

**PROFESSIONAL SERVICES AGREEMENT WITH
CAPITAL CITY CAB
TO PROVIDE CHAUFFER AND DESIGNATED DRIVER SERVICE
(CADDY PROGRAM)**

THIS AGREEMENT is made and entered into as of this 2nd day of July, 2013, by and between the **Santa Fe County**, hereinafter referred to as "County", a political subdivision of the State of New Mexico and **Capital City Cab**, a New Mexico Corporation, whose principal business address is 2875 Industrial Road, Santa Fe, New Mexico, 87507, hereinafter referred to as "the Contractor."

RECITALS

WHEREAS, the County is committed to reduce the incident of Driving While Intoxicated (DWI);

WHEREAS, the County's DWI Program explores innovative ways to reduce the incident of DWI within Santa Fe County;

WHEREAS, pursuant to Section 13-1-126 NMSA 1978, these services have been deemed as a sole source procurement and the County desires to engage the Contractor to render chauffeur and designated driver services ("CADDY") described in this Agreement and the Contractor is willing and capable to render such services.

NOW THEREFORE, in consideration of the premises and mutual obligation herein, the parties do mutually agree as follows:

AGREEMENT

1. SCOPE OF WORK

The Contractor shall:

- A. Provide transportation for adults needing CADDY Program services on Friday and Saturday nights from 5:30 PM to 2:30 AM and on certain holidays, as needed.
- B. Assume all liability for passengers and their belongings.
- C. CADDY Program Services shall be limited to one-way transportation from liquor establishment, restaurant, or drinking location including a private resident to the passenger's identified home location.
- D. CADDY Program Fares: Contractor shall collect \$1.00 per passenger for each one-way CADDY trip and deduct \$1.00 fare from the local fare charged to the County under this Agreement. The cost of a one-way CADDY trip charged to the County

shall not exceed \$25.00 per one-way trip. CADDy passengers will be responsible for any cost accrued above the \$25.00 maximum.

- E. The CADDy passenger rate of \$1.00 will be in effect from the effective date of this Agreement through June 30, 2014.
- F. CADDy services shall not provide transportation from a liquor establishment, restaurant or drinking location including a private residence to another liquor establishment, restaurant, or drinking location including a private residence.
- G. The CADDy Program will travel no more than seven (7) miles from the city limits of the City of Santa Fe into Santa Fe County to pick up and transport CADDy passenger(s). The \$25.00 maximum fare to be charged to the County shall remain in effect for all CADDy transportation initiated within the boundary of Santa Fe County.
- H. CADDy passengers shall be responsible for any CADDy fare accrued above the \$25.00 maximum.

2. COMPENSATION, INVOICING, AND SET-OFF

- A. In consideration of its obligations under this Agreement, County shall pay Contractor as follows:
 - 1) The total amount payable to the Contractor under this Agreement shall not exceed **One Hundred Fifty Six Thousand Dollars and 00/100 (\$156,000.00)**, exclusive of New Mexico gross receipts tax in accordance with pricing described in Exhibit A. Any gross receipts tax levied on the amounts payable under this Agreement shall be paid by the County to the Contractor.
 - 2) This amount is a maximum and not a guarantee that the work and services assigned to be performed by the 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 Contractor shall notify the County when the services provided under this Agreement reach the total compensation amount.
- B. Contractor shall submit a written request for payment to County whenever payment is due under this Agreement. Within fifteen (15) days of County's receipt of the written request, County shall issue a written certification of complete or partial acceptance or rejection of the contractual items or services for which payment is sought. Contractor acknowledges and agrees that 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, County shall

tender payment for the accepted items or services. In the event County fails to render payment within thirty (30) days of the written certification accepting the items or services, 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 Contractor breaches this Agreement, County may, without penalty, withhold any payments due Contractor for the purpose of set-off until such time as 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 County to recover excessive or illegal payment.

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 one year later unless earlier terminated pursuant to Section 4. "TERMINATION" and 5. "APPROPRIATIONS AND AUTHORIZATIONS" of this Agreement. The County reserves the option of establishing a one (1) year contract with three (3) year renewal periods for no more than a total of four (4) years. The renewal is dependent on the Contractor's performance of services. In no case will the contract, including any and all renewals thereof, exceed a total of four (4) years in duration from the date of the initial Agreement. The County will exercise this option by submitting a written notice to the Contractor in no less than sixty (60) days prior to the expiration of the initial term of this Agreement.

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 with 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 County. County may, in its discretion terminate this Agreement at any time for any reason by giving 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. County shall pay Contractor for acceptable work, determined in accordance with the requirements set forth in this Agreement, performed before the effective date of

the termination but shall not be liable for any work performed after the effective date of termination.

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 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 County to Contractor.

Such termination shall be without penalty to county, and County shall have no duty to reimburse Contractor for expenditures made in the performance of this Agreement. County is expressly not committed to expenditures of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. 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 Contractor in any way or forum, including a lawsuit.

6. INDEPENDENT CONTRACTOR

Contractor and its Contractors and employees are independent Contractors and are not employees or Contractors of County. Accordingly, Contractor and its Contractors 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 County. Except as may be expressly authorized elsewhere in this Agreement, Contractor has no authority to bind, represent, or otherwise act on behalf of County and agrees not to purport to do so.

7. 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 County's advance written approval shall be null and void and without any legal effect.

8. SUBCONTRACTING

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

9. PERSONNEL

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

- B. 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 County and (ii) shall be fully qualified and licensed or otherwise authorized or permitted under federal, state, and local law to perform such work.

10. RELEASE

Upon its receipt of all payments due under this Agreement, Contractor releases County, its Elected Officials, officers, Contractors and employees from all liabilities, claims, and obligations whatsoever arising from or under or relating to 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 prior approval from the County.

12. PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHTS

- A. 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 county, County shall own any such copyright.

13. CONFLICT OF INTEREST

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

14. 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. Contractor specifically acknowledges and agrees that 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.

and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

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

To the Contractor: Capital City Cab
Attn: Matt Knowles
2875 Industrial Road
Santa Fe, New Mexico 87507

23. NO THIRD-PARTY BENEFICIARIES

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

24. INSURANCE

- A. 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
- B. General Liability Insurance, Including Automobile. Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy and liability limits in amounts not less than \$1,000,000 combined single limits of bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for 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. County of Santa Fe shall be named additional insured on the policy.
- C. Workers' Compensation Insurance. Contractor shall comply with the provisions of the Workers' compensation Act.
- D. 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), Contractor shall increase the maximum limits of any insurance required herein.

25. 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.

26. FACSIMILE SIGNATURES

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

27. 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.

28. CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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

29. 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.

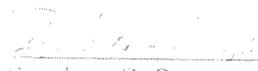
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

SANTA FE COUNTY


Katherine Miller
Santa Fe County Manager

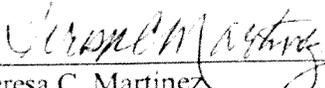
7.2.13
Date

APPROVED AS TO FORM


Stephen C. Ross
Santa Fe County Attorney

7.2.13
Date

FINANCE DEPARTMENT APPROVAL

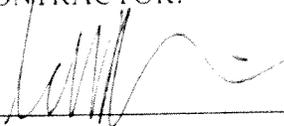


Teresa C. Martinez
Santa Fe County Finance Director

6/30/13

Date

CONTRACTOR:



Signature

7/1/13

Date