

**SANTA FE COUNTY  
FINANCE DIVISION**

**REQUEST FOR PROPOSALS**



**LODGER'S TAX ADVERTISING AND  
PROMOTIONAL SERVICES**

**RFP #2015-0307-FI/MY**

**APRIL 2015**

TABLE OF CONTENTS

|  | <u>Page</u> |
|--|-------------|
| I. ADVERTISEMENT.....                                      | 4           |
| II. INTRODUCTION .....                                     | 5           |
| A. PURPOSE OF THIS REQUEST FOR PROPOSALS .....             | 5           |
| B. SCOPE OF WORK .....                                     | 5           |
| C. QUALIFICATIONS .....                                    | 7           |
| D. PROCUREMENT MANAGER.....                                | 7           |
| E. DEFINITION OF TERMINOLOGY .....                         | 7           |
| III. CONDITIONS GOVERNING THE PROCUREMENT.....             | 9           |
| A. SEQUENCE OF EVENTS .....                                | 9           |
| B. EXPLANATION OF EVENTS .....                             | 10          |
| 1. Issue of RFP .....                                      | 10          |
| 2. Pre-Proposal Conference (If Applicable).....            | 10          |
| 3. Acknowledgment of Receipt Form .....                    | 10          |
| 4. Deadline to Submit Additional Questions .....           | 10          |
| 5. Response to Written Questions .....                     | 10          |
| 6. Submission of Proposal .....                            | 11          |
| 7. Proposal Evaluation .....                               | 11          |
| 8. Selection of Finalists.....                             | 11          |
| 9. Best and Final Offers from Finalists .....              | 11          |
| 10. Oral Presentation (if applicable) .....                | 12          |
| 11. Finalize Contract.....                                 | 12          |
| 12. Contract Award.....                                    | 12          |
| 13. Right to Protest .....                                 | 12          |
| C. GENERAL REQUIREMENTS.....                               | 13          |
| 1. Acceptance of Conditions Governing the Procurement..... | 13          |
| 2. Incurring Cost .....                                    | 13          |
| 3. Prime Contractor Responsibility.....                    | 13          |
| 4. Subcontractors.....                                     | 13          |
| 5. Amended Proposals .....                                 | 13          |
| 6. Offeror's Rights To Withdraw Proposal.....              | 13          |
| 7. Proposal Offer Firm .....                               | 14          |
| 8. Disclosure of Proposal Contents.....                    | 14          |
| 9. No Obligation.....                                      | 14          |
| 10. Termination.....                                       | 14          |
| 11. Sufficient Appropriation .....                         | 14          |
| 12. Legal Review .....                                     | 15          |
| 13. Governing Law .....                                    | 15          |
| 14. Basis for Proposal .....                               | 15          |
| 15. Contract Terms and Conditions .....                    | 15          |
| 16. Contract Deviations .....                              | 15          |
| 17. Offeror Qualifications.....                            | 15          |

|            |  |           |
|------------|--|-----------|
| 18.        | Right To Waive Minor Irregularities .....                    | 15        |
| 19.        | Change in Contractor Representatives.....                    | 15        |
| 20.        | Notice.....  | 16        |
| 21.        | County Rights .....  | 16        |
| 22.        | Right To Publish .....                                       | 16        |
| 23.        | Ownership of Proposals .....                                 | 16        |
| 24.        | Electronic Mail Address Required.....                        | 16        |
| 25.        | Preferences by Santa Fe County .....                         | 16        |
| 26.        | Double-Sided Documents .....                                 | 18        |
| 27.        | Living Wage Ordinance .....                                  | 18        |
| <b>IV.</b> | <b>RESPONSE FORMAT, SPECIFICATIONS, AND EVALUATION .....</b> | <b>19</b> |
| A.         | NUMBER OF RESPONSES .....                                    | 19        |
| B.         | NUMBER OF COPIES .....                                       | 19        |
| C.         | PROPOSAL FORMAT, EVALUATION, AND SCORING .....               | 19        |
| 1.         | Proposal Organization.....                                   | 19        |
| a.         | Letter of Transmittal.....                                   | 19        |
| b.         | Table of Contents.....                                       | 20        |
| 2.         | Evaluation Factors.....                                      | 20        |
| c.         | Introduction.....  | 20        |
| d.         | Evidence of Understanding the Scope of Work .....            | 20        |
| e.         | Technical Competence and Specialized Experience .....        | 20        |
| f.         | Capacity and Capability .....                                | 20        |
| g.         | Past Record of Performance .....                             | 21        |
| h.         | Familiarity with Site Location.....                          | 21        |
| i.         | Certifications and Preferences.....                          | 21        |
| 3.         | Preferences .....  | 22        |
| D.         | EVALUATION PROCESS .....                                     | 22        |
| E.         | INFORMATION .....  | 23        |
| 1.         | Time Frame.....  | 23        |
| F.         | APPENDICES .....   | 24        |
| a.         | Acknowledgement of Receipt Form.....                         | 24        |
| b.         | Campaign Disclosure .....                                    | 25        |
| c.         | Resident Veterans Preference Certifications .....            | 28        |
| d.         | Sample Agreement.....  | 30        |

**I. ADVERTISEMENT**

**SANTA FE COUNTY  
REQUEST FOR PROPOSALS  
LODGER'S TAX ADVERTISING AND PROMOTIONAL SERVICES**

**RFP #2015-0307-FI/MY**

Santa Fe County is requesting proposals from qualified Offerors to provide Lodger's Tax Advertising and Promotional Services. Services will include the planning, development and implementation of advertising and promoting Santa Fe County. All proposals submitted shall be valid for ninety (90) days subject to action by the County. Santa Fe County reserves the right to reject any and all proposals in part or in whole. A completed proposal shall be submitted in a sealed container indicating the proposal title and number along with the Offeror's name and address clearly marked on the outside of the container. All proposals must be received by **2:00 PM (MDT) on Friday, May 8, 2015**, at the Santa Fe County Purchasing Division (Second Floor), 142 W. Palace, Santa Fe, New Mexico 87501. By submitting a proposal for the requested services each Offeror is certifying that it is a qualified firm and its proposal complies with regulations and requirements stated within the Request for Proposals.

A Pre-Proposal Conference will be held on **Wednesday, April 15, 2015 at 2:00 PM (MDT)** at the Santa Fe County Legal Department (Second Floor), 100 Grant Avenue, Santa Fe, New Mexico 87501. Attendance at the Pre-Proposal Conference is ***NOT*** mandatory, but Offerors are encouraged to attend.

**EQUAL EMPLOYMENT OPPORTUNITY:** All qualified Offerors will receive consideration of contract(s) without regard to race, color, religion, sex or national origin, ancestry, age, physical and mental handicap, serious medical condition, disability, spousal affiliation, sexual orientation or gender identity.

Request for proposals will be available by contacting Marissa Yniguez, Procurement Specialist, 142 W. Palace Avenue (Second Floor), Santa Fe, New Mexico 87501, by telephone at (505) 992-6753 or by email at [myniguez@santafecountynam.gov](mailto:myniguez@santafecountynam.gov) or on our website at: [www.santafecountynam.gov/asd/current\\_bid\\_solicitations](http://www.santafecountynam.gov/asd/current_bid_solicitations).

**PROPOSALS RECEIVED AFTER THE DATE AND TIME SPECIFIED ABOVE WILL NOT BE CONSIDERED AND WILL BE REJECTED BY SANTA FE COUNTY.**

Santa Fe County  
Published: April 10 & 12, 2015

## II. INTRODUCTION

### A. PURPOSE OF THIS REQUEST FOR PROPOSALS

Santa Fe County is requesting proposals from qualified Offerors to provide Advertising and Promotional Services that adequately market the uniqueness of Santa Fe County as a world-class destination.

Tourism is an important component of Santa Fe County's economy, accounting for 12.4% of overall employment. Santa Fe County has many cultural corridors, and is considered the "gateway" to northern New Mexico. The County is also part of the Northern Rio Grande National Heritage Area, recognized by the United States Congress for its unique natural, cultural and historic contributions to the United States.

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.

Services will include the planning, development and implementation of advertising and promoting Santa Fe County. Proposals should reflect the importance of the following elements of the local economy:

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

### B. 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, which can be found at <http://www.santafecountynm.gov/userfiles/SFCFINALEconomicPlanNew.pdf>.

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:

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 Scope of Work 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.

**C. QUALIFICATIONS**

Qualified Offerors shall demonstrate proficiency in the planning, development, and implementation of advertising and promotional services. Interested firms must be a full service advertising, design and public relations agency with experienced marketing professionals. Offerors must also have completed, at a minimum, three (3) professional campaigns within the last five years.

**D. PROCUREMENT MANAGER**

The County has designated a Procurement Manager who is responsible for the conduct of this procurement whose name, address and telephone number is listed below. All deliveries via express carrier should be addressed as follows:

Marissa Yniguez  
 Santa Fe County Purchasing Division  
 142 W. Palace Avenue, Second Floor  
 Santa Fe, NM 87501  
 (505) 992-6753  
 Email: [myniguez@santafecountynam.gov](mailto:myniguez@santafecountynam.gov)

Any inquiries or requests regarding this procurement should be submitted to the Procurement Manager in writing. Offerors may contact ONLY the Procurement Manager regarding the procurement. Other County employees do not have the authority to respond on behalf of the County.

**E. DEFINITION OF TERMINOLOGY**

This section contains definitions and abbreviations that are used throughout this procurement document.

"BCC" means the elected Board of County Commissioners whom all powers of the municipality are vested and who are responsible for the proper and efficient administration of the municipal government.

"Close of Business" means 5:00 PM Mountain Standard or Mountain Daylight Time, whichever is in effect on the date given.

"Contract" or "Agreement" means a written agreement for the procurement of items of tangible personal property or services.

"Contractor" means a successful offeror who enters into a binding contract.

"County" means Santa Fe County.

"Determination" means the written documentation of a decision by the Procurement Manager including findings of fact supporting a decision. A determination becomes part of the procurement file.

"Desirable" The terms "may", "can", "should", "preferably", or "prefers" identify a desirable or discretionary item or factor (as opposed to "mandatory").

"Evaluation Committee" means a body appointed by the County management to perform the evaluation of offeror proposals.

"Finalist" is defined as an offeror who meets all the mandatory specifications of this Request for Proposals and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.

"Mandatory" The terms "must", "shall", "will", "is required", or "are required", identify a mandatory item or factor (as opposed to "desirable"). Failure to meet a mandatory item or factor will result in the rejection of the offeror's proposal.

"Offeror" is any person, corporation, or partnership who chooses to submit a proposal.

"Procurement Manager" means the person or designee authorized by the County to manage or administer a procurement requiring the evaluation of competitive sealed proposals.

"Purchasing Division" means the Santa Fe County Purchasing Division, Administrative Services Department.

"Request for Proposals" or "RFP" means all documents, including those attached or incorporated by reference, used for soliciting proposals.

"Responsible Offeror" means an offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services or items of tangible personal property described in the proposal.

"Responsive Offer" or "Responsive Proposal" means an offer or proposal which conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to, price, quality, quantity or delivery requirements.

### **III. CONDITIONS GOVERNING THE PROCUREMENT**

This section of the RFP contains the schedule for the procurement, describes the major procurement events and the conditions governing the procurement.

#### **A. SEQUENCE OF EVENTS**

The Procurement Manager will make every effort to adhere to the following schedule:

| <u>Action</u>                                 | <u>Responsibility</u>           | <u>Date</u>                                       |
|---|---------------------------------|---|
| 1. Issue of RFP                               | Purchasing Division             | <u>April 10 &amp; 12, 2015</u>                    |
| 2. Pre-Proposal Conference<br>(Non-Mandatory) | County/Offerors                 | <u>April 15, 2015</u>                             |
| 3. Acknowledgement Form Due                   | Offerors                        | <u>April 15, 2015</u>                             |
| 4. Deadline to Submit<br>Additional Questions | Offerors                        | <u>April 17, 2015</u>                             |
| 5. Response to Written Questions              | Purchasing Division             | <u>April 22, 2015</u>                             |
| 6. Submission of Proposal                     | Offerors                        | <u>May 8, 2015</u>                                |
| 7. Proposal Evaluation                        | Evaluation Committee            | <u>May 8, 2015</u><br>Thru<br><u>May 15, 2015</u> |
| 8. Selection of Finalists<br>(If Applicable)  | Evaluation Committee            | <u>May 15, 2015</u>                               |
| 9. Best and Final Offers                      | Offeror                         | <u>May 2015</u>                                   |
| 10. Oral Presentations<br>(If Applicable)     | Evaluation Committee<br>Offeror | <u>May 2015</u>                                   |
| 11. Finalize Contract                         | Purchasing Division             | <u>June 2015</u>                                  |
| 12. Contract Award                            | Purchasing Division             | <u>BCC June 23, 2015</u>                          |

Note: If the Evaluation Committee makes a selection at the Selection of Finalists, events 9-10 will not occur.

B. EXPLANATION OF EVENTS

The following paragraphs describe the activities listed in the sequence of events shown in Section III.A.

1. Issue RFP

This RFP is being issued by the Santa Fe County Finance Division Department and the Purchasing Division

2. Pre-Proposal Conference

A Pre-Proposal Conference is scheduled to occur on the date indicated in the "Sequence of Events" at Section III.A. Questions may be submitted at the Pre-Proposal Conference and after up until the deadline indicated in the "Sequence of Events" at Section III.A. A public log will be kept of the names of potential Offerors that attended the Pre-Proposal Conference. ***Attendance at the Pre-Proposal Conference is NOT mandatory.***

3. Acknowledgement of Receipt Form

A potential Offeror should hand-deliver, return by facsimile or e-mail the "Acknowledgement of Receipt Form" provided as Appendix A to have its name and firm placed on the procurement distribution list. The form should be signed by an authorized representative of the organization, dated and returned by close of business on the date indicated in the "Sequence of Events" at Section III.A.

The procurement distribution list will be used for the distribution of written responses to questions and any RFP addenda.

4. Deadline to Submit Additional Written Questions

Potential Offerors may submit written questions regarding this RFP until the close of business on the date indicated in the "Sequence of Events" at Section III.A. All written questions must be addressed to the Procurement Manager, listed in Section II, Paragraph D. and sent via facsimile or e-mail. **Any contact with any other County staff member other than the Procurement Manager named in this solicitation may be grounds for rejection of a proposal.**

5. Response to Written Questions

Written responses to written questions and any RFP addenda will be distributed on the date indicated in the "Sequence of Events" at Section III.A, to all potential Offerors whose names appear on the procurement distribution list.

6. Submission of Proposal

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN **2:00 PM (MDT) ON MAY 8, 2015**. Proposals received after this deadline will not be accepted. The date and time of receipt will be recorded on each proposal. Proposals must be addressed and delivered to the Procurement Manager at the address listed in Section II.D. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the County's Request for Proposals #2015-0307-FI/MY and refer to the RFP number. Proposals submitted by facsimile or other electronic means will not be accepted.

Proposals must be delivered to:

Marissa Yniguez, Senior Procurement Specialist  
Santa Fe County Purchasing Division  
142 W. Palace Avenue (Second Floor)  
Santa Fe, New Mexico 87501

A public log will be kept of the names of all offeror organizations that submitted proposals. Pursuant to Section 13-1-116 NMSA 1978, the contents of any proposal shall not be disclosed to competing offerors prior to contract award.

7. Proposal Evaluation

The evaluation of proposals will be performed by an Evaluation Committee appointed by County Management. This process will take place during the timeframe indicated in the "Sequence of Events" at III.A, above. During this time, the Procurement Manager may initiate discussions with offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals, but proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by the offerors.

8. Selection of Finalists (If Applicable)

The Evaluation Committee may select and the Procurement Manager may notify the finalist offerors on the date indicated in the "Sequence of Events" at Section III.A, above. Only finalists will be invited to participate in the subsequent steps of the procurement if the finalist process is used.

9. Best and Final Offers from Finalists (If Applicable)

Finalist offerors may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers by the date indicated in the "Sequence of Events" at Section III.A, above.

10. Oral Presentations (If Applicable)

Finalist offerors may be required to present their proposals to the Evaluation Committee. The Procurement Manager will schedule the time for each offeror's presentation. All offeror presentations will be held by the date indicated in the "Sequence of Events" at Section III.A, above.

11. Finalize Contract

The contract will be finalized with the most advantageous offeror during the timeframe indicated in the "Sequence of Events" at Section III.A, above. In the event that mutually agreeable terms cannot be reached within the time specified, the County reserves the right to finalize a contract with the next most advantageous offeror without undertaking a new procurement process.

12. Contract Award

The County anticipates awarding the contract on the date in the "Sequence of Events" in Section III.A, above. These dates are subject to change at the discretion of the Santa Fe County Purchasing Manager.

The contract shall be awarded to the offeror or offerors whose proposal is most advantageous, taking into consideration the evaluation factors set forth in the RFP. The most advantageous proposal may or may not have received the most points.

13. Right to Protest

Any protest by an Offeror must be timely and in conformance with NMSA 1978, Section 13-1-172 and applicable procurement regulations. Protests must be written and must include the name and address of the protestor and the request for proposals number. It must also contain a statement of grounds for protest including appropriate supporting exhibits. The protests must be delivered to the Santa Fe County Purchasing Division:

Santa Fe County  
Attn: Procurement Office  
P.O. Box 276  
Santa Fe, New Mexico 87504

Protests will not be accepted by facsimile or other electronic means. Protests received after the deadline will not be accepted.

## C. GENERAL REQUIREMENTS

This procurement will be conducted in accordance with Chapter 13, NMSA 1978, NMAC 1.4.1, and Santa Fe County Procurement Regulations.

### 1. Acceptance of Conditions Governing the Procurement

Offerors must indicate their acceptance of the Conditions Governing the Procurement section in the Letter of Transmittal. Submission of a proposal constitutes acceptance of the Evaluation Factors contained in Section IV of this RFP.

### 2. Incurring Cost

Any cost incurred by the offeror in preparation, transmittal, presentation of any proposal or material submitted in response to this RFP shall be borne solely by the offeror.

### 3. Prime Contractor Responsibility

Prime contractor is solely responsible for fulfillment of the contract with the County. The County will make contract payments to only the prime contractor.

### 4. Subcontractors

Use of subcontractors must be clearly explained in the proposal, and major subcontractors must be identified by name. The contractor shall be wholly responsible for the entire performance whether or not subcontractors are used.

### 5. Amended Proposals

An Offeror may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals must be complete replacements for a previously submitted proposal and must be clearly identified as such in the transmittal letter. County personnel will not merge, collate, or assemble proposal materials.

### 6. Offerors' Right to Withdraw Proposal

Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The Offeror must submit a written withdrawal request signed by the Offeror's duly authorized representative addressed to the Procurement Manager. The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations.

7. Proposal Offer Firm

Responses to this RFP, including proposal prices, will be considered firm for ninety (90) days after the due date for receipt of proposals or ninety (90) days after receipt of a best and final offer if one is submitted.

8. Disclosure of Proposal Contents

Proposals are not open to public inspection until after an Offeror(s) has been selected for award of a contract.

An Offeror may request non-disclosure of confidential information in its proposal. Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. Confidential data is normally restricted to confidential financial information concerning the Offeror's organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, 57-3A-1 to 57-3A-7, NMSA 1978. The price of products offered or the cost of services proposed shall not be designated as proprietary or confidential information.

If a request is received for disclosure of information for which an Offeror has made a written request for confidentiality, the Procurement Manager shall examine the Offeror's request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any statutory prohibition on the disclosure of confidential data.

9. No Obligation

This procurement in no manner obligates Santa Fe County or any of its departments to the use of any proposed professional services until a valid written contract is awarded and approved by the appropriate authorities.

10. Termination

This RFP may be cancelled at any time and any and all proposals may be rejected in whole or in part when the County determines such action to be in the best interest of the County.

11. Sufficient Appropriation

Any contract awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations do not exist. Such termination will be effected by sending written notice to the contractor. The County's decision as to whether sufficient appropriations and authorizations are available will be accepted by the contractor as final.

12. Legal Review

The County requires that all Offerors agree to be bound by the General Requirements contained in this RFP. Any Offeror concerns must be promptly brought to the attention of the Procurement Manager.

13. Governing Law

This procurement and any agreement with Offerors that may result shall be governed by the laws of the State of New Mexico.

14. Basis for Proposal

Only information supplied by the County in writing through the Procurement Manager or in this RFP should be used as the basis for the preparation of Offeror proposals.

15. Contract Terms and Conditions

The contract between the County and the Contractor will follow the format specified by the County and contain the terms and conditions set forth in Appendix D.

16. Contract Deviations

Any additional terms and conditions, which may be the subject of negotiation, will be discussed only between the County and the selected Offeror and shall not be deemed an opportunity to amend the Offeror's proposal.

17. Offeror Qualifications

The Evaluation Committee reserves the right to waive minor technical irregularities. This right is at the sole discretion of the Evaluation Committee, subject to Procurement Manager approval.

18. Right to Waive Minor Irregularities

The Evaluation Committee reserves the right to waive minor irregularities. The Evaluation Committee also reserves the right to waive mandatory requirements provided that all of the otherwise responsive proposals failed to meet the mandatory requirements and/or doing so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

19. Change in Contractor Representatives

The County reserves the right to require a change in contractor representatives if the assigned representatives are not, in the opinion of the County, meeting its needs

adequately. Any change in contractor representative must receive prior County approval.

20. Notice

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

21. County Rights

The County reserves the right to accept all or a portion of an Offeror's proposal.

22. Right to Publish

Throughout the duration of this procurement process and contract term, potential Offerors and contractors must secure from the County written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement or the subsequent contract. Failure to adhere to this requirement may result in disqualification of the Offeror's proposal or termination of the contract.

23. Ownership of Proposals

All documents submitted in response to this Request for Proposals shall become the property of the County. However, any technical or user documentation submitted with the proposals of non-selected Offerors shall be returned after the expiration of the protest period.

24. Electronic Mail Address Required

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). It is recommended that Offeror should have a valid e-mail address to receive this correspondence.

25. Preferences in Procurement by Santa Fe County

A. *New Mexico In-state Preference.*

New Mexico law, Section 13-1-21 NMSA 1978, provides a preference in the award of a public works contract for an "**in-state resident business**". Application of a resident business preference for any Offeror requires the Offeror to provide a copy of a valid and current certificate as a resident business. Certificates are issued by the state taxation and revenue department.

If an Offeror submits with its proposal a copy of a valid and current in-state resident business certificate, 5% of the total weight of all evaluation factors

used in the evaluation of proposals may be awarded or added to the Offerors score.

Certification by the department of taxation and revenue for the resident contractor takes into consideration such activities as the business or contractor's payment of property taxes or rent in the state and payment of unemployment insurance on employees who are residents of the state.

B. ***New Mexico Resident Veteran Preference.***

New Mexico law, Section 13-1-22 NMSA 1978, provides a preference in the award of a public works contract for a "**resident veteran business**". Certification by the department of taxation and revenue for the resident veteran business requires the Offeror to provide evidence of annual revenue and other evidence of veteran status.

An Offeror who wants the veteran contractor preference to be applied to its proposal is required to submit with its proposal the certification from the NM Department of Taxation and Revenue and the sworn affidavit attached hereto as Appendix C.

If an Offeror submits with its proposal a copy of a valid and current veteran resident business certificate, 10%, 8% or 7% of the total weight of all the evaluation factors used in the evaluation of proposals may be awarded or added to the Offeror's score, depending on the business' annual revenue.

**The resident business preference is not cumulative with the resident veteran business preference.**

C. ***Santa Fe County Preference***

Santa Fe County Ordinance 2012-4 provides for a **County preference** for a "Santa Fe County business." Application of the County preference in procurement requires an Offeror to obtain and provide a Santa Fe County Business Certificate issued by the Santa Fe County Procurement Manager. Certification by the Procurement Manager takes into consideration the business' corporate standing in the state, business licensure or registration, the duration of the business' primary office location and the payment of taxes.

If an Offeror submits with its proposal a copy of its Santa Fe County Business Certificate issued by the Purchasing Manager, 5% of the total weight of all the evaluation factors used in the evaluation of proposals may be awarded to the Offerors score.

The in-state, veteran or County preferences do not apply to procurement of services or goods involving federal funds or federal grant funds.

26. Double-Sided Documents

All submitted bids/proposal documents shall be double-sided, pursuant to Santa Fe County Resolution 2013-7, Adopting Sustainable Resource Management Principles, Section 2. A. Waste Reduction and Reuse..."all documents are to be double-sided, including those that are generated by outside entities using County funds and by consultants and contractors doing business with the County".

27. Living Wage

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

## IV. RESPONSE FORMAT, ORGANIZATION AND SPECIFICATIONS

### A. NUMBER OF RESPONSES

Offerors shall submit only one response to this RFP.

### B. NUMBER OF COPIES

Offerors shall deliver one (1) original and five (5) identical copies of its proposal to the location specified in Section II, Paragraph D on or before the closing date and time for receipt of proposals.

### C. PROPOSAL FORMAT, EVALUATION FACTORS AND SCORING

All proposals shall be limited to twenty-five (25) pages, with exception to professional licenses and certifications, which shall be added as appendices. The document shall be typewritten on standard 8 1/2 x 11 paper, with a font **no smaller than 12 pt. pitch**, with nominal 1" margins and normal line spacing. Proposals shall be bound with tabs delineating each section and shall be double-sided.

A brief explanation of each evaluation factor is listed below. Offerors should respond in the form of a thorough narrative to each mandatory specification. The narratives along with required supporting materials will be evaluated and awarded points accordingly.

The Evaluation Committee will evaluate proposals as follows:

Each factor below has a maximum number of points that can be assigned to an Offeror's proposal based on the thoroughness and responsiveness of the proposal and how the Offeror addresses each evaluation factor. The maximum number of points a proposal can receive based on the evaluation factors is **200**. This does not include preferences that may be applied.

#### 1. Proposal Organization

The proposal must be organized and indexed in the following format and must contain, as a minimum, all listed items in the sequence indicated.

- Letter of Transmittal
  - a) Identify the submitting organization;
  - b) Identify and name the title of the person authorized by the organization to contractually obligate the organization;
  - c) Identify the name, title and telephone number of the person authorized to negotiate the contract on behalf of the organization;
  - d) Identify the names, titles and telephone numbers of persons to be contacted for clarification;
  - e) Explicitly indicate acceptance of the Conditions Governing the Procurement stated in Section III, Paragraph C.1;

- f) Be signed by the person authorized to contractually obligate the organization;
- g) Acknowledge receipt of any and all amendments to this RFP;
- h) Acknowledge and acceptance of the terms and conditions of the Agreement attached as Appendix D.

- Table of Contents

2. Evaluation Factors

- Introduction..... **(20 points)**
  - a) Provide a brief introduction and overview including history, mission/vision and philosophy of firm.
- Evidence of Understanding of the Scope of Work..... **(50 points)**
  - a) Demonstrate a clear understanding of key project elements/goals as outlined in the scope of work;
  - b) Provide proposed approach to accomplishing the goals and objectives including specific tasks and a description of the milestones to be reached relative to the scope of work;
  - c) Illustrate your collaborative efforts specific to this scope of work in regards to the needs of the County.
- Technical Competence and Specialized Experience..... **(50 points)**
  - a) Provide information about the firm's specific technical experience with providing services of similar scope that demonstrate technical competence to successfully measure market results;
  - b) Provide information that demonstrates how the development and implementation of services will be managed and administered to meet milestone and accommodate cost considerations;
  - c) Demonstrate experience and knowledge of marketing and advertising.
- Capacity and Capability..... **(30 points)**
  - a) Indicate key project members who will be assigned to this project and include their specific roles and current workloads;
  - b) Include resumes of key project members describing their qualifications, credentials, experience, training, and responsibilities specifically assigned to this project;
  - c) Demonstrate team organization and working relationships;
  - d) Provide a tentative project schedule.

- Past Record of Performance..... **(30 points)**

- a) Describe contracts and other agreements with government agencies or private industry where Offeror demonstrated control of costs, performed quality work and demonstrated ability to meet schedules and deadlines;
- b) Provide a minimum of three (3) advertising and promotional campaigns with name of client(s), point-of-contact, and telephone number;
- c) Describe any particular difficulties encountered in past projects and how the Offeror addressed and resolved those issues.

- Familiarity with Site Location..... **(20 points)**

- a) Describe the Offeror's familiarity with Santa Fe County and its unique attraction.

***TOTAL POINTS 200***

- Certifications

The items specified hereunder as attachments are not considered part of the page count limitations:

- a) Offeror's proposal contains a valid certificate as an In-state Resident Business, the preference in accordance with §13-1-21 NMSA 1978, will be applied ..... **(10 points)**

**OR**

- b) Offeror's proposal contains a valid certificate as a Resident Veteran Business, the preference in accordance with §13-1-21 and §13-1-22 NMSA 1978, will be applied..... **(14, 16 or 20 points)**

**AND**

- c) Offeror's proposal contains a valid Santa Fe County Preference certificate, the preference in accordance with Santa Fe County Ordinance #2012-4, will be applied ..... **(10 points)**

Within each section of their proposal, offerors should address the items in the order in which they appear in this RFP. All forms provided in the RFP must be thoroughly completed and included in the appropriate section of the proposal.

Any proposal that does not adhere to these requirements may be deemed ***non-responsive*** and rejected on that basis.

Offerors may attach other materials that they feel may improve the quality of their responses. However, these materials should be included as items in a separate appendix

3. Preferences

If a proposal contains an In-State Resident Contractor Certificate or Resident Veterans Contractor Certificate and/or Santa Fe County Business Preference Certificate, the applicable preference will be applied.

- a) Proposal contains a valid N.M. Resident Contractor Certificate.....(10 points)

**OR**

- b) Proposal contains a valid Resident Veteran Contractor.....(14, 16 or 20 points)

**AND**

- c) Proposal contains a valid Santa Fe County Business Preference Certificate.....(10 points)

D. EVALUATION PROCESS

The evaluation process will follow the steps listed below:

1. All proposals will be reviewed for compliance with the mandatory specifications stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Procurement Manager may contact the Offeror for clarification of the response as specified in Section III, Paragraph B.7.
3. The Evaluation Committee may use other sources of information to perform the evaluation as specified in Section III, Paragraph C.18.
4. Responsive proposals will be evaluated using the factors in Section IV. The responsible Offerors with the highest scores will be selected as finalist Offerors based upon the proposals submitted. Finalist Offerors who are asked or choose to submit revised proposals for the purpose of obtaining best and final offers will have their points recalculated accordingly. The responsible Offeror whose proposal is most advantageous to the County, taking into consideration the evaluation factors in Section IV, will be recommended for contract award as specified in Section III, Paragraph B.12. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

5. Past performance in a project for the County is a significant consideration of the evaluation and poor performance on a prior County project may result in a lower number of points awarded to a proposal for this element of the evaluation.

E. **INFORMATION**

1. **Time Frame**

The contract is scheduled to begin in June 2015. Santa Fe County intends on awarding a contract with a term not to exceed four (4) years in duration, at the discretion of the county.

## APPENDIX A

### ACKNOWLEDGEMENT OF RECEIPT FORM

#### LODGER'S TAX ADVERTISING AND PROMOTIONAL SERVICES #2015-0307-FI/MY

In acknowledgement of receipt of this Request for Proposal the undersigned agrees that he/she has received a complete copy, beginning with the title page and table of contents, and ending with Appendix D.

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than close of business on April 15, 2015. Only potential Offerors who elect to return this form completed with the indicated intention of submitting a proposal will receive copies of all Offeror written questions and the County's written responses to those questions as well as RFP amendments, if any are issued.

FIRM: \_\_\_\_\_

REPRESENTED BY: \_\_\_\_\_

TITLE: \_\_\_\_\_ PHONE NO.: \_\_\_\_\_

E-MAIL: \_\_\_\_\_ FAX NO.: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

This name and address will be used for all correspondence related to the Request for Proposal.

Firm does/does not (**circle one**) intend to respond to this Request for Proposals.

Mariissa Yniguez  
Santa Fe County Purchasing Division  
142 W. Palace Avenue (Second Floor)  
Santa Fe, New Mexico 87501  
(505) 992-5753  
(505) 989-3243  
[myniguez@santafecountynm.gov](mailto:myniguez@santafecountynm.gov)

## APPENDIX B

### CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to NMSA 1978, § 13-1-191.1 (2006), any person seeking to enter into a contract with any state agency or local public body **for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources** must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body shall void an executed contract or cancel a solicitation or proposed award for a proposed contract if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

**THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.**

The following definitions apply:

**“Applicable public official”** means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

**“Campaign Contribution”** means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to either statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

**“Family member”** means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

**“Pendency of the procurement process”** means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

**“Person”** means any corporation, partnership, individual, joint venture, association or any other private legal entity.

**“Prospective contractor”** means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract.

**“Representative of a prospective contractor”** means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

## DISCLOSURE OF CONTRIBUTIONS:

**Contribution Made By:** \_\_\_\_\_

Relation to Prospective Contractor: \_\_\_\_\_

Name of Applicable Public Official: \_\_\_\_\_

Date Contribution(s) Made: \_\_\_\_\_

Amount(s) of Contribution(s) \_\_\_\_\_  
\_\_\_\_\_

Nature of Contribution(s) \_\_\_\_\_  
\_\_\_\_\_

Purpose of Contribution(s) \_\_\_\_\_  
\_\_\_\_\_

(Attach extra pages if necessary)

Signature \_\_\_\_\_ Date \_\_\_\_\_

## Title (position)

**--OR--**

**NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE** to an applicable public official by me, a family member or representative.

---

Signature

---

Date

---

Title (Position)

## APPENDIX C

### **RESIDENT VETERANS PREFERENCE CERTIFICATION**

\_\_\_\_\_ (NAME OF CONTRACTOR) hereby certifies the following in regard to application of the resident veterans' preference to this procurement.

**Please check one box only:**

- I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is less than \$1M allowing me the 10% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.
- I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$1M but less than \$5M allowing me the 8% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.
- I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$5M allowing me the 7% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

I agree to submit a report or reports to the State Purchasing Division of the General Services Department declaring under penalty of perjury that during the last calendar year starting January 1 and ending on December 31, the following to be true and accurate:

In conjunction with this procurement and the requirements of this business application for a Resident Veteran Business Preference/Resident Veteran Contractor Preference under Sections 13-1-21 or 13-1-22 NMSA 1978, which awarded a contract which was on the basis of having such veterans preference, I agree to report to the State Purchasing Division of the General Services Department the awarded amount involved. I will indicate in the report the award amount as a purchase from a public body or as a public works contract from a public body as the case may be.

I understand that knowingly giving false or misleading information on this report constitutes a crime.

I declare under penalty of perjury that this statement is true to the best of my knowledge. I understand that giving false or misleading statements about material fact regarding this matter constitutes a crime.

---

(Signature of Business Representative)\*

---

(Date)

\*Must be an authorized signatory of the Business.

The representations made by checking the boxes constitutes a material representation by the business. Any finding that the statements are incorrect may result in denial of an award or un-award of the procurement involved.

SIGNED AND SEALED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2014.

---

NOTARY PUBLIC

My Commission Expires:

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## APPENDIX D

### **PROFESSIONAL SERVICE AGREEMENT BETWEEN SANTA FE COUNTY AND \_\_\_\_\_ 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 \_\_\_\_\_, whose principal address is \_\_\_\_\_ 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.

9. 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.
10. 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.
11. 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.
12. The Contractor shall establish and maintain a website intended to promote and publicize tourist activities and attractions in the unincorporated county.
13. 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.
14. 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.
15. 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).

16. 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.
17. 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 \_\_\_\_\_ (\$) exclusive 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<br>Office of the County Attorney<br>102 Grant Avenue<br>Santa Fe, New Mexico 87501 |
|----------------|--|

To the Contractor:

## **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.

## **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 \_\_\_\_\_, located at \_\_\_\_\_ 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:**

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Katherine Miller  
Santa Fe County Manager

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Date

#### **APPROVED AS TO FORM**

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Gregory S. Shaffer  
Santa Fe County Attorney

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Date

#### **FINANCE DEPARTMENT**

Carole H. Jaramillo  
Santa Fe County Finance Director

Date

**CONTRACTOR:**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Title)