

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN SANTA FE COUNTY AND
VISTA GRANDE PUBLIC LIBRARY**

THIS AGREEMENT (“Agreement”) is entered into on this 26th day of April 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 “Vista Grande Library”), 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 Vista Grande Library 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 Vista Grande Library is therefore 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 November 2010 election, the citizens of the State of New Mexico approved the Capital Projects General Obligation Bond Act which authorized the State to issue general obligation bonds for the purpose of acquiring library books, equipment and library resources for public libraries;

WHEREAS, pursuant to 4.5.8.8 NMAC, nonprofit libraries may be allocated money from the library bond program if a local government authority enters into a written agreement to act as a fiscal agent of the funds;

WHEREAS, the New Mexico State Library has determined that under 4.5.8.8 NMAC the Vista Grande Library is eligible to receive an estimated projected allocation of \$11,690.65 for the purchase of library books, equipment and library resources for use at Vista Grande Library; and

WHEREAS, the County desires to enter into an agreement with the Vista Grande Library to serve as a fiscal agent to purchase books, equipment and resources to loan the Vista Grande Library for the benefit of County residents.

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

1. SCOPE OF WORK:

The Vista Grande Library shall:

- a. accept responsibility for any necessary communication and exchange of information with the County;
- b. meet and maintain all of the applicable eligibility requirements described in 4.5.8.8 NMAC;

- c. provide the County with information sufficient to allow the County to issue purchase documents for books, equipment, and resources to be housed in the Vista Grande Library;
- d. maintain and ensure availability of the books, equipment, and resources provided by the County to meet the public library needs of residents in the area served by the Vista Grande Library; and
- e. cooperate with the County to ensure items purchased are inventoried pursuant to Resolution No. 2007-81, the County's Fixed Assets and Inventory Exempt Items Policy & Procedure.

The County shall:

- a. sign an agreement with the New Mexico State Library to expend funds consistent with the County purchasing regulations and the general obligation funding and submit reimbursement for said expenditures to the New Mexico State Library located at 1209 Camino Carlos Rey, Santa Fe, New Mexico 87507;
- b. deliver the library resources purchased with the general obligation bond funding to the Vista Grande Library; and
- c. maintain ownership and an inventory of items purchased for use at the Vista Grande Library pursuant to Resolution No. 2007-81, the County's Fixed Assets and Inventory Exempt Items Policy & Procedure.

2. **FINANCIAL COMMITMENT:** The total amount the County shall expend under this Agreement on library books, equipment and resources shall not exceed \$11,690.65. Expenditures under this Agreement are dependent on the New Mexico State Library selling the authorized general obligation bonds and establishing a fund in the state financial system, which shall not occur until after July 1, 2011. No purchases under this Agreement shall be made until the County receives a purchase order and final notification from the New Mexico State Library.
3. **EFFECTIVE DATE AND TERM:** The term of this Agreement shall be from April 1, 2011 through April 1, 2014, unless earlier terminated pursuant to Paragraph 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 Vista Grande Library written notice of termination. The notice shall specify the effective date of

termination, which shall not be less than fifteen (15) days from the Vista Grande Library's receipt of the notice. The County shall pay the Vista Grande Library 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 Vista Grande Library and its agents and employees are independent contractors performing professional services for the County and are not employees of Santa Fe County. The Vista Grande Library 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 Vista Grande Library acknowledges that all sums received hereunder are reportable by the Vista Grande Library for tax purposes, including without limitation, self-employment and business income tax. The Vista Grande Library agrees not to purport to bind Santa Fe County unless the Vista Grande Library has express written authority to do so, and then only within the strict limits of that authority.
6. **PERSONNEL**
 - a. The Vista Grande Library 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 Vista Grande Library 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.
7. **ASSIGNMENT:** The Vista Grande Library 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.
8. **SUBCONTRACTING:** The Vista Grande Library shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the County.
9. **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.
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. **CONFLICT OF INTEREST:** The Vista Grande Library 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.
12. **CONFIDENTIALITY:** Any confidential information provided to or developed by the Vista Grande Library in the performance of this Agreement shall be kept confidential and shall not

be made available to any individual or organization by the Vista Grande Library without the prior written approval of the County.

13. **LIABILITY:** Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, § 41-4-1, et seq., NMSA 1978, as amended.
14. **AMENDMENT:** This Agreement shall not be altered, changed or amended except by an instrument in writing executed by the parties hereto.
15. **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.
16. **APPLICABLE LAW; VENUE:** This Agreement shall be construed in accordance with the laws of the State of New Mexico. The Vista Grande Library and the County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be the State District Court of New Mexico, First Judicial District, located in Santa Fe County.
17. **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 Vista Grande Library. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse Vista Grande Library 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 Vista Grande Library.
18. **FASCIMILE SIGNATURES:** The parties hereto agree that a facsimile signature has the same force and effect as an original for all purposes.
19. **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.
20. **PROHIBITED ACTIVITY:** The Vista Grande Library 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.
21. **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 Vista Grande Library 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 Vista Grande Library 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.

22. 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.

23. EQUAL OPPORTUNITY COMPLIANCE: The Vista Grande Library agrees to abide by all federal and state laws, rules and regulations, pertaining to equal employment opportunity. In accordance with all such laws, the Vista Grande Library assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any activity performed under this Agreement. If the Vista Grande Library is found not to be in compliance with these requirements during the life of this Agreement, the Vista Grande Library agrees to take appropriate steps to correct these deficiencies.

24. INVALID TERM OR CONDITION: If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

25. 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 Vista Grande Library: Vista Grande Public Library
14 Avenida Torreon

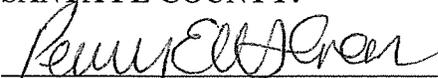
Santa Fe, NM 87508
Phone: 505-466-7323
ATTN: Rich Moore, Board President

For County:

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

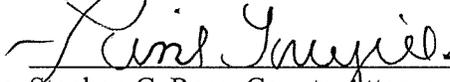
IN WITNESS WHEREOF the parties have duly executed this Agreement as of the dates first written above.

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 PUBLIC LIBRARY:

Rich Moore, Board President

FEDERAL TAX ID NUMBER: 17053073706034

Agreement No. 2011-0234-CSD/VO

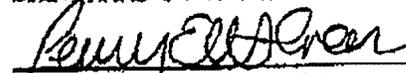
Santa Fe, NM 87508
Phone: 505-466-7323
ATTN: Rich Moore, Board President

For County:

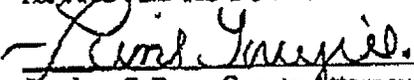
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Community Projects Division
901 W. Alameda, Suite 20C
Santa Fe, NM 87501
Phone: 505-670-5333
ATTN: Laura Epler

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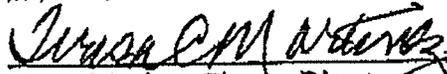
SANTA FE COUNTY:


Katherine Mfiller, County Manager

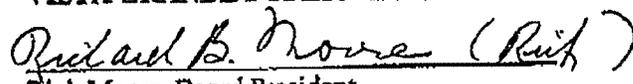
APPROVED AS TO LEGAL FORM:


Stephen C. Ross, County Attorney

FINANCE DEPARTMENT:


Teresa Martinez, Finance Director

VISTA GRANDE PUBLIC LIBRARY:


Rich Moore, Board President

FEDERAL TAX ID NUMBER: 13053073706034

NEW MEXICO



STATE LIBRARY

This document was received by Susanne Caro of the New Mexico State Library on April 28th, 2011.

Susanne Caro
State Documents Librarian
New Mexico State Library

Vista Grande 2010 Mon with the Santa Fe County

RECEIVED
NM State Library

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Santa Fe, NM