

**PROFESSIONAL SERVICE AGREEMENT
BETWEEN SANTA FE COUNTY AND PLACEWORKS FOR
TDR BANK BENEFITS ANALYSIS**

THIS AGREEMENT is made and entered into this 8th day of July 2016, by and between **SANTA FE COUNTY**, hereinafter referred to as the "County" and **PLACEWORKS**, whose principal address is **3 MacArthur Place, Suite 1100, Santa Ana, CA 92707** hereinafter referred to as the "Contractor".

WHEREAS, Santa Fe County Board of County Commissioners adopted the 2015 Sustainable Land Development Code which includes Section 12.14, establishing the framework for the Santa Fe County Transferable Development Rights (TDR) Program; and

WHEREAS, in accordance with Section 13-1-125, NMSA 1978, of the Procurement Code and pursuant to Santa Fe County Resolution 2016-33 passed in March 2016 which directs staff to initiate the TDR Program, the County issued Letter of Interest No. 2016-0366-GM/RM to obtain the services required for the above stated project; and

WHEREAS, the Contractor has proposed a highly qualified team and demonstrated its ability and qualifications to perform the required professional services needed for this project; and

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

NOW, THEREFORE, it is agreed between the parties:

1. SCOPE OF WORK INCLUDING DELIVERABLES

The Contractor shall provide the following services:

A. Project Initiation: Coordinate with County Planning staff to develop a final scope, approach and schedule:

- Review and compile background information.
- Convene an internal stakeholder meeting.
- Develop a schedule.

B. TDR Bank Benefits Analysis showing the critical role a TDR Bank plays in the TDR program:

- Conduct interviews with stakeholders to include developers, realtors, title companies, landowners, Assessor's Office and others as identified to gather information about the current and future real estate market conditions.
- Model up to six hypothetical sending and up to six hypothetical receiving, site projects selected with staff to yield a Pro Forma Residual Land Value Analysis.
 - Estimate the threshold at which receiving site developers gain economic benefit from projects utilizing TDRs.
 - Estimate the range of value that sending site applicants can expect to obtain for sale of their TDRs.

- Deliverables:
 - Develop diagrams to clearly illustrate TDR Bank Benefits Analysis.
 - Draft and final written report (TDR Bank Benefits Analysis).
 - Provide a Power Point presentation to the BCC.
- C. **Develop framework and criteria for the TDR Bank:**
 - Develop public benefit criteria to prioritize TDR acquisition goals per the 2015 SGMP, and related County policies and procedures to include alignment with the preservation goals of the draft Agriculture Implementation Plan and the draft County Open Space Management Plan.
 - Deliverables:
 - Draft document(s) developed for TDR Bank Public Benefit Criteria and Acquisition Framework.
- D. **Develop incentives based on the benefits analysis of the TDR Bank:**
 - Establish incentives based on prioritized TDR goals.
 - Establish incentives which build upon the existing TDR conversion ratio, and will be based upon the results of the pro forma Residual Land Value Analysis.
 - Deliverables:
 - Document(s) developed for TDR Bank incentives.
- E. **Final Project Deliverables:**
 - Diagrams and other presentation materials.
 - TDR Bank Benefits Analysis to include pro forma Residual Land Value Analysis.
 - Document(s) developed for TDR Bank Public Benefits Criteria and Acquisition Framework.
 - Develop incentives based on the TDR Bank Benefits Analysis.
 - Final presentation to the BCC.

2. **ADDITIONAL SERVICES**

A. The parties agree that all tasks set forth in Section 1 (Scope of Work Including Deliverables), of this Agreement shall be completed in full, to the satisfaction of the County, in accordance with professional standards and for the amount set forth in Section 3 (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 a written amendment to this Agreement.

3. COMPENSATION, INVOICING AND SET-OFF

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

- 1) County shall pay to the Contractor for services performed to the satisfaction of the County. Contractor will invoice the County monthly for services performed; invoices shall include a monthly detailed status report for all activities performed in relation to the project tasks and phases described in Section 1 and Exhibit A attached hereto.
- 2) The total amount payable to the Contractor under this Agreement shall not exceed **Eighteen Thousand Four Hundred Dollars \$18,400.00** *exclusive* of New Mexico gross receipts tax.
- 3) This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. The County will notify the Contractor when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing.

B. The Contractor shall submit a written request for payment to the County when payment is due under this Agreement. Upon the County's receipt of the written request, the County shall issue a written certification of complete or partial acceptance or rejection of the deliverables for which payment is sought.

- 1) The County's representative for certification of acceptance or rejection of contractual items and services shall be **Robert Griego, Growth Management Department Planning Manager**, or such other individual as may be designated in the absence of the office representative.
- 2) 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 services or deliverables.
- 3) Within 30 days of the issuance of a written certification accepting the services or deliverables, the County shall tender payment for the accepted items or services. In the event the County fails to tender payment within 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.

4. 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. Santa Fe County intends on awarding a one year contract with no extensions unless earlier terminated pursuant to Section 5 (Termination) or Section 6 (Appropriations and Authorizations).

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 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 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. The Contractor shall retain full ability to use in its website any and all information, photos, and digital media that may be gathered through completion of work pursuant to this Agreement.

14. CONFLICT OF INTEREST

The Contractor represents that it has no and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of its obligations under this Agreement.

15. NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED

This Agreement may not be modified, altered, changed, or amended orally but, rather, only by an instrument in writing executed by the parties hereto. The Contractor specifically acknowledges and agrees that the County shall not be responsible for any changes to Section 1 (Scope of Work Including Deliverables), 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. Contractor shall comply with the requirements of Santa Fe County Ordinance 2014-1 (Establishing a Living Wage).

C. 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 state district courts 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 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 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 exists 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**

**Santa Fe County Growth Management Department
Attn: Robert Griego, Project Manager
102 Grant Avenue
PO Box 276
Santa Fe, NM 87504-0276**

To the Contractor:

**PLACEWORKS
Attn: Steve Gunnells
3 MacArthur Place, Suite 1100,
Santa Ana, CA 92707
(714) 966-9220**

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 is properly licensed by the State of New Mexico to provide the services anticipated by this Agreement and shall maintain such registration and 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. NO THIRD-PARTY BENEFICIARIES

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

27. INSURANCE

A. General Conditions. The Contractor shall submit evidence of insurance as is required herein. 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. Santa Fe County shall be a named additional insured on the policy.

C. 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.

28. PERMITS, FEES, AND LICENSES

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

29. NEW MEXICO TORT CLAIMS ACT

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

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

31. APPOINTMENT OF AGENT FOR SERVICE OF PROCESS

The Contractor hereby irrevocably appoints **PARACORP INCORPORATED, 1012 MARQUEZ PLACE #106B, SANTA FE, NM 87505** as its agent upon whom process and writs in any action or proceeding arising out of or related to this Agreement may be served. The Contractor acknowledges and agrees that service upon its designated agent shall have the same effect as though the Contractor were actually and personally served within the state of New Mexico.

32. 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

7.1.16
Date

APPROVED AS TO FORM


Gregory S. Shaffer
Santa Fe County Attorney

7-1-16
Date

FINANCE DEPARTMENT

Carole H. Jaramillo
Carole H. Jaramillo
Santa Fe County Finance Director

7/6/16
Date

CONTRACTOR:

See attached
(Signature)

Date

(Print Name)

(Print Title)

FINANCE DEPARTMENT

Carole H. Jaramillo
Carole H. Jaramillo
Santa Fe County Finance Director

7/6/16
Date

CONTRACTOR:

Steve Gunnells
(Signature)

7-7-16
Date

Steve Gunnells
(Print Name)

Chief Economist
(Print Title)

June 17, 2016

Exhibit A

Rose Moya
Procurement Specialist Senior
Santa Fe County Purchasing Division
142 W. Palace Ave. (2nd Floor)
Santa Fe, NM 87501
Via E-Mail to rmoya@santafecountynm.gov

Subject: Revised Cost Proposal, LOI# 2016-0366-GM/RM

Dear Ms. Moya:

This letter is our cost proposal for the above referenced project and augments our LOI of June 2, 2016. The letter revises and replaces the June 6, 2016, cost proposal. Based on our June 15, 2016, call, the cost proposal has been modified to remove the project initiation meeting as a separate task and to add attendance by Rick Pruetz at the presentation to the Board of County Commissioners in Task E. In addition, the direct expenses have been itemized.

Proposed Fee

As presented in our June 2, 2016, LOI, the proposed fee for the project is \$18,400, plus \$1,529.50 for NMGR, for a grand total of \$19,929.50. Table 1 breaks the proposed fee down by staff, hourly rate, hours, and task.

The proposed fee includes \$1,710.00 in reimbursable expenses. This amount includes air fare and other travel expenses, and costs for data acquisition. These expenses will be billed at PlaceWorks' cost.

PlaceWorks will invoice the County monthly for services performed. Invoices shall include a monthly detailed status report for all activities performed in relation to the project tasks and phases as shown in Tables 1 and 2, and the deliverables described below. For example, we envision Task A, the TDR Bank Benefit Analysis, taking place over the first six weeks of the project. The invoice for the first month would only include the work done in the first month, and the remainder of the work for this Task would be included in the invoice for the second month.

Schedule

As presented in our June 2, 2016, LOI, we propose to complete the project over a 16-week period. Table 2 presents the proposed schedule by task, week, and major activities.

Deliverables

We propose the following as the major activities and deliverable products for each Task:

- Task A: TDR Banks Benefits Analysis
 - + Conference call with staff to finalize the project schedule with specific dates
 - + Up to two days of in-person meetings and interviews with County staff and stakeholders, with Steve Gunnells for the consultant team

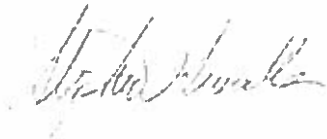
- + Deliverable: Draft report and review meeting via conference call or web conference
- Task B: Framework and Criteria for the TDR Bank
 - + Deliverable: Draft report and review meeting via conference call or web conference
- Task C: TDR Bank Incentives
 - + Deliverable: Draft report and review meeting via conference call or web conference
- Task D: Final Report and Presentation
 - + Deliverable: Final Report
 - + Deliverable: PowerPoint presentation
 - + Deliverable: In-person presentation to the BCC, with Steve Gunnells and Rick Pruetz for the consultant team

The scope and budget assume other conference calls and web conferences for project coordination and to review interim work products in addition those listed above. All deliverables will be submitted in a digital format. PlaceWorks will make one round of revisions to each draft report and the final report based on comments during the review meeting and one set of consolidated comments from the County.

We look forward to discussing the project and proposed scope of work, budget, and schedule. If you have any questions, need more information, or just want to talk about our proposal, please do not hesitate to call me at 714-966-9220 or e-mail me at sgunnells@placeworks.com.

Respectfully submitted,

PLACEWORKS



Steve Gunnells
Chief Economist

Table 1: Proposed Fee by Staff, Hourly Rate, Hours, and Task

Task	Steve Gunnells		Kelsey Carlston		Gina Froelich		Rick Pruetz		Michael Murphy		Task Totals	
	Hours	Fee	Hours	Fee	Hours	Fee	Hours	Fee	Hours	Fee	Hours	Fee
A. TDR Bank Benefits Analysis	17	3,655.00	24	2,160.00	0	0.00	3	300.00	3	240.00	47	6,355.00
B. Framework & Criteria for TDR Bank	4	860.00	0	0.00	0	0.00	18	1,800.00	5	400.00	27	3,060.00
C. TDR Bank Incentives	3	645.00	2	180.00	0	0.00	16	1,600.00	4	320.00	25	2,745.00
D. Final Report and Presentation	12	2,580.00	4	360.00	2	220.00	12	1,200.00	2	160.00	32	4,520.00
Subtotal	36	7,740.00	30	2,700.00	2	220.00	49	4,900.00	14	1,120.00	131	16,680.00
Direct expenses												
- Airfare												1,050.00
- Car												135.00
- Hotel												450.00
- Data acquisition												85.00
Total												18,400.00
NMGRT												1,529.50
Grand Total												19,929.50

Table 2: Proposed Schedule by Task and Week

[illegible]