

CITY OF SANTA FE

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into by and between the City of Santa Fe (the "City") and Building Solutions LLC (the "Contractor"). The date of this Agreement shall be the date when it is executed by the City and the Contractor, whichever occurs last.

1. **SCOPE OF SERVICES**

The Contractor shall engage the financial community in Santa Fe in a process designed to increase the efficiency and availability of senior credit lending to smaller businesses in the region. The Contractor shall attempt to facilitate a process whereby the financial institutions in the community can more profitably identify, underwrite, and lend to small businesses in the region:

A. **Phase I:** Create a common credit screening tool which provides basic information on smaller loan requests to multiple local institutions.

B. **Phase II:** Develop a basic underwriting mechanism for a fee that can reduce multiple underwriting endeavors by multiple institutions and allow more quick and cost effective "Yes-No" decisions by the most likely lenders.

C. **Phase III:** Design a method that the financial parties can share successful participations in loans as a method of spreading risk.

D. **Phase IV:** Recommend a process which is self-sustaining financially and that can be owned and managed by an entity other than the City.

E. In order to further a city wide data collection effort to better understand the local entrepreneurial and workforce community, programs and constituent needs, Contractor agrees to contribute requested internal (non-confidential) data by the City's economic development data staff or contractor and to make every reasonable effort to align data collection efforts to inform this effort.

2. STANDARD OF PERFORMANCE; LICENSES

A. The Contractor represents that it possesses the experience and knowledge necessary to perform the services described under this Agreement.

B. The Contractor agrees to obtain and maintain throughout the term of this Agreement, all applicable professional and business licenses required by law, for itself, its employees, agents, representatives and subcontractors.

3. COMPENSATION

A. The City shall pay to the Contractor in full payment for services rendered, a sum not to exceed fifty thousand dollars (\$50,000) including applicable gross receipts taxes. Payment shall be made for services corresponding to the deliverables in each phase, as follows:

- 1) Upon receipt of detailed work plan: \$5,000
- 2) Completion of Phase I: \$15,000
- 3) Completion of Phase II: \$10,000
- 4) Completion of Phase III and IV: \$20,000

Ancillary out of pocket expenses are expected to be minor and shall be absorbed by the Contractor, unless unanticipated travel or office expenses are requested, at which time the Contractor and the City shall identify appropriate funding. Payment for detailed work

plan, Phase I and Phase II shall be made in City of Santa Fe Fiscal Year 2016/2017. If budget is appropriated and allocated in City of Santa Fe Fiscal Year 2017/2018, and if it is determined by mutual agreement that Phase III and Phase IV are worthwhile, payment shall be made for completion of those phases in City of Santa Fe Fiscal Year 2017/2018. If budget becomes available in FY 2016/17, the parties may opt to amend this agreement for earlier payment of Phases III and IV.

B. The Contractor shall be responsible for payment of gross receipts taxes levied by the State of New Mexico on the sums paid under this Agreement.

C. Payment shall be made upon receipt, approval and acceptance by the City of detailed statements containing a report of services completed. Compensation shall be paid only for services actually performed and accepted by the City.

4. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City, this Agreement shall terminate upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

5. TERM AND EFFECTIVE DATE

This Agreement shall be effective when signed by the City and the Contractor, whichever occurs last, and shall terminate on December 31, 2017 unless sooner pursuant to Article 6 below.

6. TERMINATION

A. This Agreement may be terminated by the City or Contractor upon 30 days written notice.

(1) The Contractor shall render a final report of the services performed up to the date of termination and shall turn over to the City original copies of all work product, research or papers prepared under this Agreement.

(2) If compensation is not based upon hourly rates for services rendered, therefore the City shall pay the Contractor for the reasonable value of services satisfactorily performed through the date Contractor receives notice of such termination, and for which compensation has not already been paid.

(3) If compensation is based upon hourly rates and expenses, Contractor shall be paid for services rendered and expenses incurred through the date Contractor receives notice of such termination.

7. STATUS OF CONTRACTOR; RESPONSIBILITY FOR PAYMENT OF EMPLOYEES AND SUBCONTRACTORS

A. The Contractor and its agents and employees are independent contractors performing professional services for the City and are not employees of the City. The Contractor, and its agents and employees, shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City as a result of this Agreement.

B. Contractor shall be solely responsible for payment of wages, salaries and benefits to any and all employees or subcontractors retained by Contractor in the performance of the services under this Agreement.

C. The Contractor shall comply with City of Santa Fe Minimum Wage, Article 28-1-SFCC 1987, as well as any subsequent changes to such article throughout the term of this Agreement.

8. 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 City. In the event that the Contractor is in possession of credit information which is considered private and confidential by one or more financial institutions, confidentiality shall be maintained and the City is not requesting that such information be given to the City.

9. CONFLICT OF INTEREST

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. Contractor further agrees that in the performance of this Agreement no persons having any such interests shall be employed.

10. ASSIGNMENT; SUBCONTRACTING

The Contractor shall not assign or transfer any rights, privileges, obligations or other interest under this Agreement, including any claims for money due, without the prior written consent of the City. The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City.

11. RELEASE

The Contractor, upon acceptance of final payment of the amount due under this Agreement, releases the City, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the City to any obligation not assumed herein by the City unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

12. INSURANCE

A. The Contractor, at its own cost and expense, shall carry and maintain in full force and effect during the term of this Agreement, comprehensive general liability insurance covering bodily injury and property damage liability, in a form and with an insurance company acceptable to the City, with limits of coverage in the maximum amount which the City could be held liable under the New Mexico Tort Claims Act for each person injured and for each accident resulting in damage to property. Such insurance shall provide that the City is named as an additional insured and that the City is notified no less than 30 days in advance of cancellation for any reason. The Contractor shall furnish the City with a copy of a Certificate of Insurance as a condition prior to performing services under this Agreement.

B. Contractor shall also obtain and maintain Workers' Compensation insurance, required by law, to provide coverage for Contractor's employees throughout the term of this Agreement. Contractor shall provide the City with evidence of its compliance with such requirement.

C. Contractor shall maintain professional liability insurance throughout the term of this Agreement providing a minimum coverage in the amount required under the New Mexico Tort Claims Act. The Contractor shall furnish the City with proof of insurance of Contractor's compliance with the provisions of this section as a condition prior to performing services under this Agreement.

13. INDEMNIFICATION

The Contractor shall indemnify, hold harmless and defend the City from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from Contractor's performance under this Agreement as well as the performance of Contractor's employees, agents, representatives and subcontractors.

14. NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

15. THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the City and the Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

16. RECORDS AND AUDIT

The Contractor shall maintain, throughout the term of this Agreement and for a period of three years thereafter, detailed records that indicate the date, time and nature of services rendered. These records shall be subject to inspection by the City, the Department of Finance and Administration, and the State Auditor. The City shall have the right to audit the billing both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments.

17. APPLICABLE LAW; CHOICE OF LAW; VENUE

Contractor shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the City of Santa Fe. In any action, suit or legal dispute arising from this Agreement, the Contractor agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

18. AMENDMENT

This Agreement shall not be altered, changed or modified except by an amendment in writing executed by the parties hereto.

19. SCOPE OF AGREEMENT

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the services to be performed hereunder, and all such agreements, covenants and understandings have been merged into this Agreement. This Agreement expresses the entire Agreement and understanding

between the parties with respect to said services. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

20. NON-DISCRIMINATION

During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of services by Contractor hereunder, on the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

21. SEVERABILITY

In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

22. NOTICES

Any notices required to be given under this Agreement shall be in writing and served by personal delivery or by mail, postage prepaid, to the parties at the following addresses:

City of Santa Fe:
Office of Economic Development
P.O. Box 909
Santa Fe, NM 87504

Contractor:
Building Solutions LLC
650 Old Santa Fe Trail
Santa Fe, NM 87505

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.

CITY OF SANTA FE:

Javier M. Gonzales
JAVIER M. GONZALES, MAYOR

DATE: 8/9/16

CONTRACTOR:
BUILDING SOLUTIONS LLC

Katherine L. Updike
Katherine L Updike
Managing Partner
DATE: 8-4-16

CRS# 03397024005
City of Santa Fe Business
Registration # 16-00129206

ATTEST:

Yolanda Y. Migil
YOLANDA Y. MIGIL
CITY CLERK
CC mtg. 7/27/16

APPROVED AS TO FORM:

Kelley A. Brennan 7/7/16
KELLEY A. BRENNAN,
CITY ATTORNEY

APPROVED:

Osacar Rodriguez 8-4-2016
OSACAR RODRIGUEZ, FINANCE DIRECTOR

22116.510340
BUSINESS UNIT/LINE ITEM

Client#: 1198307

BUILDSOL4

ACORD™

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/14/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement.

PRODUCER: USI Southwest CL El Paso, 2505 E Missouri Ave, El Paso, TX 79903, 915 544-3111. CONTACT NAME: Alice Murphy, PHONE: 915 534-9482, FAX: 610-537-4622, E-MAIL: alice.murphy@usi.com. INSURER(S) AFFORDING COVERAGE: Hanover Insurance Company, NAIC #: 22292.

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES.

Table with columns: INSR LTR, TYPE OF INSURANCE, ADDL INSR, SUBR WVD, POLICY NUMBER, POLICY EFF (MM/DD/YYYY), POLICY EXP (MM/DD/YYYY), LIMITS. Includes sections for Commercial General Liability, Automobile Liability, Umbrella Liab, and Workers Compensation.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Re: Public Banking Feasibility Study.

CERTIFICATE HOLDER CANCELLATION

CERTIFICATE HOLDER: Economic Development Division, City of Santa Fe, Attn: Ross X. Chaney, P.O. Box 909, Santa Fe, NM 87504-0909. CANCELLATION: SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE: [Signature]



City of Santa Fe Summary of Contracts, Agreements, & Amendments

Section to be completed by department for each contract or contract amendment

1 **FOR: ORIGINAL CONTRACT** or **CONTRACT AMENDMENT**

2 Name of Contractor Building Solutions LLC

3 Complete information requested Plus GRT
 Inclusive of GRT

Original Contract Amount: \$50,000.00

Termination Date: December 31, 2015

Approved by Council Date: _____

or by City Manager Date: _____

Contract is for: Engage the financial community in Santa Fe in a process designed to increase the efficiency and availability of senior credit lending to smaller businesses in the region.

Amendment # _____ to the Original Contract# _____

Increase/(Decrease) Amount \$ _____

Extend Termination Date to: _____

Approved by Council Date: _____

or by City Manager Date: _____

Amendment is for:

4 **History of Contract & Amendments:** (option: attach spreadsheet if multiple amendments) Plus GRT
 Inclusive of GRT

Amount \$ _____ of original Contract# _____ Termination Date: _____
Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____
Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____
Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____
Reason: _____

Total of Original Contract plus all amendments: \$ _____



City of Santa Fe
Summary of Contracts, Agreements, & Amendments

5 Procurement Method of Original Contract: (complete one of the lines)

RFP# 16/38/P Date: May 31, 2016
RFQ RF Sole Source Other

6 Procurement History:
example: (First year of 4 year contract)

7 Funding Source: Economic Development BU/Line Item: 22116.510340

8 Any out-of-the ordinary or unusual issues or concerns:
(Memo may be attached to explain detail.)

9 Staff Contact who completed this form: Jessica Sandoval
Phone # xt. 6334

10 Certificate of Insurance attached. (if original Contract)

Submit to City Attorney for review/signature
Forward to Finance Director for review/signature
Return to originating Department for Committee(s) review or forward to City Manager for review and approval (depending on dollar level).

To be recorded by City Clerk:

Contract #
Date of contract Executed (i.e., signed by all parties):

Note: If further information needs to be included, attach a separate memo.

Comments:

Large empty rectangular box for comments.



MEMORANDUM

DATE: July 7, 2016
TO: Brian K. Snyder, City Manager
FROM: Kate Noble, Acting Director, Office of Economic Development
RE: Request for Insurance Clause Waiver – Section 12 paragraph A for Katherine Updike of Building Solutions PSA

BACKGROUND/ISSUE:

The Office of Economic Development would like to amend the professional service agreement with Building Solutions LLC to perform the following professional services:

Services to engage the financial community in Santa Fe in a process designed to increase the efficiency and availability of senior credit lending to smaller businesses in the region.

This primarily involves research, interviews, analysis and issuing a final report and recommendations.

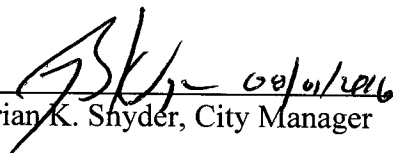
The current professional services boiler plate requires contractors provide minimum levels of insurance coverage, with the City listed as an additional insured. The City Attorney's office has approved removal of general liability boilerplate language paragraph 12 (A).

SUMMARY:

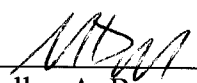
Although the boiler plate requires the general liability insurance coverage, we are requesting a waiver of this requirement. We feel that coordination of this program raises no general liability issues for the City.

APPROVED

APPROVED



Brian K. Snyder, City Manager Date

 7/8/16

Kelley A. Brennan, City Attorney Date