



**INCORPORATED COUNTY OF LOS ALAMOS  
SERVICES AGREEMENT**

This **SERVICES AGREEMENT** (this "Agreement") is entered into by and between the **Incorporated County of Los Alamos**, an incorporated county of the State of New Mexico ("County" or "Owner"), and **Mullen Heller Architecture, PC**, a New Mexico corporation ("Consultant"), to be effective for all purposes July 1, 2021.

**WHEREAS**, the County Purchasing Officer determined in writing that the use of competitive sealed bidding was either not practical or not advantageous to County for procurement of the Services and County issued Request for Proposals No. 21-45 (the "RFP") on March 14, 2021, requesting proposals for WAC Design and Historic Registration Services, as described in the RFP; and

**WHEREAS**, Consultant timely responded to the RFP by submitting a response dated April 13, 2021 ("Consultant's Response"); and

**WHEREAS**, based on the evaluation factors set out in the RFP, Consultant was the successful Offeror for the services listed in the RFP; and

**WHEREAS**, the County approved this Agreement through the County Council at its meeting on May 25, 2021; and

**WHEREAS**, Consultant shall provide the Services, as described below, to County.

**NOW, THEREFORE**, for and in consideration of the premises and the covenants contained herein, County and Consultant agree as follows:

**SECTION A. SERVICES:**

1. **Scope of Services.** Consultant shall provide Architectural and Engineering services as described herein.
  - a. **Phase 1 – Existing Building and Site Evaluation, Conceptual Design Work and Public Meetings.**
    - 1) Evaluate the building's electrical, mechanical, plumbing, structural, fire suppression and notification, envelope, and architectural systems against the current applicable codes. The evaluation shall include condition and capacities of the electrical and plumbing and mechanical systems, along with walls, floors, ceilings, windows, doors and all other associated building components;
    - 2) Evaluate the property's pavement, curb, gutter, sidewalks;
    - 3) Evaluate the Americans with Disabilities Act (ADA) and how it applies to uses of the building, including challenges and limitations;
    - 4) Assist staff with Public Meetings to be held with potential tenants, stakeholders and the public to determine potential uses (this may include design charettes);
    - 5) Provide up to three (3) Conceptual Designs to be used for consideration by County Council for the ultimate use and design of the facility. The designs shall include electrical, mechanical, fire protection, architectural, civil, landscape, interior and exterior material research and specifications in order for the facility to ultimately be registered as historic;

- 6) Determine if the proposed building use is achievable based on its functions and improvement requirements, or if adjustments to the scope of services or funding are needed;
  - 7) Prepare and provide visual materials, attend and participate in up to ten (10) public meetings:
    - i. The first five or six shall be presentations of the three (3) conceptual designs to the public, selective committees and boards and the County Council to include preliminary cost estimates for each design option for consideration;
    - ii. Up to two (2) presentations to the public and County Council at the completion of the Schematic Design;
    - iii. One (1) public meeting at the end of the Design Development Phase if a scope of services budget change is needed;
    - iv. One (1) or two (2) public meetings at the time of construction award, or an additional public meeting if the need arises at the discretion of County;
    - v. Regular meetings with County staff to discuss progress and for preparations for the public meetings (on site or virtual); and
    - vi. Meet with state and national level historic registration entities during the historic registration process; as needed.
- b. Phase 2 - Schematic Design through Construction Administration and Post-Construction Inspection Services.**
- 1) Phase 2 work shall only occur upon approval for County Council along with an approved budget and preferred concept design.
  - 2) Schematic Design:
    - i. Shall convey the design intent based on prior approvals and what the finished product will resemble;
    - ii. Shall provide calculations (architectural, mechanical and plumbing, electrical, civil, etc.) used to detail the recommendations and a detailed cost estimate;
    - iii. If the cost estimate is approaching the budget, Consultant shall provide alternatives to keep the project within budget. During this phase, there may be additional stakeholder meetings to receive input; and
    - iv. The Design shall be provided to County's Project Manager in a web-compatible format. County shall provide their review and comments within a three (3) week period.
  - 3) Design Development:
    - i. Provide a majority of the technical specifications for the project;
    - ii. Provide drawings that outline details along with placeholders for where other details are to be developed and shown. The details shall provide County with what will ultimately be shown in the Final Design package;
    - iii. The drawings shall be detailed and dimensioned to depict what the final design will represent;
    - iv. Provide desired calculations and assumptions for review;
    - v. Provide a detailed cost estimate. If the cost estimate is approaching the budget cap, Consultant shall provide alternatives to keep the project within budget. Consultant shall provide various alternatives for consideration to County for consideration;
    - vi. Expect up to bi-weekly meetings during the phase with staff and/or stakeholders; and
    - vii. Provide final drawings in this phase in a web compatible format. This package is to be considered 50% of the drawings. County shall require three (3) weeks to review the design package.
  - 4) Construction Drawings:

- i. County shall review progress of the design package at the 90% and 100% level.
  - ii. Consultant shall provide final updated building calculations, assumptions and cost estimate in detail;
  - iii. If the cost estimate is approaching the budget cap, Consultant shall provide alternatives for consideration to County for consideration;
  - iv. Expect up to bi-weekly meetings during the phase with staff and/or stakeholders; and
  - v. Provide the construction document submittal and in a web compatible format for review. County shall require three (3) weeks to review.
- 5) Construction Bidding:
  - i. Consultant may review contractor submittals for applicability, answering contractor requests for information (RFI's) and issuing architectural supplemental instructions (ASI's), as needed;
  - ii. Consultant shall attend the pre-bid/proposal meeting and be available throughout the bidding phase to answer and clarify questions about the bid documents, and shall provide to the County's Project Manager any addenda, as required. County's Project Manager and Procurement staff shall ensure all documents are issued to bidders and interested parties; and
  - iii. Consultant shall assist in reviewing bids and proposals, and make recommendations for award, if requested.
- 6) Construction Administration:
  - i. Consultant shall review contractor submittals for applicability, shop drawings, product literature, operating and maintenance manuals, and as-built drawings from the construction contractor.
    - 1. Consultant shall provide a response within five (5) days unless a faster turnaround is requested by County. When a faster response is required, County shall provide forty-eight (48) hours' notification.
    - 2. Consultant's review of the as-built drawings shall occur prior to final completion and shall provide recommended changes if needed;
  - ii. Consultant shall answer contractor requests for information (RFI's) and issue architectural supplemental instructions (ASI's) as needed.
  - iii. Consultant shall provide inspection tasks to ensure that the design has been followed, provide inspection of Substantial and Final Completion and an eleven (11) month walk-through. Contractor shall determine and provide recommended warranty items;
  - iv. Consultant evaluation, testing and review of equipment installation, on-site inspections and field documentation; and
  - v. Consultant shall attend project progress meetings on a bi-weekly schedule. There may be times where the County Project Manager may request additional meetings with the architect and design team.
- c. Consultant shall not begin the next phase of design unless authorized by County's Project Manager.
- d. Consultant shall provide cost estimates at the end of each design phase. This is to ensure the project is still within budget. If the estimates are within 10% of the budget cap, Consultant shall notify County's Project Manager and provide alternatives to keep it in budget. The initial budget is TWO AND ONE-HALF MILLION DOLLARS (\$2.5M) including Design, Construction, Asbestos Abatement, Gross Receipt Taxes and Contingency. This budget may be amended at the discretion of the County Council.
- e. Consultant shall lead the Historic Registration effort and provide sufficient documentation to register the facility as a National Historic Registered facility, and assist with the registration at the State and National levels with the National Park Service and the State of New Mexico Department of Cultural Affairs.

- f. Throughout the project, Consultant shall be available for project related consultation and interpretation, as required.
- g. Deliverables:
  - 1) Provide Drawings and related materials for the public meetings outlined above; and
  - 2) Provide drawings, specifications, and cost estimates at the end of the various design phases as outlines above.

**SECTION B. TERM:** The term of this Agreement shall commence July 1, 2021, and shall continue through June 30, 2026, unless sooner terminated, as provided herein.

**SECTION C. COMPENSATION:**

1. **Amount of Compensation.** County shall pay compensation for performance of the Services in an amount not to exceed **THREE HUNDRED FIFTY THOUSAND DOLLARS (\$350,000.00)**. Compensation shall be paid in accordance with the rate schedule set out in Exhibit "A," attached hereto and made a part hereof for all purposes.
2. **Monthly Invoices.** Consultant shall submit itemized monthly invoices to County's Project Manager showing amount of compensation due, amount of any NMGRT, and total amount payable. Payment of undisputed amounts shall be due and payable thirty (30) days after County's receipt of the invoice.

**SECTION D. TAXES:** Consultant shall be solely responsible for timely and correctly billing, collecting and remitting all NMGRT levied on the amounts payable under this Agreement.

**SECTION E. STATUS OF CONTRACTOR, STAFF, AND PERSONNEL:** This Agreement calls for the performance of services by Consultant as an independent contractor. Consultant is not an agent or employee of County and will not be considered an employee of County for any purpose. Consultant, its agents or employees shall make no representation that they are County employees, nor shall they create the appearance of being employees by using a job or position title on a name plate, business cards, or in any other manner, bearing County's name or logo. Neither Consultant nor any employee of Consultant shall be entitled to any benefits or compensation other than the compensation specified herein. Consultant shall have no authority to bind County to any agreement, contract, duty or obligation. Consultant shall make no representations that are intended to, or create the appearance of, binding County to any agreement, contract, duty, or obligation. Consultant shall have full power to continue any outside employment or business, to employ and discharge its employees or associates as it deems appropriate without interference from County; provided, however, that Consultant shall at all times during the term of this Agreement maintain the ability to perform the obligations in a professional, timely and reliable manner.

**SECTION F. STANDARD OF PERFORMANCE:** Consultant agrees and represents that it has and will maintain the personnel, experience and knowledge necessary to qualify it for the particular duties to be performed under this Agreement. Consultant shall perform the Services described herein in accordance with a standard that meets the industry standard of care for performance of the Services.

**SECTION G. DELIVERABLES AND USE OF DOCUMENTS:** All deliverables required under this Agreement, including material, products, reports, policies, procedures, software improvements, databases, and any other products and processes, whether in written or electronic form, shall remain the exclusive property of and shall inure to the benefit of County as works for hire; Consultant shall not use, sell, disclose, or obtain any other compensation for such works for hire. In addition, Consultant may not, with regard to all work, work product, deliverables or works for hire required by this Agreement, apply for, in its name or otherwise, any copyright, patent or other

property right and acknowledges that any such property right created or developed remains the exclusive right of County. Consultant shall not use deliverables in any manner for any other purpose without the express written consent of County.

**SECTION H. EMPLOYEES AND SUB-CONTRACTORS:** Consultant shall be solely responsible for payment of wages, salary or benefits to any and all employees or contractors retained by Consultant in the performance of the Services. Consultant agrees to indemnify, defend and hold harmless County for any and all claims that may arise from Consultant's relationship to its employees and subcontractors.

**SECTION I. INSURANCE:** Consultant shall obtain and maintain insurance of the types and in the amounts set out below throughout the term of this Agreement with an insurer acceptable to County. Consultant shall assure that all subcontractors maintain like insurance. Compliance with the terms and conditions of this Section is a condition precedent to County's obligation to pay compensation for the Services and Consultant shall not provide any Services under this Agreement unless and until Consultant has met the requirements of this Section. County requires Certificates of Insurance or other evidence acceptable to County that Consultant has met its obligation to obtain and maintain insurance and to assure that subcontractors maintain like insurance. Should any of the policies described below be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. General Liability Insurance and Automobile Liability Insurance shall name County as an additional insured.

- 1. General Liability Insurance:** ONE MILLION DOLLARS (\$1,000,000.00) combined single limit per occurrence; TWO MILLION DOLLARS (\$2,000,000.00) aggregate.
- 2. Workers' Compensation:** In an amount as may be required by law. County may immediately terminate this Agreement if Consultant fails to comply with the Worker's Compensation Act and applicable rules when required to do so.
- 3. Automobile Liability Insurance for Consultant and its Employees:** ONE MILLION DOLLARS (\$1,000,000.00) combined single limit per occurrence; TWO MILLION DOLLARS (\$2,000,000.00) aggregate on any owned, and/or non-owned motor vehicles used in performing Services under this Agreement.
- 4. Professional Liability Insurance:** \$1,000,000. Professional Liability shall provide coverage for Services provided hereunder during the term of this Agreement and for a period of at least five (5) years thereafter.

**SECTION J. RECORDS:** Consultant shall maintain, throughout the term of this Agreement and for a period of six (6) years thereafter, records that indicate the date, time, and nature of the services rendered. Consultant shall make available, for inspection by County, all records, books of account, memoranda, and other documents pertaining to County at any reasonable time upon request.

**SECTION K. APPLICABLE LAW:** Consultant shall abide by all applicable federal, state and local laws, regulations, and policies and shall perform the Services in accordance with all applicable laws, regulations, and policies during the term of this Agreement. In any lawsuit or legal dispute arising from the operation of this Agreement, Consultant agrees that the laws of the State of New Mexico shall govern. Venue shall be in the First Judicial District Court of New Mexico in Los Alamos County, New Mexico.

**SECTION L. NON-DISCRIMINATION:** During the term of this Agreement, Consultant shall not discriminate against any employee or applicant for an employment position to be used in the performance of the obligations of Consultant under this Agreement, with regard to race, color,

religion, sex, age, ethnicity, national origin, sexual orientation or gender identity, disability or veteran status.

**SECTION M. INDEMNITY:** Consultant shall indemnify, hold harmless and defend County, its Council members, employees, agents and representatives, from and against all liabilities, damages, claims, demands, actions (legal or equitable), and costs and expenses, including without limitation attorneys' fees, of any kind or nature, arising from Consultant's performance hereunder or breach hereof and the performance of Consultant's employees, agents, representatives and subcontractors.

**SECTION N. FORCE MAJEURE:** Neither County nor Consultant shall be liable for any delay in the performance of this Agreement, nor for any other breach, nor for any loss or damage arising from uncontrollable forces such as fire, theft, storm, war, or any other force majeure that could not have been reasonably avoided by exercise of due diligence.

**SECTION O. NON-ASSIGNMENT:** Consultant may not assign this Agreement or any privileges or obligations herein without the prior written consent of County.

**SECTION P. LICENSES:** Consultant shall maintain all required licenses including, without limitation, all necessary professional and business licenses, throughout the term of this Agreement. Consultant shall require and shall assure that all of Consultant's employees and subcontractors maintain all required licenses including, without limitation, all necessary professional and business licenses.

**SECTION Q. PROHIBITED INTERESTS:** Consultant agrees 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 its services hereunder. Consultant further agrees that it will not employ any person having such an interest to perform services under this Agreement. No County Council member or other elected official of County, or manager or employee of County shall solicit, demand, accept or agree to accept a gratuity or offer of employment contrary to Section 31-282 of the Los Alamos County Code.

**SECTION R. TERMINATION:**

- 1. Generally.** County may terminate this Agreement with or without cause upon ten (10) days prior written notice to Consultant. Upon such termination, Consultant shall be paid for Services actually completed to the satisfaction of County at the rate set out in Section C. Consultant shall render a final report of the Services performed to the date of termination and shall turn over to County originals of all materials prepared pursuant to this Agreement.
- 2. Funding.** This Agreement shall terminate without further action by County on the first day of any County fiscal year for which funds to pay compensation hereunder are not appropriated by County Council. County shall make reasonable efforts to give Consultant at least ninety (90) days advance notice that funds have not been and are not expected to be appropriated for that purpose.

**SECTION S. NOTICE:** Any notices required under this Agreement shall be made in writing, postage prepaid to the following addresses, and shall be deemed given upon hand delivery, verified delivery by telecopy (followed by copy sent by United States Mail), or three (3) days after deposit in the United States Mail:

County:

Projects Manager  
Incorporated County of Los Alamos  
1000 Central Avenue, Suite 160  
Los Alamos, New Mexico 87544

Consultant:

Michele M Mullen  
Mullen Heller Architecture P.C.  
1718 Central Ave SW, Suite D  
Albuquerque, New Mexico 87104

**SECTION T. INVALIDITY OF PRIOR AGREEMENTS:** This Agreement supersedes all prior contracts or agreements, either oral or written, that may exist between the parties with reference to the services described herein and expresses the entire agreement and understanding between the parties with reference to said services. It cannot be modified or changed by any oral promise made by any person, officer, or employee, nor shall any written modification of it be binding on County until approved in writing by both County and Consultant.

**SECTION U. NO IMPLIED WAIVERS:** The failure of the County to enforce any provision of this Agreement is not a waiver by the County of the provisions or of the right thereafter to enforce any provision(s).

**SECTION V. SEVERABILITY:** If any provision of this Agreement is held to be unenforceable for any reason: (i) such provision shall be reformed only to the extent necessary to make the intent of the language enforceable; and (ii) all other provisions of this Agreement shall remain in effect.

**SECTION W. CAMPAIGN CONTRIBUTION DISCLOSURE FORM:** A Campaign Contribution Disclosure Form was submitted as part of the Consultant's Response and is incorporated herein by reference for all purposes.

**SECTION X. LEGAL RECOGNITION OF ELECTRONIC SIGNATURES:** Pursuant to NMSA 1978 § 14-16-7, this Agreement may be signed by electronic signature.

**SECTION Y. DUPLICATE ORIGINAL DOCUMENTS:** This document may be executed in two (2) counterparts, each of which shall be deemed an original.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the date(s) set forth opposite the signatures of their authorized representatives to be effective for all purposes on the date first written above.

**ATTEST**

**INCORPORATED COUNTY OF LOS ALAMOS**

\_\_\_\_\_  
**NAOMI D. MAESTAS**  
**COUNTY CLERK**

**BY:** \_\_\_\_\_  
**HARRY BURGESS** **DATE**  
**COUNTY MANAGER**

**Approved as to form:**

\_\_\_\_\_  
**J. ALVIN LEAPHART**  
**COUNTY ATTORNEY**

**MULLEN HELLER ARCHITECTURE, P.C., A NEW**  
**MEXICO CORPORATION**

**BY:** \_\_\_\_\_  
**MICHELE M. MULLEN** **DATE**  
**PRINCIPAL/OWNER**



**Exhibit "A"**  
**AGR 21-45**  
**Compensation Rate Schedule**

<u>Item No.</u>	<u>Description</u>	<u>Unit of Measure</u>
1	Phase 1	Not to Exceed \$29,798.00
2	Phase 2 - Proposed Base for a \$2.5 Million Construction Budget	Not to Exceed \$178,750.00
3	Historic Registration - Phase 1 - Start up and Field Work, Research, develop Report, Presentation; Phase 2 - National Register Nomination Form	Not to Exceed \$82,312.76
4	NTE Reimbursable Expense Amount - Historic Registration NTE Reimbursables include 3 Flights, Lodging, Per Diem, Fuel for Phase 1 & 2; MHA Mileage for 10 trips for design and 34 trips for const. (195.6 miles x 0.56 = \$109.54/per trip, and \$1000 for reproduction costs	Not to Exceed Amount \$11,242.81
	Total	\$302,103.57
<b>Fixed Hourly Rates</b>		
Name - Subject to Change	Title	Amount Per Hour
MULLEN HELLER ARCHITECTURE, P.C.		
Doug Heller, NCARB, AIA, LEED® AP	PROJECT LEAD - Principal Architect	\$ 170.00
Michele Mullen, AIA, LEED® AP	PROJECT LEAD - Principal Architect	\$ 170.00
Sandy Johnson AIA, NCARB, LEED® AP BD+C	PROJECT SUPPORT - Project Architect	\$ 135.00
Madie Strong-Wickstrom	PROJECT SUPPORT - Intern Architect/Drafting	\$ 90.00
Danielle Welch	ADMINISTRATIVE - Office Manager	\$ 75.00
WALLA ENGINEERING		
Mike Walla, PE	Principal	\$ 160.00
Ken Velazquez	PROJECT SUPPORT - Drafting Technician	\$ 95.00
BG BUILDINGWORKS		
Morgan Royce, PE, LEED®, AP	Principal	\$ 210.00

Nathan Aultman	MECHANICAL PROJECT LEAD - Mechanical Engineer	\$	150.00
Duane Despain, PE, LEED®, AP	ELECTRICAL PROJECT LEAD - Project Manager	\$	175.00
Paul Mortensen	PROJECT SUPPORT - REVIT Drafter/Designer	\$	88.00
Bohannon Huston, Inc.			
Glenn Broughton, PE	Engineer	\$	215.00
Jeff Mulberry, PE	Technical Manager	\$	175.00
TBD	Planner	\$	150.00
EA Engineering, Science, and Technology, Inc.			
Jayne Aaron, LEED AP, ENV SP	PROJECT LEAD - SR SR.	\$	165.79
TBD	PROJECT SUPPORT - CR JR.	\$	78.13
TBD	GIS/CAD/Graphics	\$	88.97
CONSENSUS PLANNING			
Chris Green, ASLA	PROJECT LEAD - Principal Landscape Architect	\$	140.00
Ashlie Maxwell	PROJECT SUPPORT - Project Manager/Drafter	\$	85.00
Reimbursable Expense Rates Sheet			
Description	Rate	Unit	
Local Mileage (IRS Current Rate)	\$0.56	Mile	
Vehicle Rental	\$85.00	Day	
Airport Parking	\$10.00	Day	
Air Fare	\$425.00	Day	
Per Diem Lodging: Maryland	\$258.00	Day	
Per Diem Meals/Incidentals: Maryland	\$76.00	Day	
Per Diem Meals/Incidentals: New Mexico	\$96.00	Day	
Per Diem Meals/Incidentals: New Mexico	\$55.00	Day	
Fuel	\$3.50	Each	