1) Perform operational reviews of key business processes to identify deficiencies and weaknesses and make appropriate recommendations for improvements.
- 2) Perform compliance reviews to determine if established policies and procedures are being adhered to for purposes of maintaining an effective internal control environment.
- 3) Provide recommendations based upon existing "best practice" in instances where policies, procedures and processes do not exist and/or could be improved upon.
- 4) Assist the Board of County Commissioners as directed, to identify risks and appropriate internal controls to address those risks.
- 5) Issue a quarterly report, as directed by the County which analyzes significant risk assessment findings, recommend changes to enhance controls and reduce identified risks, and specify timeframes for implementation of the recommendations.

2. COMPENSATION, INVOICING, AND SET-OFF

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

- 1) All costs and expenses shall be in accordance with the rates stated in Exhibit A. The total amount payable to the Contractor for the term of the Agreement, shall not exceed sixty thousand dollars (\$60,000) inclusive of gross receipts tax including compensation for travel at the current federal rate. Any New Mexico gross receipts tax levied on the amounts payable under this Agreement shall be paid by the County to the Contractor.
- 2) 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 Contractor will notify 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.

- 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 three (3) additional years. 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 term of this Agreement. The term of this Agreement shall not exceed four years in total.

4. ADDITIONAL SERVICES

- A. The parties agree that all tasks set forth in Section 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 the state district court 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 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 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: Clifton Larson Allen LLP
Matt Bone, Principal
500 Marquette NW, Suite 800
Albuquerque, NM 87102

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. This Agreement and Contractor's obligations hereunder do not conflict with Contractor's corporate agreement or any statement filed with the New Mexico Secretary of State on Contractor's behalf.
- C. Contractor is legally registered and licensed to operate as a business in New Mexico to do the work anticipated by this Agreement and shall maintain such registration and any applicable licensure 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. 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, Invoicing, and Set-Off) 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.

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

- 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.

29. PERMITS, FEES, AND LICENSES

Contractor shall procure all applicable 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.

30. 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.

31. 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.

32. SURVIVAL

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

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

SANTA FE COUNTY


Katherine Miller
Santa Fe County Manager

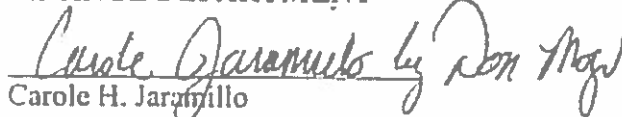
11.1.16
Date

APPROVED AS TO FORM


Gregory S. Shaffer
Santa Fe County Attorney


10/27/16
Date

FINANCE DEPARTMENT


Carole H. Jaramillo
Santa Fe County Finance Director

10-28-16
Date

CONTRACTOR:



(Signature)

11-3-16
Date

Principal

(Print Title)

DETAILED / ITEMIZED PRICING & RATE CARD

Time and Materials Pricing

We operate under the philosophy of open and direct communication regarding billing. Our professional fees for the services described throughout our proposal are based on the level of expertise of the individuals who will perform the services. The actual cost is dependent on the level of expertise required to complete the project, and the desired total work plan hours agreed to by the County.

The internal audit services will be provided on a time and materials basis. We will work with you to set the specific scope and level of effort for each project, and then assign appropriate team members to complete the agreed assignment. Input will be provided by a Subject Matter Specialist where appropriate, with the fieldwork to be performed by seniors and staff as assigned. Our engagement leaders will supervise all fieldwork and review all work performed by our team. They will also work with you in the issuance of the final reports. Actual travel expenses will be billed as incurred.

Based on the results of the risk assessment, CLA will work directly with the County's project liaison to develop an internal audit plan that meets your needs and expectations. The plan will identify the number of internal audits you would like to have performed and the timeframe of execution for each. Based on the internal audit plan, we will develop individual workorders that clearly define the scope, timing and budget for each internal audit project we perform. The blended rate per hour that CLA proposes is \$150/hour for internal audit services (including travel and other out of pocket expenses). Total hours and related fees for all internal audit services will be developed based on the audit plan and agreed to by the County.

CLA understands that the County has a budget of \$60,000 for FY17 for internal audit services and will work with the County by quarter to make sure the necessary hours for the projects will be consistent with the annual internal audit budget.

Rate Card

Based on our current understanding, we estimate a blended rate as defined below for the above mentioned internal audit services. This estimate can fluctuate based on project complexity and scope. As such, we have included the rates per level in the below table. We will work with you to ensure the specific internal audit work plan addresses risk areas and is performed within the established budget. CLA services for the County will be priced based on the following hourly rates:

| Title | Rate |
|-----------|-------|
| Principal | \$250 |
| Manager | \$180 |
| Senior | \$150 |
| Staff | \$125 |

We have found over the years that our clients don't like fee surprises. Neither do we. We commit to you, as we do all of our clients, that:

- We will be available for brief routine questions at no additional charge.
- Any additional charges not discussed in this proposal will be mutually agreed upon up front.
- We will always be candid and fair in our fee discussions, and we will avoid surprises.

Billing for Calls and Questions

It is not our policy or practice to bill our clients every time we receive a phone call. In the course of providing our services to you, we will regularly consult with you regarding accounting, financial reporting, and significant business issues. If a specific request is complex or requires significant time or resources, we will discuss the scope of the project and its fee with you first to make sure there are no surprises. While it is difficult to establish an exact policy for billing in these situations, we commit to discussing the request with you in advance of performing our services if we believe the time requirement to provide you the desired assistance is other than routine. We will discuss the scope of the project and our estimate to complete it prior to commencing work.

Our last word on fees — we are committed to serving you. Therefore, if fees are a deciding factor in your selection of an accounting firm, we would appreciate the opportunity to discuss with you the scope of our audit plan.