# SANTA FE COUNTY
# PROFESSIONAL SERVICES AGREEMENT
# WITH COONEY, WATSON AND ASSOCIATES
# TO PROVIDE PUBLIC RELATION, MARKETING AND ADVERTISING SERVICES

**THIS AGREEMENT** is made and entered into this 5th day of August, 2010 by and between Santa Fe County, hereinafter referred to as "the County," and Cooney, Watson and Associates, a New Mexico corporation with a principal address located at 2201 San Pedro NE, Albuquerque, NM 87110, hereinafter referred to as "the Contractor."

**WHEREAS,** pursuant to NMSA 1978, Section 13-1-125, this is a "small purchase" for the provision of the professional services; and

**WHEREAS,** the County desires to engage the Contractor to render public relation, marketing and advertising services, and the Contractor is willing to render such services; and

**WHEREAS,** the County requires these services and the Contractor is willing to provide these services and both parties wish to enter into this Agreement.

**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 at the direction of the County Manager:

A. Review recent, current and potential news coverage of County activities with recommendations on how to shape and receive accurate, positive media coverage;

B. Attend designated meetings with County staff to develop communications protocols that help ensure consistent messaging among all potential spokespersons, County commissioners and County staff;

C. Develop a basic communications plan that identifies key stakeholders and communications protocols, priorities and timelines to reach each stakeholder group (internal employees, external constituents, media, etc.);

D. Select one or more County staff to serve as spokespersons when appropriate and training of spokespersons;

E. Provide customized media training for members of the Santa Fe County Commission and County staff;

F. Provide 24-hour, 7-day-a-week, on-call media consulting to develop talking points, opinion/editorial pieces, written statements and provide assistance at interviews as well as serve as a liaison with media as needed in the event of emergencies, controversial activities, etc.;

G. Provide in-person or telephone meetings with County staff and County Commissioners as needed. Contractor shall, at a minimum, conduct initial meetings with County staff and Commissioners prior to County Commission public meetings (on the 2nd of each month) where major actions are anticipated; Tuesday

H. Provide outreach to Commissioners Constituent Services Liaisons to provide assistance with newsletters, communications and to ensure consistent messaging;

I. Prepare quarterly outcome reports that summarize media coverage and activities with recommendations for improvement;

J. Provide other communication activities as needed.

K. Contractor's initial focus of communication activities shall include, but is not limited to, the following:

a) Conduct a meeting with Kristine Mihelcic, the County's internal Public Information Officer and media production staff member (as well as any other appropriate County staff), to coordinate activities;

b) Conduct a meeting with County staff to anticipate any issues likely to arise within the next 30-60 days.

## 2. COMPENSATION AND INVOICING

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

In no event shall the total compensation paid to Contractor by County under this Agreement exceed $15,000, inclusive of gross receipts tax.

a) The County shall pay Contractor $100 per hour for public relations services.

b) Media tracking – 2.0 hours per month @ $45/hr. for 3 months
for a total of $270.00

c) Invoicing/contract compliance – 2.0 hours per month @ $65/hr. for 3 months
for a total of $390.00

d) Miscellaneous – The County shall reimburse the Contractor reasonable travel expenses. Authorized travel shall be reimbursed at the rate set forth for hourly employees in the Travel and Per Diem and Mileage Act, NMSA 1978, Section 10-8-4, et. seq as amended and at the mileage rate set forth in the Per Diem and Mileage Act and DFA Rule 95-1 regulations governing the Per Diem and Mileage Act.

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 on November 30, 2010, unless earlier terminated pursuant to Section 4, "TERMINATION," 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 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.

## 5. 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 the 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.

## 6. 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 nor 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.

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

## 8. 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.

## 9. INDEMNITY

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 shall be retained 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.

## 10. 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.

## 11. 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.

## 12. PERMITS, FEES, AND LICENSES

The 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.

## 13. 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.

## 14. 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 written approval of the County.

## 15. PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHTS

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.

## 16. 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.

## 17. 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.

## 18. 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.

## 19. EQUAL OPPORTUNITY COMPLIANCE

A. The 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, 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.

## 20. 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.

## 21. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW

A. In performing its obligation hereunder, the Contractor shall comply with all applicable laws, ordinances, and obligations.

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. The Contractor and the County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be the federal and state district courts of New Mexico, located in Santa Fe County.

## 22. NOTICE OF PENALTIES

The Procurement Code, NMSA 1978, Section 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.

## 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. FACSIMILE SIGNATURES

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

## 25. LIMITATION OF LIABILITY

The County's liability to the 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 the Contractor for special or consequential damages, even if the County was advised of the possibility of such damages prior to entering into this Agreement.

## 26. 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.

## 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 $1,050,000 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. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

The Contractor hereby represents and warrants that:

A. It is a corporation duly organized and in good standing under the laws of the State of New Mexico.

B. 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.

C. This Agreement and the Contractor's obligations hereunder do not conflict with the Contractor's articles of incorporation or by-laws or any corporate resolution adopted by the Contractor.

D. It will maintain throughout the life of this Agreement, its registration, licensure to

conduct business in the State of New Mexico, and its status of "good standing" with the New Mexico Public Regulation Commission.

## 29. 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.

## 30. NOTICES

All notices required to be given to the County under this Agreement shall be mailed (pre-postage paid) to:

Santa Fe County
Legal Department
102 Grant Avenue / P.O. Box 276
Santa Fe, NM 87504-0276

All notices required to be given to the Contractor under this Agreement shall be mailed (pre-postage paid) to:

Cooney, Watson and Associates
2201 San Pedro NE, Building 2, Suite 100-PB
Albuquerque, NM 87110

## 31. SURVIVAL

The provisions of following paragraphs shall survive termination of this Contract; INDEMNITY, RECORDS AND INSPECTION, RELEASE, CONFIDENTIALITY, COPYRIGHT, COMPLIANCE WITH APPLICALBLE LAW; CHOICE OF LAW, NO THIRD-PARTY BENEFICIARIES, NEW MEXICO TORT CLAIMS ACT, INSURANCE, AND SURVIVAL.

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

**SANTA FE COUNTY**

Penny Ellis-Green interim County Manager.
Santa Fe County Manager

**APPROVED AS TO FORM**

Stephen C. Ross
Santa Fe County Attorney

7-30-10
Date

**FINANCE DEPARTMENT APPROVAL**

Teresa C. Martinez
Santa Fe County Finance Director

7/20/10
Date

**COONEY, WATSON AND ASSOCIATES**

Patti R. Watson
(Signature)

8-5-10
Date

Patti R. Watson, CEO
(Print name and title)

**FEDERAL IDENTIFICATION NUMBER: 85-0409025**