# SANTA FE COUNTY
# SERVICES AGREEMENT
# WITH BACA'S TREES, INC.
# TO PROVIDE TREE TRIMMING AND TREE REMOVAL SERVICES

**THIS AGREEMENT** is made and entered into this 21st day of December, 2009 by and between Santa Fe County, hereinafter referred to as "the County," and Baca's Trees, Inc., a New Mexico corporation with a principal address located at 7933 Edith Blvd. NE, Albuquerque, NM, 87113 hereinafter referred to as "the Contractor".

**WHEREAS,** pursuant to NMSA 1978, Sections 13-1-112 and 13-1-117, competitive, sealed proposals were solicited via a formal request for proposals, RFP No. 2010-0065-ASD/TVR, for the provision of the services; and

**WHEREAS,** the County desires to engage the Contractor to render tree trimming and tree removal services as described in the RFP, 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 complete the following tasks upon request of the County:

A. Trim and remove trees as requested by County staff on an "on call" and /or scheduled basis;

B. Remove all debris at completion of job including but not limited to limbs, twigs, leaves and trash;

C. Provide a Traffic Control Plan (TCP), in accordance with the Manual on Uniform Traffic Control Devices (MUTCD), prior to commencing work for approval by staff;

D. Respond within five (5) days for normal service and three (3) hours for emergency service;

E. Perform Work during normal working hours (8:00 am-5:00 pm, Monday thru Friday), unless otherwise approved by County Staff;

F. Cooperate with the County and owners of private property to ensure access is authorized prior to commencing work and coordinate with the owner of private property, in advance, concerning those areas to be dedicated to Contractor's operations, to lay-down and storage of equipment;

G. Notify owner of private property forty-eight (48) hours in advance of any interruption of utilities, access or usage of the location;

H. Minimize interruptions of traffic flow;

I. Furnish all equipment, labor, materials and tools required to perform the Work specified;

J. Be responsible for all clean-up of materials at the job site resulting from the performance of any Work;

K. Provide competent supervision and skilled personnel to complete all Work;

L. Comply with all applicable codes and regulations pertaining to work performed and materials used;

M. Provide all safeguards, safety devices and protective equipment and take any other needed actions necessary to protect the life and health of employee on-the-job, the safety of the public and to protect County property in connection with the performance of the Work;

N. Limit use of the premises to the Work;

O. Be responsible for loading/unloading all materials required to perform the Work, and schedule deliveries so as to minimize long-term storage at the project area;

P. Provide written justification to the department for leaving a job site unfinished for more than one (1) day;

Q. Cooperate with necessary agencies, such as, local electric company, city county and state offices, law enforcement, fire department etc., prior to commencing Work;

R. Clear sight distances 100' to 400' in all directions of all county road intersections or as directed by County staff.

## 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 $200,000 inclusive of gross receipts tax.

The County shall pay Contractor on a monthly basis at the following hourly rates for services performed: See "Exhibit A," attached hereto.

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 payments.

## 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 21st day, of December, 2013, 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. 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.

## 16. 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.

## 17. 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.

## 18. 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.

## 19. 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.

## 20. 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.

## 21. 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.

## 22. NO THIRD-PARTY BENEFICIARIES

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

## 23. FACSIMILE SIGNATURES

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

## 24. 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.

## 25. 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.

## 26. 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.

## 27. 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.

## 28. 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.

## 29. 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:

Baca's Trees, Inc.
Attn: Robert L. Cordova
7933 Edith Blvd. NE

Albuquerque, NM 87113

## 30. LIQUIDATED DAMAGES

In addition to withholding any payments as provided in Article 2.C above, should the Contractor neglect, refuse or otherwise fail to complete Work undertaken pursuant to this Agreement, within the time specified, the Contractor agrees to pay to the County liquidated damages in an amount of five percent (5%) of the invoiced amount or one hundred dollars, whichever is greater, per consecutive calendar day for each day work remains uncompleted.

A. Contractor Acts Constituting a Breach. In the event the Contractor performs, or fails to perform, one or more of the following acts, the County may declare the Contractor to be in breach of this Agreement:

1. Fails to begin the Work pursuant to this Agreement within the time specified;
2. Fails to perform the Work with sufficient supervision, workmen, equipment or materials to assure the prompt completion of said work;
3. Performs the Work unsuitably or neglects or refuses to remove materials or to perform new such Work as may be rejected as unacceptable or unsuitable;
4. Discontinues the prosecution of the work;
5. Fails to resume work which has been discontinued within a reasonable time after notice to do so;
6. Becomes insolvent or is declared bankrupt or commits any acts of bankruptcy or insolvency;
7. For any other cause, except as provided in the contract, fails to carry on the work in an unacceptable manner.

## 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**

Roman Abeyta, Manager

**APPROVED AS TO FORM**

Stephen C. Ross
Santa Fe County Attorney

12-1-09
Date

**FINANCE DEPARTMENT APPROVAL**

Teresa C. Martinez
Santa Fe County Finance Director

12/7/09
Date

**BACA'S TREES, INC.**

(Signature)

12-21-09
Date

Robert L. Cordova vice president
(Print name and title)

**FEDERAL IDENTIFICATION NUMBER: 85-0356376**

EXHIBIT
A

Santa Fe County
Administrative Services Department
142 W. Palace Ave.
2nd Floor
Santa Fe, NM 87501

## IFB #2010-0065-ASD/TRV

Please offer your best price, for each item as outline below. **The Bidders shall complete the following bid sheet in full, for Bid No. 2010-0065-ASD/TRV, including signature at the bottom as stated.** Be advised that award may be made without discussion with Bidders on offers received. Offers will be accepted until 10:00 am on the bid due date specified.

| Item | Approx Qty | Article and Description | Crew Rate | Man Hour Rate |
|---|---|---|---|---|
| 1 | HOUR | Trim tree limbs within Santa Fe County airspace to height of twenty (20) feet | 3 man Crew. includes chipper $174.00 | $58.00 |
| 1A | HOUR | Same as above for emergency/after hour fee (after 5:00 pm weekdays and weekends) | 3 man Crew includes Chipper $274.00 | $91.33 |
| 2 | HOUR | Trim tree limbs within Santa Fe County airspace height greater than twenty (20) feet | 3 man Crew include chipper $174.00 | $58.00 |
| 2A | HOUR | Same as above for emergency/after hour fee (after 5:00 pm weekdays and weekends) | 3 man Crew Includes chipper $274.00 | $91.33 |
| 3 | HOUR | Tree removal within Santa Fe County right of way to height of twenty (20) feet. Stump to remain no greater than four (4) inches above grade | 3 man Crew, Includes chipper $174.00 | $58.00 |
| 3A | HOUR | Same as above for emergency/after hour fee (after 5:00 pm weekdays and weekends) | 3 man Crew Includes chipper $274.00 | $91.33 |
| 4 | HOUR | Tree removal within Santa Fe County right of way to height greater than twenty (20) feet. Stump to remain no greater than four (4) inches above grade | 3 man Crew, Includes chipper $174.00 | $58.00 |
| 4A | HOUR | Same as above for emergency/after hour fee (after | $274.00 | 91.33 |

| | | | | |
|---|---|---|---|---|
| | | 5:00 pm weekdays and weekends) | | |
| 5 | HOUR | Tree removal within Santa Fe County right of way to height of twenty (20) feet. Stump and root to be removed by contractor | 3 man Crew Includes all machinery $174.00 | |
| 5A | HOUR | Same as above for emergency/after hour fee (after 5:00 pm weekdays and weekends) | 3 man Crew Includes all machinery $274.00 | |
| 6 | HOUR | Tree removal within Santa Fe County right of way to height greater than twenty (20) feet. Stump and root to be removed by contractor | 3 man Crew Includes all machinery $174.00 | |
| 6A | HOUR | Same as above for emergency/after hour fee (after 5:00 pm weekdays and weekends) | 3 man Crew Includes all machinery $274.00 | |
| 7 | HOUR | Mowing Services within Santa Fe County right of way (per 5 feet of right of way) | | |
| 7A | HOUR | Same as above for emergency/after hour fee (after 5:00 pm weekdays and weekends) | | |
| | | | **Day Rate** | **Hourly Rate** |
| 8 | RATE/HOUR | Heavy Equipment Rate (bucket truck, chipper, etc.) | Included with 3 man Crew | " " |
| 8A | RATE/HOUR | Heavy Equipment Rate (bucket truck, chipper, traffic control, etc.; after 5:00 pm weekdays and weekends) | Included with 3 man Crew | " " |
| 9 | RATE/HOUR | Traffic Control Rate | $500 | 50.00 |
| 9A | RATE/HOUR | Traffic Control Rate (after 5:00 pm weekdays and weekends) | $600 | $60.00 |

**Contractor's Name:** Baca's Trees Inc.

**Contractor's Phone:** 505-899-6666 **Fax #:** 505-899-6950

**Signature of Authorized Contractor's Agent:** [signature]

**Title:** Arborist / Estimator