

**Searchable Web Tool License Agreement  
Between Santa Fe County and Rand Corporation**

This **License Agreement** (“Agreement”) is entered into upon signing by both parties, by and between Santa Fe County (hereinafter referred to as the “County”), a New Mexico political subdivision and RAND Corporation (hereinafter called “RAND”), whose registered offices are situated at 1776 Main Street, Santa Monica, California 90401.

**RECITALS**

**WHEREAS**, in the spirit of cooperation, mutual respect and service to the residents of Santa Fe County, this Agreement confirms the parties’ commitment and mutual cooperation which recognizes that the partnering activities between government and private entities of similar purposes may produce community and constituency benefits beyond what might be produced independently;

**WHEREAS**, the RAND Corporation is a nonprofit institution that helps improve policy and decision making through research and analysis;

**WHEREAS**, the RAND Corporation has created a Resource Director that they desire to make available to residents of Santa Fe County, as well as other surrounding communities;

**WHEREAS**, the RAND Corporation has requested that the County offer a link to the Resource Director on the County website with a searchable function; and

**WHEREAS**, the County desires to make the resource guide available electronically to benefit residents of Santa Fe County, as well as other surrounding communities.

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

**1. USER LICENSE:** This Agreement constitutes a non-exclusive, non-transferable license to use the searchable web tool “Product,” for the County to host the Product on County web servers, and after January 1, 2013 for the County to take full ownership of the Product, including the source code and data files. The Product is defined as follows:

- A set of HTML pages with a searchable interface that connects to a database and includes necessary scripting that makes the search tool function to display a listing of data that matches the search criteria.
- The database will be populated with data from an initial dataset. The content of the database will be a subset of the printed MCH Resource Directory and not the entire printed MCH Resource Directory.

- The database is in an appropriate format for use in the Windows IIS-based web server environment which runs on Microsoft SQL Server Express or a similar database program. The exact format to be used has yet to be determined.
- The Product includes a web-based administrative interface to facilitate data entry and allows edits to be made to the data in the database. Both RAND and Santa Fe County will have access to this administrative interface and will determine a mutually-agreeable workflow for data entry, which may involve coordination of timing when updating the data to avoid overlapping work to ensure quality of data. RAND will not be held responsible for errors in the data.
- All necessary files to operate the search tool will be delivered by RAND to Santa Fe and installed by Santa Fe County on the County web servers. Santa Fe will host all necessary web pages and database files on their servers and will password-protect the administrative interface to prevent unauthorized access.
- Santa Fe will acknowledge RAND Corporation as the developer of the Product at the bottom of the first page of the search tool, during the active phase of the project while product data updates are being made by RAND, to occur until January 1, 2013. After January 1, 2013, Santa Fe will remove this acknowledgment. The parties may not use each other's names in any other manner without prior written permission.

**2. AUTHORIZED USE:** Subject to the restrictions contained in Article 4 below, the County is hereby granted a license to use the Product for non-commercial purposes only to benefit the residents of Santa Fe County, as well as other surrounding communities.

The County's rights are limited to itself alone and do not extend to subsidiary or parent corporations, or to any other related or affiliated organizations. Any rights not expressly granted in this license are reserved to RAND.

**3. RESTRICTIONS:** During the active phase of the project while product data updates are being made by RAND, to occur until January 1, 2013, the County may not-modify the code or database in such a way that it affects the functionality of the web-based search tool or administrative interface. However, the County may modify the code to alter the design of the interface so that it matches the aesthetic design elements of the County website in which the tool will be hosted; the County may also modify the code when the files are delivered by RAND to Santa Fe and installed on County web servers, if necessary in order to make the tool functional on the Santa Fe web servers.

**4. PRICING AND TERM:**

- A. RAND shall not receive any payment under this agreement.

B. This Agreement shall, upon due execution by all parties, become effective as of the date first written above and shall terminate January 1, 2013, unless earlier terminated pursuant to Section 7 (Termination) or Section 8 (Appropriations).

**5. PRODUCT UPDATES:** RAND will update the database approximately every six months until the end of 2012, contingent on the status of the evaluation project ("First Born Program Evaluation") that the database supports. After January 1, 2013, all database updates will be made by the County and RAND will no longer be responsible for any updates to the data. After this date, and as necessary to protect the County web site, County staff shall change the administrative password and may also make changes to the programming of the search tool in order to change its functionality.

**6. DISCLAIMER:** RAND makes no implied warranties of merchantability or fitness for a particular purpose or accuracy. The Product and any data resulting from the Product is provided "as-is." RAND makes no representation that there will always be sufficient capacity or continuance of service. No use of the Product is authorized hereunder except under this Disclaimer.

#### **7. 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 RAND written notice of termination. The notice shall specify the effective date of termination, which shall not be less than fifteen (15) days from RAND's receipt of the notice.

**8. 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 RAND. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse RAND for expenditures made in the performance of this Agreement. 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 RAND in any way or forum, including a lawsuit.

**9. INDEPENDENT CONTRACTOR:** RAND and its agents and employees are independent contractors and are not employees or agents of the County. Accordingly, RAND 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, RAND has no authority to bind, represent, or otherwise act on behalf of the County and agrees not to purport to do so.

**10. CONFIDENTIALITY:** Any confidential information provided to or developed by RAND in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by RAND without the prior written approval of the County.

**11. CONFLICT OF INTEREST:** RAND 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.

**12. 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, Section 41-4-1 NMSA 1978 et seq., as amended.

### **13. EQUAL OPPORTUNITY COMPLIANCE**

A. RAND 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, RAND specifically agrees not to discriminate against any person with regard to employment with RAND 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. RAND acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Agreement.

### **14. INSURANCE**

A. General Conditions. RAND 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. Workers' Compensation Insurance. RAND shall comply with the provisions of the Workers' Compensation Act.

C. 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), RAND shall increase the maximum limits of any insurance required herein.

D. Professional Liability. RAND shall carry professional liability (errors and omissions) insurance, with policy limits of not less than \$1,000,000.00.

**15. 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.

**16. ENTIRE UNDERSTANDING:** This Agreement constitutes the entire understanding of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter hereof, whether oral or written.

**17. AMENDMENT:** No modification or claimed waiver of any provision of this Agreement shall be valid except by written amendment signed by authorized representatives of the Customer and RAND.

**18. NOTICE:** Any notice required by this Agreement or given in connection with it, shall be in writing and shall be given to the appropriate party by personal delivery or by certified mail, postage prepaid, or recognized overnight delivery services.

If to RAND:

Rebecca Kilburn  
1776 Main Street  
Santa Monica, CA 90407-2138  
(310) 393-0411 x 7734  
Email: gregr@rand.org

If to Customer:

Community Services HHSD/MCH  
2052 S. Galisteo Street  
Santa Fe, NM 87501  
(505) 995-9527  
ATTN: Lisa Garcia

**19. NO THIRD-PARTY BENEFICIARIES:** This Agreement was not intended to and does not create any rights in any persons not a party hereto.

**20. REPRESENTATIONS AND WARRANTIES:**

RAND hereby represents and warrants that:

A. This Agreement has been duly authorized by RAND, the person executing this Agreement has authority to do so, and, once executed by RAND, this Agreement shall constitute a binding obligation of RAND.

B. RAND Corporation is authorized to do business in New Mexico.

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

**22. SURVIVAL:** The provisions of following paragraphs shall survive termination of this Contract; AUTHORIZED USE; CONFIDENTIALITY; COMPLIANCE WITH APPLICABLE LAW; JURSDICTION AND VENUE; NO THIRD-PARTY BENEFICIARIES; SURVIVAL.

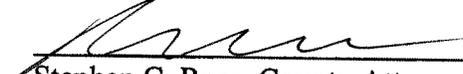
**IN WITNESS WHEREOF** the parties have duly executed this Agreement as of the date first printed above.

**SANTA FE COUNTY:**

  
\_\_\_\_\_  
Katherine Miller, County Manager

12-2-11  
\_\_\_\_\_  
Date Signed

**APPROVED AS TO LEGAL FORM:**

  
\_\_\_\_\_  
Stephen C. Ross, County Attorney

11-28-11  
\_\_\_\_\_  
Date Signed

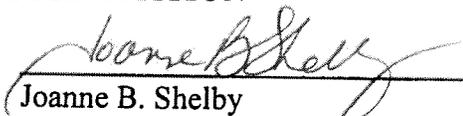
**FINANCE DEPARTMENT:**

  
\_\_\_\_\_  
Teresa Martinez, Finance Director

11/29/11  
\_\_\_\_\_  
Date Signed

**ACKNOWLEDGED AND AGREED:**

**RAND CORPORATION**

By:   
Name: Joanne B. Shelby

11/22/2011  
\_\_\_\_\_  
Date Signed

Title: \_\_\_\_\_  
Director, Contract and Grant Services