

Henry P. Roybal
Commissioner, District 1

Miguel Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

DATE: *July 30, 2015*

TO: *Board of County Commissioners*

FROM: *Adam Leigland, Public Works Department Director*

VIA: *Katherine Miller, County Manager*

ITEM AND ISSUE: *BCC Meeting August 11, 2015*
Request for Direction on the Creation of County Flood Commissioner Pursuant to NMSA 1978, Sections 4-50-1 Through 4-50-9 (Public Works/Adam Leigland)

SUMMARY

This is an update and further request for direction on the creation of the Office of the County Flood Commissioner, as requested by the BCC at the May 26, 2015, meeting.

BACKGROUND:

A presentation on the possible creation of a county flood commissioner was made to the BCC on May 26, to outline the pros and cons of this office and to gauge the commission's interest in pursuing the option. The BCC directed staff to further explore the idea and report back. The BCC also requested that staff investigate soil and water conservation districts and compare them to the flood commissioner.

Other Counties. Three counties have created the office of the flood commissioner: Chaves, Dona Ana, and Sierra. For this report, staff interviewed the individuals listed below:

Chaves County: County manager, public works director, director of the flood commission.

Dona Ana County: BCC chair, county manager, public works director, county attorney, director of the flood commission.

Sierra County: Assistant county manager, public works director.

In every case except one, the flood commission was considered by the interviewee to be a positive. The Chaves County public works director indicated that he wished he could work more with the flood commissioner. The Dona Ana County BCC chair stated that he wished the flood

commissioner had more resources to be able to accomplish more. The Sierra County assistant county manager indicated that under the previous flood commissioner, the office worked very well. The Sierra County BCC has requested that the Office of the Governor appoint a new flood commissioner.

In short, it appears that the effectiveness of a flood commissioner, which can be high, lies in the level of collaboration and cooperation the flood commissioner has with the county commission, county staff, and constituents.

Soil and Water Conservation Districts. Soil and Water Conservation Districts (SCWD) are enabled by state statute (NMSA 73-20-44) to, among other things, develop comprehensive plans for flood prevention and control and to construct, improve, operate, or maintain physical projects and structures necessary or convenient for the flood prevention and control. Further, SCWDs are allowed by law (NMSA 73-20-4) to subdivide themselves into Watershed Districts (WSD), which are enabled to undertake projects for flood prevention, flood control, erosion prevention and control of erosion, and floodwater and sediment damages. Each district has the ability to levy tax assessments (1 mill for SWCD and 5 mills from WSD within their respective jurisdictions) to fund these projects and other district activities. SCWDs and WSDs are created from the ground up, have their own elected boards, and are accountable to the state soil and water conservation commission. There are currently 47 SWCDs and 7 WSDs in the state.

It appears that these two types of districts have largely similar powers to those of a flood commissioner with regard to flood control and/or damage, and have the ability to levy tax assessments. Staff reviewed the websites of the 17 SWCDs with websites and noted that only one of them (Coronado) actually does flood control/damage work. Staff also interviewed the director of the Santa Fe/Pojoaque SCWD.

In sum, while these districts have similar power and abilities with respect to flood control/damage as a flood commission, they have two disadvantages from the County's point of view. First, these districts are independent from a county and therefore not tools that a county commission can directly wield. Second, flood prevention and control does not appear to be a high priority for the districts.

DISCUSSION:

Based on the information gathered thus far, staff feels that a flood commissioner would be a valuable tool for the County. The specific action that the BCC would undertake to create the flood commission would be passage of a resolution approving the creation of the office of the flood commission; a sample resolution is attached for review.

One downside of the flood commissioner is that property taxes are increased within the county for an entity that is not managed by the county.

Learning from the experience of other counties, staff would recommend the execution of a memorandum of agreement (MOA) between the County and the flood commissioner. A sample such MOA is attached for review. This MOA would address in particular the problems that Sierra County faced with their flood commissioner.

Creation of the office of the flood commissioner would take time. A sample timeline, assuming that BCC approval is granted in August, is provided below.

Sample Timeline:

Date	Action
Sep 29, 2015	BCC approves enabling resolution; solicits candidates for appointment
Oct 8, 2015	Office of the Governor solicited for appointment
Nov 10, 2015	Flood commissioner appointed
Dec 8, 2015	MOA signed
Mar 30, 2016	Flood commissioner presents certification of need to BCC
Jul 1, 2016	BCC imposes property assessment
Jul 12, 2016	Flood commissioner presents work plan for approval
April 2017	First property assessment revenues distributed from state

The state statute allows the BCC to impose the property tax assessment without first submitting the question to the voters. As mentioned earlier, the increase in property tax is a potential downside, so the BCC may choose to solicit voter approval for the creation of the office of the flood commissioner, in which case the timeline above would need to be modified accordingly.

Staff is requesting that the process to create the office of the flood commissioner be initiated with the enabling resolution.

ACTION REQUESTED:

Direct staff to bring an enabling resolution to the BCC for approval.



SANTA FE COUNTY
RESOLUTION No. 2015-__

**A RESOLUTION CONDITIONALLY APPROVING THE
CREATION OF THE OFFICE OF THE COUNTY FLOOD
COMMISSIONER**

WHEREAS, NMSA 1978, Section 4-50-1 to -10 (1921, as amended through 1997) grants boards of county commissioners the power to approve the creation of the office of the county flood commissioner and the annual budget of the office; and

WHEREAS, county flood commissioners are empowered to inspect rivers and streams in their respective counties where flood waters are liable to cause damage to property or life and in their discretion cause to be constructed and maintained dikes, embankments, dams, ditches or other structures or excavations necessary to control such flood water and protect life and property in their counties against loss and damage; and

WHEREAS, Santa Fe County contains numerous rivers and streams where flood waters have caused damage to property or life in the past and are liable to do so in the future; and

WHEREAS, County approval of creation of an Office of Santa Fe County Flood Commissioner will benefit to the citizens of Santa Fe County; and

WHEREAS, the flood commissioner is appointed by the governor, and serves a term of two years; and

WHEREAS, under Section 4-50-3, county flood commissioners have may inspect rivers and streams in their respective counties where flood waters are liable to cause damage to property or life and in their discretion cause to be constructed and maintained dikes, embankments, dams, ditches or other structures or excavations necessary to control such flood water and protect life and property in their counties against loss and damage; and

WHEREAS, for flood control purposes, upon certification of the need and estimated cost by the county flood commissioner, the Board of County Commissioners ("BCC") is authorized under Section 4-50-2 to levy an annual tax upon all the taxable property located within five miles of both sides of any river or stream which contributes to or is subject to flood conditions destructive to property or dangerous to human life; and

SAMPLE

WHEREAS, the levy under 4-50-2 shall not exceed one dollar fifty cents, or any lower maximum amount required by operation of the rate limitation provisions of NMSA 1978, Section 7-37-7.1 upon a tax imposed under this section, on each one thousand dollars of net taxable value;

WHEREAS, although the flood commissioner is a state position appointed by the governor, all expenses and indebtedness incurred by any county flood commissioner under the provisions of Sections 4-50-1 through 4-50-9 are subject to the approval of the BCC; and

WHEREAS, the Office of the Santa Fe Flood Commissioner will require broad operational support from the County, including support in the areas of finance, legal, human resources, and procurement; and

WHEREAS, in order establish clear lines of authority, responsibilities, staffing, office space and equipment, and other operational requirements it is essential that the relationship between the County and the flood commissioner be set out in a binding memorandum of agreement; and

WHEREAS, the BCC's approval of the creation of the office of the Santa Fe County flood commissioner should be conditioned on the governor's appointed flood commissioner executing an appropriate memorandum of agreement ("MOA") with the County; and

WHEREAS, the County Manager should be delegated authority to negotiate the MOA with the Flood Commissioner and to present the MOA to the BCC for approval within three months after the governor's appointment; and

WHEREAS, if the County Manager and Flood Commissioner are unable to negotiate and present a mutually acceptable MOA to the BCC within three months, or if BCC does not approve the MOA within sixth months, the BCC's approval of the creation of the Office of the Santa Fe Flood Commission shall automatically be rescinded unless BCC extends the periods of negotiation and approval by resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY BOARD OF COMMISSIONERS:

1. Pursuant to Section 4-50-1, the creation of the Office of the Santa Fe County Flood Commissioner is hereby conditionally approved.
2. The County Manager is authorized to formally notify the Office of the Governor of this approval and seek the immediate appointment of a flood commissioner, and, unless the BCC's approval is automatically rescinded as provided below, the County Manager is further authorized to seek new appointments and reappointments in the future as necessary.
3. The County Manager and the Flood Commissioner appointed by the governor shall negotiate a mutually acceptable draft MOA between the BCC and the Office of the Santa Fe

SAMPLE

Flood Commissioner and jointly present the draft to the BCC for approval within three months of the governor's appointment.

- 4. The MOA shall describe the scope and the terms of the County's operational support to the Office of the Santa Fe Flood Commissioner, establish requirements for reporting to the BCC and the County Manager, and include a list of performance criteria and such other terms and conditions as the County Manager deems necessary or appropriate.
- 5. The County Manager and the Flood Commissioner shall jointly present a proposed MOA to the BCC for approval and execution within three months of the Governor's appointment of the flood commissioner. If the MOA is not presented to the BCC within three months of the Governor's appointment of the flood commissioner, or if the MOA has not been approved by the BCC and executed by the BCC, the County Manager, and the Office of the Santa Fe Flood Commissioner within six months of the appointment of the flood commissioner, the BCC's conditional approval of the Office of the Santa Fe County Flood Commissioner shall automatically be rescinded unless the BCC extends the deadlines by resolution. The County Manager shall promptly notify the Office of the Governor if the BCC's conditional approval is rescinded under the terms of this Resolution.
- 6. The County Manager shall be the liaison between the BCC and the Office of the Santa Fe Flood Commissioner.

**PASSED, APPROVED, AND ADOPTED THIS ___ DAY OF _____, 2015.
BOARD OF COUNTY COMMISSIONERS**

By: _____ Date _____
Robert Anaya, Chair

ATTEST:

Geraldine Salazar, County Clerk Date _____

Approved as to form:

Gregory Shaffer County Attorney Date _____

**MEMORANDUM OF AGREEMENT
BETWEEN SANTA FE COUNTY AND
THE OFFICE OF THE SANTA FE COUNTY FLOOD COMMISSIONER**

THIS AGREEMENT is entered into this _____ day of _____ 201X, by and between the County of Santa Fe, a political subdivision of the State, hereinafter referred to as the "County," and the Office of the Santa Fe County Flood Commissioner, an entity created pursuant to NMSA 1978 Section 4-50-1, hereinafter referred to as the "Flood Commission".

WHEREAS, State statute (NMSA 1978 Section 4-50-1 to -10 (1921)) grants boards of county commissioners the power to approve the creation of the office of the county flood commissioner; and

WHEREAS, the Santa Fe Board of County Commissioners approved the creation of the office of the county flood commissioner on XXX, 201X, by Resolution No. 201X-XXX; and

WHEREAS, for flood control purposes, upon certification of need and estimated cost by the Flood Commission, the Board of County Commissioners is authorized to levy an annual tax upon all the taxable property located within five miles of both sides of any river or stream which contributes to or is subject to flood conditions destructive to property or dangerous to human life; and

WHEREAS, NMSA 1978 Section 4-50-6 requires that expenses and indebtedness incurred by the Flood Commission shall be subject to the approval of the County; and

WHEREAS, NMSA 1978 Section 4-50-7 requires that between the 15th day of December of each year and the succeeding first day of January the Flood Commission shall make full and detailed report to the County, giving a detailed description of all work constructed, built, or maintained by the Flood Commission during the current year, together with a full and true account of all expenditures made by the Flood Commission; and

WHEREAS, in order to function properly, the Flood Commission shall require the operational support of the County in such areas as finance, legal, human resources, and procurement; and

WHEREAS, the County desires that the Flood Commission become and remain a cost-effective, responsive, relevant, and transparent organization;

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. **CERTIFICATION OF NEED AND ESTIMATED COST.** Pursuant to Section 4-50-2, within 180 days of the effective date of this agreement, the Flood Commission shall present to the County a recommendation for the determination of drainage areas, a certification of need (to include a staffing and equipment plan), and an estimated cost to meet such needs in such drainage areas, for County Commission approval.
2. **TAX LEVY AND COUNTY FLOOD FUND.** Based on the certification of need and estimated cost and determination of drainage areas as described in Paragraph 1, the County shall cause to be levied a tax on all properties within the drainage areas in compliance with the terms of Section 4-50-2. The revenues received from this tax shall be maintained in a separate fund known as the county flood fund, and the county flood fund shall be used to fund all operational and capital requirements of the Flood Commission.
3. **BRIDGING FUNDS.** The County may, as necessary, provide operating funds to the Flood Commission to bridge the time gap between the creation of the Flood Commission and the first receipts of revenue into the county flood fund. These bridging funds shall be reimbursed to the County on a schedule to be determined during the annual budget preparation process.
4. **APPROVAL OF EXPENDITURES AND WORK PLAN.** Pursuant to Section 4-50-6, the Flood Commission shall participate in the County annual budget process. In January and July of each year, the Flood Commission shall present to the County Commission for approval a work plan and an accounting of all anticipated expenditures for the upcoming six-month period and report on expenditures of the previous six-month period.
5. **ANNUAL REPORT.** Pursuant to Section 4-50-7, at the first commission meeting in December of each year, the Flood Commission shall present to the County a full and detailed report, giving a detailed description of all work constructed, built, or maintained by the Flood Commission during the current year, together with a full and true account of all expenditures made by the Flood Commission and an accounting of performance measures as described in Paragraph 9.
6. **OPERATIONAL SUPPORT.** The Flood Commission shall be entitled to full use and benefit of County operational resources. For this, the Flood Commission shall compensate the County an amount determined each year by the County during the budget preparation process for the upcoming fiscal year, and such compensation shall be transferred from the county flood fund into the County general fund.
7. **COORDINATION.** County departments such as Public Works and Growth Management shall well and faithfully coordinate their efforts with the Flood Commission as appropriate, and the Flood Commission shall in turn coordinate with County departments.

8. **COUNTY POLICIES AND PROCEDURES.** The Flood Commission shall follow and comply with all County policies and procedures in effect, including but not limited to the following areas: human resources, procurement, finance, fleet management, IT, public meetings, ethics, citizen advisory committees, and risk management.
9. **PERFORMANCE MEASURES.** To ensure that the Flood Commission meets County goals of cost-effectiveness, transparency, responsiveness, and relevance, the following measures shall be used to evaluate Flood Commission performance for purposes of approval of work plan and expenditures and maintenance of the Flood Commission. The annual report specified in Paragraph 5 shall contain an accounting of these performance measures. If the performance measures are not met, the County may specify remedial measures as a condition of approval of expenditures, or may choose to terminate this agreement pursuant to Paragraph 12.
 - a. **Staffing.** The Flood Commission shall maintain a level of staffing that is equivalent to the level of staffing of a similar County department performing a similar level of work.
 - b. **Work orders.** The Flood Commission shall create a work order submission and management program or shall cooperate with an existing such County program, and shall promulgate and meet work order response rates.
 - c. **Work plan.** The Flood Commission shall complete at least 75% of the tasks outlined in the work plan described in Paragraph 4 above in the timeline indicated for each task.
10. **OTHER AGREEMENTS.** The County and the Flood Commission may enter into agreements for the provision of services such as management of the County Flood Damage Control Ordinance. The Flood Commission may, as appropriate, enter into agreements with other public entities and such agreements shall be subject to County approval.
11. **EFFECTIVE DATE.** This Agreement shall become effective on the date of execution by the County or the Flood Commission, whichever occurs last.
12. **TERMINATION.** This Agreement may be terminated by the County if the performance measures described in Paragraph 9 are not met. Termination shall occur by resolution of the County Commission, and such termination of the agreement shall constitute disbanding of the Flood Commission. The resolution terminating this agreement and thus disbanding the Flood Commission shall contain the timeline and process for the disbanding and a description of the disposition of Flood Commission assets, including the county flood fund.
13. **LIABILITY.** Each party shall be solely responsible for fiscal or other sanctions occasioned as a result of its own violation of requirements applicable to the performance of the Agreement. Each party shall be liable for its actions in accordance with this Agreement. Any liability incurred by the County or the Flood

Commission in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act NMSA 1978, Section 41-4-1, *et. seq.* and as amended. The County, Flood Commission, 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.

14. **AMENDMENT.** This Agreement shall not be altered, changed, or amended except by an instrument executed in writing signed by all parties.
15. **APPROPRIATIONS.** The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of the State of New Mexico and the governing body of the County for the performance of this Agreement. If sufficient appropriations and authorization are not made, this Agreement shall terminate immediately upon written notice being given by the terminating party to the other party. Any party's decision as to whether sufficient appropriations are available shall be accepted by the other party and shall be final.
16. **GOVERNING LAW.** This Agreement shall be governed by, and construed in accordance with, the laws of New Mexico.
17. **NO THIRD-PARTY BENEFICIARIES.** Nothing in this Agreement, express or implied, is intended to confer any rights, remedies, claims or interests upon a person not a party to this Agreement.
18. **ENTIRE AGREEMENT.** This Agreement represents the entire understanding between the County and the Flood Commission and supersedes any prior agreements or understandings with respect to the subject of this Agreement. No changes, amendments or alterations to this Agreement will be effective until in writing and signed by the parties.

IN WITNESS WHEREOF, the parties set their hands:

FLOOD COMMISSION:

SANTA FE COUNTY

XXX, Flood Commissioner

XXXXXXX, Chair
Board of County Commissioners Manager

DATE: _____

DATE: _____

ATTEST:

XXXX,
County Clerk

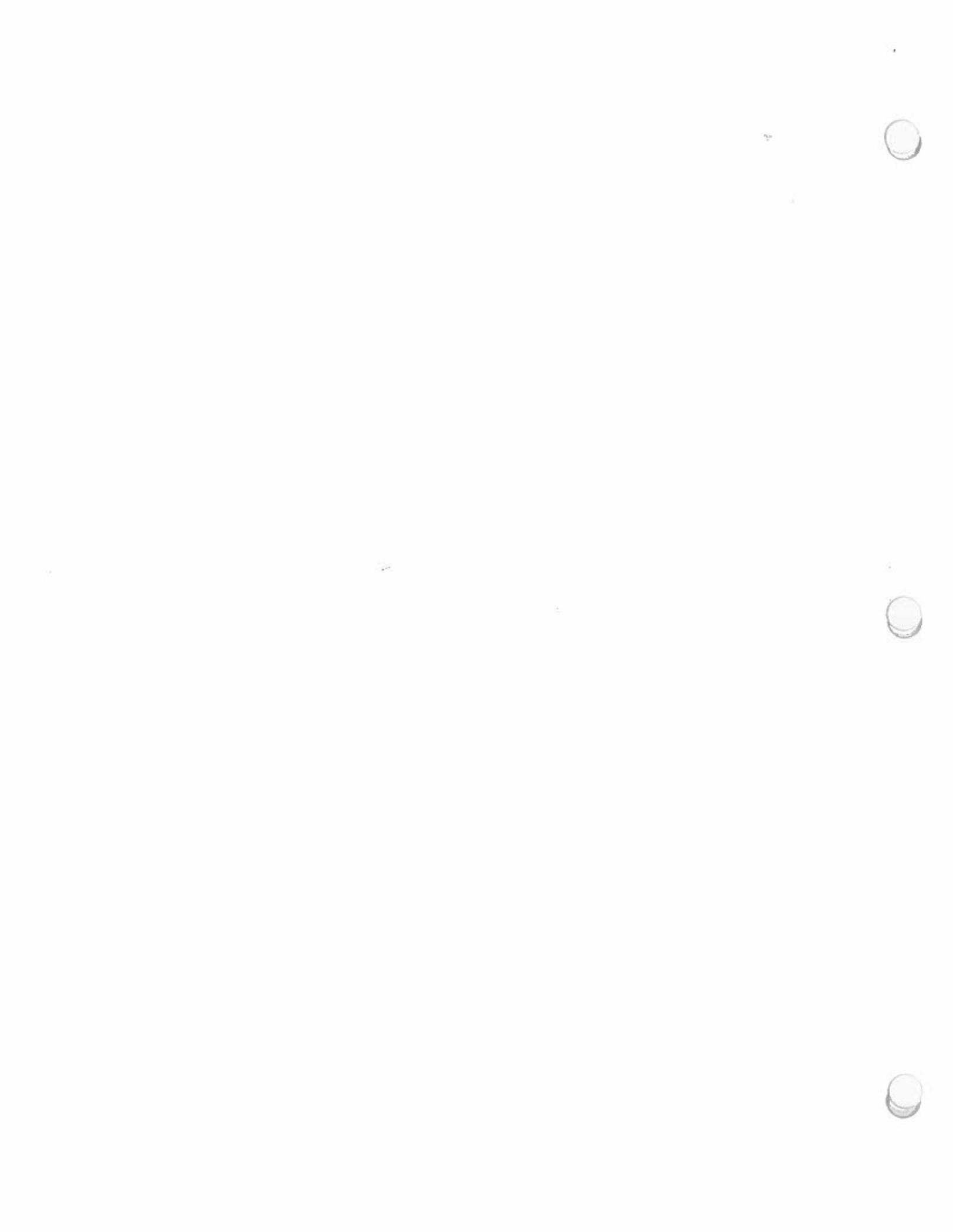
Approved as to form:

XXXXX, County Attorney
Santa Fe County

Approved:

XXXX, Director
Finance Division
Santa Fe County

SAMPLE

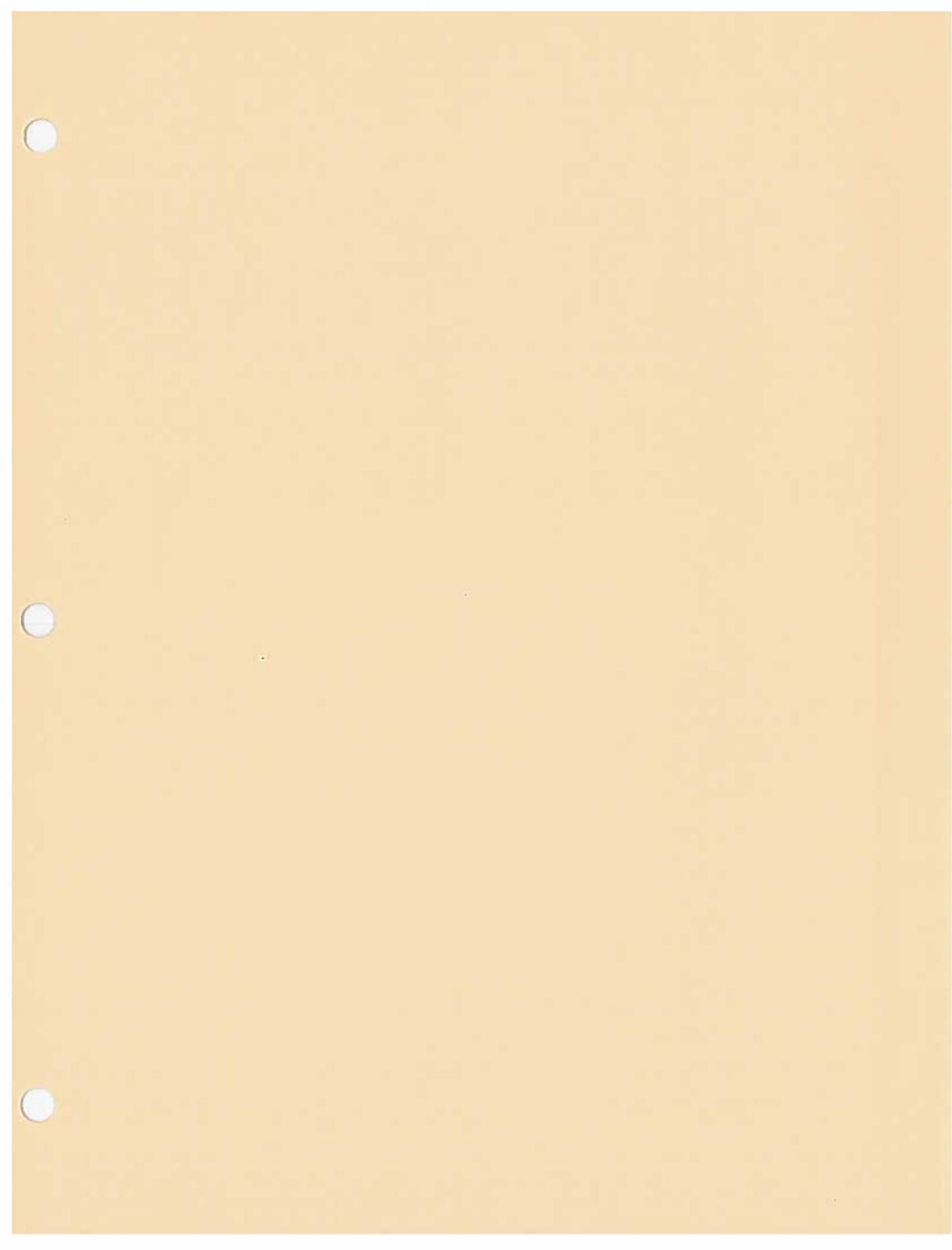




III. Action Items

B. Miscellaneous

- 2. Request for Direction on the Santa Fe
County Employee Benefit Program.
(Human Resources/Bernadette Salazar)**



Henry P. Roybal
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner,
District 4

Liz Stefanics
Commissioner,
District 5

Katherine Miller
County Manager

MEMORANDUM

DATE: July 29, 2015

TO: Board of County Commissioners

VIA: Katherine Miller, County Manager *KM 8/4/15*

FROM: Adam Leigland, Public Works Director *AL 7/30/15*

ITEM AND ISSUE: *BCC Meeting August 11, 2015*

Discussion and Possible Direction on Options for Residential Curbside Solid Waste and Recycling Service Regulation within Santa Fe County (Public Works/Craig O'Hare)

SUMMARY:

At the direction of Commissioners at the July 14 meeting, staff has prepared a set of residential solid waste and recycling collection options for the Commission's consideration. Based on input received from the public and from Commissioners, staff includes a recommendation for the BCC to adopt Option 2 below. If the Commission takes action on a specific option (including any amendments to the option) at today's meeting, staff recommends that at least three public outreach meetings be held in the most affected areas of the County followed by additional direction from the Commission to prepare the appropriate ordinance.

BACKGROUND:

The BCC held a June 30 public hearing on an ordinance to establish three "Residential Solid Waste Collection Districts" in the more densely populated areas of the County immediately surrounding the City of Santa Fe. Solid waste and recycling collection in those districts would be performed via a contract between the County and a single solid waste hauler (including the possibility for that hauler to subcontract with a smaller private hauler for specialized collection services) selected by the County from a competitive Request for Proposal (RFP) process. Public input at the hearing was predominantly in opposition to the proposed initiative for the following primary reasons: 1) Citizens were content with their existing hauler, rates and services; 2) Citizens were concerned that small locally-based haulers might be put out of business; and 3) Citizens objected, in principal, to the County selecting the hauler they must use for refuse collection. Opposition came primarily from homeowners living in the proposed North Collection District. The Commission voted to delay action on the ordinance until the November 10 BCC meeting.

At the July 14 BCC meeting, Commissioners informally discussed the Solid Waste Collection Districts proposal. Commissioners expressed their interest in increasing the waste diversion and recycling rate in the County and directed staff to develop alternative options in addition to the Solid Waste Collection District approach. As a result of this discussion, staff placed issuing a Request for Proposal to haulers on “hold” pending further direction.

DISCUSSION:

Upon further research and internal discussions, staff developed three main options for the Commission’s consideration. Options 1 and 2 can be further modified to address particular concerns or interests by the Commission.

Option 1: Continue with Solid Waste Collection District Proposal as Presented on June 30

This option involves continuing with the Solid Waste and Recycling Collection District proposal as originally envisioned. A thorough discussion of the proposal is in the attached June 15 memo to the BCC written for the June 30 public hearing. This option is the most comprehensive and aggressive in achieving the solid waste management, recycling, and resource management objectives. It would likely, of course, continue to receive significant opposition from a portion of the affected population.

Possible Modifications:

The Commission could choose to remove one of the three collection districts or modify the boundaries of the collection districts. Staff would recommend that at least two distinct collection districts exist in order to be able to select and maintain competition among private haulers.

If this option is selected, the RFP issuance will be restarted, with proposals due in November and further BCC consideration undertaken at that time.

Option 2: Utilize a Permitting/Regulatory Approach Requiring Private Haulers to Provide Refuse and Recycling Collection as a Single “Bundled” Service

Option 2 would preserve the three collection districts proposed under Option 1, but would apply only a regulatory regime to any private sector hauler operating in the district. This option maintains the existing open market structure amongst haulers and hauler choice for homeowners. In addition to providing weekly refuse service, haulers would be required to provide some level of recycling collection service for all non-glass recyclables. (Requiring glass collection and processing could add significantly to rates). The recycling service would be included, coupled with refuse service, in a single monthly or quarterly charge. Homeowners would not have a choice of rejecting recycling service for a lower fee. The objective is to increase recycling by making it just as convenient as refuse disposal.

The County would require that all private haulers in the collection districts obtain a permit from the County requiring: 1) the “bundled” refuse and recycling service noted above; 2) flow control to Caja del Rio landfill and BuRRT recycling center; and 3) quarterly reporting of refuse and recycling tonnages, customer rates, number of customers, landfill and BuRRT drop-off tonnages, etc. In this option, the County would not assume a rate oversight or rate control responsibility, nor a performance monitoring role beyond compliance with the permit.

Many homeowners already have the option of combined refuse and recycling service and would therefore be unaffected by this proposal. Homeowners that currently have only refuse collection

service, on the other hand, would likely experience an increase in their monthly fee reflecting the additional recycling collection service. While it's difficult to know for certain what this monthly increase might be, staff estimates a range of an additional \$6-10 per month.

Possible Modifications:

In addition to Option 2 for the three Collection Districts described above, a County-wide approach could be included that would require haulers that provide curbside refuse outside the collection districts to also offer every other week recycling collection for an additional charge. Homeowners would be assured that recycling service is available to them but would have the choice of whether to pay extra for it. The same hauler permitting and reporting requirements would be incorporated. Staff recommends considering this modification/addition after implementation of Option 2 is well underway (assuming the Commission selects Option 2). Staff does not feel that requiring bundled refuse and recycling service is appropriate throughout the County because of the potential for it to dramatically increase customers' costs in outlying, less densely populated areas.

Note that if Option 2 selected, services from the County's solid waste consultant for developing the RFP will likely no longer be necessary. Staff would, therefore, recommend terminating this contract.

Option 3: "No Action"

Option 3 maintains the status quo. This option is the easiest and would likely satisfy the objectors mentioned above, but does little to advance the County's established solid waste management and recycling objectives. Staff resources permitting, the County could continue to work with the haulers and homeowners to promote and encourage recycling.

Note that if Option 3 selected, services from the County's solid waste consultant for developing the RFP will likely no longer be necessary. Staff would, therefore, recommend terminating this contract.

Staff recommends that the Commission select a single option or modified option before further public outreach meetings are held. At least three public meetings would be held in late August and into September. Staff would then bring the item back for further direction at the September 29 BCC meeting.

Staff recommends Option 2.

ACTION REQUESTED:

Direct staff to develop Option 2, conduct public outreach, and bring a developed proposal to the September 29 meeting.

Attachment:
June 15, 2015, BCC memo

Henry P. Roybal
Commissioner, District 1

Miguel Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

DATE: *June 15, 2015*

TO: *Board of County Commissioners*

FROM: *Adam Leigland, Public Works Department Director*

VIA: *Katherine Miller, County Manager*

ITEM AND ISSUE: *BCC Meeting June 30, 2015*

Ordinance No. 2015-___, An Ordinance Establishing Curbside Residential Solid Waste and Recycling Collection Districts within Certain Populated Parts of Santa Fe County; Prohibiting the Commercial Collection of Residential Solid Waste Within These Districts Except in Accordance with a Valid Contract Between a Commercial Solid Waste Hauler and the County; Implementing and Amending Ordinance Number 2014-10. (Final Public Hearing) (Public Works/Adam Leigland)

SUMMARY:

The proposed ordinance would establish three residential solid waste and recycling collection districts in the more densely populated residential areas of the County surrounding the City of Santa Fe. The three collection districts are identified on the attached overview map. Implementation of the Ordinance will result in a single private solid waste hauler being authorized to provide solid waste and recycling collection service in each district. Unless curbside collection is already required by a homeowners' association covenant or County ordinance, homeowners' use of the collection service will be voluntary. Homeowners in a District may choose to utilize the private hauler collection service or dispose of their solid waste on their own via the County's convenience centers. The ordinance is structured such that at least two private haulers will serve the three districts, in order to maintain a more competitive environment for future contract awards or extensions.

BACKGROUND:

One of the Commission's Solid Waste Task Force (SWTF) recommendations approved by the BCC at its October 28, 2014 meeting was the creation of solid waste collection districts in the denser areas surrounding the City of Santa Fe. The concept is that several collection districts of approximately equal size will be created, and in order for a private solid waste service provider to operate in a collection district, the private hauler must have a contract with the County. The contract will be exclusive, that is, only one hauler can operate in any one collection district, and the

contract will specify certain levels of service as determined by the County. The motivating idea behind this is that by aggregating demand and requiring that private haulers contract with the County to serve these areas, the County can ensure that residents can get higher solid waste service at a lower price.

A common disappointment expressed by County residents with existing private service is the lack of curbside recycling being offered. The contracts with the private haulers selected to provide solid waste collection will include requiring recycling collection as well.

The County's new comprehensive Solid Waste Ordinance, 2014-10, was adopted on November 25, 2014. Ordinance 2014-10 established most of the general enabling authority to pursue the establishment of collection districts. The proposed collection district ordinance further defines the procedures, roles, and responsibilities of residents, the County, and private haulers with respect to establishing and administering the collection districts.

DISCUSSION:

The following represents the key issues to be addressed in the County's contracts with the private haulers that are selected to serve each collection district:

Basic service. The basic service to be provided by the private hauler will be once-weekly curbside refuse pickup and weekly or biweekly curbside recycling pickup. Bins will be provided by the private hauler. The hauler must dispose solid waste at the Caja del Rio landfill. Other services and/or parameters may be considered, such as bulky item collection, pay-as-you-throw pricing, amnesty days, household hazardous waste collection, and so on.

Special service. Household collection service beyond the basic service described above, such as greater frequency of pick-up or "side door" collection, will be offered and will be the responsibility of the individual household to subscribe to and pay for.

Accounts and billing. The contractor will be responsible for creating and maintaining customer accounts, and for customer billing. Delinquent accounts will be the contractor's responsibility.

Service Districts. Three districts have been identified, shown on the attached map. The number of households in each of the service districts is shown in the table below.

Service Districts	Number of Households
North	5011
Southeast	5726
Southwest	5006
Total	15,743

The service areas are coterminous with the Sustainable Growth Management Plan's Sustainable Development Area (SDA) 2 in the Santa Fe metro area, thus furthering County growth management goals.

Service parameters and rate setting. The County will establish the basic service parameters. The contractor's initial rate will be market-driven as determined in the RFP process. Subsequent rate changes will be allowed either by pre-established escalators such as the Consumer Price Index or by approval of the BCC.

Voluntary household participation. Households can voluntarily opt out of contracted service, unless they are otherwise required to have curbside service. Since the private hauler contracts will be exclusive for each district, households that opt-in to contracted service will not have a choice of service provider, and households that opt-out must purchase a County solid waste permit and utilize County convenience centers.

That said, it should be noted that section 7.20 of the Sustainable Land Development Code mandates that new developments in SDA-1 must have contracted solid waste service. Further, numerous existing subdivisions in the proposed collection districts have covenants that require contracted solid waste collection. In these cases, household participation will be mandatory.

Although it is impossible to say precisely how many households would opt-out, using permit sales data, staff estimates that of the 15,743 households in the proposed collection areas, approximately 2,400, or 15%, will opt out. Staff expects that over time, many households that initially opt out will eventually opt in.

Number of collection districts. Any private hauler will only be allowed to serve any two of the three districts at any one time. This is intended to increase opportunity for the private sector, increase competition, and prevent the County from becoming locked in to a single private hauler.

Contract fee. It is common practice for a local government to charge a fee to contractors in contract arrangements such as the one under consideration. For instance, Taos County, which already has contracted solid waste collection districts, charges private haulers who serve in those districts a fee that is a percentage of annual gross revenues. This generates revenue for the County and also provides some quality control of the contractors, but since the haulers mostly pass the cost through, it slightly increases the cost of solid waste service to residents.

Staff is recommending in the ordinance a contract fee of 2% of gross revenues. Assuming a customer base of 13,300 households and a monthly rate of \$17/household produces annual gross revenue of \$2,700,000. Using a contract fee rate of 2% produces \$54,400 in annual revenue to the County.

Contract term. Private haulers will seek the longest term possible, and the County would likely get lower rates the longer the contract term. Most solid waste equipment can be amortized over seven to eight years, which will be a prime consideration for the private haulers. Staff has included a seven-year term in the ordinance.

State statute (Section 4-37-7(A)) requires publication of "the date and time of the meeting at which the ordinance is to be considered" for solid waste fee items. The BCC approved the publication of

title and general summary at the April 28 meeting; this notice was published in the Albuquerque Journal on May 26th.

Three public meetings were held, one in each of the proposed districts, the week of May 18. The BCC was provided a presentation on the feedback received at these meetings at the June 9, 2015, BCC meeting. Additionally, meetings were held with the private haulers to get their input. Attached to this memo is a copy of the outreach document used at those meetings and subsequently.

The next step in the process is to finalize and issue the request for proposals (RFP). This is expected to occur in early August. Proposals will be received and evaluated by November. When the proposals are received, the County will know if its goals have been met, and the decision of whether to award the contracts and implement this concept can be made at that time. Staff believes that the concerns of both the public and the private haulers can be met with this schedule.

Revisions to the April 28th Draft Ordinance

Public Works Department and County Attorney Office staff made a few clarifying and organizational revisions to the April 28th draft of the ordinance. While none of the edits changed the fundamental components of the ordinance, the more significant changes include:

- Section 4 Findings: The County's waste reduction and recycling objectives were added, since recycling is expected to increase in the collection districts.
- Section 4D: Clarification that collection of commercial and industrial solid waste is not affected by this ordinance.
- Section 5 Definitions: "Service Area" has been added. A service area can be all of or part of a Collection District. This provides County staff needed flexibility in establishing contracts with the haulers (e.g. if the number of collection districts or the area to be serviced within a collection district needs to be revised.)
- Section 6C(3): Revised to better align with the Sustainable Land Development Code.

ACTION REQUESTED:

Approve subject ordinance.

Attachments:

1. Overview map of the proposed collection districts
2. Proposed ordinance with exhibits
3. Residential Collection Districts public information document

THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY

ORDINANCE NO. 2015-____

AN ORDINANCE ESTABLISHING CURBSIDE RESIDENTIAL SOLID WASTE AND RECYCLING COLLECTION DISTRICTS WITHIN CERTAIN POPULATED PARTS OF SANTA FE COUNTY; PROHIBITING THE COMMERCIAL CURBSIDE COLLECTION OF RESIDENTIAL SOLID WASTE WITHIN SUCH DISTRICTS EXCEPT IN ACCORDANCE WITH A VALID CONTRACT BETWEEN A COMMERCIAL SOLID WASTE HAULER AND THE COUNTY; AND IMPLEMENTING AND AMENDING ORDINANCE NUMBER 2014-10.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY:

Section 1. Short Title

This Ordinance may be cited as the “Residential Solid Waste and Recycling Collection Ordinance.”

Section 2. Purpose

The purpose of this Ordinance is to implement the provisions of the Solid Waste and Recycling Management Ordinance (Ordinance No. 2014-10) (“Solid Waste Management Ordinance”) that require or authorize the County to establish exclusive collection districts for residential solid waste.

Section 3. Authority

This Ordinance is enacted pursuant to the authority granted to counties under NMSA 1978, Sections 4-37-1 (1975) and NMSA 1978, Sections 4-56-1 through 4-56-3 (1967). This Ordinance is also enacted to implement the provisions of the Management Ordinance regarding the establishment of solid waste collection districts, including Sections 6(A), 9(B), and 13(B)(A) and (B).

Section 4. Findings

The Board of County Commissioners of Santa Fe County FINDS:

A. The BCC enacted the Solid Waste Management Ordinance to provide for the safety, preserve the health, promote the prosperity and improve the comfort and convenience of

the County and its inhabitants. The purposes of the 2014 Solid Waste Management Ordinance are, among other things, to:

- (1) Establish a system of storage, collection, and disposal of all refuse in the County; and
- (2) Create mandatory curbside solid waste collection districts and to establish the procedures for such collection.
- (3) Promote, to the greatest extent possible, waste reduction and the reuse and recycling of materials to further resource conservation and minimize landfill disposal.

B. The provisions of the Solid Waste Management Ordinance regarding the creation of solid waste collection districts and curbside collection within these districts are not self-executing, meaning that implementation of these provisions require further action by the BCC or the County Manager. The provisions requiring further action are:

- (1) Section 5(C), requiring the County Manager to “establish rules and regulations to carry out the intent and purpose of the [Management] Ordinance”;
- (2) Section 5(D), requiring the County Manager to “establish policies and procedures for billing and collection of service fees”;
- (3) Section 5(H), providing that upon the recommendation of the County Manager and approval by BCC by ordinance, “the County may regulate the activities of Commercial Solid Waste Haulers, including, but not limited to, by imposing Solid Waste and recycling reporting requirements, licensing requirements, establishment of exclusive and non-exclusive service areas, and service area fees”;
- (4) Section 6(A), requiring that “all Solid Waste accumulated in areas indicated in Exhibit A [of the Management Ordinance to be] collected, conveyed and disposed of by the County or any of its authorized contractors,” but delaying this “mandatory collection” until the BCC “establishes the fees for that service”;
- (5) Section 7(B), setting out “Requirements for Solid Waste Collected Curbside and Roadside,” including Section 7(B)(F)(1), which requires “containers [to] conform to contractor collection specifications, or to specifications promulgated by the County Manager”;
- (6) Section 9(B), requiring the BCC to “designate service areas of the County for phased-in service by mandatory Solid Waste collection services, including collection of recyclables”; and
- (7) Section 13(B) regarding “Service Fees for Mandatory Service Areas.”

C. This Residential Solid Waste and Recycling Collection Ordinance fully implements the forgoing provisions of the Solid Waste Management Ordinance as to curbside collection of residential solid waste by establishing three Solid Waste Collection Districts and

prohibiting the commercial curbside collection of residential solid waste within these Districts except by County Contractors.

D. This Ordinance does not affect the existing collection of commercial or industrial solid waste within the County. The BCC may provide for collection of commercial or industrial solid waste in a subsequent ordinance.

E. Except as provided in Sections 4(B), (C) and (D) of this Section, the Solid Waste Management Ordinance is self-executing and requires no further action by the BCC or the County Manager to be enforceable.

Section 5. Definitions

The definitions set out in Section 4 of the Management Ordinance apply to this Ordinance. In addition:

“BCC” means the Santa Fe County Board of County Commissioners.

“Commercial Curbside Collection of Solid Waste” means curbside collection of residential solid waste by an SW Hauler. As used in this Ordinance, “curbside” includes both “curbside” and “roadside” collection.

“County Contractor” or “Contractor” means an SW Hauler who has an SWC Contract with the County granting the Contractor the exclusive right to provide Solid Waste collection services within the service area defined in the Contract.

“Director” means the Santa Fe County Public Works Department Director.

“District” means a Solid Waste Collection District established by this Ordinance.

“Person” shall be construed broadly to include individuals and non-governmental legal entities, including but not limited to partnerships, corporations, businesses, homeowners’ and other associations, joint ventures, trusts, companies and firms.

“Solid Waste Collection Contract” or “SWC Contract” means a contract between an SW Hauler and the County that grants the Hauler the exclusive right to perform commercial curbside collection of solid waste within the service area defined in the Contract.

“Service Area” means the area defined in a solid waste collection contract in which the Contractor has the exclusive right to provide commercial curbside collection of solid waste. A Service Area may cover all or part of one or more Districts.

“SW Hauler” or “Hauler” means Commercial Solid Waste Hauler as defined in the Management Ordinance.

Section 6. Establishment of Solid Waste Collection Districts; Prohibiting Commercial Curbside Collection of Residential Solid Waste within Such Districts Except in Accordance with a Solid Waste Collection Contract.

A. There is hereby established three Solid Waste Collection Districts:

- (1) The North District, which is depicted on Exhibit A to this Ordinance.
- (2) The Southwest District, which is depicted on Exhibit B to this Ordinance.
- (3) The Southeast District, which is depicted on Exhibit C to this Ordinance.

B. The Director shall have authority to adjust the boundaries of the Districts established by this Ordinance to facilitate the efficient collection and disposal of solid waste; provided, however, that any adjustment that would change the number of households within a district by 500 or more shall require approval by the BCC. The Director shall post changes to the District boundaries upon approval of the changes.

C. After June 30, 2016:

- (1) No SW Hauler shall engage in commercial curbside collection of solid waste within any District except in accordance with a Solid Waste Collection Contract.
- (2) No person shall arrange for commercial curbside solid waste collection within any District except with a County Contractor.
- (3) Every person residing or located within a District who is required under the County Sustainable Land Development Code to have curbside collection of solid waste shall arrange for such collection to be performed by a County Contractor.
- (4) Every person residing or located within a District who is required by covenant or contractual obligation to have curbside collection of solid waste shall arrange for such collection to be performed by a County Contractor.

D. Except as provided in paragraph C of this Section 6, persons residing or located within any District may choose not to participate in the curbside solid waste collection program established by this Ordinance. Persons who choose not to participate shall dispose of their residential solid waste at the nearest landfill or transfer station, provided that such disposal may not be performed by any SW Hauler other than a County Contractor.

Section 7. Procurement of Solid Waste Collection Services; Residential Solid Waste Collection Contracts; Exclusive Solid Waste Collections Rights; Exceptions.

A. After the effective date of this Ordinance, the Director shall obtain bids from qualified SW Haulers in accordance with the New Mexico Procurement Code, NMSA 1978, Sections 13-1-1 through 13-1-199, and County Procurement Ordinances and Resolutions.

Unless there are insufficient qualified bidders, the Director shall enter into SWC Contracts with at least two SW Haulers.

B. The Director shall negotiate SWC Contracts with individual qualified SW Haulers. SWC Contracts shall include standard contractual terms and, to the extent practicable, shall be substantially the same in each District. However, where circumstances warrant, the Director may authorize variations between SWC Contracts; provided, however, that each SW Contract shall provide:

(1) The Contractor shall be responsible for collecting all fees for the collection service it provides directly from its customers. The types and amounts of fees shall be established in the SWC Contract and shall allow the Contractor a reasonable return on investment and be reasonable, transparent, and in the best interest of the County and its residents.

(2) The Contractor shall remit to the County on a semiannual basis two percent (2%) of Haulers' gross revenue attributable to the contract with the County.

(3) The contract term shall be seven (7) years unless terminated earlier in accordance with the terms of the Contract.

(4) The contract shall establish an exclusive Service Area.

(5) Terms allowing extension beyond the original term, and for renewal of additional terms, may be included if deemed necessary or appropriate by the Director, provided that such terms are consistent with State and County procurement law.

(6) Container specifications shall be set out in the contract or in an exhibit to the contract and shall, to the extent practicable, be the same for all Districts.

(7) The Contractor shall provide a quarterly report of the Contractor's monthly expenses and gross income for the quarter and such other periodic reports as the Director may require. The Contractor's books shall be open to inspection by the County.

C. Subject to Section 7(E), upon execution of a SWC Contract, the Contractor shall have the exclusive right to provide Solid Waste collection services within the Service Area defined in the Contract.

D. No SWC Contract shall be effective until approved by the BCC, approved by the County Attorney as to form, and signed by the Director and the SW Hauler. The BCC's approval of a Contract shall constitute its final action on the establishment of the system of fees applicable in the Service Area defined in the Contract. In accordance with NMSA 1978, Section 4-56-3(F)(1971), at least twenty days' notice of the meeting at which the BCC will consider a Contract will be provided on the County's website, and notice shall also be published in a newspaper of general circulation in the County at least fifteen days prior to the meeting. Subsequent Contracts or amendments of Contracts that would, if approved by BCC, change the system of fees in a Service Area shall be subject to the same notice and approval process.

E. If a Contractor is unable or unwilling to provide collection services as provided in its Contract, the Director may arrange for another Contractor, an SW Hauler, or the County to provide such services.

Section 8. Amendment of Ordinance No. 2014-10.

This Ordinance amends Ordinance No. 2014-10 only as follows:

A. Subject to Section 9 of this Ordinance, the Director shall perform all duties and obligations assigned to the County Manager in Ordinance No. 2014-10.

B. In the event of a conflict between the text of this Ordinance and Ordinance No. 2014-10, this Ordinance shall prevail.

C. The references to Exhibit A in Section 6(A) of Ordinance No. 2014-10 shall be deleted and replaced by Exhibits A, B, and C of this Ordinance.

D. Except as expressly provided in Sections 8(A), (B) and (C) of this Ordinance, Ordinance No. 2014-10 shall remain in full force and effect.

Section 9. Authority of County Manager.

The County Manager shall supervise the Director in carrying out the mandates of this Ordinance and may, to the extent the County Manager deems necessary or appropriate, carry out such mandates personally or delegate them to other County staff.

**BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY**

By: _____
Robert A. Anaya, Chairperson

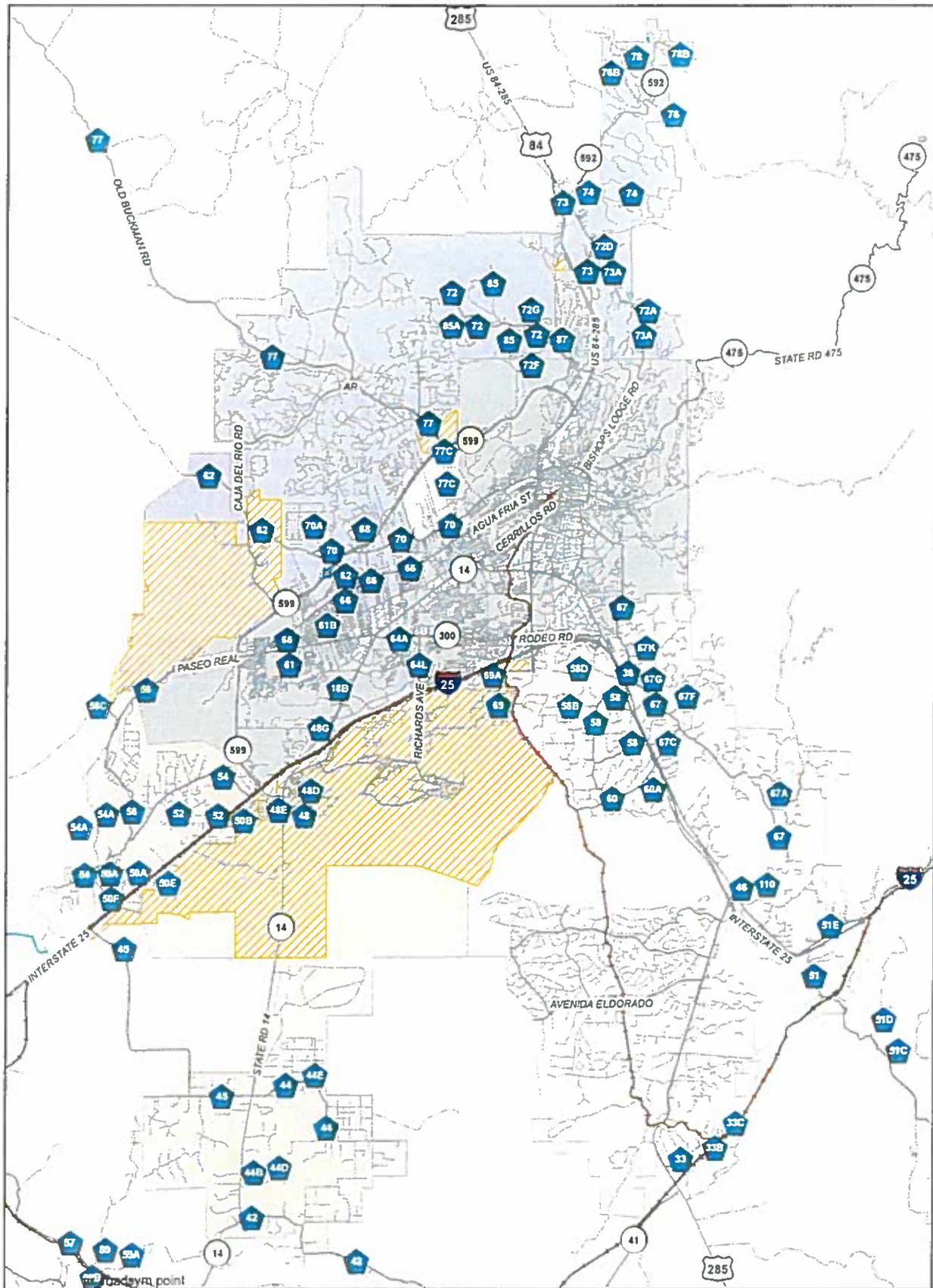
ATTEST:

Geraldine Salazar, Santa Fe County Clerk

APPROVED AS TO FORM:

Gregory S. Shaffer, County Attorney

Overview of Residential Solid Waste Service Districts



- Railroads
- Major Roads
- SGMP SDA 1
- North Service District
- Southeast Service District
- Southwest Service District
- City of Santa Fe

May 13, 2015

This information is for reference only. Santa Fe County assumes no liability for errors associated with the use of these data. Users are solely responsible for confirming data accuracy.



Santa Fe County Proposed Residential Solid Waste & Recycling Collection Districts

June 2015



County Commission Public Hearing on Proposed Ordinance: Tuesday, June 30th - At or after 5:00 p.m. Commission Chambers, 102 Grant Ave. (behind the Lensic Theater)

The Collection District Ordinance and maps of the 3 Collection Districts can be obtained from the County's web site: http://www.santafecountynm.gov/public_works/solidwaste

Overview

Santa Fe County is interested in more comprehensively managing solid waste and recycling activities throughout the County. As part of that objective, the Board of County Commissioners (BCC) is considering an ordinance to establish three curbside "Residential Solid Waste Collection Districts" in the more densely populated residential areas surrounding the City of Santa Fe. Each Collection District will be exclusively served by a single private hauler selected by the County using a competitive process. The County will oversee private haulers' operations via a contract that will include: rates, provision of recycling service, levels of service (frequency of collection, types of containers, etc.), accommodating special needs customers, and reporting of solid waste and recycling data.

Residents in each Collection District will be able to voluntarily choose whether they want to use the curbside services of the selected private hauler or whether they prefer to self-haul to one of the County's solid waste convenience centers. Residents will not be able to retain the services of a private hauler that is not the County-identified hauler for the Collection District.

The June 30th public hearing on the ordinance is intended to obtain the public's interests and concerns as we move forward with this initiative. The County values input from citizens affected by this proposal. The current proposal may be revised based on the public's input.

**For More Information Contact: Craig O'Hare, Public Works Department, (505) 992-3044
cohare@santafecountynm.gov**

Frequently Asked Questions

Note: Many of the program and service details (e.g. monthly rates, types of recyclables to be collected) will be determined as part of the public input process, the specifics included in the "Request for Proposals" (RFP) to the haulers, and, ultimately the contracts the County signs with the haulers.

What is the County trying to accomplish with this initiative?

In establishing residential solid waste collection districts, the objectives are to:

- Reduce private haulers' monthly rates for refuse service by taking advantage of economies of scale. (Note: The actual rates in a given collection district won't be known until proposals are received in the fall of this year.)

- Increase waste diversion and recycling rates by: 1) instituting a “pay-as-you-throw” refuse rate structure by requiring that at least two different-sized and priced container choices be offered. 2) require at least every other week recycling service that is automatically provided with the refuse service. One rate would “bundle” both services.
- Reduce wear-and-tear on County roads by minimizing the amount of heavy truck vehicle miles travelled on the road.
- Ensure private haulers provide safe solid waste operations and accountable, responsive customer service by instituting County oversight.

Other counties and communities around the country have been able to achieve these objectives by establishing exclusive solid waste franchise areas like the ones Santa Fe County are proposing.

What is the schedule for adoption and implementation of this proposal?

The Collection District Ordinance, scheduled for a public meeting and possible BCC action on June 30, further defines the procedures, roles, and responsibilities of residents, the County, and private haulers with respect to establishing and administering the collection districts. If the BCC adopts the Collection District Ordinance, staff will issue the Request for Proposals in late July or early August with proposals being due from private haulers a couple of months after that. Adoption of the Collection District Ordinance is not the final action the BCC will take to implement the program. The BCC will need to approve the contracts with each of the selected haulers in order for the initiative to proceed. This is expected to occur in January 2016.

Collection and Container Questions

Why is the County issuing a Request for Proposal (RFP) for solid waste and recycling collection?

Currently, garbage and recycling collection in unincorporated areas of the County is performed by several different haulers. The haulers do not offer a full range of service (e.g., garbage, recycling, and bulky waste collection) to all residents in the County. By issuing an RFP, the County expects that a more uniform level of service will be provided, in particular curb-side recycling will be made available to all residential units that choose to make use of this service. The agreement with the selected hauler and the County will assure full services (garbage, recycling, and bulky waste collection) are available to all residents in the County.

- **What will be the frequency of my collection?**
It is anticipated that garbage collection will be once each week; recycling collection may be weekly or every-other-week.
- **What day of the week will my collection take place?**
That will be determined once a vendor is selected. That is not known at this time.
- **Will my regularly scheduled collection day change?**
If you currently receive curbside collection it may or may not change. The County will work with the selected vendor to minimize the disruption in collection days.
- **What are the pick-up hours?** *Typically set as no earlier than 7am and no later than 6pm.*
- **Will refuse and recyclables be picked up on the same day?** *That is the goal.*
- **Will I receive a new container?** *If you currently have a container and service is provided by a different vendor, it will most likely be exchanged for a container provided by the selected vendor for your district (if it is a different vendor).*
- **Will collection be automated, or manual?** *It is expected that collection will be automated.*



Henry P. Roybal
Commissioner, District 1

Miguel Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

DATE: July 29, 2015

TO: Board of County Commissioners

FROM: Bill Taylor, Purchasing Manager

VIA: Katherine Miller, County Manager
Jeffrey Trujillo, ASD Director
Pablo Sedillo III, Corrections Department Director

ITEM AND ISSUE: BCC Meeting August 11, 2015

REQUEST APPROVAL OF CONSTRUCTION CONTRACT NO. 2015-0292-CORR/IC BETWEEN SANTA FE COUNTY AND PRIME BUILDERS, LLC. IN THE AMOUNT OF \$449,291.91, EXCLUSIVE OF GRT FOR THE SERVER ROOMS AT ADULT DETENTION FACILITY AND YOUTH DEVELOPMENT PROGRAM AND REQUEST SIGNATURE AUTHORITY BE GRANTED TO THE COUNTY MANAGER TO EXECUTE THE PURCHASE ORDER. (PURCHASING/BILL TAYLOR)

SUMMARY:

The Purchasing Division and the Corrections Department are requesting County Manager signature approval on the Prime Builders, LLC., purchase order in the amount of \$449,291.91, exclusive of GRT for the Prime Builders, LLC contract No. 2015-0292-CORR/IC.

BACKGROUND:

Conron & Woods Architects was contracted to provide full design services for server rooms at Adult Detention Facility and Youth Development Program, budgeted from the Corrections Operations Fund.

Improvements will include relocation and construction of the current server room, ADA compliant raised floor for the server rack area, static dissipative tiles for new work area, fire rated suspended ceiling, computer racking station, tape storage racks, task chair, relocation of HVAC openings and installation of a new AC unit, a transformer and LV Panels.

ACTION REQUESTED:

The Purchasing Division and the Corrections Department are requesting BCC approval of contract no. 2015-0292-CORR/IC with Prime Builders, LLC in the amount of \$449,291.91 exclusive of GRT for the server rooms and request signature authority be granted for the County Manager to execute the purchase order.

**AGREEMENT BETWEEN SANTA FE COUNTY AND CONTRACTOR
FOR CONSTRUCTION SERVICES**



**SANTA FE COUNTY
ADMINISTRATIVE SERVICES DEPARTMENT
PURCHASING DIVISION
2014 EDITION**

[Changes, additions, deletions and/or any modifications other than those agreed upon by the parties upon execution of this contract, without the written consent of Santa Fe County shall render this document null and void.]

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION.

Hereafter "County":

Katherine Miller, County Manager
Santa Fe County
PO Box 276
Santa Fe, New Mexico 87504-0276
TELEPHONE: 505-986-6200
FAX: 505-985-2740

Hereafter "Contractor":

Prime Builders, LLC
Prime Builders, LLC
PO Box 91480
Albuquerque, NM 91480
TELEPHONE: 505-924-0455
EMAIL: speterson@primebuildersnm.com

Architect

NAME: Conron & Woods Architects
ADDRESS: 1222 Luisa St.
Santa Fe, NM 87505
TELEPHONE: (505) 983-6948
E-MAIL ADDRESS: office@conronandwoods.com

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RECITALS

WHEREAS, in accordance with Section 13-1-103 through Section 13-1-110 NMSA 1978, the County issued Invitation for Bid (IFB) No. 2015-0292-CORR/IC to solicit bids for construction services for the Server Room at ADF & YDP; and

WHEREAS, the Contractor submitted its bid, in response to IFB No. 2015-0292-CORR/IC; and

WHEREAS, the County is authorized to enter into a construction contract for the Project pursuant to Sections 13-1-100, NMSA 1978; and

WHEREAS, the Contractor hereby represents that it is a licensed contractor of the State of New Mexico pursuant to Chapter 60, Article 13 NMSA 1978; and

WHEREAS, the Owner agrees to hire the Contractor, and the Contractor agrees to provide Construction Services as required herein for the Project in accordance with the terms and conditions set forth in this Agreement; and

WHEREAS, the County requires the services of the Contractor, and the Contractor is willing to provide these services and both parties wish to enter into this Agreement.

ARTICLE 1 THE CONTRACT DOCUMENTS

1.1 DOCUMENTS

The contract documents consist of the following:

- Agreement between County and Contractor
 - General Conditions of the Construction Contract
 - Conditions of the Work of the Construction Contract
 - Bid Sheet
 - Addenda and Modifications issued before and after execution of this Contract
- Attachment A
Attachment B

1.2 CERTIFICATES AND DOCUMENTATION

The following certificates and documentation are hereby attached as exhibits as follows:

- | | |
|--|-----------|
| Project Manual | Exhibit A |
| Technical Specifications as listed in Plan Set | Exhibit B |
| Labor and Material Payment Bond | Exhibit C |
| Performance Bond | Exhibit D |
| Assignment of Antitrust Claims | Exhibit E |
| Certificate of Insurance | Exhibit F |

Notice of Award
Notice to Proceed
Change Order
Certificate of Substantial Completion

Exhibit G
Exhibit H
Exhibit I
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ARTICLE 2 THE WORK

2.1 THE WORK

The Contractor shall perform all the Work required by the Contract Documents for the following:

Adult Detention Facility (28 Camino Justica, Santa Fe, NM 87508):

Evaluate and relocate the current server room and construct a new server room at the Adult Detention facility. Divide existing training room to be new server room. Server racks portion to have raised floor with ADA ramp, static dissipative tiles for new work area, fire rated suspended ceiling, computer racking station, tape storage rack, clean agent fire suppression to be added, existing HVAC openings to be reconfigured and AC Unit installed. New transformer and LV Panel will be installed in the main panel room. All existing IT equipment to be moved from existing server room to new server room and be fully functional at project completion.

Youth Development Program Facility (4250 Airport Road, Santa Fe, NM 87507):

Evaluate and relocate existing server room. Convert current family room into a server room, new entry door, raised floor with ADA ramp, with static dissipative tiles at the server rack, computer racking station, tape storage rack, clean agent fire suppression to be added. Existing HVAC openings to be reconfigured and AC unit installed, new transformer and LV panel will be installed in the maintenance shop. All existing IT equipment to be moved from existing server room to new server room and be fully functional at project completion.

Contractor's scope of work shall specifically be as follows:

- Conduct a site assessment of the project area with County staff to review the project location and conditions.
- Follow construction documents including all specifications prepared by Conron and Woods Architects.
- Field verifies all dimensions and site conditions before proceeding with the work or ordering of materials.
- Prior to start of project contractor shall field review project, schedule, sequencing, site conditions and layout with owner and architect.
- Contractor will be responsible to obtain any and all required permits for the work as well as scheduling of all required inspections and tests.
- Conduct weekly progress meetings.
- All employees scheduled to work in the facility will be subject to a background check and security clearance with security clearance forms for each individual being submitted by contractor and approved prior to admittance into facility.

- Follow all security requirements set forth by corrections.
- During construction contractor shall provide a safe and dust free working environment and protect all existing improvements.
- Upon completion contractor shall ensure work area is left clean and free of debris.
- Contractor shall provide Santa Fe County with a certificate of occupancy from CID upon completion of the project.

ARTICLE 3 EFFECTIVE DATE, TIME OF COMMENCEMENT, SUBSTANTIAL COMPLETION AND AMENDMENTS

3.1 EFFECTIVE DATE

The Effective Date of this Agreement is the date of signature by the County.

3.2 TIME OF COMMENCEMENT

The placement of a purchase order with the manufacturer for the equipment specified in this project shall commence within seven (7) calendar days of receipt of Notice to Proceed from the County by Contractor, hereto attached as Exhibit H. The Contractor is free to commence the work performed under this contract at the time most suitable to it following receipt of the equipment, although all work must be performed in accordance with Section 3.3 Substantial Completion, of this project.

3.3 SUBSTANTIAL COMPLETION

The Contractor shall achieve Substantial Completion of the entire work no later than one hundred and twenty (120) calendar days from the date of the Notice to Proceed, except as hereafter extended by valid written Change Order. The 120 calendar days shall include the lead time allowed for delivery of all required equipment. A Certificate of Substantial Completion, attached hereto as Exhibit J, will be issued by the County to the Contractor, as adjusted by any Change Order, attached hereto as Exhibit I.

3.4 TIME FOR COMPLETION AND LIQUIDATED DAMAGES

Should the Contractor neglect, refuse, or otherwise fail to complete the Work within the time specified in this Article, the Contractor agrees that Liquidated Damages in the amount of three hundred dollars (\$300.00) shall be assessed per each calendar day that expires after the date of substantial completion, as adjusted by any change order, and until issuance by the County of a certificate of Substantial Completion in accordance with Paragraph 7 EFFECTIVE DATE AND TERM of the General Conditions.

- A. It is hereby understood and mutually agreed, by and between the Contractor and the County, that the date of beginning and the time for completion as specified in the contract of the work to be done hereunder are *essential conditions* of this contract and

it is further mutually understood and agreed that the work outlined in this contract shall be commenced on a date to be specified in the Notice to Proceed.

- B. The Contractor agrees that work shall be prosecuted regularly, diligently and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the County, that the time for the completion of the work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.
- C. If the Contractor shall neglect, fail or refuse to complete the work within the time herein specified or any proper extension thereof granted by the County, then the Contractor does hereby agree, as a part consideration for the awarding of this contract, to pay to the County the amount specified in the contract, not as a penalty but as liquidated damages for such breach of contract as herein set forth, for each and every calendar day that the contract shall be in default after the time stipulated in the contract for completing the work.
- D. The amount is fixed and agreed upon by and between the Contractor and the County because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the County would in such event sustain, and the amount is agreed to be the amount of damages which the County would sustain and the amount shall be retained from time to time by the County from current periodical estimates.
- E. It is agreed that time is of the essence of each and every portion of this contract and of the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever and where under the contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this contract. Provided that the Contractor shall not be charged with liquidated damages or any excess cost when the County determines that the Contractor is without fault and the Contractor's reasons for the time extension are acceptable to the County. Provided that the Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the work is due:
 - 1. To any preference, priority or allocation order duly issued by the County;
 - 2. To unforeseeable cause beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, or of the public enemy, acts of the County, acts of another contractor in the performance of a contract with the County, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather;
 - 3. To any delays of subcontractors or suppliers occasioned by any of the causes specified in subsections above.
- F. Provided further, that the Contractor shall, within ten (10) days from the beginning of such delay, unless the County shall grant a further period of time prior to the date of final settlement of the contract, notify the County in writing of the causes of the

delay, who shall ascertain the facts and extent of the delay and notify the Contractor within a reasonable time of its decision in the matter.

3.5 AMENDMENTS

This Agreement may be amended by mutual agreement by both parties upon issuance of a Change Order by the County to the Contractor. Any such amendment shall be in accordance with Paragraph 10 AMENDMENTS-CHANGE ORDERS of the General Conditions. Unless otherwise agreed to by the parties, an amendment shall not affect any outstanding Purchase Order(s) issued by the County prior to the effective date of the amendment.

**ARTICLE 4
CONTRACT SUM**

4.1 LUMP SUM

The County shall pay the Contractor in current funds for the performance of the Work, subject to additions and deductions by Change Order as provided in the Contract Documents, an agreed upon Lump Sum of Four Hundred Forty Nine Thousand Two Hundred Ninety One Dollars and Ninety One Cents \$449,291.91, exclusive of New Mexico gross receipts tax.

4.2 CONTRACT AMOUNT

The Contract sum is determined as follows:

Base Bid	\$	449,291.91
Total Contract Amount	\$	449,291.91, Exclusive of gross receipts tax

**ARTICLE 5
PROGRESS PAYMENTS**

5.1 PROGRESS PAYMENTS

Based upon an Application for Payment submitted to the County by the Contractor and Certificates for Payment issued by the County, the County shall make progress payments on account of the Contract sum to the Contractor as provided in the Contract documents for the period ending the last day of the month as follows:

- A. No later than (21) working days following receipt by the County of an undisputed Application for Payment, one hundred percent (100%) of the portion of the Contract Sum properly allocable to labor, materials, and equipment incorporated in the Work and one hundred percent (100%) of the portion of the Contract Sum properly allocable to materials and equipment suitably stored at the site or some other location agreed upon in writing for the period covered by the Application for Payment, less

the aggregate of previous payments made by the County; less such amounts as the Architect/ Engineer shall determine for all incomplete Work and unsettled claims as provided in the Contract Documents (Section 57-28-5, NMSA 1978).

- B. When making payments, the County, Contractor or subcontractor shall not retain, withhold, hold back or in any other manner not pay amounts owed for work performed. For additional information regarding retainage and the Prompt Payment Act (refer to Section 57-28-5, NMSA 1978).
- C. Contractor and subcontractors shall make prompt payment to their subcontractors and suppliers for amounts owed for work performed on the construction project within twenty-one (21) days after receipt of payment from the County, Contractor or subcontractor. If the Contractor or subcontractor fails to pay its subcontractor and suppliers by first-class mail or hand delivery within twenty-one (21) days after receipt of an undisputed request for payment, the Contractor or subcontractor shall pay interest to its subcontractors and suppliers beginning on the twenty-second day after payment was due, computed at one and one-half percent of the undisputed amount per month or fraction of a month until payment is issued. These payment provisions apply to all tiers of contractors, subcontractors and suppliers (Section 57-28-1 et. seq. NMSA 1978).
- D. In preparing estimates the material delivered on the site and preparatory work done may be taken into consideration.
- E. All material and work covered by partial payments made shall thereupon become the sole property of the County, but this provision shall not be construed as relieving the Contractor from the sole responsibility for the care and protection of materials and work upon which payments have been made or the restoration of any damaged work, or as a waiver of the right of the County to require the fulfillment of all of the terms of the contract.
- F. County's right to withhold certain amounts and make application thereof. The Contractor agrees that it will indemnify and hold the County harmless from all claims growing out of the lawful demands of subcontractors, laborers, workmen, mechanics, material men, and furnisher of machinery and parts thereof, equipment, power tools, and all supplies, including commissary, incurred in the furtherance of the performance of this contract. The Contractor shall, at the County's request, furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged, or waived. If the Contractor fails so to do, then the County may, after having served written notice on the said Contractor, either pay unpaid bills, of which the County has written notice, direct, or withhold from the Contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the Contractor shall be resumed, in accordance with the terms of this contract, but in no event shall the provisions of this sentence be construed to impose any obligations upon the County to either the

Contractor or its Surety. In paying any unpaid bills of the Contractor, the County shall be deemed the agent of the Contractor, and any payment so made by the County shall be considered as a payment made under the contract by the County to the Contractor and the County shall not be liable to the Contractor for any such payments made in good faith.

ARTICLE 6 FINAL PAYMENT

6.1 FINAL PAYMENT

The entire unpaid balance of the Contract Sum, shall be paid by the County to the Contractor within thirty (30) calendar days after notification of the County by the Architect that all incomplete and unacceptable work that was noted during the Substantial Completion Inspection and listed on the attachment to the Certificate of Substantial Completion has been corrected, and provided the Contract has been fully performed and a final Certificate for Payment has been issued by the Architect. In addition, the Contractor shall provide to the County a certified statement of Release of Liens and Consent of Surety.

6.2 ACCEPTANCE OF FINAL PAYMENT CONTITUTES RELEASE

The acceptance by the Contractor of final payment shall be and shall operate as a release to the County of all claims and all liability to the Contractor for all things done or furnished in connection with this work and for every act and neglect of the County and others relating to or arising out of this work. No payment, however, final or otherwise, shall operate to release the Contractor or its sureties from any obligations under this contract or the Performance and Payment Bond.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first written above.

SANTA FE COUNTY:

Robert A. Anaya, Chair
Santa Fe County Board of County Commissioners

Date

ATTESTATION:

Geraldine Salazar
Santa Fe County Clerk

APPROVED AS TO FORM



Gregory S. Shaffer
Santa Fe County Attorney

7/23/15

Date

FINANCE DEPARTMENT APPROVAL:

Carole H. Jaramillo
Santa Fe County Finance Director

Date

CONTRACTOR:

Signature

Date

Print Name

Print Title

NEW MEXICO LICENSE NUMBER: _____

**GENERAL CONDITIONS
TO AGREEMENT BETWEEN SANTA FE COUNTY
AND CONTRACTOR
FOR CONSTRUCTION SERVICES**

1.0 DEFINITIONS

The following terms as used in this contract are respectively defined as follows:

- 1.1 *Application for Payment* Contractor's written request for payment for completed portions of the work and, for materials delivered or stored and properly labeled for the respective project.
- 1.2 *Change Order* A written document between the County and the Contractor signed by the County and the Contractor authorizing a change in the work or an adjustment in the contract sum or the contract time. A change order may be signed by the Architect or Engineer, provided they have written authority from the County for such procedure and that a copy of such written authority is furnished to the Contractor upon request. The contract sum and the contract time may be changed only by change order. A change order may be in the form of additional compensation or time; or less compensation or time known as a Deduction (from the contract) the amount deducted from the contract sum by change order.
- 1.3 *Calendar Day* Each and every Day shown on the calendar, beginning and ending at midnight.
- 1.4 *Contract Period* The elapsed number of working days or calendar days from the specified date of commencing work to the specified date of completion, as specified in the contract.
- 1.5 *Contractor* A person, firm or corporation with whom the contract is entered into with the County.
- 1.6 *Construction Documents* All drawings, specifications and addenda associated with a specific construction project.
- 1.7 *Construction Schedule* A schedule in form satisfactory to the County, showing the proposed dates of commencement and completion of each of the various subdivisions of work required under the contract documents and the anticipated amount of each monthly payment that will become due the Contractor in accordance with the progress schedule.
- 1.8 *Day* The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.
- 1.9 *Labor and Material Payment Bond* A written form of security from a surety (bonding) company to the County, on behalf of an acceptable prime Contractor or subcontractor, guaranteeing payment to the County in the event the Contractor fails to pay for all labor, materials, equipment, or services in accordance with the contract. (see Performance Bond and Surety Bond).

10 *Lump Sum Agreement (See Stipulated Sum Agreement)*

- 1.11 *Lump Sum Bid* A single entry amount to cover all labor, equipment, materials, services, and overhead and profit for completing the construction of a variety of unspecified items of work without the benefit of a cost breakdown.
- 1.12 *Lump Sum Contract* A written contract between the County and Contractor wherein the County agrees to pay the Contractor a specified sum of money for completing a scope of work consisting of a variety of unspecified items or work.
- 1.13 *Payment Bond* A written form of security from a surety company to the County, on behalf of an acceptable prime contractor or subcontractor, guaranteeing payment to all persons providing labor, materials, equipment, or services in accordance with the contract.
- 1.14 *Performance Bond* A written form of security from a surety company to the County, on behalf of an acceptable prime contractor or subcontractor, guaranteeing the completion of the work in accordance with the terms of the contract.
- 1.15 *Progress Payment* A payment from the County to the Contractor determined by calculating the difference between the completed work and materials stored and a predetermined schedule of values or unit costs. (see Schedule of Values, Unit Costs).

16 *Progress Schedule* A pictorial or written schedule (including a graph or diagram) that shows proposed and actual start and completion dates of the various work elements.

- 1.17 *Punch list* A list of items to be completed or corrected, prepared by the Architect, checked and augmented as required by the Contractor or Construction Manager is appended hereto as Exhibit J. Note: The failure to include any item on such list does not relieve the Contractor of the responsibility to complete all work in accordance with the contract documents.
- 1.18 *Schedule of Values* A statement furnished by the Contractor to the Architect or Engineer and the County reflecting the portions of the contract sum allotted for the various parts of the work and used as the basis for reviewing the Contractor's Applications for Payment.
- 1.19 *Services* Includes services performed, workmanship, and material furnished or utilized in the performance of services.
- 1.20 *Stipulated Sum Agreement* A written agreement in which a specific amount is set forth as the total payment for completing the contract (See Lump Sum Contract).
- 1.21 *Subcontractor* A person, firm or corporation supplying labor and materials or only labor for work at the site of the project for, and under separate contract or agreement with, the Contractor.

1.22 *Unit Price Contract* A written contract wherein the County agrees to pay the Contractor a specified amount of money for each unit of work successfully completed as set forth in

the contract.

- 1.23 *Unit Prices* A predetermined price for a measurement or quantity of work to be performed within a specific contract. The designated unit price would include all labor materials, equipment or services associated with the measurement or quantity established.
- 1.24 *Working Day* Every day except Saturday, Sunday and holidays recognized by Santa Fe County. Based on a review of weather that may adversely affect the Contractor's ability to effectively prosecute the Work, and the actual Work performed by the Contractor, the Architect or Engineer will determine (between the end of the day and noon of the next day) if the County will charge a Working Day. If the Contractor was able to effectively prosecute Work on a critical path item for six (6) or more hours on a Saturday, Sunday or County-recognized Holiday, the Architect or Engineer may charge a Working Day.
- 1.25 *Work on (at) the project* means work to be performed at the location of the project, including the transportation of materials and supplies to or from the location of the project by employees of the Contractor and any subcontractor.

2. CONTRACT AND CONTRACT DOCUMENTS

- 2.1 *Entire Agreement.* This Agreement represents the entire contract between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto. This Agreement incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this Agreement, and all such conditions, understandings, and agreements have been merged into this written Agreement. No prior condition, agreement, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless incorporated in this written Agreement.
- 2.2 *Relationship of Contract Documents.* The Contract Documents are complementary, and any requirement of one Contract Document shall be as binding as if required by all.
- 2.3 *Conflicting Conditions.* Any provisions in any of the Contract Documents which may be in conflict or inconsistent with any of the paragraphs in these General Conditions shall be void to the extent of such conflict or inconsistency.

3. PLANS, SPECIFICATIONS AND ADDENDA

- 3.1 The plans, specifications and addenda, hereinafter enumerated in Article 1 of the Agreement Between County and Contractor for Construction shall form part of this Contract and the provisions thereof shall be as binding upon the parties hereto as if they were herein fully set forth. The table of contents, titles, headings, running headlines and marginal notes contained herein and in said documents are solely to facilitate reference to various provisions of the Contract Documents and in no way affect or limit the interpretation of the provisions to which they refer.

3.2 Certificates and Documents Incorporated. All certificates and documentation required by the provisions of the Agreement shall be attached to this Agreement at the time of execution, and are hereby incorporated by reference as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

4. CONTRACT SECURITY – BONDS

4.1 Performance Bond. The Contractor shall furnish a performance bond in an amount at least equal to one hundred percent (100%) of the contract sum as security for the faithful performance of this contract. The performance bond and the payment bond may be in one or in separate instruments in accordance with local law.

4.2 Payment Bond. The Contractor shall provide payment bond in an amount not less than one hundred percent (100%) of the contract price or in a penal sum not less than that prescribed by state, territorial or local law, as security for the payment of all persons performing labor on the project under this contract, furnishing materials in connection with this contract and all of Contractor's requirements as specified in the contract documents. The Payment Bond shall remain in effect until one year after the date when final payment becomes due.

4.3 Additional or Substitute Bond. If at any time the County for justifiable cause shall be or become dissatisfied with any surety or sureties, then upon the Performance or Payment Bonds, the Contractor shall within five (5) days after notice from the County so to do, substitute an acceptable bond (or bonds) in such form and sum and signed by such other surety or sureties as may be satisfactory to the County. The premiums on such bond shall be paid by the Contractor. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished such an acceptable bond to the County.

4.4 Labor and Material Bond. The Contractor shall provide to the County Labor and Material Bond in an amount equal to the required payments by the Contractor to pay specified subcontractors, laborers, and materials suppliers associated with the project.

5. TERMS AND MEANINGS

Terms used in this Agreement that are defined in the Conditions of the Contract shall have the meanings designated in those Conditions.

5.1 Words and Phrases. Words, phrases, and abbreviations which have well-known technical or trade meanings used in the Contract Documents shall be used according to such recognized meanings. In the event of a conflict, the more stringent meaning shall govern.

5.2 Gender, Singular/Plural. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

5.3 Captions and Section Headings. The captions and section headings contained in this Agreement are for convenience of reference only, and in no way limit, define, or enlarge

the terms, scope and conditions of this Agreement.

5.4 **Interchangeable Terms.** For purposes of all provisions within this Agreement and all attachments hereto, the terms "Agreement" and "Contract" shall have the same meaning and shall be interchangeable.

6. COMPLIANCE WITH APPLICABLE LAW, CHOICE OF LAW

6.1 This Agreement shall be governed exclusively by the provisions hereof and by the laws of the State of New Mexico and applicable ordinances of Santa Fe County.

6.2 In performing its obligations hereunder, the Contractor shall comply with all applicable laws, ordinances, and regulations, including Santa Fe County Ordinance 2014-1 (Establishing a Living Wage).

6.3 **Minimum Wage Rates.** The Contractor, all subcontractors and subsubcontractors warrants and agree to will comply with all applicable provisions of the New Mexico Public Works Minimum Wage Act as outlined in the Bid Documents. Wage rates are not applicable to projects costing less than \$60,000.

6.4 This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules. Contractor and the County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be federal and state district courts of New Mexico.

6.5 Pursuant to 13-1-191, NMSA 1978, reference is hereby made to the criminal laws of New Mexico, including §30-14-1, §30-24-2, and §30-41-1 through 3 NMSA 1978, which prohibit bribes, kickbacks, and gratuities, violation of which constitutes a felony. Further, the Procurement Code, 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation.

6.6 **New Mexico Tort Claims Act.** Any liability incurred by the County 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. NMSA 1978, as amended. The County 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.

6.7 **Provision Required by Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract shall forthwith be physically amended to make such insertion or correction.

7. EFFECTIVE DATE AND TERM

- 7.1 This Agreement shall, upon due execution by all parties, become effective in accordance with the Agreement Between County and Contractor for Construction, Article 3 - Effective Date, Time of Commencement and Substantial Completion. This Agreement shall not become effective until: (1) approved by the Santa Fe County Commissioners and/or the County Manager or their designee; and (2) signed by all parties required to sign this Agreement.
- 7.2 This Contract shall achieve Substantial Completion in accordance with the Agreement Between County and Contractor, Article 3 - Effective Date, Time of Commencement and Substantial Completion, unless earlier terminated pursuant to Section 8 (Termination) or 9, (Appropriations and Authorizations) of these General Conditions.

8. TERMINATION

- 8.1 Termination of Agreement for Cause. Either party may terminate the Agreement based upon any material breach of this Agreement by the other party. The non-breaching party shall give the breaching party written notice of termination specifying the grounds for the termination. The termination shall be effective thirty (30) days from the breaching party's receipt of the notice of termination, during which time the breaching party shall have the right to cure the breach. If, however, the breach cannot with due diligence be cured within thirty (30) days, the breaching party shall have a reasonable time to cure the breach, provided that, within thirty (30) days of its receipt of the written notice of termination, the breaching party began to cure the breach and advised the non-breaching party in writing that it intended to cure.
- 8.2 Termination for Convenience of the County. The County may, in its discretion, terminate this Agreement at any time for any reason by giving the Contractor written notice of termination. The notice shall specify the effective date of termination, which shall not be less than fifteen (15) days from the Contractor's receipt of the notice. The County shall pay the Contractor for acceptable work, determined in accordance with the specifications and standards set forth in this Agreement, performed before the effective date of termination but shall not be liable for any work performed after the effective date of termination.
- 8.3 Right of the County to Terminate Contract In the event that any of the provisions of this Contract are violated by the Contractor, or by any of its subcontractors, the County may serve written notice upon the Contractor and the Surety of its intention to terminate the contract, such notices to contain the reasons for such intention to terminate the Contract, and unless within ten (10) days after the serving of such notice upon the Contractor, such violation or delay shall cease and satisfactory arrangement of correction be made, the Contract shall, upon the expiration of said ten (10) days, cease and terminate. In the event of any such termination, the County shall immediately serve notice thereof upon the Surety and the Contractor and the Surety shall have the right to take over and perform the Contract. Provided, however, that if the Surety does not commence performance thereof

within ten (10) days from the date of the mailing to such Surety of notice of termination, the County may take over the work and prosecute the same to completion by contract or by force account and at the expense of the Contractor and the Contractor and its Surety shall be liable to the County for any excess cost occasioned the County thereby, and in such event the County may take possession of and utilize in completing the work, such materials, appliances, and plant as may be on the site of the work and necessary therefore.

9. APPROPRIATIONS AND AUTHORIZATIONS

This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Santa Fe County Board of County Commissioners and/or, if state funds are involved, the New Mexico State Legislature. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Agreement shall terminate upon written notice by the County to the Contractor. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse the Contractor for expenditures made in the performance of this Agreement. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. The County's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by the Contractor in any way or forum, including a lawsuit.

10. AMENDMENTS – CHANGE ORDERS

Contract Documents may be amended by a Change Order, hereto attached as Exhibit I to allow for additions, deletions, and revision as specified in Article 2 The Work of the Agreement between Santa Fe County and the Contractor or to amend the terms and conditions by a Change Order.

11. INDEMNIFICATION

- 11.1** The Contractor shall defend, indemnify, and hold harmless the County and its elected officials, agents, and employees from any losses, liabilities, damages, demands, suits, causes of action, judgments, costs or expenses (including but not limited to court costs and attorneys' fees) resulting from or directly or indirectly arising out of the Contractor's performance or non-performance of its obligations under this Agreement, including but not limited to the Contractor's breach of any representation or warranty made herein.
- 11.2** The Contractor agrees that the County shall have the right to control and participate in the defense of any such demand, suit, or cause of action concerning matters that relate to the County and that such suit will not be settled without the County's consent, such consent can not to be unreasonably withheld. If a conflict exists between the interests of the County and the Contractor in such demand, suit, or cause of action, the County may retain its own counsel to represent the County's interest.
- 11.3** The Contractor's obligations under this section shall not be limited by the provisions of any insurance policy the Contractor is required to maintain under this Agreement.

12. AGGRIEVEMENT PROCEDURE DURING CONTRACT ADMINISTRATION

- 12.1** Any claims, disputes, or other matters in question between the Contractor and the County, except those which have been waived by the making or acceptance of final payment as provided in Paragraph 6.2 of the Agreement Between Santa Fe County and Contractor for Construction, shall be presented in the form of a written request accompanied by supporting data to the Architect for formal decision, with a copy to the other party. Such formal decision of the Architect is binding upon the Contractor and the County unless either or both notify each other and the Architect in writing within fifteen (15) days of their receipt of the decision that they are unwilling to abide by the Architect's/Engineer's decision, are thereby aggrieved in connection with the decision, and are separately exercising such rights as either may have under the Contract Documents or by law and regulation. If the Architect fails to provide a written decision or a reasonable schedule to issue a written decision within ten (10) days after the County or the Contractor has presented its request, that party may consider itself aggrieved and may proceed to exercise its rights.
- 12.2** A settlement agreement signed by the County and the Contractor shall supersede and cancel any other dispute resolution proceedings regarding the same matter.
- 12.3** Unless work is stopped or payment withheld in accordance with the conditions of the Contract, or unless otherwise agreed in writing, the Contractor shall carry on the Work and maintain its progress during any dispute resolution proceedings, and the Owner shall continue to make payments to the Contractor in accordance with the Contract Documents.

13. DISPUTE RESOLUTION

- 13.1** Either County or Contractor may request mediation pursuant to the New Mexico Public Works Mediation Act, 13-4C-1 NMSA 1978, of any claim before such decision become final and binding. The request for mediation shall be submitted in writing to the other party. Timely submission of the request shall stay the effect of Paragraph 12.1.
- 13.2** County and Contractor shall participate in the mediation process in good faith. The process shall be completed within sixty (60) days of filing of the request. The mediation shall be governed by the rules for mediation pursuant to the New Mexico Public Works Mediation Act.
- 13.3** If the dispute is not resolved by mediation, the dispute shall be resolved through litigation in the district court. The parties agree that the exclusive forum for such litigation shall be the State of New Mexico District Court for the First Judicial District at Santa Fe, New Mexico. Contractor irrevocably consents to the jurisdiction of said Court and agrees to accept service of a summons and complaint by mail or commercial courier service in accordance with Rule 1-004(E)(3) NMRA.

14. INSURANCE

- 14.1** The Contractor shall not commence work under this Contract until they have obtained all the insurance required under this paragraph and such insurance has been approved by the County, nor shall the Contractor allow any subcontractor to commence work on its subcontract until the insurance required of the subcontractor has been so obtained and approved.
- 14.2** Proof of Carriage of Insurance. The Contractor shall furnish the County with certificates showing the type, amount, class of operations covered, effective dates and date of expiration of policies. Such certificates shall also contain substantially the following statement: "Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions".
- 14.3** General Conditions. The Contractor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.
- 14.4** General Liability Insurance, Including Automobile. The Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,050,000.00 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the County by the Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Agreement is an insured contract. The Santa Fe County shall be a named additional insured on the policy.
- 14.5** Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance. The Contractor shall require each of its subcontractors to procure and to maintain during the life of its subcontract, Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance of the type and in the amounts specified in 14.4 above.
- 14.6** Workers' Compensation Insurance. The Contractor shall comply with the provisions of the Workers' Compensation Act, 52-1-1 to 52-1-70 NMSA 1978. The Contractor shall procure and shall maintain during the life of this Contract Workmen's Compensation Insurance as required by applicable State law for all of its employees to be engaged in work at the site of the project under this Contract and, in case of any such work sublet, the Contractor shall require the subcontractor similarly to provide Workmen's Compensation Insurance for all of the latter's employees to be engaged in such work unless such employees are covered by the protection afforded by the Contractor's Workmen's Compensation Insurance. In case any class of employees engaged in hazardous work on the project under this Contract is not protected under the Workmen's Compensation law, the Contractor shall provide and shall cause each subcontractor to provide adequate employer's liability insurance for the protection of such of its employees as are not otherwise protected.

- 14.7 Scope of Insurance and Special Hazards.** The insurance require under subparagraphs 14.4 and 14.5 hereof shall provide adequate protection for the Contractor and his subcontractors, respectively, against damage claims which may arise from operations under this Contract, whether such operations be by the insured or by anyone directly or indirectly employed by him and, also against any of the special hazards which may be encountered in the performance of this Contract.
- 14.8 Builder's Risk Insurance (Fire and Extended Coverage).** Until the project is completed and accepted by the County, the County, or Contractor at the County's option is required to maintain Builder's Risk Insurance (fire and extended coverage) on a 100 percent completed value basis on the insurable portion of the project for the benefit of the County, the Contractor, subcontractors as their interests may appear. The Contractor shall not include any costs for Builder's Risk Insurance (fire and extended coverage) premiums during construction unless the Contractor is required to provide such insurance; however, this provision shall not release the Contractor from its obligation to complete, according to plans and specifications, the project covered by the contract, and the Contractor and his Surety shall be obligated to full performance of the Contractor's undertaking.
- 14.9 Increased Limits.** If, during the life of this Agreement, the New Mexico State Legislature increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended), the Contractor shall increase the maximum limits of any insurance required herein.
- 14.10 Additional insured.** Santa Fe County will be listed as an additional insured on all policies, and proof of coverage must be provided before work begins. Contractor shall maintain adequate insurance in at least the maximum amounts which the County could be liable under the New Mexico Tort Claims Act. It is the sole responsibility of the Contractor to be in compliance with the law.

15. INDEPENDENT CONTRACTOR

- 15.1** The Contractor and the Contractor's agents and employees are independent contractors performing professional and technical services for the County and are not employees of the County. The Contractor and the Contractor's agents and employees shall not accrue leave, retirement, insurance, bonding, use of County's vehicles, or any other benefits afforded to employees of the County as a result of this Agreement.
- 15.2** The Contractor shall not subcontract any portion of the services to be performed under this Agreement without prior written approval of the County.
- 15.3** The Contractor shall maintain detailed time records which indicate the date, time and nature of services rendered. These records shall be subject to inspection by the County and the State Auditor. The County shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the County to recover excessive illegal payments.

16. CONFLICT OF INTEREST OF OFFICERS OR EMPLOYEES OF THE LOCAL

JURISDICTION, MEMBERS OF THE LOCAL GOVERNING BODY, OR OTHER PUBLIC OFFICIALS

- 16.1** No officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Contract, during its tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed. Further, the Contractor shall cause to be incorporated in all subcontracts the language set forth in this paragraph prohibiting conflict of interest.
- 16.2** No official of the County who is authorized in such capacity and on behalf of the County to negotiate, make, accept or approve, or to take part in negotiating, making accepting or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part hereof. No officer, employee, architect, attorney, engineer or inspector of or for the County who is authorized in such capacity and on behalf of the County to exercise any legislative, executive, supervisory or other similar functions in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the project.
- 16.3** The Contractor warrants that the Contractor presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under this Agreement.

17. ASSIGNMENT

- 17.1** 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 advance written approval of the County. Any attempted assignment or transfer without the County's advance written approval shall be null and void and without any legal effect.

18. SUBCONTRACTING

- 18.1** The Contractor shall not subcontract or delegate any portion of the services to be performed under this Agreement without the advance written approval of the County. Any attempted subcontracting or delegating without the County's advance written approval shall be null and void and without any legal effect.
- 18.2** Contractor shall provide to the County a listing of subcontractors within ten (10) days of the Contract award.
- 18.3** Contractor shall adhere to all provisions of the Subcontractor's Fair Practices Act 13-4-31 to 13-4-42, NMSA 1978.
- 18.4** Contractor shall provide to the County completed Non-Collusion Affidavit of

Subcontractor form and Certification of Subcontractor Regarding Equal Employment Opportunity form for all subcontractors listed.

- 18.5 The Contractor shall not award any work to any subcontractor without prior written approval of the County, which approval will not be given until the Contractor submits to the County a written statement concerning the proposed award to the subcontractor, which statement shall contain such information as the County may require.
- 18.6 The Contractor shall be as fully responsible to the County for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as they are for the acts and omissions of persons directly employed by them.
- 18.7 The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractors to the Contractor by the terms of the General Conditions and other contract documents insofar as applicable to the work of subcontractors and to give the Contractor the same power as regards terminating any subcontract that the County may exercise over the Contractor under any provision of the contract documents.
- 18.8 Nothing contained in this Contract shall create any contractual relation between any subcontractor and the County.
- 18.9 All work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate written agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of County. Any contract between Contractor and a Subcontractor or Supplier shall provide that any remedy or claim for nonpayment of sums due or owing to Subcontractor or Supplier or services performed or materials provided is against Contractor and not County, subject to any remedy or rights Subcontractor or Supplier may have under the terms of the Contractor's Performance Bond and Section 13-4-19 NMSA 1978, the New Mexico Little Miller Act.

19. PERSONNEL

- 19.1 All work performed under this Agreement shall be performed by the Contractor or under its supervision.
- 19.2 The Contractor represents that it has, or will secure at its own expense, all personnel required to discharge its obligations under this Agreement. Such personnel (i) shall not be employees of or have any contractual relationships with the County and (ii) shall be fully qualified and licensed or otherwise authorized or permitted under federal, state, and local law to perform such work.
- 19.3 The Contractor will submit information for all of its staff who will work on site for background checks which will be conducted by the State Department of Corrections. Because the facility is housed on State Penitentiary grounds no fire arms or illicit substances are allowed to be carried onto the job site.

20. NOTICES

20.1 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 County: Santa Fe County
Office of the County Attorney
102 Grant Avenue
Santa Fe, New Mexico 87501

To the Contractor: Prime Builders, LLC
Attention: Stephanie Peterson
PO Box 91480
Albuquerque, NM 87199

20.2 Nothing herein contained shall preclude the giving of any such written notice by personal service. The address to which notices shall be mailed to either party may be changed by written notice given by such party to the other as hereinabove provided.

21. RELEASE

The Contractor, upon final payment of the amounts due under this Agreement, releases the County, the County's officers and employees from all liabilities and obligations arising from or under this Agreement, including, without limitation, all damages, losses, costs, liability, and expenses, including, without limitation, attorney's fees and costs of litigation that the Contractor may have.

22. WAIVER

No provision of this Agreement shall be deemed to have been waived by either party unless such waiver be in writing signed by the party making the waiver and addressed to the other party; nor shall any custom or practice which may evolve between the parties in the administration of the terms hereof be construed to waive or lessen the right of either party to insist upon performance by the other party in strict accordance with the terms hereof. Further, the waiver by any party of a breach by the other party of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition thereof.

CONDITIONS OF THE WORK

1. Additional Instructions and Detail Drawings

- 1.1 The Contractor will be furnished additional instructions and detail drawings as necessary to carry out the work of the Contract. The additional drawings and instructions supplied to the Contractor will coordinate with the Contract Documents and will be so prepared that they can be reasonably interpreted as part thereof. The Contractor shall carry out the work in accordance with the additional detail drawings and instructions. The Contractor and the Architect will prepare jointly (a) a schedule, fixing the dates at which special detail drawings will be required, such drawings, if any, to be furnished by the Architect in accordance with the schedule, and (b) a schedule fixing the respective dates for the submission of shop drawings, the beginning of manufacture, testing and installation of materials, supplies and equipment, and the completion of the various parts of the work; each schedule to be subject to change from time to time in accordance with progress of the work.

2. Shop or Setting Drawings

- 2.1 The Contractor shall submit promptly to the Architect two (2) copies of each shop or setting drawing prepared in accordance with the schedule predetermined as aforesaid. After examination of such drawings by the Architect and the return thereof, the Contractor shall make such corrections to the drawings as have been indicated and shall furnish the Architect with two corrected copies. If requested by the Architect the Contractor must furnish additional copies. Regardless of corrections made in or approval given to such drawings by the Architect, the Contractor will be responsible for the accuracy of such drawings and for their conformity to the Plans and Specifications, unless the Contractor notifies the Architect in writing of any deviations at the time the Contractor furnishes such drawings.

3. Materials, Services, and Facilities

3.1 It is understood that except as otherwise specifically stated in the Contract Documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, superintendence, temporary construction of every nature, and all other services and facilities of every nature whatsoever necessary to execute, complete, and deliver the work within the specified time.

3.2 Any work necessary to be performed after regular working hours, on Sundays or legal holidays, shall be performed without additional expense to the County.

4. Contractor's Title to Materials

- 4.1 No materials or supplies for the work shall be purchased by the Contractor or by any subcontractor subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller. The Contractor warrants that

he/she has good title to all materials and supplies used by him/her in the work, free from all liens, claims or encumbrances.

5. Inspection and Testing of Materials

- 5.1 All materials and equipment used in the construction of the project shall be subject to adequate inspection and testing in accordance with accepted standards. The laboratory or inspection agency shall be selected by the County. The County will pay for all laboratory inspection service direct, and not as a part of the Contract.
- 5.2 Materials of construction, particularly those upon which the strength and durability of the structure may depend, shall be subject to inspection and testing to establish conformance with specifications and suitability for uses intended.

6. "Or Equal" Clause

- 6.1 Whenever a material, article or piece of equipment is identified on the plans or in the specifications by reference to manufacturers' or vendors' names, trade names, catalogue numbers, etc., it is intended merely to establish a standard; and, any material, article, or equipment or other manufacturers and vendors which will perform adequately the duties imposed by the general design will be considered equally acceptable provided the material, article, or equipment so proposed, is, in the opinion of the Architect, of equal substance and function. It shall not be purchased or installed by the Contractor without the Architect's written approval.

7. Patents

- 7.1 The Contractor shall hold and save the County and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the Contract, including its use by the County, unless otherwise specifically stipulated in the Contract Documents.
- 7.2 License and/or Royalty Fees for the use of a process which is authorized by the County of the project must be reasonable, and paid to the holder of the patent, or its authorized licensee, direct by the County and not by or through the Contractor.
- 7.3 If the Contractor uses any design, device or materials covered by letters, patent or copyright, the Contractor shall provide for such use by suitable agreement with the County of such patented or copyrighted design, device or material. It is mutually agreed and understood, that, without exception, the Contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the work. The Contractor and/or its Sureties shall indemnify and save harmless the County of the project from any and all claims for infringement by reason of the use of such patented or copyrighted design, device or materials, or any trademark or copyright in connection with work agreed to be performed under this Contract, and shall indemnify the County for any

cost, expense or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after, completion of the work.

8. Surveys, Permits, and Regulations

- 8.1 Unless otherwise expressly provided for in the Specifications, the County will furnish to the Contractor all surveys necessary for the execution of the work.
- 8.2 Unless otherwise expressly provided for in the Specifications, the Contractor shall procure and pay all permits, licenses and approvals necessary for the execution of this Contract.
- 8.3 The Contractor shall comply with all laws, ordinances, rules, orders, and regulations relating to performance of the work, the protection of adjacent property, and the maintenance of passageways, guard fences or other protective facilities.

9. Contractor's Obligations

- 9.1 The Contractor shall and will, in good workmanlike manner, do and perform all work and furnish all supplies and materials, machinery, equipment, facilities and means, except as herein otherwise expressly specified, necessary or proper to perform and complete all the work required by this Contract, within the time herein specified. The Contractor will perform the Work in accordance with the provisions of this Contract and said specifications and in accordance with the plans and drawings covered by this Contract any and all supplemental plans and drawings, and in accordance with the directions of the Architect as given from time to time during the progress of the work. The Contractor shall furnish, erect, maintain, and remove such construction plans and such temporary works as may be required.
- 9.2 The Contractor shall observe, comply with, and be subject to all terms, conditions, requirements, and limitations of the Contract and specifications, and shall do, carry on, and complete the entire work to the satisfaction of the Architect and the County.

10. Weather Conditions

- 10.1 In the event of temporary suspension of work, or during inclement weather, or whenever the Architect shall direct, the Contractor will, and will cause its subcontractors to protect carefully its and their work and materials against damage or injury from the weather. If, in the opinion of the Architect, any work or materials shall have been damaged or injured by reason of failure on the part of the Contractor or any of its Subcontractors so to protect its work, such materials shall be removed and replaced at the expense of the Contractor.

11. Protection of Work and Property-Emergency

- 11.1 The Contractor shall at all times safely guard the County's property from injury or loss in connection with this Contract. The Contractor shall at all times safely guard and protect its own work, and that of adjacent property from damage. The Contractor shall replace or

make good any such damage, loss or injury unless such is caused directly by errors contained in the Contract or by the County, or its duly authorized representatives.

- 11.2 In case of an emergency which threatens loss or injury of property, and/or safety of life, the Contractor will be allowed to act, without previous instructions from the Architect, in a diligent manner. The Contractor shall notify the Architect immediately thereafter. Any claim for compensation by the Contractor due to such extra work shall be promptly submitted to the Architect for approval.
- 11.3 Where the Contractor has not taken action but has notified the Architect of an emergency threatening injury to persons or to damage to the work or any adjoining property, the Contractor shall act as instructed or authorized by the Architect.
- 11.4 The amount of reimbursement claimed by the Contractor on account of any emergency action shall be determined in the manner provided in Paragraph 15 of these Conditions of the Work.

12. Inspection

- 12.1 The authorized representatives and agents of the County shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records.

13. Reports, Records, and Data

- 13.1 The Contractor shall submit to the County such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data as the County may request concerning work performed or to be performed under this Contract.

14. Superintendent by Contractor

- 14.1 At the site of the work the Contractor shall employ a construction superintendent or foreman who shall have full authority to act for the Contractor. It is understood that such representative shall be acceptable to the Architect/ Engineer/County and shall be one who can be continued in that capacity for the particular job involved unless he/she ceases to be on the Contractor's payroll.

15. Changes in Work

- 15.1 No changes in the work covered by the approved Contract Documents shall be made without having prior written approval of the County. Charges or credits for the work covered by the approved change shall be determined by one or more, or a combination of the following methods:

- A. Unit bid prices previously approved.
- B. An agreed lump sum.

- C. The actual cost of:
 - 1) Labor, including foremen;
 - 2) Materials entering permanently into the work;
 - 3) The County's or rental cost of construction equipment during the time of use on the extra work;
 - 4) Power and consumable supplies for the operation of power equipment;
 - 5) Insurance;
 - 6) Social Security and old age and unemployment contributions.
- D. To the costs for changes in work a fixed fee will be added to be agreed upon but not to exceed ten percent (10%) of the actual cost of the work. The fee shall be compensation to cover the cost of supervision, overhead, bond, profit and any other general expenses.

16. Extras

16.1 Without invalidating the contract, the County may order extra work or make changes by altering, adding to or deducting from the work, the contract sum being adjusted accordingly, and the consent of the Surety being first obtained where necessary or desirable. All the work of the kind bid upon shall be paid for at the price stipulated in the proposal, and no claims for any extra work or materials shall be allowed unless the work is ordered in writing by the County or the Architect, acting officially for the County, and the price is stated in such order.

17. Inspection of Services

17.1 The Contractor shall provide and maintain an inspection system acceptable to the County covering the services under this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the County during contract performance and for as long afterwards as the Contract requires.

17.2 The County has the right to inspect and test all services called for by the Contract, to the extent practicable at all times and places during the term of the Contract. The County shall perform inspections and tests in a manner that will not unduly delay the work.

17.3 If the County performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.

17.4 If any of the services do not conform with the Contract requirements, the County may require the Contractor to perform the services again in conformity with Contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by re-performance, the County may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and reduce the Contract sum to reflect the reduced value of the services performed.

17.5 If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with Contract requirements, the County may by

contract or otherwise, perform the services and charge to the Contractor any cost incurred by the County that is directly related to the performance of such service, or terminate the Contract for default.

18. Correction of Work

18.1 All work, all materials, whether incorporated in the work or not, all processes of manufacture, and all methods of construction shall be at all times and places subject to the inspection of the Architect/ Engineer/County who shall be the final judge of the quality and suitability of the work, materials, processes of manufacture, and methods of construction for the purposes for which they are used. Should they fail to meet their approval they shall be forthwith reconstructed, made good, replaced and/or corrected, as the case may be, by the Contractor at its own expense. Rejected material shall immediately be removed from the site. If, in the opinion of the Architect, it is undesirable to replace any defective or damaged materials or to reconstruct or correct any portion of the work injured or not performed in accordance with the Contract Documents, the compensation to be paid to the Contractor hereunder shall be reduced by such amount as in the judgment of the Architect shall be equitable.

19. Warranty of Construction.

19.1 In addition to any other warranties in this Contract, the Contractor warrants that work performed under this Contract conforms to the Contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

19.2 This warranty shall continue for a period of one (1) year from the date of final acceptance of the work. If the County takes possession of any part of the work before final acceptance, this warranty shall continue for a period of one (1) year from the date the County takes possession.

19.3 The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to County-owned or controlled real or personal property, when that damage is the result of the Contractor's failure to conform to contract requirements or any defect of equipment, material, workmanship, or design furnished.

19.4 The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for one (1) year from the date of repair or replacement.

19.5 The County shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

19.6 If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the County shall have the right to replace, repair, or otherwise

remedy the failure, defect, or damage at the Contractor's expense.

- 19.7 With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this Contract, the Contractor shall obtain all warranties that would be given in normal commercial practice; require all warranties to be executed, in writing, for the benefit of the County, if directed by the County; and, enforce all warranties for the benefit of the County, if directed by the County.
- 19.8 In the event the Contractor's warranty under subparagraph 19.4 of this clause has expired, the County may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.
- 19.9 Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the County nor for the repair of any damage that results from any defect in County-furnished material or design.
- 19.10 This warranty shall not limit the County's rights under the Inspection and Acceptance clause of this Contract with respect to latent defects, gross mistakes, or fraud.

20. Subsurface Conditions Found Different

- 20.1 Should the Contractor encounter sub-surface and/or latent conditions at the site materially differing from those shown on the Plans or indicated in the Specifications, the Contractor shall immediately give notice to the Architect of such conditions before they are disturbed. The Architect will thereupon promptly investigate the conditions, and if they find that they materially differ from those shown on the Plans or indicated in the Specifications, they will at once make such changes in the Plans and/or Specifications as they may find necessary, any increase or decrease of cost resulting from such changes to be adjusted in the manner provided in Paragraph 15 above.

21. Claims for Extra Cost

- 21.1 No claim for extra work or cost shall be allowed unless the same was done in pursuance of a written order of the Architect approved by the County, as aforesaid, and the claim presented with the first estimate after the changed or extra work is done. When work is performed under the terms of General Conditions, the Contractor shall furnish satisfactory bills, payrolls and vouchers covering all items of cost and when requested by the County, giving the County access to accounts relating thereto.

22. Construction Schedule and Periodic Estimates

- 22.1 Immediately after execution and delivery of the Contract, and before the first partial payment is made, the Contractor shall deliver to the County an estimated construction progress schedule in a form satisfactory to the County, showing the proposed dates of commencement and completion of each of the various subdivisions of work required under the Contract Documents and the anticipated amount of each monthly payment that will

become due to the Contractor in accordance with the progress schedule. The Contractor shall also furnish on forms to be supplied by the County (a) a detailed estimate giving a complete breakdown of the Contract sum and (b) periodic itemized estimates of work done for the purpose of making partial payments thereof. The costs employed in making up any of these schedules will be used only for determining the basis of partial payments and will not be considered as fixing a basis for additions to or deductions from the Contract price.

22.2 Schedule

The Contractor shall, within five (5) days after the effective date of Notice to Proceed, prepare and submit five (5) copies of a progress schedule covering project operations for the Contract period. This progress schedule shall be of the type generally referred to as a Critical Path Method (CPM), Critical Path Schedule (CPS), and Critical Path Analysis (CPA), and other similar designations. The CPM shall be used to control the timing and sequences of the project. All work shall be done in accordance with the CPM Planning and Scheduling. A written statement of explanation shall be submitted with the progress schedule. All costs incurred by the contractor to implement the CPM shall be borne by the Contractor.

23. Assignments

23.1 The Contractor shall not assign the whole or any part of this Contract or any monies due or to become due hereunder without written consent of the County. In case the Contractor assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due to the Contractor shall be subject to prior claims of all persons, firms and corporations of services rendered or materials supplied for the performance of the work called for in this Contract.

24. Mutual Responsibility of Contractors

24.1 If, through acts of neglect on the part of the Contractor, any other Contractor or any subcontractor shall suffer loss or damage on the work, the Contractor agrees to settle with such other Contractor or subcontractor by agreement or arbitration if such other Contractor or subcontractors will so settle. If such other Contractor or subcontractor shall assert any claim against the County on account of any damage alleged to have been sustained, the County shall notify the Contractor, who shall indemnify and save harmless the County against any such claim.

25. Separate Contract

25.1 The Contractor shall coordinate its operations with those of other contractors. Cooperation will be required in the arrangement for the storage of materials and in the detailed execution of the work. The Contractor, including its subcontractors, shall keep informed of the progress and the detail work of other contractors and shall notify the Architect/Engineer/County immediately of lack of progress or defective workmanship on the part of

other contractors. Failure of a contractor to keep informed of the work progressing on the site and failure to give notice of lack of progress or defective workmanship by others shall be construed as acceptance by the Contractor of the status of the work as being satisfactory for proper coordination with its own work.

26. Architect 's Authority

26.1 The Architect shall give all orders and directions contemplated under this Contract and specifications, relative to the execution of the work. The Architect shall determine the amount, quality, acceptability, and fitness of the several kinds of work and materials which are to be paid for under this Contract and shall decide all questions which may arise in relation to said work and the construction thereof. The Architect's estimates and decisions shall be final and conclusive, except as herein otherwise expressly provided. In case any question shall arise between the parties hereto relative to said contract or specifications, the determination or decision of the Architect shall be a condition precedent to the right of the Contractor to receive any money or payment for work under this Contract affected in any manner or to any extent by such question.

26.2 The Architect shall decide the meaning and intent of any portion of the specifications and of any plans or drawings where the same may be found obscure or be in dispute. Any differences or conflicts in regard to their work which may arise between the Contractor under this Contract and other Contractors performing work for the County shall be adjusted and determined by the Architect.

27. Stated Allowances

27.1 It is understood that Contractor has included in its proposal for the Contract sum all allowances including "Allowed Materials" The Contractor shall purchase the "Allowed Materials" as directed by the County on the basis of the lowest and best bid of at least three competitive bids. If the actual sum for purchasing the "Allowed Materials" is more or less than the "Cash Allowance," the Contract sum shall be adjusted accordingly. The adjustment in contract price shall be made on the basis of the purchase price without additional charges for overhead, profit, insurance or any other incidental expenses. The cost of installation of the "Allowed Materials" shall be included in the applicable sections of the Contract Specifications covering this work.

28. Use of Premises and Removal of Debris

28.1 The Contractor expressly undertakes at its own expense:

- A. to take every precaution against injuries to persons or damage to property;
- B. to store its apparatus, materials, supplies and equipment in such orderly fashion at the site of the work as will not unduly interfere with the progress of its work or the work of any other subcontractors;
- C. to place upon the work or any part thereof only such loads as are consistent with the safety of the portion of the work;
- D. to clean up frequently all refuse, rubbish, scrap materials, and debris caused by its

operations, to the end that at all times the site of the work shall present a neat, orderly and workmanlike appearance;

- E. before final payment to remove all surplus material, false-work, temporary structures, including foundations thereof, plant of any description and debris of every nature resulting from its operations, and to put the site in a neat, orderly condition.
- F. to affect all cutting, fitting or patching of its work required to make the same to conform to the plans and specifications and, except with the consent of the Architect, not to cut or otherwise alter the work of any other Contractor.

29. Quantities of Estimate

29.1 Wherever the estimated quantities of work to be done and materials to be furnished under this Contract are shown in any of the documents including the proposal, they are given for use in comparing bids and the right is especially reserved except as herein otherwise specifically limited, to increase or diminish them as may be deemed reasonably necessary or desirable by the County to complete the work contemplated by this Contract, and such increase or diminution shall in no way void this Contract, nor shall any such increase or diminution give cause for claims or liability for damages.

30. Lands and Rights-of-Way

30.1 Prior to the start of construction, the County shall obtain all lands and rights-of-way necessary for the carrying out and completions of work to be performed under this Contract.

31. General Guaranty

31.1 Neither the final certificate of payment nor any provision in the Contract Documents, nor partial or entire occupancy of the premises by the County, shall constitute an acceptance of work not done in accordance with the Contract Documents or relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The Contractor shall remedy any defects in the work and pay for any damage to other work resulting therefrom, which shall appear within a period of one (1) year from the date of final acceptance of the work unless a longer period is specified. The County will give notice of observed defects with reasonable promptness.

32. Protection of Lives and Health

32.1 The Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the site, which occur as a result of its prosecution of the work. The safety provisions of applicable laws and building and construction codes shall be observed and the Contractor shall take or cause to be taken, such additional safety and health measures as the County may determine to be reasonably necessary.

33. Interest of Member

33.1 No member of Santa Fe Board of County Commissioners shall be admitted to any share or part of this Contract or to any benefit that may arise therefrom.

34. Other Prohibited Interests

34.1 No official of the County who is authorized in such capacity and on behalf of the County to negotiate, make, accept or approve, or to take part in negotiating, making accepting or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the project, shall become directly or indirectly interested personally in this Contract or in any part hereof. No officer, employee, architect, attorney, engineer or inspector of or for the County who is authorized in such capacity and on behalf of the County to exercise any legislative, executive, supervisory or other similar functions in connection with the construction of the project, shall become directly or indirectly interested personally in this Contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the project.

35. Use and Occupancy Prior to Acceptance by County

35.1 The Contractor agrees to the use and/or occupancy of a portion or unit of the project before formal acceptance by the County, provided the County:

- A. Secures written consent of the Contractor except in the event, in the opinion of the Architect/ Engineer, the Contractor is chargeable with unwarranted delay in final cleanup of punch list items or other contract requirements.
- B. Secures endorsement from the insurance carrier and consent of the surety permitting occupancy of the building or use of the project during the remaining period of construction.
- C. When the project consists of more than one building, and one of the buildings is occupied, secures permanent fire and extended coverage insurance, including a permit to complete construction. Consent of the surety must also be obtained.

ATTACHMENT A
BID SHEETS

ATTACHMENT B
ADDENDA & MODIFICATIONS

EXHIBIT A
PROJECT MANUAL

EXHIBIT B

TECHNICAL SPECIFICATIONS AS LISTED IN PLAN SET

EXHIBIT C

LABOR AND MATERIAL PAYMENT BOND (SAMPLE)

KNOW ALL MEN BY THESE PRESENT, THAT WE _____
_____ as PRINCIPAL hereinafter called the "PRINCIPAL" and
_____ as SURETY hereinafter called the "SURETY", are held and
firmly bound unto Santa Fe County, a Political Subdivision of the State of New Mexico as OBLIGEE
hereinafter called the "COUNTY", for the use and benefit of any claimants as herein below defined, in
the amount of _____ (\$.) dollars for the payment whereof
PRINCIPAL and SURETY bind themselves, their heirs, executors, administrators, successors, and
assigns, jointly and severally, firmly by these presents.

WHEREAS, the PRINCIPAL has a written contract dated _____, 2015, with the
COUNTY for the Server Rooms at ADF & YDP in Santa Fe County, New Mexico, which must be
constructed in accordance with drawings and specifications which contract is referenced and made a part
hereof, and is hereinafter referred to as the "Contract."

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if PRINCIPAL shall
promptly make payment to all claimants as hereinafter defined, for all labor and material used or
reasonably required for use in the performance of the Contract, then this obligation shall be void;
otherwise, it shall remain in full force and effect, subject to the following conditions:

1. A claimant is defined as one having a direct contract with the PRINCIPAL or with a subcontractor of the PRINCIPAL for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include but not be limited to that part of water, gas, power, light, heat, oil, gasoline, telephone services or rental of equipment directly applicable to the Contract.
2. The above named PRINCIPAL and SURETY hereby jointly and severally agree with the COUNTY that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, prosecute a suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereof. The COUNTY shall not be liable for payment of any cost or expenses of any such suit.
3. No suit or action shall be commenced hereunder by any claimant:
 - a. Unless claimant, or other than one having a direct contract with the PRINCIPAL, shall have written notice in the form of an sworn statement to the COUNTY and any one or both of the following: the PRINCIPAL or SURETY above named, within ninety (90) days after such said claim is made or suit filed, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed.
 - b. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the COUNTY, PRINCIPAL or SURETY, at any place where an office is regularly maintained by said COUNTY,

PRINCIPAL or SURETY for the transaction of business, or served in any manner in which legal process may be served in the State in which the aforesaid project is located, save that such service need not be made by a public officer.

- 4. Any suit under this Labor and Material Bond must be instituted in accordance with the statute of limitation under Section 37-1-3 NMSA 1978.
- 5. No right of action shall accrue on this Bond to or for the use of any person or corporation other than subcontractors or sub-subcontractors of the said Contract between PRINCIPAL and Santa Fe County named herein.

SIGNED AND SEALED THIS _____ DAY OF _____, 2015.

CONTRACTOR – PRINCIPAL (signature)

By: _____
(Printed name and title)

NOTARY PUBLIC

(seal)

My Commission expires: _____

SURETY (signature)

(Printed name and title)

NOTARY PUBLIC

(seal)

My Commission expires: _____

SURETY'S Authorized New Mexico Agent

EXHIBIT D

PERFORMANCE BOND (SAMPLE)

A. KNOW ALL MEN BY THESE PRESENT, THAT WE _____, as PRINCIPAL hereinafter called the "CONTRACTOR" and _____, as SURETY hereinafter called the "SURETY", are held and firmly bound unto OBLIGEE Santa Fe County, a Political Subdivision of the State of New Mexico, hereinafter called the "COUNTY", in the sum of _____ (\$ _____) dollars for the payment whereof CONTRACTOR and SURETY bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

B. WHEREAS, the CONTRACTOR has a written contract dated _____, 2015, with the COUNTY for the Server Rooms at ADF & YDP in Santa Fe County, New Mexico, in accordance with drawings and specifications which contract is referenced made part hereof, and is hereinafter referred to as the "Contract."

C. NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if CONTRACTOR shall promptly and faithfully perform said Contract (including any amendment thereto), then this obligation shall be null and void; otherwise it shall remain in full force and effect until the COUNTY shall by written instrument notify the SURETY that the obligation is discharged, except that the obligation shall continue for at least three (3) months following the expiration of the term of the Contract.

1. The SURETY hereby waives notice of any alteration or extension of the Contract time made by the COUNTY.
2. Whenever CONTRACTOR shall be, and is declared by the COUNTY to be in default under the Contract, the COUNTY having performed the COUNTY'S obligations thereunder, the SURETY must promptly remedy the default and shall promptly:
 - (1) Complete the Contract in accordance with its terms and conditions, or
 - (2) Obtain a bid or bids for submission to the COUNTY for completing the Contract in accordance with its terms and conditions, and upon determination by the COUNTY and SURETY of the lowest responsible bidder, arrange for a contract between such bidder and Santa Fe County, and make available as work progresses (even though there should be a default or a secession of defaults under the Contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract price, but not exceeding, including other costs and damages for which the SURETY may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the Contract price" as used in this paragraph, shall mean the total amount payable by the COUNTY to CONTRACTOR under the Contract and any amendments thereto, less the amount properly paid by the COUNTY to CONTRACTOR.

D. No right of action shall accrue on this Performance Bond to or for the use of any person or corporation other than Santa Fe County named herein or the heirs, executors, administrators, or successors of Santa Fe County.

E. This Bond shall be enforceable without the need to have recourse to any judicial or arbitral proceedings.

SIGNED AND SEALED THIS _____ DAY OF _____, 2015.

CONTRACTOR – PRINCIPAL (signature)

By: _____
(Printed name and title)

NOTARY PUBLIC (seal)

My Commission expires: _____

SURETY (signature)

(Printed name and title)

NOTARY PUBLIC (seal)

My Commission expires: _____

SURETY'S Authorized New Mexico Agent

EXHIBIT E

ASSIGNMENT OF ANTITRUST CLAIMS

TO BE EXECUTED BY GENERAL CONTRACTORS, SUBCONTRACTORS, SUPPLIERS,
AND SUBSUBCONTRACTORS OF CONTRACTORS ON COUNTY CONTRACTS.

FIRM NAME:

PROJECT:

ADDRESS:

PROJECT NO: 2015-0292-CORR/IC

PHONE NO.:

_____ agrees that any and all claims which it may have or may incur to it for overcharges resulting from antitrust violations as to goods, services, and materials purchased in connection with the above-referenced project are hereby assigned to Santa Fe County, but only to the extent that such overcharges are passed on to the County. It is agreed that the undersigned retains all rights to any such antitrust claims to the extent of any overcharges not passed on to the County, including the right to any treble damages attributable thereto.

FIRM: _____

BY: _____
Signed by Individual empowered to obligate Suppliers,
Subcontractors or Subsubcontractors

TITLE: _____

EXHIBIT F
CERTIFICATE OF LIABILITY INSURANCE

EXHIBIT G

NOTICE OF CONTRACT AWARD

TO:

FROM: _____, Public Works Department

CONTRACT NO. 2015-0292-CORR/IC

This is to inform that you that you have been awarded the Contract for:

Project Name: Server Rooms at ADF & YDP

Date of Award _____ Amount of Award _____

Contractor Information:

Firm Name: _____ License# _____

Address: _____ Phone # _____

It is anticipated that construction will take place:

Approximate Starting Date: _____ Approximate Completion Date: _____

Santa Fe County hereby accepts your offer on the solicitation No. 2015-0292-CORR/IC as reflected in this award document. The rights and obligations of the parties shall be subject to and governed by this document and any documents attached or incorporated by reference.

SANTA FE COUNTY

Name of Public Works Director or designee: _____
(Print Name)

Signature

EXHIBIT H

NOTICE TO PROCEED

TO: DATE:
PROJECT:
ATTN: PROJECT NO. 2015-0292-CORR/IC
CONTRACT NO.
IFB NO.

Ladies and Gentlemen:

Enclosed is your copy of the Contract, which has been approved. Please consider this letter as official NOTICE TO PROCEED on the above-referenced project.

Your firm shall commence after the placement of an order for the Major Equipment specified in the Contract within seven (7) calendar days of the above date and shall achieve Substantial Completion two hundred ten (210) calendar days thereafter, which shall be [REDACTED], 2015, unless modified by Change Order.

It is essential that you make reference to the above-stated project number on all documents sent to the Architect from your office. These documents shall include correspondence, change order proposals, change orders, payment request statements, and all other project-related material which you forward to the Architect for information and processing.

Also, before you may start any Work at the site, you must (add any other requirements):

OWNER: Santa Fe County
SFC [REDACTED] DEPARTMENT

By: [REDACTED]
Director, SFC Department

EXHIBIT I

CHANGE ORDER

PROJECT:

CONTRACTOR
CHANGE ORDER NO:

ARCHITECT

PROJECT NO: 2015-0292-CORR/IC

Contractor Telephone:
Contractor e-mail:
ENGINEER'S/ARCHITECT'S PROJECT NO:

CHANGE ORDER JUSTIFICATION (Provide definitive reason for proposed change order.)

You are directed to make the following changes in this Contract: (Provide a detailed description of the Scope of the Work.)

NOT VALID UNTIL SIGNED BY BOTH THE COUNTY AND THE ARCHITECT . Signature of the Contractor indicates his agreement herewith, including any adjustment in the Contract Sum or Contract Time.

The Original Contract Sum was	
Net change by previously authorized Change Orders	\$0.00
The Contract Sum prior to this Change Order was he Contract Sum will be increased/decreased/unchanged	
by this Change Order in the amount of	\$0.00
The new contract Sum including this Change Order will be	\$0.00
The Contract Time will be increased/decreased/unchanged by <input type="text"/> days.	
The date of Substantial Completion as of the date of this Change Order therefore is: <input type="text"/>	

CHANGE ORDER SIGNATURE PAGE

REVIEWED

Santa Fe County

By:

Date:

AGREED AND RECOMMENDED

CONTRACTOR

By:

Date:

Title:

ARCHITECT

By:

Date:

APPROVED

SANTA FE COUNTY

By:

Date:

EXHIBIT J

CERTIFICATE OF SUBSTANTIAL COMPLETION

SANTA FE COUNTY - PUBLIC WORKS DEPARTMENT

Public Works Director or designee (name): _____

CONTRACTOR: _____

Contractor Purchase Order Number: _____

ARCHITECT: _____

Project Name: _____

Contract Date: _____

Project Description - Article 2 to Agreement Between Santa Fe County and Contractor (include address and project location description):

The contractor hereby certifies the Work of this project to be in complete conformance to the Contract Documents and is substantially complete, enabling the County to make use of the Work as intended.

By its signature below the Contractor further requests Architect and County to inspect the Work and to concur in the Work's substantial completion by their signature and/or to provide in a timely manner to Contractor a listing of work items adjudged by them as remaining to be completed or corrected. Contractor agrees to complete and correct all work items (Punch List) representative of such listing within ___ days from date of receipt from Architect.

Contractor

Signature

Print Name

Date

Accepted by Santa Fe County

_____ Signature (Public Works Director or Designee) Inspected/Concurrence Architect	_____ Print Name	_____ Date
---	---------------------	---------------

_____ Signature	_____ Print Name	_____ Date
--------------------	---------------------	---------------

PUNCH LIST

A list of items (Punch List) to be completed or corrected, verified by the Architect and County, is appended hereto. Failure to include any incomplete items on such list does not alter the responsibility of the Contractor to provide all Work in complete conformance with the Contract Documents.

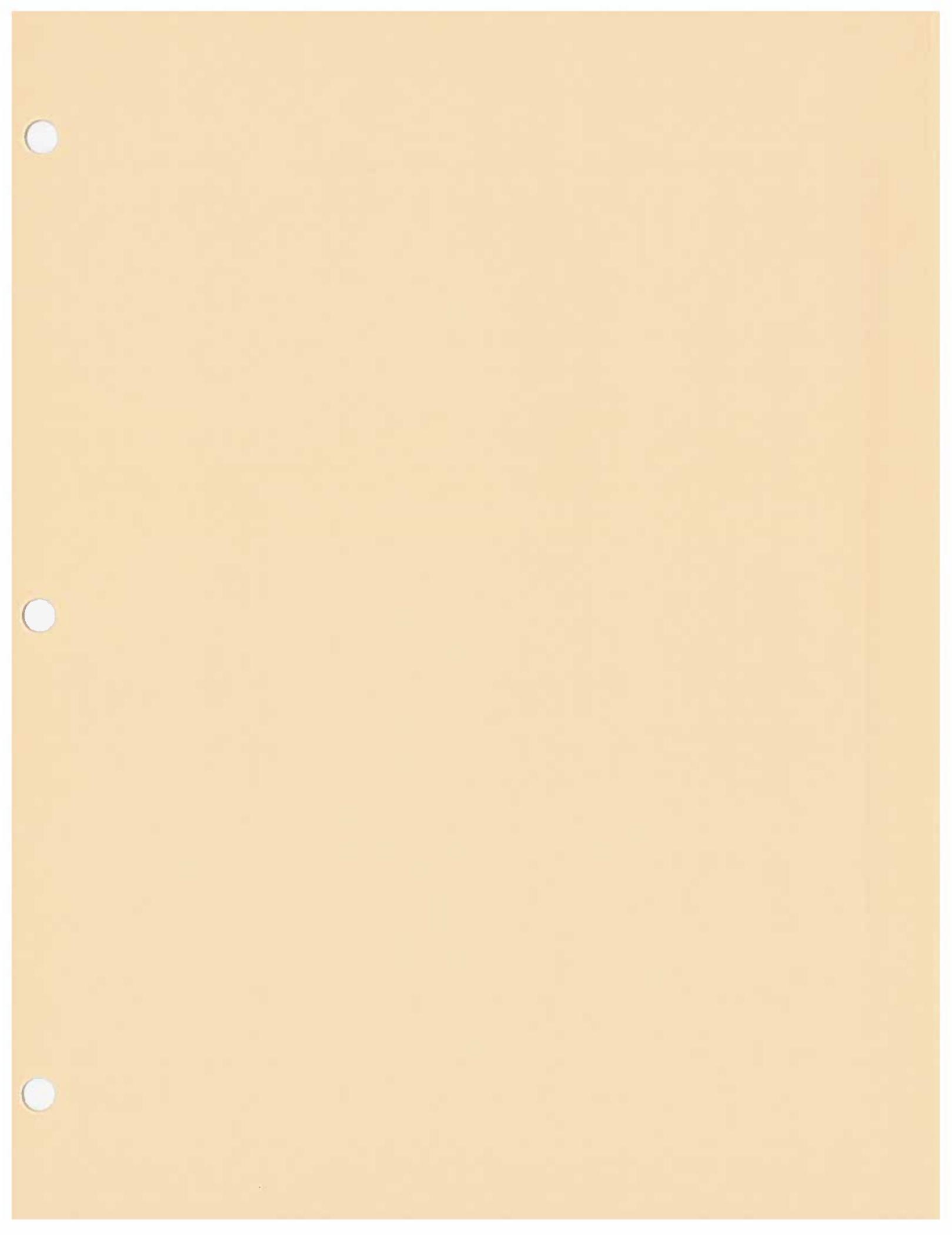
The Contractor shall complete or correct the work on the punch list appended hereto by _____ (Date)

The punch list consists of _____ (indicate number of items) items.

The Work performed under this Contract has been reviewed and found to be substantially complete by the Director of Public Works who has hereby established the Date of Substantial Completion as _____ (date) which is also the date of commencement of all warranties and guarantees required by the Contract Documents. The Date of Substantial Completion of the Work or designated portion thereof is the date established by the Director of Public Works (or designee) when construction is sufficiently complete, in accordance with the Contract Documents, so the County may occupy the Work, or designated portion thereof, for the use for which it is intended.

The County accepts the Work or designated portion thereof as substantially complete and assumes full possession thereof, in accordance with the contract documents.

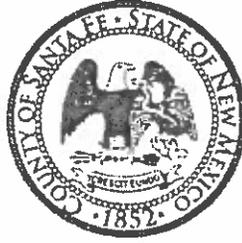
Punch List Items: (Use additional sheets if necessary)



Henry P. Roybal
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

DATE: *July 29, 2015*

TO: *Board of County Commissioners*

FROM: *Bill Taylor, Procurement Manager*

VIA: *Katherine Miller, County Manager* *8.4.15*
Carole Jaramillo, Finance Director

ITEM AND ISSUE: BCC Meeting August 11, 2015

REQUEST APPROVAL TO AWARD AGREEMENT 2015-0307-FI/MY LODGERS TAX ADVERTISING AND PROMOTIONAL SERVICES BETWEEN SANTA FE COUNTY AND HK ADVERTISING IN THE AMOUNT OF \$300,000.00 INCLUSIVE OF GROSS RECEIPTS TAX (*Bill Taylor, Purchasing Division*)

Summary:

The Lodger's Tax Act (Sections 3-38-13 to 3-38-24, NMSA 1978) and Santa Fe County Ordinance number 1999-10 both provide funding for advertising, publicizing and promoting tourist attractions in Santa Fe County. As such, the County requires that planning, development and implementation of advertising and promotional services be provided by a Professional Advertising Firm in promoting Santa Fe County. Emphasizing the importance of the following elements of the local economy:

- Cultural Tourism
- Outdoor recreation and ecotourism
- Agritourism
- Wedding tourism
- Health/wellness tourism

The Purchasing Division and the Finance Division are requesting authorization to award a Professional Services Agreement with HK Advertising in response to RFP 2015-0307-FI/MY to provide Advertising and Promotional Services for Santa Fe County.

Background:

Pursuant to 13-1-112 NMSA 1978, the Purchasing Division processed a Request for Proposal (RFP) 2015-0307-FI/MY for the Lodgers Tax Advertising and Promotional Services on April 10, 2015 and proposals were submitted by the following:

HK Advertising
Impressions Advertising
12FPS
Tourism Santa Fe

The submitted proposals were reviewed by an evaluation committee selected by the Procurement Division and as a result of the review, scoring and presentation the following recommendation has been made for the award of this Agreement.

Recommendation:

The Finance Division in conjunction with the Purchasing Division requests authorization to enter into Agreement 2015-0307-FI/MY with HK Advertising for Lodgers Tax Advertising and Promotional Services in the amount of \$300,000.00 inclusive of Gross Receipts Tax for Fiscal Year 2016.

**PROFESSIONAL SERVICE AGREEMENT
BETWEEN SANTA FE COUNTY AND HK ADVERTISING
TO PROVIDE ADVERTISING AND PROMOTIONAL SERVICES**

THIS AGREEMENT is made and entered into this _____ day of _____ 2015, by and between **SANTA FE COUNTY**, hereinafter referred to as the "County" and **HK ADVERTISING**, whose principal address is 41 Bisbee Ct. Suite A1, Santa Fe, New Mexico hereinafter referred to as the "Contractor".

WHEREAS, tourism is an important component of the County's economy; accounting for 12.4% of overall employment. The County has many cultural corridors and is considered the "gateway" to northern New Mexico; and

WHEREAS, the County is a part of the Northern Rio Grande National Heritage Area, and is recognized by the United States Congress for its unique natural, cultural and historic contributions; and

WHEREAS, the Lodger's Tax Act, NMSA 1978 Sections 3-38-13 through 3-38-24, and the County's Ordinance 1999-10 support advertising and promoting tourism throughout the County; and

WHEREAS, pursuant to NMSA 1978, Sections 13-1-112 and 13-1-117, competitive, sealed proposals were solicited via a formal Request for Proposals (RFP) No. 2015-0307-FI/MY for the provision of advertising and promotional services; and

WHEREAS, based upon the evaluation criteria established within the RFP for the purposes of selecting the most qualified offeror, the County has determined the Contractor as the most responsive and highly rated offeror; and

WHEREAS, the County requires the services of the Contractor and the Contractor is willing to provide these services and both parties wish to enter into this Agreement.

NOW, THEREFORE, it is agreed between the parties:

1. SCOPE OF WORK

Contractor shall perform necessary and County-approved advertising and related promotional services and activities that target the tourism assets available in the County and that reflect the County's economic development goals and objectives as identified in the County's Economic Development Plan.

The Contractor will include strategies for increasing shoulder season tourism, and include examples of marketing materials and concepts, with a comprehensive social media and target strategy approach. The Contractor shall obtain County approval, in advance and in writing, for concepts and costs for advertising and promoting County tourism that may include, but not be limited to, advertising and promoting centers, facilities, areas or activities that exist within Santa Fe County, and any collaborative efforts with other governmental entities, as appropriate. Contractor shall perform the following activities under this Agreement:

The Contractor shall provide, without limitation, the following services.

1. The Contractor shall coordinate with Santa Fe County representatives to develop strategies, goals and objectives to be used in the advertising, promoting and publicizing of Santa Fe County as a tourist destination for in-state, national and International travelers.
2. After coordination and input from the County, as required in this Scope of Work, Contractor shall submit an annual marketing, media and public relations plan, subject to County approval that will maximize the effectiveness of all existing and new marketing efforts that achieve the County's established goals and objectives for attracting tourism. This will include messaging, themes, and concepts, as well as examples of marketing/promotional material. The Contractor shall include in its annual marketing plan a report on the previous year's success. The Contractor shall provide a proposed system for measuring the success of the advertising and promotional efforts and strategies within the requirements of the contract.
3. The Contractor shall produce all advertising and promotional materials related to all activities and initiatives approved by the County under this SOW including, but not limited to, broadcasting, print advertisements, social media, place, print and broadcast media insertion materials and oversee the completion, fulfillment and processing of all such activities.
4. The Contractor shall establish and maintain a website intended to promote and publicize tourist activities and attractions in the unincorporated county.
5. The Contractor shall provide and produce a review and analysis of any ongoing or new media and marketing efforts for advertising, promoting and publicizing tourism in the County as requested by the County.
6. The Contractor shall prepare and submit for approval by the County, a budget of the annual contract dollars for all activities and promotional efforts requested by the County. The Contractor shall be responsible for administering and monitoring contract expenditures in accordance with the County approved budget for work related to this Agreement. Budget reports shall be due quarterly or whenever County determines such reports need to be completed. The Contractor shall also submit budget revision recommendations for approval by the County or as determined necessary by the County.
7. The Contractor shall prepare grant applications and grant proposals for advertising related grants as identified and requested by the County (e.g., NM Department of Tourism).
8. The Contractor shall prepare and submit monthly progress reports and orally present the reports at the Lodgers' Tax Advisory Board meetings of all activities performed under this Agreement. The Contractor shall also present its annual report, all updates

of the annual plan and report on work completed under this Agreement to the Board of County Commissioners when and as requested by the County.

9. The Contractor shall perform other services or tasks as deemed necessary by the County in relation to promoting and advertising tourism for Santa Fe County pursuant to this Agreement and Scope of Work.

2. ADDITIONAL SERVICES

A. The parties agree that all tasks set forth in Section 1 (Scope of Work), of this Agreement shall be completed in full, to the satisfaction of the County, in accordance with professional standards and for the amount set forth in Section 3 (Compensation, Invoicing and Set-off), of this Agreement, and for no other cost, amount, fee or expense.

B. The County may from time to time request changes in the scope of work to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the County and the Contractor, shall be incorporated in a written amendment to this Agreement.

3. COMPENSATION, INVOICING AND SET-OFF

A. In consideration of its obligations under this Agreement the Contractor shall be compensated as follows:

- 1) County shall pay to the Contractor in full payment for services satisfactorily performed and all costs and expenses shall be in accordance with Exhibit A.
- 2) The total amount payable to the Contractor under this Agreement shall not exceed Three Hundred Thousand Dollars (\$300,000.00) inclusive of New Mexico gross receipts tax. Any New Mexico gross receipts tax levied on the amounts payable under this Agreement shall be paid by the County to the Contractor.
- 3) 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. The County will notify the Contractor 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.

B. The Contractor shall submit a written request for payment to the County when payment is due under this Agreement. Upon the County's receipt of the written request, the County shall issue a written certification of complete or partial acceptance or rejection of the contractual items or services for which payment is sought. The Contractor acknowledges and agrees that the County may not make any payment hereunder unless and until it has issued a

written certification accepting the contractual items or services. Within thirty (30) days of the issuance of a written certification accepting the contractual items or services, the County shall tender payment for the accepted items or services. In the event the County fails to tender payment within thirty (30) days of the written certification accepting the items or services, the County shall pay late payment charges of one and one-half percent (1.5%) per month, until the amount due is paid in full.

C. In the event the Contractor breaches this Agreement, the County may, without penalty, withhold any payments due the Contractor for the purpose of set-off until such time as the County determines the exact amount of damages it suffered as a result of the breach.

D. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payment.

4. EFFECTIVE DATE AND TERM

This Agreement shall become effective on the date first written above and shall terminate one (1) year later, unless earlier terminated pursuant to Section 5 (Termination) or Section 6 (Appropriations and Authorizations). The County has the option to renew on the same terms and conditions for three (3) additional one (1) year terms not to exceed four (4) years in duration.

5. TERMINATION

A. Termination of Agreement for Cause. Either party may terminate the Agreement based upon any material breach of this Agreement by the other party. The non-breaching party shall give the breaching party written notice of termination specifying the grounds for the termination. The termination shall be effective thirty (30) days from the breaching party's receipt of the notice of termination, during which time the breaching party shall have the right to cure the breach. If, however, the breach cannot with due diligence be cured within thirty (30) days, the breaching party shall have a reasonable time to cure the breach, provided that, within thirty (30) days of its receipt of the written notice of termination, the breaching party began to cure the breach and advised the non-breaching party in writing that it intended to cure.

B. Termination for Convenience of the County. The County may, in its discretion, terminate this Agreement at any time for any reason by giving the Contractor written notice of termination. The notice shall specify the effective date of termination, which shall not be less than fifteen (15) days from the Contractor's receipt of the notice. The County shall pay the Contractor for acceptable work, determined in accordance with the specifications and standards set forth in this Agreement, performed before the effective date of termination but shall not be liable for any work performed after the effective date of termination.

6. APPROPRIATIONS AND AUTHORIZATIONS

This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Board of County Commissioners of the County and/or, if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Agreement shall terminate upon

written notice by the County to the Contractor. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse the Contractor for expenditures made in the performance of this Agreement. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. The County's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by the Contractor in any way or forum, including a lawsuit.

7. INDEPENDENT CONTRACTOR

The Contractor and its agents and employees are independent contractors and are not employees or agents of the County. Accordingly, the Contractor and its agents and employees shall not accrue leave, participate in retirement plans, insurance plans, or liability bonding, use County vehicles, or participate in any other benefits afforded to employees of the County. Except as may be expressly authorized elsewhere in this Agreement, the Contractor has no authority to bind, represent, or otherwise act on behalf of the County and agrees not to purport to do so.

8. 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 advance written approval of the County. Any attempted assignment or transfer without the County's advance written approval shall be null and void and without any legal effect.

9. SUBCONTRACTING

The Contractor shall not subcontract or delegate any portion of the services to be performed under this Agreement without the advance written approval of the County. Any attempted subcontracting or delegating without the County's advance written approval shall be null and void and without any legal effect.

10. PERSONNEL

A. All work performed under this Agreement shall be performed by the Contractor or under its supervision.

B. The Contractor represents that it has, or will secure at its own expense, all personnel required to discharge its obligations under this Agreement. Such personnel (i) shall not be employees of or have any contractual relationships with the County and (ii) shall be fully qualified and licensed or otherwise authorized or permitted under federal, state, and local law to perform such work.

11. RELEASE

Upon its receipt of all payments due under this Agreement, the Contractor releases the County, its elected officials, officers, agents and employees from all liabilities, claims, and obligations whatsoever arising from or under or relating to this Agreement.

12. 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 County.

13. PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT

A. The County has the unrestricted right to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other material prepared under or pursuant to this Agreement.

B. The Contractor acknowledges and agrees that any material produced in whole or in part under or pursuant to this Agreement is a work made for hire. Accordingly, to the extent that any such material is copyrightable in the United States or in any other country, the County shall own any such copyright. The Contractor shall retain full ability to use in its website any and all information, photos, and digital media that may be gathered through completion of work pursuant to this Agreement.

14. CONFLICT OF INTEREST

The Contractor represents that it has no and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of its obligations under this Agreement.

15. NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED

This Agreement may not be modified, altered, changed, or amended orally but, rather, only by an instrument in writing executed by the parties hereto. The Contractor specifically acknowledges and agrees that the County shall not be responsible for any changes to Section 1 (Scope of Work), of this Agreement unless such changes are set forth in a duly executed written amendment to this Agreement.

16. ENTIRE AGREEMENT; INTEGRATION

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

17. NOTICE OF PENALTIES

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

18. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

A. The Contractor agrees to abide by all federal, state, and local laws, ordinances, and rules and regulations pertaining to equal employment opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, the Contractor specifically agrees not to discriminate against any person with regard to employment with the Contractor or participation in any program or activity offered pursuant to this Agreement on the grounds of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation, or gender identity.

B. The Contractor acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Agreement.

19. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW

A. In performing its obligations hereunder, the Contractor shall comply with all applicable laws, ordinances, and regulations.

B. Contractor shall comply with the requirements of Santa Fe County Ordinance 2014-1 (Establishing a Living Wage).

C. This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules. Contractor and the County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be state district courts of New Mexico, located in Santa Fe County.

20. RECORDS AND INSPECTIONS

A. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to the County as part of the procurement process, the Contractor agrees to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under this Agreement; (ii) allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with generally accepted accounting principles (GAAP).

B. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to County as part of the procurement process, the Contractor also agrees to require any subcontractor it may hire to perform its obligations under this Agreement to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under the subcontract; (ii) to allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with GAAP.

21. INDEMNIFICATION

A. The Contractor shall defend, indemnify, and hold harmless the County and its elected officials, agents, and employees from any losses, liabilities, damages, demands, suits, causes of action, judgments, costs or expenses (including but not limited to court costs and attorneys' fees) resulting from or directly or indirectly arising out of the Contractor's performance or non-performance of its obligations under this Agreement, including but not limited to the Contractor's breach of any representation or warranty made herein.

B. The Contractor agrees that the County shall have the right to control and participate in the defense of any such demand, suit, or cause of action concerning matters that relate to the County and that such suit will not be settled without the County's consent, such consent not to be unreasonably withheld. If a conflict exists between the interests of the County and the Contractor in such demand, suit, or cause of action, the County may retain its own counsel to represent the County's interest.

C. The Contractor's obligations under this section shall not be limited by the provisions of any insurance policy the Contractor is required to maintain under this Agreement.

22. SEVERABILITY

If any term or condition of this Agreement shall be held invalid or non-enforceable by any court of competent jurisdiction, the remainder of this Agreement shall not be affected and shall be valid and enforceable to the fullest extent of the law.

23. 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 County: Santa Fe County
Office of the County Attorney
102 Grant Avenue
Santa Fe, New Mexico 87501

To the Contractor: (See Section 31 - Agent)

24. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

The Contractor hereby represents and warrants that:

A. This Agreement has been duly authorized by the Contractor, the person executing this Agreement has authority to do so, and, once executed by the Contractor, this Agreement shall constitute a binding obligation of the Contractor.

B. This Agreement and Contractor's obligations hereunder do not conflict with Contractor's corporate agreement or any statement filed with the New Mexico Secretary of State on Contractor's behalf.

C. Contractor is legally registered and is properly licensed by the State of New Mexico to provide the services anticipated by this Agreement and shall maintain such registration and licensure in good standing throughout the duration of the Agreement.

25. FACSIMILE SIGNATURES

The parties hereto agree that a facsimile signature has the same force and effect as an original for all purposes, unless original signature is required pursuant to County Resolution 2006-60, Santa Fe County Purchasing Regulations and Policy Manual.

26. NO THIRD-PARTY BENEFICIARIES

This Agreement was not intended to and does not create any rights in any persons not a party hereto.

27. INSURANCE

A. General Conditions. The Contractor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.

B. General Liability Insurance, Including Automobile. The Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,000,000.00 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the County by the Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Agreement is an insured contract. Santa Fe County shall be a named additional insured on the policy.

C. Increased Limits. If, during the life of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended), the Contractor shall increase the maximum limits of any insurance required herein.

28. PERMITS, FEES, AND LICENSES

Contractor shall procure all permits and licenses, pay all charges, fees, and royalties, and give all notices necessary and incidental to the due and lawful performance of its obligations hereunder.

29. NEW MEXICO TORT CLAIMS ACT

No provision of this Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by County or its "public employees" at common law or under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

30. CAMPAIGN CONTRIBUTION DISCLOSURE FORM

The Contractor agrees to compute and submit simultaneous with execution of this Agreement a Campaign Contribution Disclosure Form approved by the County.

31. APPOINTMENT OF AGENT FOR SERVICE OF PROCESS,

The Contractor hereby irrevocably appoints David C. Hayduk, located at 41 Bisbee Court A1, Santa Fe, NM 87508 as its agent upon whom process and writs in any action or proceeding arising out of or related to this Agreement may be served. The Contractor acknowledges and agrees that service upon its designated agent shall have the same effect as though the Contractor were actually and personally served within the state of New Mexico.

32. SURVIVAL

The provisions of following paragraphs shall survive termination of this Contract; INDEMNIFICATION; RECORDS AND INSPECTION; RELEASE, CONFIDENTIALITY, PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT; COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW; NO THIRD-PARTY BENEFICIARIES; SURVIVAL.

IN WITNESS WHEREOF, the parties have duly executed this Amendment to the Agreement as of the date first written above.

SANTA FE COUNTY:

Robert A. Anaya
Chair, Board of County Commissioners

Date

Geraldine Salazar
Santa Fe County Clerk

APPROVED AS TO FORM



Gregory S. Shaffer
Santa Fe County Attorney



Date

FINANCE DEPARTMENT

Carole H. Jaramila
Carole H. Jaramila
Santa Fe County Finance Director

7/31/15
Date

CONTRACTOR:

(Signature)

Date

(Print Name)

(Print Title)

EXHIBT A

HK Pricing and Services, pursuant to Section 3, Compensation, Invoicing and Set-Off

Account Services

The Agency will make such studies of your product or services, your markets and your competitors as are necessary to plan an integrated advertising program. The Agency will prepare a Plan of advertising, including a budget, for your advance approval. We will then execute the Plan using our best efforts, and measure the plan's results using the most appropriate means and methodology.

Creative Services

The Agency will write, design, illustrate, lay out or otherwise prepare advertisements, broadcast commercials and programs called for in the approved Plan or as otherwise directed. We will, as requested, prepare direct mail advertising, publicity materials, catalogs, booklets, manuals, sales letters, dealer ads, and other advertising, publicity or promotional materials.

Production Services.

The Agency will place Purchase Orders as your agent and for your account, pursuant to the approved Plan, for all required outside art-work, color separation, engravings, type composition, audio/visual production services and other mechanical services required for your advertising.

Market Research

Market research, market analysis and special field studies will be billed to you at the Agency's hourly rate for such services.

Public Relations

Researching and writing press releases, distributing them to a network of publication /broadcast sources and follow through. Organizing timely press conferences and working with a large network of editors and publications and broadcast stations.

Media Services

Evaluation. The Agency will evaluate all advertising media according to coverage, cost and effectiveness, and submit detailed recommendations. The Agency will order the space, time or other means of advertising, endeavoring to secure the most advantageous rates available for the Client.

Print Advertising. Print advertising, authorized under the Plan, and purchased by us for your account, will be billed to you at the end of each month.

Broadcast Advertising. Broadcast advertising authorized by you under the Plan, and purchased by us for your account, will be billed to you at the end of each month.

Web Site Design. Broadcast advertising authorized by you under the Plan, and purchased by us for your account, will be billed to you at the end of each month.

Outdoor Advertising. Outdoor advertising, authorized under the Plan, and purchased by us for your account, will be billed to you at the end of each month.

Traffic. The Agency will forward copy, printing plates, audio and video recordings, and other materials to the appropriate media; supervise radio and television production; check invoices from vendors for the Client's account, and where the Agency has received funds on account and has been so instructed, pay the invoice or statement for the client.

Other Services:

Purchased Products and Services. All outside purchases authorized by you under the Plan will include 20% earned commission to the agency and will be billed to you at the end of the month.

Additional Service. Any Additional services or products not included in the Plan, will be approved in advance by the Client at the Agency's cost.

Miscellaneous Expenses. Miscellaneous expenses such as long distance telephone calls, freight, special deliveries, photo copies, and the like, will be billed to the Client at the Agency's cost.

Agency Fees:

Commissions on Media. All media placement charges to the Client will include a 15% earned commission to the Agency. All media will be authorized by the Client before placement by the Agency for the Client's account.

Agency Services. The Client will pay the Agency an hourly fee for all "in house" services authorized by the Plan. The fee will vary depending upon the nature of the work. A representative schedule of the fees is available for the Client's inspection at any time during the term of this Agreement.

Reimbursable Expenses. The Agency will be paid by the Client for travel expenses incurred in the regular servicing of the Client's account.

Extraordinary Expenses. Where the Client requests the Agency to send personnel on special assignments out-of-town, including market surveys, special research work, or sales meetings, the expenses will be paid by the Client. The agency will submit an estimate of such expense to the Client for its prior approval.

Account Services	\$125 per hour
Creative Concept & Design	\$125 per hour
Copywriting	\$100 per hour
Production Art	\$100 per hour
Broadcast Production	\$125 per hour
Website Maintenance	\$95 per hour
Media Analysis & Planning	\$95 per hour
Public Relations	\$125 per hour

Total: \$300,000 inclusive of NMGR



