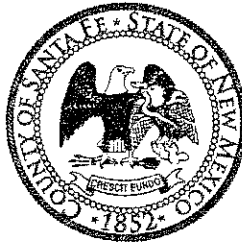


Henry P. Roybal
Commissioner, District 1

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

TO: Santa Fe Board of County Commissioners

FROM: David Sperling, Fire Chief

THRU: Pablo Sedillo, Public Safety Director
Katherine Miller, County Manager *KM 7/20/16*

DATE: July 12, 2016

SUBJECT: Request Approval of the Terms and Conditions of a Memorandum of Agreement Between The Energy, Minerals and Natural Resources Department (EMNRD) and Santa Fe County to Provide a Mechanism for the County to Receive Funds From EMNRD to Mitigate the Threat of Wildland Fire and Improve Forest Health. (Fire Department/Chief Sperling)

ISSUE:

The Santa Fe County Fire Department (SFCFD) requests Board of County Commission approval of the terms and conditions of an MOA between EMNRD and the County in order to provide a mechanism for the transfer of funds to the County to mitigate the threat of wildland fire and improve forest health. The Agreement will become effective following Board approval and EMNRD's signature and shall continue indefinitely unless terminated earlier pursuant to Sections 5 Terminations, and Section 6 Appropriations. The indefinite term of this Agreement requires Board approval.

BACKGROUND:

EMNRD occasionally receives funds from the State of New Mexico and the United States Department of Agriculture to mitigate the threat of wildland fire and improve forest health. EMNRD and the Fire Department desire to enter into this indefinite term Agreement to provide an efficient mechanism to create and fund Wildland Urban Interface and Hazardous Fuels Reduction Grant Programs that emphasize improving watershed areas on public and private land, develop defensible space for individual homeowners, develop fuel breaks along common boundaries between private and public land, and assist with thinning of individual lots and subdivisions. There may be multiple projects conducted as part of this Agreement. Each individual project would follow

a specific Project Work Plan prepared and approved by the County and approved by EMNRD through its Forestry Division prior to the commencement of any work.

RECOMMENDATION:

Recommend Board of County Commissioner approval of the attached indefinite term MOA between New Mexico Energy, Minerals and Natural resources Department and Santa Fe County.

Thank you for your consideration.

**MEMORANDUM OF
AGREEMENT BETWEEN THE
NEW MEXICO ENERGY, MINERALS
AND NATURAL RESOURCES
DEPARTMENT AND
SANTA FE COUNTY**

THIS MEMORANDUM OF AGREEMENT (AGREEMENT) is made and entered into by the New Mexico Energy, Minerals and Natural Resources Department (EMNRD) and the Santa Fe County (County).

WHEREAS, EMNRD from time to time receives funds from the State of New Mexico (State) and United States Department of Agriculture (USDA) to mitigate the threat of wildland fire and improve forest health; and

WHEREAS, EMNRD and County desire to enter into this Agreement for administrative efficiency so that a project can be carried out through a single program,

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES THAT THE METHOD BY WHICH THIS PURPOSE SHALL BE ACCOMPLISHED IS AS FOLLOWS:

1. Both parties agree as follows:

A. Wildland Urban Interface (WUI) and Hazardous Fuels Reduction (HAZ) Grant Programs projects or other fuels reduction projects conducted under this Agreement shall involve work that emphasizes improving watershed areas on public and private land, the development of defensible space for individual homeowners, development of fuel breaks along common boundaries between private and public land, and assisting with thinning of individual lots and subdivision groups. There may be multiple projects conducted as part of this Agreement. Each project to be conducted under this Agreement shall follow the procedures indicated in a written Project Work Plan, which will be developed at the time a WUI, HAZ or other fuels reduction project is initiated.

B. The County shall not perform any work until a Project Work Plan is in place and EMNRD, acting through its Forestry Division, issues in writing a Notice to Proceed.

2. County shall:

A. Consult with EMNRD and request the work to be performed based upon the needs of the County to improve natural resources on lands within

County through the performance of natural resource restoration. Such work shall be performed in those areas that have the greatest impact on mitigating the threat of wildfires and improving forest health. County shall coordinate its projects with activities being conducted by other entities where feasible.

B. Prepare a proposed Project Work Plan for each individual project for consideration and approval by EMNRD.

C. Provide a written activity report of work completed as set forth in the Project Work Plan.

D. Provide EMNRD with invoices for payment supported by detailed certified statements of account documenting the services rendered for each payment as necessary but no more frequently than on a weekly basis.

3. EMNRD shall:

A. Reimburse the County out of state or federal funds for all reimbursable costs incurred under this Agreement for materials and labor in an amount not to exceed the limit set forth in the Project Work Plan. That limit, which will vary due to the type of each project and its complexity, shall include New Mexico governmental gross receipts tax, if applicable. Reimbursement is contingent upon the County expending matching funds, if applicable, as set forth in the Project Work Plan. The matching amount shall be dependent on the allocation made to EMNRD by the state or USDA and the amount EMNRD makes available to County.

B. Make all disbursements for costs by voucher supported by approved purchase order or equivalent document and invoice from County evidencing the propriety of each payment. Amounts charged for personal services will be based on payrolls maintained by County and supported by time and attendance sheets.

C. Provide overall guidance on goals and objectives for forest insect and disease and forest health program activities on state and private lands in New Mexico.

D. Inspect project implementation and certify work as being in compliance with each Project Work Plan.

4. **Term:** This Agreement becomes effective on EMNRD's signature and shall continue indefinitely unless earlier terminated pursuant to Section 5, Termination, or Section 6, Appropriations, below.

5. **Termination:** Either party may terminate this Agreement upon written notice delivered to the other at least 10 days prior to the intended termination date. By such termination, neither party may nullify or avoid any obligation required to have been performed prior to termination.

6. **Appropriations:** The terms of this Agreement are contingent upon the New Mexico State Legislature and USDA granting sufficient appropriation and authorization for the performance of this Agreement. If sufficient appropriation or authorization is not granted, either party may terminate this Agreement, or suspend performance pending approval of sufficient appropriation or authorization, upon written notice from one to the other. Either party's decision as to whether sufficient appropriations are available shall be final, binding and accepted by the other.

7. **Subcontracting:** County shall not subcontract any portion of the services it performs under this Agreement or obligate itself in any manner to any third party, with respect to any rights or responsibilities under this Agreement, without EMNRD's prior written approval.

A. County is required to provide EMNRD with evidence of competitive procurement for any subcontract, including records of advertisement of bid, proposals received and methods to select each subcontractor.

B. Any subcontract shall include provisions necessary to allow County to meet its obligations and requirements under this Agreement.

8. **Strict Accountability for Receipts and Disbursements:**

A. County shall be strictly accountable for receipts and disbursements relating hereto and shall make all relevant financial records available to EMNRD, the Department of Finance and Administration, the New Mexico State Auditor, and USDA upon request, and shall maintain all such records for seven years after this Agreement has expired or has been terminated.

B. If County receives \$500,000 or more in federal funding from all sources in the aggregate in a fiscal year, County financial records involving services and procurement under this Agreement shall be audited annually pursuant to all federal, state, and local government audit requirements 2 C.F.R. Part 225 and OMB Circular and A-133, as prescribed by the Single Audit Act of 1984, or any subsequent OMB Circular. County shall provide EMNRD with a copy of the independent financial audit, either in hard copy format or on disk, no more than 45 days after the audit's completion for each fiscal year this Agreement is in effect.

9. **Disposition, Division, or Distribution of Property; Return of Surplus Funds:** Upon expiration or termination of this Agreement, if either party has property or funds in its possession belonging to the other, it shall return the property or funds in proportion to the parties' original contribution.

10. **Equal Opportunity Compliance:** County agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, County assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age,

physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation, or gender identity, be excluded from employment with or participation in, be denied the benefits of or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If County is found not to be in compliance with these requirements during the life of this Agreement, COUNTY agrees to take appropriate steps to correct these deficiencies.

11. **Compliance with Funding Source Conditions:** County shall comply with all applicable state and federal statutes and rules and regulations the funding source imposes.

12. **Insurance Coverage:** By signing this Agreement, County certifies that activities described in Section 1 above are covered by insurance as specified within this Section, secured in accordance with any method allowed by applicable law, including self-insurance, pooling of self-insured reserves, or insurance provided by a third party. County shall maintain continuous insurance coverage as specified below of the activities described in Section 1 above so long as this Agreement is in effect. Failure to maintain such coverage is reason for this Agreement's immediate termination. County shall notify EMNRD prior to cancellation or expiration of any insurance required under this Agreement.

A. Worker's Compensation protection that complies with the requirements of the New Mexico Workers' Compensation Act, NMSA 1978, §52-1-1, et seq., if applicable. If County fails to comply with the Workers' Compensation Act and applicable rules when required to do so, EMNRD may terminate this Agreement.

B. Comprehensive public liability protection covering property damage and personal injury liability that may arise under this Agreement and any amendments hereto, in amounts equal or greater than liability limits set forth in NMSA 1978, §41-4-19, as it may be amended from time to time.

13. **Amendment:** This Agreement shall not be altered, changed, or amended except by instrument in writing executed by the parties hereto.

IN WITNESS WHEREOF, the parties have herein set their hand.

STATE OF NEW MEXICO, ENERGY, MINERALS AND NATURAL
RESOURCES DEPARTMENT

By: _____
Cabinet Secretary or Designee

Date: _____

SANTA FE COUNTY

By: _____ Date: _____
Miguel M. Chavez, Chair
Board of County Commissioners of Santa Fe County

Attestation:

By: _____
Geraldine Salazar
Santa Fe County Clerk

Approved as to form:

 _____ Date: 7-7-16
Gregory S. Shaffer
Santa Fe County Attorney

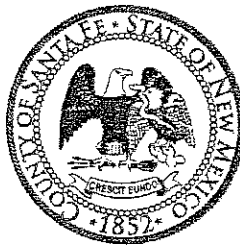
Finance Department approval:

 _____ Date: 7/6/16
Carole H. Jaramillo
Finance Director

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 11, 2016

To: Board of County Commissioners

Via: Katherine Miller, County Manager
Jeffrey Trujillo, ASD Director
Patricia Boies, Acting Director Community Services Department

From: Bill Taylor, Procurement Manager
Lupe Sanchez, County DWI Program

ITEM AND ISSUE: BCC Meeting July 26, 2016

REQUEST APPROVAL OF AMENDMENT NO. 3 TO AGREEMENT NO. 2014-0237-HHS/PL WITH FIRESTIK STUDIO TO INCREASE THE AMOUNT OF THE AGREEMENT AN ADDITIONAL \$130,000, INCLUSIVE OF GRT, EXTENDING THE TERM FOR AN ADDITIONAL YEAR AND AUTHORIZING THE COUNTY MANAGER TO SIGN THE PURCHASE ORDER (Bill Taylor Purchasing/Lupe Sanchez/Community Services)

ISSUE

Amendment No. 3 increases the Agreement amount an additional \$130,000 for a total contract sum of \$540,000 over a three and a half year term. The contract sum therefore requires Board of County Commissioner approval.

BACKGROUND

The Purchasing Division issued Request for Proposal (RFP) #2014-0237-HHS/PL "Design and Implementation of DWI Public Awareness Campaigns" on January 9, 2014. March 31, 2014 Santa Fe County entered into the contract with Firestik Studios for an original contract amount of \$130,000, inclusive of GRT to design and implement two different DWI Public Awareness Campaigns. The campaigns included creative development, design, production, management and printing of promotions items for the DWI program; which included radio advertisement, drink coasters, cocktail napkins, posters, stickers, t-shirts and bus wraps in both English and Spanish.

Amendment No. 1 increased the original amount of the contract an additional \$150,000 for a total contract sum of \$280,000 and extended the term an additional year.

Amendment No. 2 also increased the contract amount an additional \$130,000 for a total contract sum of \$410,000 and extended the term to July 31, 2016.

Amendment No. 3 increases the contract amount an additional \$130,000 for a total contract amount of \$540,000 and extends the term to July 31, 2017. This campaign will include the design, implementation, management, and printing of promotional items for two distinctly different public awareness campaigns in both English and Spanish.

The County does have a final option to renew the agreement through March 31, 2018.

RECOMMENDATION

The Community Services Department requests the approval of Amendment No.3 to Agreement No. 2014-0237-HHL/PL with Firestik Studio to increase the amount of the agreement an additional \$130,000, inclusive of GRT, extending the agreement for one additional year and authorizing the County Manager to sign the purchase order.

**AMENDMENT NO. 3
TO AGREEMENT BETWEEN SANTA FE COUNTY
AND FIRESTIK STUDIO
TO DESIGN AND IMPLEMENT A DWI AWARENESS CAMPAIGN**

THIS AMENDMENT is made and entered into as of this _____ day of _____, 2016, by and between **Santa Fe County**, hereinafter referred to as the "County," and **Firestik Studio**, hereafter referred to as the "Contractor."

WHEREAS, the County and Contractor entered into Agreement No. 2014-0237-HHS/PL (the Agreement) on March 31, 2014, to provide for Contractor's design and implementation of the County's ongoing DWI Public Awareness Campaign; and

WHEREAS, Article 15 of the Agreement allows the Agreement to be amended by an instrument in writing signed by the parties; and

WHEREAS, the term of the Agreement is due to expire July 31, 2016; and

WHEREAS, due to the availability of the grant funding for this program, the County wishes to amend the term of the Agreement to align the term with the availability and expenditure requirements of the grant funding.

NOW, THEREFORE, the parties agree to amend the Agreement as follows:

1. Article 3.A.2. (Compensation and Invoicing) is amended by inserting subparagraph "c" to read:

c. By Amendment No. 3, the Contractor's compensation for the period ending July 31, 2016, is One Hundred Thirty Thousand Dollars (\$130,000.00). The total amount payable to the Contractor under this Agreement shall not exceed Five Hundred Forty Thousand Dollars (\$540,000.00) inclusive of NM gross receipts tax.

2. Article 4 (Effective Date and Term), is amended by inserting a subparagraph "c" to read:

c. By Amendment No. 3, the parties agree to extend the term of this Agreement from July 31, 2016 to July 31, 2017. The County has the option to extend the term of this Agreement for a period not to exceed March 31, 2018.

3. All provisions of the Agreement not specifically amended or modified by this Amendment No. 3 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment as of last date of signature by the parties.

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

Date

FINANCE DEPARTMENT APPROVAL

Carole H. Jaramillo
Santa Fe County Finance Director

Date

CONTRACTOR

Signature

Date

Print Name and Title

**AMENDMENT NO. 2
TO AGREEMENT BETWEEN SANTA FE COUNTY
AND FIRESTIK STUDIO
TO DESIGN AND IMPLEMENT A DWI AWARENESS CAMPAIGN**

THIS AMENDMENT is made and entered into as of this 23rd day of February, 2016, by and between **Santa Fe County**, hereinafter referred to as the "County," and **Firestik Studio** hereinafter referred to as the "Contractor."

WHEREAS, the County and Contractor entered into Agreement No. 2014-0237-HHS/PL (the Agreement) on March 31, 2014, to provide for Contractor's design and implementation of the County's ongoing DWI Public Awareness Campaign; and

WHEREAS, Article 15 of the Agreement allows the Agreement to be amended by an instrument in writing signed by the parties;

WHEREAS, the term of the Agreement is due to expire March 31, 2016; and

WHEREAS, due to the availability of the grant funding for this program, the County wishes to amend the term of the Agreement to align the term with the availability and expenditure requirements of the grant funding.

NOW THEREFORE, the parties agree to amend the Agreement as follows:

1. Article 3.A.2) (Compensation and Invoicing) is amended by inserting subparagraphs "a" and "b" read:
 - a. By Amendment No. 1, the County exercised its first option to extend this Agreement from March 31, 2015 to March 31, 2016. The total amount payable to the Contractor for the period of March 31, 2015 to March 31, 2016 shall not exceed One Hundred Fifty Thousand Dollars (\$150,000.00) inclusive of NM gross tax in accordance with the prices in Exhibit B attached. The total amount payable to the Contractor under this Agreement as amended shall not exceed Two Hundred Eighty Thousand Dollars (\$280,000.00), inclusive of NM gross receipts tax.
 - b. By Amendment No. 2, the Contractor's compensation for the period ending June 30, 2016 is \$130,000.00. The total amount payable to the Contractor under this Agreement shall not exceed Four Hundred Ten Thousand Dollars (\$410,000.00), inclusive of NM gross receipts tax.
2. The amendment to Article 3 by Amendment No. 1 is deleted in its entirety.
3. Article 4 (Effective Date and Term) is amended by deleting the second sentence in its entirety and replace with:

The County has the option to extend the term of this Agreement in one-year increments or less, but in no event will the term of this Agreement be extended beyond March 31, 2018.

4. Article 4 (Effective Date and Term), is amended by inserting a subparagraph 4.b to read:

b. By Amendment No. 2, the parties agree to extend the term of this Agreement from March 31, 2016, to July 31, 2016. The County has the option to extend the term of this Agreement for a period not to exceed March 31, 2018.

5. All provisions of the Agreement not specifically amended or modified by this Amendment No. 2 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment as of last date of signature by the parties.

SANTA FE COUNTY

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

Date 2/23/16



Approved as to form:

Robert S. Shaffer
Gregory S. Shaffer
Santa Fe County Attorney

Date 2-1-16

Finance Department:

Carole H. Jaramillo
Carole H. Jaramillo
Finance Director

Date 2/1/16

CONTRACTOR

OWNER
(signature and title)

Date 2/4/16

**AMENDMENT NO. 2
TO AGREEMENT BETWEEN SANTA FE COUNTY
AND FIRESTIK STUDIO
TO DESIGN AND IMPLEMENT A DWI AWARENESS CAMPAIGN**

THIS AMENDMENT is made and entered into as of this 23 day of February, 2016, by and between Santa Fe County, hereinafter referred to as the "County," and Firestik Studio hereinafter referred to as the "Contractor."

WHEREAS, the County and Contractor entered into Agreement No. 2014-0237-HHS/PL (the Agreement) on March 31, 2014, to provide for Contractor's design and implementation of the County's ongoing DWI Public Awareness Campaign; and

WHEREAS, Article 15 of the Agreement allows the Agreement to be amended by an instrument in writing signed by the parties;

WHEREAS, the term of the Agreement is due to expire March 31, 2016; and

WHEREAS, due to the availability of the grant funding for this program, the County wishes to amend the term of the Agreement to align the term with the availability and expenditure requirements of the grant funding.

NOW THEREFORE, the parties agree to amend the Agreement as follows:

1. Article 3.A.2) (Compensation and Invoicing) is amended by inserting subparagraphs "a" and "b" read:
 - a. By Amendment No. 1, the County exercised its first option to extend this Agreement from March 31, 2015 to March 31, 2016. The total amount payable to the Contractor for the period of March 31, 2015 to March 31, 2016 shall not exceed One Hundred Fifty Thousand Dollars (\$150,000.00) inclusive of NM gross tax in accordance with the prices in Exhibit B attached. The total amount payable to the Contractor under this Agreement as amended shall not exceed Two Hundred Eighty Thousand Dollars (\$280,000.00), inclusive of NM gross receipts tax.
 - b. By Amendment No. 2, the Contractor's compensation for the period ending June 30, 2016 is \$130,000.00. The total amount payable to the Contractor under this Agreement shall not exceed Four Hundred Ten Thousand Dollars (\$410,000.00), inclusive of NM gross receipts tax.
2. The amendment to Article 3 by Amendment No. 1 is deleted in its entirety.
3. Article 4 (Effective Date and Term) is amended by deleting the second sentence in its entirety and replace with:

The County has the option to extend the term of this Agreement in one-year increments or less, but in no event will the term of this Agreement be extended beyond March 31, 2018.

4. Article 4 (Effective Date and Term), is amended by inserting a subparagraph 4.b to read:

b. By Amendment No. 2, the parties agree to extend the term of this Agreement from March 31, 2016, to July 31, 2016. The County has the option to extend the term of this Agreement for a period not to exceed March 31, 2018.

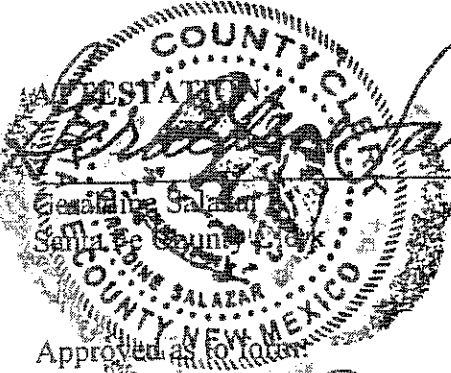
5. All provisions of the Agreement not specifically amended or modified by this Amendment No. 2 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment as of last date of signature by the parties.

SANTA FE COUNTY

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

Date 2/23/16



Approved as follows:

Gregory S. Shaffer
Gregory S. Shaffer
Santa Fe County Attorney

Date 2-1-16

Finance Department:

Carole H. Jaramillo
Carole H. Jaramillo
Finance Director

Date 2/1/16

CONTRACTOR

OWNER
(signature and title)

Date 2/4/16

**AMENDMENT NO. 1
BETWEEN SANTA FE COUNTY AND FIRESTIK STUDIO
TO DESIGN AND IMPLEMENT DWI PUBLIC AWARENESS CAMPAIGNS**

This Amendment is made and entered into as of this 31 day of March, 2015 by and between **Santa Fe County**, hereinafter referred to as "the County", a New Mexico political subdivision, and **Firestik Studio**, hereinafter referred to as "the Contractor".

WHEREAS, in accordance with Section 13-1-112 NMSA 1978, the County issued Request for Proposal (RFP) No. 2014-0237-HHS/PL to design and implement DWI Public Awareness Campaigns; and

WHEREAS, the County and Contractor entered into Agreement No. 2014-0237-HHS/PL on March 31, 2014 for these services for a term of one year; and

WHEREAS, Section 15, "NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED" of Agreement No. 2013-0320-HHS/PL allows the parties to amend the Agreement by an instrument in writing executed by the parties hereto; and

WHEREAS, Section 4, "EFFECTIVE DATE AND TERM" of Agreement No. 2014-0237-HHS/PL the County has the option to renew the Agreement on the same terms and conditions for one year; and

WHEREAS, by Amendment No. 1 the parties agree to renew the term of Agreement No. 2014-0237-HHS/PL from March 31, 2015 to March 31, 2016 and increase compensation by \$150,000.

NOW, THEREFORE, the parties agree as follows:


1. Article 3. "COMPENSATION AND INVOICING" a new subparagraph is inserted as "3)" to read as follows:
 - 3) By Amendment No. 1, the County exercised its first option to extend this Agreement from March 31, 2015 to March 31, 2016. The total amount payable to the Contractor for the period of March 31, 2015 to March 31, 2016 shall not exceed One Hundred Fifty Thousand Dollars (\$150,000.00) inclusive of NM gross receipts tax in accordance with the prices in Exhibit B attached. The total amount payable to the Contractor under this Agreement, as amended and extended, shall not exceed Two Hundred Eighty Thousand Dollars (\$280,000.00) inclusive of NM gross receipts tax.
2. Article 4 "EFFECTIVE DATE AND TERM" a new subparagraph "4.a" is inserted to read as follows:
 - a. By Amendment No. 1, the County notifies Contractor and exercised the County's first option to extend the term of this agreement for one (1) year

from March 31, 2015 to March 31, 2016 on the same terms and conditions as stated herein.

3. All other provisions of the Agreement No. 2014-0237-HHS/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 to Agreement 2014-0237-HHS/PL as of the date first written above.


SANTA FE COUNTY:



Robert Anaya, Chair
Santa Fe County Board of Commissioners

3/31/15
Date

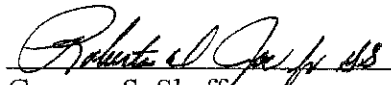
ATTESTATION



Geraldine Salazar
Santa Fe County Clerk

3-31-2015
Date

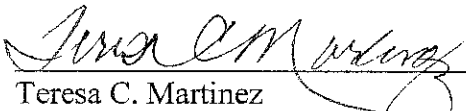
APPROVED AS TO FORM



Gregory S. Shaffer
Santa Fe County Attorney

2/11/15
Date


FINANCE DEPARTMENT APPROVAL



Teresa C. Martinez
Santa Fe County Finance Director

2/16/15
Date

CONTRACTOR:



(Signature)

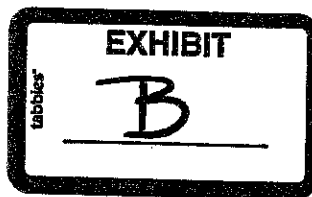
2/23/15
Date

ERIC GRIECO

(Print Name)

OWNER

(Print Title)



strategic thinking + design

FIRESTIK
STUDIO

January 27, 2015

BUDGET

SANTA FE COUNTY - 2 campaigns Spring / Summer DWI Awareness Campaign

The development of this design/advertising campaign consists of three focus areas to include: the *Cab Ride Home* program, the *Vehicle Forfeiture Ordinance* and *educating the public on the dangers of drinking and driving*. The primary target audience is English and Spanish speaking males, ages 21–35.

Spring Campaign

DESIGN / ACCOUNT MANAGEMENT

Creative development and brainstorm of campaign concept	\$ 5,000.00
General account management	\$ 5,000.00
Creation and development of campaign materials, headlines and taglines	\$ 5,500.00
Copywriting and translating of print ads and collateral	\$ 3,500.00
Design and production of agreed upon deliverables	\$ 8,500.00
Photography	\$ 4,000.00

PRINTING/COLLATERAL - may include but not limited to:

Posters	\$ 2,750.00
1,500, 11 X 17", 100# UV velvet cover 4cp/0	
Coasters	\$ 8,750.00
100,000 @ \$0.0575 each / 4" x 4" or 3.5" x 3.5" square with round corners or 3.5" round, 60pt, 4cp/4cp	
Tees, Hats and or wearables	\$ 3,575.00
men's / women's and unisex styles	
King Kong Bus Wraps	\$ 4,000.00
2 drivers side	

Bus Shelter Advertisements

\$ 1,500.00

6 locations - 36" x 36"

ADVERTISING - may include but not limited to:

\$ 16,000.00

Bus wraps, radio spots, statement stuffers

online advertising, newspaper inserts, bus shelters

Summer Campaign**DESIGN / ACCOUNT MANAGEMENT**

Creative development and brainstorm of campaign concept

\$ 5,000.00

General account management

\$ 5,000.00

Creation and development of campaign creative,
headlines and taglines

\$ 5,500.00

Copywriting and translating of print ads and collateral

\$ 3,500.00

Design and production of agreed upon deliverables

\$ 8,500.00

Photography

\$ 4,000.00

PRINTING/COLLATERAL - may include but not limited to:**Posters**

\$ 2,750.00

1,500, 11 X 17", 100# UV velvet cover 4cp/0

Coasters

\$ 8,750.00

100,000 @ \$0.0575 each / 4" x 4" or 3.5" x 3.5" square
with round corners or 3.5" round, 60pt, 4cp/4cp**Tees, Hats and or wearables**

\$ 3,575.00

men's / women's and unisex styles

King Kong Bus Wraps

\$ 4,000.00

2 drivers side

Bus Shelter Advertisements

\$ 1,500.00

6 locations - 36" x 36"

Digital Brochure / Rack Card

\$ 2,490.00

4" x 9"

ADVERTISING - may include but not limited to:

\$ 16,000.00

Bus wraps, radio spots, statement stuffers

online advertising, newspaper inserts, bus shelters

sub total:
NMGR tax (8.1875%)

\$ 138,640.00
\$ 11,351.15

Total:

\$ 149,991.15

Timeline / Campaign 1 & 2

Approval of Concept 1

present initial concept on agreed upon collateral material
approve final design for printing

3/15/15
4/15/15

Approval of Concept 2

present initial concept on agreed upon collateral material
approve final design for printing

6/15/15
7/15/15

**PROFESSIONAL SERVICE AGREEMENT
BETWEEN SANTA FE COUNTY AND FIRESTIK STUDIO
TO DESIGN AND IMPLEMENT DWI PUBLIC AWARENESS CAMPAIGNS**

THIS AGREEMENT is made and entered into this 31st day of March 2014, by and between **Santa Fe County**, hereinafter referred to as the "County" and **Firestik Studio**, whose principal place of business is located at 1012 Marquez Place #105, Santa Fe, N.M. 87505, hereinafter referred to as the "Contractor".

WHEREAS, the Santa Fe County Community Services Division, DWI Program, requires design services to develop and implement Public Awareness Campaigns that informs and instructs the public of the dangers of drinking and driving;

WHEREAS, pursuant to NMSA 1978, Sections 13-1-112 and 13-1-117, competitive, sealed proposals were solicited via a formal request for proposals, RFP No. 2014-0237-HHS/PL, for the provision of these services;

WHEREAS, based upon the evaluation criteria established within the request for proposals for the purposes of selecting the most qualified offeror, the County has determined the Contractor as the most responsive and highly rated offeror;

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

NOW, THEREFORE, it is agreed between the parties:

1. SCOPE OF WORK

The Contractor shall provide the creative development, design, production, copy writing, management and printing of the campaign promotional materials to include, but not limited to, the following:

- A. Develop a strategy to rebrand and produce a new logo for the Santa Fe County DWI Program.
- B. Develop two distinctly different Public Awareness campaigns in both English and Spanish for the Santa Fe County DWI Program to include:
 - 1) Cab Ride Home Program;
 - 2) Change to the County's Vehicle Forfeiture Ordinance;
 - 3) Law Enforcement efforts to reduce DWI within Santa Fe County;
 - 4) Public education on the dangers of drinking and driving.
- C. Develop new, innovative tactics to promote the campaigns utilizing materials for distribution to restaurants and bars such as coasters, napkins, rack cards, Johnny Boards, magnets and key chains. Other promotional techniques could include bus wraps and advertising on gas pumps as well as other clever ideas.

- D. Provide all copy writing, production, management, design, creative development, and printing of promotional materials.
- E. Produce a designated number of coasters, key chains, bus wraps (King Kong wraps or others to include installation).
- F. Produce and print direct mailing postcards to include cost of postage.
- G. Develop and place digital media.
- H. Provide support during public process including attendance at pre-arranged press conferences, social media updates and other collateral material.

The Santa Fe County DWI Program shall:

- A. Provide direction and work closely with Contractor to ensure that all printed and produced materials are satisfactorily completed.
- B. Develop a timeline with established deadlines for the timely delivery of all printed and produced materials.

2. ADDITIONAL SERVICES

A. The parties agree that all tasks set forth in Section 1 (Scope of Work), of this Agreement shall be completed in full, to the satisfaction of the County, in accordance with professional standards and for the amount set forth in Section 3 (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.

3. COMPENSATION AND INVOICING

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

- 1) County shall pay to the Contractor in full payment for services satisfactorily performed and all costs and expenses shall be in accordance with Exhibit A.
- 2) The total amount payable to the Contractor under this Agreement shall not exceed one hundred thirty thousand dollars (\$130,000.00) inclusive of gross receipts tax. Any New Mexico gross receipts tax levied on the

amounts payable under this Agreement shall be paid by the County to the Contractor.

- 3) 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.

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.

4. 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.

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. 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: Firestik Studio
1012 Marquez Place #105
Santa Fe, New Mexico 87505

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. Contractor is registered as a sole proprietor under the laws of the State of New Mexico.

C. Contractor is legally registered and is properly licensed by the New Mexico State 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. 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

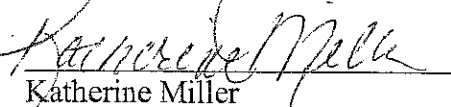
The Contractor agrees to compute and submit simultaneous with execution of this Agreement a Campaign Contribution Disclosure Form approved by the County.

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

3-31-14
Date

Approved as to Form

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

3/12/14
Date

Finance Department Approval

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

3/20/14
Date

CONTRACTOR:

Eric Griego
(Signature)

3/18/14
Date

ERIC GRIEGO
(Print Name)

OWNER
(Print Title)

FEDERAL IDENTIFICATION NUMBER: 043805132



strategic thinking + design

FIRESTIK
STUDIO



March 25, 2014

BUDGET

SANTA FE COUNTY - 2 campaigns Spring / Summer DWI Awareness Campaign

The development of this design/advertising campaign consists of three focus areas to include: the *Cab Ride Home* program, the *Vehicle Forfeiture Ordinance* and *educating the public on the dangers of drinking and driving*. The primary target audience is English and Spanish speaking males, ages 21-35.

Spring Campaign

DESIGN / ACCOUNT MANAGEMENT

Logo development	\$ 5,000.00
General account management	\$ 5,000.00
Creation and development of campaign creative, headlines and taglines	\$ 5,500.00
Copywriting and translating of print ads and collateral	\$ 3,500.00
Design and production of agreed upon deliverables	\$ 6,500.00
Photography	\$ 1,500.00

PRINTING/COLLATERAL - may include but not limited to:

Posters 1,500, 11 X 17", 100# UV velvet cover 4cp/0	\$ 2,750.00
Coasters 100,000 @ \$0.0575 each / 4" x 4" or 3.5" x 3.5" square with round corners or 3.5" round, 60pt, 4cp/4cp	\$ 8,750.00
Grocery Bags 1,000, 1 color - 75 gsm non-woven, 14"h x 16"w x 3"	\$ 3,575.00
King Kong Bus Wraps 2 drivers side	\$ 4,000.00

Bus Shelter Advertisements

6 locations - 36" x 36"

\$ 1,500.00

ADVERTISING - may include but not limited to:

Bus wraps, radio spots, statement stuffers
online advertising, newspaper inserts, bus shelters

\$ 15,000.00

Summer Campaign

DESIGN / ACCOUNT MANAGEMENT

General account management

\$ 5,000.00

Creation and development of campaign creative,
headlines and taglines

\$ 5,500.00

Copywriting and translating of print ads and collateral

\$ 3,500.00

Design and production of agreed upon deliverables

\$ 6,500.00

Photography

\$ 1,500.00

PRINTING/COLLATERAL - may include but not limited to:

Posters

1,500, 11 X 17", 100# UV velvet cover 4cp/0

\$ 2,750.00

Coasters

100,000 @ \$0.0575 each / 4" x 4" or 3.5" x 3.5" square
with round corners or 3.5" round, 60pt, 4cp/4cp

\$ 8,750.00

Grocery Bags

1,000, 1 color - 75 gsm non-woven, 14" h x 16" w x 3"

\$ 3,575.00

King Kong Bus Wraps

2 drivers side

\$ 4,000.00

Bus Shelter Advertisements

6 locations - 36" x 36"

\$ 1,500.00

ADVERTISING - may include but not limited to:

Bus wraps, radio spots, statement stuffers
online advertising, newspaper inserts, bus shelters

\$ 15,000.00

sub total: \$ 120,150.00
NMGR tax (8.1875%) \$ 9,837.29

Total: \$ 129,987.29

Timeline / Spring Campaign

Approval of Logo

selection of logo and tagline 4/14/14

Approval of Concept

present initial concept on agreed upon collateral material 4/18/14

approve final design for printing 4/20/14

Delivery of Approved Graphics

be ready to execute mailings, graphics etc. 5/02/14

Timeline / Summer Campaign

TBD

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

DATE: *July 13, 2016*

TO: *Board of County Commissioners*

FROM: *Bill Taylor, Procurement Manger*

VIA: *Katherine Miller, County Manager*
Jeff Trujillo, ASD Director
Michael Kelley, Public Works Department Director

ITEM AND ISSUE: *BCC Meeting July 26, 2016*

Approval of Memorandum of Understanding between Santa Fe County and United States Department of the Interior Bureau of Land Management for the Maintenance of El Camino Real de Tierra Adentro National Historic Trail Buckman Road Segment Retracement Trail (Public Works/Colleen Baker)

SUMMARY:

The purpose of this MOU is to provide for the construction and maintenance of El Camino Real de Tierra Adentro National Historic Trail, Buckman Road Segment Retracement Trail within the Bureau of Land Management lands north of NM 599 to the US Forest Service Boundary west of the Caja del Rio Landfill.

BACKGROUND:

In 2014 Santa Fe County applied for and received a grant from the Federal Highway Administration (FHWA) through the Federal Lands Access Program to design and construct a trail retracing the route of El Camino Real de Tierra Adentro along Caja del Rio Rd. and Buckman Rd. from the Santa Fe River to Diablo Canyon. Under the grant agreement Santa Fe County agreed to operate and maintain the trail once it is constructed.

The Project is divided into three segments. Segment 1 is a 30" wide natural surface trail from the US Forest Service Headquarters Well Trailhead to the BLM Diablo Canyon Trailhead. Segment 2 is a multi-use, paved trail along Caja del Rio Rd. from the Santa Fe River Trail to County Rd 62. Segment 2A is a 4' wide crushed fines trail that connects the paved trail along Caja del Rio Rd. to the US Forest Service Headquarters Well Trailhead.

The majority of Segment 2 is within the Caja del Rio Road Right-of-Way that BLM granted to the County. However the road right-of-way does not give the County permission to construct the trail.

BLM has agreed to enter into an MOU with the County to permit the trail to be constructed while the County pursues a right-of-way for Segments 2 and 2A of the trail.

ACTION REQUESTED:

Approval of Memorandum of Understanding between Santa Fe County and United States Department of the Interior Bureau of Land Management for the Maintenance of El Camino Real de Tierra Adentro National Historic Trail Buckman Road Segment Retracement Trail.

**MEMORANDUM OF UNDERSTANDING
BETWEEN
SANTA FE COUNTY
AND
UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
FOR THE MAINTENANCE OF EL CAMINO REAL DE TIERRA ADENTRO
NATIONAL HISTORIC TRAIL BUCKMAN ROAD SEGMENT RETRACEMENT
TRAIL**

This MEMORANDUM OF UNDERSTANDING (hereinafter "MOU") is entered into on this ____ day of _____ 2016, by and between Santa Fe County (hereinafter "County") and the United States Department of the Interior, Bureau of Land Management (hereinafter "BLM").

RECITALS

WHEREAS, the County and BLM have entered into a Memorandum of Agreement with the Federal Highway Administration, Central Federal Lands Highway Division (FHWA-CFLHD) to construct a recreational trail retracing the historic route of El Camino Real de Tierra Adentro National Historic Trail, Buckman Road Segment (see Exhibit A attached hereto); and

WHEREAS, the trail will be managed as a retracement trail of El Camino Real de Tierra Adentro National Historic Trail; and

WHEREAS, a portion of the trail will be constructed on land under the jurisdiction of the BLM, Taos Field Office; and

WHEREAS, the BLM has agreed to accept the portion of the trail under its jurisdiction as part of the BLM trail system once it is constructed; and

WHEREAS, the County has agreed to maintain the trail once it is constructed.

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

I. PURPOSE

The purpose of this MOU is to provide for the maintenance of the El Camino Real de Tierra Adentro National Historic Trail, Buckman Road Segment Retracement Trail within BLM lands in T17N, R8E, Sections 21, 22, 26 and 35, N.M.P.M., depicted as Segments 2 and 2A on Exhibit B attached hereto (hereinafter "Trail").

II. AUTHORITIES

- A. The Federal Land Policy and Management Act of 1976 (Public Law 94-579, Section 307 (b)). Omnibus Consolidated Appropriations Bill of 1997, P.L. 104-208.
- B. The National Trails System Act of 2009 (P.L. 90-543)
- C. The National Trails System Memorandum of Understanding (06-SU-11132424-196) among the US Department of Interior Bureau of Land Management, National Park Service, US Fish and Wildlife Service US Department of Agriculture Forest Service, US Department of the Army Corps of Engineers and the US Department of Transportation Federal Highway Administration
- D. Executive Order 13195-Trails for America in the 21st Century 2001
- E. Memorandum of Understanding (01-SU-11130124-096) for the Administration and Management of National Historic and National Scenic Trails among the US Department of the Interior Bureau of Land Management, National Park Service, and the US Department of Agriculture Forest Service and the US Department of Transportation Federal Highway Administration and the National Endowment for the Arts.

III. MUTUAL UNDERSTANDING AND AGREEMENT

- A. BLM reserves the right to manage resources and resource use on land under their respective jurisdictions.
- B. This MOU does not supersede existing MOUs with other cooperating organizations nor does it prevent the BLM from entering into MOUs with other cooperating organizations.
- C. This MOU does not require the BLM to obligate funding for the maintenance of the Trail, nor does this MOU prevent the BLM from maintaining or constructing improvements to the Trail within their jurisdictions at their sole discretion, and at their own cost.
- D. Subject to Section X below (DISPOSITION OF PROPERTY) any materials provided by the BLM for the maintenance, repair or improvement of the Trail, will remain the property of the providing agency.

IV. ROLES AND RESPONSIBILITIES

A. County will:

1. Designate the Open Space and Trails Maintenance Foreman to act as the liaison with BLM for the purpose of this MOU.
2. Notify the BLM by email at least seven calendar days prior to any trail maintenance activity. This includes grubbing to maintain side slope or repair tread, brushing and/or pruning vegetation, clearing debris, obstructions or safety hazards, repair and/or construction of drainage features, and repair or replacement of signs or other markers.
3. Maintain the Trail in reasonable condition and in accordance with the construction specifications and applicable federal regulations.
4. Provide all necessary labor, equipment and materials to maintain the Trail.
5. Conduct an inspection of the Trail three times per year, in the Spring (February-April), Summer (May-July), and Fall (August-October).
6. Respond to and take action to correct any damage or other physical condition that may be hazardous to trail users within five working days of when the condition was reported.
7. Submit a Trail Maintenance Report and three Trail Inspection forms, in a format mutually agreed to by the parties, to BLM annually within 30 days of the anniversary of the effective date of this MOU.
8. Submit plans to BLM for prior approval by the Authorized Officer of any proposed changes to the as-built Trail before beginning work. If BLM does not respond within 30 calendar days of receipt of the County's plans, the plans will be deemed rejected.

B. BLM will:

1. Designate the Taos Field Office Outdoor Recreation Planner to act as the liaison with the County for the purpose of this MOU.
2. Provide oversight and coordination of maintenance activities as necessary.
3. Make a reasonable effort to complete the review of plans submitted by the County within 30 calendar days of receipt. The BLM may approve the

plans as submitted, require changes to the plans as a condition of granting approval or may reject the plans. The Authorized Officer for the BLM is the Taos Field Office Manager.

V. FUNDING

The County agrees to be the primary party responsible for the cost to maintain the Trail. The County shall include in its annual budget such funding as it deems necessary to maintain the Trail.

VI. EFFECTIVE DATE AND TERM

This MOU shall become effective on the date of the last signature by the parties and shall remain in effect for a period of five years, unless terminated earlier pursuant to Paragraph VII. The MOU may be renewed by written mutual consent of the parties.

VII. TERMINATION

At any time, this MOU may be terminated by written mutual consent of both parties or through written notification to the other party at least 90 days prior to termination. A joint meeting will be held not less than 60 days prior to the termination setting forth the reasons for the termination.

VIII. APPROPRIATIONS AND AUTHORITY

This MOU 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 MOU shall terminate upon written notice by the County to the BLM. Such termination shall be without penalty to the County. 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 MOU shall be final and not subject to challenge by the BLM or in any way or forum, including a lawsuit.

IX. AMENDMENT

This Agreement shall not be altered, changed or amended except by an instrument in writing executed by the parties hereto. Amendments, modifications, or supplements

to this MOU may be proposed at any time by any party and shall become effective upon written approval of both parties.

X. DISPOSITION OF PROPERTY

Upon expiration or termination of this MOU, any permanent improvements made by the County to the Trail, such as drainage features, signs, gates and fences, shall become the property of the agency with jurisdiction over the land where the improvements are located at no additional cost to the agency. BLM shall assume responsibility for maintenance of the Trail within their respective jurisdictions at their sole discretion and cost.

XI. NO THIRD-PARTY BENEFICIARIES; RESERVATION OF RIGHTS

This MOU IS not intended to and does not create and rights in any persons or party not a party hereto.

XII. LIABILITY

Each party shall be solely responsible for any liability arising from personal injury or damage to persons or property occasioned by its own agents or employees, contractors or subcontractors and shall not be responsible for liability incurred as a result of another party's acts or omissions in connection with this MOU.

Any liability incurred by the County in connection with this MOU is subject to the immunities and limitations of the New Mexico Tort Claims Act, § 41-4-1, et seq., NMSA 1978, as amended.

The BLM assumes no liability for any actions or activities conducted under this MOU except to the extent that recourse or remedies are provided by Congress under the Federal Tort Claims Act [28 U.S.C.1346(b), 2401(b), 2671 - 2680, as amended by P.L. 89-506, 80 Stat. 306].

XIII. INSURANCE

The County shall submit evidence of the following insurance coverage for activities described in this MOU:

- A. Workers' Compensation protection that complies with the requirements of the New Mexico Workers' Compensation Act, NMSA 1978, Sections 52-1-1, et seq., if applicable.

- B. Comprehensive public liability protection covering property damage and personal injury liability that may arise under this MOU and any amendments hereto, in amounts equal or greater than liability limits set forth in NMSA 1978, Section 41-4-1, as amended. The United States of America shall be named as an additional insured on the policy.

XIV. ORDER OF PRECEDENCE

Any inconsistency in this MOU shall be resolved by giving precedence in the following order: (a) Any national policy requirements and administrative management standards; (b) requirements of the applicable OMB Circulars and Treasury regulations; (c) 43 CFR Part 12; (d) special terms and conditions; and (e) all MOU sections, documents, exhibits, and attachments.

XV. INTEGRATION CLAUSE

This MOU incorporates all the covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants and understandings have been merged into this Agreement. No prior covenants or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

XVI. DISPUTE RESOLUTION; APPLICABLE LAW; VENUE

In the event of any dispute between the parties regarding the enforcement, effect, or interpretation of this MOU that is not resolved informally between the parties, any party may pursue the following dispute resolution procedure:

- A. The party that seeks resolution will provide a written statement of its dispute, along with any rationale or supporting documents, to the other party. The parties will engage in discussions in an attempt to resolve the dispute.
- B. If no resolution is reached within 30 days of receipt of the statement of dispute, the parties shall resort to mediation before a neutral mediator, mutually agreed to by the parties. If mediation is not successful to resolve a dispute, the parties agree to resolve disputes in New Mexico State and Federal District Courts.
- B. The terms of this MOU shall be construed in accordance with the laws of the State of New Mexico. The parties agree that the forums for any litigation arising

out of or related to this MOU shall be the State District Court, First Judicial District, Santa Fe, NM and federal courts of New Mexico.

XVII. FACIMILE SIGNATURES

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

XVIII. NOTICES

Any notice required by this MOU shall be in writing and delivered personally or sent by email, or certified or registered mail and shall be effective upon receipt (or refusal of receipt), as follows:

For County: Santa Fe County
102 Grant Ave.
P.O. Box 276
Santa Fe, NM 87504-0276
Phone: 505-986-6200
ATTN: Santa Fe County Manager

For BLM: BLM Taos Field Office
226 Cruz Alta Road
Taos, NM 87571
Phone: 575-758-8851
ATTN: Taos Field Manager

APPROVED:

**UNITED STATES DEPARTMENT OF THE INTERIOR BUREAU OF LAND
MANAGEMENT:**

Sarah Schlanger
Taos Field Manager

Date

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

7-7-16

Date

Santa Fe County Finance Department:

Carole H. Jaramillo
Santa Fe County Finance Director

7/12/16

Date

EXHIBIT

A

FEDERAL LANDS ACCESS PROGRAM (FLAP) **PROJECT MEMORANDUM OF AGREEMENT**

March 23, 2015

Project Route: Buckman Road Segment of El Camino Real de Tierra Adentro National Historic Trail

State: New Mexico

County: Santa Fe County

Owner of Federal Lands to which the Project Provides Access: Bureau of Land Management (BLM) and United States Forest Service (USFS), Santa Fe National Forest

Entity with Title or Maintenance Responsibility for Facility: Santa Fe County

Type of Work:

The work consists of environmental clearance services, final design including trail, signing, interpretive exhibits, mapping, and right of way as well as Project Management services towards delivery of a 100% PS&E bid package for the Federal Highway Administration, Central Federal Lands Highway Division (CFLHD) for proposed improvements to El Camino Real de Tierra Adentro National Historic Trail, a multi-use trail accessing BLM - Diablo Canyon Trailhead, USFS - Santa Fe National Forest and NPS-BLM - El Camino de Tierra Adentro National Historic Trail. The project is located in Santa Fe County, northwest of Santa Fe, New Mexico.

The segment 1 of the project is 2-5 ft. wide natural surface recreational trail that will follow the historic route of the El Camino Real de Tierra Adentro National Historic from the USFS Headquarters Trailhead continuing north to a new trail head at the existing parking area for the USFS "Dead Dog Trail". The Trail will proceed north paralleling Old Buckman Road (CR77) and continuing to follow the historic alignment of El Camino Real de Tierra Adentro National Historic to the BLM Diablo Canyon Trailhead.

The segment 2 of the project is a 10 ft. wide multi-use trail beginning at a junction with the Santa Fe River Greenway. The segment will proceed north from the Santa Fe River Greenway Trail under NM Highway 599 through an existing multi-use trail underpass and then parallel the west side of Caja Del Rio Road, to CR62. The trail will parallel the north side of CR62, cross CR62 heading south to USFS Headquarters Trailhead at the entry to Santa Fe National Forest and BLM lands.

Additional components of the project include a multi-use bridge over Arroyo De Los Frijoles adjacent to Caja del Rio Road, concrete box culvert pedestrian underpass and way-finding signage and interpretive exhibits. The general scope of the project is to construct a multi-use trail and natural surface trail along existing ground.

A scoping meeting and field visit was completed June 24, 2014 to review the project elements and issues associated with the project. Attendees from FHWA-CFLHD, the County of Santa Fe, USDA Forest Service, National Park Service (NPS) and Santa Fe Metropolitan Planning Organization (SFMPO) participated and helped identify improvements that are detailed in the Scoping Report prepared by HDR Engineering, Inc., which formed the basis for this FLAP project agreement.

This Agreement does not obligate (commit to) the expenditure of Federal funds nor does it commit the parties to complete the project. Rather, this Agreement sets forth the respective responsibilities as the project proceeds through the project development process.

Parties to this Agreement:

- Santa Fe County
- USDA Forest Service, Santa Fe National Forest
- Bureau of Land Management
- Federal Highway Administration Central Federal Lands Highway Division (FHWA-CFLHD)

The New Mexico Program Decision Committee (PDC) approved this project on August 20, 2014.

AGREED:

Katherine Miller
Katherine Miller, County Manager, Santa Fe County

Approved as to form
Santa Fe County Attorney
By: [Signature]
Date: 7/23/15

4 28 15
Date

[Signature] 4/27/15

, Forest Engineer, Santa Fe National Forest

Date

[Signature]
District Manager, Bureau of Land Management
Field Taos FO

12/1/15
Date

[Signature]
Mike Davies, Director
Central Federal Lands Highway Division

5/7/2015
Date

A. PURPOSE OF THIS AGREEMENT

This Agreement documents the intent of the parties and sets forth the anticipated responsibilities of each party in the development, construction, and future maintenance of the subject project. The purpose of the Agreement is to identify and assign responsibilities for the environmental analysis, design, right-of-way, utilities, acquisition and construction as appropriate for this programmed project, and to ensure maintenance of the facility for public use if improvements are made. The parties understand that any final decision as to design or construction will not be made until after the environmental analysis required under the National Environmental Policy Act (NEPA) is completed (this does not prevent the parties from assigning proposed design criteria to be studied in the NEPA process.) Any decision to proceed with the design and construction of the project will depend on the availability of appropriations at the time of obligation and other factors such as issues raised during the NEPA process, a natural disaster that changes the need for the project, a change in Congressional direction, or other relevant factors.

If Federal Lands Access Program funds are used for the development or construction of this project, Santa Fe County agrees to provide a matching share equal to 14.56% of the total cost of the project, as detailed more fully in Sections I and J below.

B. AUTHORITY

This Agreement is entered into between the signatory parties pursuant to the provisions of 23 U.S.C. 204.

C. JURISDICTION AND MAINTENANCE COMMITMENT

The County of Santa Fe has jurisdictional authority to operate and maintain the existing facility and will operate and maintain the completed project at its expense.

D. FEDERAL LAND MANAGEMENT AGENCY COORDINATION

Santa Fe County has coordinated project development with the Bureau of Land Management and the USDA Forest Service. The Bureau of Land Management and the USDA Forest Service support of the project is documented in the initial New Mexico Access Program Project Application. Each party to this agreement who has a primary role in NEPA, design, or construction shall coordinate their activities with the Bureau of Land Management and the USDA Forest Service.

E. PROJECT BACKGROUND/SCOPE/BUDGET

Length: 14.3 Miles,

Segment 1 – 2-5 ft. earth trail, Trail Class 2 Moderately Developed, 9.6 miles

Segment 2 – 10 ft. Multi-use Path, 4.7 miles

Scope: This project will construct trails for 14.3 miles of El Camino Real de Tierra Adentro National Historic Trail. Improvements include new trail alignments, clearing and grubbing, linear earthwork grading, earth surfacing, aggregate base and hot asphaltic pavement surfacing, roadway aggregate surfacing of parking areas at 2 trailheads, pedestrian bridge and trail signing. The improvements will connect existing trail systems and provide access to USFS Headquarters Trailhead, Dead Dog Trailhead and El Diablo Trailhead.

Safety and Highway Design: Assumed design method for Segment 1 and 2

1. Start with aerial imagery and topography, if available, and lay out potential trail alignments in the office.
2. Make a field visit to locate and flag potential alignments. Maintenance and visitor experience will be considered. GPS or survey the trail points.
3. Determine whether the alignments can be constructed using typical cross sections and field engineering; or if they require plan and profile engineering.
4. Develop plans and specifications for the engineered and field designed sections.

Segment 1 – 2-5 ft. earth trail, Trail Class 2 Moderately Developed. The trail structural section is 2-5 ft. unpaved earth surface. The existing ground will be cleared and grubbed to a depth of 6 inches. The clearing and grubbing limits will depend on the width of the trail as determined during design and construction. The trail will be compacted to the width of the walking surface of 2-5 ft. to establish a trail permanent location. The trail will match the existing grade with less than 12 inches of cut or fill. The trail alignment may include arroyo crossings and other ephemeral stream bed crossings but not preferred. The trail construction approaches the crossing and stops then is re-established on the opposite side of the crossing. Way finding and signing is used to delineate the trail alignment.

Segment 2 - 10 ft. paved surface Multi-use Path. The trail structural section is 10 ft. paved surface composed of 2 inches Hot Asphalt Concrete Pavement (HACP) and 4 inches roadway aggregate. The existing ground will be cleared and grubbed to a depth of 6 inches and width of 14 feet.

Safety improvements include concrete barrier where the trail is adjacent to a roadway, unpaved buffer between the trail and nearby roadway and asphalt surfacing.

Utilities: Utility relocations are not anticipated for this project. A Utility Quality Level D is recommended for utilities in locations where ground survey is performed. Utilities will be located by 811 services prior to ground disturbance.

Permits and Environment: FHWA-CFLHD will obtain the following permits required for the project:

- Section 404 Nationwide Permit
- General Construction Permit (Stormwater)
- Floodplain development permit

Additional permit needs will be determined through the environmental process in coordination with local, state, and federal agencies.

FHWA-CFLHD will complete a Categorical Exclusion to fulfill the requirements of the National Environmental Policy Act. Critical resources include Waters of the U.S. and Section 404 permitting, historic resources, and Section 4(f) resources. Early coordination with Santa Fe County, BLM, NPS and USFS will be critical to the project's success.

Survey and Right-of-Way: A full topographical mapping survey will not be required. The trail alignment can be defined using GPS points and aerials and constructed from a typical section. Survey will consist of ground topography and features at 3 locations each with an approximate area of 600ft x 600ft each, locations are: Station 719+00 Arch Pipe and 96" CMP culvert location (trail will be adjacent to road), Station 778+00 Trail road crossing at the Santa Fe Municipal Recreation Complex entrance at the access point to Caja del Rio Road. 4-barrel 48 inch culvert location. (trail will be adjacent to road), Station 788+00 Pedestrian Bridge Location and CBC option location (proposed bridge location)

Right of Way acquisition is not required on this project. Santa Fe County will provide a Memorandum of Agreement (MOA) or Memorandum of Understanding (MOU) for construction, use, and maintenance between Santa Fe County, USDA Forest Service and Bureau of Land Management.

Geotechnical and Pavements: Geotechnical investigation is not required for trail design or trail structural section. Geotechnical investigation and testing for the pedestrian bridge and abutments will be performed by the Contractor.

Hydrology/Hydraulics: There is 1 major structure on the project. The major structure is a pedestrian bridge spanning the Arroyo de los Frijoles. The construction contractor will be responsible for performing hydrology and flood plain requirements necessary to determine any scour parameters, size and layout of scour protection, foundation and abutment design and construction as part of the pedestrian bridge work at the Arroyo de los Frijoles Station 786+50 to 788+50.

Construction: It is anticipated the project will be constructed in 1 season. The trail is to be constructed off roadway and the adjacent roadway is to remain open during construction with few limited short duration closures to construct portions of the project. Single lane closures and appropriate traffic control devices are expected.

Budget:

<u>Item</u>	<u>Total</u>	<u>Comments</u>
Preliminary Engineering (PE)	\$ 600,000	
Construction contract (CN)	\$ 2,997,000	
Construction Engineering (CE)	\$ 300,000	
Sub-total:	\$ 3,897,000	
Project Contingency	\$ 389,000	Estimated at 10 %
Total:	\$ 4,286,000	

Costs estimate assuming 4% escalation:

YR 2016	\$ 4,423,000
YR 2017	\$ 4,620,000

F. ROLES AND RESPONSIBILITIES

Responsible Party	Product/Service/Role	Comments
FHWA-CFLHD	<ul style="list-style-type: none"> • <i>Develop and sign this Project Agreement</i> • <i>Manage project development schedule and manage preliminary engineering costs.</i> • <i>Perform topographic survey, if required.</i> • <i>Prepare environmental document and make project decisions based on NEPA document</i> • <i>Subject to the NEPA decision,</i> <ul style="list-style-type: none"> ○ <i>Obtain permits required for Federally constructed projects</i> ○ <i>Prepare right-of-way plans and legal descriptions of parcels to be acquired.</i> ○ <i>Prepare 4(f) statement, if needed</i> ○ <i>Prepare the 100% PS&E</i> ○ <i>Advertise and award the contract utilizing design, bid and build process.</i> ○ <i>Construct the project.</i> • <i>Potentially enter into a formal partnering work session and agreement with all parties involved in the construction contract (CFLHD, USDA Forest Service, BLM and County, contractor, etc.).</i> • <i>Review Construction contract options to utilize most effective contracting method</i> • <i>Provide Project Engineer on site for construction administration.</i> • <i>Determine the need for any proposed changes to contract documents; evaluate change impacts, coordinate technical reviews as needed, and ensure that the construction meets the requirements intended in the PS&E</i> • <i>Ensure that the contractor will bear all expense of maintaining traffic, other than snow removal and normal state or county maintenance work</i> • <i>Verify adherence to environmental documents and attend final inspection with USDA Forest Service, BLM and County upon completion of construction</i> 	

Responsible Party	Product/Service/Role	Comments
Santa Fe County	<ul style="list-style-type: none"> • Review and sign this Project Agreement • Attend reviews and meetings • Provide in a timely manner available data including but not limited to traffic, material sources, construction costs, agreements and other technical data • Review plans and specifications at each phase of design and provide project development support • Provide any ROW and utility information & coordination • Acquire TCEs if necessary. No private property acquisition is anticipated. CFLHD will develop the TCEs within the Bureau of Land Management. • Provide for utility relocation if necessary. No utility relocations anticipated. • Obtain all rights necessary to construct, operate, and maintain the facility • Sign CFLHD Utility and Right of Way certifications • If required, enter into a formal partnering work session and agreement with all parties involved in the construction contract (FHWA, BLM, Forest Service, contractor, etc.). • Designate a representative who will be the primary contact for FHWA's construction staff during construction • Assist FHWA in any proposed design change during construction and evaluate change impacts, as needed, ensuring that requests meet the requirements intended in the PS&E • Attend a final inspection with the FHWA, BLM, and Forest Service upon completion of construction • Assume responsibility of the NPDES permit until the Notice of Termination is filed and accepted • Provide long term maintenance and operation of the project upon completion. 	

Responsible Party	Product/Service/Role	Comments
Bureau of Land Management	<ul style="list-style-type: none"> • Review and sign this Project Agreement • Attend reviews and meetings • Provide in a timely manner available data including but not limited to existing agreements or technical data • Assist FHWA in completion of NEPA document. • Review plans and specifications at each phase of design and provide project development support • In coordination with the FHWA project manager, ensure that completed plans, specifications, and estimates (PS&E) are consistent with the intended outcome • Provide overall direction regarding BLM policy and administration for the project and concur with the final plans and specifications • Provide a fire plan for incorporation into the Special Contract Requirements • Provide a seed mix for the final seeding mix into the Special Contract Requirements • Provide support to FHWA (respond to question regarding environmental issues), as requested, for the development of environmental documents • Provide necessary Right-of-way for construction. • Develop a public information program in coordination with FHWA, Forest Service and the County • If required, enter into a formal partnering work session and agreement with all parties involved in the construction contract (FHWA, Forest Service, County, contractor, etc.). • Designate a representative who will be the primary contact for the FHWA's Construction staff • Continue to update and implement the public information program • Consider proposed design changes, evaluate change impacts, and provide construction oversight as needed, ensuring that requests meet the requirements intended in the PS&E • Attend final inspection with FHWA and County upon completion of construction 	

Responsible Party	Product/Service/Role	Comments
USDA Forest Service, Santa Fe National Forest	<ul style="list-style-type: none"> • Review and sign this Project Agreement • Attend reviews and meetings • Provide in a timely manner available data including but not limited to existing agreements or technical data • Assist FHWA in completion of NEPA document. • Review plans and specifications at each phase of design and provide project development support • In coordination with the FHWA project manager, ensure that completed plans, specifications, and estimates (PS&E) are consistent with the intended outcome • Provide overall direction regarding Forest Service policy and administration for the project and concur with the final plans and specifications • Provide a fire plan for incorporation into the Special Contract Requirements • Provide a seed mix for the final seeding mix into the Special Contract Requirements • Provide support to FHWA (respond to question regarding environmental issues), as requested, for the development of environmental documents • Provide necessary Right-of-way for construction. • Develop a public information program in coordination with FHWA, BLM and the County • If required, enter into a formal partnering work session and agreement with all parties involved in the construction contract (FHWA, BLM, County, contractor, etc.). • Designate a representative who will be the primary contact for the FHWA's Construction staff • Continue to update and implement the public information program • Consider proposed design changes, evaluate change impacts, and provide construction oversight as needed, ensuring that requests meet the requirements intended in the PS&E • Attend final inspection with FHWA and County upon completion of construction 	

G. SCHEDULE – ROLES & RESPONSIBILITIES

<i>Responsible Lead</i>	<i>Product/Service/ Role</i>	<i>Schedule Start-Finish</i>	<i>Comments</i>
<i>FHWA-CFLHD</i>	<i>Project Development and Planning</i>	<i>May, 2015</i>	
<i>FHWA-CFLHD</i>	<i>Preliminary Design</i>	<i>Early November 2015</i>	<i>Develop 30% PS&E</i>
<i>FHWA-CFLHD</i>	<i>Environmental Compliance</i>	<i>Late March, 2015</i>	<i>Categorical Exclusion (CE) completed</i>
<i>FHWA-CFLHD</i>	<i>Intermediate Design</i>	<i>Mid-April, 2015</i>	<i>Develop 70% PS&E</i>
<i>FHWA-CFLHD</i>	<i>Pre-Final Design</i>	<i>Late May, 2016</i>	<i>Develop 95% PS&E</i>
<i>Santa Fe County</i>	<i>Obtain any TCEs</i>	<i>Late July, 2016</i>	<i>Obtain TCEs as necessary for construction access and temporary staging access</i>
<i>FHWA-CFLHD</i>	<i>Final Design</i>	<i>August, 2016</i>	<i>Develop final contract documents</i>
<i>FHWA-CFLHD</i>	<i>Approve plans and obligate NM FLAP funding</i>	<i>Late August, 2016</i>	<i>Dependent upon FLAP funding and County match being in place</i>
<i>FHWA-CFLHD</i>	<i>Advertise and Award Contract and NTP</i>	<i>Fiscal Year, 2017</i>	<i>Dependent upon FLAP funding and County match being in place</i>
<i>FHWA-CFLHD</i>	<i>Close out contracts</i>	<i>April, 2018</i>	

Note: A more detailed Primavera project schedule will be developed and provided to the county, Forest Service and BLM at the design phase reviews.

H. PROPOSED DESIGN STANDARDS

Final design standards will be determined through the NEPA process.

Criteria	Proposed	Comments
Standard	AASHTO & USFS	AASHTO, USFS and local design standards
Functional Classification	Trails	AASHTO & USFS Trail design
Surface Type	Asphalt and natural	

I. FUNDING

Fund Source	Amount	Comments
New Mexico Federal Lands Access Program funds.	\$ 3,359,560	
Local Match - Santa Fe County	\$ 567,400	14.56 % match.
TOTAL	\$ 3,897,000	<i>Does not include contingency</i>

J. MATCHING SHARE REQUIREMENTS

Local match schedule of payments:

Milestone	Projected Match requirement	Schedule
Preliminary Engineering	\$ 42,000	To be invoiced monthly by FHWA at initiation of Preliminary Engineering activity.
Construction/Construction Engineering/Reserve	\$ 449,000	To be invoiced on a monthly basis as progress payments are made to the contractor and FHWA CE costs incurred.

During Preliminary Engineering work activity, FHWA-CFLHD will provide quarterly reports showing actual cost and project remaining costs as well as current projected cost for construction contract and construction engineering.

K. PROJECT TEAM MEMBERS - POINTS OF CONTACT

The following table provides the points of contact for this project. They are to be the first persons to deal with any issues or questions that arise over the implementation of each party's role and responsibility for this agreement.

Name/Title	Organization	Address/Phone Number/Email
Colleen Baker	Santa Fe County	901 West Alameda St, Suite 20C Santa Fe, New Mexico 87501 cbaker@santafecountynm.gov 505-992-9868
Tami Torres	Bureau of Land Management, Taos District	226 Cruz Alta road Taos, New Mexico 87571 ttorres@blm.gov 575-758-4757
Lynn Bjorklund	USDA Forest Service Santa Fe National Forest	11 Forest Lane Santa Fe, New Mexico 87508 lbjorklund@fs.fed.gov 505-753-7331
Thomas Puto, Project Manager	FHWA-CFLHD	Federal Highway Administration Central Federal Lands Highway Division 12300 West Dakota Avenue, Suite 380 Lakewood, Colorado 80228 Tom.puto@dot.gov Office: 720-963-3728

L. CHANGES/AMENDMENTS/ADDENDUMS

The agreement may be modified, amended, or have addendums added by mutual agreement of all parties. The change, amendment, or addendum must be in writing and executed by all of the parties.

The types of changes envisioned include, but are not limited to, changes that impact scope, schedule, or budget; changes to the local match, either in type or responsibility; changes that alter the level of effort or responsibilities of a party. The parties commit to consider suggested changes in good faith. Failure to reach agreement on changes may be cause for termination of this agreement.

A change in the composition of the project team members does not require the agreement to be amended. It is the responsibility of the project team members to recognize when changes are needed and to make timely notification to their management in order to avoid project delivery delays.

M. ISSUE RESOLUTION PROCEDURES MATRIX

Issues should be resolved at the lowest level possible. The issue should be clearly defined in writing and understood by all parties. Escalating to the next level can be requested by any party. When an issue is resolved, the decision will be communicated to all levels below.

FHWA-CFLHD	Santa Fe County	Bureau of Land Management	USDA Forest Service	Time
Thomas Puto, Project Manager	Colleen Baker, Project Manager	Tami Torres, Outdoor Recreation Planner	Lynn Bjorklund, Espanola RD Recreation Staff	14 days
Gary Strike, Branch Chief	Adam Leigland, Public Works Director	Ernesto Hurtado Assistant Field Manager, Multi- Resources	Mike Frazier, R/H/L/M/E Staff Officer	21 days
Michael Davies, Director of Project Delivery	Katherine Miller, Santa Fe County Manager	Sarah Schlanger Field Manager	Maria T. Garcia, SFNF Supervisor	28 days

N. TERMINATION

This agreement may be terminated by mutual written consent of all parties. This agreement may also be terminated if either the NEPA process or funding availability requires a change and the parties are not able to agree to the change. Any termination of this agreement shall not prejudice any rights or obligations accrued to the parties prior to termination. If Federal Access funds have been expended prior to termination, the party responsible for the match agrees to provide a match in the applicable percentage of the total amount expended on the project prior to the termination.

Federal Highway Administration
Federal Lands Highway
REIMBURSABLE AGREEMENT

DTFH68-15-E-00018

PARTIES TO THE AGREEMENT

Reimbursing Organization	Organization to be Reimbursed
Santa Fe County, New Mexico 102 Grant Avenue P.O. Box 276 Santa Fe County, NM 87504-0276	Federal Highway Administration Central Federal Lands Highway Division 12300 West Dakota Ave Lakewood, CO 80228
DUNS Number: 053297131 TIN: 85-6000073	DUNS Number 126129936

POINTS OF CONTACT FOR THE AGREEMENT

Reimbursing Organization Finance Point of Contact	Organization to be Reimbursed Finance Point of Contact
Name: Carol H. Jaramillo Finance Division Director Address: 102 Grant Avenue P.O. Box 276 Santa Fe, NM 87504-0276 Phone: 505-995-6321 E-mail: cjaramillo@santafecountynm.gov	Name: Suzanne Schmidt Address: 12300 West Dakota Ave Lakewood, CO 80228 Phone: 720-963-3356 E-mail: suzanne.schmidt@dot.gov
Reimbursing Organization Program Point of Contact	Organization to be Reimbursed Program Point of Contact
Name: Colleen Baker Address: 901 West Alameda St, Suite 20C Santa Fe, New Mexico 87501 Phone: 505-992-9868 E-mail: cbaker@santafecountynm.gov	Name: Thomas Puto Address: 12300 West Dakota Ave Lakewood, CO 80228 Phone: 720-963-3728 E-mail: tom.puto@dot.gov

PERIOD OF PERFORMANCE	LEGAL AUTHORITY
From: See date of signature below To: April 30, 2018	23 U.S.C. 201 and 204

TOTAL AGREEMENT AMOUNT	PAYMENT TERMS AND SCHEDULE
TOTAL AGREEMENT AMOUNT: \$ 624,041.60	EFT

DESCRIPTION OF SUPPLIES, SERVICES, AND DELIVERABLES
See attached Statement of Work.

AUTHORIZED APPROVALS

For Reimbursing Organization	For Organization to be Reimbursed
Signature: <i>Katherine [Signature]</i> Date: 5.4.15 Title: Santa Fe County Manager	Signature: <i>Michael [Signature]</i> Date: 5/7/2015 Title: Fort Ricardo Suarez

Statement of Work

Project: NM FLAP 77000(1)

Santa Fe County – El Camino Real de Tierra Adentro National Historic Trail

Reimbursable Agreement No.: DTFH68-15-E-00018

March 23, 2015

- I. Introduction: Santa Fe County, New Mexico will provide funding for project development, construction contract and construction inspection services to the Federal Highway Administration, Central Federal Lands Highway Division (CFLHD) for NM FLAP 77000(1), El Camino Real Trail. Santa Fe County shall be referred to as the Requesting Agency and the CFLHD shall be referred to as the Servicing Agency.
- II. Location: El Camino Real de Tierra Adentro National Historic Trail, Santa Fe, New Mexico.
- III. Work Required: See attached Federal Lands Access Program (FLAP) El Camino Real de Tierra Adentro National Historic Trail Project Memorandum of Agreement (PA) for details.
- IV. Breakdown of costs: The expected costs for Preliminary Engineering, Construction contract, Construction Engineering and project contingency in the amount of 10% is as follows:

Project Funding

Item	NM FLAP	County Match	Total
Preliminary Engineering	\$ 512,640	\$ 87,360	\$ 600,000
Construction Contract	\$ 2,560,636.80	\$ 436,363.20	\$ 2,997,000
Construction Engineering	\$ 256,320	\$ 43,680	\$ 300,000
Sub-Total	\$ 3,329,596.80	\$ 567,403.20	\$ 3,897,000
Contingency (10%)	\$ 332,361.60	\$ 56,638.40	\$ 389,000
Project Total	\$ 3,661,958.40	\$ 624,041.60	\$ 4,286,000

The requesting agency will provide funds in the amount of 14.56% of the total Federal Lands Access Program funding required to complete the work in this Agreement. The amount of matching funds provided by Santa Fe County shall not exceed \$ 624,041.60.

A project contingency in the amount of 10% has been added to this reimbursable agreement. The local agency match for this contingency amount is \$ 56,638.40.

The Requesting Agency is not required to reimburse the Servicing Agency for any costs incurred by the Servicing Agency prior to the date of this Agreement

- V. Period of Performance: All work associated with this agreement will be completed no later than April 30, 2018

Statement of Work
Project: NM FLAP 77000(1)
Santa Fe County – El Camino Real de Tierra Adentro National Historic Trail
Reimbursable Agreement No.: DTFH68-15-E-00018
March 23, 2015

- VI. Technical Representative: CFLHD Program Point of Contact for this Agreement is Mr., Thomas Puto, Project Manager and he can be contacted at 720-963-3728 or tom.puto@dot.gov.

The Santa Fe County Program Point of Contact for this Agreement is Colleen Baker, Project Manager and she can be contacted at (505) 992-9868 or cbaker@santafecountynm.gov.

- VII. Roles and Responsibilities – see attached Project Memorandum of Agreement.

- VIII. Financial Administration:

A. **Total Agreement Matching Amount:** Not to exceed \$ 624,041.60

B. **Funding Citations:** 23 U.S.C. 201 and 204.

C. **Reimbursable Payment:**

The Servicing Agency will bill monthly in the amount of 14.56% of the total Federal Lands Access Program funding expended for the project for Preliminary engineering (project development), construction engineering (administrative and oversight of the construction contract) and progress payments made to the construction contractor. The local match amount for this work is estimated a \$ 624,041.60. Any remaining balance will be billed at the final closeout of the construction contract or at the resolution of any disputes or claims.

Regardless of the estimate, Santa Fe County will provide 14.56% of the total Federal Lands Access Program funding required for the project through construction contract completion, closeout, and resolution of any disputes, in an amount not to exceed that provided in this Agreement.

The Servicing Agency is limited to recovery of the matching share of actual costs incurred, as reflected in the invoice provided by the Servicing Agency.

The Servicing Agency shall not incur costs which result in matching funds exceeding the maximum cost stated in this Agreement without authorization by the Requesting Agency in the form of written modification to this agreement.

Upon receipt of the invoice of costs incurred and authorized, the Requesting Agency will issue payment via one of the methods listed below.

Statement of Work
Project: NM FLAP 77000(1)
Santa Fe County – El Camino Real de Tierra Adentro National Historic Trail
Reimbursable Agreement No.: DTFH68-15-E-00018
March 23, 2015

D. Method of Billing:

The Servicing Agency shall bill the Requesting Agency, in accordance with the payment terms and schedule as agreed upon in the Agreement.

The Servicing Agency will furnish a final Project Status Report detailing the funding usage on the project and calculations used to determine match funding requirements.

The Servicing Agency request that the payments be made through the US Treasury's website <http://pay.gov>. Pay.gov can be use to make secure electronic payments to any Federal Government Agencies via credit card or direct debit. Payments shall be submitted referencing the FHWA/CFLHD-ID

Agreement Number: DTFH68-15-E-00018

Option 1 (Preferred Method)

- Plastic card or Automatic Clearing House Payment (ACH Direct Debit)
- Go to Treasury's website <https://pay.gov>
- Search for Agency Name (Transportation Department)
- Select the appropriate Transportation Agency (Federal Highway Administration)
- Follow the form instructions to make your payment. Note, if making an ACH payment from your bank account, please select ACH Direct Debit as the payment type.

Option 2

- Mail check payment to the following address for Paper Check Conversion (PCC) processing:

Make Check Payable To:
DOT FHWA
Mailing Address:
Enterprise Service Center
Federal Aviation Administration
ATTN: AMZ-340, Mark Richardson
6500 S. MacArthur Blvd., HDQ Rm 285
Oklahoma City, OK 73169

Notice to customers making payment by check: Please notify Regina Monroe at 720-963-3460 or regina.monroe@dot.gov if mailing a check.

When you provide a check as payment you authorize us either to use information from your check to make a one-time electronic fund transfer from

Statement of Work
Project: NM FLAP 77000(1)
Santa Fe County – El Camino Real de Tierra Adentro National Historic Trail
Reimbursable Agreement No.: DTFH68-15-E-00018
March 23, 2015

your account or to process the payment as a check transaction.

- o When we use information from your check to make an electronic fund transfer, funds may be withdrawn from your account as soon as the same day we receive your payment and you will not receive your check back from your financial institution.

Privacy Act- A Privacy Act Statement required by 5 U.S.C. § 552a(e)(3) stating our authority for soliciting and collecting the information from your check, and explaining the purposes and routine uses which will be made of your check information, is available from our internet site at (PCCOTC.GOV), or call toll free: at (1-800-624-137 to obtain a copy by mail. Furnishing the check information is voluntary, but a decision not to do so may require you to make payment by some other method,

IX. Modifications:

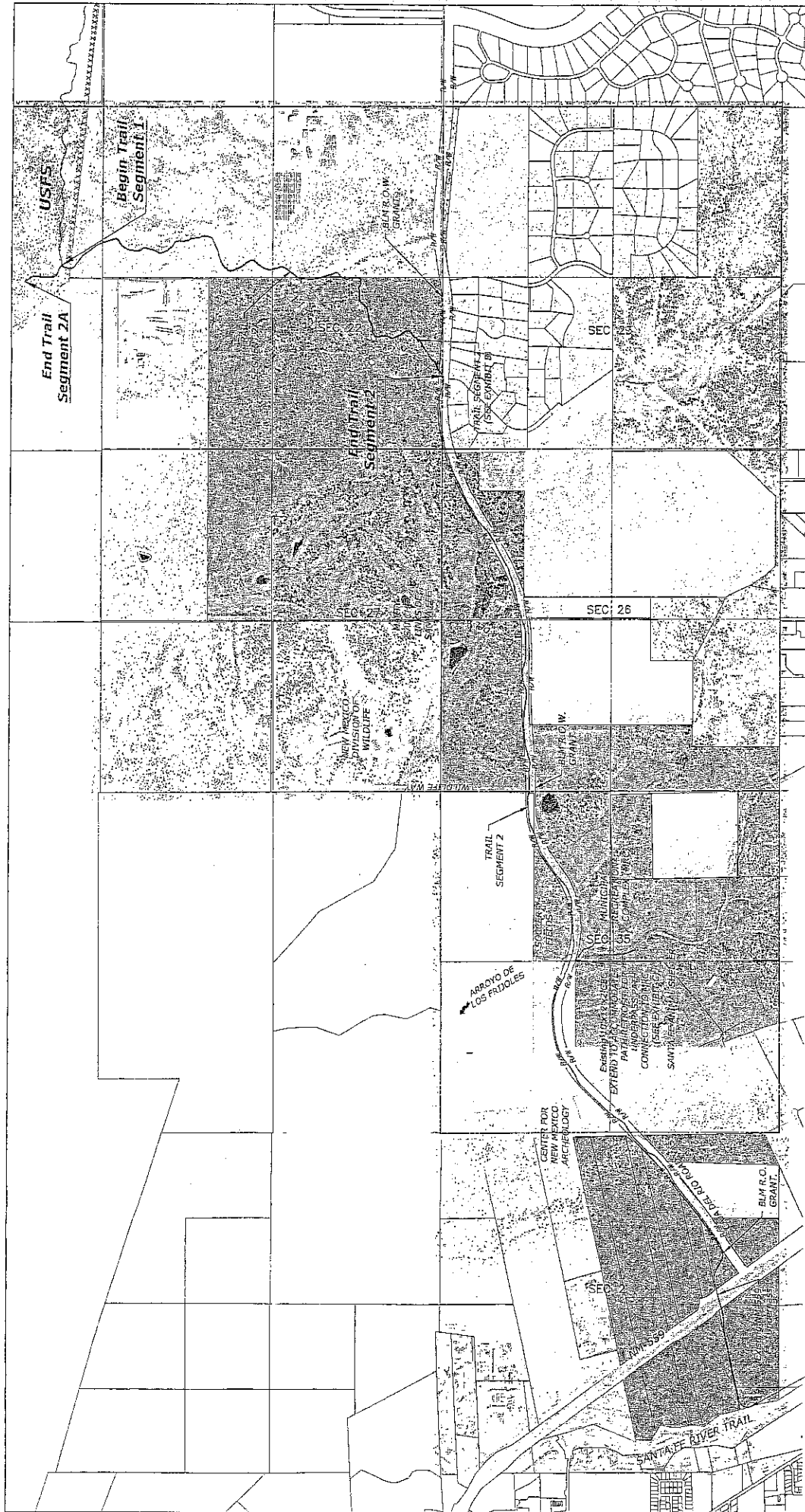
Any modifications to the Agreement must be made in writing and agreed to by both parties. Such modifications are not binding unless they are in writing and signed by personnel authorized to bind each of the agencies.

X. Agreement Completion:

When the Requesting Agency has accepted all deliverables, the Servicing Agency will provide a written project evaluation and final accounting of project costs to the Requesting Agency contact.

XI. Termination:

This agreement will terminate upon the ninety (90) calendar days after the date specified in Section V or upon (30) calendar days subsequent to written notification to the other party. If this agreement is terminated by the Requesting Agency its liability shall extend only to pay for its share of the actual and reasonable costs of the items/services rendered and the costs of any non-cancelable obligations incurred in accordance with the terms of this agreement prior to the effective date of termination. If this agreement is terminated by the Servicing Agency its liability shall extend only to the release of its work products and related materials to the Requesting Agency by the effective date of termination.



Begin Trail Segment 2

- ☐ BLM Land
- ☐ USFS Land
- ☐ BLM Patent Number 30990263
- ☐ BLM Right of Way Grant 90125
- ☐ State Land

LEGEND

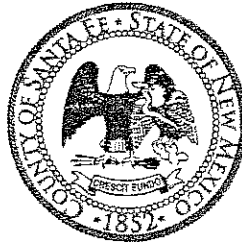
- ☐ Private Land / Other
- ☐ Property Line
- ☐ Existing Fence to Remain
- ☐ Existing Fence to Removed
- ☐ Install Fence, Barbed Wire, 4 Strand
- ☐ 10' Paved Path
- ☐ 4' Crushed Flies Trail
- ☐ 30' Natural Surface Trail

EXHIBIT B SITE MAP (Segment 2 & 2A)

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
Pablo Sedillo, III, Director of Public Safety

ITEM AND ISSUE: BCC Meeting July 26, 2016

REQUEST RATIFICATION OF THE COUNTY MANAGER'S SIGNATURE APPROVAL OF AGREEMENT NO. 2014-0267-CORR/IC WITH ACC HEALTH LLC TO PROVIDE DENTAL SERVICES FOR INMATES AND RESIDENTS AT THE ADF AND YDP TOTAL CONTRACT AMOUNT NOT TO EXCEED \$308,000 EFFECTIVE JULY 10, 2014 TO JULY 10, 2016. (Bill Taylor, Purchasing Division)

SUMMARY:

The Purchasing Division and the Corrections Department are requesting BCC approval and ratification of Agreement No. 2014-0276-CORR/IC with ACC Health LLC. to provide dental services to the inmates and residents at the ADF and YDP.

BACKGROUND:

The Agreement was procured through Request for Proposal which was issued on April 13, 2014 and was advertised in the Santa Fe New Mexican and the Albuquerque Journal. Only one proposal was received (ACC Health LLC) on the deadline of May 19, 2014. The proposal was evaluated by a committee that consisted of 3 Santa Fe County Staff members who deemed the proposal qualified and responsive. The committee recommended awarding a contract to ACC Health based on their expertise and experience in providing dental services in correctional facilities.

In July 2014, Santa Fe County entered into Agreement No. 2014-0276-CORR/IC with ACC Health to provide dental services to the inmates and residents at the ADF and YDP for an initial term of 2 years with a not to exceed compensation amount per year of \$154,000; however because the term of

the contract was for a two (2) year term, the actual total compensation was \$308,000 (2 year term) and mistakenly prepared and submitted to the County Manager for approval. The Department has expended a total of \$292,101.37, inclusive of GRT.

ACTION REQUESTED:

The Purchasing Division and the Corrections Department are requesting BCC approval and ratification of Agreement No. 2014-0276-CORR/IC with ACC Health the amount of \$308,000 exclusive of NM GRT for dental services at the ADF and YDP.

**PROFESSIONAL SERVICES AGREEMENT
WITH ACC HEALTH LLC
TO PROVIDE DENTAL SERVICES**

THIS AGREEMENT is made and entered into on this 10th day of July, 2014, by and between **SANTA FE COUNTY** (hereinafter referred to as the "County"), a New Mexico political subdivision, and **ACC HEALTH LLC** (hereinafter referred to as the "Contractor"), a limited liability corporation with a principal address located at 901 Lamberton Place NE, Suite W, Albuquerque, NM 87107, (hereinafter referred to as the "Contractor").

WHEREAS, Santa Fe County Corrections Department is committed to providing quality and professional dental services to its inmates within a supervised and secure setting, while assuring the safety of the public, the staff and the inmates;

WHEREAS, in accordance with Section 13-1-112 NMSA 1978, the County issued Request of Proposal (RFP) No. 2014-0267-CORR/IC for these services;

WHEREAS, the Contractor is a licensed and accredited dentist as required by the RFP that can provide professional and cost-effective services to the Santa Fe County Corrections Department;

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

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

1. SCOPE OF WORK

The Contractor shall:

- A. Be available to provide dental services - maximum of 20 hours (16 hours at SFC ADF and 4 hours at SFCYDP) per week, contingent upon the dental needs of the inmates/residents. There are no limits on the number of trips per week to the two facilities for emergency dental services.
- B. Provide routine dental services at the facilities' fully equipped dental offices to include: examinations; x-rays; restorative needs; routine extractions; and assessment of complicated treatments to determine feasibility of care at each facility's dental office, or for referral to other specialists.
- C. Follow-up dental care for all identified dental issues and all required dental interventions.

- D. Provide dental screenings for all new intakes within fourteen (14) days of a detention inmate's/resident's arrival at the facilities, per federal requirements.
- E. Provide on-call dental services as needed to include emergency dental services to inmates/residents who are in acute pain due to difficulty with teeth, gums or palate.
- F. Provide for on-call substitute dental services for the facilities in the event of the Contractor's absence. The Contractor shall be solely responsible for payment to the dental assistant and designated substitute dentist. Contractor shall provide information to include licensure, qualifications, phone number and address of the dental assistant and substitute dentist to the Corrections Medical Administrator.
- G. Document and record all services rendered in an inmate's dental record (file).
- H. Conduct a thorough inventory and accounting of all instruments, equipment and supplies at the beginning of each work day, prior to seeing patients and prior to departure on same day. Any instruments, equipment and supplies that are unaccounted for shall be reported immediately to the Corrections Medical Administrator.
- I. Provide and maintain records and documentation for each inmate/resident as required in the State of New Mexico, Santa Fe County and the Bureau of Prisons for the purpose of accreditation.
- J. Comply with all applicable infection control practices as promulgated by OSHA and CDC.
- K. Comply with the Health Insurance Portability and Accountability (HIPPA) requirements and standards for patient privacy.
- L. Attend monthly meetings with the Corrections Medical Director and Administrator.
- M. Contractor, dental assistant and designated substitute dentist shall be in compliance with all federal, state and local professional licensing requirements and shall maintain such licensure throughout the term of this Agreement.
- N. Contractor shall submit copies of current CPR certification as well as a TB skin test (annually) and Hepatitis B vaccination for the Contractor, dental assistant and substitute dentist to the Facility Medical Administrator.
- O. All services shall meet or exceed the requirements of all applicable regulatory, licensing and accreditation standards governing the delivery of dental services, as such standards may be amended from time to time.

- P. Contractor, the dental assistant and designee substitute dentist will complete background checks before contract award. The background checks will be conducted by the Santa Fe County Corrections Department.

2. COMPENSATION, INVOICING, AND SET-OFF

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

- 1) County shall pay to the Contractor in full payment for services satisfactorily performed at the rate of One hundred twenty dollars (\$120.00) per hour for a licensed dentist and a rate of twenty seven dollars and fifty cents (\$27.50) for a licensed dental assistant (all costs and expenses shall be in accordance with Exhibit A).
- 2) The total amount payable to the Contractor under this Agreement, exclusive of gross receipts tax shall not exceed one hundred fifty four thousand dollars (\$154,000.00) per year. Any New Mexico gross receipts tax levied on the amounts payable under this Agreement shall be paid by the County to the Contractor.
- 3) 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 being performed.

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, upon due execution by all parties, become effective as of the date first written above and shall terminate two (2) years later, unless earlier terminated pursuant to Section 5 (Termination) or Section 6 (Appropriations and Authorizations). The County has the option to extend the contract at the same price, terms and conditions for a period of two (2) renewal periods of one (1) year each, not to exceed a total contract term of four (4) years. The County may exercise this option by submitting a written notice to Contractor that the Agreement will be extended an additional year. The notice must be submitted to Contractor at least sixty (60) days prior to expiration of the Agreement or any extension thereof.

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. Upon execution of this Agreement, the County agrees that Contractor will identify a dental assistant and designee or substitute dentist to provide dental services in Contractor's absence.

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.

C. Contractor shall be fully responsible for payment to its dental assistant and designee or substitute dentist.

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. 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 the state district court 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 Manager
102 Grant Avenue
Santa Fe, New Mexico 87501

To the Contractor: ACC Health LLC
Ginny Berger, CEO
901 Lamberton Place NE Suite W
Albuquerque, NM 87107

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. This Agreement and Contractor's obligations hereunder do not conflict with Contractor's corporate agreement or any statement filed with the New Mexico Secretary of State on Contractor's behalf.

C. Contractor is legally registered and licensed to operate as a business in 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. LIMITATION OF LIABILITY

The County's liability to the Contractor for any breach of this Agreement by the County shall be limited to direct damages and shall not exceed the maximum amount of potential compensation specified in Section 2, "COMPENSATION AND INVOICING," of this Agreement. In no event shall the County be liable to the Contractor for special or consequential damages, even if the County was advised of the possibility of such damages prior to entering into this Agreement.

27. NO THIRD-PARTY BENEFICIARIES

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

28. INSURANCE

A. General Conditions. The Contractor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.

B. General Liability Insurance, Including Automobile. The Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,050,000.00 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.

E. Professional Liability [Malpractice/Errors and Omissions Insurance]. The Contractor shall procure and maintain during the life of this agreement professional liability (errors and omissions) insurance, with policy limits of not less than \$1,500,000.00 per occurrence, \$2,500,000.00 per aggregate.

29. 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.

30. 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.

31. 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.

32. APPOINTMENT OF AGENT FOR SERVICE OF PROCESS

The Contractor hereby irrevocably appoints, Virginia Berger, a New Mexico resident at, 901 Lamberton Pl. NE, Suite W, Albuquerque, NM 87107, as its agent upon whom process and writs in any action or proceeding arising out of or related to this Agreement may be served. The Contractor acknowledges and agrees that service upon its designated agent shall have the same effect as though the Contractor were actually and personally served within the state of New Mexico.

32. 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 7-10-14
Katherine Miller
Santa Fe County Manager

CONTRACTOR:

Virginia Berger
(Signature)

By: Virginia Berger
(Print Name)

Approved as to Form:

Gregory S. Shaffer 7/7/14
Gregory S. Shaffer
Santa Fe County Attorney

Its: CEO
(Print Title)

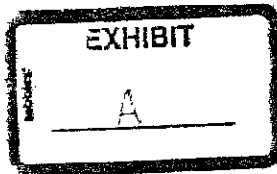
FEDERAL TAX I.D. NUMBER

Finance Department Approval:

Susan E. Martz
Susan E. Martz
Santa Fe County Finance Director

15-0138-5206

ACC Health LLC _____



Cost Proposal
RFQ Dental Services 2014-0267-CORR/IC

Fee Proposal

Offerors must complete the Fee Proposal and submit with its proposal. Proposed fees must be fully loaded and include costs for wages, liability and malpractice insurance, worker's compensation, unemployment insurance, travel to and from the off-site workplace to the on-site workplace, per diem, fringe benefits and any other overhead or incidental costs for the required dental services.

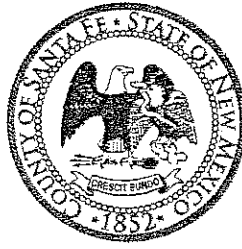
The rates shall be fixed throughout the term of the contract. The contractor shall be solely responsible for reimbursing the dental assistant and the designated substitute dentist.

<u>Service</u>	<u>Hourly Rate</u>
Licensed Dentist	\$120.00 per hour
Dental Assistant	\$27.50 per hour
On-Call Emergency Service	No Charge

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, Purchasing Manager

VIA: Katherine Miller, County Manager
Jeffery Trujillo, ASD Director
Pablo Sedillo, Director of Public Safety

ITEM AND ISSUE: BCC Meeting July 26, 2016

REQUEST APPROVAL OF AMENDMENT NO. 1 TO AGREEMENT NO. 2014-0267-CORR/IC WITH ACC HEALTH LLC. FOR AN INCREASED CONTRACT AMOUNT OF \$150,000.00 AND EXTEND THE CONTRACT TERM ONE (1) ADDITIONAL YEAR TO PROVIDE DENTAL SERVICES AT THE ADF AND YDP AND GRANT SIGNATURE AUTHORITY TO THE COUNTY MANAGER TO SIGN THE PURCHASE ORDER. (Bill Taylor, Purchasing Division)

SUMMARY:

The Purchasing Division requests approval of Amendment No. 1 to Agreement No. 2014-0267-CORR/IC with ACC Health LLC. to provide dental services to the inmates and residents at the ADF and YDP for an additional one (1) year term at a cost of one hundred fifty thousand dollars (\$150,000).

Amendment No. 1 will begin the 3rd year term and increase the total contact amount to \$458,000 which requires the Board of County Commissioner's approval.

BACKGROUND:

Santa Fe County Corrections Department provides dental services for inmates and residents at the Adult Detention Facility and Youth Development Program. The original contract was signed by all parties on July 12, 2014 with a contract term of 2 years and a not to exceed amount of \$154,000 per

year (\$308,000 total contract amount). Amendment No. 1 extends the term of the agreement for one (1) additional year and will increase the total contract amount an additional one hundred fifty thousand dollars (\$150,000.00) making the total contract amount four hundred fifty thousand dollars (\$458,000).

ACTION REQUESTED:

The Purchasing Division requests approval of Amendment No. 1 to Agreement No. 2014-0267-CORR/IC with ACC Health LLC. to extend the term of the agreement for one (1) year and increase the contract one hundred fifty thousand dollars (\$150,000.00). The Purchasing Division also requests signature authority for the County Manager to execute the purchase order.

**AMENDMENT NO. 1
TO PROFESSIONAL SERVICES AGREEMENT
WITH ACC HEALTH LLC**

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 **ACC Health, LLC**, a limited liability corporation with a principal address located at 901 Lambertson Place NE, Suite W, Albuquerque, NM 87107, hereinafter referred to as the "Contractor."

WHEREAS, by, the County and the Contractor entered into Agreement No. 2014-0267-CORR/IC dated July 10, 2014 (the Agreement), to provide for Contractor's provision of dental services for the Santa Fe County Corrections Department; and

WHEREAS, the term of the Agreement is due to expire July 10, 2016 and the County wishes to continue benefit from Contractor's services for another year and the Contractor is willing to render such services; and

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; and

WHEREAS, the parties wish to amend the Agreement to extend the term of the Agreement through July 10, 2017.

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

1. Section 2.A.2 (Compensation), a new subparagraph "(a)" is inserted to read:

(a) By Amendment No. 1 that extends the term of this Agreement from July 10, 2016 to July 10, 2017, the amount payable to the Contractor exclusive of NM grt during this term shall not exceed \$150,000.00. For purposes of compensation to the Contractor during this term, the effective date shall be July 10, 2016. The total amount payable to the Contractor under the term of this Agreement shall not exceed \$458,000.00 exclusive of NM grt.

2. 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 County exercised its option to renew the term of this Agreement. The term of this Agreement is extended from July 10, 2016 to July 10, 2017.

3. All other provisions of the Agreement not specifically amended or modified by this Amendment No. 1 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 as of the date of the last signature below.

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

4-11-16

Date

Finance Department approval:

Carole H. Jaramillo
Finance Director

7/11/16

Date

CONTRACTOR:

By: _____
(Print Name)

Date

Its: _____
(Print Title)

**PROFESSIONAL SERVICES AGREEMENT
WITH ACC HEALTH LLC
TO PROVIDE DENTAL SERVICES**

THIS AGREEMENT is made and entered into on this 10th day of July, 2014, by and between **SANTA FE COUNTY** (hereinafter referred to as the "County"), a New Mexico political subdivision, and **ACC HEALTH LLC** (hereinafter referred to as the "Contractor"), a limited liability corporation with a principal address located at 901 Lamberton Place NE, Suite W, Albuquerque, NM 87107, (hereinafter referred to as the "Contractor").

WHEREAS, Santa Fe County Corrections Department is committed to providing quality and professional dental services to its inmates within a supervised and secure setting, while assuring the safety of the public, the staff and the inmates;

WHEREAS, in accordance with Section 13-1-112 NMSA 1978, the County issued Request of Proposal (RFP) No. 2014-0267-CORR/IC for these services;

WHEREAS, the Contractor is a licensed and accredited dentist as required by the RFP that can provide professional and cost-effective services to the Santa Fe County Corrections Department;

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

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

1. SCOPE OF WORK

The Contractor shall:

- A. Be available to provide dental services a maximum of 20 hours (16 hours at SFC ADF and 4 hours at SFCYDP) per week, contingent upon the dental needs of the inmates/residents. There are no limits on the number of trips per week to the two facilities for emergency dental services.
- B. Provide routine dental services at the facilities' fully equipped dental offices to include: examinations; x-rays; restorative needs; routine extractions; and assessment of complicated treatments to determine feasibility of care at each facility's dental office, or for referral to other specialists.
- C. Follow-up dental care for all identified dental issues and all required dental interventions.

- D. Provide dental screenings for all new intakes within fourteen (14) days of a detention inmate's/resident's arrival at the facilities, per federal requirements.
- E. Provide on-call dental services as needed to include emergency dental services to inmates/residents who are in acute pain due to difficulty with teeth, gums or palate.
- F. Provide for on-call substitute dental services for the facilities in the event of the Contractor's absence. The Contractor shall be solely responsible for payment to the dental assistant and designated substitute dentist. Contractor shall provide information to include licensure, qualifications, phone number and address of the dental assistant and substitute dentist to the Corrections Medical Administrator.
- G. Document and record all services rendered in an inmate's dental record (file).
- H. Conduct a thorough inventory and accounting of all instruments, equipment and supplies at the beginning of each work day, prior to seeing patients and prior to departure on same day. Any instruments, equipment and supplies that are unaccounted for shall be reported immediately to the Corrections Medical Administrator.
- I. Provide and maintain records and documentation for each inmate/resident as required in the State of New Mexico, Santa Fe County and the Bureau of Prisons for the purpose of accreditation.
- J. Comply with all applicable infection control practices as promulgated by OSHA and CDC.
- K. Comply with the Health Insurance Portability and Accountability (HIPPA) requirements and standards for patient privacy.
- L. Attend monthly meetings with the Corrections Medical Director and Administrator.
- M. Contractor, dental assistant and designated substitute dentist shall be in compliance with all federal, state and local professional licensing requirements and shall maintain such licensure throughout the term of this Agreement.
- N. Contractor shall submit copies of current CPR certification as well as a TB skin test (annually) and Hepatitis B vaccination for the Contractor, dental assistant and substitute dentist to the Facility Medical Administrator.
- O. All services shall meet or exceed the requirements of all applicable regulatory, licensing and accreditation standards governing the delivery of dental services, as such standards may be amended from time to time.

- P. Contractor, the dental assistant and designee substitute dentist will complete background checks before contract award. The background checks will be conducted by the Santa Fe County Corrections Department.

2. COMPENSATION, INVOICING, AND SET-OFF

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

- 1) County shall pay to the Contractor in full payment for services satisfactorily performed at the rate of One hundred twenty dollars (\$120.00) per hour for a licensed dentist and a rate of twenty seven dollars and fifty cents (\$27.50) for a licensed dental assistant (all costs and expenses shall be in accordance with Exhibit A).
- 2) ~~The total amount payable to the Contractor under this Agreement, exclusive of gross receipts tax shall not exceed one hundred fifty four thousand dollars (\$154,000.00) per year.~~ Any New Mexico gross receipts tax levied on the amounts payable under this Agreement shall be paid by the County to the Contractor.
- 3) 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 being performed.

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, upon due execution by all parties, become effective as of the date first written above and shall terminate two (2) years later, unless earlier terminated pursuant to Section 5 (Termination) or Section 6 (Appropriations and Authorizations). The County has the option to extend the contract at the same price, terms and conditions for a period of two (2) renewal periods of one (1) year each, not to exceed a total contract term of four (4) years. The County may exercise this option by submitting a written notice to Contractor that the Agreement will be extended an additional year. The notice must be submitted to Contractor at least sixty (60) days prior to expiration of the Agreement or any extension thereof.

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. Upon execution of this Agreement, the County agrees that Contractor will identify a dental assistant and designee or substitute dentist to provide dental services in Contractor's absence.

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.

C. Contractor shall be fully responsible for payment to its dental assistant and designee or substitute dentist.

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. 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 the state district court 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 Manager
102 Grant Avenue
Santa Fe, New Mexico 87501

To the Contractor: ACC Health LLC
Ginny Berger, CEO
901 Lamberton Place NE Suite W
Albuquerque, NM 87107

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. This Agreement and Contractor's obligations hereunder do not conflict with Contractor's corporate agreement or any statement filed with the New Mexico Secretary of State on Contractor's behalf.

C. Contractor is legally registered and licensed to operate as a business in 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. LIMITATION OF LIABILITY

The County's liability to the Contractor for any breach of this Agreement by the County shall be limited to direct damages and shall not exceed the maximum amount of potential compensation specified in Section 2, "COMPENSATION AND INVOICING," of this Agreement. In no event shall the County be liable to the Contractor for special or consequential damages, even if the County was advised of the possibility of such damages prior to entering into this Agreement.

27. NO THIRD-PARTY BENEFICIARIES

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

28. INSURANCE

A. General Conditions. The Contractor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.

B. General Liability Insurance, Including Automobile. The Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,050,000.00 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.

E. Professional Liability [Malpractice/Errors and Omissions Insurance]. The Contractor shall procure and maintain during the life of this agreement professional liability (errors and omissions) insurance, with policy limits of not less than \$1,500,000.00 per occurrence, \$2,500,000.00 per aggregate.

29. 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.

30. 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.

31. 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.

32. APPOINTMENT OF AGENT FOR SERVICE OF PROCESS

The Contractor hereby irrevocably appoints, Virginia Berger, a New Mexico resident at, 901 Lamberton Pl. NE, Suite W, Albuquerque, NM 87107. as its agent upon whom process and writs in any action or proceeding arising out of or related to this Agreement may be served. The Contractor acknowledges and agrees that service upon its designated agent shall have the same effect as though the Contractor were actually and personally served within the state of New Mexico.

32. 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 7-10-14
Katherine Miller
Santa Fe County Manager

Approved as to Form:

Gregory S. Shaffer 7/7/14
Gregory S. Shaffer
Santa Fe County Attorney

Finance Department Approval:

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

CONTRACTOR:

Virginia Berger
(Signature)

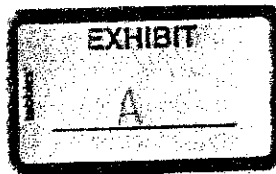
By: Virginia Berger
(Print Name)

Its: CEO
(Print Title)

FEDERAL TAX I.D. NUMBER

85-038-5296

ACC Health LLC



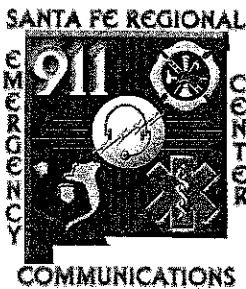
Cost Proposal
RFQ Dental Services 2014-0267-CORR/IC

Fee Proposal

Offerors must complete the Fee Proposal and submit with its proposal. Proposed fees must be fully loaded and include costs for wages, liability and malpractice insurance, worker's compensation, unemployment insurance, travel to and from the off-site workplace to the on-site workplace, per diem, fringe benefits and any other overhead or incidental costs for the required dental services.

The rates shall be fixed throughout the term of the contract. The contractor shall be solely responsible for reimbursing the dental assistant and the designated substitute dentist.

<u>Service</u>	<u>Hourly Rate</u>
Licensed Dentist	\$120.00 per hour
Dental Assistant	\$27.50 per hour
On-Call Emergency Service	No Charge



MEMORANDUM

DATE: July 26, 2016

TO: Santa Fe Board of County Commissioners

FROM: Ken Martinez
RECC Director

SUBJECT: Enhanced 911 Grant Agreement

*Ken
7-20-17*

BACKGROUND

The New Mexico Department of Finance and Administration has submitted for approval two original copies of the current E-911 grant agreement which reflects the State Board of Finance approval of funding for Fiscal Year 2017. These are to be presented to the Santa Fe County Commission for approval and signature.

The grant is a pass-through grant and does not require any matching funds from the County. This term of this grant agreement will be from July 1, 2016 to June 30, 2017.

ACTION REQUESTED

Approval from the Board of County Commissioners is requested in order to return the signed Grant Agreement to the Department of Finance and Administration, Local Government Division. Upon return, the agreement will be fully executed and payment can begin for FY17 911 expenses.

SUSANA MARTINEZ
GOVERNOR



DUFFY RODRIGUEZ
ACTING CABINET SECRETARY

RICK LOPEZ
DIRECTOR

BILL R. GARCIA
DEPUTY DIRECTOR

STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
LOCAL GOVERNMENT DIVISION
Bataan Memorial Building ♦ 407 Galisteo St. ♦ Suite 202 ♦ Santa Fe, NM 87501
PHONE (505) 827-4950 ♦ FAX (505) 827-4948

July 6, 2016

Ken Martinez
Santa Fe County
35 Camino Justicia
Santa Fe, New Mexico 87508

Re: Fiscal Year 2017 (FY17) Grant Agreement – Signature Request

Dear Mr. Martinez,

Attached is an electronic version of the FY17 E-911 grant agreement which reflects the State Board of Finance approval of funding for FY17. Please **print two originals**, sign and date the grant agreements, have them notarized and return to the Department of Finance and Administration, Local Government Division (LGD).

Both original grant agreements require the signature of the County Manager or County Commission Chair. Also, please note that original signatures are required on the signature page of both originals. After LGD signs both originals, one original signed grant will be returned to you for your records.

Please return both notarized originals to LGD, to the attention of Bill Range, at the address listed above. Upon receipt, the Department of Finance and Administration, Local Government Division will fully execute and begin making payments on your behalf for FY17 expenses.

If you have any questions regarding this matter, please call Bill Range, E-911 Program Manager at (505) 827-4804 or Michael Mariano, E-911 Bureau Chief at (505) 699-6911.

Sincerely,

Rick Lopez, Director
Local Government

Enclosures

STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
LOCAL GOVERNMENT DIVISION
ENHANCED 911 ACT GRANT PROGRAM

GRANT AGREEMENT

Project No. 17-E-11

THIS GRANT AGREEMENT made and entered into by and between the Department of Finance and Administration (DFA), State of New Mexico, acting through the Local Government Division, Bataan Memorial Building, Suite 201, Santa Fe, New Mexico 87501, hereinafter called the **DIVISION**, and the **County of Santa Fe**, hereinafter called the **GRANTEE**.

WITNESSETH:

WHEREAS, this Grant Agreement is made by and between the DFA, State of New Mexico, acting through the Division, and the Grantee, pursuant to the authority in the Enhanced 911 Act, Sections 63-9D-1 *et seq.* NMSA 1978, (hereinafter referred to as the "Act") as amended, and the Enhanced 911 Rules, 10.6.2 NMAC (hereinafter referred to as the "Enhanced 911 Requirements" or "E-911 Rules."); and

WHEREAS, an enhanced 911 telephone emergency system is necessary to expand the benefits of the basic 911 emergency telephone number, to achieve a faster response time which minimizes the loss of life and property, provides automatic routing to the appropriate public safety answering point (PSAP), provides immediate visual display of the location and telephone number of the caller and curtails abuses of the emergency system by documenting callers; and

WHEREAS, the Grantee and the Division have the authority, pursuant to the Act, NMSA 1978, Sections 63-9D-1 *et seq.*, and the E-911 Rules, to enter into this Grant Agreement; and

WHEREAS, the Grantee complies with the definition of "Grantee" in 10.6.2.7(HH) NMAC, of the E-911 Rules; and

WHEREAS, the Division has the authority, pursuant to NMSA 1978, Section 63-9D-8, to administer the Enhanced 911 fund; and

WHEREAS, on June 21, 2016, the State Board of Finance awarded the Grantee \$ 394,935.00 for enhanced 911 services and equipment.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

ARTICLE I - LENGTH OF GRANT AGREEMENT

A. Unless terminated earlier pursuant to Article IV herein, the term of this Grant Agreement, upon being duly executed by the Division, shall be from **July 1, 2016**, through **June 30, 2017**.

B. In the event that, due to unusual circumstances, it becomes apparent that this Grant Agreement cannot be brought to full completion within the time period set forth in Paragraph A above, the Grantee shall so notify the Division in writing at least 30 days prior to the termination date of this Grant Agreement, for the purpose of allowing the Grantee and

the Division to review the work accomplished to date and determine whether there is need or sufficient justification to amend this Grant Agreement and to provide additional time for completing the same. The Division's decision whether or not to extend the term of this Grant Agreement is final and non-appealable.

ARTICLE II - REPORTS

A. PSAP Annual Report: No later than June 30th of each year, the Grantee shall submit to the Division a PSAP Annual Report, in the form attached hereto as Exhibit A, as may be changed from time to time upon the Division's written notice to the Grantee. The PSAP Annual Report shall include information described in 10.6.2.11.D NMAC, of the E-911 Rules, and any such other information as the Division may request, in sufficient detail to evaluate the effectiveness of the 911 equipment and services provided by the equipment vendor.

B. Federal 911 Resource Center Report: No later than January 30th of each year, the Grantee shall submit to the Division a Federal 911 Resource Center Report, in the form attached hereto as Exhibit B, as may be changed from time to time upon the Division's written notice to the Grantee.

ARTICLE III - CONSIDERATION AND METHOD OF PAYMENT

A. In consideration of the Grantee's satisfactory completion of all work, purchase and maintenance of the equipment and services required to be performed in compliance with all the terms and conditions of this Grant Agreement, the Division shall pay the Grantee a sum not to exceed \$ 394,935.00 from the Enhanced 911 fund in accordance with Article III (D). The funds are to be expended in accordance with the approved Revenue/Expenditure Budget (Budget), attached to and incorporated by reference as Exhibit "C", and in accordance with 10.6.2.11 NMAC of the E-911 Rules, "PSAP Equipment, Acquisition, and Disbursement of Funds." It is understood and agreed that the Grantee's expenditure of these monies shall not deviate from the line items of the Budget without the prior written approval of the Division and the funds shall not be expended for ineligible costs, 10.6.2.11(F) of the E-911 Rules.

B. The funds mentioned in Paragraph A above shall constitute full and complete payment of monies to be received by the Grantee from the Division.

C. It is understood and agreed that if any portion of the funds set forth in Paragraph A above is not expended for the purpose of this Grant Agreement, after all conditions of this Grant Agreement have been satisfied, the unexpended funds shall be reverted by the Division in accordance with the Act and the E-911 Rules.

D. Pursuant to NMSA 1978, Section 63-9D-8, as amended, payments shall be made from the Enhanced 911 fund to, or on behalf of, participating local governing bodies or their fiscal agents upon vouchers signed by the director of the Division solely for the purpose of reimbursing local governing bodies or their fiscal agents, commercial mobile radio service providers or telecommunications companies for their costs of providing enhanced 911 service.

E. Payments may be made by the Division as follows: 1) on behalf of the Grantee to telecommunications companies, vendors and equipment providers; or 2) reimbursements to the Grantee for actual costs or expenditures after the Division receives a completed Request

for Payment Form, or an invoice certified correct by the Grantee and/or the Division for the E-911 equipment, equipment maintenance, and upgrades billed by the equipment provider. All purchases made by the Grantee for equipment, equipment maintenance, and upgrades require prior written approval by the Division to be eligible for reimbursement.

F. Payments will not be made to the Grantee for work, equipment, maintenance or services not specified in this Grant Agreement or in violation of or ineligible under the E-911 Rules.

ARTICLE IV - MODIFICATION, TERMINATION AND MERGER

A. Early Termination. Except as provided in Article IV (D) below, this Grant Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least 30 days prior to the intended date of termination. Except as otherwise allowed or provided under this Grant Agreement, the Division's sole liability upon termination shall be to pay for eligible Budget items purchased prior to the Grantee's receipt of the notice of termination, if the Division is the terminating party, or upon the Grantee sending a notice of termination, if the Grantee is the terminating party. A notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Grant Agreement. The Grantee shall submit an invoice for such eligible Budget items within 30 days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Grant Agreement may be terminated immediately upon written notice to the Grantee if the Grantee becomes unable to or fails to perform the terms of this Agreement, as determined by the Division or if, during the term of this Grant Agreement, the Grantee or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of state funds or due to the Appropriations paragraph herein. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE DIVISION'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE GRANTEE'S DEFAULT/BREACH OF THIS GRANT AGREEMENT, INCLUDING BUT NOT LIMITED TO, RETURN OF MISSPENT GRANT FUNDS BY THE GRANTEE TO THE DIVISION.

B. Termination Management. Immediately upon receipt by either the Division or the Grantee of a notice of termination of this Grant Agreement, the Grantee shall: 1) not incur any further obligations for expenditure of funds under this Grant Agreement without written approval of the Division; and 2) comply with all directives issued by the Division in the notice of termination as to the performance under this Grant Agreement.

C. This Grant Agreement incorporates all agreements, covenants and understandings between the parties concerning the subject matter of this Grant Agreement and all such agreements, covenants and understandings have been merged into this written Grant Agreement. No prior agreements, covenants, or understandings oral or otherwise, of the parties or their agents shall be valid and enforceable unless embodied in this Grant Agreement.

D. The terms of this Grant Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of the Grant Agreement. If sufficient appropriations and authorizations are not made by the Legislature, the Division may *immediately* terminate this Grant Agreement, in whole or in part, regardless of any existing legally binding third party contracts entered into by or between the Grantee and a third party, by giving the Grantee written notice of such immediate early termination. The Division's decision as to whether sufficient appropriations

are available shall be final and non-appealable. The Grantee shall include a substantively identical clause in all contracts between it and third parties that are (i) funded in whole or in part by funds made available under this Grant Agreement and (ii) entered into between the effective date of this Grant Agreement and the Termination Date or early termination date.

ARTICLE V - CERTIFICATION

The Grantee assures and certifies that it will comply with all state laws, the E-911 Rules, and other state laws, rules, policies and with respect to the acceptance and use of State funds. Also, the Grantee gives assurances and certifies with respect to the Grant that:

- A. It will comply with the New Mexico Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199.
- B. It will adhere to all financial and accounting requirements of the DFA.
- C. It will comply with all requirements set forth in the Act and prescribed by the Division in its E-911 Rules, or other guidelines and procedures in relation to receipt and use of State Enhanced 911 Grant Funds.
- D. It shall not at any time utilize or convert any equipment or property acquired or developed pursuant to this Grant Agreement for other than the uses specified, without the prior written approval of the Division.
- E. It will comply with NMSA 1978, Section 63-9D-4D and provide Geographic Information Systems (GIS) addressing and digital mapping data to the PSAP that provides the enhanced 911 service to the Grantee.
- F. It accepts responsibility for coordinating and providing accurately maintained GIS addressing, road centerline, boundary and other data in the service area to the Division per 10.6.2 NMAC. This information shall be compliant with the statewide dataset used by the local PSAPs.
- G. It agrees and acknowledges that all GIS data provided to the Division's statewide dataset in support of the E-911 program is public data and shall be shared with other governmental agencies.
- H. It will finance any amount exceeding the approved funding for the 911 equipment costs.
- I. It will not make any changes in the E-911 system configuration without first submitting a written request to the Division and obtaining the Division's written approval of the proposed change(s).
- J. It will provide to the Division, documentation of total insurance coverage for all hardware and software and other equipment purchased with E-911 funds. Insurance should, at a minimum, cover non-routine maintenance defects including, but not limited to, all acts of God, floods, fire, lightning strikes and water damage.
- K. It will provide all the necessary qualified personnel, material, and facilities to run the E-911 PSAP.

L. It will submit all project related contracts, subcontracts, and agreements to the Division for administrative review and approval prior to execution for compliance with the E-911 program requirements and not for legal sufficiency. Amendments to existing contracts also must be submitted to the Division for review and approval prior to execution.

M. It will comply with the PSAP consolidation requirement pursuant to the 10.6.2.15 NMAC of the E-911 Rules.

ARTICLE VI - RETENTION OF RECORDS

The Grantee shall keep and preserve such records as will fully disclose the amount and disposition of the total funds from all sources budgeted for a period of six years from the termination of the Grant Agreement, the purpose of undertaking for which such funds were used, the amount and nature of all contributions from other sources, and such other records as the Division shall prescribe.

ARTICLE VII – REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS GRANT AGREEMENT

A. The Grantee shall include the following or a substantially similar termination clause in all contracts that are (i) funded in whole or in part by funds made available under this Grant Agreement and (ii) entered into after the effective date of this Grant Agreement:

“This contract is funded in whole or in part by funds made available under a Department of Finance and Administration, Local Government Division (Division) Grant Agreement. Should the Division or the [insert name of Grantee] terminate the Grant Agreement, the [insert name of Grantee] may terminate this contract by providing the Contractor written notice of the termination in accordance with the notice provisions in this contract. In the event of termination pursuant to this paragraph, the Grantee’s only liability shall be to pay the Contractor for acceptable goods/equipment and/or services delivered and accepted prior to the termination date.”

ARTICLE VIII - REPRESENTATIVES

A. The Grantee hereby designates the person listed below as the official Grantee Representative responsible for overall supervision of the approved project:

Name: Ken Martinez
Title: PSAP Director
Address: 35 Camino Justicia
Santa Fe, New Mexico 87508

Phone: 505-992-3096
Fax: 505-428-3735
Email: krmartinez@co.santa-fe.nm.us

B. The Division designates the person listed below as its Program Manager, responsible for overall administration of this Grant Agreement, including compliance and monitoring of Grantee:

Name: Bill Range

Title: E-911 Program Manager
Address: Department of Finance and Administration
Local Government Division
Bataan Memorial Building, Suite 202
Santa Fe, NM 87501

Phone: 505-827-4804
Fax: 505-827-4948
Email: bill.range@state.nm.us

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Grantee and the Division do hereby execute this Grant Agreement.

THIS GRANT AGREEMENT has been approved by:

GRANTEE

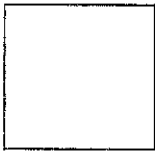
Authorized Signatory

Date

(Type or Print Name)

STATE OF NEW MEXICO)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by _____.



Notary Public

My Commission Expires: _____

**DEPARTMENT OF FINANCE AND ADMINISTRATION
LOCAL GOVERNMENT DIVISION**

By: _____
Rick Lopez, Director

Date

STATE OF NEW MEXICO)
)ss.
COUNTY OF SANTA FE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by _____.



Notary Public

My Commission Expires: _____

Exhibit A

PSAP Annual Report

PSAP Annual Report Form For: _____

Date of Report: _____

Section	PSAP Input
Section 10.6.2.11 D(8)	
PSAP Name	
Date of PSAP Report	
Exact address of the PSAP (No P. O. boxes)	
Number make and model of E911 and Radio Dispatch positions (if a position is used for both call taking and dispatching, list it as such)	
Type of equipment to include make and model	
Telephone switching equipment	
MIS System	
Mapping server	
Radio System	
UPS (for 911 Equipment)	
Back-up Generator	
Version of E911 operating system software	
Number and type of dedicated/ switched voice/data circuits	
Routing central office and PSAP end office	
Maintenance control center to include name of company, physical address, telephone number, Email address, and your point of contact for E911 equipment and voice logging recorder, if different from E911 equipment maintainer	
PSAP manager or coordinator and alternate: contact names, addresses, phone numbers, and their PSAP Email address	
MSAG coordinator name, address, phone number, and Email address	
GIS representative to include physical address, telephone number, and Email address	

Section	PSAP Input
Type and manufacturer of CAD system, if any, and type and manufacturer of voice logging recorder	
Section 10.6.2.11 D(9)	
Each PSAP shall maintain at least one 10-digit administrative number. This number shall also be used to receive incoming emergency calls transferred to the PSAP by other PSAPs for certain alternate and default routing arrangements. The preferred way to transfer an emergency call is via one-button transfer via 911 trunk, but the above method can be used for PSAPs that do not have one-button transfers the above mentioned PSAP.	
Provide the administrative number(s)	
Section 10.6.2.11 D(14)	
The PSAP shall maintain a list of fixed and auto-dial transfer features.	
List of fixed transfers	
List of auto-dial transfers	
Section 10.6.2.11 D(18)	
Special circumstances.	
(a) In accordance with the ADA each PSAP shall establish procedures to handle calls from speech and hearing impaired individuals. <u>Include a copy of your procedures.</u>	
(b) PSAPs shall develop procedures for handling unanswered or silent 911 calls. <u>Include a copy of your procedures.</u>	
Miscellaneous Section	
List the PSAP insurance provider name, POC, and policy numbers as proof of hazard and liability insurance for the PSAP facility	
List any back-up PSAP(s) and attach any MOU(s) documenting agreement(s)	

PSAP Annual Report Continued

9-1-1 PSAP Activity-PSAP Input Here			
	Wireline 9-1-1 Calls	Wireless 9-1-1 Calls	Total 9-1-1 Phone Calls
<i>Jul</i>			
<i>Aug</i>			
<i>Sep</i>			
<i>Oct</i>			
<i>Nov</i>			
<i>Dec</i>			
<i>Jan</i>			
<i>Feb</i>			
<i>Mar</i>			
<i>Apl</i>			
<i>May</i>			
<i>June</i>			
<i>Total</i>			
<i>Month Avg.</i>			
<i>Day Avg.</i>			

Exhibit B

Federal 911 Resource Center Report

Call Types	Annual Total of Calls from January 1 through December 31
Wireline	
Wireless	
Voice over Internet Protocol (VoIP)	
Multiline Telephone System (MLTS)	
Telematics	
Other	
Total of All Call Types	

New Mexico E-911 Program Grant

Exhibit C

Local Government Division

Department of Finance and Administration

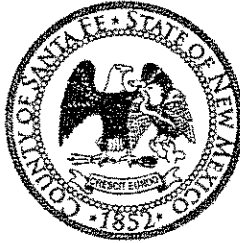
Grantee:	Santa Fe County	Grant Award:	394,935
Address:	35 Camino Justicia Santa Fe, NM 87508	Project Number:	17-E-11
Telephone:	505-992-3096	Grant Period:	July 1, 2016 - June 30, 2017
Number of Funded PSAP Positions:		Santa Fe - 14	

Budget Line Items	Total Budgeted Amount
Capital	
E-911 Equipment Upgrades	-
Firewall and Router Equipment	-
Dispatch Software	-
Recorder	-
UPS/Generator	-
Capital Subtotal	-
Recurring Network/Managed Services	
Voice Network	213,000
Data MPLS Network	8,711
Wireless Cost Recovery	7,000
Recurring Network/Circuit Subtotal	228,711
Recurring Maintenance	
System Maintenance	113,000
Recurring Maintenance Subtotal	113,000
Services/Training	
911 Related Training	20,000
911 Related GIS	4,000
911 Consulting Services	1,924
GIS Consulting Services	16,300
Interpretive Services	9,000
Minor Equipment	2,000
Services/Training Subtotal	53,224
TOTAL	394,935

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

Date: July 18, 2016

To: Board of County Commissioners

From: Robert Griego, Planning Manager *RG*
Rosemary Bailey, Affordable Housing Specialist

Via: Penny Ellis-Green, Director, Growth Management Director *PEG*
Katherine Miller, County Manager

Item: Discussion and Direction on Possible Amendments to the Affordable Housing Requirements in the Sustainable Land Development Code. (Robert Griego/ Growth Management)

BACKGROUND AND SUMMARY:

Staff is in the process of the 6 month review of the Sustainable Land Development Code. Chapter 13 of the SLDC, Fair and Affordable Housing is being reviewed as part of this process and several changes are being proposed to address corrections, clarify language and eliminate inconsistencies. In addition to these proposed SLDC changes, the Board and staff have identified several policy issues related to the Affordable Housing regulations that require Board direction.

1. Income Range Requirements
2. Alternative Means of Compliance
 - a. Rental Units
 - b. Long Term Affordability
3. Affordable Housing Incentives

Attached as Exhibit A is a staff review which outlines Affordable Housing issues and options for discussion by the Board.

ACTION REQUESTED:

Staff is requesting direction on possible amendments to the Affordable Housing regulations in the Sustainable Land Development Code.

EXHIBITS:

Exhibit A: Affordable Housing Ordinance Review White Paper

102 Grant Avenue · P.O. Box 276 · Santa Fe, New Mexico 87504-0276 · 505-986-6200 · FAX:
505-995-2740 www.santafecountynm.gov

Santa Fe County Affordable Housing Ordinance Review

SUMMARY

This white paper is intended to provide a review and analysis of existing Affordable Housing Ordinances and Regulations.¹ The focus of the review is to outline options for existing and proposed affordable housing requirements, affordable housing incentives and alternative means of compliance.

BACKGROUND

The County's Affordable Housing ordinances have been developed over a period of 15 years. Affordable housing requirements were initially established through the Community College District (CCD) adopted by Ordinance 2000-12. This ordinance required 15% affordable housing and was initially the only area in the County that required affordable housing. In 2006, Santa Fe County adopted Ordinance 2006-2, which expanded the area required for affordable housing to the Central and Northern areas of the County. This ordinance also increased the percentage of AH required to 30% for major projects² and 15% for minor projects.³ A total of 260 AH units have been built in Santa Fe County. During the period of 2003 through 2010, a total of 237 affordable dwelling units were built. With the exception of 43 affordable dwelling units in Aldea, almost all of the affordable housing constructed has been in the CCD. From 2010-2016, 23 units or an average of approximately 4 AH units per year were built during this time period.

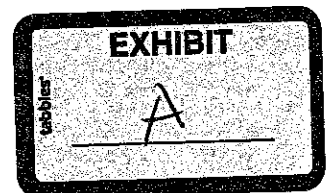
An important goal of the Affordable Housing Program is long-term affordability. In general, the County requires the required affordable housing within a subdivision to be sold at or below a "maximum target housing price," which is based on the eligible buyer's⁴ income and ability to pay. If there is a difference between maximum housing target price and the appraised market price, the buyer is required to grant the County an "affordability lien" equal to the difference between 95% of the market value and the maximum housing target price. The purpose of the lien is to prevent a windfall to the buyer and help assure long-term affordability, because the lien is generally assumable by subsequent eligible buyers.

¹ Santa Fe County's Affordable Housing Program includes ordinances and regulations authorizing Santa Fe County to provide down payment assistance and roof repair or replacement and renovations regulations. These regulations are in accordance with the New Mexico Affordable Housing Act and have been approved by the NM Mortgage Finance Authority. These ordinances relating to providing assistance are not addressed in this review

² Subdivisions of 25 or more parcels.

³ Subdivisions of 5 to 24 parcels.

⁴ Eligible buyers are those that earn 120% or less than the area median income (AMI) and are divided into four income ranges. All except range 4 are below the AMI, and the affordable housing within a subdivision must be divided equally among the four income ranges.



After the economic downturn, which significantly reduced development Countywide, the County adopted Ordinance 2012-1. This Ordinance reduced the percentage of affordable housing required to 15% for major projects and 8% for minor projects. As a result of the reduction in the AH requirements, several Affordable Housing Agreements were amended to reflect the reduced requirements. In 2015, the Board also approved an alternative means of compliance for La Pradera that allowed homes built by the Community Housing Trust to be approved as affordable dwelling units. This was the first time that the County allowed a nonprofit to hold the lien rather than the County, which effectively removed the County from the role of assuring long-term affordability of these units.

In 2015, Santa Fe County adopted the Santa Fe Land Development Code (SLDC) which incorporated a compilation of the affordable housing ordinances that have been adopted and amended into Chapter 13 of the SLDC. Staff and legal review of Chapter 13 has identified several amendments and technical changes that need to be addressed in the SLDC revisions.

This review document identifies potential options to address issues that have been identified in the County's current affordable housing requirements and regulations. Additional concerns may be identified through the affordable housing discussion and public review process.

Affordable Housing Regulations Issues and Options for Consideration

SLDC Chapter 13 Fair and Affordable Housing Amendments: There is an immediate need to amend SLDC Chapter 13 to address clean up and clarification (Technical Changes). These amendments should be completed through a clear public review process and within the time frame for the SLDC 6 month review process. A summary of the proposed changes includes:

- Revise language to clarify intent but not change the basic requirements.
- Amend definitions in Chapter 13 to be consistent with SLDC definitions.
- Amend language to eliminate any county sharing in market appreciation, consistent with Ordinance No. 2012-1.
- Amend language to eliminate any reduction in the lien, except for hardships, consistent with Ordinance No. 2015-2.

Current Santa Fe County Affordable Housing Requirements by Income Range and Project Type.

Income Range	Minor Projects % 5 – 24 Lots	Major Projects % 25 or more Lots
Income Range 1 <65% AMI	2	3.75
Income Range 2 66% to 80% AMI	2	3.75
Income Range 3 81% to 100% AMI	2	3.75
Income Range 4 101% to 120% AMI	2	3.75
Total AH required by subdivision type	8 %	15 %

Potential Policy Amendments for Board Consideration:

Income Range Requirements: Affordable Housing regulations require a percentage of affordable dwelling units based on project size and income range requirements as identified in the table above. Income ranges are established by a percentage of the Area Median Income (AMI) in four income ranges: 0-65% AMI, 66-80% AMI, 81 to 100 % AMI and Tier 4 101-120% of AMI (see table above). The Affordable Housing Regulations establish the home price for each income range based on factors that include household size, number of bedrooms, % of gross income spent on housing, and interest rates. The County review may include considering options for amendments to address Income Range 1 and Income Range 4 for both minor and major projects. The following identify issues and options to address Income Range 1 and Income Range 4 for both minor and major projects.

1. **Income Range 1:** For Income Range 1 which is 0-65% AMI, there are concerns regarding readiness for home ownership for this income tier. This income range with a one-person household has an income limitation of \$29,445.00 yearly, which amounts to an hourly rate of approximately \$14.15. Homeowners in all income tiers may also be required to pay Homeowner Association Fees, which increases the housing cost. This is an indication of how challenging it is for potential home buyers in this income range to qualify and successfully maintain home ownership. Developers who provide housing for Income range 1 experience the most significant losses in comparison to the other ranges. The affordable housing regulations require that developers sell homes at the income ranges established in the regulations, which includes a lien in favor of the County for the difference between the sales price of the home and 95% of the appraised value of the home. The amount of the liens in favor of the County for Income Range 1 are from \$71,600.00 to \$146,410.00.

Income Range 1 Options:

- A. Delete Income Range 1 for Minor and Major projects and either increase the percentage required for other Tiers or reduce total percentage of affordable housing.
- B. Reduce the percentage of homes required for Income Range 1 for Minor Projects from 2% to 1 % and Major Projects from 3.75% to 2% and either increase percentage required for other Tiers or reduce total percentage required.
- C. Allow fee in lieu for Income Range 1 in the amount of the difference between the Required Sales Price of the Home and the 95 % Appraised value or to a set amount (% of total).

Pros:

- Elimination or reduction of affordable dwelling units in Income Range 1 addresses concerns from developers that this income range is the highest loss for each unit.
- Potential home buyers in this income range would not be set up for failure with mortgages and housing costs they may not be able to afford.
- If total requirements for affordable housing remain the same, the potential pool of applicants for Income Range 2, 3, and 4 would be increased.

Cons:

- Homeownership in Income Range 1 would be reduced.

2. **Income Range 4:** Affordable Housing regulations for Tier 4 is 101-120% of AMI. This income tier was established in the 2006 ordinance and has seen the least amount of affordable units built; only

3 units have been qualified in this income range. In the current housing market, the Tier 4 homes are selling at market rates. This is likely a result of a number of factors, which include previous affordable housing agreements that did not require this income tier; developer use of Alternative Means of Compliance; and the reluctance of potential buyers to go through the County program for a market range home as required by an Affordability Mortgage or Lien requirement (Ordinance 2015-2). Property owners may choose not to go through the County for market rate homes for the following reasons:

- AH Regulations do not allow property owner to rent property with the exception of immediate family members.
- County has right of first refusal option to purchase or sell to another affordable buyer.
- AH Regulations only allow upgrades up to \$5,000.00 for an affordable unit.
- Homeowners are required to complete homebuyer education.

Income Range 4 Options:

- A. Allow income Range 4 homes to be sold by developer with only a requirement that County certifies income eligibility.

Pros:

- Developers would be able to sell Tier 4 homes without the hesitation from affordable buyers for County regulations and without requiring an affordability mortgage or lien in favor of the County.

Cons:

- Homebuyer education not provided.
- Long term affordability is not ensured.

3. Alternative Means of Compliance: There is a need to review and consider revisions to the Alternative Means of Compliance Amendments to include rentals, fee in-lieu, long term affordability and the option for nonprofit organizations to hold liens. The existing ordinance identifies rentals but does not provide provisions for how this is addressed. There may be a need to develop criteria to allow for rental housing. The Fee-in lieu provision allows making a cash payment equal to or greater value than would have been required if the affordable unit had been constructed. This alternative does not provide a viable fee-in-lieu option from a developer perspective because the costs per unit is not feasible. For Long-term affordability, the Board has approved an affordable housing agreement amendment in one case that allowed a non-profit organization to hold the lien. Other developers have expressed an interest in receiving credit for affordable homes that have been built and sold by nonprofits as an option to address their affordable housing requirements. There is a need for the Board to consider whether and under what terms to allowing non-profits to hold liens will ensure long-term affordability.

Alternative Means of Compliance Options

- A. Explore the potential to partner with the Housing Authority or a non-profit to address rental requirements.
- B. Allow non-profit organizations to hold the liens instead of County.
- C. Develop alternative means of compliance to allow fee-in-lieu to address rental units.

Pros:

- Rental units are needed in Santa Fe County and there may be creative ways to address this need.
- Addresses concerns from developers who have expressed need for alternative compliance.

Cons:

- Rental requirements could be difficult to administer.
- Non-profits holding the liens would mean that the County would not receive revenue from liens when property is sold to a non-eligible buyer. Nonprofits would receive revenue through silent liens.
- It would be the nonprofit, not the County, that would be responsible for maintaining long-term affordability.

Other Potential Policy Considerations:

- **Areas for Affordable Housing:** Current boundary for Affordable Housing Requirement is Central and Northern Santa Fe County. Consider amending areas required for Affordable Housing to SDA 1. This would ensure that affordable housing has Adequate Public Facilities and Services. This option may provide a requirement for subdivisions outside of SDA-1 to include a fee in lieu.
- **Multi-Family.** Current regulations do not require multi-family residential to provide affordable housing. Consider option to require multi-family residential projects to provide affordable units or a fee in lieu.
- **Affordable Housing Administrator.** SLDC identifies an Affordable Housing Administrator. County does not currently have an Affordable Housing Administrator. This could be addressed through an amendment to designate someone for this role or remove this position from SLDC.
- **Affordable Housing Incentives.** The affordable housing regulations include affordable housing incentives as part of the regulations. There may be a need to amend incentives as part of the SLDC or Affordable Housing Regulations. AH Incentives include:
 - A. **Water for Affordable Housing-** This incentive eliminates the requirement to transfer water rights to the County for Affordable units so long as the County has water rights and is able to supply. This incentive is only available in the County water service area.
 - B. **Density Bonus-** This incentive is not applicable in the CCD because the density is allowed without the density bonus.
 - C. **Energy Efficiency-** This section identifies energy efficiency incentives but there are no incentives identified. Consider adding incentives or eliminating this section.
 - D. **Relief from Development Fees.** This incentive is utilized.
 - E. **Relief from additional County Water Utility Connection Charges.** This incentive works for areas on the County Utility. Does not work for areas outside of County Utility Service Area.
 - F. **Reduction of Lot Size for Affordable Units.** This incentive is not applicable in the CCD because the density is allowed without the density bonus.
 - G. **Developer Subsidy.** This incentive is part of Ordinance 2011-6 and is not part of the SLDC. The Board has allocated funding for this subsidy but it has not been utilized. Regulations for qualification for this subsidy may need to be refined to make this incentive function.

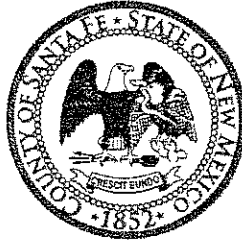
Next Steps for Affordable Housing Regulation Amendments

1. Address Board direction on any proposed amendments to Affordable Housing regulations.
2. Incorporate proposed amendments to Chapter 13 of the SLDC.
3. Conduct Public and Stakeholder Meetings to review proposed amendments.
4. Propose SLDC amendments for September BCC Meeting.
5. Public Review and adoption process to coincide with SLDC 6 month amendments.
6. Amend AH Regulations to coincide with Chapter 13 SLDC Amendments.

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

Date: July 13, 2016

To: Board of County Commissioners

From: Penny Ellis-Green, Growth Management Director *PEG*
Robert Griego, Planning Manager

Via: Katherine Miller, County Manager

Re: Presentation and Direction on the Sustainable Land Development Code 6 Month Review.

Issue

On December 8, 2015, the Board of County Commissioners (BCC) approved the Sustainable Land Development Code, Ordinance No. 2015-11 (SLDC), which included a requirement to begin a review of the SLDC six months after its effective date. The SLDC became effective on January 15, 2016.

Staff will present a summary of the initial changes to the SLDC, which have resulted from issues arising from the application of the SLDC; staff's identified errors; and public concerns.

Staff proposes the following procedure and timeframe for this 6 month review of the SLDC:

July 26 BCC meeting

- Presentation of initial proposed staff amendments to the SLDC and possible affordable housing amendments

August 2016

- Public comment period and area wide meetings
- Initial presentation to the Planning commission

September 2016

- Request to publish title and general summary of SLDC amendments to BCC
- Planning Commission Hearing

October 2016

- First BCC public hearing

November 2016

- Final BCC public hearing

