

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 investigate the business, financial, and economic feasibility of a public bank initiative for the City of Santa Fe. This work shall help determine the efficacy of moving forward to establish the legal, political, and structural elements to implement such a program. During all phases, the City and Contractor shall maintain a growing list of potential investment and public banking opportunities which would benefit from the City's initiative and provide a more tangible basis on which to evaluate the economic impact of the initiative. The City shall be integrally involved in developing the feasibility, and in particular, shall have small committee available to regularly review findings of the Contractor and to advise, and, at times, to accompany the Contractor, in meetings designed to obtain information, develop consensus, and seek solutions to obstacles.

The Contractor shall achieve the following deliverables along with the City staff:

Create a work plan and estimated timeline for the Scope of Work.

(1) Phase I: Create a consensus document with the Finance and Economic Development Departments which can be used to evaluate the “free cash flow,” unrestricted cash, and debt capacity and other resources which the City could dedicate to a public banking initiative.

(2) Phase II: Meet both formally and informally with potential collaborators with the City in the initiative, including the Santa Fe Community Foundation, Impact Network Santa Fe, one or more community banks and CDFIs, and others as identified by the City and/or the Contractor. Prepare a presentation to the City, which outlines the initiatives, their history, successes, issues, and potential for contribution to the City’s plans.

(3) Phase III: Develop one or more “straw man” approaches to the investment of public funds to stimulate and fund investments which can increase the economic and financial security of the City of Santa Fe. Discuss the risk vs. reward tradeoffs encountered. Develop a set of issues to be addressed in Phase IV. If necessary reduce the scope of the “straw man” in order to move forward with a more focused analysis.

(4) Phase IV: Work with a broad array of technical experts (e.g., regulatory, banking, et al) and community members to minimize risks identified in Phase III and to address concerns in either the City or amongst community members . Develop a report which clearly identifies the Risks and Mitigants of the chosen strategy, as well as follow-up work which must be accomplished to implement the strategy (e.g., policy action by City Council, formal legal opinions, collaborator board decisions, etc.) . Implementation of the recommended strategy is not considered part of the scope of this Contract. The

contractor shall provide a written report on the strategy, including, if possible, interim steps which might pave the way for the longer term strategy implementation.

(5) **Phase V:** Engage Arrowhead Center in the review of the economic impact anticipated from the chosen strategy. If more than one strategy are still under consideration, Arrowhead shall attempt to include their opinion on how the alternatives might affect the economic and/or fiscal impact of the strategy.

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), plus applicable gross receipts taxes. Payment shall be made for services corresponding to the deliverables in each phase, as follows:

- | | | |
|-----|---|----------|
| (1) | Upon receipt of a work plan & estimated timeline for the scope of work: | \$10,000 |
| (2) | Completion of Phase I: | \$5000 |
| (3) | Completion of Phase II: | \$5000 |
| (4) | Completion of Phase III: | \$10,000 |
| (5) | Completion of Phase IV: | \$10,000 |

(6) Completion of Phase V: \$10,000

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.

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, 2015, 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.

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. Contractor shall, at its own cost and expense, carry and maintain Workers' Compensation insurance, as required by law, to provide coverage for Contractor's employees throughout the term of this Agreement.

B. 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:
Housing and Community Development
Department
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.

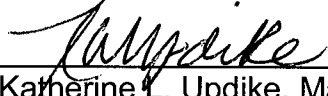
CITY OF SANTA FE:

 MAYOR PRO TEM
FOR JAVIER M. GONZALES, MAYOR

DATE: 1/28/15

CONTRACTOR:

BUILDING SOLUTIONS LLC


Katherine L. Updike, Managing Partner

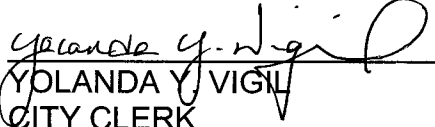
DATE: 2/17/15

CRS# 03-307024-00-5


City of Santa Fe Business

Registration # 15-00129206


ATTEST:


YOLANDA Y. VIGIL
CITY CLERK
CC mtg. 1/28/15

APPROVED AS TO FORM:

 1/27/15
KELLEY A. BRENNAN, CITY ATTORNEY

APPROVED:



OSCAR RODRIGUEZ
FINANCE DIRECTOR

22116.510340
Business Unit Line Item

ACORD™

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/02/2015

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. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

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. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

| | | |
|---|--|------------------------------------|
| PRODUCER USI Southwest CL El Paso 2505 E Missouri Ave El Paso, TX 79903 915 544-3111 | CONTACT NAME: Alice Murphy-Gonzalez | |
| | PHONE (A/C, No, Ext): 915 534-9482 | FAX (A/C, No): 610-537-4622 |
| | E-MAIL ADDRESS: Alice.Murphy-Gonzalez@usi.biz | |
| | INSURER(S) AFFORDING COVERAGE | NAIC # |
| | INSURER A: Hanover Insurance Company | 22292 |
| INSURED Building Solutions LLC 650 Old Santa Fe Trail Santa Fe, NM 87505 | INSURER B: | |
| | INSURER C: | |
| | INSURER D: | |
| | INSURER E: | |
| | INSURER F: | |

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. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.


| INSR LTR | TYPE OF INSURANCE | ADDL INSR | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS |
|----------|---|-----------|----------|---------------|-------------------------|-------------------------|--|
| | GENERAL LIABILITY | | | | | | EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$ |
| | <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR | | | | | | |
| | GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC | | | | | | |
| | AUTOMOBILE LIABILITY | | | | | | COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ |
| | <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS | | | | | | |
| | <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS | | | | | | |
| | UMBRELLA LIAB | | | | | | EACH OCCURRENCE \$ AGGREGATE \$ \$ |
| | <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$ | | | | | | |
| | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y / <input checked="" type="checkbox"/> N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below | | | | | | WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$ |
| A | Professional Liab Claims Made Retro 1/30/15 | | | LHDA54424800 | 01/30/2015 | 01/30/2016 | \$500,000 Ea Claim Limit \$500,000 Aggregate \$5,000 Deductible |

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

Re: Public Banking Feasibility Study

CERTIFICATE HOLDER

CANCELLATION

| | |
|--|---|
| Economic Development Division, City of Santa Fe Attn: Ross X. Chaney P.O. Box 909 Santa Fe, NM 87504-0909 | 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  |
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