

CITY OF SANTA FE

PROFESSIONAL SERVICES CONTRACT

THIS AGREEMENT is made and entered into by and between the City of Santa Fe, New Mexico, hereinafter referred to as the "City," and **Strategic Economics**, hereinafter referred to as the "Contractor," and is effective as of the date set forth below upon which it is executed by the Parties.

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

A. The Contractor shall perform the following work:

1) The Scope of Work for the Economic Analysis and Urban Planning Team ("Planning Team") shall include the following services:

a. Economic Analysis

- i. Fiscal and Economic Analysis and Yield Evaluation
- ii. Land Valuation Analysis and Financial Modeling
- iii. Public Financing and Public Policy Analysis / Impact Fee Analysis
- iv. Disposition and Development RFP Evaluation

b. Urban Planning

- i. Urban Planning and Design
- ii. Land Use
- iii. Redevelopment Planning and Revitalization/Activation Strategies
- iv. Disposition and Development RFP Evaluation

B. Performance Measures.

1) Contractor shall substantially perform the following Performance Measures:

a. Deliverables pursuant to the analysis, modeling, and evaluation outline above.

b. Advice on decision making processes for the development of the Midtown Property.

2) The receipt of the deliverables contemplated under this Agreement shall assist the City in obtaining its goal(s) as set forth in The Planning Guidelines for the City's Midtown Property.

2. **Compensation.**

A. The City shall pay to the Contractor in full payment for services rendered a sum not to exceed \$325,960. **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. Contractor is responsible for notifying the City 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 prior to those services in excess of the total compensation amount being provided.**

B. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the City. All invoices **MUST BE** received by the City no later than thirty (30) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date **WILL NOT BE PAID.**

C. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the City finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the City that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the City shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

3. **Term.**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY. This Agreement shall terminate on **December 31, 2020.** unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

4. **Termination.**

A. **Termination.** This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the City's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the City is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall

not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the City or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of City funds or due to the Appropriations paragraph herein. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE City's OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

B Termination Management. Immediately upon receipt by either the City or the

Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the City; 2) comply with all directives issued by the City in the notice of termination as to the performance of work under this Agreement; and, 3) take such action as the City shall direct for the protection, preservation, retention or transfer of all property titled to the City and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the City upon termination and shall be submitted to the City as soon as practicable.

5. Appropriations.

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City Council, this Agreement shall terminate immediately 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. If the City proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

6. Status of Contractor.

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. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the City unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

7. **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 prior written approval of the City.

8. **Subcontracting.**

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the City.

9. **Release.**

Final payment of the amounts due under this Agreement shall operate as a release of the City, its officers and employees from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

10. **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.

11. **Product of Service -- Copyright.**

All materials developed or acquired by the Contractor under this Agreement shall become the property of the City and shall be delivered to the City no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

12. **Conflict of Interest; Governmental Conduct Act.**

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. *The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978.*

C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the City relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the City if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of

new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the City and notwithstanding anything in the Agreement to the contrary, the City may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this section.

13. Amendment.

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the City proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

14. Merger.

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

15. Penalties for violation of law.

The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

16. Equal Opportunity Compliance.

The Contractor agrees to abide by all federal and state laws and rules and regulations, and Santa Fe City Code, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

17. Applicable Law.

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

18. Workers Compensation.

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the City.

19. Professional Liability Insurance. 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.

20. Other Insurance

If the services contemplated under this Agreement will be performed on or in City facilities or property, Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the City as additional insured.

- A. Workers Compensation (including accident and disease coverage) at the statutory limit.

Employers liability: \$100,000.

- B. Comprehensive general liability (including endorsements providing broad form property damage, personal injury coverage and contractual assumption of liability for all liability the Contractor has assumed under this contract). Limits shall not be less than the following:

- a. Bodily injury: \$1,000,000 per person /\$1,000,000 per occurrence.
- b. Property damage or combined single limit coverage: \$1,000,000.
- c. Automobile liability (including non-owned automobile coverage): \$1,000,000.
- d. Umbrella: \$1,000,000.

- C. Contractor shall maintain the above insurance for the term of this Agreement and name the City as an additional insured and provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

21. Records and Financial Audit.

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the City. The City shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments

22. Indemnification.

The Contractor shall defend, indemnify and hold harmless the City from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the City.

23. 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.

24. Invalid Term or Condition.

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

25. Enforcement of Agreement.

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

26. 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 City: Office of Economic Development, P.O. Box 909, Santa Fe, NM 87501

To the Contractor: [Strategic Economics, 2991 Shattuck Avenue, Suite 203, Berkeley, CA, 94705, c/o Dena Belzar, Principal].

27. Authority.

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.

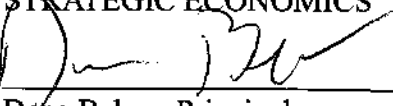
CITY OF SANTA FE:



ALAN WEBBER, MAYOR

DATE: 8/2/19

CONTRACTOR:

STRATEGIC ECONOMICS


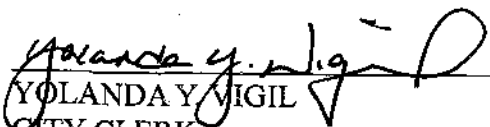
Dena Belzar, Principal

DATE: 08-27-2019

CRS# 03-500447-00-9

Registration # 19-00158722

ATTEST:




YOLANDA Y. MIGIL
CITY CLERK

cc mtg. 7-31-19

APPROVED AS TO FORM:

 7/2/19
ERIN K. MCSHERRY, CITY ATTORNEY

APPROVED:

 08.02.19
MARY MCCOY, FINANCE DIRECTOR
32161.572970.011990
Business Unit Line Item

Attachment 1

Scope of Work **Performance Measures**

Through satisfactory completion of the Scope of Work set forth above and submission of acceptable Deliverables, the Contractor will assist the City to meet the goals and objectives described in The Planning Guidelines for the City's Midtown Property.

Pursuant to RFP # 19/36/P: Economic Analysis & Urban Planning, the Scope of Work has been phased into the following categories and associated Fee structure:

FEE BY SCOPE OF WORK PHASE

Phase 1:	\$ 58,961	(2 months)
Phase 2:	\$ 90,733	(2-3 months)
Phase 3:	\$ 80,113	(2-3 months)
Phase 4:	\$ 76,153	(2-3 months)
Subtotal:	<u>\$305,960</u>	
Expenses	<u>\$ 20,000</u>	(reimbursable)
TOTAL:	\$325,960	(total 80-10 months)

PHASE 1: PROJECT INITIATION AND ESTABLISHMENT OF INITIAL PROJECT GOALS AND DECISIONMAKING FRAMEWORK

This work phase will focus on bringing the Strategic Economic team "up to speed" by reviewing already available background material regarding the Midtown Site; establishing the City's preliminary goals and benchmark/measurable objectives against which various development/disposition options for the Site can be evaluated; and, identifying how the various development/disposition options for the site will be identified. The entire Strategic Economics team will participate in a multi-day working session in Santa Fe, and the Strategic Economics leadership team will participate in bi-weekly meetings with Santa Fe's Core Staff/Proyecto. In addition to attending the working session and reviewing background materials, Phase 1 team member activities are shown below by discipline.

Urban Planning Team

Establish Development Framework options based on:

- i. Reviewing alternatives from Midtown Property Planning Guidelines
- ii. Input from staff on existing building conditions
- iii. Buildings suitable for reuse
- iv. Buildings suitable for decommissioning and demolition
- v. Initial interest in sites and buildings
- vi. Access and circulation options based on internal access and establishing

connecting to the greater

Economics Team

Establish modeling parameters and metrics

- i. Debt service repayment
- ii. Revenue generation for site operation and maintenance costs
- iii. Land valuation
- iv. Impact fee options and potential revenues
- v. Identify parameters for measuring the broader economic impacts associated with various development/development options
- vi. Review sources for model inputs including construction costs, rents/sales prices
- vii. Review building conditions by building
- viii. Review potential disposition strategies (single sale, sell individual parcels, ground lease, etc.)

Infrastructure Team

Energy Systems

- i. Establish parameters for further consideration (district energy, net zero buildings, etc.)

Water Management

- i. Establish water management priorities for storm water, water conservation, and potentially for managing grey and black water.

Entire Team

- i. Set preliminary performance benchmarks by goal/objective including potential community benefits
- ii. Establish process for identifying other goals, objectives and performance benchmarks

PHASE 2: IDENTIFY AND TEST DEVELOPMENT FRAMEWORK OPTIONS

Phase 2 work will establish and test various development framework scenarios. Based on input from the City Project Team/Proyecto, the urban planning and infrastructure teams will work together to develop initial development framework scenarios using market input gathered during the previous phase. These scenarios will address land use by building type (existing and new construction); potential parcelization; public and civic space; circulation and access; and infrastructure systems, especially with respect to the way these could impact development patterns/phasing. Once development programs have been identified, the economics team will incorporate these development scenarios into the financial modeling process to assess the direct financial benefits to the City. Additional community benefits and regional impacts will be evaluated during Phase 3 once the most financially viable development/disposition frameworks have been identified. Both the development framework scenarios and the modeling process will be iterative. However, this process must also be accomplished within the budget and scheduling parameters established by the City and the Strategic Economics team. Also, the analysis for some variables may be qualitative instead of quantitative. Phase 2 will culminate in identifying

up to three development framework scenarios and potential disposition strategies that can meet minimum financial performance benchmarks, i.e., are these scenarios financially feasible, do they generate sufficient operating revenues to the City to cover debt service and carrying costs, and do they generate any additional revenue above a “break even” threshold. If certain uses, parcelization strategies, and/or disposition approaches cannot meet these basic financial parameters, they will not be able to offer any additional community benefits, including paying for affordable housing, etc. During Phase 2 Strategic Economics team members will participate in bi-weekly phone calls with the City’s Project Team. Detailed team member activities will also include the following:

Urban Planning and Infrastructure Teams

Develop potential development framework alternatives including development programs

- i. Use by building type
- ii. Parcelization
- iii. Access and circulation internal to the Site and to connect with the greater Midtown area

Test infrastructure options

- i. Access and circulation
- ii. Energy (with input from Integral)
- iii. Water management systems (with input from Sherwood)

Refine the development frameworks as necessary

Economics Team

- i. Gather cost and revenue data
- ii. Build appropriate financial models to test the development/disposition options
- iii. Analyze demographic and economic growth trends to inform phasing assumptions
- iv. Examine the market potential and financial feasibility of desired land uses, and estimate likely absorption rates
- v. Develop phasing options
- vi. Identify transaction/disposition structures, which could vary by development type, site location, and/or development phase

PHASE 3: TEST DEVELOPMENT FRAMEWORK OPTIONS PERFORMANCE AGAINST COMMUNITY OBJECTIVES

The Phase 2 results will provide a set of the most robust development/disposition options for the Site. At this point, these options can be further evaluated to test which ones are best able to meet the broader community objectives, focusing on various ways to address housing affordability, employment opportunities, etc. During this Phase, the City Project Team and the Strategic Economics Team will identify various tradeoffs among development options and disposition options to further test financial performance and to measure how each option performs with respect to community benefits. The primary objective of this Phase will be to identify a final development framework for the Site, and to lay the groundwork for Scope B as identified in the Request for Proposals. Because this work Phase is an important step between analyzing alternatives and developing a

final Development Framework, representatives from the economics team and the urban planning team will attend the second in-person working session with the City Project Team. This meeting, or series of meetings, will identify the final evaluation process combining financial and other metrics to test how well the final Framework performs against the City's goals for the site. Another topic to be addressed is the form and content for the final Development Framework/Design Guidelines document to be produced in Phase 4. This document will need to provide sufficient detail to articulate the City's expectations for future uses and users at the Site, but also allow enough flexibility to respond to various market cycles and other incremental changes that may affect the Site's eventual development. Detailed team member activities will also include the following:

Economics Team

- i. Prepare further financial evaluation of various development and disposition options and combinations to measure performance against the community's goals for the Site, including financial metrics, community benefits (including affordable housing), sustainability/resilience, delivery mechanisms.
- ii. Refine or reconsider phasing options (based on information from RFI).
- iii. Refine model assumptions as appropriate (iterative based on trade-offs discussions and potential further community input and developer RFIs).
- iv. Identify public agency programs gaps for community stabilization that should be combined with development options to optimize community benefits both on the Site and for the broader Midtown community.

Urban Planning and Infrastructure Teams

- i. Refine Development Framework
- ii. Identify opportunities to transition the Site's infrastructure towards more sustainable energy and water systems

PHASE 4: PREPARE DEVELOPMENT FRAMEWORK

This final work phase will provide an integrated strategy for advancing future development at the Midtown site by specifying principles and guidelines that address property disposition, development phasing, infrastructure phasing, general circulation, public space, and urban design. A key element of this document will be to address a governance strategy or other ongoing mechanism for decision making to ensure that all public agencies making decisions regarding this site will be making those decisions in a coordinated and holistic manner. This decision-making process should also allow for ongoing community input and accountability. Adopting a governance strategy along with the Development Framework will ensure that the City and its partners, including the private sector, other governmental agencies, and other community partners will all work together to deliver the community's complete vision for the Midtown Site. Strategic Economics team members will work with the City's Project Team to prepare one draft and one final Development Framework document. Strategic Economics Team members will also come to Santa Fe to present the Draft Development Framework and take input from appropriate stakeholders including, but not limited to, City Councilors. Detailed team member activities will also include the following:

Urban Planning and Infrastructure Teams

Prepare Development Framework

- i. Prepare design concepts for access and circulation
- ii. Identify development parcels
- iii. Identify public realm by type
- iv. Prepare infrastructure implementation framework

Economics Team

- i. Prepare disposition strategy.
- ii. Identify preliminary infrastructure funding and financing strategy.
- iii. Identify a governance strategy or other mechanism for ensuring that City departments coordinate their ongoing work and investment priorities to ensure that as the Midtown site evolves, it will continue to deliver optimal benefits. This strategy or mechanism may include other public departments, and/or a separate special purpose semi-governmental entity, for preliminary consideration. Strategy will propose next steps in the analysis for establishing the appropriate governance structure, while considering the various large-scale development projects within the City's portfolio.
- iv. Refine or reconsider phasing options
- v. Identify suggested public agency programs or initiatives focusing on community stabilization
- vi. Prepare final model runs against performance benchmarks