

**SANTA FE COUNTY  
PROFESSIONAL SERVICES AGREEMENT  
WITH MOSS ADAMS LLP  
FOR NM GROSS RECEIPTS TAX REFUND APPLICATION**

**THIS AGREEMENT** is made and entered into this 23 day of JULY, 2015 by and between Santa Fe County, hereinafter referred to as the "County," a political subdivision of the State of New Mexico (hereinafter referred to as "the County") and Moss Adams LLP, 6100 Uptown Blvd NE, Suite 400, Albuquerque, NM 87110 (hereinafter referred to as "Moss Adams").

**WHEREAS**, Santa Fe County requires the services of a certified public accountant to analyze certain transactions between the County and Las Campanas Water and Sewer Cooperative ("LCW&SC"), a bulk water customer of the County Water Utility; and

**WHEREAS**, for the prior three (3) years, the County has been billing LCW&SC for the cost of bulk water and the amount of the invoices included NM gross receipts tax; and

**WHEREAS**, in 2015 Las Campanas Water and Sewer Cooperative obtained a Non-Taxable Transaction Certificate ("NTTC") Type 2, from the New Mexico Taxation and Revenue Department. At this time LCW&SC has sought the assistance of Moss Adams to secure a refund of NM gross receipts tax paid to the County for bulk water; and

**WHEREAS**, through this Agreement and the attached Moss Adams Addendum (the "Addendum") the County has agreed to assist LCW&SC with its effort to obtain a refund of NM gross receipts tax that was paid to Santa Fe County and that Santa Fe County paid to NM Taxation and Revenue. The assistance the County is willing to provide to LCW&SC is to complete research into past transactions between the County and LCW&SC, file amended CRS-1 returns for 2012, 2013 and 2014, and work with Moss Adams to facilitate Moss Adams' filing of a tax refund application with NM Taxation and Revenue; and

**WHEREAS**, the County and LCW&WC have entered into a separate Service Agreement that provides for the assistance the County will provide to LCW&SC to obtain the tax refund and the County's agreement to remit any refund it may receive to LCW&SC; and

**WHEREAS**, a procurement for the services under this Agreement was not completed because this Agreement does not involve any compensation to Moss Adams or expenditure of funds by the County; and

**WHEREAS**, the County requires these services and Moss Adams is qualified and willing to provide these services and both parties wish to enter into this Agreement; and

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

## **1. SCOPE OF SERVICES**

A) Moss Adams will provide the following services:

- 1) Prepare a NM gross receipts tax refund application(s) on behalf of Santa Fe County.
- 2) Obtain the County's review and approval of any NM gross receipts refund application prepared pursuant to this Agreement prior to the submission of such claims to the NM Taxation and Revenue Department.
- 3) Pursuant to a written Addendum between the County, LCW&SC and Moss Adams, Moss Adams will serve as the point of contact for the submission of the NM gross receipts tax application, including facilitating all communications and conferences that may be necessary between the Moss Adams and the NM Taxation and Revenue Department.
- 4) Respond to requests from NM Taxation and Revenue for additional information and documentation, which may require additional research and analysis and/or gathering additional documentation to support the tax refund application.
- 5) Provide regular status reports with information detailing the status of Moss Adams' submission of a tax refund application on behalf of the County.
- 6) All work and services shall be performed in accordance with New Mexico State tax laws and all applicable professional standards.

B) The County will provide the following to Moss Adams:

- 1) Complete research into past transactions between the County and LCW&SC going back to 2012, 2013, 2014 and January 2015.
- 2) Provide the information revealed to Moss Adams to facilitate Moss Adams' filing of a NM gross receipts tax refund application to NM Taxation and Revenue.
- 3) Inform Moss Adams of any CRS-1 amended returns filed by the County.
- 4) Inform Moss Adams of any refund of NM gross receipts received from NM Taxation and Revenue pursuant to the tax refund application submitted by Moss Adams on behalf of the County.

## **2. 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 Sections 5 (Termination) or 6 (Appropriations) of this Agreement. The term of this Agreement may be extended by mutual agreement of the parties not to exceed a total term of two (2) years.

#### 4. 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 Moss Adams written notice of termination. The notice shall specify the effective date of termination, which shall not be less than fifteen (15) days from Moss Adams' receipt of the notice. The County shall not be liable for any compensation for work or services performed before or after the effective date of termination.

C. Termination of Addendum. This Agreement shall automatically terminate in the event the LCW&SC terminates its engagement with Moss Adams and/or the Addendum is terminated.

#### 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 Moss Adams. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse Moss Adams 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 Moss Adams in any way or forum, including a lawsuit.

#### 7. INDEPENDENT CONTRACTOR

Moss Adams and its agents and employees are independent contractors and are not employees or agents of the County. Accordingly, Moss Adams 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, Moss Adams has no authority to bind, represent, or otherwise act on behalf of the County and agrees not to purport to do so.

**8. ASSIGNMENT**

Moss Adams 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**

Moss Adams 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 Moss Adams or under its supervision.

B. Moss Adams 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 the County's receipt of any refund of NM gross receipt tax from the NM Taxation and Revenue Department, Moss Adams 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 Moss Adams in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by Moss Adams, except as permitted in this Agreement or the Addendum, without the prior written approval of the County.

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

A. Any working papers, accounting-related general skills, expertise, ideas, concepts, software or other intellectual property owned by Moss Adams shall be deemed confidential or a trade secret pursuant to the Uniform Trade Secrets Act, § 57-3A-1 et seq., NMSA 1978. If any such material is provided to the County, Moss Adams shall expressly identify the confidential

portions or the protected material or data that is Moss Adams' intellectual property and a trade secret at the time it is submitted to the County.

#### **14. CONFLICT OF INTEREST**

Moss Adams 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. Moss Adams 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.

#### **16. ENTIRE AGREEMENT; INTEGRATION**

This Agreement, including the Addendum, 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. Moss Adams 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, Moss Adams specifically agrees not to discriminate against any person with regard to employment with Moss Adams 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. Moss Adams 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, Moss Adams 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. Moss Adams 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. Moss Adams 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 execution of 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. Moss Adams 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 execution of 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. Moss Adams 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) for personal injury or damage to tangible personal property resulting from or directly or indirectly arising out of Moss Adams' performance or non-performance of its obligations under this Agreement including any claims or causes of action resulting from the Addendum agreement (Attachment A) between Moss Adams, County and LCW&SC, and including but not limited to the Moss Adams' breach of any representation or warranty made herein.

B. Moss Adams agrees that the County shall have the right to 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 Moss Adams in such demand, suit, or cause of action, the County may at its own expense retain counsel to represent the County's interest.

C. Moss Adams' obligations under this section shall not be limited by the provisions of any insurance policy Moss Adams 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 87504-0276

Finance Director  
Santa Fe County Finance Department  
102 Grant Avenue  
Santa Fe, New Mexico 87504-0276

To Moss Adams: Duwayne Sibley  
Moss Adams, LLP  
6100 Uptown Blvd NE, Suite 400  
Albuquerque, New Mexico 87110

## **24. MOSS ADAMS' REPRESENTATIONS AND WARRANTIES**

Moss Adams hereby represents and warrants that:

- A. It is a Washington limited liability partnership licensed to conduct business under the laws of the State of New Mexico.
- B. This Agreement has been duly authorized by Moss Adams, the person executing this Agreement has authority to do so, and, once executed by Moss Adams, this Agreement shall constitute a binding obligation of Moss Adams.
- C. This Agreement and Moss Adams' obligations hereunder do not conflict with Moss Adams' articles of incorporation or by-laws or any corporate resolution adopted by Moss Adams.

- D. It will maintain throughout the life of this Agreement, its registration and licensure with the State of New Mexico.

## **25. FACSIMILE SIGNATURES**

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

## **26. NO THIRD-PARTY BENEFICIARIES**

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

## **27. INSURANCE**

A. General Conditions. Moss Adams 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. Moss Adams 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 \$1,050,000.00 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Non-hired vehicle insurance coverage will be required for employees, temporary employees, and subcontractor using their personal vehicle. Said policies of insurance shall include coverage for all operations performed for the County by Moss Adams; 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. Moss Adams 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), Moss Adams shall increase the maximum limits of any insurance required herein.

## **28. PERMITS, FEES, AND LICENSES**

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

**29. NEW MEXICO TORT CLAIMS ACT**

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

**30. CAMPAIGN CONTRIBUTION DISCLOSURE FORM**

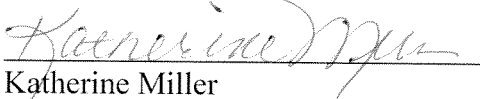
Moss Adams agrees to compute and submit simultaneous with execution of this Agreement a Campaign Contribution Disclosure Form approved by the County.

**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 Agreement as of the date first written above.

**SANTA FE COUNTY**

  
Katherine Miller  
Santa Fe County Manager


7-23-15  
Date

**APPROVED AS TO FORM:**

  
Gregory S. Shaffer  
Santa Fe County Attorney

7-17-15  
Date

**FINANCE DEPARTMENT APPROVAL:**

  
Carole H. Jaramillo  
Santa Fe County Finance Director

7/20/15  
Date

**MOSS ADAMS, LLP:**

  
Signature

July 15, 2015  
Date

Senior Manager, Moss Adams  
Title