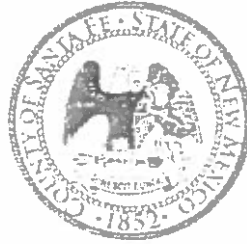


Henry P. Roybal
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

DATE: *July 12, 2016*

TO: *Board of County Commissioners*

FROM: *Bill Taylor, Procurement Manager, CPO*

VIA: *Katherine Miller, County Manager*
Jeffery Trujillo, ASD Director
Joseph R. Montoya, Housing Director

ITEM AND ISSUE: BCC Meeting July 12, 2016

REQUEST RATIFICATION OF THE COUNTY MANAGER'S SIGNATURE APPROVAL OF AMENDMENT NO. 2 TO AGREEMENT NO. 2014-0276-HO/PL WITH BOYS & GIRLS CLUB OF SANTA FE/DEL NORTE TO PROVIDE AFTER SCHOOL AND SUMMER PROGRAM SERVICES FOR A TOTAL CONTRACT AMOUNT NOT TO EXCEED \$298,666.65 EFFECTIVE MAY 31, 2016 TO JULY 31, 2016. (Bill Taylor, Purchasing Division)

SUMMARY:

The Purchasing Division and the Housing Department are requesting BCC approval and ratification of Amendment No. 2 to Agreement No. 2014-0276-HO/PL with Boys & Girls Club Santa Fe/Del Norte for After School and Summer Program Services.

In June 2014, Santa Fe County entered into Agreement No. 2014-0276-HO/PL with the Boys & Girls Club of Santa Fe/Del Norte to provide After School and Summer Program Services. The Agreement was procured through Request for Proposal.

BACKGROUND:

In May 2016, Santa Fe County amended the Agreement for a two month term and increased compensation by \$38,666.66 to continue services thru July 31, 2016 the County Manager signed the Amendment to avoid a lapse in service.

ACTION REQUESTED:

The Purchasing Division and the Housing Department are requesting BCC approval and ratification of Amendment No. 2 to Agreement No. 2014-0276-HO/PL with Boys & Girls Club/Santa Fe Del Norte in the amount of \$298,666.65 inclusive of NM GRT for the After School and Summer Program.

**AMENDMENT NO. 2
TO PROFESSIONAL SERVICES AGREEMENT
WITH BOYS & GIRLS CLUBS OF SANTA FE/DEL NORTE**

THIS AMENDMENT is made and entered into this 22nd day of June, 2016 by and between Santa Fe County (hereinafter "County"), a political subdivision of the State of New Mexico, and Boys & Girls Clubs of Santa Fe/Del Norte, a non-profit registered to do business in new Mexico, whose business address is 730 Alto Street, Santa Fe, NM 87501, hereinafter referred to as the "Contractor."

WHEREAS, by Agreement No. 2014-0276-HO/PL (Agreement) dated June 3, 2014, the County and the Contractor entered into an agreement whereby Contractor will provide after-school and summer program services for the Santa Fe County Housing Department; and

WHEREAS, by Amendment No. 1 the Agreement was due to expire May 31, 2016, however the County wishes to have the Contractor continue to provide services for the summer of 2016 and the Contractor is willing to render such services; and

WHEREAS, according to Section 15 (No Oral Modification; Written Amendments Required), of the Agreement amendments and modifications to the Agreement must be in writing and signed by the parties. According to Section 3 (Effective Date and Term) of the Agreement the County has the option to renew the Agreement for a term not to exceed four years; and

WHEREAS, the parties wish to amend Agreement No. 2014-0276-HO/PL to extend the term through July 31, 2016 and increase compensation by \$38,666.66 for a not-to-exceed contract sum of \$298,666.65, inclusive of New Mexico gross receipts tax.

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

1. Section 2. A. (Compensation, Invoicing, and Set-Off), new subparts 5) and 6) are inserted to read:

5) By Amendment No. 2 to this Agreement, for purposes of compensation to the Contractor for services provided in June and July, 2016, the County shall pay to the Contractor nineteen thousand three hundred thirty three dollars and thirty three cents (\$19,333.33) each month.

6) By Amendment No. 2 to this Agreement, the total amount payable to the Contractor under this Agreement, shall not exceed two hundred ninety eight thousand six hundred sixty six dollars and sixty five cents (\$298,666.65), inclusive of NM gross receipts tax.

2. Section 3 (Effective Date and Term) is amended by inserting a subparagraph b to read as follows:

b. By Amendment No. 2 to this Agreement, the term of this Agreement is extended from May 31, 2016 to July 31, 2016.

3. All other provisions of Agreement No. 2014-0276-HO/PL not specifically amended or modified by Amendment No. 1 and this Amendment No. 2 shall remain in full force and effect.

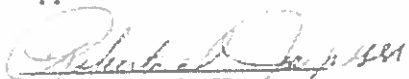
IN WITNESS WHEREOF, the parties have duly executed this Amendment No. 2 as of the date first written above.

SANTA FE COUNTY


Katherine Miller
Santa Fe County Manager

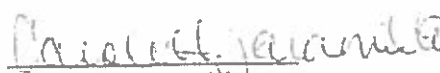
Date 6-22-16

Approved as to form


Gregory S. Shaffer
Santa Fe County Attorney


Date 6-22-16

Finance Department


Carole H. Jaramila
Finance Director

Date 6/21/16

CONTRACTOR


Signature and title *Professional*
Roman Abeyta *officer*

Date 6-20-16

**AMENDMENT NO. 1
TO PROFESSIONAL SERVICES AGREEMENT
WITH BOYS & GIRLS CLUBS OF SANTA FE/DEL NORTE TO
PROVIDE AFTER-SCHOOL AND SUMMER PROGRAM SERVICES**

THIS AMENDMENT is made and entered into this 3rd day of June, 2015 by and between **Santa Fe County** (hereinafter "County"), a political subdivision of the State of New Mexico, and **Boys & Girls Clubs of Santa Fe/Del Norte**, a non-profit registered to do business in new Mexico, whose business address is 730 Alto Street, Santa Fe, NM 87501, hereinafter referred to as the "Contractor."

WHEREAS, by Agreement No. 2014-0276-HO/PL dated June 3, 2014, the County and the Contractor entered into an agreement whereby Contractor will provide after-school and summer program services for the Santa Fe County Housing Department;

WHEREAS, the Agreement is due to expire June 3, 2015 and the County wishes to have the Contractor continue to provide services for the summer of 2015 and the Contractor is willing to render such services;

WHEREAS, according to Section 15 (No Oral Modification: Written Amendments Required), all amendments and modifications to the Agreement are required to be in writing and signed by the parties;

WHEREAS, the parties wish to amend Agreement No. 2014-0276-HO/PL to extend the term through June 30, 2016 and increase compensation by \$129,999.99 for a not-to-exceed contract sum of \$259,999.99, inclusive of New Mexico gross receipts tax.

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

1. Section 2. (Compensation, Invoicing, and Set-Off), subpart A.1) is deleted in its entirety and replace with the following:

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

1) For services provided in June, July and August, 2014, the County shall pay to the Contractor nineteen thousand three hundred thirty three dollars and thirty three cents (\$19,333.33) each month. For September through May 31, 2015, the County shall pay to the Contractor eight thousand dollars (\$8,000.00) each month.

2) The total amount payable to the Contractor under the term of this Agreement shall not exceed one hundred thirty thousand dollars (\$130,000.00), inclusive of NM gross receipts tax.

3) By Amendment No. 1 to this Agreement, for services provided in June, July and August, 2015, the County shall pay to the Contractor nineteen thousand three hundred thirty three dollars and thirty three cents (\$19,333.33). For September through May 31, 2016, the County shall pay to the Contractor eight thousand dollars (\$8,000.00) each month.

4) By Amendment No. 1 to this Agreement, the total amount payable to the Contractor under this Agreement, shall not exceed one hundred eighty seven thousand nine hundred ninety nine dollars (\$259,999.99), inclusive of NM gross receipts tax.

2. Renumber A.2) as A.5).

3. Section 3 (Effective Date and Term) is amended by inserting a subparagraph "a" to read as follows:

a. By Amendment No. 1 to this Agreement, the term of this Agreement is extended from June 3, 2015 to May 31, 2016.

3. All other provisions of Agreement No. 2014-0276-HO/PL not specifically amended or modified by this Amendment No. 1 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have duly executed this Amendment No. 1 as of the date first written above.

SANTA FE COUNTY

Katherine Miller
Katherine Miller
Santa Fe County Manager

Date 6-3-15

Approved as to form

Gregory S. Shaffer
Santa Fe County Attorney


Date _____

Finance Department

Carole H. Jarraillio
Carole H. Jarraillio
Finance Director

Date 6/2/15

CONTRACTOR


Signature and title of
Chief of Professional
Officer

Date 6/3/15



**PROFESSIONAL SERVICE AGREEMENT
WITH BOYS & GIRLS CLUBS OF SANTA FE/DEL NORTE
TO PROVIDE AFTER-SCHOOL AND SUMMER PROGRAM SERVICES**

THIS AGREEMENT is made and entered into on this 3rd day of June 2014, by and between **SANTA FE COUNTY** (hereinafter referred to as the "County"), a New Mexico political subdivision, and **BOYS & GIRLS CLUBS OF SANTAFE/DEL NORTE**, a non-profit organization with a principal address located at 730 Alto Street, Santa Fe, N.M. 87501, (hereinafter referred to as the "Contractor").

WHEREAS, in accordance with NMSA 1978 Sections 13-1-112- and 113-1-117, competitive, sealed proposals were solicited via a formal request for proposal RFP# 2014-0276-HO/PL for the development, implementation and operation of after-school and summer youth programs located at three housing sites within the County;

WHEREAS, based upon the evaluation criteria established within the RFP for the purposes of determining the most qualified Offeror, Santa Fe County has determined the Contractor as the most responsive and highest rated Offeror;

WHEREAS, the County requires the 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 THE WORK

The contractor shall:

- A. Operate three (3) on-site after-school and summer programs for youth between the ages of six to seventeen years old at the following public housing neighborhood centers located in Santa Fe County:
 - 1) Valle Vista Housing Neighborhood, 8 Las Lomas, Santa Fe, N.M. 87508
 - 2) Jacob D. Martinez Housing Neighborhood, 70 Camino de Jacobo, Santa Fe, N.M. 87507
 - 3) Santa Cruz Housing Neighborhood, 155B Camino de Quintana, Santa Cruz, N.M. 87532
- B. Include, at each site, at a minimum, educational support activities, drop-out prevention activities, various sports activities and drug and alcohol prevention activities appropriate for all age groups.
- C. Operate at each site no less than one thousand four hundred and thirty (1,430) hours per year. One hour of program operation shall be defined as the specific

hours of operation that the center is open and able to accept youth participants and shall include the following hours of operation:

- 1) During the school year -2:00 p.m. to 6:00 p.m., Monday through Friday
 - 2) During the summer months- 7:30 a.m. to 6:00 p.m., Monday through Friday
 - 3) During Christmas break, spring break, school in-service days, and holidays-7:30 a.m. to 6:00 p.m. (with the exception of Christmas Eve, Christmas Day and Thanksgiving and the day after Thanksgiving when the centers shall be closed)
- D. Provide adequate staff supervision and adequate facilities to accommodate all activities. At a minimum, the Contractor shall provide one (1) program director and two (2) program supervisors at each neighborhood site. These positions may be full or part-time.
- E. Limit the number of youth participation at each neighborhood site for the after-school program to a maximum of forty-five (45) participants for a total of one hundred thirty-five (135) participants. Limit the number of youth participation at each site for the summer program to a maximum of seventy-five (75) participants for a total of two hundred twenty-five (225) participants. The Executive Director or the Deputy Housing Director must approve any additional participants, in advance, in writing.
- F. Provide a summer youth program to serve an additional two hundred (200) youth between the ages of 13 and 18 years in Santa Fe County. The program shall be carried out at various times and locations throughout the County. The program shall include planning, organizing, and conducting special events for teens in coordination with County staff. Contractor shall provide events and activities that are recreational in nature and shall be at no cost to the participants. Activities may include indoor and outdoor teen dances, basketball league, golf, bowling, volleyball tournaments, tennis instruction and/or competitions, gymnastics, custom car and bike shows and youth concerts.
- G. Provide a written program implementation plan for review and approval by the County with input from the County to include monthly calendar listing of all scheduled activities.
- H. Record daily participation of the activities offered by the program.
- I. Provide to the County, on a monthly basis, a written record of activity participation by the public housing residents, Santa Fe County residents, and City of Santa Fe residents. Within forty-five (45) days of contract award, the Contractor shall provide to the County, a written report detailing methods and goals for obtaining a higher percentage rate of public housing resident

participation in activities offered by the program and implementation of these methods.

- J. Establish a program waiting list with the following resident priorities:
 - 1) County public housing residents
 - 2) County residents
 - 3) City of Santa Fe residents
- K. Meet with County representatives and neighborhood Resident Councils once a month, at a location specified by the County, to discuss program progress and resident objectives and goals. During the meetings, the County and Resident Council shall provide feedback on Contractor's performance and make reasonable recommendations for improvement, if necessary. Contractor shall make every reasonable effort to implement any recommendations in the best interest of the program. During monthly meetings, written reports shall be provided by the Contractor to the County and shall address all facets of the program and provide projections for the following month. Contractor shall be available for regular on-site visits by County staff.
- L. Be responsible for the cleaning and providing custodial services in and around the neighborhood centers while using the premises. The facility and surrounding areas shall be maintained in a manner that is found to be acceptable to the County. Contractor shall be responsible for all repairs and/or replacement of equipment that is not due to reasonable wear and tear within the neighborhood centers.
- M. Be responsible for all utility costs including gas, water, electric and waste disposal associated with the three neighborhood centers utilized for the services.
- N. Provide background checks for all management personnel and staff members to include:
 - 1) Employment
 - 2) Driving record
 - 3) Criminal background

2. COMPENSATION, INVOICING, AND SET-OFF

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

- 1) In no event shall the total compensation paid to the Contractor by the County under this Agreement exceed one hundred thousand thirty dollars (\$130,000.00) inclusive of gross receipts tax, at the conclusion of each year of service. This amount shall be paid in the following monthly amounts:

July-August - \$19,333.33 per month
Sept-May - \$8,000 per month

- 2) This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. The County will notify the contractor when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.

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 payment.

3. EFFECTIVE DATE AND TERM

This Agreement shall become effective on the date first written above and shall terminate one (1) years later, unless earlier terminated pursuant to Section 5 (Termination) or Section 6 (Appropriations and Authorizations). The County has the option to renew on the same terms and conditions for three (3) years in one (1) year increments. In no event shall this Agreement exceed a term of four (4) years.

4. ADDITIONAL SERVICES

A. The parties agree that all tasks set forth in Paragraph 1, SCOPE OF WORK of this Agreement, shall be completed in full, to the satisfaction of the County, for the amount set

forth in Section 2, COMPENSATION, INVOICING, AND SET-OFF, of this Agreement, and for no other cost, amount, fee, or expense.

B. The County may from time-to-time request changes in the Scope of Work to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the County and the Contractor, shall be incorporated in written amendments to this Agreement.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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 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.

11. 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.

12. 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.

13. PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT

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.

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 1, "SCOPE OF WORK", 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. Contractor shall comply with the requirements of Santa Fe County Ordinance 2014-1 (Establishing a Living Wage).

C. 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

To the Contractor: Boys & Girls Clubs of Santa Fe/Del Norte
730 Alto Street
Santa Fe, New Mexico 87501

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.

B. It is a non-profit organization duly organized and in good standing under the laws of the State of New Mexico.

C. Contractor is legally registered and is properly licensed by the State of New Mexico to do the work anticipated by this Agreement and shall maintain such registration and licensure in good standing throughout the duration of the Agreement.

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, PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT; COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW; NO THIRD-PARTY BENEFICIARIES; SURVIVAL.

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

SANTA FE COUNTY:


Katherine Miller
Santa Fe County Manager

5.27.14
Date

Approved as to Form


Gregory Shaffer
Santa Fe County Attorney

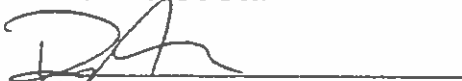
6/24/14
Date

Finance Department Approval

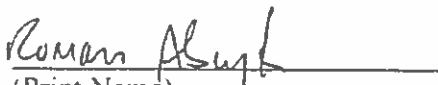

Teresa C. Martinez
Santa Fe County Finance Director.

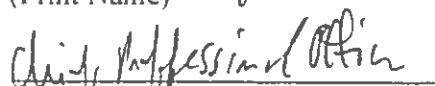
5/22/14
Date

CONTRACTOR:


(Signature)

6/3/14
Date


(Print Name)


(Print Title)

FEDERAL ID NUMBER: 850102948

Henry P. Roybal
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

DATE: July 12, 2016

TO: Board of County Commissioners

FROM: Bill Taylor, Procurement Manager, CPO

VIA: Katherine Miller, County Manager
Jeffery Trujillo, ASD Director
Joseph R. Montoya, Housing Director

ITEM AND ISSUE: BCC Meeting July 12, 2016

REQUEST APPROVAL OF AMENDMENT NO. 3 TO AGREEMENT NO. 2014-0276-HO/PL WITH THE BOYS & GIRLS CLUB OF SANTA FE/DEL NORTE TO PROVIDE AFTER SCHOOL AND SUMMER PROGRAM SERVICES FROM AUGUST 1, 2016 TO MAY 31, 2017, FOR A TOTAL CONTRACT AMOUNT NOT TO EXCEED \$389,999.98 INCLUSIVE ON NM GRT AND AUTHORIZING THE COUNTY MANAGER TO SIGN AND EXECUTE THE PURCHASE ORDER. (Bill Taylor, Purchasing Division)

SUMMARY:

The Purchasing Division and the Housing Department are requesting BCC approval of Amendment No. 3 and County Manager signature approval on the Boys & Girls Club/Santa Fe Del Norte, purchase order in the amount of \$130,000 inclusive of NM GRT for the After School and Summer Program Services Amendment No. 3 to Agreement No. 2014-0276-HO/PL.

In June 2014, Santa Fe County entered into Agreement No. 2014-0276-HO/PL with the Boys & Girls Club of Santa Fe/Del Norte to provide After School and Summer Program Services. The Agreement was procured through Request for Proposal.

BACKGROUND:

In May 2016, Santa Fe County amended the Agreement for a two month term and increased compensation by \$38,666.66 to continue services thru July 31, 2016. The Housing Department is requesting a 10 month extension and an increase to compensation for \$91,333.33 for a not to exceed amount contract sum of \$389,999.98, inclusive of NM GRT.

ACTION REQUESTED:

The Purchasing Division and the Housing Department are requesting BCC approval of Amendment No. 3 to Agreement No. 2014-0276-HO/PL with Boys & Girls Club/Santa Fe Del Norte in the amount of \$389,999.98 inclusive of NM GRT for the After School and Summer Program and request signature authority to be granted for the County Manager to execute the purchase order.

**AMENDMENT NO. 3
TO PROFESSIONAL SERVICES AGREEMENT
WITH BOYS & GIRLS CLUBS OF SANTA FE/DEL NORTE**

THIS AMENDMENT is made and entered into this _____ day of _____, 2016 by and between Santa Fe County (hereinafter "County"), a political subdivision of the State of New Mexico, and Boys & Girls Clubs of Santa Fe/Del Norte, a non-profit registered to do business in new Mexico, whose business address is 730 Alto Street, Santa Fe, NM 87501, hereinafter referred to as the "Contractor."

WHEREAS, by Agreement No. 2014-0276-HO/PL (Agreement) dated June 3, 2014, the County and the Contractor entered into an agreement whereby Contractor will provide after-school and summer program services for the Santa Fe County Housing Department; and

WHEREAS, by Amendment No. 2 the term of the Agreement was extended to July 31, 2016 and the compensation payable to the Contractor was increased by \$38,666.66; and

WHEREAS, the County wishes to have the Contractor continue to provide services for the remaining summer months of 2016 and the summer of 2017, and the Contractor is willing to render such services; and

WHEREAS, according to Section 15 (No Oral Modification; Written Amendments Required), of the Agreement amendments and modifications to the Agreement must be in writing and signed by the parties. According to Section 3 (Effective Date and Term) of the Agreement the County has the option to renew the Agreement in one-year increments for a term not to exceed four years in total; and

WHEREAS, the parties wish to amend Agreement No. 2014-0276-HO/PL to extend the term from August 1, 2016 to May 31, 2017 and increase compensation by \$91,333.33 for a not-to-exceed contract sum of \$390,000.00, inclusive of New Mexico gross receipts tax, and amend the Contractor's duties under this Agreement.

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

1. Section 1 (Scope of the Work), subparagraph M is deleted in its entirety and amended as follows; and a new subparagraph "O" is inserted to read as follows:

M. Have all utilities (gas, water, electric and waste disposal) associated with Contractor's three neighborhood centers put into the name of the Boys and Girls Clubs of Santa Fe and assume payment of all utility and waste disposal expenses associated with Contractor's three neighborhood centers.

O. Be responsible for maintenance at Contractor's three neighborhood centers, and be responsible for completion of any needed capital improvements that

are approved by the County. Any capital improvements will be completed in accordance with any requirements of the funding source.

2. Section 2.A (Compensation, Invoicing, and Set-Off), new subparts 7) and 8) are inserted to read:

7) By Amendment No. 3 to this Agreement for services provided in August, 2016 the County shall pay to the Contractor \$19,333.00. For services provided in September, October, November, December, 2016, and January, February, March, April, May, 2017, the County shall pay to the Contractor eight thousand dollars and no cents (\$8,000.00) each month.

8) By Amendment No. 3 to this Agreement, the total amount payable to the Contractor under this Agreement, shall not exceed three hundred ninety thousand dollars and no cents (\$390,000.00) inclusive of NM gross receipts tax.

3. Section 3 (Effective Date and Term) is amended by inserting a subparagraph b to read as follows:

b. By Amendment No. 3 to this Agreement, the term of this Agreement is extended from August 1, 2016 to May 31, 2017.

4. All other provisions of Agreement No. 2014-0276-HO/PL not specifically amended or modified by Amendment Nos. 1, 2 and this Amendment No. 3 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have duly executed this Amendment No. 3 as of the date first written above.

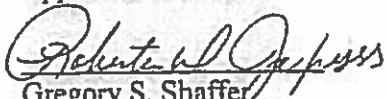
SANTA FE COUNTY

Miguel M. Chavez, Chair
Santa Fe County Board of County Commissioners

ATTESTATION:

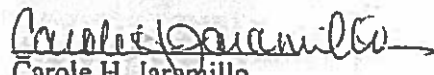
Geraldine Salazar
Santa Fe County Clerk

Approved as to form:


Gregory S. Shaffer
Santa Fe County Attorney

Date 6-29-16

Finance Department



Carole H. Jaramillo
Finance Director

Date 10/29/16

CONTRACTOR

(Signature and title)

Date _____

**AMENDMENT NO. 2
TO PROFESSIONAL SERVICES AGREEMENT
WITH BOYS & GIRLS CLUBS OF SANTA FE/DEL NORTE**

THIS AMENDMENT is made and entered into this 22nd day of June, 2016 by and between Santa Fe County (hereinafter "County"), a political subdivision of the State of New Mexico, and Boys & Girls Clubs of Santa Fe/Del Norte, a non-profit registered to do business in new Mexico, whose business address is 730 Alto Street, Santa Fe, NM 87501, hereinafter referred to as the "Contractor."

WHEREAS, by Agreement No. 2014-0276-HO/PL (Agreement) dated June 3, 2014, the County and the Contractor entered into an agreement whereby Contractor will provide after-school and summer program services for the Santa Fe County Housing Department; and

WHEREAS, by Amendment No. 1 the Agreement was due to expire May 31, 2016, however the County wishes to have the Contractor continue to provide services for the summer of 2016 and the Contractor is willing to render such services; and

WHEREAS, according to Section 15 (No Oral Modification; Written Amendments Required), of the Agreement amendments and modifications to the Agreement must be in writing and signed by the parties. According to Section 3 (Effective Date and Term) of the Agreement the County has the option to renew the Agreement for a term not to exceed four years; and

WHEREAS, the parties wish to amend Agreement No. 2014-0276-HO/PL to extend the term through July 31, 2016 and increase compensation by \$38,666.66 for a not-to-exceed contract sum of \$298,666.65, inclusive of New Mexico gross receipts tax.

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

1. Section 2. A. (Compensation, Invoicing, and Set-Off), new subparts 5) and 6) are inserted to read:

5) By Amendment No. 2 to this Agreement, for purposes of compensation to the Contractor for services provided in June and July, 2016, the County shall pay to the Contractor nineteen thousand three hundred thirty three dollars and thirty three cents (\$19,333.33) each month.

6) By Amendment No. 2 to this Agreement, the total amount payable to the Contractor under this Agreement, shall not exceed two hundred ninety eight thousand six hundred sixty six dollars and sixty five cents (\$298,666.65), inclusive of NM gross receipts tax.

2. Section 3 (Effective Date and Term) is amended by inserting a subparagraph b to read as follows:

b. By Amendment No. 2 to this Agreement, the term of this Agreement is extended from May 31, 2016 to July 31, 2016.

3. All other provisions of Agreement No. 2014-0276-HO/PL not specifically amended or modified by Amendment No. 1 and this Amendment No. 2 shall remain in full force and effect.


IN WITNESS WHEREOF, the parties have duly executed this Amendment No. 2 as of the date first written above.

SANTA FE COUNTY


CMT Katherine Miller
Santa Fe County Manager

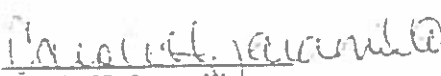
Date 6-22-16

Approved as to form


Gregory S. Shaffer
Santa Fe County Attorney

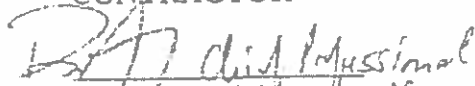
Date 6-22-16

Finance Department


Carole H. Jaramillo
Finance Director

Date 6/21/16

CONTRACTOR


Signature and title
Roman Abeyte
Officer

Date 6-20-16

**AMENDMENT NO. 1
TO PROFESSIONAL SERVICES AGREEMENT
WITH BOYS & GIRLS CLUBS OF SANTA FE/DEL NORTE TO
PROVIDE AFTER-SCHOOL AND SUMMER PROGRAM SERVICES**

THIS AMENDMENT is made and entered into this 3rd day of June, 2015 by and between **Santa Fe County** (hereinafter "County"), a political subdivision of the State of New Mexico, and **Boys & Girls Clubs of Santa Fe/Del Norte**, a non-profit registered to do business in new Mexico, whose business address is 730 Alto Street, Santa Fe, NM 87501, hereinafter referred to as the "Contractor."

WHEREAS, by Agreement No. 2014-0276-HO/PL dated June 3, 2014, the County and the Contractor entered into an agreement whereby Contractor will provide after-school and summer program services for the Santa Fe County Housing Department;

WHEREAS, the Agreement is due to expire June 3, 2015 and the County wishes to have the Contractor continue to provide services for the summer of 2015 and the Contractor is willing to render such services;

WHEREAS, according to Section 15 (No Oral Modification; Written Amendments Required), all amendments and modifications to the Agreement are required to be in writing and signed by the parties;

WHEREAS, the parties wish to amend Agreement No. 2014-0276-HO/PL to extend the term through June 30, 2016 and increase compensation by \$129,999.99 for a not-to-exceed contract sum of \$259,999.99, inclusive of New Mexico gross receipts tax.

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

1. Section 2. (Compensation, Invoicing, and Set-Off), subpart A.1) is deleted in its entirety and replaced with the following:

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

1) For services provided in June, July and August, 2014, the County shall pay to the Contractor nineteen thousand three hundred thirty three dollars and thirty three cents (\$19,333.33) each month. For September through May 31, 2015, the County shall pay to the Contractor eight thousand dollars (\$8,000.00) each month.

2) The total amount payable to the Contractor under the term of this Agreement shall not exceed one hundred thirty thousand dollars (\$130,000.00), inclusive of NM gross receipts tax.

3) By Amendment No. 1 to this Agreement, for services provided in June, July and August, 2015, the County shall pay to the Contractor nineteen thousand three hundred thirty three dollars and thirty three cents (\$19,333.33). For September through May 31, 2016, the County shall pay to the Contractor eight thousand dollars (\$8,000.00) each month.

4) By Amendment No. 1 to this Agreement, the total amount payable to the Contractor under this Agreement, shall not exceed one hundred eighty seven thousand nine hundred ninety nine dollars (\$259,999.99), inclusive of NM gross receipts tax.

2. Renumber A.2) as A.5).

3. Section 3 (Effective Date and Term) is amended by inserting a subparagraph "a" to read as follows:

a. By Amendment No. 1 to this Agreement, the term of this Agreement is extended from June 3, 2015 to May 31, 2016.

3. All other provisions of Agreement No. 2014-0276-HO/PL not specifically amended or modified by this Amendment No. 1 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have duly executed this Amendment No. 1 as of the date first written above.

SANTA FE COUNTY


Katherine Miller
Santa Fe County Manager

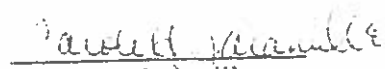
Date 6-3-15

Approved as to form

Gregory S. Shaffer
Santa Fe County Attorney


Date _____

Finance Department


Carole H. Jaramillo
Finance Director

Date 6/2/15

CONTRACTOR


Signature and title of
Chief of Police
Officer

Date 6/3/15



**PROFESSIONAL SERVICE AGREEMENT
WITH BOYS & GIRLS CLUBS OF SANTA FE/DEL NORTE
TO PROVIDE AFTER-SCHOOL AND SUMMER PROGRAM SERVICES**

THIS AGREEMENT is made and entered into on this 3rd day of June 2014, by and between **SANTA FE COUNTY** (hereinafter referred to as the "County"), a New Mexico political subdivision, and **BOYS & GIRLS CLUBS OF SANTAFE/DEL NORTE**, a non-profit organization with a principal address located at 730 Alto Street, Santa Fe, N.M. 87501, (hereinafter referred to as the "Contractor").

WHEREAS, in accordance with NMSA 1978 Sections 13-1-112- and 113-1-117, competitive, sealed proposals were solicited via a formal request for proposal RFP# 2014-0276-HO/PL for the development, implementation and operation of after-school and summer youth programs located at three housing sites within the County;

WHEREAS, based upon the evaluation criteria established within the RFP for the purposes of determining the most qualified Offeror, Santa Fe County has determined the Contractor as the most responsive and highest rated Offeror;

WHEREAS, the County requires the 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 THE WORK

The contractor shall:

- A. Operate three (3) on-site after-school and summer programs for youth between the ages of six to seventeen years old at the following public housing neighborhood centers located in Santa Fe County:
 - 1) Valle Vista Housing Neighborhood, 8 Las Lomas, Santa Fe, N.M. 87508
 - 2) Jacob D. Martinez Housing Neighborhood, 70 Camino de Jacobo, Santa Fe, N.M. 87507
 - 3) Santa Cruz Housing Neighborhood, 155B Camino de Quintana, Santa Cruz, N.M. 87532
- B. Include, at each site, at a minimum, educational support activities, drop-out prevention activities, various sports activities and drug and alcohol prevention activities appropriate for all age groups.
- C. Operate at each site no less than one thousand four hundred and thirty (1,430) hours per year. One hour of program operation shall be defined as the specific

hours of operation that the center is open and able to accept youth participants and shall include the following hours of operation:

- 1) During the school year -2:00 p.m. to 6:00 p.m., Monday through Friday
 - 2) During the summer months- 7:30 a.m. to 6:00 p.m., Monday through Friday
 - 3) During Christmas break, spring break, school in-service days, and holidays-7:30 a.m. to 6:00 p.m. (with the exception of Christmas Eve, Christmas Day and Thanksgiving and the day after Thanksgiving when the centers shall be closed)
- D. Provide adequate staff supervision and adequate facilities to accommodate all activities. At a minimum, the Contractor shall provide one (1) program director and two (2) program supervisors at each neighborhood site. These positions may be full or part-time.
- E. Limit the number of youth participation at each neighborhood site for the after-school program to a maximum of forty-five (45) participants for a total of one hundred thirty-five (135) participants. Limit the number of youth participation at each site for the summer program to a maximum of seventy-five (75) participants for a total of two hundred twenty-five (225) participants. The Executive Director or the Deputy Housing Director must approve any additional participants, in advance, in writing.
- F. Provide a summer youth program to serve an additional two hundred (200) youth between the ages of 13 and 18 years in Santa Fe County. The program shall be carried out at various times and locations throughout the County. The program shall include planning, organizing, and conducting special events for teens in coordination with County staff. Contractor shall provide events and activities that are recreational in nature and shall be at no cost to the participants. Activities may include indoor and outdoor teen dances, basketball league, golf, bowling, volleyball tournaments, tennis instruction and/or competitions, gymnastics, custom car and bike shows and youth concerts.
- G. Provide a written program implementation plan for review and approval by the County with input from the County to include monthly calendar listing of all scheduled activities.
- H. Record daily participation of the activities offered by the program.
- I. Provide to the County, on a monthly basis, a written record of activity participation by the public housing residents, Santa Fe County residents, and City of Santa Fe residents. Within forty-five (45) days of contract award, the Contractor shall provide to the County, a written report detailing methods and goals for obtaining a higher percentage rate of public housing resident

participation in activities offered by the program and implementation of these methods.

- J. Establish a program waiting list with the following resident priorities:
 - 1) County public housing residents
 - 2) County residents
 - 3) City of Santa Fe residents
- K. Meet with County representatives and neighborhood Resident Councils once a month, at a location specified by the County, to discuss program progress and resident objectives and goals. During the meetings, the County and Resident Council shall provide feedback on Contractor's performance and make reasonable recommendations for improvement, if necessary. Contractor shall make every reasonable effort to implement any recommendations in the best interest of the program. During monthly meetings, written reports shall be provided by the Contractor to the County and shall address all facets of the program and provide projections for the following month. Contractor shall be available for regular on-site visits by County staff.
- L. Be responsible for the cleaning and providing custodial services in and around the neighborhood centers while using the premises. The facility and surrounding areas shall be maintained in a manner that is found to be acceptable to the County. Contractor shall be responsible for all repairs and/or replacement of equipment that is not due to reasonable wear and tear within the neighborhood centers.
- M. Be responsible for all utility costs including gas, water, electric and waste disposal associated with the three neighborhood centers utilized for the services.
- N. Provide background checks for all management personnel and staff members to include:
 - 1) Employment
 - 2) Driving record
 - 3) Criminal background

2. COMPENSATION, INVOICING, AND SET-OFF

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

- 1) In no event shall the total compensation paid to the Contractor by the County under this Agreement exceed one hundred thousand thirty dollars (\$130,000.00) inclusive of gross receipts tax, at the conclusion of each year of service. This amount shall be paid in the following monthly amounts:

July-August - \$19,333.33 per month
Sept-May - \$8,000 per month

- 2) This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. The County will notify the contractor when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.

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 payment.

3. EFFECTIVE DATE AND TERM

This Agreement shall become effective on the date first written above and shall terminate one (1) years later, unless earlier terminated pursuant to Section 5 (Termination) or Section 6 (Appropriations and Authorizations). The County has the option to renew on the same terms and conditions for three (3) years in one (1) year increments. In no event shall this Agreement exceed a term of four (4) years.

4. ADDITIONAL SERVICES

A. The parties agree that all tasks set forth in Paragraph 1. SCOPE OF WORK of this Agreement, shall be completed in full, to the satisfaction of the County, for the amount set

forth in Section 2, COMPENSATION, INVOICING, AND SET-OFF, of this Agreement, and for no other cost, amount, fee, or expense.

B. The County may from time-to-time request changes in the Scope of Work to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the County and the Contractor, shall be incorporated in written amendments to this Agreement.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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 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.

11. 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.

12. 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.

13. PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT

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.

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 1, "SCOPE OF WORK", 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. Contractor shall comply with the requirements of Santa Fe County Ordinance 2014-1 (Establishing a Living Wage).

C. 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

To the Contractor: Boys & Girls Clubs of Santa Fe/Del Norte
730 Alto Street
Santa Fe, New Mexico 87501

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.

B. It is a non-profit organization duly organized and in good standing under the laws of the State of New Mexico.

C. Contractor is legally registered and is properly licensed by the State of New Mexico to do the work anticipated by this Agreement and shall maintain such registration and licensure in good standing throughout the duration of the Agreement.

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, PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT; COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW; NO THIRD-PARTY BENEFICIARIES; SURVIVAL.

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

SANTA FE COUNTY:


Katherine Miller
Santa Fe County Manager

5.27.14
Date

Approved as to Form


Gregory Shaffer
Santa Fe County Attorney

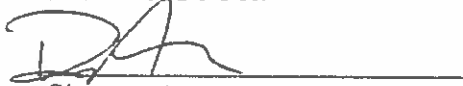
6/24/14
Date

Finance Department Approval

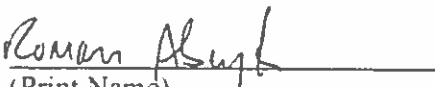

Teresa C. Martinez
Santa Fe County Finance Director.

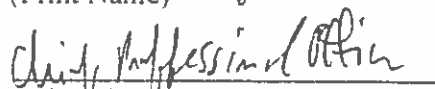
5/23/14
Date

CONTRACTOR:


(Signature)

6/3/14
Date


(Print Name)

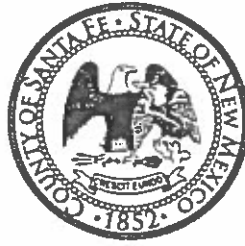

(Print Title)

FEDERAL ID NUMBER: 850102948

Henry P. Roybal
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathleen Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

Date: *June 29, 2016*

To: *Board of County Commissioners*

From: *Bill Taylor, Procurement Manager*

Via: *Katherine Miller, County Manager*
Jeffery Trujillo, ASD Director
Michael Kelley, Public Works Director

ITEM AND ISSUE: BCC Meeting July 12, 2016

APPROVAL OF FOUR PRICE AGREEMENTS FOR LEASE AND SHORT TERM RENTAL OF HEAVY EQUIPMENT AND GRANTING SIGNATURE AUTHORITY TO THE COUNTY MANAGER TO EXECUTE THE PURCHASE ORDERS. (Bill Taylor, Purchasing Division)

ISSUE:

The County Public Works Department, Roads Maintenance Division, requires the use of various makes and models of heavy road equipment to implement their road projects. Not all heavy equipment Dealers supply all makes and brands of vehicles; therefore, pursuant to 13-1-154, NMSA 1978, Multiple source award, it has been determined that it would be in the best interest of the County to issue multiple awards to insure that the correct equipment necessary to complete various projects is available.

BACKGROUND:

Invitation for Bid No. 2016-0199-PW/RM was issued on April 3, 2016, for lease and short term rental of heavy equipment. The following five bids were received by the May 4, 2016, 2:00 pm deadline:

- Easton Sales and Rental – Albuquerque, New Mexico
- 4 Rivers Equipment – Albuquerque, New Mexico
- United Rentals – Santa Fe, New Mexico
- Wagner Equipment – Albuquerque, New Mexico
- Hertz Equipment Rental Corp – Bonita Springs, Florida

After a review of the received bids, it was determined that four of the five bids were responsible and acceptable. Therefore the following bids are being recommended for award:

- **Easton Sales and Rental (Exhibit 1)**
- **4 Rivers Equipment (Exhibit 2)**
- **United Rentals – North America Inc. (Exhibit 3)**
- **Wagner Equipment Company (Exhibit 4)**

ACTION REQUESTED:

Approval of the Price Agreements 2016-0199A,B,C,D-PW/RM between Santa Fe County and Heavy Equipment Dealers (Exhibits 1,2,3, and 4) for the lease and short term rental of heavy equipment and granting signature authority to the County Manager to execute the purchase orders.

Henry P. Roybal
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

Date: March 4, 2016

To: Procurement File

From: Bill Taylor, Procurement Manager *BT*

Subject: *Determination for Multiple Award for IFB No. 2016-0199-PW/RM, Lease and Short Term Rental of Heavy Equipment*

Pursuant to 13-1-154, NMSA 1978. Multiple source award; determination required; the Santa Fe County Central Purchasing Office has determined that it is in the best interest to the County to utilize the multiple source award for the subject IFB for the following reasons:

The County Public Works Department, Roads Maintenance Division require the use of various makes and models of heavy road equipment. Not all heavy equipment Dealers inventory and supply all makes and brands of vehicles. In addition, with the multiple source award, other contracted Dealers can be used to supply the equipment needed in the event that other machinery is out of service. The need is typically based on not only cost but what Dealer can supply the County with the equipment in a timely manner.

Therefore, the Santa Fe County Purchasing Division has determined that it would be in the best interest of the County to consider the award of multiple contracts as result of the subject IFB, if it would achieve the intent of the project scope of work required.

It is also determined that the County anticipates awarding a minimum of three contracts, but no more than five.

SANTA FE COUNTY PRICE AGREEMENT
FOR HEAVY EQUIPMENT

THIS AGREEMENT is made and entered into by and between Santa Fe County, New Mexico, a New Mexico political subdivision, (hereinafter "**County**") and **Easton Sales and Rental, LLC**, 7900 B Reading Avenue, SE, Albuquerque, NM 87105, a company authorized to do business in the State of New Mexico (hereinafter "**Vendor**").

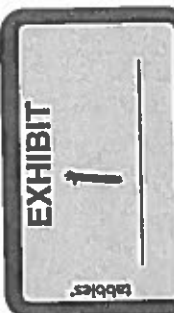
IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. DEFINITIONS

- A. "**County**" shall mean the County of Santa Fe, New Mexico.
- B. "**Using Department or Department**" shall mean a Department of Santa Fe County.
- C. "**Purchase Order**" shall mean a fully executed Purchase Document issued by the County Purchasing Department that specifies the items to be provided by the Vendor.
- D. "**Price Agreement**" means this indefinite quantity Price Agreement which requires the Vendor to furnish items to the Using Department which issues a Purchase Order.
- E. "**Rent**" means the payment by the Using Department to the Vendor of money for the rent of equipment covered by the accompanying schedule attached hereto and incorporated herein (Attachment A), purchase order or other document.

2. GOODS TO BE PROVIDED

- A. **Rental.** Attachment A of this Price Agreement is the list of the daily, weekly and monthly rental fees for rental of individual items of heavy equipment and a description of the equipment specifications included in the rental fee, for all items that are the subject of this Price Agreement.
- B. **Goods Listed on Attachment A.** The Using Department may issue Purchase Orders for the rent of the items listed in Attachment A. Any item ordered by a Using Department must be an item listed on Attachment A. All orders issued hereunder must bear both an order number and the number of this Price Agreement (No. 2016-0199A-PW/RM).
- C. **Quantities.** It is understood that this is an indefinite quantity Price Agreement and the County may rent any quantity of the items listed on Attachment A. No guarantee or warranty is made or implied that any order for any definite quantity will be issued under this Price Agreement. The Vendor is required to accept the Purchasing Order and furnish the item when ordered.
- D. **Specifications.** The items furnished hereunder shall meet or exceed the specifications provided in the Information for Bidders No. 2016-0199-PW/RM including all Addenda. Orders issued pursuant to this Agreement must show the applicable Price Agreement item(s), number(s) and price(s).
- E. **Delivery and Billing Instructions.**
 - 1. The Vendor shall deliver the items in accordance with the Using Department's instructions and delivery time of any item shall be not be longer than 30 business days from the date of the Using Department's request for the item(s). Time is of the essence for purposes of this Price Agreement. In the event the Vendor fails to deliver an item of heavy equipment within the time designated above, the Vendor agrees to pay liquidated damages to the County in the amount of \$100.00 per



- business day beginning on business day 31. The Vendor shall also deliver, with the items ordered, an invoice listing the order number, price agreement number, bill of lading, and the serial number or other vehicle identification number for each item of heavy equipment. Destination charges are to be included in the rental prices.
2. Except for loss or damage directly attributable to the negligence of the Using Department, the Vendor shall bear all risk of loss or damage until the item(s) have been accepted by the Department.
 3. Whenever the Department does not accept any item and returns it to the Vendor, all related documentation furnished by the Vendor shall be returned.
 4. The Vendor shall bear all risk of loss or damage with respect to returned products except for loss or damage directly attributable to the negligence of the Using Department.
 5. Unless otherwise agreed upon by the County, the Vendor shall be responsible for the pick-up of the returned item(s).
- F. Delivery Tickets.** The Purchase Order number, Vendor's name, Using Department's name and location, and this Price Agreement number shall be shown on each packing and delivery ticket, package, bill of lading and/or other correspondence in connection with shipments of heavy equipment.
- G. Rental fee.** Prices listed in Attachment A, for each item, shall be the fee for rental of the item of heavy equipment.
- 3. PAYMENT.** All payments under this Price Agreement are subject to the following provisions:
- A. Inspection.** Final inspection and acceptance of the item ordered shall be made at the destination. Item rejected at the destination for non-conformance with specifications shall be removed at the Vendor's risk and expense promptly after notice of non-acceptance or rejection.
 - B. Acceptance.** In accordance with NMSA 1978, Section 13-1-158, the Using Department shall determine if the item meets specifications and will accept the item if the item meets specifications. No payment shall be made for any item until the item has been accepted, in writing, by the Using Department. Unless otherwise agreed upon, between the Department and the Vendor within 30 days from the receipt of items, the Using Department shall issue a written certification of complete or partial acceptance or rejection of the item. The time period shall begin at the time of receipt of the final shipment when there are multiple shipments per Purchase Order, unless the Using department gives notice of rejection, within the specified time period, the item will be deemed to have been accepted.
 - C. Issuance of Orders.** Only written, signed and properly executed Purchase Orders are valid under this Price Agreement.
 - E. Rent and Late Charges.** In consideration of its rights under this Price Agreement, the Using Department shall pay the Vendor as follows:
 1. At the conclusion of each month of possession and use after certification of the equipment, the rental fee identified in Attachment A shall be remitted to Vendor.
 2. Vendor shall submit a written request for payment to the Using Department at the conclusion of each month of possession by the Using Department of the equipment following certification of that equipment.
 3. Within 30 days of the issuance of a written request for payment, the Using Department shall tender payment for the equipment rented by the Using Department.

4. In the event the Using Department fails to tender payment within 30 days of written request for payment, the Using Department shall pay late payment charges of one and one-half percent (1.5%) per month, until the amount due is paid in full.
5. Payment under this Price Agreement shall not foreclose the right of the Using Department to recover excessive or illegal payment.
- F. **Taxes.** Applicable gross receipts taxes or local option tax(es) shall be included on each invoice and shown as a separate item to be paid, the payment of taxes for any money received under this Price Agreement shall be the Vendor's sole responsibility and must be reported under the Vendor's federal and County tax identification number(s). If the Using Department is exempt from the New Mexico gross receipts tax or local option taxes for the transaction, the Using Department shall provide the Vendor with written evidence of such exemption(s).

4. TERM OF THIS AGREEMENT. This Price Agreement shall be effective on the last date of signature by the parties hereto. The term of this Price Agreement shall be four years, unless earlier terminated. There shall not be any automatic renewal of the term of this Price Agreement.

5. EXPIRATION OF A RENTAL PERIOD. Vendor shall be solely responsible for the cost of retrieving heavy equipment at the expiration of a rental period, unless termination results from the Using Department's breach in which case the Using Department shall be responsible for the cost of returning the equipment to Vendor.

6. CANCELLATION.

- A. The County reserves the right to cancel all or any part of any orders placed under this Price Agreement, without cost to the County, if the item fails to meet the requirements of this Price Agreement.
- B. The failure of the Vendor to perform shall create a default pursuant to this Price Agreement.
- C. The Vendor may be excused from performance under this Price Agreement if the Vendor's failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Vendor, unless the County shall determine that the item, to be furnished by a sub-vendor, is obtainable from other sources in sufficient time to permit the Vendor to meet the required delivery schedule and agreed upon pricing.
- D. Such causes of excuse include, but are not limited to, acts of God or the public enemy, acts of the County or Federal government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of sub-vendors due to any of the above.
- E. The County may cancel all, or any part, of any resulting order without cost to the County if the Vendor fails to meet material provisions of the order and the Vendor shall be liable for any excess costs, incurred by the County, associated with such a default.

7. TERMINATION.

- A. **For Convenience.** Consistent with applicable New Mexico law, this Price Agreement may be terminated by the County at any time, without penalty. Unless some unforeseen circumstance(s) arise, which Lessee shall document, Lessee will provide 20 days advance written notice to the Vendor before the proposed date of termination. Notice of Termination of the Price Agreement shall not affect any outstanding order(s).

- B. For Cause.** Either party may terminate this Agreement for cause based upon material breach of this Agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If, within 30 days, after receipt of a written notice, the breaching party has not corrected the breach or, in the case of a breach which cannot be corrected in 30 days, begin and proceed in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the Agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.
- C. Return of Equipment Upon Cancellation or Termination.** Termination of this Price Agreement also results in termination of the rental of any equipment in the County's possession. In the event of such early termination, as reflected in this section, the Using Department shall immediately cease all use of the equipment and shall immediately make arrangements with Vendor or its designee to return the equipment to Vendor at any destination within the continental United States designated by the Vendor. Any expenses or risks associated with returning equipment to the Vendor shall be borne solely by the Using Department if termination was for convenience by the Using Department. Such equipment shall be in good repair and in the same condition as when received by the Using Department, reasonable wear, tear and depreciation resulting from normal and proper use excepted.

8. AMENDMENT. Except for amendment affecting rental fees, this Price Agreement may be amended by mutual agreement of the County and the Vendor upon written notice by either party to the other. Amendments shall be in writing and signed by the parties hereto. An amendment to this Price Agreement shall not affect any outstanding Purchase Order(s) issued by the County prior to the effective date of the amendment.

9. ASSIGNMENT. Vendor shall not sell, assign, pledge, transfer, mortgage or otherwise convey part of its interest in this Price Agreement

10. NON-COLLUSION. In signing this Price Agreement, the Vendor certifies it has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with its offer and this Price Agreement.

11. CONDITION OF PROPOSED ITEMS. All proposed items to be delivered under this Price Agreement are to be new and of most current production, unless otherwise specified.

12. COMMERCIAL WARRANTY. The Vendor agrees that the items furnished under this Price Agreement shall be covered by the most favorable commercial warranties the Vendor gives to any customer for such items, and that the rights and remedies provided herein shall extend to the County and are in addition to and do not limit any rights afforded to the County by any other clause of this order. Vendor agrees not to purport to disclaim warranties of fitness for a particular purpose or merchantability.

13. ASSIGNMENT OF MANUFACTURER/SUPPLIER WARRANTIES AND VENDOR'S WARRANTIES. To the extent permitted and so long as no event of default has occurred and is continuing, Vendor hereby assigns to the Using Department, for the total term of any rental, all equipment warranties provided by a manufacturer/supplier in the applicable purchase documents.

- A. The County shall have the right to take any action appropriate to enforce such warranties provided such enforcement is pursued in the Using Department's name and at its expense. In the event the Using Department is precluded from enforcing any such warranty in its name, Vendor, as owner of the equipment, shall upon the Using Department's request, take reasonable steps to enforce such warranties at costs to be borne by Vendor.
- B. All equipment covered by this Price Agreement shall conform to the specifications, samples or other descriptions furnished or adopted by the County, and shall be merchantable, fit for the purpose for which rented, of best quality and workmanship and free from all defects. All equipment delivered, pursuant to this Price Agreement, shall conform to standards established for such goods and delivery in accordance with any applicable federal, state or local laws and regulations.

14. INSURANCE OF EQUIPMENT. Commencing upon acceptance and continuing throughout the initial term, the County agrees to keep the equipment insured at the County's expense against all risks or loss from any cause, including without limitation, theft and damage. The County may self-insure against such risk provided that the Vendor's interests are protected to the same extent as if the insurance had been obtained by third party insurance carriers. The County will provide Vendor proof of such coverage.

15. RECORDS. During the term of this Agreement and for three years thereafter, the Vendor shall maintain detailed records pertaining to the products delivered. These records shall be subject to inspection by the Using Department, the County and State Auditor and other appropriate County authorities. The Department shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Using Department to recover excessive or illegal payments.

16. APPROPRIATIONS. The terms of this Price Agreement, and any orders placed under it, are contingent upon sufficient appropriations and authorization being made by the Board of County Commissioners for the performance of this Agreement. If sufficient appropriations and authorization are not made, this Price Agreement, and any orders placed under it, shall terminate upon written notice being given to the Vendor. The County's decision as to whether sufficient appropriations are available shall be accepted by the Vendor and shall be final.

17. CONFLICT OF INTEREST. The Vendor 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 any performance required under this Agreement. The Vendor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.

18. APPROVAL OF VENDOR REPRESENTATIVES. The County reserves the right to require a change in Vendor representatives if the assigned representatives are not, in the opinion of the County, serving the needs of the County adequately.

19. SCOPE OF AGREEMENT, MERGER. This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof and all such covenants, agreements and understandings have been merged into this written Agreement.

No prior agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

20. NOTICE. The New Mexico Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199 imposes civil misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

21. INDEMNIFICATION. The Vendor shall hold the County and its agencies and employees harmless and shall indemnify the County and its agencies and employees against any and all claims, suits, actions, liabilities and cost of any kind, including attorney's fees for personal injury or damage to property arising from the acts or omissions of the Vendor, its agents, officers, employees, or sub-vendors. The Vendor shall not be liable for any injury or damage as a result of any negligent act or omission committed by the Using Department, its officers or employees.

22. THIRD PARTY BENEFICIARY. This Price Agreement is not intended to and does not create any rights in any persons not a party hereto.

23. NEW MEXICO TORT CLAIMS ACT. No provision of this Price 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, Section 41-4-1, et seq.

24. APPLICABLE LAW. This Agreement shall be governed by the laws of the State of New Mexico.

25. CHOICE OF LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico. The parties agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be in the state or federal district courts of New Mexico, located in Santa Fe County, New Mexico.

26. INVALID TERM OR CONDITION/SEVERABILITY. The provisions of this Price Agreement are severable, and if for any reason, a clause, sentence or paragraph of this Agreement is determined to be invalid by a court or department having jurisdiction over the subject matter hereof, such invalidity shall not affect other provisions of the Agreement, which can be given effect without the invalid provision.

27. ENFORCEMENT OF AGREEMENT. A party's failure to require strict performance of any provision of this Price Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by party or any of its rights under this Agreement shall be effective unless express and in writing, and not effective waiver by a party of any of its right shall be effective to waive any other rights.

28. SURVIVAL. The following provisions shall survive termination of this Price Agreement: Delivery & Billing Instructions; Records, Indemnification, Commercial Warranty; Records; Applicable Law and Survival.

29. **NOTICES.** Either party may give written notice to the other party in accordance with the terms of this Price Agreement. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivery or three business days after being mailed.

To the County:

Santa Fe County Attorney's Office
102 Grant Avenue
PO Box 276
Santa Fe, NM 87504-0276
505-986-6279 (voice)
505-986-6362 (fax)

To the Vendor:

Attn: Bill Downey, Manager
Easton Sales and Rentals, LLC
7900 B Reading Avenue SE
Albuquerque, NM 87105
(505) 877-1041

Either party may change its representative or address above by written notice to the other in accordance with the terms of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Price Agreement as of the date of execution by:

SANTA FE COUNTY

Miguel M. Chavez, Chair
Santa Fe County Board of Commissioners


Date

ATTESTATION

Geraldine Salazar
Santa Fe County Clerk

Date

APPROVED AS TO FORM


Gregory S. Shaffer
Santa Fe County Attorney

6-7-16
Date

FINANCE DEPARTMENT


Carole H. Jaramillo
Santa Fe County Finance Director

6/9/16
Date

VENDOR – Easton Sales and Rentals, LLC

Signature

Date

Print Name and Title

APPROVED AS TO FORM

Grego S. Shaffer
Santa Fe County Attorney

Date

FINANCE DEPARTMENT

Carole H. Jaramillo
Santa Fe County Finance Director

Date

VENDOR - Easton Sales and Rentals, LLC

Signature

Date

William P Downey
Print Name and Title

MANAGER

6.13.16

Attachment A Listing of Prices

Agreement No. 2016-0199A-PW/RM LEASE & SHORT TERM RENTAL OF HEAVY EQUIPMENT
EASTON SALES AND RENTALS, LLC

RENTAL EQUIPMENT:		RENTAL RATES:		
	DESCRIPTION	DAILY	WEEKLY	MONTHLY
1.	Wheel loader, 3-4 Cu. Yd.	622.00	1,866.00	5,600.00
2.	Backhoe loader, extendahoe, enclosed cab, 4x4, 91 IIP or better	200.00	600.00	1,800.00
3.	Broom sweeper, enclosed cab, 8 foot brush	344.00	1,229.00	2,457.00
4.	Excavator, 65 IIP or better 12' dig depth or better	434.00	1,300.00	3,900.00
5.	Double drum steel wheel, 2-4 ton with spray bar system	190.00	558.00	1,675.00
6.	Double drum steel wheel, 4-6 ton with spray bar system	225.00	650.00	1,900.00
7.	Pneumatic roller, 8-12 ton with spray bar system	835.00	2,503.00	4,500.00
8.	Motor Grader, 200 IIP or better	655.00	1,966.00	5,900.00
9.	Dozer 130 IIP or better	489.00	1,466.00	4,400.00
10.	Skid steer loader, 80 IIP or better	323.00	967.00	2,900.00
11.	Tractor scraper, 18 Cu. Yd. pan self-loading	N/A	N/A	N/A
12.	Asphalt reclaimers 350 IIP or better	N/A	N/A	N/A

SANTA FE COUNTY PRICE AGREEMENT **FOR HEAVY EQUIPMENT**

THIS AGREEMENT is made and entered into by and between Santa Fe County, New Mexico, a New Mexico political subdivision, (hereinafter "**County**") and **4 Rivers Equipment**, 2301 Candelaria Road, PO Box 6157, Albuquerque, NM 87197, a company authorized to do business in the State of New Mexico (hereinafter "**Vendor**").

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. DEFINITIONS

- A. "**County**" shall mean the County of Santa Fe, New Mexico.
- B. "**Using Department or Department**" shall mean a Department of Santa Fe County.
- C. "**Purchase Order**" shall mean a fully executed Purchase Document issued by the County Purchasing Department that specifies the items to be provided by the Vendor.
- D. "**Price Agreement**" means this indefinite quantity Price Agreement which required the Vendor to furnish items to the Using Department which issues a Purchase Order.
- E. "**Rent**" means the payment by the Using Department to the Vendor of money for the rent of equipment covered by the accompanying schedule attached hereto and incorporated herein (Attachment A), purchase order or other document.

2. GOODS TO BE PROVIDED

- A. **Rental.** Attachment A of this Price Agreement is the list of the daily, weekly and monthly rental fees for rental of individual items of heavy equipment and a description of the equipment specifications included in the rental fee, for all items that are the subject of this Price Agreement. Long term rental (lease) of the items shown on Attachment A shall be for a minimum term of 48 months.
- B. **Goods Listed on Attachment A.** The Using Department may issue Purchase Orders for the rent of the items listed in Attachment A. Any item ordered by a Using Department must be an item listed on Attachment A. All orders issued hereunder must bear both an order number and the number of this Price Agreement (No. 2016-0199B-PW/RM).
- C. **Quantities.** It is understood that this is an indefinite quantity Price Agreement and the County may rent any quantity of the items listed on Attachment A. No guarantee or warranty is made or implied that any order for any definite quantity will be issued under this Price Agreement. The Vendor is required to accept the Purchasing Order and furnish the item when ordered.
- D. **Specifications.** The items furnished hereunder shall meet or exceed the specifications provided in the Information for Bidders No. 2016-0199-PW/RM including all Addenda. Orders issued pursuant to this Agreement must show the applicable Price Agreement item(s), number(s) and price(s).
- E. **Delivery and Billing Instructions.**
 - 1. The Vendor shall deliver the items in accordance with the Using Department's instructions and delivery time of any item shall be not be longer than 30 business days from the date of the Using Department's request for the item(s). Time is of essence for purposes of this Price Agreement. In the event the Vendor fails to deliver an item of heavy equipment within the time designated above, the Vendor



agrees to pay liquidated damages to the County in the amount of \$100.00 per business day beginning on business day 31. The Vendor shall also deliver, with the items ordered, an invoice listing the order number, price agreement number, bill of lading, and the serial number or other vehicle identification number for each item of heavy equipment. Destination charges are to be included in the rental prices.

2. Except for loss or damage directly attributable to the negligence of the Using Department, the Vendor shall bear all risk of loss or damage until the item(s) have been accepted by the Department.
3. Whenever the Department does not accept any item and returns it to the Vendor, all related documentation furnished by the Vendor shall be returned.
4. The Vendor shall bear all risk of loss or damage with respect to returned products except for loss or damage directly attributable to the negligence of the Using Department.
5. Unless otherwise agreed upon by the County, the Vendor shall be responsible for the pick-up of the returned item(s).

F. Delivery Tickets. The Purchase Order number, Vendor's name, Using Department's name and location, and this Price Agreement number shall be shown on each packing and delivery ticket, package, bill of lading and/or other correspondence in connection with shipments of heavy equipment.

G. Rental fee. Prices listed in Attachment A, for each item, shall be the fee for rental of the item of heavy equipment.

3. PAYMENT. All payments under this Price Agreement are subject to the following provisions:

- A. Inspection.** Final inspection and acceptance of the item ordered shall be made at the destination. Item rejected at the destination for non-conformance with specifications shall be removed at the Vendor's risk and expense promptly after notice of non-acceptance or rejection.
- B. Acceptance.** In accordance with NMSA 1978, Section 13-1-158, the Using Department shall determine if the item meets specifications and will accept the item if the item meets specifications. No payment shall be made for any item until the item has been accepted, in writing, by the Using Department. Unless otherwise agreed upon, between the Department and the Vendor within 30 days from the receipt of items, the Using Department shall issue a written certification of complete or partial acceptance or rejection of the item. The time period shall begin at the time of receipt of the final shipment when there are multiple shipments per Purchase Order, unless the Using department gives notice of rejection, within the specified time period, the item will be deemed to have been accepted.
- C. Issuance of Orders.** Only written, signed and properly executed Purchase Orders are valid under this Price Agreement.
- E. Rent and Late Charges.** In consideration of its rights under this Price Agreement, the Using Department shall pay the Vendor as follows:
 1. At the conclusion of each month of possession and use after certification of the equipment, the rental fee identified in Attachment A shall be remitted to Vendor.

2. Vendor shall submit a written request for payment to the Using Department at the conclusion of each month of possession by the Using Department of the equipment following certification of that equipment.
 3. Within 30 days of the issuance of a written request for payment, the Using Department shall tender payment for the equipment rented by the Using Department.
 4. In the event the Using Department fails to tender payment within 30 days of written request for payment, the Using Department shall pay late payment charges of one and one-half percent (1.5%) per month, until the amount due is paid in full.
 5. Payment under this Price Agreement shall not foreclose the right of the Using Department to recover excessive or illegal payment.
- F. **Taxes.** Applicable gross receipts taxes or local option tax(es) shall be included on each invoice and shown as a separate item to be paid, the payment of taxes for any money received under this Price Agreement shall be the Vendor's sole responsibility and must be reported under the Vendor's federal and County tax identification number(s). If the Using Department is exempt from the New Mexico gross receipts tax or local option taxes for the transaction, the Using Department shall provide the Vendor with written evidence of such exemption(s).

4. **TERM OF THIS AGREEMENT.** This Price Agreement shall be effective on the last date of signature by the parties hereto. The term of this Price Agreement shall be four years, unless earlier terminated. There shall not be any automatic renewal of the term of this Price Agreement.

5. **EXPIRATION OF A RENTAL PERIOD.** Vendor shall be solely responsible for the cost of retrieving heavy equipment at the expiration of a rental period, unless termination results from the Using Department's breach in which case the Using Department shall be responsible for the cost of returning the equipment to Vendor.

6. **CANCELLATION.**

- A. The County reserves the right to cancel all or any part of any orders placed under this Price Agreement, without cost to the County, if the item fails to meet the requirements of this Price Agreement.
- B. The failure of the Vendor to perform shall create a default pursuant to this Price Agreement.
- C. The Vendor may be excused from performance under this Price Agreement if the Vendor's failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Vendor, unless the County shall determine that the item, to be furnished by a sub-vendor, is obtainable from other sources in sufficient time to permit the Vendor to meet the required delivery schedule and agreed upon pricing.
- D. Such causes of excuse include, but are not limited to, acts of God or the public enemy, acts of the County or Federal government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of sub-vendors due to any of the above.
- E. The County may cancel all, or any part, of any resulting order without cost to the County if the Vendor fails to meet material provisions of the order and the Vendor shall be liable for any excess costs, incurred by the County, associated with such a default.

7. TERMINATION.

- A. For Convenience.** Consistent with applicable New Mexico law, this Price Agreement may be terminated by the County at any time, without penalty. Unless some unforeseen circumstance(s) arise, which Lessee shall document, Lessee will provide 20 days advance written notice to the Vendor before the proposed date of termination. Notice of Termination of the Price Agreement shall not affect any outstanding order(s).
- B. For Cause.** Either party may terminate this Agreement for cause based upon material breach of this Agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If, within 30 days, after receipt of a written notice, the breaching party has not corrected the breach or, in the case of a breach which cannot be corrected in 30 days, begin and proceed in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the Agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.
- C. Return of Equipment Upon Cancellation or Termination.** Termination of this Price Agreement also results in termination of the rental of any equipment in the County's possession. In the event of such early termination, as reflected in this section, the Using Department shall immediately cease all use of the equipment and shall immediately make arrangements with Vendor or its designee to return the equipment to Vendor at any destination within the continental United States designated by the Vendor. Any expenses or risks associated with returning equipment to the Vendor shall be borne solely by the Using Department if termination was for convenience by the Using Department. Such equipment shall be in good repair and in the same condition as when received by the Using Department, reasonable wear, tear and depreciation resulting from normal and proper use excepted.

8. AMENDMENT. Except for amendment affecting rental fees, this Price Agreement may be amended by mutual agreement of the County and the Vendor upon written notice by either party to the other. Amendments shall be in writing and signed by the parties hereto. An amendment to this Price Agreement shall not affect any outstanding Purchase Order(s) issued by the County prior to the effective date of the amendment.

9. ASSIGNMENT. Vendor shall not sell, assign, pledge, transfer, mortgage or otherwise convey part of its interest in this Price Agreement

10. NON-COLLUSION. In signing this Price Agreement, the Vendor certifies it has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with its offer and this Price Agreement.

11. CONDITION OF PROPOSED ITEMS. All proposed items to be delivered under this Price Agreement are to be new and of most current production, unless otherwise specified.

12. COMMERCIAL WARRANTY. The Vendor agrees that the items furnished under this Price Agreement shall be covered by the most favorable commercial warranties the Vendor gives to any customer for such items, and that the rights and remedies provided herein shall extend to the County and are in addition to and do not limit any rights afforded to the County by any other clause of this

order. Vendor agrees not to purport to disclaim warranties of fitness for a particular purpose or merchantability.

13. ASSIGNMENT OF MANUFACTURER/SUPPLIER WARRANTIES AND VENDOR'S WARRANTIES. To the extent permitted and so long as no event of default has occurred and is continuing, Vendor hereby assigns to the Using Department, for the total term of any rental, all equipment warranties provided by a manufacturer/supplier in the applicable purchase documents.

- A. The County shall have the right to take any action appropriate to enforce such warranties provided such enforcement is pursued in the Using Department's name and at its expense. In the event the Using Department is precluded from enforcing any such warranty in its name, Vendor, as owner of the equipment, shall upon the Using Department's request, take reasonable steps to enforce such warranties at costs to be borne by Vendor.
- B. All equipment covered by this Price Agreement shall conform to the specifications, samples or other descriptions furnished or adopted by the County, and shall be merchantable, fit for the purpose for which rented, of best quality and workmanship and free from all defects. All equipment delivered, pursuant to this Price Agreement, shall conform to standards established for such goods and delivery in accordance with any applicable federal, state or local laws and regulations.

14. INSURANCE OF EQUIPMENT. Commencing upon acceptance and continuing throughout the initial term, the County agrees to keep the equipment insured at the County's expense against all risks or loss from any cause, including without limitation, theft and damage. The County may self-insure against such risk provided that the Vendor's interests are protected to the same extent as if the insurance had been obtained by third party insurance carriers. The County will provide Vendor proof of such coverage.

15. RECORDS. During the term of this Agreement and for three years thereafter, the Vendor shall maintain detailed records pertaining to the products delivered. These records shall be subject to inspection by the Using Department, the County and State Auditor and other appropriate County authorities. The Department shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Using Department to recover excessive or illegal payments.

16. APPROPRIATIONS. The terms of this Price Agreement, and any orders placed under it, are contingent upon sufficient appropriations and authorization being made by the Board of County Commissioners for the performance of this Agreement. If sufficient appropriations and authorization are not made, this Price Agreement, and any orders placed under it, shall terminate upon written notice being given to the Vendor. The County's decision as to whether sufficient appropriations are available shall be accepted by the Vendor and shall be final.

17. CONFLICT OF INTEREST. The Vendor 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 any performance required under this Agreement. The Vendor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.

18. APPROVAL OF VENDOR REPRESENTATIVES. The County reserves the right to require a change in Vendor representatives if the assigned representatives are not, in the opinion of the County, serving the needs of the County adequately.

19. SCOPE OF AGREEMENT, MERGER. This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof and all such covenants, agreements and understandings have been merged into this written Agreement. No prior agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

20. NOTICE. The New Mexico Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199 imposes civil misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

21. INDEMNIFICATION. The Vendor shall hold the County and its agencies and employees harmless and shall indemnify the County and its agencies and employees against any and all claims, suits, actions, liabilities and cost of any kind, including attorney's fees for personal injury or damage to property arising from the acts or omissions of the Vendor, its agents, officers, employees, or sub-vendors. The Vendor shall not be liable for any injury or damage as a result of any negligent act or omission committed by the Using Department, its officers or employees.

22. THIRD PARTY BENEFICIARY. This Price Agreement is not intended to and does not create any rights in any persons not a party hereto.

23. NEW MEXICO TORT CLAIMS ACT. No provision of this Price 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, Section 41-4-1, et seq.

24. APPLICABLE LAW. This Agreement shall be governed by the laws of the State of New Mexico.

25. CHOICE OF LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico. The parties agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be in the state or federal district courts of New Mexico, located in Santa Fe County, New Mexico.

26. INVALID TERM OR CONDITION/SEVERABILITY. The provisions of this Price Agreement are severable, and if for any reason, a clause, sentence or paragraph of this Agreement is determined to be invalid by a court or department having jurisdiction over the subject matter hereof, such invalidity shall not affect other provisions of the Agreement, which can be given effect without the invalid provision.

27. ENFORCEMENT OF AGREEMENT. A party's failure to require strict performance of any provision of this Price Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by party or any of its rights under this

Agreement shall be effective unless express and in writing, and not effective waiver by a party of any of its right shall be effective to waive any other rights.

28. SURVIVAL. The following provisions shall survive termination of this Price Agreement: Delivery & Billing Instructions; Records, Indemnification, Commercial Warranty; Records; Applicable Law and Survival.

29. NOTICES. Either party may give written notice to the other party in accordance with the terms of this Price Agreement. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivery or three business days after being mailed.

To the County:

Santa Fe County Attorney's Office
102 Grant Avenue
PO Box 276
Santa Fe, NM 87504-0276
505-986-6279 (voice)
505-986-6362 (fax)

To the Vendor:

Attn: Rod Tyra, Territory Manager
4 Rivers Equipment
2301 Candelaria Road
P.O. Box 6157
Albuquerque, NM 87197
(505) 884-2900

Either party may change its representative or address above by written notice to the other in accordance with the terms of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Price Agreement as of the date of execution by:

SANTA FE COUNTY

Miguel M. Chavez, Chair
Santa Fe County Board of Commissioners

Date

ATTESTATION

Geraldine Salazar
Santa Fe County Clerk

Date

APPROVED AS TO FORM

Gregory S. Shaffer
Santa Fe County Attorney

6-7-16
Date

FINANCE DEPARTMENT APPROVAL

Carole H. Jaramillo
Santa Fe County Finance Director

6/9/16
Date

VENDOR – 4 Rivers Equipment

Signature

Date

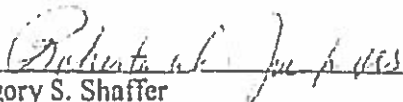
Print Name and Title

ATTESTATION

Geraldine Salazar
Santa Fe County Clerk

Date

APPROVED AS TO FORM


Gregory S. Shaffer
Santa Fe County Attorney

6-7-16
Date

FINANCE DEPARTMENT APPROVAL


Carole H. Jaramillo
Santa Fe County Finance Director

6/9/16
Date

VENDOR - 4 Rivers Equipment


Signature

6/13/2016
Date

Print Name and Title

Attachment A Listing of Prices

Agreement No. 2016-0199B-PW/RM LEASE & SHORT TERM RENTAL OF HEAVY EQUIPMENT 4 RIVERS EQUIPMENT

LEASE EQUIPMENT						
Equipment Information				Program Cost		
Description	Make	Model	Lease Term (Months)	Lease Term (Total Hours)	Base Lease Payment (Annual)	Lease Amount (Month)
Loader Backhoe	John Deere	310SL	48	4,000	9,271.20	772.16
	John Deere	310SL	48	6,000	10,681.80	890.15
Motor Grader	John Deere	770 GP	48	4,000	27,938.28	2,328.19
	John Deere	770 GP	48	6,000	31,178.88	2,598.24
Loader	John Deere	544 K	48	4,000	14,597.16	1,216.43
	John Deere	544 K	48	6,000	16,638.96	1,386.58
						Yes (See attached) Yes (See attached)
						Yes (See attached) Yes (See attached)
						Yes (See attached) Yes (See attached)

Attachment A (Continued) Listing of Prices

Agreement No. 2016-0199B-PW/RM LEASE & SHORT TERM RENTAL OF HEAVY EQUIPMENT 4 RIVERS EQUIPMENT

RENTAL EQUIPMENT: <i>DESCRIPTION</i>	RENTAL RATES:		
	<i>DAILY</i>	<i>WEEKLY</i>	<i>MONTHLY</i>
1. Wheel loader, 3-4 Cu. Yd.	625.00	1,850.00	4,125.00
2. Backhoe loader, extendahoe, enclosed cab, 4x4, 91 HP or better	350.00	1,000.00	2,250.00
3. Broom sweeper, enclosed cab, 8 foot brush	225.00	675.00	1,500.00
4. Excavator, 65 HP or better 12' dig depth or better	525.00	1,600.00	3,563.00
5. Double drum steel wheel, 2-4 ton with spray bar system	200.00	600.00	1,350.00
6. Double drum steel wheel, 4-6 ton with spray bar system	350.00	1,050.00	2,363.00
7. Pneumatic roller, 8-12 ton with spray bar system	325.00	975.00	2,194.00
8. Motor Grader, 200 HP or better	750.00	2,250.00	5,063.00
9. Dozer 130 HP or better	850.00	2,500.00	5,625.00
10. Skid steer loader, 80 HP or better	285.00	855.00	1,782.00
11. Tractor scraper, 18 Cu. Yd. pan self-loading	N/A	N/A	N/A
12. Asphalt reclaimier 350 HP or better	N/A	N/A	N/A

SANTA FE COUNTY PRICE AGREEMENT
FOR HEAVY EQUIPMENT

THIS AGREEMENT is made and entered into by and between Santa Fe County, New Mexico, a New Mexico political subdivision, (hereinafter "**County**") and **United Rentals (North America), Inc.**, 2707 Cerrillos Road, Santa Fe, NM 87507, a company authorized to do business in the State of New Mexico (hereinafter "**Vendor**").

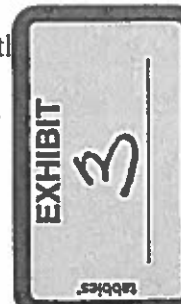
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- C. **Quantities.** It is understood that this is an indefinite quantity Price Agreement and the County may rent any quantity of the items listed on Attachment A. No guarantee or warranty is made or implied that any order for any definite quantity will be issued under this Price Agreement. The Vendor is required to accept the Purchasing Order and furnish the item when ordered.
- D. **Specifications.** The items furnished hereunder shall meet or exceed the specifications provided in the Information for Bidders No. 2016-0199-PW/RM including all Addenda. Orders issued pursuant to this Agreement must show the applicable Price Agreement item(s), number(s) and price(s).
- E. **Delivery and Billing Instructions.**
 - 1. The Vendor shall deliver the items in accordance with the Using Department's instructions and delivery time of any item shall be not be longer than 30 business days from the date of the Using Department's request for the item(s). Time is of the essence for purposes of this Price Agreement. In the event the Vendor fails to deliver an item of heavy equipment within the time designated above, the Vendor agrees to pay liquidated damages to the County in the amount of \$100.00 per



business day beginning on business day 31. The Vendor shall also deliver, with the items ordered, an invoice listing the order number, price agreement number, bill of lading, and the serial number or other vehicle identification number for each item of heavy equipment. Destination charges are to be included in the rental prices.

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3. PAYMENT. All payments under this Price Agreement are subject to the following provisions:

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4. TERM OF THIS AGREEMENT. This Price Agreement shall be effective on the last date of signature by the parties hereto. The term of this Price Agreement shall be one year, unless earlier terminated. There shall not be any automatic renewal of the term of this Price Agreement. The County has the option to extend the term of this Agreement on the same terms and conditions stated herein for a term not to exceed four years in total.

5. EXPIRATION OF A RENTAL PERIOD. Vendor shall be solely responsible for the cost of retrieving heavy equipment at the expiration of a rental period, unless termination results from the Using Department's breach in which case the Using Department shall be responsible for the cost of returning the equipment to Vendor.

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- D. Such causes of excuse include, but are not limited to, acts of God or the public enemy, acts of the County or Federal government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of sub-vendors due to any of the above.
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- C. Return of Equipment Upon Cancellation or Termination.** Termination of this Price Agreement also results in termination of the rental of any equipment in the County's possession. In the event of such early termination, as reflected in this section, the Using Department shall immediately cease all use of the equipment and shall immediately make arrangements with Vendor or its designee to return the equipment to Vendor at any destination within the continental United States designated by the Vendor. Any expenses or risks associated with returning equipment to the Vendor shall be borne solely by the Using Department if termination was for convenience by the Using Department. Such equipment shall be in good repair and in the same condition as when received by the Using Department, reasonable wear, tear and depreciation resulting from normal and proper use excepted.

8. AMENDMENT. Except for amendment affecting rental fees, this Price Agreement may be amended by mutual agreement of the County and the Vendor upon written notice by either party to the other. Amendments shall be in writing and signed by the parties hereto. An amendment to this Price Agreement shall not affect any outstanding Purchase Order(s) issued by the County prior to the effective date of the amendment.

9. ASSIGNMENT. Vendor shall not sell, assign, pledge, transfer, mortgage or otherwise convey part of its interest in this Price Agreement

10. NON-COLLUSION. In signing this Price Agreement, the Vendor certifies it has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with its offer and this Price Agreement.

11. CONDITION OF PROPOSED ITEMS. All proposed items to be delivered under this Price Agreement are to be new and of most current production, unless otherwise specified. Vendor shall inform the Using Department, prior to delivery of the item of equipment, if the item of equipment requested by the Using Department is not new and is used or is not of the most current production.

12. COMMERCIAL WARRANTY. The Vendor agrees that the items furnished under this Price Agreement shall be covered by the most favorable commercial warranties the Vendor gives to any customer for such items, and that the rights and remedies provided herein shall extend to the County and are in addition to and do not limit any rights afforded to the County by any other clause of this order. Vendor agrees not to purport to disclaim warranties of fitness for a particular purpose or merchantability.

13. ASSIGNMENT OF MANUFACTURER/SUPPLIER WARRANTIES; EQUIPMENT SPECIFICATIONS; VENDOR'S WARRANTY. To the extent permitted, Vendor hereby assigns to the Using Department, for the term of any rental of equipment under this Agreement, all equipment warranties, if any, that may be provided to Vendor's customers by the manufacturer/supplier of such equipment.

- A. The County shall have the right to take any action appropriate to enforce such warranties provided such enforcement is pursued in the Using Department's name and at its expense. In the event the Using Department is precluded from enforcing any such warranty in its name, Vendor, as owner of the equipment, may upon the Using Department's request, take reasonable steps to enforce such warranties at costs to be borne by Vendor only if such warranties are available to the Using Department as a customer.
- B. All equipment covered by this Price Agreement shall conform to the specifications, samples or other descriptions furnished or adopted by the County. All equipment delivered pursuant to this Agreement shall conform to standards established for such goods and delivery in accordance with any applicable federal, state or local laws and regulations.
- C. Vendor warrants that upon delivery of the equipment rented hereunder, the equipment will be in good working condition. If the equipment is not in good working conditions upon delivery, Vendor shall promptly repair or replace the equipment at Vendor's sole cost and expense. If the equipment requires repair or replacement during the rental period, Vendor will promptly repair or replace the equipment at Vendor's sole cost and expense; however, if the repair or replacement is necessary due to the Using Department's misuse or neglect, the County will be responsible for the cost of repair or replacement. EXCEPT AS SET FORTH HEREIN VENDOR DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE COUNTY'S RENTAL OF EQUIPMENT UNDER THIS AGREEMENT.

14. INSURANCE OF EQUIPMENT. Commencing upon acceptance and continuing throughout the initial term, the County agrees to keep the equipment insured at the County's expense against all risks or loss from any cause, including without limitation, theft and damage. The County may self-insure against such risk provided that the Vendor's interests are protected to the same extent as if the insurance had been obtained by third party insurance carriers. The County will provide Vendor proof of such coverage.

15. RECORDS. During the term of this Agreement and for three years thereafter, the Vendor shall maintain detailed records pertaining to the products delivered. These records shall be subject to inspection by the Using Department, the County and State Auditor and other appropriate County authorities. The Department shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Using Department to recover excessive or illegal payments.

16. APPROPRIATIONS. The terms of this Price Agreement, and any orders placed under it, are contingent upon sufficient appropriations and authorization being made by the Board of County Commissioners for the performance of this Agreement. If sufficient appropriations and authorization are not made, this Price Agreement, and any orders placed under it, shall terminate upon written notice being given to the Vendor. The County's decision as to whether sufficient appropriations are available shall be accepted by the Vendor and shall be final.

17. CONFLICT OF INTEREST. The Vendor 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 any performance required under this Agreement. The Vendor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.

18. APPROVAL OF VENDOR REPRESENTATIVES. The County reserves the right to require a change in Vendor representatives if the assigned representatives are not, in the opinion of the County, serving the needs of the County adequately.

19. SCOPE OF AGREEMENT, MERGER. This Price Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof and all such covenants, agreements and understandings have been merged into this Price Agreement. No prior agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement. The terms and conditions of this Price Agreement shall have precedence and prevail in any conflict between the terms and conditions of this Price Agreement and a Purchase Order or the Vendor's RENTAL AGREEMENT
ADDITIONAL TERMS AND CONDITIONS.

20. NOTICE. The New Mexico Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199 imposes civil misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

21. INDEMNIFICATION. Vendor shall hold the County and its agencies and employees harmless and shall indemnify the County and its agencies and employees against any and all claims, suits, actions, liabilities and actual costs and reasonable attorney's fees for personal injury or damage to property arising from the negligent acts or omissions or willful misconduct of the Vendor, its agents, officers, or employees in the performance of services under this Agreement. Vendor shall not be liable for any injury or damage as a result of any negligent act or omission committed by the Using Department, its officers or employees.

22. THIRD PARTY BENEFICIARY. This Price Agreement is not intended to and does not create any rights in any persons not a party hereto.

23. NEW MEXICO TORT CLAIMS ACT. No provision of this Price 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, Section 41-4-1, et seq.

24. APPLICABLE LAW. This Agreement shall be governed by the laws of the State of New Mexico.

25. CHOICE OF LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico. The parties agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be in the state or federal district courts of New Mexico, located in Santa Fe County, New Mexico.

26. INVALID TERM OR CONDITION/SEVERABILITY. The provisions of this Price Agreement are severable, and if for any reason, a clause, sentence or paragraph of this Agreement is determined to be invalid by a court or department having jurisdiction over the subject matter hereof, such invalidity shall not affect other provisions of the Agreement, which can be given effect without the invalid provision.

27. ENFORCEMENT OF AGREEMENT. A party's failure to require strict performance of any provision of this Price Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by party or any of its rights under this Agreement shall be effective unless express and in writing, and not effective waiver by a party of any of its right shall be effective to waive any other rights.

28. SURVIVAL. The following provisions shall survive termination of this Price Agreement: Delivery & Billing Instructions; Records, Indemnification, Commercial Warranty; Records; Applicable Law and Survival.

29. NOTICES. Either party may give written notice to the other party in accordance with the terms of this Price Agreement. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivery or three business days after being mailed.

To the County:
Santa Fe County Attorney's Office
102 Grant Avenue
PO Box 276
Santa Fe, NM 87504-0276
505-986-6279 (voice)
505-986-6362 (fax)

To the Vendor:
Attn: Gregory Winter, Branch Manager
United Rentals
2707 Cerrillos Road
Santa Fe, NM 87507

Either party may change its representative or address above by written notice to the other in accordance with the terms of this Agreement.

30. VENDOR'S ADDITIONAL TERMS AND CONDITIONS. The County acknowledges that the Vendor has rental terms and conditions applicable to Vendor's customers. The Vendor has proposed a RENTAL AGREEMENT ADDITIONAL TERMS AND CONDITIONS, a copy of which is attached hereto as Attachment B, whose terms are acceptable in part but require the removal of other terms and conditions that the County cannot agree to, or that are inapplicable to the County, a governmental entity. The County and Vendor agree to modify the terms and conditions in Attachment B as follows. All other terms and conditions not specifically modified herein are incorporated as part of this Price Agreement.

Article 3. *INDEMNITY/ HOLD HARMLESS*, is deleted in its entirety.

Article 6. *USE OF EQUIPMENT*, the third sentence in subpart A. is deleted in its entirety.

Article 6. *USE OF EQUIPMENT*, subpart B. is deleted in its entirety.

Article 7. *DISCLAIMER OF WARRANTIES*. is deleted in its entirety.

Article 9. *RETURN OF EQUIPMENT/ DAMAGED & LOST EQUIPMENT*, is deleted in its entirety. SEE 2.E.2, 2.E.4, 2.E.5 (Goods to be Provided); 3.A (Payment); 5 (Expiration of Rental Period); 6.E (Cancellation); 7.C (Termination) of Price Agreement No. 2016-0199C-PW/RM.

Article 11. *LATE RETURN*, subpart "(c)" is deleted in its entirety.

Article 13. *DEPOSIT*, is deleted in its entirety.

Article 14. *PAYMENT*, is deleted in its entirety.

Article 17. *DEFAULT*, the provision "and hereby waives all claims for damages and losses physical and pecuniary, caused thereby and shall pay all cost and expenses incurred by United in retaking and repossessing;" is deleted.

Article 18. *CUSTOMER'S INSURANCE COVERAGE*, is deleted in its entirety.

Article 19. *NO ASSIGNMENT, LENDING OR SUBLETTING*, the third sentence is deleted.

Article 20. *ENTIRE AGREEMENT/ ONLY AGREEMENT*, is deleted in its entirety.

Article 21. *ORDER OF PRECEDENCE*, is deleted in its entirety.

Article 22. *OTHER PROVISIONS*, subparts B and D are deleted in their entirety.

IN WITNESS WHEREOF, the parties have executed this Price Agreement as of the date of execution by:

SANTA FE COUNTY

Miguel M. Chavez, Chair
Santa Fe Board of County Commissioners

Date: _____

ATTESTATION:

Geraldine Salazar
Santa Fe County Clerk

Date: _____

APPROVED AS TO FORM

Gregory S. Shaffer
Santa Fe County Attorney

Date: _____

FINANCE DEPARTMENT

Carol H. Jaramillo
Finance Director

Date: _____

VENDOR – United Rentals (North America), Inc.

Signature

Gregory Winter, Branch Manager

Attachment A Listing of Prices

Agreement No. 2016-0199C-PW/RM LEASE & SHORT TERM RENTAL OF HEAVY EQUIPMENT UNITED RENTALS

RENTAL EQUIPMENT:	RENTAL RATES:		
	DAILY	WEEKLY	MONTHLY
<i>DESCRIPTION</i>			
1. Wheel loader, 3-4 Cu. Yd.	670.47	1,684.63	4,427.58
2. Backhoe loader, extendahoe, enclosed cab, 4x4, 91 HP or better	377.49	1,127.83	2,546.23
3. Broom sweeper, enclosed cab, 8 foot brush	257.00	1,034.00	1,897.00
4. Excavator, 65 HP or better 12' dig depth or better	639.00	1,606.00	3,224.00
5. Double drum steel wheel, 2-4 ton with spray bar system	259.00	638.00	1,277.00
6. Double drum steel wheel, 4-6 ton with spray bar system	399.00	1,163.00	2,326.00
7. Pneumatic roller, 8-12 ton with spray bar system	N/A	N/A	N/A
8. Motor Grader, 200 HP or better	N/A	N/A	N/A
9. Dozer 130 HP or better	N/A	N/A	N/A
10. Skid steer loader, 80 HP or better	350.00	997.00	2,419.00
11. Tractor scraper, 18 Cu. Yd. pan self-loading	N/A	N/A	N/A
12. Asphalt reclaimers 350 HP or better	N/A	N/A	N/A

IN WITNESS WHEREOF, the parties have executed this Price Agreement as of the date of execution by:

SANTA FE COUNTY

Miguel M. Chavez, Chair
Santa Fe Board of County Commissioners

Date: _____

ATTESTATION:

Geraldine Salazar
Santa Fe County Clerk

Date: _____

APPROVED AS TO FORM

Gregory S. Shaffer
Santa Fe County Attorney

Date: _____

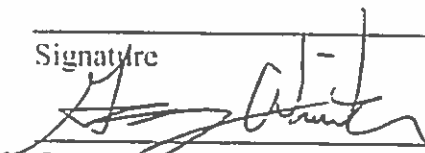
FINANCE DEPARTMENT

Carol H. Jaramillo
Finance Director

Date: _____

VENDOR – United Rentals (North America), Inc.

Signature



Gregory Winter, Branch Manager

SANTA FE COUNTY PRICE AGREEMENT
FOR HEAVY EQUIPMENT

THIS AGREEMENT is made and entered into by and between Santa Fe County, New Mexico, a New Mexico political subdivision, (hereinafter "**County**") and **Wagner Equipment Company**, 4000 Osuna Road NE, Albuquerque, NM 87109, a company authorized to do business in the State of New Mexico (hereinafter "**Vendor**").

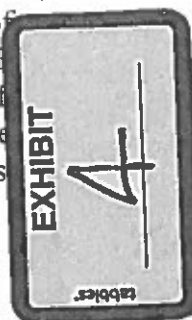
IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. DEFINITIONS

- A. "**County**" shall mean the County of Santa Fe, New Mexico.
- B. "**Using Department or Department**" shall mean a Department of Santa Fe County.
- C. "**Purchase Order**" shall mean a fully executed purchase document issued by the County Purchasing Department that specifies the items to be provided by the Vendor.
- D. "**Price Agreement**" means this indefinite quantity Price Agreement which required the Vendor to furnish items to the Using Department which issues a Purchase Order.
- E. "**Rent**" means the payment by the Using Department to the Vendor of money for the rent of equipment covered by the accompanying schedule attached hereto and incorporated herein (Attachment A), Purchase Order or other document.

2. GOODS TO BE PROVIDED

- A. **Rental.** Attachment A of this Price Agreement is the list of the daily, weekly and monthly rental fees for rental of individual items of heavy equipment and a description of the equipment specifications included in the rental fee, for all items that are the subject of this Price Agreement.
- B. **Goods Listed on Attachment A.** The Using Department may issue Purchase Orders for the rent of the items listed in Attachment A. Any item ordered by a Using Department must be an item listed on Attachment A. All orders issued hereunder must bear both an order number and the number of this Price Agreement (No. 2016-0199D-PW/RM).
- C. **Quantities.** It is understood that this is an indefinite quantity Price Agreement and the County may rent any quantity of the items listed on Attachment A. No guarantee or warranty is made or implied that any order for any definite quantity will be issued under this Price Agreement. The Vendor is required to accept the Purchasing Order and furnish the item when ordered.
- D. **Specifications.** The items furnished hereunder shall meet or exceed the specifications provided in the Information for Bidders No. 2016-0199-PW/RM including all Addenda. Orders issued pursuant to this Agreement must show the applicable Price Agreement item(s), number(s) and price(s).
- E. **Delivery and Billing Instructions.**
 - 1. The Using Department will sign Vendor's form titled "Rental/ Purchase Agreement," a copy of which is attached hereto as Attachment B, solely as acknowledgment of delivery of an item received from the Vendor pursuant to this Price Agreement. By signing the form, the County acknowledges delivery only. Any reference in the form to other terms and conditions which are not contained in this Price Agreement are not binding on the County and do not pertain to this Price Agreement. The item's



rental price, item specifications, and all other terms and conditions of the County's procurement of the items that are the subject of this Agreement, are all governed by the terms of this Price Agreement and no other document or agreement, including Vendor's Rental/Purchase Agreement. The County's signature on the Vendor's Rental/Purchase Agreement form does not waive or nullify the Using Department's right to reject delivered items as provided herein.

2. The Vendor shall deliver the items in accordance with the Using Department's instructions and delivery time of any item shall be not be longer than 30 business days from the date of the Using Department's request for the item(s). Time is of the essence for purposes of this Price Agreement. In the event the Vendor fails to deliver an item of heavy equipment within the time designated above, the Vendor agrees to pay liquidated damages to the County in the amount of \$100.00 per business day beginning on business day 31. The Vendor shall also deliver, with the items ordered, an invoice listing the order number, price agreement number, bill of lading, and the serial number or other vehicle identification number for each item of heavy equipment. Destination charges are to be included in the rental prices.
 3. Except for loss or damage directly attributable to the negligence of the Using Department, the Vendor shall bear all risk of loss or damage until the item(s) have been accepted by the Department.
 4. Whenever the Department does not accept any item and returns it to the Vendor, all related documentation furnished by the Vendor shall be returned.
 5. The Vendor shall bear all risk of loss or damage with respect to returned products except for loss or damage directly attributable to the negligence of the Using Department.
 6. Unless otherwise agreed upon by the County, the Vendor shall be responsible for the pick-up of the returned item(s).
- F. Delivery Tickets.** The Purchase Order number, Vendor's name, Using Department's name and location, and this Price Agreement number shall be shown on each packing and delivery ticket, package, bill of lading and/or other correspondence in connection with shipments of heavy equipment.
- G. Rental fee.** Prices listed in Attachment A, for each item, shall be the fee for rental of the item of heavy equipment.

3. **PAYMENT.** All payments under this Price Agreement are subject to the following provisions:
 - A. Inspection.** Final inspection and acceptance of the item ordered shall be made at the destination. Item rejected at the destination for non-conformance with specifications shall be removed at the Vendor's risk and expense promptly after notice of non-acceptance or rejection.
 - B. Acceptance.** In accordance with NMSA 1978, Section 13-1-158, the Using Department shall determine if the item meets specifications and will accept the item if the item meets specifications. No payment shall be made for any item until the item has been accepted, in writing, by the Using Department. Unless otherwise agreed upon, between the Department and the Vendor within 30 days from the receipt of items, the Using Department shall issue a written certification of complete or partial acceptance or rejection of the item. The time period shall begin at the time of receipt of the final shipment when there are multiple shipments per Purchase Order, unless the Using department gives notice of rejection, within the specified time period, the item will be deemed to have been accepted.

- C. **Issuance of Orders.** Only written, signed and properly executed Purchase Orders are valid under this Price Agreement.
- E. **Rent and Late Charges.** In consideration of its rights under this Price Agreement, the Using Department shall pay the Vendor as follows:
 - 1. At the conclusion of each month of possession and use after certification of the equipment, the rental fee identified in Attachment A shall be remitted to Vendor.
 - 2. Vendor shall submit a written request for payment to the Using Department at the conclusion of each month of possession by the Using Department of the equipment following certification of that equipment.
 - 3. Within 30 days of the issuance of a written request for payment, the Using Department shall tender payment for the equipment rented by the Using Department.
 - 4. In the event the Using Department fails to tender payment within 30 days of written request for payment, the Using Department shall pay late payment charges of one and one-half percent (1.5%) per month, until the amount due is paid in full.
 - 5. Payment under this Price Agreement shall not foreclose the right of the Using Department to recover excessive or illegal payment.
- F. **Taxes.** Applicable gross receipts taxes or local option tax(es) shall be included on each invoice and shown as a separate item to be paid, the payment of taxes for any money received under this Price Agreement shall be the Vendor's sole responsibility and must be reported under the Vendor's federal and County tax identification number(s). If the Using Department is exempt from the New Mexico gross receipts tax or local option taxes for the transaction, the Using Department shall provide the Vendor with written evidence of such exemption(s).

4. TERM OF THIS AGREEMENT. This Price Agreement shall be effective on the last date of signature by the parties hereto. The term of this Price Agreement shall be four years, unless earlier terminated. There shall not be any automatic renewal of the term of this Price Agreement.

5. EXPIRATION OF A RENTAL PERIOD. Vendor shall be solely responsible for the cost of retrieving heavy equipment at the expiration of a rental period, unless termination results from the Using Department's breach in which case the Using Department shall be responsible for the cost of returning the equipment to Vendor.

6. CANCELLATION.

- A. The County reserves the right to cancel all or any part of any orders placed under this Price Agreement, without cost to the County, if the item fails to meet the requirements of this Price Agreement.
- B. The failure of the Vendor to perform shall create a default pursuant to this Price Agreement.
- C. The Vendor may be excused from performance under this Price Agreement if the Vendor's failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Vendor, unless the County shall determine that the item, to be furnished by a sub-vendor, is obtainable from other sources in sufficient time to permit the Vendor to meet the required delivery schedule and agreed upon pricing.
- D. Such causes of excuse include, but are not limited to, acts of God or the public enemy, acts of the County or Federal government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of sub-vendors due to any of the above.

- E. The County may cancel all, or any part, of any resulting order without cost to the County if the Vendor fails to meet material provisions of the order and the Vendor shall be liable for any excess costs, incurred by the County, associated with such a default.

7. TERMINATION.

- A. **For Convenience.** Consistent with applicable New Mexico law, this Price Agreement may be terminated by the County at any time, without penalty. Unless some unforeseen circumstance(s) arise, which Lessee shall document, Lessee will provide 20 days advance written notice to the Vendor before the proposed date of termination. Notice of Termination of the Price Agreement shall not affect any outstanding order(s).
- B. **For Cause.** Either party may terminate this Agreement for cause based upon material breach of this Agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If, within 30 days, after receipt of a written notice, the breaching party has not corrected the breach or, in the case of a breach which cannot be corrected in 30 days, begin and proceed in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the Agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.
- C. **Return of Equipment Upon Cancellation or Termination.** Termination of this Price Agreement also results in termination of the rental of any equipment in the County's possession. In the event of such early termination, as reflected in this section, the Using Department shall immediately cease all use of the equipment and shall immediately make arrangements with Vendor or its designee to return the equipment to Vendor at any destination within the continental United States designated by the Vendor. Any expenses or risks associated with returning equipment to the Vendor shall be borne solely by the Using Department if termination was for convenience by the Using Department. Such equipment shall be in good repair and in the same condition as when received by the Using Department, reasonable wear, tear and depreciation resulting from normal and proper use excepted.

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9. ASSIGNMENT. Vendor shall not sell, assign, pledge, transfer, mortgage or otherwise convey part of its interest in this Price Agreement

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11. CONDITION OF PROPOSED ITEMS. All proposed items to be delivered under this Price Agreement are to be new and of most current production, unless otherwise specified.

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13. ASSIGNMENT OF MANUFACTURER/SUPPLIER WARRANTIES; EQUIPMENT SPECIFICATIONS; VENDOR'S WARRANTIES. To the extent permitted and so long as no event of default has occurred and is continuing, Vendor hereby assigns to the Using Department, for the term of any rental of equipment under this Agreement, all equipment warranties, if any, that may be provided to Vendor's customers by the manufacturer/supplier of such equipment.

- A. The County shall have the right to take any action appropriate to enforce such warranties provided such enforcement is pursued in the Using Department's name and at its expense. In the event the Using Department is precluded from enforcing any such warranty in its name, Vendor, as owner of the equipment, may upon the Using Department's request, take reasonable steps to enforce such warranties at costs to be borne by Vendor.
- B. All equipment covered by this Price Agreement shall conform to the specifications, samples or other descriptions furnished or adopted by the County, and shall be fit for the purpose for which rented, of best quality and workmanship and free from all defects. All equipment delivered, pursuant to this Agreement shall conform to standards established for such goods and delivery in accordance with any applicable federal, state or local laws and regulations.

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provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.

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19. SCOPE OF AGREEMENT, MERGER. This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof and all such covenants, agreements and understandings have been merged into this written Agreement. No prior agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

20. NOTICE. The New Mexico Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199 imposes civil misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

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22. THIRD PARTY BENEFICIARY. This Price Agreement is not intended to and does not create any rights in any persons not a party hereto.

23. NEW MEXICO TORT CLAIMS ACT. No provision of this Price 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, Section 41-4-1, et seq.

24. APPLICABLE LAW. This Agreement shall be governed by the laws of the State of New Mexico.

25. CHOICE OF LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico. The parties agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be in the state or federal district courts of New Mexico, located in Santa Fe County, New Mexico.

26. INVALID TERM OR CONDITION/SEVERABILITY. The provisions of this Price Agreement are severable, and if for any reason, a clause, sentence or paragraph of this Agreement is determined to be invalid by a court or department having jurisdiction over the subject matter hereof, such invalidity shall not affect other provisions of the Agreement, which can be given effect without the invalid provision.

27. ENFORCEMENT OF AGREEMENT. A party's failure to require strict performance of any provision of this Price Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by party or any of its rights under this Agreement shall be effective unless express and in writing, and not effective waiver by a party of any of its right shall be effective to waive any other rights.

28. SURVIVAL. The following provisions shall survive termination of this Price Agreement: Delivery & Billing Instructions; Records, Indemnification, Commercial Warranty; Records; Applicable Law and Survival.

29. NOTICES. Either party may give written notice to the other party in accordance with the terms of this Price Agreement. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivery or three business days after being mailed.

To the County:

Santa Fe County Attorney's Office
102 Grant Avenue
PO Box 276
Santa Fe, NM 87504-0276
505-986-6279 (voice)
505-986-6362 (fax)

To the Vendor:

Wagner Equipment Company
Attn: Carlos Rede, Sales
4000 Osuna Road NE
Albuquerque, NM 87109
(505) 345-8411

Either party may change its representative or address above by written notice to the other in accordance with the terms of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Price Agreement as of the date of execution by:

SANTA FE COUNTY

Miguel M. Chavez, Chair
Santa Fe County Board of Commissioners


Date

ATTESTATION:

Geraldine Salazar
Santa Fe County Clerk

Date

APPROVED AS TO FORM:

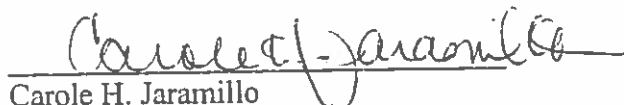


Gregory S. Shaffer
Santa Fe County Attorney

6-15-16

Date

FINANCE DEPARTMENT APPROVAL



Carole H. Jaramillo
Santa Fe County Finance Director

6/28/16

Date

VENDOR – Wagner Equipment Company

Signature

Date

Print Name and Title

ATTESTATION:

Geraldine Salazar
Santa Fe County Clerk

Date

APPROVED AS TO FORM:

Gregory S. Shaffer
Santa Fe County Attorney

Date

FINANCE DEPARTMENT APPROVAL

Carole H. Jaramillo
Santa Fe County Finance Director

Date

VENDOR - Wagner Equipment Company

Signature

ROBERT VANGORDER, RISK MANAGER
Print Name and Title

Date

Attachment A Listing of Prices

Agreement No. 2016-0199D-PW/RM LEASE & SHORT TERM RENTAL OF HEAVY EQUIPMENT
WAGNER EQUIPMENT COMPANY

RENTAL EQUIPMENT:		RENTAL RATES:		
	DESCRIPTION	DAILY	WEEKLY	MONTHLY
1.	Wheel loader, 3-4 Cu. Yd.	650.00	1,825.00	5,100.00
2.	Backhoe loader, extendahoe, enclosed cab, 4x4, 91 HP or better	350.00	825.00	2,375.00
3.	Broom sweeper, enclosed cab, 8 foot brush	250.00	880.00	2,100.00
4.	Excavator, 65 HP or better 12' dig depth or better	425.00	1,485.00	3,700.00
5.	Double drum steel wheel, 2-4 ton with spray bar system	225.00	630.00	1,640.00
6.	Double drum steel wheel, 4-6 ton with spray bar system	280.00	745.00	1,980.00
7.	Pneumatic roller, 8-12 ton with spray bar system	400.00	1,000.00	2,750.00
8.	Motor Grader, 200 HP or better	1,000.00	3,000.00	7,500.00
9.	Dozer 130 HP or better	750.00	2,080.00	5,800.00
10.	Skid steer loader, 80 HP or better	265.00	920.00	2,300.00
11.	Tractor scraper, 18 Cu. Yd. pan self-loading	2,000.00	7,500.00	18,000.00
12.	Asphalt reclaimers 350 HP or better	3,400.00	9,500.00	26,650.00

