

**PROFESSIONAL SERVICE AGREEMENT BETWEEN
SANTA FE COUNTY AND SANTA FE BUSINESS INCUBATOR
TO PROVIDE BUSINESS OUTREACH, TRAINING AND BUSINESS DEVELOPMENT
SERVICES**

THIS AGREEMENT is made and entered into on this 5th day of June 2014, by and between **SANTA FE COUNTY** (hereinafter referred to as the "County"), a New Mexico political subdivision, and **SANTA FE BUSINESS INCUBATOR** non-profit 501 C(3), with a principal address located at 3900 Paseo Del Sol, Santa Fe, NM 87507, hereinafter referred to as "Contractor".

WHEREAS, Santa Fe County requires the services of a business incubator to provide select and unique services for outreach, tracking and training for Santa Fe County businesses located outside the incorporated area of the County;

WHEREAS, the Contractor is the only business incubator in Santa Fe County and Northern New Mexico with the exception of the City of Farmington, New Mexico (NM) area and is the only incubator in NM certified to offer the GrowthWheel program to business start-ups;

WHEREAS, Santa Fe Business Incubator was established in 1997, was the first New Mexico incubator certified by the NM Economic Development Department, serves on average of 17 firms per year and has created over 700 jobs;

WHEREAS, on April 15, 2014, pursuant to NMSA 1978 13-1-126, Sole Source Procurement, the County's Purchasing Division Manager made a Sole Source Determination to allow the Contractor to provide these services for the Santa Fe County's Growth Management Department;

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

1. SCOPE OF WORK

The Contractor shall provide outreach, tracking and training services for Santa Fe County businesses located outside the incorporated area as required in the Scope of Work attached hereto as Exhibit "A".

A. Deliverables

The Contractor will deliver to the County a final written report, due one (1) year after the signing of this Agreement, with the following information:

- 1) IncuTrack report with detailed information on each County business entered into the system.

- 2) Report on the two business forums (outcomes, successes/failures)
- 3) Report on the two GrowthWheel workshops (outcomes, successes/failures).
- 4) Report on businesses that engaged via RUNWAY (outcomes, successes/failures).

2. COMPENSATION, INVOICING, AND SET-OFF

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

- 1) The total amount payable to the Contractor under this Agreement, exclusive of gross receipts tax shall not exceed twenty five thousand dollars (\$25,000.00). Any New Mexico gross receipts tax levied on the amounts payable under this Agreement shall be paid by the County to the Contractor.
- 2) For services performed under this Agreement the County shall pay the Contractor two (2) times per year at twelve thousand five hundred dollars (\$12,500.00) for each payment upon delivery of the required IncuTrack report, highlighting all items on the deliverables and the current status.
- 3) Santa Fe Business Incubator will invoice the County on the following schedule:
 - a. December 1, 2014 in the amount of \$12,500.00.
 - b. May 1, 2015 in the amount of \$12,500.00.
- 4) 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.

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.

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 (1) year later unless earlier terminated pursuant to Section 5. **TERMINATION** or 6. **APPROPRIATIONS AND AUTHORIZATIONS** of this Agreement. The County reserves the option of establishing a one (1) year Agreement 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 Agreement, 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, or any renewal thereof.

4. ADDITIONAL SERVICES

A. The parties agree that all tasks set forth in Paragraph 1, and Exhibit "A" (Scope of Work) of this Agreement, shall be completed in full, to the satisfaction of the County, for the amount set forth in Section 2, (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 written amendments to this Agreement.

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.

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 federal and 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

To the Contractor: Santa Fe Business Incubator
3900 Paseo Del Sol
Santa Fe, New Mexico 87507

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. Contractor is registered as a domestic non-profit corporation under the laws of the State of New Mexico.

C. Contractor is legally registered and is properly qualified to do the work anticipated by this Agreement and shall maintain such registration 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. The County of Santa Fe shall be a named additional insured on the policy.

C. Workers' Compensation Insurance. The 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), 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

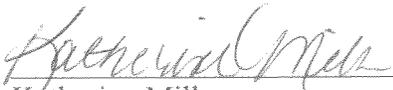
The Contractor agrees to compute and submit simultaneous with execution of this Agreement a Campaign Contribution Disclosure Form approved by the County.

31. 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.

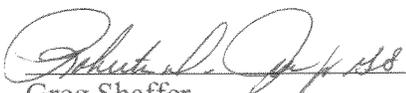
IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first written above.

SANTA FE COUNTY:


Katherine Miller
Santa Fe County Manager

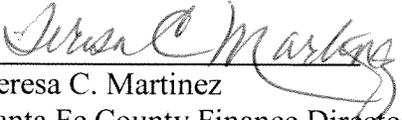
6.5.14
Date

Approved as to Form


Greg Shaffer
Santa Fe County Attorney

5/28/14
Date

Finance Department Approval


Teresa C. Martinez
Santa Fe County Finance Director

5/24/14
Date

CONTRACTOR:


(Signature)

6/4/2014
Date

MARIE LONGSERRE
(Print Name)

PRESIDENT & CEO
(Print Title)

FEDERAL IDENTIFICATION NUMBER: 85-0431271

EXHIBIT A SCOPE OF WORK

Program Overview

The Santa Fe Business Incubator (SFBI) will develop a program to assist existing businesses and startups in the unincorporated area of Santa Fe County. The *Stay, Make and Grow* Program will use the resources, programs, services, training, network and facilities of SFBI to help Santa Fe County retain and strengthen its business and entrepreneurial community. The *Stay, Make and Grow* program will also collect important information from businesses to assist Santa Fe County in its strategic planning and focus policy decisions on retaining businesses in the county, helping businesses expand their operations, and making Santa Fe County an attractive place to start a business.

Program Description

The Santa Fe County *Stay, Make & Grow* Program will have four components: GrowthWheel Business Workshops, Santa Fe County RUNWAY packet, Santa Fe County Business Forums, and a Santa Fe County Business Database. Information about the *Stay, Make & Grow* program along with information on other resources offered by SFBI and its partner organizations will be available through the SFBI newsletter, targeted e-mails, social media, and direct engagement.

- a) GrowthWheel Business Workshops. GrowthWheel is a business development tool that helps startups and small business owners get focused, set agendas, make decisions, and take action. Both the President of SFBI and the Program Director are experienced, certified and licensed GrowthWheel Business Advisors. SFBI will develop and deliver a core workshop for businesses in the unincorporated areas of Santa Fe County using GrowthWheel.
- b) County Specific Runway Packet. The RUNWAY pre-incubation packet is designed to help very early idea stage businesses identify their customers, validate their market, and develop initial cash flow projections. RUNWAY is a three month course of study and preparation with a nominal fee overseen by the SFBI. RUNWAY requires the business to consult with one or more SFBI partner business assistance organizations including the SBDC, SCORE, WESST and Los Alamos Connect. SFBI will develop and implement a RUNWAY packet specifically for the unincorporated areas of Santa Fe County.
- c) Santa Fe County Business Forums. The SFBI will help organize and facilitate two County Business Forums. The Forums are designed specifically for businesses within the unincorporated area of the County to meet their County officials and receive information from business assistance organizations. The Forums will offer the opportunity to gather information about businesses in the unincorporated areas of the county and connect county residents to a wide variety of resources to help grow and strengthen their businesses. These meetings will help determine shared problems facing businesses in the unincorporated areas and develop strategies to solve these problems.
- d) County Specific Business Database. The SFBI will use its current Incutrack management system to create a Santa Fe County specific business database. Information to populate

the database will be gathered through voluntary submission during the Business Forums, GrowthWheel Workshops, RUNWAY, or a short on-line form. A survey instrument will be developed for businesses in Santa Fe County, and will be disseminated through the business forums, GrowthWheel workshops, the RUNWAY packet, and other outreach mechanisms.

Branding

SFBI will use the County's name and Logo on all materials distributed for the *Stay, Make & Grow* program. The name and logo of Santa Fe County will be prominently displayed on all pieces of direct outreach, handouts, announcements, and other promotional materials. The Santa Fe County name and logo will also appear on all newsletters, social media posts, banners, and print advertising related to the *Stay, Make and Grow* program.

Scope of Work Metrics

The following metrics will be provided to Santa Fe County:

1. Number of County Residents attending each of the two Santa Fe County Business Forums
2. Number of County Residents participating in each of the two GrowthWheel Business Workshops
3. Number of County Businesses in the Business Database
4. Number of County Residents that participated in RUNWAY
5. Number of respondents to surveys and taken both in person and on-line
6. Information in the aggregate compiled from surveys including:
 - Number of Businesses in certain Industry classifications
 - Geographic disbursement of respondents
 - Employment numbers
7. Information on common problems faced by businesses in the County as reported on surveys.