

**SERVICE AGREEMENT  
WITH ANTHONY P. GONZALES  
TO PROVIDE GRASS MANAGEMENT SERVICES  
AT THE SANTA FE COUNTY QUILL WATER RECLAMATION PLANT**

**THIS AGREEMENT** is made and entered into this 19<sup>th</sup> day of May 2014, by and between **Santa Fe County**, hereinafter referred to as the “County”, a New Mexico political subdivision and **Anthony P. Gonzales**, whose principal place of business is located at 9626 Thomas Lane NW, Albuquerque, N.M. 87114, hereinafter referred to as the “Contractor”.

**WHEREAS**, to prevent interference with the operations of its water reclamation facility Santa Fe County requires the management of overgrown grass on approximately 95 acres of land located near the County’s Quill Water Reclamation Plant also referred to as the “Quill Plant”;

**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. 2014-0248-PW/PL for the provision of these services;

**WHEREAS**, based upon the evaluation criteria established in the RFP for the purpose of selecting the most qualified offeror, the County has determined the Contractor as the most responsive and highly rated offeror;

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

**NOW, THEREFORE**, it is agreed between the parties:

**1. LICENSE TO ENTER AND USE PROPERTY**

The County hereby grants a license to the Contractor to enter the property for the sole purpose of performing grass management activities consisting of grazing bovine animals or mechanical means of grass management.

**2. SCOPE OF SERVICES**

The Contractor shall provide the following services:

- A. Grass management consisting of the reduction of growth and length of grass on up to ninety five (95) acres of land adjacent to the Quill Plant and managing the grass such that it does not exceed 2 ½ feet in height at any time during the term of this Agreement.
- B. Grass management services through mechanical means and/or by the use of grazing bovine animals to consume the grass without interfering with the operations of the Quill Plant or the County’s irrigation system on the property.

- C. If the Contractor provides the grass management through mechanical means, these services will be provided at no cost to the County, including bailing and removal of the grass from the site. Contractor shall be responsible for all costs associated with the services. Such costs include, without limitation, fuel, lubricants, additional equipment, equipment maintenance and repair, labor, incidental fees and insurance.
- D. If the Contractor provides the grass management through the use of grazing bovine animals, these services will be provided at no cost to the County. The Contractor shall be responsible for all feed, water, care and containment within the fence, of Contractor's animals.
- E. Contractor shall be responsible for containing Contractor's animals and maintaining all existing border fencing so to prevent the animals from straying beyond the fence, or onto any part of the NM State Penitentiary.
- F. Contractor shall be fully responsible for the safety and security of its animals grazing on the property and/or for all machinery and equipment used or stored on the property. The County does not warrant any care or security for the Contractor's animals, machinery or equipment.
- G. The County assumes no liability for the health and actions of the Contractor's bovine animals or of the condition of any machinery and equipment or for the operator(s) of the machinery or equipment. The responsibility and liabilities are exclusively that of the Contractor.
- H. The Contractor shall be responsible for all necessary insurance and shall name Santa Fe County as an additional insured on the Contractor's insurance.

### **3. ADDITIONAL SERVICES**

A. The parties agree that all tasks set forth in Section 2 (Scope of Services), of this Agreement shall be completed in full, to the satisfaction of the County, in accordance with professional standards, and for no other cost, amount, fee or expense.

B. The County may from time to time request changes in the scope of services to be performed hereunder. Such changes shall be mutually agreed upon by and between the County and the Contractor and shall be incorporated in written amendments to this Agreement.

### **4. NO-CASH EXCHANGE OF VALUE AND SERVICES**

A. This Agreement between the County and Contractor is a "no-cash exchange" agreement wherein the Contractor performs valuable grass management services that facilitate and benefit the County's use and operation of the Quill Plant. The Contractor is granted a license to access and use the property to perform the services and derives the benefit of providing feed to Contractor's animals.

**5. EFFECTIVE DATE AND TERM**

This Agreement shall become effective on the date of signature by the parties. The Contractor's services as provided in this Agreement No. 2014-0248-PW/PL shall commence on July 1, 2014 and terminate on December 31, 2017, unless earlier terminated pursuant to Section 6 (Termination) or Section 7 (Appropriations and Authorizations).

**6. 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.

**7. 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 that affect this Agreement 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.

**8. 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 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.

**9. 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.

**10. 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.

**11. PERSONNEL AND SANTA FE COUNTY ORDINANCE 2014-1 (Establishing a Living Wage).**

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 or 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.

C. Living Wage. Contractor agrees to abide by Santa Fe County Ordinance 2014-1 establishing a Living Wage within Santa Fe County. Contractor acknowledges and agrees that failure to comply with this Section of the Agreement shall constitute a material breach of the Agreement.

**12. RELEASE**

Upon the termination of this Agreement, 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 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 the prior written approval of the County.

**14. 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.

**15. 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 2 (Scope of Services), of this Agreement unless such changes are set forth in a duly executed written amendment to this Agreement.

**16. 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.

**17. 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.

**18. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE**

A. The Contractor agrees to abide by all federal, state, and local laws, ordinances, and rules and regulations pertaining to equal employment 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. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW**

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

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

**20. 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.

**21. INDEMNIFICATION**

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 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.

**22. 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.

**23. NOTICES**

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the County:                    Santa Fe County  
   Office of the County Attorney  
   102 Grant Avenue  
   Santa Fe, New Mexico 87501

AND

Santa Fe County Utilities  
Attn: Robert George  
Public Works Facility  
P.O. Box 276  
Santa Fe, New Mexico 87504

To the Contractor:            Anthony P. Gonzales  
   9626 Thomas Lane NW  
   Albuquerque, New Mexico 87114

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

The Contractor hereby represents and warrants that:

A. 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.

**25. FACSIMILE SIGNATURES**

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

**26. NO THIRD-PARTY BENEFICIARIES**

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

**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 \$1,000,000.00 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. PERMITS, FEES, AND LICENSES**

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.

**29. NEW MEXICO TORT CLAIMS ACT**

No provision of this Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by County or its "public employees" at common law or under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

**30. 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.

**31. SURVIVAL**

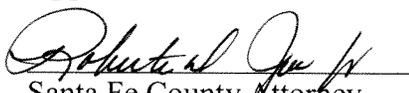
The provisions of following paragraphs shall survive termination of this Contract; INDEMNIFICATION; RECORDS AND INSPECTION; RELEASE, CONFIDENTIALITY; COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW; NO THIRD-PARTY BENEFICIARIES; SURVIVAL.

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

**SANTA FE COUNTY:**

      5.15.14  
Katherine Miller      Date  
Santa Fe County Manager

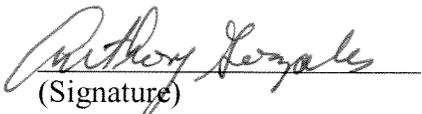
**Approved as to Form**

      5/2/14  
Santa Fe County Attorney      Date

**Finance Department Approval**

      5/13/14  
Teresa C. Martinez      Date  
Santa Fe County Finance Director

**CONTRACTOR:**

      5/19/14  
(Signature)      Date

ANTHONY GONZALES  
(Print Name)

CONTRACTOR  
(Print Title)

Federal Identification Number: 585-64-5163

