PROFESSIONAL SERVICES AGREEMENT WITH NATIONAL RESEARCH CENTER INC TO PROVIDE NATIONAL CITIZEN SURVEY

THIS AGREEMENT is made and entered into as of this 24th day of June, 2013, by and between the **Santa Fe County,** hereinafter referred to as "County", a political subdivision of the State of New Mexico and **National Research Center Inc.,** registered as a foreign profit corporation registered to do business in the State of New Mexico, with its principal place of business at 2955 Valmont Road, Suite 300, Boulder, Colorado 80301, hereinafter referred to as "Contractor".

RECITALS

WHEREAS, in the Santa Fe County Fiscal Year 2013 budget cycle, the County Manager and the Board of County Commissioners determined that conducting a survey of Santa Fe County residents is an important part of performance management and results-accountability for the County;

WHEREAS, Santa Fe County requires the services of research and survey firm to gauge satisfaction of County services and assess County programs and services priorities based on input from Santa Fe County citizens;

WHEREAS, the Contractor is the only firm that provides the comparative jurisdictional data and has the linkage to the International City and County Management Association (ICMA), to enter survey results into the Center for Performance Management (CPM 101) program, in which the County participates;

WHEREAS, the Contractor is the only firm that has linkage to the ICMA, CPM 101 program, and the procurement for these specific research and the County Procurement Manager determines that survey services meet the Sole Source Procurement requirements of Section 13-1-126 of the Procurement Code;

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

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

AGREEMENT

1. SCOPE OF WORK

The Contractor shall:

A. Conduct a random sample scientific mail survey of 3,000 Santa Fe County residents for responses to question(s) regarding satisfaction of County services, and receive input for assessment of County programs and service priorities.

B. Develop survey cover letter and survey questionnaire with input by County staff utilizing Contractor worksheet tool.

C. Provide a Spanish translation questionnaire to be made available by the County upon request. Instructions in the Spanish language inviting respondents to request a Spanish translation questionnaire will be noted in the Contractor's survey cover letter.

D. Collect survey responses to one (1) open ended question and provide report tables with list of verbatim responses.

E. Develop a set of customized benchmarks for comparison to other counties or communities selected by the County. Benchmark data of selected areas will be extracted from the Contractor database.

F. Produces custom benchmark comparison to submit to the County in statistical report tables.

G. Produce national benchmark comparisons to submit to the County in statistical report tables.

H. Provide demographic subgroup comparisons. Demographic subgroup comparisons will be provided in a separate report for four (4) demographic questions by the evaluative questions on the survey. Contractor will provide worksheet tool for County input for the demographic subgroup comparison reports.

I. Provide geographic subgroup comparisons. Subgroup comparisons will be provided in a separate report for one set of geographic identifying data. Contractor, using input from the County, will define and determine geographic areas prior to survey mailings. Contractor will provide worksheet tool for County input for the geographic subgroup comparison reports.

J. Create internet web capability for scientific survey. Ensure the mailed scientific survey will be available online. The web survey must be available only to those households selected as part of the random, scientific sample. Include web responses with the mailed survey results in the reports.

K. Create non-scientific internet web survey. Ensure the non-scientific web survey be available on-line and open to the entire County. The non-scientific web results will not be part of the scientific survey. The Contractor will produce separate stand-alone statistical tables from the non-scientific web survey.

2. COMPENSATION, INVOICING, AND SET-OFF

A. In consideration of its obligations under this Agreement, County shall pay Contractor as follows:

1.) The total amount payable to the Contractor under this Agreement shall not exceed Twenty-Five Thousand Dollars ($25,000.00), exclusive of New Mexico gross receipts tax. Any gross receipts tax levied on the amounts payable under this Agreement shall be paid by the County to the Contractor.

2.) The Compensation state herein is based on the Contractor's fees as follows:

NCS Basic Services	10,300.00
Custom benchmark comparison:	1,100.00
Demographic subgroup comparisons:	900.00
Expanded mailing:	7,100.00
Geographic subgroup comparisons:	1,100.00
One open-ended question:	1,500.00
Spanish translation of survey available	1,450.00
Web Survey (Scientific sample)	900.00
Web Survey (open, not scientific):	650.00
Total Services	**$25,000.00**

3.) This amount is a maximum and not a guarantee that the work and services assigned to be performed by the 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 Contractor shall notify the County when the services provided under this Agreement reach the total compensation amount.

B. Contractor shall submit a written request for payment to County whenever payment is due under this Agreement. Within fifteen (15) days of County's receipt of the written request, County shall issue a written certification of complete or partial acceptance or rejection of the contractual items or services for which payment is sought. Contractor acknowledges and agrees that 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, County shall tender payment for the accepted items or services. In the event County fails to render payment within thirty (30) days of the written certification accepting the items or services, 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 Contractor breaches this Agreement, County may, without penalty, withhold any payments due Contractor for the purpose of set-off until such time as 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 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 one (1) year later unless earlier terminated pursuant to Section **4, TERMINATION,** or **5. APPROPRIATIONS AND AUTHORIZATIONS** of this Agreement. The County has the option to renew this Agreement for one (1) additional year. The County will exercise this option by submitting a written notice to the Contractor in no less than sixty (60) days prior to the expiration of the initial term of this Agreement. In no event shall the term of this Agreement exceed two (2) years total from the effective date of this Agreement.

4. 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 with 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 County, County may, in its discretion terminate this Agreement at any time for any reason by giving Contractor written notice of termination. The notice shall specify the effective date of termination, which shall not be less than fifteen (15) days from Contractor's receipt of the notice. County shall pay Contractor for acceptable work, determined in accordance with the requirements set forth in this Agreement, performed before the effective date of the termination but shall not be liable for any work performed after the effective date of termination.

5. 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 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 County to Contractor. Such termination shall be without penalty to county, and County shall have no duty to reimburse Contractor for expenditures made in the performance of this Agreement. County is expressly not committed to expenditures of any funds until such time as they

are programmed, budgeted, encumbered and approved for expenditure by the County. 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 Contractor in any way or forum, including a lawsuit.

6. INDEPENDENT CONTRACTOR

Contractor and its agents and employees are independent contractors and are not employees or agents of County. Accordingly, 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 County. Except as may be expressly authorized elsewhere in this Agreement, Contractor has no authority to bind, represent, or otherwise act on behalf of County and agrees not to purport to do so.

7. 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 County's advance written approval shall be null and void and without any legal effect.

8. SUBCONTRACTING

Contractor shall not subcontract or delegate any portion of the services to be performed under this Agreement without the advance written approval of County. Any attempted subcontracting or delegating without County's advance written approval shall be null and void and without any legal effect.

9. PERSONNEL

A. All work performed under this Agreement shall be performed by the Contractor or under its supervision.

B. 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 County and (ii) shall be fully qualified and licensed or otherwise authorized or permitted under federal, state, and local law to perform such work.

10. RELEASE

Upon its receipt of all payments due under this Agreement, Contractor releases County, its Elected Officials, officers, agents and employees from all liabilities, claims, and obligations whatsoever arising from or under or relating to this Agreement.

11. CONFIDENTIALITY

Any confidential information provided to the Contractor by the County or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without prior approval from the County.

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

A. 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 parties acknowledge that Contractor has materials, survey methods and benchmarks which it has developed and will be used in Contractor's performance of this Agreement. Such materials, survey methods and benchmarks may be subject to copyright held by the Contractor. Contractor acknowledges and agrees that any deliverables or survey results or reports produced in whole or in part under or pursuant to this Agreement are deliverables belonging to the County. Accordingly, to the extent that these deliverables are copyrightable in the United States or in any other county, the County shall own any such copyright.

13. CONFLICT OF INTEREST

Contractor represents that it has no and shall not require any interest, direct or indirect, that would conflict in any manner or degree with the performance of its obligations under this Agreement.

14. 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. Contractor specifically acknowledges and agrees that 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.

15. ENTIRE AGREEEMNT; 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.

16. NOTICE OF PENALTIES

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

17. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

A. Contractor agrees to abide by all Federal, State, and local laws, ordinances, and rules and regulations pertaining to equal opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, Contractor specifically agrees not to discriminate against any person with regard to employment with 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. Contractor acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Agreement.

18. COMPLIANCE WITH APPLICALBE LAW; CHOICE OF LAW

A. In performing its obligations hereunder, 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.

19. RECORDS AND INSPECTIONS

A. To the extent their books and records relate to (i) their 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, Contractor agrees to (i) maintain such books and records during the term of this Agreement for a period of six (6) years from the date of final payment under this Agreement; (ii) allow County or 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 their books and records relate to (i) their 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, 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 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 with GAAP.

20. INDEMNIFICATION

A. Contractor shall defend, indemnify, and hold harmless 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 Contractor's performance or non-performance of its obligations under this Agreement, including but not limited to Contractor's breach of any representation or warranty made herein.

B. County shall have the right to approve any counsel retained by Contractor to defend any demand, suit, or cause of action in which County is named, such approval not to be unreasonably withheld. Contractor agrees (i) that 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 (ii) that such suit will not be settled without County's consent, such consent not to be unreasonably withheld. If in County's judgment, a conflict exists between the interests of County and Contractor such demand, suit, or cause of action, County may retain its own counsel, whose fees shall be paid by Contractor.

C. Contractor's obligations under this section shall not be limited by the provisions of any insurance policy Contractor is required to maintain under this Agreement.

21. 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.

22. 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: National Research Center Inc
2955 Valmont Road, Suite 300
Boulder, Colorado 80301

23. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

A. It is corporation duly organized and in good standing under the laws of the state of Colorado.

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

C. This Agreement and Contractor's obligations hereunder do not conflict with Contractor's articles of incorporation or by-laws or any corporate resolution adopted by Contractor.

24. LIMITATION OF LIABILITY

County's liability to Contractor for any breach of this Agreement by 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 County be liable to Contractor for special or consequential damages, even if County was advised of the possibility of such damages prior to entering into this Agreement.

25. NO THIRD-PARTY BENEFICIARIES

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

26. INSURANCE

A. General Conditions. 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. Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy and liability limits in amounts not less than $1,000,000 per occurrence combined single limits of bodily injury, including death, and property damage for any one occurrence or $2,000,000 aggregate. Said policies of insurance shall include coverage for all operations performed for County by 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. County of Santa Fe shall be named additional insured on the policy.

C. Workers' Compensation Insurance. 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), Contractor shall increase the maximum limits of any insurance required herein.

E. Malpractice/Errors and Omissions Insurance. Contractor shall procure and maintain during the life of this Agreement professional liability (errors and omissions) insurance with policy limits of not less than $1,000,000.00 per occurrence, $2,000,000.00 per aggregate.

27. 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.

28. APPOINTMENT OF AGENT FOR SERVICE OF PROCESS, if applicable

The Contractor hereby irrevocably appoints Corporation Service Company, a New Mexico resident company located at 125 Lincoln Avenue Suite 223, Santa Fe, New Mexico, 87501, 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 services upon its designated agent shall have the same effect as though the Contractor were personally served within the state of New Mexico.

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 and 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 executed this Agreement as of the date first written above.

SANTA FE COUNTY

Katherine Miller, Manager — Date: 6-24-13

APPROVED AS TO FORM

Stephen C. Ross, Santa Fe County Attorney — Date: 6/20/13

FINANCE DEPARTMENT APPROVAL

Teresa C. Martinez, Santa Fe County Finance Director — Date: 6/20/13

CONTRACTOR

National Research Center Inc.

(signature and title) — Date: 6/20/13

President