

**SANTA FE COUNTY  
PROFESSIONAL SERVICES AGREEMENT  
WITH APRYL MILLER  
TO PROVIDE COUNSELING SERVICES**

**THIS AGREEMENT** is made and entered into this 25 day of April, 2011 by and between Santa Fe County, Community Services Division Teen Court, hereinafter referred to as “the County”, and Apryl Miller, a sole proprietor with a principal address located at 113 Camino Escondito #3, Santa Fe, NM 87501, hereinafter referred to as “the Contractor”.

**WHEREAS**, this procurement is a small purchase pursuant to § 13-1-125, NMSA 1978, of the Procurement Code;

**WHEREAS**, the County desires to engage the Contractor to provide counseling services for Santa Fe County adolescents and their families referred to Contractor by Teen Court of Santa Fe County;

**WHEREAS**, the Contractor is willing to render such services at a cost that is in the best interest of the County;

**WHEREAS**, the County requires these services and the Contractor is willing to provide these services and both parties desire to formalize their agreement in this Contract; and

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

**1. SCOPE OF WORK**

Beginning fiscal year 2012, the Contractor shall:

- A. Provide individual counseling and/or family sessions for clients referred to Contractor by the Santa Fe County Teen Court.
- B. Meet with Teen Court staff, DWI Program Staff and other social service providers to provide and coordinate counseling services to Santa Fe County Teen Court;
- C. Counseling services shall be performed and completed to the satisfaction of the County. The Contractor shall provide and charge only for services the County expressly requests in writing to be provided by the Contractor. No service(s) may be requested performed or compensated for except as agreed upon in writing and in advance by the County and Contractor.
- D. The Contractor shall provide reports pertinent to the counseling services requested by the County and provided by the Contractor to clients referred by Santa Fe County Teen Court. Contractor shall ensure that no report violates confidentiality of clients and such reports shall be submitted to the Santa Fe County Teen Court Coordinator and the

DWI Program Coordinator as requested. Reports should contain the number of clients referred to Contractor for counseling and the status or final outcome of Contractor's counseling services;

- E. Prior to commencement of any services under this Agreement, Contractor shall provide a copy of Contractor's license as an Independent Social Worker indicating licensure for the term of this Agreement.

## 2. COMPENSATION AND INVOICING

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

- (1) The County shall pay Contractor on monthly basis for counseling services provided to clients referred by Teen Court at rate of \$75.00 per hour of counseling. No travel or per diem shall be paid to the Contractor under this Agreement.

- (2) In no event shall the total compensation paid to Contractor by County under this Agreement for fiscal year 2012 beginning July 1, 2011 and ending June 30, 2012, exceed \$10,000., *exclusive of gross receipts tax.*

- B. No later than the last day of every month the Contractor shall submit an itemized, written and certified invoice of all counseling services provided during that month. 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 items or services for which payment is requested by Contractor. Contractor's request for payment or invoice shall contain the following information: (1) Contractor's name and address; (2) Federal Tax Identification Number; (3) Contractor's date and time log with details, as requested by the County, of counseling services performed and the total cost inclusive of gross receipts tax; (4) invoices shall be faxed or mailed to the attention of Joyce Varela, Santa Fe County DWI Program Office at 2052 S. Galisteo, Santa Fe NM 87505 or facsimile number 505-992-9855.

The Contractor acknowledges and agrees that the County may not make any payment hereunder until the County has issued a written certification accepting the counseling services provided by Contractor. Within thirty (30) days of the issuance by the County of a written certification accepting the counseling items or services, the County shall tender payment. 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 incur late payment charges of one and one-half percent (1.5%) per month, until the approved amounts due are paid.

- 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 on July 1, 2011 and terminate June 30, 2012, unless earlier terminated pursuant to Section 4, "TERMINATION," of this Agreement.

**4. TERMINATION**

- A. Termination of Agreement for Cause. The County may terminate the Agreement based upon any material breach of this Agreement by the Contractor. The County 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 Contractor's receipt of the notice of termination, during which time the Contractor shall have the right to cure the breach. If, however, the breach cannot with due diligence be cured within thirty (30) days, the Contractor 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 Contractor began to cure the breach and advised the County 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 provisions of 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 is an independent contractor and not an employee or agent of the County. Accordingly, the Contractor 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. 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.

**7. SUBCONTRACTING**

The Contractor represents that it will personally perform all work required of the Contractor under this Agreement. 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.

**8. 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.

**9. RECORDS AND INSPECTIONS**

- A. To the extent records or information relate to (i) its performance of this Agreement or (ii) costs or pricing data (if any) set forth in this Agreement or that was required to be submitted to the County as part of the solicitation of quotes procurement process, the Contractor agrees to 1) maintain such records and information during the term of this Agreement and for a period of six (6) years from the date of final payment under this Agreement; 2) allow the County or its designee to audit such information and records at reasonable times and upon reasonable notice; and 3) to keep such information and records in accordance with generally accepted accounting principles ("GAAP").

**10. 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.

**11. 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.

**12. 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.

**13. CONFIDENTIALITY**

Any confidential information and records 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.

**14. 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.

**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 be changed or amended 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 written amendment to this Agreement signed by the County and Contractor. No change to the Contract Sum, Scope of Work or Contract Term shall be valid and effective until approved by the Santa Fe Board of County Commissioners or the Santa Fe County Manager.

**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 State District Court of New Mexico, located in Santa Fe County.

**21. 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.

**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 under this Agreement is subject to the limitations in the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1, et seq. In no event shall the County be liable to the Contractor for special or consequential damages or attorneys fees. 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.

**25. 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. If applicable, 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.

- E. Professional Liability Insurance. Contractor shall procure and maintain during the life of this Agreement professional liability insurance in amounts not less than \$1,000,000 per occurrence, \$2,000,000 per aggregate.

**26. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES**

The Contractor hereby represents and warrants that:

- A. She is a sole proprietor 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. She will maintain throughout the life of this Agreement, her registration and licensure with the State of New Mexico Regulation and Licensing Department Board of Social Work Examiners as a Licensed Independent Social Worker.

**27. 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.

**28. NOTICES**

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

Santa Fe County  
102 Grant Avenue  
P.O. Box 276  
Santa Fe, NM 87504-0276  
ATTN: Jennifer Jaramillo

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

Apryl Miller  
PO Box 113  
San Jose, NM 87565

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

Date: 4/27/11

**APPROVED AS TO FORM**

  
Stephen C. Ross  
Santa Fe County Attorney

April 14, 2011  
Date

**FINANCE DEPARTMENT APPROVAL**

  
Teresa C. Martinez  
Santa Fe County Finance Director

4/20/2011  
Date

**CONTRACTOR**

\_\_\_\_\_  
Apryl Miller

\_\_\_\_\_  
Date

**FEDERAL IDENTIFICATION NUMBER: 163-52-92422**

**STATE DEPARTMENT OF FINANCE & ADMINISTRATION:**

\_\_\_\_\_  
Johnathan Fernandez

\_\_\_\_\_  
Date

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

Date: \_\_\_\_\_

**APPROVED AS TO FORM**

\_\_\_\_\_  
Stephen C. Ross  
Santa Fe County Attorney

\_\_\_\_\_  
Date

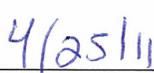
**FINANCE DEPARTMENT APPROVAL**

\_\_\_\_\_  
Teresa C. Martinez  
Santa Fe County Finance Director

\_\_\_\_\_  
Date

**CONTRACTOR**

  
\_\_\_\_\_  
Apryl Miller

  
\_\_\_\_\_  
Date

**FEDERAL IDENTIFICATION NUMBER: 163-52-92422**

**STATE DEPARTMENT OF FINANCE & ADMINISTRATION:**

\_\_\_\_\_  
Johnathan Fernandez

\_\_\_\_\_  
Date

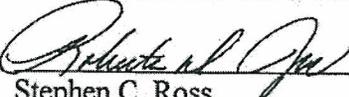
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**SANTA FE COUNTY**

\_\_\_\_\_  
Katherine Miller  
Santa Fe County Manager

Date: \_\_\_\_\_

**APPROVED AS TO FORM**

  
\_\_\_\_\_  
Stephen C. Ross  
Santa Fe County Attorney

April 14, 2011  
Date

**FINANCE DEPARTMENT APPROVAL**

\_\_\_\_\_  
Teresa C. Martinez  
Santa Fe County Finance Director

\_\_\_\_\_  
Date

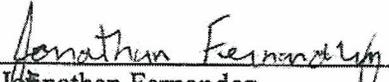
**CONTRACTOR**

\_\_\_\_\_  
Apryl Miller

\_\_\_\_\_  
Date

**FEDERAL IDENTIFICATION NUMBER: 163-52-92422**

**STATE DEPARTMENT OF FINANCE & ADMINISTRATION:**

  
\_\_\_\_\_  
Jonathan Fernandez  
Admin Approval Only

4/20/11  
Date