

**AGREEMENT
BETWEEN SANTA FE COUNTY AND
EASTER SEALS EL MIRADOR, INC.
FOR PURCHASE AND USE OF FURNISHINGS**

THIS AGREEMENT is made and entered into this 10 day of JULY 2015, by and between **SANTA FE COUNTY**, hereinafter referred to as the "County" and **EASTER SEALS EL MIRADOR**, 10 A Van Nu Po, Santa Fe, NM 87508, a New Mexico non-profit organization, whose address is 1219 Luisa Street, Suite 3-B, Santa Fe, New Mexico 87501, hereinafter referred to as the "El Mirador".

WHEREAS, El Mirador is a local home care and case management agency that provides case management, homemaker services, personal care services, and environmental modifications for disabled and elderly residents in New Mexico; and

WHEREAS, the New Mexico State Legislature has allocated funds to Santa Fe County in the amount of \$20,000.00 to purchase furnishings for El Mirador for use by the disabled in Santa Fe County; and

WHEREAS, the County agrees to act as agent for El Mirador for the express and limited purpose of securing and expending the state appropriation in accordance with the New Mexico State Procurement Code and to retain ownership of the purchased furnishings or items; and

WHEREAS, the parties desire to expend the funds appropriated for the purchase of furnishings for El Mirador's use.

NOW; THEREFORE, it is agreed between the parties:

1. EL MIRADOR'S OBLIGATIONS

El Mirador shall:

- A. Provide specifications regarding furnishings needed by El Mirador within fifteen days of execution of this Agreement.
- B. Maintain an inventory of all furnishings purchased by the County with the state appropriation including the location of each item and provide the inventory annually to the County.
- C. Maintain the furnishing with due care and in a manner which will maximize the useful life of the furnishings.
- D. Return all furnishings to the County upon cessation of use of the furnishings or at the end of the useful life of the furnishings, whichever occurs first.
- E. Secure insurance for the furnishings provided by the County and naming the County as an additional insured under the insurance policy.

- F. Ensure that a portion of the participants in El Mirador's program for which the Furnishings are being utilized are disabled individuals.

2. COUNTY'S OBLIGATIONS:

The County shall:

- A. Comply with the State of New Mexico Procurement Code in acquiring furnishings based on the specifications provided by El Mirador.
- B. Expend the following state legislative appropriations: #12-1474 - \$ 20,000 to purchase furnishings for use by the disabled in Santa Fe County.
- C. Retain ownership of all purchased furnishings and items and accept each item from El Mirador upon cessation of the use of the furnishings or item by El Mirador upon expiration of the furnishings' or items' useful life, whichever occurs first.

3. EFFECTIVE DATE AND TERM

This Agreement shall, upon due execution by all parties, become effective as of the date first written above and shall remain in effect for so long as El Mirador is using and has possession of any furnishings and any other items purchased by the County with appropriated funds for use by El Mirador, unless earlier terminated pursuant to Section 4 (Termination) or Section 5 (Appropriations and Authorizations) of this Agreement. In the event of termination of this Agreement the duty to return the furnishings or items to the County upon cessation of use of the furnishings or items by the El Mirador, or upon expiration of the item's useful life, shall remain in effect and enforceable by the County.

4. 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 El Mirador written notice of termination. The notice shall specify the effective date of termination, which shall not be less than fifteen (15) days from El Mirador's receipt of the notice.

5. 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 El Mirador. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse El Mirador 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 El Mirador in any way or forum, including a lawsuit.

6. INDEPENDENT CONTRACTOR

El Mirador and its agents and employees are independent contractors and are not employees or agents of the County. Accordingly, El Mirador 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, El Mirador has no authority to bind, represent, or otherwise act on behalf of the County and agrees not to purport to do so.

7. ASSIGNMENT

El Mirador shall not assign or transfer any interest in this Agreement or assign any claims for furnishings, equipment or other items 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.

8. CONFLICT OF INTEREST

El Mirador 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.

9. 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.

10. 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.

11. 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.

12. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

A. El Mirador 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, El Mirador specifically agrees not to discriminate against any person with regard to employment with El Mirador 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. El Mirador acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Agreement.

13. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW

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

B. 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. El Mirador 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.

14. 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 El Mirador 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, El

Mirador 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.

15. INDEMNIFICATION

A. El Mirador 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 El Mirador's performance or non-performance of its obligations under this Agreement, including but not limited to El Mirador's breach of any representation or warranty made herein.

B. El Mirador 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 El Mirador in such demand, suit, or cause of action, the County may retain its own counsel to represent the County's interest.

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

16. 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.

17. 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 El Mirador: Easter Seals El Mirador
10 A Van Nu PO
Santa Fe, NM 87508
(505) 428.2005

18. EL MIRADOR'S REPRESENTATIONS AND WARRANTIES

The El Mirador hereby represents and warrants that:

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

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

C. It is a non-profit corporation duly organized and in good standing under the laws of the State of New Mexico.

19. FACSIMILE SIGNATURES

The parties hereto agree that a facsimile signature has the same force and effect as an original for all purposes.

20. NO THIRD-PARTY BENEFICIARIES

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

21. NEW MEXICO TORT CLAIMS ACT

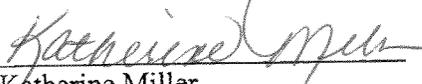
No provision of this Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by County or its "public employees" at common law or under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

22. SURVIVAL

The provisions of following paragraphs shall survive termination of this Contract; INDEMNIFICATION; RECORDS AND INSPECTION; COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW; NO THIRD-PARTY BENEFICIARIES; SURVIVAL.

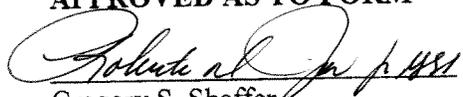
IN WITNESS WHEREOF, the parties have duly executed this Amendment to the Agreement as of the date first written above.

SANTA FE COUNTY:


Katherine Miller
Santa Fe County Manager

7.9.15
Date

APPROVED AS TO FORM



Gregory S. Shaffer
Santa Fe County Attorney

6-30-15
Date

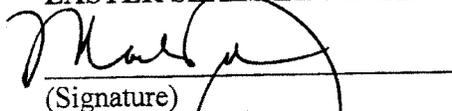
FINANCE DEPARTMENT



Carole H. Jaramillo
Santa Fe County Finance Director

7/7/15
Date

EASTER SEALS EL MIRADOR, INC.


(Signature)

Mark Johnson
(Print Name)

CEO
(Print Title)

6/29/15
Date

