

**MEMORANDUM OF AGREEMENT BETWEEN
SANTA FE COUNTY AND THE
VISTA GRANDE PUBLIC LIBRARY**

THIS MEMORANDUM OF Agreement (“Agreement”) is entered into on this 2nd day of November 2011, by and between Santa Fe County (hereinafter referred to as “County”), a New Mexico political subdivision, and the Vista Grande Public Library (hereinafter referred to as “Contractor”), incorporated as a New Mexico non-profit public library with a principal address at 14 Avenida Torreon, Santa Fe, New Mexico 87508.

RECITALS

WHEREAS, the Contractor is a nonprofit public library created for the purpose of providing residents of the communities in the Southeast sector of Santa Fe County with free and equal access to resources, materials, and services that encourage and support their educational, cultural, recreational, intellectual, and informational interests;

WHEREAS, the Contractor is subject to Article IX, Section 14 of the Constitution of the State of New Mexico, the Anti Donation Clause, that prohibits the State of New Mexico from making direct grants of aid to private entities;

WHEREAS, in the spirit of cooperation, mutual respect and service to the residents of Santa Fe County, this Agreement confirms the parties’ commitment and mutual cooperation which recognizes that the partnering activities between government and private entities of similar purposes may produce community and constituency benefits beyond what might be produced independently;

WHEREAS, the Contractor provides services to the County by making the library and its programs available to residents of Santa Fe County, as well as other surrounding communities;

WHEREAS, the Contractor provides Santa Fe County with programs that promote reading, literacy and is committed to improving opportunities for community members to enhance their cultural and leisure activities; and

WHEREAS, the County desires to grant the Contractor funds for operational expenses to continue partnering with the Library to provide valuable library service for the County.

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

1. SCOPE OF AGREEMENT

Contractor shall perform the following services:

- Promote reading, literacy, and the dissemination of information free of charge to the general public;

- promote the appreciation of culture and the arts;
- inform the community about Library collections and services;
- preserve and teach about the local history and the environment; and
- cover issues of current local interest to County residents.

2. COMPENSATION

- A. The total compensation to be paid under this Agreement shall not exceed \$40,000.00.
- B. All payments under this Agreement shall be on a reimbursement basis for operational costs incurred by the Contractor. Prior to cost reimbursement, the Contractor shall submit to the County a fund requisition with documentation in support of each budgetary category and operational expense. Such documentation shall include the original or certified copies of invoices, vouchers, budgetary and other restrictions of expenses established by this Agreement.
- C. Payment by the County shall be made upon receipt of a detailed, certified invoice supporting operational costs incurred by the Contractor. Thirty (30) business days shall be allowed for payment after receipt of the invoice.
- D. Payment under this Agreement shall not foreclose the right of the County to recover any excessive or illegal payment(s).

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 terminate June 30, 2012, unless earlier terminated pursuant to Section 4 [TERMINATION] or Section 5 [APPROPRIATIONS]. In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978 and in accordance with Santa Fe County Ordinance 2010-8, multi-year contracts shall be limited to a term of two-years unless authorized for a longer term by the County Manager.

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 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 Contractor's receipt of the notice.

5. APPROPRIATIONS AND AUTHORIZATIONS

This Agreement is contingent upon sufficient appropriations and authorizations being made by the Santa Fe County Board of County Commissioners and 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.

6. INDEPENDENT CONTRACTOR

The Contractor and its agents and employees are independent contractors performing professional services for the County and are not employees of Santa Fe County. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of county vehicles, or any other benefits afforded to employees of Santa Fe County as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind Santa Fe County unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

7. PERSONNEL

A. The Contractor represents that it has, or will secure at its own expense, all personnel required to perform all of the services required of it under this Agreement. Such personnel shall not be employees of or have any contractual relationships with the County.

B. All services required hereunder will be performed by the Contractor and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such services.

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 prior written approval of the County.

9. SUBCONTRACTING

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the County.

10. RELEASE

Final payment of the amounts due under this Agreement shall operate as a release of the County, its officers and employees, and Santa Fe County from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

11. 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.

12. 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. 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.

13. CONFLICT OF INTEREST

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

14. NO THIRD-PARTY BENEFICIARIES

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

15. AMENDMENT

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

16. INTEGRATION CLAUSE

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

17. PENALTIES FOR VIOLATION OF LAW

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

18. EQUAL OPPORTUNITY COMPLIANCE

A. Contractor agrees to abide by all federal, state, and local laws, ordinances, and rules and regulations pertaining to equal opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, Contractor specifically agrees not to discriminate against any person with regard to employment with 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. Contractor acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Agreement.

19. APPLICABLE LAW; VENUE

A. In performing its obligations hereunder, Contractor 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. Contractor and the County agree that the exclusive forum for any litigation between them arising out of or related to

this Agreement shall be federal and state district courts of New Mexico, located in Santa Fe County.

20. RECORDS AND FINANCIAL AUDIT

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. LIABILITY

The County’s liability to Contractor for any breach of this Agreement by the County shall be limited to direct damages and shall not exceed the maximum amount of potential compensation specified in Section 2, “COMPENSATION AND INVOICING,” of this Agreement. In no event shall the County be liable to Contractor for special or consequential damages, even if the County was advised of the possibility of such damages prior to entering into this Agreement.

22. INDEMNIFICATION

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

B. 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 Contractor in such demand, suit, or cause of action, the County may retain its own counsel shall be retained to represent the County's interest.

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

23. INSURANCE

General Conditions. 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.

General Liability Insurance, Including Automobile. Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,050,000.00 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the County by Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Agreement is an insured contract. The County of Santa Fe shall be a named additional insured on the policy.

Workers' Compensation Insurance. Contractor shall comply with the provisions of the Workers' Compensation Act.

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.

Malpractice/Errors and Omissions Insurance. Contractor shall procure and maintain during the life of this Agreement professional liability or errors and omissions insurance in amounts not less than \$1,500,000.00 per occurrence, \$2,500,000.00 per aggregate.

24. NEW MEXICO EMPLOYEES HEALTH COVERAGE

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2010 if the expected annual value in the aggregate of any and all contracts between Contractor and the County exceed \$250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance

coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the County.

C. Contractor agrees to advise all employees of the availability of New Mexico State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information:
<http://insurenemexico.state.nm.us/>.

25. FASCIMILE SIGNATURES

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

26. 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.

27. CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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

28. NEW MEXICO TORT CLAIMS ACT

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

29. PROHIBITED ACTIVITY

The Contractor is prohibited from using funds provided herein or personnel employed in the administration of this Agreement for political activities; sectarian or religious activities; lobbying, or political patronage.

30. INVALID TERM OR CONDITION

If any term or condition of this Agreement shall be held invalid or unenforceable 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.

31. NOTICES

Any notice required by this Agreement shall be given in writing to the parties designated below. Notice shall be effective when delivered personally to any party, or three business

days after deposited, postage fully prepaid, registered or certified, in an official receptacle of the U.S. Postal Service.

For Contractor of Santa Fe: Rich Moore, Board President
Vista Grande Library
14 Avenida Torreon
Santa Fe, New Mexico 87508

For County: Community Services Department/Community
Projects Division
ATTN: Laura Epler
901 W. Alameda, Suite 20C
Santa Fe, NM 87501
Phone: 505-670-5333

32. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

Contractor hereby represents and warrants that:

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

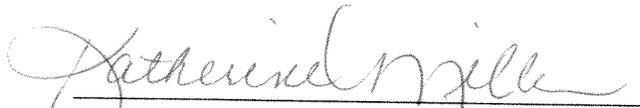
B. This Agreement and Contractor obligations hereunder do not conflict with Contractor corporate agreement or any statement filed with the Public Regulation Commission on Contractor's behalf.

33. SURVIVAL

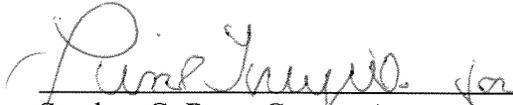
The provisions of following paragraphs shall survive termination of this Contract; INDEMNIFICATION; RECORDS AND FINANCIAL AUDIT; RELEASE, CONFIDENTIALITY, PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT; APPLICABLE LAW, VENUE; CHOICE OF LAW; NO THIRD-PARTY BENEFICIARIES; SURVIVAL.

IN WITNESS WHEREOF the parties have duly executed this Agreement as of the dates written below.

SANTA FE COUNTY:

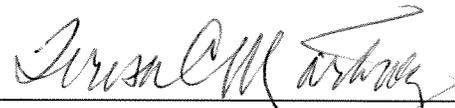

Katherine Miller, County Manager

APPROVED AS TO LEGAL FORM:



Stephen C. Ross, County Attorney

FINANCE DEPARTMENT:



Teresa Martinez, Finance Director

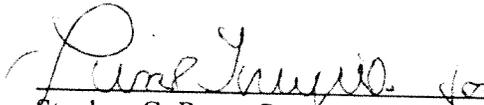
VISTA GRANDE LIBRARY:

Rich Moore, Board President

FEDERAL TAX ID NUMBER

85-6000168 _____

APPROVED AS TO LEGAL FORM:

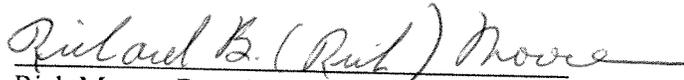


Stephen C. Ross, County Attorney

FINANCE DEPARTMENT:

Teresa Martinez, Finance Director

VISTA GRANDE LIBRARY:



Rich Moore, Board President

FEDERAL TAX ID NUMBER

85-6000168