



**INTERGOVERNMENTAL AGREEMENT BETWEEN
OTERO COUNTY, TWELFTH JUDICIAL DISTRICT COURT, AND
ADMINISTRATIVE OFFICE OF THE COURTS FOR THE NEW
OTERO COUNTY TWELFTH DISTRICT COURTHOUSE**

THIS INTERGOVERNMENTAL AGREEMENT is entered into this 27th day of December, 2023, by and between the County of Otero, a political subdivision of the State of New Mexico, hereinafter referred to as the “COUNTY” and the Twelfth Judicial District Court hereinafter referred to as the “TJDC” and the Administrative Office of the Courts, hereinafter referred to as the “AOC” (hereinafter referred to as the “PARTIES”). This Agreement shall be effective as of the date it is executed by the PARTIES.

RECITALS

WHEREAS, the COUNTY has an interest in the fair and efficient administration of the judiciary; and

WHEREAS, the COUNTY has an interest in providing support and resources for the fair administration of justice; and

WHEREAS, the TJDC is currently located at the COUNTY owned property located at 1000 New York Ave., Alamogordo, New Mexico 88310; and

WHEREAS, there was a question of whether the current location provided adequate quarters for the district courthouse in accordance with Section 34-6-24 NMSA 1978 and TJDC filed a lawsuit over the matter; and

WHEREAS, the COUNTY at a public meeting on December 8, 2022, committed to build a new courthouse on the north end of Alamogordo, New Mexico in order to address its statutory duty to provide adequate quarters for the operations of the Twelfth Judicial District Court, subject to a joint financial commitment with the State of New Mexico; and

WHEREAS, the projected cost of a new courthouse for the Twelfth Judicial District Court, providing four courtrooms, two hearing rooms, administrative space for services, and proper courthouse security is reasonably estimated to be \$25 to \$30 million; and

WHEREAS, the COUNTY and the TJDC entered into a settlement agreement on December 2022 with the parties agreeing to jointly fund the project; and

WHEREAS, the COUNTY committed to provide \$12.5 to \$15 million for construction costs and necessary infrastructure; and

WHEREAS, the TJDC committed to provide the remaining funds for the completion of the new courthouse from resources allocated by the 2023 New Mexico Legislature and administered by the AOC.

NOW THEREFORE in consideration of the promises and conditions contained herein, the PARTIES hereto agree as follows:

- I. **PURPOSE.** The purpose of this Intergovernmental Agreement (hereinafter referred to as “IGA”) is to memorialize the roles and responsibilities of the PARTIES with regards to the design, construction, schedule, management, and cost associated with the new Otero County Courthouse located at Unit 1, Lot 5-A, of the Mesa Village Subdivision, Alamogordo, New Mexico, 88310.
- II. **TERM.** This IGA is effective upon the first date written above and shall terminate upon the completion of the Project.
- III. **FUNDING.** In the 2023 Legislative Regular Session, House Bill 2 at page 188 provides three million dollars (\$3,000,000.00) to the AOC, to plan, design, construct, renovate, furnish, and equip district court improvements statewide, contingent upon county match of at least fifty percent (50%) to project cost, and requiring the AOC to prioritize projects based on critical need and county financial capacity.

In addition, House Bill 505 appropriates twenty million dollars (\$20,000,000.00) to the AOC, to plan design, construct, renovate, furnish, and equip district court improvements statewide, contingent upon county match of at least fifty percent (50%) of project cost, and requiring the AOC to prioritize projects based on critical need and county financial capacity.

The COUNTY is committing to funding at least fifty percent (50%) of the project cost in like match funding with the AOC.

The COUNTY’s funding for the Project:

| FUND | GL ACCOUNT | BUDGET |
|---------------------------------------|-------------------|------------------------|
| Local & Tribal Consistency Fund | 171091-5896 | \$9,68,268.02 |
| 1/4% Hold Harmless Gross Receipts Tax | 196088-5959 | \$5,000,000.00 |
| 1/8% Hold Harmless Gross Receipts Tax | 197089-5959 | \$331,731.98 |
| | TOTAL: | \$15,000,000.00 |

The COUNTY's obligations under this Agreement to provide funding are not, however, limited to the accounts listed should they prove to be insufficient to meet the COUNTY'S maximum obligation of \$15 million dollars, at any point during the lifetime of the project.

IV. RESPONSIBILITIES OF PARTIES.

1. The COUNTY will have County Project Manager, Trent Parker and/or his designee serve as the lead role in executing, controlling, and closing the construction of the Project, based on the approved Project plans and specifications provided by an architect firm selected in accordance with Section 13-1-117.2 NMSA 1978 and Section 13-1-120 NMSA.

The County Project Manager project duties include but are not limited to the design development phase, procurement process phase, participation with preparation and coordination of the construction documents phase including but not limited to mechanical, electrical, plumbing, fire alarm, fire sprinkles, data infrastructure and other existing systems within the Project's scope, construction phase, and construction closing.

2. The COUNTY will coordinate schedules to include meetings, design, construction, and inspections for the Project and coordinate parties responsible for addressing any questions, difficulties, or disputes, of whatever nature, which may arise relative to the interpretation of the plans and fulfillment of the Scope of Work described below, as to the character, quality, amount, and value of any work done, and materials furnished, under or by reason of this IGA.
3. The COUNTY will be responsible for coordinating with subject matter experts for inspection of all work done and all materials furnished.
4. The COUNTY will permit the TJDC and AOC designees access to County documents, including financial records, throughout the Project.
5. The COUNTY will seek written approval from the TJDC and AOC designees at critical stages in the Project process to include schematic design, design development, and construction documents.

V. SCOPE OF WORK.

1. The purpose of the IGA between the Twelfth Judicial District Court and Otero County is to define the obligations of the parties for the construction of a new District Courthouse. The Scope of Work includes, but is not limited to, the following:
 - a. Construction of a new District Courthouse with approximately 45,000 square feet with four courtrooms, two hearing rooms, administrative space for services, and courthouse security. The building would be for district court

only with no other tenants or entities occupying the building. Courthouse construction includes secured and unsecured parking, landscaping, a sally port for inmate transfer, along with holding cells, security check-in at the entry, and other typical security features such as cameras, judicial offices, administrative offices, legal library, jury rooms, hearing rooms, and restroom facilities. Construction also includes floor, wall, and ceiling finishes; casework; mechanical, plumbing, and electrical systems; and data and telecommunication systems; and fire suppression systems.

b. Other Work jointly approved by COUNTY, TJDC, and AOC.

2. The TJDC and the COUNTY will work together cooperatively to request bids in accordance with Section 13-1-117.2 NMSA 1978 and Section 13-1-120 NMSA.

VI. PAYMENTS.

1. Requests for payment must have Proper Documentation of services performed for the COUNTY per this Agreement. Proper Documentation includes a cover letter from the COUNTY requesting reimbursement, a pay application signed by the Architect of Record and the contractor, and a copy of the payment made to the contractor or vendor.
2. The COUNTY shall submit invoices to the TJDC for reimbursement pursuant to the procedures set forth in Article IX of this Agreement. The COUNTY may submit Proper Documentation to the TJDC via electronic means and the TJDC may submit approved requests for payment to the AOC via electronic means.
3. The Parties are responsible for ensuring the Project is completed within the budget.
4. The TJDC and AOC agree to secure an amount of \$15 million for the Project, which equal to the amount committed by COUNTY.
5. AOC represents and warrants that it has the funds and does not require a Notice of Obligation from the Department of Finance and Administration.

VII. LIMITATION ON AOC'S OBLIGATION TO MAKE REIMBURSEMENT TO THE COUNTY.

1. Upon the Effective Date of this Agreement, for permissible purposes within the Scope of Work, the COUNTY shall only be reimbursed for monies for which the AOC has issued and the TJDC has approved. This Agreement and the disbursement of any and all amounts of the above referenced Appropriation Amount are expressly conditioned upon the following:
 - a. The total amount received by the COUNTY shall not exceed the Appropriation Amount identified in Article VI, Paragraph (4) above; and
 - b. The COUNTY'S expenditures are made pursuant to the County's Purchasing

Ordinance(s) and the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors¹ for the provision of services, including professional services, or the purchase of tangible personal property for the Project, hereinafter referred to as "Third-Party Obligations"; and

- c. The COUNTY'S submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and
- d. The COUNTY'S submission of documentation of all Third-Party Obligations and amendments thereto (including terminations) to the AOC shall be governed by the following:
 - i. The COUNTY shall submit to the AOC one copy of all Third-Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third-Party.
2. Project funds shall not be used for purposes other than those specified in the Project Description.
3. Unless specifically allowed by law, Project funds cannot be used to reimburse COUNTY for indirect Project costs. Indirect Project costs include expenses of COUNTY staff in performing the work of the Project.
4. The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Board of County Commissioners of Otero County

VIII. ASSIGNMENT.

The COUNTY shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement.

IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES.

1. The COUNTY shall request reimbursement by submitting a Request for Payment to the TJDC for approval with the AOC issuing payment to the County. Payment requests are subject to the following procedures:
 - a. The COUNTY must submit a Request for Payment; and
 - b. Each Request for Payment must contain a breakdown of work performed and associated costs pursuant to this Agreement. Any expenditures made pursuant to the Project will be submitted for request for reimbursement. Payment to the COUNTY is on a cost reimbursement basis. The COUNTY shall provide billing detail by contractor's schedule of values.

¹ Third-Party contractors or vendors are independent contractors performing services in fulfillment of the Scope of Work for the COUNTY.

- c. The TJDC agrees to rely on the County's assessment of progress when approving invoices.
- d. The TJDC will not unreasonably withhold approval of any invoice. Should the TJDC dispute any expenditure on an invoice, the TJDC will inform the County within ten (10) business days of receiving such invoice and the parties will confer within ten (10) business days.
- e. The TJDC will forward an approved Request for Payment to the AOC for payment to the COUNTY.

2. Deadlines

- a. Requests for Payments shall be submitted by the COUNTY to the TJDC for approval immediately as they are received by the COUNTY but at a maximum thirty (30) days from when the expenditure was incurred.
- b. TJDC shall approve invoices within ten (10) days of receipt from County.
- c. TJDC shall submit invoices to AOC for payment within ten (10) days of approving such invoices.
- d. AOC shall pay invoices received from the SJDC within ten (10) days of receipt. Payment will be made to the COUNTY.
- e. The COUNTY's failure to abide by the requirements set forth in Article VI, Article VII, and Article IX herein may result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The TJDC has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Scope of Work and that the expenditures and the COUNTY are otherwise in compliance with this Agreement.

X. NOTICE PROVISIONS AND PARTIES' DESIGNATED REPRESENTATIVES.

- 1. Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.
 - a. The COUNTY designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Name: Pamela Heltner
Title: County Manager
Address: 1101 New York Ave, Alamogordo, New Mexico 88310
Email: pheltner@co.otero.nm.us
Phone: (575) 437-7427

Name: R. B. Nichols
Title: County Attorney
Address: 1101 New York Ave, Alamogordo, New Mexico 88310
Email: rnichols@co.otero.nm.us
Phone: (575) 520-5335

- b. The TJDC designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Name: Angie K. Schneider
Title: Chief District Judge
Email: aladaks@nmcourts.gov
Phone: (575) 439-1333

Name: Audrey Hukari
Title: Court Executive Officer Twelfth Judicial District Court
Address: 1000 New York Ave, Alamogordo, New Mexico 88310
Email: aladalh@nmcourts.gov
Phone: (575) 812-508

- c. The AOC designates the person(s) listed below, or their successors, as the Point of Contact for matters related to this Agreement.

Name: Arthur W. Pepin
Title: Director, Administrative Office of the Courts
Address: 237 Don Gaspar, Santa Fe, New Mexico 87501
Email: aocawp@nmcourts.gov
Phone: (505) 827-4800

- d. The PARTIES agree that each party shall send all notices, including written decisions, related to this Agreement to the above-named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

2. For purposes of communicating regarding the Project specifically, the Parties designate the follow individuals as Points of Contact and have indicated the methods by which to contact such individuals:

The COUNTY:

Name: Pamela Heltner
Title: County Manager
Email: pheltner@co.otero.nm.us
Phone: (575) 437-7427

Name: R. B. Nichols
Title: County Attorney
Email: rnichols@co.otero.nm.us
Phone: (575) 520-5335

Name: Trent Parker
Title: County Project Manager
Email: tparker@co.otero.nm.us
Phone: (575) 551-4754

Name: Julianne Hall
Title: County Finance Director
Email: jhall@co.otero.nm.us
Phone: (575) 437-7427

Name: Wendy Robinson
Title: County Chief Procurement Officer
Email: wrobinson@co.otero.nm.us
Phone: (575) 437-7427

The TJDC:

Name: Angie K. Schneider
Title: Chief District Judge
Email: aladaks@nmcourts.gov
Phone: (575) 439-1333

Name: Audrey Hukari
Title: Court Executive Officer Twelfth Judicial District Court
Email: aladalh@nmcourts.gov
Phone: (575) 812-5080

Name: Megan Bowman
Title: Court Financial Manager
Email: aladmnb@nmcourts.gov
Phone: (575) 812- 5081

The AOC:

Name: Dimple Tafoya
Title: Chief Financial Officer
Email: aocdkt@nmcourts.gov
Phone: (505) 827- 4832

XI. RECORDS AND AUDIT.

The COUNTY shall maintain detailed invoices, which indicate the date and nature of services rendered. These records shall be subject to inspection by the TJDC and AOC. The TJDC and AOC shall have the right to audit billings, both before and after payment; payment under this Agreement shall not foreclose the right of the TJDC or AOC to recover excessive or illegal payment.

XII. CONFIDENTIALITY.

To the extent permitted by law, any confidential information provided to or developed by the COUNTY in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the COUNTY.

XIII. CONFLICT OF INTEREST.

The COUNTY 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.

XIV. AMENDMENT.

This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto.

XV. SCOPE OF AGREEMENT.

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 understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

XVI. PENALTIES.

The New Mexico 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.

XVII. INDEMNIFICATION.

Neither the COUNTY, or the AOC, or the TJDC shall be responsible for liability incurred as a result of the other Party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, et seq.

XVIII. APPLICABLE LAW.

The Agreement shall be governed by the laws of the State of New Mexico.

XIX. WAIVER.

No waiver of any breach of any of the terms or conditions of this Agreement shall be held to be a waiver of any other or subsequent breach; nor shall any waiver be valid or binding unless the same shall be in writing and signed by the party alleged to have granted the waiver.

XX. EQUAL OPPORTUNITY COMPLIANCE:

The COUNTY agrees to abide by all federal and state laws pertaining to equal employment opportunity. If COUNTY is found to be not in compliance with these requirements during the life of this Agreement, the TJDC agrees to take appropriate steps to correct these deficiencies.

XXI. LIABILITY.

Any and all claims by third parties resulting from this Agreement are subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1 et seq., NMSA 1978, as amended. Neither of the Parties shall be considered liable for the acts or omissions of the other party, nor for those of the other party's employees.

XXII. FACSIMILE/ELECTRONIC SIGNATURE.

A signature sent via facsimile/electronic shall have the same legal effect as if the Original has been signed in person.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of execution by the Chairwoman, Otero County Board of County Commissioners below.

OTERO COUNTY

Vickie Marquardt, Chairwoman
Board Of County Commission
Otero County, New Mexico

Date: _____

APPROVED AS TO FORM:

R. B. Nichols
County Attorney

Date: _____

TWELFTH JUDICIAL DISTRICT COURT

Angie Schneider
Chief Judge

Date: _____

Audrey Hukari
Court Executive Officer

Date: _____

APPROVED AS TO FORM:

Michael Ryan Suggs
Staff Attorney

Date: _____

ADMINISTRATIVE OFFICE OF THE COURTS

Artie Pepin
AOC Director

Date: _____

APPROVED AS TO FORM:

Celina Jones
AOC General Counsel

Date: _____