



**May 2, 2012**  
Agenda  
9:30 A.M. Business Meeting  
Valencia County Commission Chambers  
444 Luna Avenue  
Los Lunas, NM 87031

*Board of County Commissioners*  
*Donald E Holliday, Chair District V*  
*Georgia Otero-Kirkham, Vice-Chair District II*  
*Mary Andersen District I*  
*Lawrence R. Romero District III*  
*Ron Gentry District IV*

A handwritten signature in black ink, reading "Donald E. Holliday".

- 1) Call Meeting to Order
- 2) Pledge of Allegiance
- 3) Approval of Agenda
- 4) Approval of Minutes:

**PRESENTATION(S)**

- 5) Jim Glover – Community Branding – phase II

**DISCUSSION (Non-Action) ITEM(S)**

- 6) Reports from Commissions, Boards & Committees

**ACTION ITEM(S)**

- 7) Consideration of a Proclamation declaring the month of May Older American Month: **Ruben Chavez / Jose Campos**
- 8) Consideration of an amendment to the Grant Agreement for the purpose of increasing the funding contribution by AAA to the Older American Program: Contract # 2011-12 60028: **Ruben Chavez / Jose Campos**
- 9) Consideration of an amendment to the Vendor Agreement for the purpose of increasing the State portion of the program funding contribution by AAA to the Older American Program: Contract # 2011-12 60028: **Ruben Chavez / Jose Campos**
- 10) Consideration of Approval of Amendment Number 4 Agreement No. 11-690-13020-4: **Cynthia Ferrari**
- 11) Consideration of Approval of Satellite Lease Agreement # VCL-FY12-503: **Cynthia Ferrari**
- 12) Accept approval to be fiscal manager for Juvenile Adjudication Grant Fund: **Tasa Stromei**
- 13) Consideration of Resolution 2012-\_\_\_ Delegation of Authority to the County Manager to enter into Certain Contracts and Settlement Agreements: **County Commission**
- 14) ***Accept Findings of Facts and Conclusions of Law***
  - (1) Consideration to adopt the findings of facts and conclusions of law concerning a Verification of a Non-Conforming Use for the storage and sale of fill dirt and gravel products on the property described as T5N, R1E, Section 1; NMPM; Map: 96; a portion of Tracts 67, 68 and Tract 46-C-2; Zoned RR-2; Filed in Book 300, Page 1093, of the office of the Valencia County Clerk, also known as 1 Eddie Lane, Belen, NM 87002: **Jacobo Martinez-Jacobo will bring updated information on this item**



15) Approval of contract for audit for Valencia County FY 2012-2013: **Christina Card**

16) Request approval of Memorandum of Understanding to provide financial support for the Summer Recreation Program in the City of Belen: **Christina Card**

17) Request approval of Memorandum of Understanding to provide financial support for the Summer Recreation Program in the Village of Bosque Farms: **Christina Card**

**FINANCIAL MATTERS:**

18) Consideration of Approval: Payroll / Warrants: **Christina Card**

**PUBLIC COMMENT:**

Please sign up on the sheet located just outside the Commission chambers. The Board will allow each member of the public wishing to address the Board a full and complete opportunity to address the Commission

**EXECUTIVE SESSION:**

Pursuant to Section 10-15 1 (H) (2) (7) & (8), the following matters may be discussed in closed session: a. personnel: **Finance Director** b. pending or threatened litigation: **EEOC Charge Number 543-2012-00434; San Davie Road** c. real property: d. other specific limited topics that are allowed or authorized under the stated statute.

- ♦ Motion and roll call vote to go into Executive Session for the stated reasons
- ♦ Board meets in closed session
- ♦ Motion and vote to go back into regular session
- ♦ Summary of items discussed in closed session
- ♦ Motion and roll call vote that matters discussed in closed session were limited to those specified in motion for closure, and that no final action was taken, pursuant to the authority in §10-15-1 NMSA 1978.

**ACTION ITEMS FROM EXECUTIVE SESSION:**

- a) Approval of Finance Director Employment Contract
- b) EEOC Charge Number 543-2012-00434

**NEXT COMMISSION MEETING:**

- ♦ **May 9, 2012 – Public Hearing @ 5:00 P.M.**  
Valencia County Commission Board Room 444 Luna Ave. LL, NM

**ADJOURN:**

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*If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Valencia County Manager's Office at the Valencia County Courthouse, Los Lunas, New Mexico, (505) 866-2014 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Valencia County Manager's Office at the old Valencia County Courthouse if a summary or other type of accessible format is needed.*



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**VALENCIA COUNTY BOARD OF COMMISSIONERS**

**PUBLIC HEARING MEETING**

**APRIL 11, 2012**

<b>PRESENT</b>	
Donald E. Holliday, Chairman	
Georgia Otero Kirkham, Vice-Chair	
Lawrence R. Romero, Member	
Ron Gentry, Member	
Mary J. Andersen, Member	
Eric Zamora, County Manager	
Adren Nance & Dave Pato, County Attorneys	
Sally Perea, County Clerk	
Press and Public	

1) The Meeting was called to order by Chairman Holliday at 5:00 P.M.

2) Chairman Holliday led the Pledge of Allegiance.

**3) Approval of Agenda**

Commissioner Gentry requested that the agenda be amended by moving item (4) Discussion of Joint Power Agreement of Hospital with City of Belen to be heard after item (6) Appeal Request. Commissioner Gentry moved for approval. Seconded by Chairman Holliday. Motion carried unanimously.

**SWEARING IN OF PARTICIPANTS**

County Clerk Sally administered the oath to those individuals wishing to give testimony at tonight's Public Hearing Meeting.

**PUBLIC HEARING ITEM(S):**

**4) Discussion of Joint Power Agreement of Hospital with City of Belen-Commission**

City of Belen Mayor Rudy Jaramillo, Councilman Jareh Cordova, Belen City Manager Lucy Baca and City of Belen Attorneys John Salazar and Jennifer Stone came before the commission to present a Joint Powers Agreement passed and signed by the Belen City Council along with a copy of the feasibility study. Mayor Jaramillo said the city has invested to make this site available for a hospital site including the ponding on Westside of Interstate 25.

Councilor Cordova provided a presentation in three parts which included a brief history of Belen's involvement in the hospital project, an overview of the feasibility study as it was completed by Ameris and finally a discussion of the Joint Powers Agreement.

Chairman Holliday said he let the mayor know that the county's counsel had issues they wanted to discuss with the city's attorneys. He would rather counsel review the Joint Powers Agreement, see what they think and bring it back.

Commissioner Andersen said we all have a five page letter from our legal counsel with a lot of questions and it would be her suggestion that until those questions are answered to the satisfaction of our legal counsel, we not discuss this.

Commissioner Gentry's concern would be is they have times, dates and targets to get it moving and he agrees if they're going to do it that's what they need to do but he wants it made clear, who pays for what and the way he reads it, if they start this JPA the way it is, the county is going to be paying for the cost of starting and setting up the 501C3. Mayor Jaramillo said he would direct those questions to their counsel Jennifer Stone and John Salazar. Commissioner Gentry said the way he reads it, this is looking at a possible General Obligation Bond to pay for a hospital and we will finally become owners and operators of a hospital that has never been the concept from day one when they started this, it was going to be privately funded and they would subsidize the Mill Levy which was what the people voted for. What Commissioner Gentry is trying to define is that a balanced budget has to be prepared within the next four weeks and approved by DFA to appropriate funding which the Joint Powers Agreement calls for, that has to be understood in order to encumber those funds and place them in the budget. The JPA states that the county will be called upon to fund the cost of the setup for the 501C3 and their operational costs upfront which is the first thing that needs to be done. Isn't that true he asked?



Councilor Cordova stated for clarification, the JPA only requires the county to fund one aspect of this project and that's the formation of the non-profit. Beyond that there is no obligation on the part of the county or the City of Belen to fund the project.

Attorney for the City of Belen John Salazar stated the county does need to know what it's getting into if it gets into this Joint Powers Agreement and what it is committing to and believes the way it's written Valencia County will authorize the expenditure of county funds necessary for formation of the non-profit and for the performance of the duties assigned to the non-profit. The way the document is drafted, there is an additional county obligation and at this point he would point out to the commission, this is a proposed Joint Powers Agreement and the reason it's presented at a public hearing. The county is not being asked to take action on it tonight, but so the county can consider and react to the proposal that's being made by the City of Belen. In regards to Commissioner Gentry's question, the wording on the JPA is Valencia County shall authorize the expenditure of or otherwise provide county funds for the independent feasibility validation.

Commissioner Gentry went on to express his concerns on the issue of General Obligation Bonds, who was going to pay for setting up the bond, paying the bond attorneys and what the cost of the additional 10.35 acres would be which would also have to be included in the bond. The commissioners agreed that they would not approve a General Obligation Bond and would not make the taxpayers pay for any additional taxes. There has to be other options. The commission thanked Mayor Jaramillo, staff and their attorneys for all their hard work.

**5) Consideration of Application 545 / 484043(B) to Valencia County License Venture, LLC DBA Valencia County Liquors, 2765 State Hwy 47, Los Lunas, New Mexico for a Transfer of Ownership of a Liquor License from Carol Trujillo and the Estate of Daniel Trujillo DBA el Rio Cantina - County Clerk**

County Clerk Sally Perea presented the above application for consideration of a transfer of a liquor license from Carol Trujillo and the estate Daniel Trujillo doing business as El Rio Cantina to Valencia County License Venture. The procedure as per statute is that within 45 days after receiving the application this request has to be heard by the commission at a public hearing. All the notices have been published in the local paper and notices have been sent to the individuals.

Chairman Holliday asked if there was anyone present in the audience wanting to speak in favor or against this request. No one spoke.

**6) Appeal Request – Consideration to Hear an Appeal of a Decision Made by the Planning and Zoning Administrator to Deny a Non-Conforming Use for the Storage and Sale of Fill Dirt and Gravel Products; T5N, R1E, Section 1, NMPM, Map 96, a Portion of Tracts 67, 68 and Tract 46-C-2, Zoned RR-2, Filed in Book 300 Page 1093 of the Office of the Valencia County Clerk, Also Known as 1 Eddie Lane, Belen, NM 87002 – Jacobo Martinez.**

County Planner Jacobo Martinez stated the case before the commission today has been heard in District Court for settlement. The court ordered that the defendant Mr. Robert Chavez shall have 120 days from the filing on the court's findings and conclusions to complete the zoning variance / change with Valencia County. So there was findings of fact and conclusion of law established by the court. On January 20, 2012 the Planning and Zoning Department received a request for a verification of a non-conforming use for the storage and sale of fill dirt and gravel products on the lot known as 1 Eddie Lane, Belen, NM 87002.

On February 14, 2012 the Planning and Zoning administrator denied the request for a verification of a non-conforming use. Upon reviewing the materials submitted by the applicant in support of his application for verification of non-conforming use and the Findings of Fact and Conclusions of Law issued by the District Court in relation to this matter, the Planning and Zoning Department determined that the applicant failed to present sufficient evidence that the proposed use has been in existence on the subject property for at least 10 years prior to the submission of the application for verification of non-conformity and on February 28, 2012 Mr. Chavez filed an appeal of that administrative decision.

Norman McDonald, Attorney for Mr. Chavez gave a history on this case in which a court proceeding in District Court was held. The business location comprises of 2.9 acres and the business sells gravel products, field dirt, crusher finds and there is no excavating, digging, mining of any sort, it is not a gravel pit. The business has been in existence at this location since 2000 prior to that Mr. Chavez had the gravel products located north of his home starting about 1995 and prior to that his business consisting of a laser leveling custom farm work and also sale of gravel products. He received his certification from the State Department Taxation and Revenue in 1988 under the name Chavez Laser Leveling. In 2000 Mr. Chavez retired from PNM and went full time into this business. There are only two employees at the site, father and daughter. Mr. Chavez was granted a business license



Minutes of April 11, 2012 Public Hearing Meeting

commencing in 1998 from Valencia County. This property as of today is being assessed and taxed by the county as commercial property. The county did not change its zoning map in 2007 at the time that Mr. Apodaca entered into this downsizing agreement so the property is shown on the map as RR-2, rural residential two acre minimum. Mr. Chavez has filed for a non-conforming use which is an administrative procedure to determine that the property is grandfathered in and the requirement is that it has to have been in existence for ten years prior to the application. The application was made January 2012 so it would have had to have been in existence January 2002 or before. The denial of the request by Mr. Jacobo Martinez's Office said they were not satisfied that the ten year requirement had been met because Judge Eichwald in his findings of fact stated that the business started in that location in 2004 and that matter is presently on appeal. Mr. McDonald presented sworn testimony from the lead plaintiff Earl Gleason verifying exactly what they stated was the case as far as meeting the ten year requirement and that information has been given to Mr. Martinez. Mr. McDonald is requesting that the commission overturn the decision by Mr. Martinez's office determining that this property does merit to be grandfathered as a non-conforming use having met the required time of ten years before application.

Commissioner Otero-Kirkham said the copy of the business license provided by Mr. McDonald says Ed Chavez Trucking and Laser Leveling and did Mr. Chavez ever get a license under his gravel company name?

When the license was first issued in 1998 that was the name of the business at that time. The business changed slightly, Mr. Chavez got out of laser leveling, but was always in field dirt and got more into gravel products. The business is owned by Ed Chavez as a sole proprietorship, it's not a corporation.

Commissioner Otero-Kirkham asked if there were other commercial businesses within the vicinity. Mr. McDonald said yes there is another commercial business where Mr. Gleason lives that have gravel products, have dump trucks and are also in the county.

Commissioner Otero-Kirkham asked if the entire area zoned RR-2. Mr. McDonald response was yes. Commissioner Otero-Kirkham said so you're saying Mr. Chavez should be granted this zone change because he was there for ten years. Mr. McDonald said it's not a zone change, technically approving the non-conforming use because it meets the ten year criteria to be grandfathered and in addition they have supplemented that with the position the county has taken through the county manager's office and the downsizing agreement on the issuing of the licenses annually and the assessing and taxing of the property as commercial annually. Recognition of the downsizing was confirmed by the county manager's office by a letter from Mr. Nance and a memo from Ruben Chavez.

Attorney James Sanchez representing the homeowners who live adjacent to the sand and gravel pit said Ms. Brower's property is right on the fence line of this gravel pit. Mr. Sanchez pointed out that this is not a correct grandfather procedure. This is not the proper procedure to consider what Mr. Chavez is trying to do in this rural residential zone. What he should be seeking is a zone change as that is exactly what the court had ordered, that he apply for a zone ordinance or a zone change. The form that was used in 2008 by Mr. Aranda when it was first denied for a request for a legal non-conformance is the same that was used now when Mr. Martinez also denied the request for non-conformance. This form asks if the present structure has been in use or existence for ten or more years prior to September 15, 2004. That is the date the county amended its zoning map and filed the new zoning code. This procedure was intended to grandfather uses that might have been affected by the change of the code. For example when the code was changed and new line was drawn, you may have had a business that all of sudden was non-conforming but it had been there ten years before the zoning maps were changed, therefore it would legally be non-forming. The question is, was this business in existence for ten years before September 15, 2004 and by looking at the zoning code which was adopted on September 15, 2004 under section 4.5.3c are the three issues which have to be met before you have a true grandfather situation. The first requirement is the nature and the extent of the use has to of existed for ten years from the adoption of this ordinance. You can't come before this commission and say I've been operating illegally for ten years, now they have some type of an adverse possession claim for a grandfather clause. That is not what grandfathering is or intended to be for and Mr. Sanchez feels it's improper for Mr. Chavez to have proceeded this way and is an improper application. The court found that this business started in 2004 and aerial photographs were submitted to the court and also presented to county showing that this business did not exist before 2004. Aerial photographs show exactly what existed on the date they were taken. Photos don't speak but also don't lie. Those photographs show that in fact this business did not exist before 2004.

Commissioner Otero-Kirkham asked if there was some kind of business in 1998. Mr. Sanchez said there was a laser leveling business, which is a business location for mailing but none of the work was done there and his tractors were stored there.



Commissioner Otero-Kirkham said wouldn't that have required a big tractor traveling down Eddie Lane as well? Mr. Sanchez said occasionally; maybe even once a day but not the use that it converted to in 2004.

Those individuals speaking against the appeal and not wanting to put Mr. Chavez out of business just simply want him to move his business to an appropriate location were: Mrs. Evelyn Castillo Brower of 12 Wagner Lane, Belen; Ms. Joan Oreolt, 1405 N. Mesa Road; Darla and Earl Gleason, 1211 N. Mesa Road and Richard Brower.

Those individuals speaking in favor of the appeal were; Jason Brousseau who is sure they could dig up records proving the ten years business at that time; Lorenzo Romero, 1210 N. Mesa Road; Chris Diaz, owner of Diaz Landscape; Ryan Gross of PG Enterprises; Ida Gardner; Patrick Castillo; Patricia Gardner and Joe Marques, 1412 Mesa Road.

**PUBLIC COMMENT:**

Those individuals making comments at tonight's Public Hearing Meeting were Valencia County residents Mike Wood, Jan Johnson, Mr. Carrillo, Mary Wood, Dr. Rudolpho Sanchez, Sue Moran and Clarke Metcalf.

**NEXT COMMISSION MEETING:**

The next Business Meeting of the Valencia County Board of County Commission will be held on April 18, 2012 at 9:30 A.M. in the County Commission Room at the Valencia County Courthouse.

**ADJOURNMENT:**

Commissioner Gentry moved for adjournment. Seconded by Commissioner Andersen. Motion carried unanimously. TIME: 8:31 P.M.

**NOTE:** All proposals, documents, items, etc., pertaining to items on the agenda of the April 11, 2012 Public Hearing Meeting (presented to the Board of County Commissioners) are attached in consecutive order as stated in these minutes.

**VALENCIA COUNTY BOARD OF COMMISSIONERS**

\_\_\_\_\_  
**DONALD E. HOLLIDAY, CHAIRMAN**

\_\_\_\_\_  
**GEORGIA OTERO-KIRKHAM, VICE-CHAIR**

\_\_\_\_\_  
**LAWRENCE R. ROMERO, MEMBER**

\_\_\_\_\_  
**RON GENTRY, MEMBER**

\_\_\_\_\_  
**MARY J. ANDERSEN, MEMBER**

**ATTEST:**

\_\_\_\_\_  
**SALLY PEREA, COUNTY CLERK**

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**DATE**



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# VALENCIA COUNTY BOARD OF COMMISSIONERS

## BUSINESS MEETING

April 18, 2011

<b>PRESENT</b>	
Donald E. Holliday, Chairman	
Georgia Otero-Kirkham, Vice-Chair	
Lawrence R. Romero, Member	
Ron Gentry, Member	
Mary J. Andersen, Member	
Lawrence Esquibel, Interim County Manager	
Adren Nance & Dave Pato, County Attorneys	
Sally Perea, County Clerk	
Press and Public	

- 1) The meeting was called to order by Chairman Holliday at 9:30 A.M.
- 2) Chairman Holliday led the Pledge of Allegiance.
- 3) Approval of Agenda  
Commissioner Otero-Kirkham moved for approval of the agenda. Seconded by Chairman Holliday. Motion carried unanimously.
- 4) Approval of Minutes: March 29, 2012 Special Meeting  
April 4, 2012 Business Meeting  
April 4, 2012 Emergency Meeting  
Commissioner Andersen moved for approval of the minutes of March 29, 2012 Special Meeting, April 4, 2012 Business Meeting and April 4, 2012 Emergency Meeting. Seconded by Chairman Holliday. Motion carried unanimously.

### DISCUSSION (Non-Action) ITEM(S)

#### 5) Reports from Commissions, Boards & Committees

Commissioner Andersen attended a meeting of the board of the Mid-Region Council of Governments and learned that the U.S. Census Bureau has classified Valencia County as a metropolitan area and is no longer considered by the census bureau as a rural area. The county will now be asked to join the Metropolitan Planning Organization which is a function of the Council of Governments; this will give Valencia County a greater access to transportation funds. The Village of Los Lunas has been a member of the Metropolitan Planning Organization for some time which has enabled them to get the funding for the installation of the new sidewalks and the changes along Hwy 314. The Council of Governments will come before the commission to present and explain the entire program which may be the second meeting in May.

### ACTION ITEM(S)

- 6) Sheriff Requests Commission Approval to Accept the NM Department of Transportation 100 Days and Nights of summer Grand and Consideration of Resolution 2012-17 for Related Budget Adjustment – Sheriff Burkhard.  
Commissioner Andersen moved for approval. Seconded by Commissioner Otero-Kirkham. Motion carried unanimously.  
County Clerk Sally Perea announced Resolution 2012-17.
- 7) Consideration for Approval of Transfer of Liquor License-Sally Perea  
Commissioner Gentry moved for approval of transfer of liquor license. Seconded by Commissioner Andersen. Motion carried unanimously.
- 8) Determination of an appeal of a Decision made by the Planning and Zoning Administrator to Deny a Non-Conforming Use for the storage and Sale of Fill Dirt and Gravel Products: T5N, R1E, Section 1 NMPM, Map 96, a Portion of Tracts 67,68 and Tract 46-C-2, Zoned RR-2 Filled in Book 300 Page 1093 of the Office of the Valencia County Clerk also Known as 1 Eddie Lane, Belen, NM 87002- Jacobo Martinez.  
County Planner Jacobo Martinez stated the county commission heard the case on April 11, 2012 in a public hearing. Mr. Chavez's agent, Attorney Norman McDonald, provided testimony of evidence supporting the business being established for more than 10 years citing a letter provided to Mr. Chavez from then County Manager Francisco Apodaca and



an affidavit of Mr. Gleason's stating the business was established about 10 years ago. Mr. McDonald also provided other forms of evidence. Attorney James Sanchez provided evidence that the business had not been established for more than 10 years citing the District Court's findings. Mr. Sanchez also provided other forms of evidence. Community residents gave testimony for and against the business established by Mr. Sanchez.

Commissioner Andersen had spoken with both county attorneys on this item and there are some legal ramifications attached to this decision no matter what the commission decides on. Commissioner Andersen moved to go into Executive Session to discuss this item before the commission takes action on it. Seconded by Commissioner Romero. Commissioner Romero voted yes. Commissioner Otero-Kirkham voted yes. Commissioner Andersen voted yes. Commissioner Gentry voted yes. Chairman Holliday voted yes. Motion carried 5-0.

News Bulletin reporter Julia Dendinger questioned if this was the proper procedure.

Attorney Adrian Nance said in this situation while the commission is sitting as a Quasi Judicial Body, acting as a judge and jury, just like a jury, the commission has a right to go in and discuss it and deliberate. It is proper in this situation.

Commissioner Otero-Kirkham moved to go back into regular session. Seconded by Commissioner Andersen. Commissioner Romero voted yes, Commissioner Otero-Kirkham voted yes. Commissioner Andersen voted yes. Commissioner Gentry voted yes. Chairman Holliday voted yes. Motion carried 5-0.

County Attorney Adren Nance stated that the items discussed in Executive Session were limited to what was included in the motion for closure which was item (8) on the agenda, Determination of an appeal of a decision made by the Planning and Zoning Administrator, this was discussed under 1051H3 deliberations by a public body in conjunction with administrative juditory proceeding and no final action was taken.

Chairman Holliday moved for approval of the summary as stated by Attorney Adren Nance. Seconded by Commissioner Otero-Kirkham. Commissioner Romero voted yes. Commissioner Otero-Kirkham voted yes. Commissioner Andersen voted yes. Commissioner Gentry voted yes. Chairman Holliday voted yes. Motion carried 5-0.

Commissioner Gentry moved to issue the certificate of non-conformance on this property. Seconded by Commissioner Romero. Motion carried 3-2. Commissioners Otero-Kirkham and Andersen voted no.

**9) Consideration of Lease Addendum between TNT Investments, LLC and Valencia County 13<sup>th</sup> Judicial District Attorney Office –Ruben Chavez**

Commissioner Andersen stated this is a revised addendum for the lease extending it for six months with the provision that it will automatically renew for a second six months unless the county provides a sixty day written notice to TNT Investments of its intent to terminate. Commissioner Anderson moved for approval of the addendum to the lease. Seconded by Commissioner Gentry. Motion carried unanimously.

**10) Consideration of a Budget Increase Adjustment to the Code Enforcement Department for the Purpose of Starting an Address Identification System – Ruben Chavez / Victor Gonzales.**

Commissioner Andersen moved for approval. Seconded by Commissioner Otero-Kirkham. Motion carried unanimously.

**11) Consideration of Entering into a Spay / Neuter Agreement with Pet ER – Ruben Chavez.**

Commissioner Romero moved for approval. Seconded by Commissioner Otero-Kirkham. Motion carried unanimously. Motion carried unanimously.

**12) Consideration of MOU between Village of Los Lunas, Los Lunas School District and Valencia County to Provide Financial Support for a Summer Recreation Program – Christina Card.**

Commissioner Andersen moved for approval. Seconded by Commissioner Holliday. Motion carried unanimously.

**FINANCIAL MATTERS:**

**13) Consideration of Approval: Payroll / Warrants – Christina Card**

Chairman Holliday moved for approval. Seconded by Commissioner Andersen. Motion carried unanimously.



Minutes of April 18, 2012 Regular Business Meeting

**PUBLIC COMMENTS:**

Those members of the audience making comments at today's Business Meeting were Valencia County residents Bob Gostischa, Sue Moran, Mike Wood and Mary Wood.

**NEXT COMMISSION MEETING:**

A Budget Workshop will be held on April 25<sup>th</sup> – 26<sup>th</sup>, 2012 which will begin at 9:00 A.M.

The next Regular Meeting of the Valencia County Board of County Commission will be held on May 2, 2012 at 9:30 A.M. in the County Commission Room at the Valencia County Courthouse.

**ADJOURNMENT:**

Commissioner Andersen moved for adjournment. Seconded by Commissioner Gentry. Motion carried unanimously. TIME: 10:52 A.M.

**NOTE:** All proposals, documents, items, etc., pertaining to items on the agenda of the April 18, 2012 Business Meeting (presented to the Board of County Commissioners) are attached in consecutive order as stated in these minutes.

**VALENCIA COUNTY BOARD OF COMMISSIONERS**

\_\_\_\_\_  
**DONALD E. HOLLIDAY, CHAIRMAN**

\_\_\_\_\_  
**GEORGIA OTERO KIRKHAM, VICE-CHAIR**

\_\_\_\_\_  
**LAWRENCE R. ROMERO, MEMBER**

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**RON GENTRY, MEMBER**

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**MARY J. ANDERSEN, MEMBER**

**ATTEST:**

\_\_\_\_\_  
**SALLY PEREA, COUNTY CLERK**

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**DATE**



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**VALENCIA COUNTY**  
**Board of County Commissioners**

**Agenda Request Form**

**Department Head:** Ruben Chavez

**Individual Making Request:** Jose Compos

**Presentation at Meeting on:** May 2<sup>nd</sup>, 2012

**Date Submitted:** April 23<sup>rd</sup>, 2012

**Title of Request:** Older American Month Proclamation

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**Action Requested of Commission:**

Consideration of a Proclamation declaring the month on May Older American Month.

**Information Background and Rationale**

In 1963, President John F. Kennedy acknowledged the importance of recognizing our Older American Population, declaring the month of May as Older American Month. The County's Older American Program has planned a series of activities to commemorate this event. Events include but not limited to nutrition education, food drives and social events at Senior Centers.

**What is the Financial Impact of this Request?**

There is no cost to the County's funding source for these events.





**May 2012  
Older Americans Month**

*Never Too Old to Play!*

**A Proclamation**

**Whereas**, Valencia County includes 16,000 citizens aged 60 and older; and

**Whereas**, Valencia County is committed to helping all individuals maintain their health and independence in later life; and

**Whereas**, the older adults in Valencia County have an important role in sharing knowledge, wisdom, and understanding of the history of our community through interactions with children, youth, and adults from other generations; and

**Whereas**, the fruits of knowledge and experience can be effectively transferred from generation to generation through meaningful social interactions; and

**Whereas**, their interactions with family, friends, and neighbors across generations enrich the lives of everyone involved; and

**Whereas**, our community can provide opportunities to enrich citizens young and old by:

- Emphasizing the value of including elders in public and family life
- Creating opportunities for older Americans to interact with people of different generations
- Providing services, technologies, and support systems that allow older adults to participate in social activities in the community

**Now Therefore**, We of VALENCIA COUNTY, NEW MEXICO do hereby proclaim May 2012 to be Older Americans Month. We urge every citizen to take time this month to engage with our older citizens through enjoyable social interactions such as sports, games, contests, and other forms of play.



**May 2012**  
**Older Americans Month**

**DONE, THIS 2ND DAY OF MAY 2012, IN VALENCIA COUNTY,  
STATE OF NEW MEXICO.**

**BOARD OF COMMISSIONERS**

\_\_\_\_\_  
Donald E Holliday, Chair, District V  
District II

\_\_\_\_\_  
Georgia Otero-Kirkham, Vice Chair,

\_\_\_\_\_  
Mary Andersen, Commissioner, District I  
District III

\_\_\_\_\_  
Lawrence R Romero, Commissioner,

\_\_\_\_\_  
Ron Gentry, Commissioner, District IV

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Attest: Sally Perea, County Clerk



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**VALENCIA COUNTY**  
**Board of County Commissioners**

**Agenda Request Form**

**Department Head:** Ruben Chavez

**Individual Making Request:** Jose Compos

**Presentation at Meeting on:** May 2, 2012

**Date Submitted:** April 23, 2012

**Title of Request:** Amendment to Area Agency on Aging Grant Agreement

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**Action Requested of Commission:**

Consideration of an amendment to the Grant Agreement for the purpose of increasing the funding contribution by AAA to the Older American Program: Contract # 2011-12 60028

**Information Background and Rationale**

The Older American Program applied for and was awarded a Grant Agreement already amended once, for the amount of \$81,735.00. This is a second awarded increase of \$8,000 bringing the total to \$89,735. This increase reflects the increase of meals served at senior centers throughout the County.

**What is the Financial Impact of this Request?**

There are no matching funds required by the County. These addition funds will assist in meeting our rising cost in providing meals to seniors.

**Staff Comments**

**Legal:** Approved as to form. AN

**Finance:**

This agreement has a positive impact on our Budget. CC





**PO Box 5115, Santa Fe, NM 87502 1-866-699-4927**

## **MEMORANDUM**

To: Providers/Contractors

From: Nancy M. Arias, AAA Assistant Director

Date: April 12, 2012

Re: Nutrition Service Incentive Program (NSIP) Contract Amendment

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Enclosed you will find two signed Nutrition Service Incentive Program (NSIP) contract amendments and Notification of Grant Awards (NGA) for fiscal year 2011/2012. Please ensure both contracts and notification of grant award documents are signed by the appropriate individual(s). Retain one set for your records and return the other set for full execution to:

**NCNMEDD Non-Metro Area Agency on Aging  
P.O. Box 5115  
Santa Fe, NM 87502**

Please do not hesitate to call me at 505-476-0106 or 1-866-699-4927 if you have questions.



**NORTH CENTRAL NEW MEXICO  
ECONOMIC DEVELOPMENT DISTRICT  
NON-METRO AREA AGENCY ON AGING  
NUTRITION SERVICE INCENTIVE PROGRAM (NSIP) AGREEMENT**

**AMENDMENT NO. 2**

This Amendment is made and entered into this 1st day of April, 2012, by and between the North Central New Mexico Economic Development District, Non-Metro Area Agency on Aging hereinafter referred to as the "Agency" and Valencia County, hereinafter referred to as the "Contractor".

1. Purpose of Amendment. The purpose of the Amendment is to:
  - A. Revise the contract amount from \$81,735 to \$89,735 thereby increasing the total dollar amount by \$8,000.
2. Changes to Contract. The following changes are amendments to the contract:
  - A. Paragraph II. A. Compensation is amended to read: The total amount payable to the Contractor under this Agreement shall not exceed \$89,735 for eligible meals served during the period July 1, 2011 through June 30, 2012, regardless of funding sources, to eligible participants and their spouse.
3. All other clauses in the original Agreement will remain unchanged and together with this Agreement constitute the entire Agreement between the Contractor and Agency.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates listed below.


Valencia County  
Legal Name of Vendor/Contractor

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed/Typed Name of Signatory

\_\_\_\_\_  
Date

NCNMEDD Non-Metro AAA  
Name of Area Agency on Aging

  
\_\_\_\_\_  
Signature

Tim Armer, Executive Director  
Printed/Typed Name of Signatory

April 1, 2012  
Date



NORTHCENTRAL NEW MEXICO ECONOMIC DEVELOPMENT DISTRICT  
NON-METRO AREA AGENCY ON AGING  
NOTIFICATION OF GRANT AWARD (NGA)  
SPECIAL PROJECTS - NUTRITION SERVICE INCENTIVE PROGRAM (NSIP)

GRANTEE: Valencia County ADDRESS:		APPROVED BUDGET FOR THE PERIOD FROM: 07/01/2011 TO: 06/30/2012		Type of Grant or Action New/Cont: _____ Revision: X Other: _____		NGA DATE 4.1.12
PHONE:		Fund: 210 Title of Project: NSIP		CFDA # 93.053		
Indirect Cost % of \$						
DESCRIPTION	FEDERAL	STATE	LOCAL CASH	LOCAL IN-KIND	PROJECT INCOME	TOTAL
Personnel Services	\$0.00	\$0.00				\$0.00
Fringe Benefits	0.00	0.00				0.00
Travel	0.00	0.00				0.00
Maintenance & Repair	0.00	0.00				0.00
Supplies (Raw Food)	\$89,735.00	0.00				\$89,735.00
Contractual Services	0.00	0.00				0.00
Other Operating Costs	0.00	0.00				0.00
Capital Outlay	0.00	0.00				0.00
Subtotal	\$89,735.00	\$0.00				\$89,735.00
PERCENT OF TOTAL COST	100%	0%	0%	0%	0%	100%
COMPUTATION OF GRANT						
1. Estimated Total Cost .....	\$89,735.00	8. Federal/State Shares will be Comprised of: a. Federal/State grant unearned in previous project year(s)      FY      Federal: 0.00 FY      State: 0.00				
2. LESS Anticipated Project Income .....	\$0.00					
3. Estimated Net Cost .....	\$89,735.00					
4. Non-federal and Non-state Share of Net Cost .....	\$0.00	b. Carry Over      0.00				
5. Project Income (Used as Match) .....	\$0.00					
6. Federal Share of Net Cost .....	\$89,735.00	c. New Obligational Authority Herein      FY      Federal: \$8,000.00 Awarded				
7. State Share of Net Cost .....	\$0.00					
<p><input checked="" type="checkbox"/> Unless revised, the amount of lines 6 and 7 (Computation of Grant) will constitute a ceiling for federal and/or state participation in the approved cost.</p> <p><input checked="" type="checkbox"/> The federal and/or state share of the project cost is earned only when the cost is accrued and the non-federal and/or non-state share of the cost has been contributed. Receipt of federal and/or state funds (either through advance or reimbursement) does not constitute earning of these funds.</p> <p><input checked="" type="checkbox"/> If the actual net cost is less than the amount on line 3 (Computation of Grant) the non-federal and/or non-state share, the federal share, and the state share will meet the percentages indicated on Page 1 of the NGA.</p> <p><input checked="" type="checkbox"/> As shown in the Computation of Grant (assuming satisfactory progress, adequate justification and the availability of funds), the federal and state shares shall meet the amounts shown on lines 6 and 7 of the estimated net project cost shown on line 3.</p> <p><input checked="" type="checkbox"/> Funds herein awarded will remain available during the length of the project period, however, state and/or federal funds are dependent upon availability.</p> <p><input checked="" type="checkbox"/> In accepting the grant awarded for support of the expanded portion of an existing program, the grantee agrees to maintain expenditures for the existing program in the amount of Line 6 during the approved project period.</p>						
<p>All accounting records are to be kept in accordance with federal and state policy and readily available for examination by Area Agency personnel or other federal and/or state officials authorized to examine any or all financial and programmatic records. Such records shall be retained in accordance with the following:</p> <ol style="list-style-type: none"> <li>1. Keep adequate and complete financial records, and to report promptly and fully to the Area Agency.</li> <li>2. If a federal and/or state audit has not been made within three (3) years after project termination, project records may then be destroyed, on approval of the Agency.</li> <li>3. In all cases, an over-riding requirement exists to retain records until resolution of any audit questions relating to individual grants.</li> <li>4. Non-federal resources must be contributed equally to the percentage of the non-federal share of actual net costs for a project year. If a Grantee reports federal and/or state cash received but unearned on the final project report for a project year, the Grantee then owes the Area Agency this amount. This amount may constitute a cash advance on any funds awarded to the Grantee by the Area Agency for the following project year.</li> <li>5. The disposition of unearned portions of federal and/or state funds at the end of the project year shall be made in accordance with current state policies.</li> <li>6. Unearned federal and/or state cash at the time the project is terminated shall be returned in full to the Area Agency.</li> <li>7. All obligations will be liquidated within 30 days after the end of the project year and before final program and financial reports are submitted.</li> <li>8. Inventory of project equipment will be maintained and submitted as requested.</li> <li>9. Project records will be preserved and kept available to federal and state auditors at the primary offices of the Grantee.</li> </ol>						
Signature of Area Agency on Aging Authorizing Official:  Tim Armer, Executive Director  Signature: _____ Date: 4/1/12				We, the undersigned officers of the Grantee organization, certify that we are in agreement with the terms and conditions of this award.  _____ Date: _____  _____ Date: _____		



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**VALENCIA COUNTY**  
**Board of County Commissioners**

**Agenda Request Form**

**Department Head:** Ruben Chavez

**Individual Making Request:** Jose Compos

**Presentation at Meeting on:** May 2, 2012

**Date Submitted:** April 23, 2012

**Title of Request:** Amendment to Area Agency on Aging Vendor Agreement

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**Action Requested of Commission:**

Consideration of an amendment to the Vendor Agreement for the purpose of increasing the State portion of the program funding contribution by AAA to the Older American Program: Contract # 2011-12 60028

**Information Background and Rationale**

The Older American Program was awarded an increase to the allocation provided by the State. of The original agreement was for \$379,456 the new agreement is for \$390,800 a \$11,344 increase over our initial agreements. This increase in funds will greatly assist the program in meeting its increasing needs.

**What is the Financial Impact of this Request?**

There are no matching funds required by the County. These addition funds will assist in meeting our rising cost in providing meals to seniors.

**Staff Comments**

**Legal:** Approved as to form. AN

**Finance:**

This agreement has a positive impact on our Budget. CC





**PO Box 5115, Santa Fe, New Mexico 87502**

## **MEMORANDUM**

To: Contractor/Vendor

From: Nancy M. Arias, AAA Assistant Director

Date: April 1, 2012

Re: Vendor Agreement/Contract Amendment

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Enclosed you will find two signed Contract Amendment and Notification of Grant Awards for fiscal year 2011/2012. Please ensure both contracts and notification of grant award documents are signed by the appropriate individual(s). Keep one set for your records and return one for full execution to:

**NCNMEDD Non-Metro Area Agency on Aging  
P.O. Box 5115  
Santa Fe, NM 87502**

The purpose of the Amendment:

- ☐ is to exchange State funds for NSIP funds
- ☐ is to adjust Local funds according to Letter of Commitment
- ☐ is a result of Recalculation of Service Cost submitted to Non-Metro AAA
- ☒ is a result of Recalculation of Service Cost and/or change to Units of Service as determined by review of financial and performance information submitted to Non-Metro AAA.
- ☒ is to reduce or increase Federal and/or State funds

**You will also find enclosed a copy of the Amended Summary of Budgeted Revenues for your records.**

Please do not hesitate to call me at 505-476-0106 or 1-866-699-4927 if you have questions.



**NORTH CENTRAL NEW MEXICO  
ECONOMIC DEVELOPMENT DISTRICT  
NON-METRO AREA AGENCY ON AGING**

**VENDOR AGREEMENT  
AMENDMENT NO. 1**

This Amendment is made and entered into this 1st day of April, 2012 by and between the North Central New Mexico Economic Development District, Non-Metro Area Agency on Aging hereinafter referred to as the "Agency" and Valencia County, hereinafter referred to as the "Contractor".

1. Purpose of Amendment. The purpose of the Amendment is to:
  - A. Revise the contract amount from (\$379,456) to (\$390,800) thereby *increasing* the total dollar amount by (\$11,344).
2. Changes to Contract. The following changes are amendments to the contract:
  - A. Paragraph I.B. Payment for Services is amended to read: For the services by the Agency to be satisfactorily provided by Vendor hereunder, the Agency shall pay the vendor during the Term an aggregate amount, not to exceed **(\$390,800)** said aggregate amount to be derived from the following sources, when units are met.
    1. (\$42,540) from Title III-B of the OAA;
    2. (\$76,295) from Title III-C1 of the OAA;
    3. (\$21,714) from Title III-C2 of the OAA;
    4. (\$0) from Title III-D of the OAA;
    5. (\$0) from Title III-E of the OAA; and
    6. (\$250,251) from the NMGAA-State/HB-2.



B. Paragraph I.C. Services and Reimbursement Methodology is amended to read:

Service	Total Unit Cost	Federal & State Negotiated Unit Costs	Units	Persons
Congregate Meals	\$5.20764	\$ 3.68852	38,253	700
Home Delivered Meals	\$5.86920	\$ 2.55995	69,860	300
Transportation	\$6.99205	\$4.65727	15,216	205
Homemaker/Housekeeping	\$	\$		
Case Management	\$	\$		
CG – Respite Care	\$,	\$,		

3. All other clauses in the original Agreement will remain unchanged and together with this Agreement constitute the entire Agreement between the Contractor and NCNMEDD, Non-Metro AAA.
4. For the faithful performance of the terms of this agreement, the parties affix their signatures and bind themselves effective July 1, 2011.

Valencia County  
*Legal Name of Vendor/Contractor*

*Signature*

Printed/Typed Name of Signatory

Date \_\_\_\_\_

NCNMEDD Non-Metro Area Agency on Aging  
Name of Area Agency on Aging

*Signature*

Tim Armer, Executive Director  
*Printed/Typed Name of Signatory*

Date \_\_\_\_\_



NORTH CENTRAL NEW MEXICO ECONOMIC DEVELOPMENT DISTRICT  
NON-METRO AREA AGENCY ON AGING  
NOTIFICATION OF GRANT AWARD (NGA)

TITLE III

<b>GRANTEE:</b> Valencia County <b>ADDRESS:</b> <b>PHONE:</b>			<b>APPROVED BUDGET PERIOD</b> FROM: 7/1/2011 TO: 6/30/2012		<b>Grant/Action</b> New/Cont: <input checked="" type="checkbox"/> Revision: <input checked="" type="checkbox"/> BAR: <input type="checkbox"/> Other: <input type="checkbox"/>		<b>NGA DATE</b> 4.1.12
DESCRIPTION	FEDERAL	STATE	LOCAL		PROJ. INC.	TOTAL	
Title IIIB Access	\$ 42,540	\$ 28,325	\$ 33,126	\$ -	\$ 2,400	\$ 106,391	
In-Home	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Community All Other	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Subtotal	\$ 42,540	\$ 28,325	\$ 33,126	\$ -	\$ 2,400	\$ 106,391	
Title IIIC1 Meal Costs	\$ 76,295	\$ 64,802	\$ 38,105	\$ -	\$ 20,006	\$ 199,208	
Subtotal	\$ 76,295	\$ 64,802	\$ 38,105	\$ -	\$ 20,006	\$ 199,208	
Title IIIC2 Meal Costs	\$ 21,714	\$ 157,124	\$ 205,269	\$ -	\$ 25,915	\$ 410,022	
SubTotal	\$ 21,714	\$ 157,124	\$ 205,269	\$ -	\$ 25,915	\$ 410,022	
Title IIID Health Promotion	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Sub Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Title IIIE Care Giver Support	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Sub Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
DEMONSTRATON GRANT							
ALZHEIMER Respite Care	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Sub Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
ALL STATE OTHER	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Sub Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
SUB TOTALS Title IIIB	\$ 42,540	\$ 28,325	\$ 33,126	\$ -	\$ 2,400	\$ 106,391	
Title IIIC1	\$ 76,295	\$ 64,802	\$ 38,105	\$ -	\$ 20,006	\$ 199,208	
Title IIIC2	\$ 21,714	\$ 157,124	\$ 205,269	\$ -	\$ 25,915	\$ 410,022	
Title IIID	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Title IIIE	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Alzheimer Respite Care	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
All State Other	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
GRAND TOTAL	\$ 140,549	\$ 250,251	\$ 276,500	\$ -	\$ 48,321	\$ 715,621	
<b>COMPUTATION OF GRANT</b> 1. Estimated Total Cost..... \$ 715,621 2. LESS Anticipated Proj. Inc. \$ 48,321 3. Estimated Net Cost..... \$ 667,300  4. Non-federal and Non-state Share of Net Cost..... 5. Proj. Inc. (Used as Match)..... \$ 48,321 6. Federal Share of Net Cost.... \$ 140,549 7. State Share of Net Cost.... \$ 250,251			8. Federal/State Shares will be comprised of: a. Federal/State FY 20 ____ Federal grant unearned State in previous project year(s)  b. Carry Over FY 20 ____ Federal State  c. New Obligational FY- Federal \$ - Authority Herein Awarded State \$ 11,344				



## NOTIFICATION OF GRANT AWARD

REMARKS: In addition to the conditions contained in the agreement on the application form, the conditions below apply to this grant.

- X 1. Unless revised, the amount of lines 6 and 7 (Computation of Grant) will constitute a ceiling for federal and/or state participation in the approved cost.
- X 2. The federal and/or state share of the project cost is earned only when the cost is accrued and the non-federal and/or non-state share of the cost has been contributed. Receipt of federal and/or state funds (either through advance or reimbursement) does not constitute earning of these funds.
- X 3. If the actual net cost is less than the amount on line 3 (Computation of Grant) the non-federal and/or non-state share, the federal share, and the state share will meet the percentages indicated on Page 1 of the NGA.
- X 4. As shown in the Computation of Grant (assuming satisfactory progress, adequate justification and the availability of funds), the federal and state shares shall meet the amounts shown on lines 6 and 7 of the estimated net project cost shown on line 3.
- X 5. Funds herein awarded will remain available during the length of the project period, however, state and/or federal funds are dependent upon availability.
- X 6. Percentages indicated on this Notification of Grant Award are adjustable at year end based on the amount of program income earned and expended. All program income must be expended within the program period indicated on page 1.
- X 7. Programs must meet the units of services projected in order to be reimbursed or submit a recalculation of service costs request detailing reasons approved units are not being met. Amendments must be approved by the Area Agency on Aging.

**The Grantee organization is responsible for retaining records of all federal and/or state accounts as follows:**

All accounting records are to be kept in accordance with federal and state policy and readily available for examination by Area Agency on Aging personnel or other federal and/or state officials authorized to examine any or all financial and programmatic records. Such records shall be retained in accordance with the following:

1. Keep adequate and complete financial records, and to report promptly and fully to the Area Agency on Aging on a monthly basis.
2. If a federal and/or state audit has not been made within three (3) years after project termination, project records may then be destroyed, on approval of the Area Agency on Aging.
3. In all cases, an over-riding requirement exists to retain records until resolution of any audit questions relating to individual grants.
4. Non-federal resources must be contributed equally to the percentage of the non-federal share of actual net costs for a project year. If a Grantee reports federal and/or state cash received but unearned on the final project report for a project year, the Grantee then owes the Area Agency on Aging this amount. This amount may constitute a cash advance on any funds awarded to the Grantee by the Area Agency on Aging for the following project year.
5. The disposition of unearned portions of federal and/or state funds at the end of the project year shall be made in accordance with current state policies.
6. Unearned federal and/or state cash at the time the project is terminated shall be returned in full to the Area Agency on Aging.
7. All obligations will be liquidated within 30 days after the end of the project year and before final program and financial reports are submitted.
8. Inventory of project equipment will be maintained and submitted as requested.

Project records will be preserved and kept available to federal and state auditors at the following address:

NCNMEDD Non-Metro Area Agency on Aging  
Authorizing Official

*Tim Armer*

4/12/12

Signature:  
Tim Armer, Executive Director

Date:

We, the undersigned officers of the Grantee organization, certify that we are in agreement with the terms and conditions of this award.

Signature:

Date:

Signature:

Date:



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# VALENCIA COUNTY

## Board of County Commissioners

### Agenda Request Form

**Department Head:** Cynthia Ferrari

**Individual Making Request:** Cynthia Ferrari

**Presentation at Meeting on:** May 2, 2012

**Date Submitted:** April 16, 2012

**Title of Request:** Approval of Amendment Number 4 Agreement No. 11-690-13020-4

**Action Requested of Commission:**

Approval of Amendment Number 4 Agreement No. 11-690-13020-4

**Information Background and Rationale:**

This agreement amendment between CYFD and Valencia County would extend the term of the contract through December 31, 2012. It would increase compensation for FY-13 by \$28,750.00 for a new contract total of \$116,250.00. It would revise the budget to reflect the increase in budget. The amendment would allow the Valencia County Juvenile Justice Board to continue its work with the New Day RAC, continue the services of the continuum coordinator and allow for the continuation of the running of said board.

**What is the Financial Impact of this Request?**

There is no financial impact to the county.

**Staff Comments:**

**Legal:**

The proposed amendment extends the contract term for one year, and increases the contract sum. D.P.

**Finance:**

Additonal Costs will affect county finances. CC



**AMENDMENT NUMBER FOUR (4)  
AGREEMENT**

This is the fourth Amendment to Agreement No. 11-690-13020 between the State of New Mexico Children, Youth and Families Department, hereinafter referred to as the "Agency" and Valencia County, hereinafter referred to as the "Contractor."

**PURPOSE OF AMENDMENT**

1. **Extend the term** of contract through December 31, 2012.
2. **Increase compensation** for FY13 by \$28,750.00 for a new contract total of \$116,250.00.
3. **Revise Third Revised Attachment 2-Budget** to reflect the increase in budget.

**CHANGES TO AGREEMENT**

Effective upon approval by both parties, the Agreement is amended as follows:

**I. Period of Agreement**

This Agreement shall become effective when signed by both parties, and shall terminate on December 31, 2012, unless terminated pursuant to Article VI, *infra*.

**III. Limitation of Cost**

The total amount of the monies payable to the Contractor under this Agreement shall not exceed one hundred sixteen thousand, two hundred fifty dollars (**\$116,250.00**). The annual budget is attached hereto as "**Fourth Revised Attachment 2 - Budget**" and incorporated herein by reference.

**Fourth Revised Attachment 2 - Budget** is attached and incorporated into the Contract Amendment.

All remaining sections and exhibits in Contract No. 11-690-13020 shall remain in effect and are not altered by this Amendment.



**IN WITNESS WHEREOF**, the Agency and the Contractor have caused this Agreement to be executed, said Agreement to become effective when signed by both parties.

**Contractor, Valencia County**

\_\_\_\_\_  
Authorized Signatory

Date: \_\_\_\_\_

\_\_\_\_\_  
Printed Title of Authorized Signatory

\_\_\_\_\_  
Legal Counsel, Contractor

Date: \_\_\_\_\_

**Agency, Children, Youth and Families Department**

\_\_\_\_\_  
Secretary or Designee, Agency

Date: \_\_\_\_\_

**Approved as to legal form and sufficiency.**

\_\_\_\_\_  
Office of General Counsel, Agency

Date: \_\_\_\_\_



**Fourth Revised Attachment 2 – Budget**  
**Valencia County**

<b><u>Description</u></b>	<b><u>Amount</u></b>
<b>Professional Services:</b>	
Contracting Agency for Assessment Study:	
➤ Reception Assessment Center RAC	\$0.00
➤ Continuum Coordinator supervising community assessment and program development.	\$25,000.00
Increase amended amount for FY 2012 (July 1, 2011-Sept. 30, 2011)	\$7,500.00
Increase amended amount for FY 2012 (Oct. 1, 2011-June 30, 2012)	\$50,000.00
Increase amended amount for FY2013 (July 1, 2012-Dec. 31, 2012)	\$28,750.00
<b>*Travel:</b>	
Mileage and per Diem	\$ 3,000.00
<b>Miscellaneous expenses:</b>	
Printing, data collection instruments, postage, faxing & Supplies	\$ 2,000.00
Rent	\$ 0.00
Training	\$ 0.00
<b>TOTAL Budget</b>	<b>\$116,250.00</b>

The total amount of this contract shall not exceed \$116,250.00, including gross receipt taxes.

Valencia County agrees that expenditures will not deviate from the project budget without prior written approval from the designated Agency's program manager. Funds may be moved between individual line items in the budget with written pre-approval by the Agency's Program Manager. Initiate a pre-approval by submitting a Budget Adjustment Request to the Agency's Program Manager.

\* Per Diem and mileage, and other miscellaneous expenses, will be paid in accordance with the department of Finance and Administration (DFA) Rule 2.42.2 NMAC.

**Federal Funding Source:**

Grant Name: JABG Federal Grant  
Grant Number: 2009-JB-FX-0020  
CFDA Number: 16.523  
Award Year: 2009  
DUNS #: 788-20-3081



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# VALENCIA COUNTY

## Board of County Commissioners

### Agenda Request Form

**Department Head:** Cynthia Ferrari

**Individual Making Request:** Cynthia Ferrari

**Presentation at Meeting on:** May 2, 2012

**Date Submitted:** April 16, 2012

**Title of Request:** Approval of Satellite Lease Agreement #VCL-FY12-503

**Action Requested of Commission:**

Approval of Satellite Lease Agreement #VCL-FY12-503

**Information Background and Rationale:**

This lease agreement would allow for the leasing of up to 5 GPS units to be placed on juvenile offenders who would otherwise be placed in detention. The rationale behind this request is that Juvenile Probation would release appropriate juveniles under strict supervision while wearing a GPS unit. These juveniles would appear the judge and be ordered onto the GPS monitor in lieu of returning to detention. This would save the county the cost of paying for a bed in the detention center for an indeterminate amount of time. Per Juvenile Probation, under normal circumstances the county would be responsible for the monitoring. However, Juvenile Probation and Aftercare Services have volunteered to monitor the bracelets for the county.

**What is the Financial Impact of this Request?**

The leasing costs could be up to \$14,500 per year, depending on the number of bracelets utilized.

**Staff Comments:**

**Legal:**

Approved as to form. A.N.

**Finance:**

This expense has not been buudgeted and funds will need to be reallocated from another fund.  
CC



## LEASE AGREEMENT

#VCL-FY12-503

This Lease Agreement is made on this \_\_\_\_ day of \_\_\_\_\_, 2012 by and between SATELLITE TRACKING OF PEOPLE LLC ("Lessor") and Valencia County ("Lessee").

In consideration of the mutual promises contained herein and the receipt of other good and valuable considerations, the parties agree as follows:

### Scope of Work:

- Lessee desires to have the ability to electronically monitor certain individuals.
- Lessor desires to lease to Lessee certain equipment and services as set forth in Exhibit A.
- Title to all leased equipment shall remain with Lessor. Lessee is not purchasing any of the equipment set forth in Exhibit A. Instead, such equipment is being leased by Lessee solely for its use in the United States to assist in tracking the location of designated individuals (referred to herein as "Individuals").
- Lessee will promptly return all leased equipment to Lessor upon expiration of the lease term in its original condition, reasonable wear and tear excepted.

**Agreement Term and Renewal:** This Agreement shall begin on the Effective Date defined above and shall continue for the period of one (1) year, during which time Lessor provides the services set forth in Exhibit A, unless terminated or renewed as provided herein ("Initial Term"). This Agreement shall automatically extend for each subsequent year for a total of four years, unless otherwise terminated as provided herein. In accordance with Section 13-1-150 NMSA 1978, no contract term, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination.

**Payment:** Lessor will provide Lessee with monthly invoices in accordance with Exhibit A. Lessor invoices are due and payable in full when presented. Lessee is responsible for sales or use tax, if any, or any other similar state taxes or fees on the transactions hereunder.

**Shipping:** Unless otherwise agree to by Lessor, shipping of equipment will be done in accordance with Lessor's standard shipping terms of 2<sup>nd</sup> day delivery processed the day following receipt of the order. Lessor is responsible for paying for the cost associated with the shipping of leased equipment to and from Lessee's designated delivery location. Lessor will pay shipping costs for faulty equipment returned for repair and replacement.

**Lessee's Obligations:** In addition to any obligations and responsibilities otherwise noted herein, Lessee understands and acknowledges that during the term of this Agreement and any renewals thereof, it (a) is has complete authority and responsibility for the selection, management and administration of Individuals, including but not limited to monitoring, (b) designating the monitoring level for all Individuals monitored with the leased equipment, (c) identifying and making available Lessee staff during the term of this Agreement, (d) establish alert notification protocols and parameters.

**Proprietary Property:** Title to any Intellectual Property, leased equipment, including its replacements, and all components of such equipment and replacements, including any software, shall not pass to Lessee as a result of this Agreement. Leased equipment may only be serviced and/or repaired by Lessor. As an attribute of the equipment lease and for only so long as such lease is not terminated or expired, Lessor grants to Lessee a personal, non-exclusive, and non-transferable license under certain U.S. Patents and other intellectual property rights, hereinafter "INTELLECTUAL PROPERTY," that Lessor has the right to license, such INTELLECTUAL PROPERTY pertaining to the leased equipment, including any software, and the intended use of such leased equipment. This license shall only extend to Lessee's use of the leased equipment as specified herein and for no other purpose. This license shall also extend only to that equipment whose lease from Lessor has not terminated or expired. Notwithstanding any provision herein to the contrary, this license shall not be assignable or transferable by Lessee. In consideration of this license and as a requirement of the lease, Lessee agrees that it will not decompile, disassemble or otherwise reverse engineer the leased equipment, including any software, or cause or allow others to do so. Lessee will not modify, or cause or allow others, to modify the leased equipment and software, without the prior written consent of Lessor. Lessor or a professional audit firm selected by Lessor shall have the right, at Lessor's expense, to enter Lessee's premises during times and dates reasonably agreed upon by Lessee and Lessor, and make a reasonable examination of Lessee's records, the leased equipment and other things as may be necessary to verify that Lessee is s abiding by the terms and conditions of this Agreement.

**Non-Infringement of Intellectual Property:** Lessor warrants that neither the products, processes, computer software, software modules, media, documentation and other materials provided to Lessee under this Agreement will infringe or constitute an infringement of any U.S. copyright, U.S. patent, U.S. trademark or other proprietary right of a third party. Should any such items become the subject of an infringement claim or suit, Lessor may obtain for Lessee the right to continue using such items or may replace or modify them to make them non-infringing. If Lessor, in its sole discretion, does not believe that either of these alternatives is reasonable, Lessor may require Lessee to stop using such items and Lessee agrees to immediately cease all infringing use.

**Nondisclosure:** The parties hereto agree to protect all confidential proprietary information provided by one party to the other, and not to publish or disclose the other party's information to any third party without the other's written permission. The term proprietary



information means confidential materials, documents, data and other information which Lessor or Lessee has designated or marked as proprietary and confidential. Neither Lessor nor Lessee will be required to protect proprietary information, which is or becomes publicly available, (other than as a result of a breach of this Agreement) is independently developed by such party outside the scope of this Agreement, or is rightfully obtained from third parties.

**Warranties, Disclaimers and Indemnification:** Lessee is entitled to any warranties on leased equipment provided by the manufacturer of such equipment and which can be assigned to Lessee. Lessor expressly disclaims any warranty that its monitoring service or its system is impervious to tampering. In no event will Lessor be liable for any direct, indirect, special, consequential or incidental damages in connection with or arising out of the providing, performance or use of the products or services provided under this Agreement. Lessee acknowledges that neither the equipment nor services provided herein shall prevent, and that neither is it intended to prevent, any individual from committing any harmful, tortuous, or illegal acts. Lessee further acknowledges that it may be possible for an individual to remove the equipment by unauthorized means, and that Lessor expressly disclaims any liability for any harmful, tortuous, or illegal acts committed by the individual. In no event does Lessor assume or bear any responsibility or liability for acts that may be committed by third Parties or persons subject to or using products or services. The parties hereto shall not be liable for any failure or delay in performance hereunder which is due to Force Majeure. For purposes of this Section, Force Majeure shall mean any event beyond the reasonable control of the parties, including, without limitation, failures of computers, computer-related equipment, hardware or software, network service coverage, fire, flood, riots, strikes, epidemics, war (declared or undeclared and including the continuance, expansion or new outbreak of any war or conflict now in existence), embargoes and governmental actions or decrees.

Notwithstanding anything to the contrary in this Agreement, Lessor will reimburse Lessee for reasonable costs from a final judgment in a court of law ruling the damage was proximately caused by Lessor's equipment. The Lessor shall defend, indemnify and hold harmless the County from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Lessor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Lessor resulting in injury or damage to persons or property during the time when the Lessor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement.

**Miscellaneous Provisions: Continued Performance:** When this Agreement terminates, both Parties will continue to comply with all of the terms of this Agreement which call for performance prior or subsequent to the termination date, including their respective obligations to protect confidential proprietary information. **Breach and Non-payment Termination:** In the event a breach of this Agreement occurs by Lessee by any reason, including non-payment, then Lessor shall notify Lessee who shall then have fifteen (15) calendar days to cure said breach. In the event of a failure to cure, Lessor, in addition to exercising any other rights or remedies that may be available, may terminate this Agreement upon twenty-four (24) hours notice. The occurrence of any of the following events shall constitute an Event of Default or Breach under this Agreement: (i) Either Party fails to comply with any other term, condition or covenant contained in this Agreement and does not cure that failure as specified herein; (ii) A petition in bankruptcy is filed by or against either Party or a receiver or trustee of any property of either Party is appointed, (iii) Either Party is dissolved, liquidated or terminated, or either Party ceases its ongoing business operations, sales activity of Support Services, without prior written consent of the other Party, (iv) Any act or omission of either Party, which adversely affects the reputation of the other; (v) The passage of any legislation which would impair or jeopardize the ability of Lessor to maintain Lessor's proprietary rights in the Intellectual Property for the products and services covered by this Agreement. **Venue:** This Agreement shall be governed, interpreted and construed under the laws of the State of New Mexico. The venue for any action arising under this Agreement will lie in the Thirteenth Judicial District Court in Valencia County, New Mexico. **No Third Party Beneficiaries:** This Agreement is intended for the exclusive benefit of Lessor, Lessee and their permitted affiliates and assigns and is not intended and shall not be construed as conferring any benefit on any third party or the general public. **Successors:** This Agreement shall be binding upon the respective successors, affiliates and assigns of the parties. **Modifications and Waivers:** Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto. **Entire Agreement:** This Agreement sets forth the full understanding between the parties and may only be changed in writing, dully executed by both Parties. **Acknowledgement:** The parties acknowledge that they have had an opportunity to fully examine this Agreement and completely understand its terms, and that they approve the same including all of the terms and conditions.

**Indemnification** The Lessor shall defend, indemnify and hold harmless the County from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Lessor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Lessor resulting in injury or damage to persons or property during the time when the Lessor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement.

**Appropriations.** The terms of this Contract are contingent upon sufficient appropriations and authorization being made by the governing body for the performance of this Contract. If sufficient appropriations are not made by the governing body, this Contract shall terminate upon written notice being given by the County to the Contractor. The County's determination as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

**Release.** Lessor's acceptance of final payment of the amount due under this Agreement shall operate as a release of the County, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

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



**Equal Opportunity Compliance.** The Lessor 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, the Contractor agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age or handicap, 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 Lessor is found not to be in compliance with these requirements during the life of this Agreement, Lessor agrees to take appropriate steps to correct these deficiencies.

Exhibit A attached is made a part of this Agreement as if fully included in the text.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature by the Board of County Commissioners below.

**Lessor:**  
**Satellite Tracking Of People LLC**  
Name: Greg Utterback  
Title: Chief Development Officer

Signature: \_\_\_\_\_

**Lessee:**

Entity Name: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Contact Tel: \_\_\_\_\_

Signature: \_\_\_\_\_

**BOARD OF COUNTY COMMISSIONERS**

APPROVED, ADOPTED AND PASSED on this \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Donald E. Holliday  
Chair, District V

\_\_\_\_\_  
Georgia Otero-Kirkham  
Vice-Chair, District II

\_\_\_\_\_  
Mary J. Andersen  
Commissioner, District I

\_\_\_\_\_  
Lawrence R. Romero  
Commissioner, District III

\_\_\_\_\_  
Ron Gentry  
Commissioner, District IV

Attest:

\_\_\_\_\_  
Sally Perea  
Valencia County Clerk



**EXHIBIT A**

**Unit Pricing**

<b>Category</b>	<b>Volume Tiers</b>	<b>Price</b>
Radio Frequency – Landline	1 +	\$1.75/day/unit
Radio Frequency – Cellular	1 +	\$2.60/day/unit
Passive GPS	1 +	\$4.00/day/unit
Hybrid GPS	1 +	\$4.95/day/unit
Active GPS	1+	\$5.25/day/unit
BluHome	1+	No Charge
BluBox	1+	No Charge
BluScan	1 +	No Charge



**Insurance and Replacement Costs:** In the event of damage to the unit caused by the tracked individuals or LESSEE, or if the unit is lost, the LESSEE will reimburse LESSOR based on the Replacement Cost listed below. **In lieu of LESSEE paying for lost/damaged units, LESSEE may elect below to purchase insurance at the per diem noted below to provide no-deductible coverage up to 15% of the average daily units billed during the preceding twelve (12) months. Any lost or damaged units above this amount will be billed in accordance with the Replacement Cost below. Election for insurance coverage must be made at the beginning of the Agreement, and remains in effect during the term of the Agreement for all billable units.** Regardless of whether insurance coverage is elected, LESSEE shall use its best efforts to recover all units on behalf of LESSOR. LESSOR may terminate this Agreement if lost or damaged units from this Agreement exceed 20% of the average daily units activated.

Insurance Cost    –    Additional \$.50 per BluTag unit per day.  
                              –    Additional \$.25 per BluBand unit per day.  
                              –    Insurance is not available for accessories, including BluHome, BluBox, BluFone, or BluScan.

**Electing Insurance Coverage (must check one):**           Yes                      X   No

**Replacement Cost**

Part	Description	Quantity	Replacement Cost
1	BluTag® Unit	1	\$ 500 <sup>1</sup>
2	BluHome® Unit (if applicable)	1	\$ 350 <sup>1</sup>
3	BluBox® (if applicable)	1	\$ 200 <sup>1</sup>
4	BluFone® (if applicable)	1	\$ 200 <sup>1</sup>
5	Straps and direct clips for BluTag® (set comprised of one strap and four clips)	9 per unit per year	\$ 10
6	Charging Coupler for BluTag®	1	\$ 25
7	BluScan® (if applicable)	1	\$ 350
8	BluBand ®	1	\$ 125
9	Installation Kit	1	\$ 25

Notes:    1 - Replacement only for lost and stolen units. Units are not available for purchase. Data and wireless plan included.



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# **VALENCIA COUNTY**

## **Board of County Commissioners**

### **Agenda Request Form**

**Department Head:** Youth Development, Inc

**Individual Making Request:** Tasa Stromei, Teen Court Program Manager

**Presentation at Meeting on:** May 2, 2012

**Date Submitted:** April 25, 2012

**Title of Request:** Accept approval to be fiscal manager for Juvenile Adjudication Grant Fund

**Action Requested of Commission:**

Accept approval to be fiscal manager for Juvenile Adjudication Grant Fund

**Information Background and Rationale:**

The Juvenile Adjudication Grant Fund is used to administer the operation of the YDI-Valencia Teen Court program.

**What is the Financial Impact of this Request?**

None, see attached budget.

**Staff Comments:**

**Legal:**

The County's match will be made by the provision of in-kind administrative services, which is anticipated to be approving grant forms and providing payment for the services YDI-Teen court provides. D.P.

**Finance:**



**Juvenile Adjudication Fund Grant Program  
Application Cover Sheet  
Local Government Division - DFA**

Date of Application: \_\_\_\_\_

Application Number: \_\_\_\_\_

(DFA use only)

**Contact Person or Project Director:**

Contact Name: Tasa Stromei  
 Name of agency or organization: Youth Development, Inc.  
 Address: 428 S. Los Lentes  
 City, State, Zip: Los Lunas, NM 87031  
 Telephone: 505-352-3483  
 E-Mail: ~~YDI@valencia.nm.gov~~  
 Fax: 505-866-7422

**Fiscal Agent:**

Contact Name: Bruce Swingle  
 Name of Fiscal Agent: Valencia County Gov.  
 Mailing Address: P.O. Box 1118  
 City, State, Zip: Los Lunas, N.M. 87031  
 Telephone: 505-866-2438  
 E-Mail: ~~Bruce.Swingle@valencia.nm.gov~~  
 Fax: 505-866-3355

**Proposal Information****Project Summary (Please give 2-3 sentence summary of request):**

YDI-Valencia Division is submitting a proposal for funding from the Juvenile adjudication fund grant program to manage the YDI-Valencia County Teen Court. Funding will be for 10% of 1 FTE YDI Staff time to manage and oversee the project and 1 half time YDI Staff position to coordinate the Teen Court project with Valencia County Government being the fiscal agent. Funds will also be used for volunteer background checks, supplies, training, and contractual services. YDI is working collaboratively with JPPD, schools, community leaders, Law Enforcement and both private and public sectors of the community to administer YDI-Valencia Teen Court effectively.

Population served: Valencia County  
 Geographic area(s) served: Valencia County

**Budget**

Dollar amount requested: \$25,000.00  
 Match (cash and/or in-kind): \$4,800  
 Total project budget: 29,800.00

**Authorization**

I authorize the applicant to submit this application for funding from the State of New Mexico. To the best of my knowledge, the information presented in the application is true and correct.

Name of chief official: Bruce Swingle

Signature and date: Bruce Swingle 4/24/12

Name of project representative: Kathy Chavez

Signature and date: Kathy Chavez 4-29-12



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# VALENCIA COUNTY

## Board of County Commissioners

### Agenda Request Form

**Department Head:** County Commission

**Individual Making Request:** County Commission

**Presentation at Meeting on:** May 2, 2012

**Date Submitted:** April 25, 2012

**Title of Request:** Resolution 2012-\_\_\_ Delegation of Authority

**Action Requested of Commission:**

Consideration of Resolution 2012-\_\_\_ Delegation of Authority to the County Manager to enter into Certain Contracts and Settlement Agreements

**Information Background and Rationale:**

**What is the Financial Impact of this Request?**

**Staff Comments:**

**Legal:**

The Board of County Commissioners is statutorily permitted to employ a County Manager to facilitate in the administration of the business of the Board. See NMSA 1978, § 4-38-19 (1973) ("A board of county commissioners may employ and set the salary of a county manager to conduct the business of the county, to serve as personnel officer, fiscal director, budget officer, property custodian and to act generally as the administrative assistant to the board, aiding and assisting it in the exercise of its duties and responsibilities."). This Resolution details the scope and parameter of the delegation of authority to the County Manager. The amounts and scope of delegation provided therein are place markers, and we would encourage discussion and revision by the Board. D.P.

**Finance:**



VALENCIA COUNTY  
BOARD OF COUNTY COMMISSIONERS  
RESOLUTION № 2012-\_\_\_\_  
DELEGATION OF AUTHORITY TO THE COUNTY MANAGER TO ENTER INTO  
CERTAIN CONTRACTS AND SETTLEMENT AGREEMENTS

**WHEREAS**, the Board of County Commissioners met in a regularly scheduled meeting on Wednesday, May 2, 2012 at 9:30 a.m. in the Valencia County Administration Building 444 Luna Avenue, Los Lunas, New Mexico 87031; and,

**WHEREAS**, pursuant to NMSA 1978 Section 4-38-1 (1884) the powers of a county as a body politic and corporate shall be exercised by a board of county commissioners; and,

**WHEREAS**, NMSA 1978 Section 4-38-19 (B) (1973) provides that, “[a] board of county commissioners may employ and set the salary of a county manager to conduct the business of the county, to serve as personnel officer, fiscal director, budget officer, property custodian and to act generally as the administrative assistant to the board, aiding and assisting it in the exercise of its duties and responsibilities;” and,

**WHEREAS**, NMSA 1978 Section 13-1-125 (2007) exempts certain small purchases from the bidding requirements the Procurement Code so long as those purchase are made in compliance with regulations set forth by the County of Valencia; and,

**WHEREAS**, the Board of County Commissioners promulgated regulations which delineate the manner in which procurement of items of tangible personal property, services and construction are procured by the County with its adoption of Resolution 2005-68- Policy Number 401-01-4.

**NOW THEREFORE, BE IT RESOLVED**, by the Board of County Commissioners of Valencia County:

1. The authority to enter into contracts, for amounts of Five-Thousand Dollars (\$5,000.00) or less, for the procurement of items of tangible personal property, services and construction is delegated to County Manager Bruce Swingle.
2. The authority to enter into legal settlement agreements for amounts of Five-Thousand Dollars (\$5,000.00) or less is delegated to County Manager Bruce Swingle.
3. All procurement shall be made pursuant to Resolution 2005-68 and the New Mexico Procurement Code NMSA 1978 Sections 13-1-28 *et. seq.*
4. To be effective, any contract or settlement agreement entered into pursuant to this resolution shall be signed by Bruce Swingle, Valencia County Manager & \_\_\_\_\_, Valencia County Finance Director.
5. Any contract or settlement agreement entered into pursuant to this resolution shall be delivered for review to the Board at its next regular meeting after the date of execution.



**APPROVED, ADOPTED, AND PASSED** on this 2<sup>nd</sup> day of May, 2012.

\_\_\_\_\_  
Donald E. Holliday,  
Chairman, District V

\_\_\_\_\_  
Georgia Otero-Kirkham,  
Vice-Chair, District II

\_\_\_\_\_  
Mary J. Andersen  
Commissioner, District I

\_\_\_\_\_  
Ron Gentry  
Commissioner, District IV

\_\_\_\_\_  
Lawrence R. Romero  
Commissioner, District III

Attest:

\_\_\_\_\_  
Sally Perea, County Clerk



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# VALENCIA COUNTY

## Board of County Commissioners

### Agenda Request Form

**Presenter:** Jacobo Martinez

**Individual Making Request:** Jacobo Martinez

**Presentation at Meeting on:** May 2, 2012

**Date Submitted:** April 23, 2012

**Title of Request:** Findings of Facts and Conclusion of Law

#### **Action Requested of Commission:**

Consideration to adopt the findings of facts and conclusions of law concerning a Verification of a Non-Conforming Use for the storage and sale of fill dirt and gravel products on the property described as T5N, R1E, Section 1; NMPM; Map: 96; a portion of Tracts 67, 68 and Tract 46-C-2; Zoned RR-2; Filed in Book 300, Page 1093, of the office of the Valencia County Clerk, also known as 1 Eddie Lane, Belen, NM 87002.

#### **Information Background and Rationale:**

#### **Decision**

IT IS THEREFORE ORDERED that the P&Z Administrator's decision to deny a request for is hereby reversed, and applicant's request for a verification of a non-conforming use for the storage and sale of fill dirt and gravel products on the property described as T5N, R1E, Section 1; NMPM; Map: 96; a portion of Tracts 67, 68 and Tract 46-C-2; Zoned RR-2; Filed in Book 300, Page 1093, of the office of the Valencia County Clerk, Also known as 1 Eddie Lane, Belen, NM 87002 is hereby granted.

#### **Legal:**

T5N, R1E, Section 1; NMPM; Map: 96; a portion of Tracts 67, 68 and Tract 46-C-2; Zoned RR-2; Filed in Book 300, Page 1093, of the office of the Valencia County Clerk, also known as 1 Eddie Lane, Belen, NM 87002



BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF VALENCIA COUNTY

In the matter of Appealing the Planning &  
Zoning Administrator's Decision to deny a  
request for a Verification of Non  
Conformance within a Rural Residential  
Zone, Valencia County, New Mexico,  
Application by Edward Chavez

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION**

**THIS MATTER** came before the Board of County Commissioners of Valencia County ("the Board") on April 17, 2012, and was held pursuant to the Edward Chavez's Application to Appeal the Planning & Zoning (P&Z) Administrator's Decision to deny a request for a Verification of a Non-Conforming Use within a Rural Residential-2 Zone on the property commonly described as T5N, R1E, Section 1; NMPM; Map: 96; a portion of Tracts 67, 68 and Tract 46-C-2; Zoned RR-2; Filed in Book 300, Page 1093, of the office of the Valencia County Clerk, Also known as 1 Eddie Lane, Belen, NM 87002.

The Board, having considered the documents in the record before it, testimony of staff, applicants and members of the public, and argument by the parties and/or their legal representatives, **FINDS:**

**Findings of Fact**

1. Notice of the regularly scheduled meeting of the Board of Commissioners of Valencia County, New Mexico (the "Board") on April 10, 2012, at which the final hearing of the Application to Appeal the P&Z Administrator Decision was published according to New Mexico Statutes and the Valencia County Interim Comprehensive Zoning Ordinance, Ordinance 2004-05, as amended ("Zoning Ordinance").
2. The property for which the Verification of a Non-Conforming Use is requested has a Rural Residential (RR-2) zoning designation.
3. The application is to appeal the P&Z Administrator's decision to deny a request for a Verification of a Non-Conforming Use to all allow for the storage and sale of fill dirt and gravel products on the property described as T5N, R1E, Section 1; NMPM; Map: 96; a portion of Tracts 67, 68 and Tract 46-C-2; Zoned RR-2; Filed in Book 300, Page 1093, of the office of the Valencia County Clerk, Also known as 1 Eddie Lane, Belen, NM 87002.
4. Mr. Chavez's original application was a request for approval of a Verification of a Non-Conforming Use.
5. The subject property is located in a Rural Residential (RR-2) Zoning Designation.
6. On February 14, 2012, the Planning and Zoning administrator denied the request for a verification of a non-conforming use.



7. On February 28, 2012, Mr. Edward Chavez filed an appeal of the Type A administrative decision.
8. Edward Chavez resides at 1 Eddie Lane, Belen, NM 87002.
9. The appellant tendered testimony that there was an issuance of state of a New Mexico taxation and revenue department identification number to Edward Chavez at 1 Eddie Lane in Belen, NM on February 10, 1988.
10. The appellant additionally testified that there was an issuance of a Business License of Valencia County to Edward Chavez at 1 Eddie Lane, Belen, NM on July 2, 1998. Subsequent licenses were renewed for each year thereafter.
11. The appellant additionally provided an affidavit of Mr. Earl Gleason stating that Edward Chavez started storing crusher fine rock piles on his ten acre alfalfa field south of 1 Eddie Lane and started the sand and gravel business on approximately October 14, 2000.
12. The appellant additionally provided evidence of a deposition of Mr. Earl Gleason stating that Mr. Chavez was in the gravel business commencing in 2001.
13. The appellant additionally provided evidence of a receipt and copy of check of Mr. Earl Gleason dated April 24, 2001 evidencing date on which he purchased gravel products from Edward Chavez business.
14. Jason De Rousseau, General Manager of Rio Grande Landscape, testified that they have been purchasing rock and gravel from Mr. Chavez at this location since 2001.
15. Chris Diaz, owner of Diaz Landscape, testified that he has been doing business with Mr. Chavez since 1997 or 1998.
16. Ryan Gross, owner of PG Enterprises, testified that he has been doing business with Mr. Chavez for over ten years.
17. The Board, having considered the factors detailed in Section 154.062(E)(2) of the Zoning Ordinance, and absent objection from the Appellee, held a de novo hearing on the appeal of the P&Z decision to conditionally approve the facility on April 10, 2012.
18. The findings made by the Board are each independent reasons for the decision of the Board in denying the appeal request.

### **Conclusions of Law**

The following conclusions of law are cumulative, but are severable and independent of each other.

A. The County is a zoning authority with the power to regulate and restrict use of land. NMSA 1978, § 3-21-1 (1995).

B. The Board of County Commissioners is the body that exercises the powers of a county as a body politic and corporate. NMSA 1978, § 4-38-1 (1876).



C. The Board takes notice that the Zoning Ordinance was adopted according to New Mexico statutory authority and duly recorded in the records of the Clerk of Valencia County.

D. The Board has discretion in making zoning decisions. *See Singleterry v. City of Albuquerque*, 96 N.M. 468, 471, 632 P2d 345, 348 (1981).

E. Section 154.062 (C) (1) (c) of the Valencia County Zoning Ordinance details the requirements for standing, which is required to appeal a decision of the Planning and Zoning Commission.

F. Section 154.062 (C)(1)(c) requires that the appellant be “entitled by this chapter to notice of hearing prior to decision appealed; or is aggrieved or has interests adversely affected by the decision.”

G. Appellant Edward Chavez has standing to appeal the decision of the Planning and Zoning Commission as the appellant meets the criteria detailed in Section 154.062(C)(1)(c).

I. Pursuant to Section 154.059(2) “[t]his section allows non-conforming uses and structures to be continued, altered, restored or replaced subject to satisfaction of the review criteria specified in division (C) below. Nothing contained in this chapter shall require any change in the plans, construction or designated use of any structure for which a building permit was issued and actual construction commenced prior to the date of adoption of this chapter or any amendments thereto. No alteration of a non-conforming use shall be permitted except in compliance with the provisions of this section.”

J. Pursuant to Section 154.059(C)(2)(c) “[a] request to verify that a use or structure is legally non-conforming pursuant to this section may be approved by the Department, subject to the Type A application procedure set forth in § 154.075, and provided that the applicant submits evidence of the following: 1) The nature and extent of the use for at least 10 years from the adoption of this chapter prior to the date of application for verification of non-conformity; 2) The use or structure was in existence at least 10 years prior to the date the application for verification of non-conformity is submitted; and 3) the use has continued uninterrupted, or the structure has been occupied continuously, for at least 10 years prior to the date the application for verification of non-conformity is submitted.”

K. For the purposes of the application for a certificate of non-conforming use, the appellant has provided sufficient evidence of the nature and extent of use of the subject property over the period of ten years from the adoption of the zoning ordinance prior to the date of application for verification of non-conformity.

L. For the purposes of the application for a certificate of non-conforming use, the appellant has provided sufficient evidence that the use was in existence at least 10 years prior to the date of the application.

M. For the purposes of the application for a certificate of non-conforming use, the appellant has provided sufficient evidence that the use has continued uninterrupted for at least 10 years prior to the date of the application.



**Decision**

**IT IS THEREFORE ORDERED** that the P&Z Administrator's decision to deny a request for a Verification of a Non-Conforming Use for the storage and sale of fill dirt and gravel products on the property described as T5N, R1E, Section 1; NMPM; Map: 96; a portion of Tracts 67, 68 and Tract 46-C-2; Zoned RR-2; Filed in Book 300, Page 1093, of the office of the Valencia County Clerk, also known as 1 Eddie Lane, Belen, NM 87002 is hereby reversed, and applicant's request for a verification of a non-conforming use for the storage and sale of fill dirt and gravel products on the property described as T5N, R1E, Section 1; NMPM; Map: 96; a portion of Tracts 67, 68 and Tract 46-C-2; Zoned RR-2; Filed in Book 300, Page 1093, of the office of the Valencia County Clerk, Also known as 1 Eddie Lane, Belen, NM 87002 is hereby granted.

***Reference to Document: (APL12\_001) Appeal made by applicant Edward Chavez.***

**Approved and passed 2nd of May 2012, by the Board of County Commissioners of Valencia County.**

**BOARD OF COUNTY COMMISSIONERS OF VALENCIA COUNTY**

P.O. Box 1119 / 444 Luna Ave  
Los Lunas, NM 87031

\_\_\_\_\_  
Donald E. Holliday, Chair

\_\_\_\_\_  
Georgia Otero-Kirkham, Vice-Chair

\_\_\_\_\_  
Mary J. Andersen, Commissioner

\_\_\_\_\_  
Lawrence R. Romero, Commissioner

\_\_\_\_\_  
Ron Gentry, Commissioner

ATTEST BY:

\_\_\_\_\_  
Sally Perea, County Clerk

Date: \_\_\_\_\_



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# VALENCIA COUNTY

## Board of County Commissioners

### Agenda Request Form

**Department Head:** Christina Card  
**Individual Making Request:** Michael Vinyard  
**Presentation at Meeting on:** Wednesday, May 2, 2012  
**Date Submitted:** Monday, April 30, 2012  
**Title of Request:** Contract for FY12 County Audit

#### **Action Requested of Commission:**

Approval of contract for audit of Valencia County for fiscal year 2012.

#### **Information Background and Rationale:**

Annual audit is required. Valencia County Procurement Policy notwithstanding, 2.2.2 New Mexico Administrative Code ("Audit Rule 2012") directs that the procurement of audit contracts not exceeding \$50,000 be treated as small purchases and are thus not subject to formal competitive requirements. As long as the cost does not exceed \$50,000 (not considering taxes) in any single year, we may retain the same auditor for up to twelve (12) years before legal rotation requirements kick in. We have used the services of "Accounting and Consulting Group, LLP" for the past five (5) years. The amounts paid (not considering taxes) have not exceeded \$50,000. I have not been made aware of any issues that would cause us to consider another auditor. The executed contract is due to the State Auditor by May 1, 2012.

#### **What is the Financial Impact of this Request?**

This is a budgeted item. The cost will not exceed \$50,000, not including taxes.

#### **Staff Comments:**

None

#### **Legal:**

The proposed contract is under review as of the time of this agenda request.

#### **Finance:**

This is legally required and has been provided for in the draft FY13 budget, currently under consideration. It must be included in the approved budget. Recommend approval.



## VALENCIA COUNTY Audit Contract

CONTRACT #VCS-FY12-505

THIS AGREEMENT is made and entered into by and between the Board of County Commissioners of Valencia County, State of New Mexico, hereinafter referred to as the "County" and Accounting and Consulting Group, LLC, hereinafter referred to as the "Contractor", and is effective as of the date set forth below upon which it is executed by the Purchasing Agent, the Valencia County Manager and the Board of County Commissioners.

IT IS AGREED BETWEEN THE PARTIES:

**1. Scope of Work.**

The Contractor shall perform the work outlined in the Scope of Work attached hereto as **Attachment 1** and incorporated herein by reference.

**2. Compensation.**

A. The County shall pay to the Contractor in full payment for services satisfactorily performed \_\_\_\_\_ dollars (\$\_\_\_\_\_), such compensation not to exceed \$50,000.00), excluding gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling (\$\_\_\_\_\_) shall be paid by the County to the Contractor. The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (\$\_\_\_\_\_). 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. Contractor is responsible for notifying the County when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.

B. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work. All invoices MUST BE received by the County no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

C. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the County finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall



provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the County that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the County shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

D. The payment of taxes due for any money received under this Agreement shall be the Contractor's sole responsibility and shall be reported under the Contractor's Federal and State tax identification number(s).

**3. Term.**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE STATE AUDITOR. This Agreement shall terminate one calendar year from the date approved by the State Auditor unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

**4. Termination.**

A. Termination. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the County's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the County is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the County or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of government funds or due to the Appropriations paragraph herein. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE COUNTY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

B Termination Management. Immediately upon receipt by either the County or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the County; 2) comply with all directives issued by the County in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the County shall direct for the protection, preservation, retention or transfer of all property titled to the County and records generated under this Agreement. Any non-expendable



personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the County upon termination and shall be submitted to the County as soon as practicable.

**5. Appropriations.**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Board of County Commissioners for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Board of County Commissioners, this Agreement shall terminate immediately upon written notice being given by the County to the Contractor. The County's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the County proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

**6. Status of Contractor.**

The Contractor and its agents and employees are independent contractors performing professional services for the County and are not employees of the County of Valencia. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of county vehicles, or any other benefits afforded to employees of the County of Valencia as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the County of Valencia unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

**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 prior written approval of the County.

**8. Subcontracting.**

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the County. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the County. In all cases, the contractor is solely responsible for fulfillment of this Agreement.

**9. Release.**

Final payment of the amounts due under this Agreement shall operate as a release of the procuring agency of the County, its officers and employees, and the County of Valencia from all liabilities, claims and obligations whatsoever arising from or under this Agreement.



**10. 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.

**11. Product of Service -- Copyright.**

All materials developed or acquired by the Contractor under this Agreement shall become the property of the County of Valencia and shall be delivered to the County no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

**12. Conflict of Interest; Governmental Conduct Act.**

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

1) in accordance with Section 10-16-4.3 NMSA 1978, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any County employee while such employee was or is employed by the County and participating directly or indirectly in the County's contracting process;

2) this Agreement complies with Section 10-16-7(B) NMSA 1978 because (i) the Contractor is not a public officer or employee of the County; (ii) the Contractor is not a member of the family of a public officer or employee of the County; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the County, a member of the family of a public officer or employee of the County, or a business in which a public officer or employee of the County or the family of a public officer or employee of the County has a substantial interest, public notice was given as required by Section 10-16-7(B) NMSA 1978 and this Agreement was awarded pursuant to a competitive process;

3) in accordance with Section 10-16-8(C) NMSA 1978, (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the County within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the County whose official act, while in County employment, directly resulted in the County's making this Agreement;

4) in accordance with Section 10-16-13 NMSA 1978, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and



5) in accordance with Section 10-16-3 and Section 10-16-13.3 NMSA 1978, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the County.

C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the County relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the County if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the County and notwithstanding anything in the Agreement to the contrary, the County may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Article 12(B).

### **13. Amendment.**

This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

### **14. Merger.**

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

### **15. Penalties for violation of law.**

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

### **16. Equal Opportunity Compliance.**

The Contractor agrees to abide by all federal, state and county laws and rules and regulations, pertaining to equal employment opportunity. In accordance with all such laws, the Contractor 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, or 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 Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.



**17. Applicable Law.**

In any action, suit or legal dispute arising from this Agreement, the Contractor agrees that the laws of the State of New Mexico shall govern and that venue will lie in the Thirteenth Judicial District Court in Valencia County. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

**18. Workers Compensation.**

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the County.

**19. Records and Financial Audit.**

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the County, the Department of Finance and Administration and the State Auditor. The County shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payments

**20. Disclaimer and Hold Harmless.**

The Valencia County shall not be liable to the Contractor, or the Contractor's successors, heirs, administrators, or assigns, for any loss, damage, or injury, whether to Contractor's person or property, occurring in connection with Contractor's performance of Contractor's duties according to this Agreement. Contractor shall hold the Valencia County harmless from all loss, damage, and injury, including court costs and attorney fees, incurred by Valencia County in connection with the performance by Contractor of Contractor's duties according to this Agreement.

**21. Indemnification.**

The Contractor shall defend, indemnify and hold harmless the County of Valencia from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the County of Valencia and the New Mexico Association of Counties by certified mail.



**22. Invalid Term or Condition.**

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

**23. Enforcement of Agreement.**

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

**24. Authority.**

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

**25. Lobbying.**

No federal appropriated funds can be paid or will be paid, by or on behalf of the CONTRACTOR, or any person for influencing or attempting to influence an officer or employee of any County, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, or the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, or modification of any Federal contract, grant, loan, or cooperative agreement. If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any County, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection of this federal contract, grant, loan, or cooperative agreement, the CONTRACTOR shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

**26. Approval of Contractor Personnel.**

Personnel proposed in the Contractor's written proposal to the County are considered material to any work performed under this Agreement. No changes of personnel will be made by the Contractor without prior written consent of the procuring agency of the County. Replacement of any Contractor personnel, if approved, shall be with personnel of equal ability, experience and qualifications. The Contractor will be responsible for any expenses incurred in familiarizing the replacement personnel to insure their being productive to the project immediately upon receiving assignments. Approval of replacement personnel shall not be unreasonably withheld. The procuring agency of the County shall retain the right to request the removal of any of the Contractor's personnel at any time.

**27. Survival.**

The agreement paragraphs titled "Patent, Copyright, Trademark, and Trade Secret Indemnification" and "Indemnification" shall survive the expiration of this agreement. Software



licenses, leases, maintenance and any other unexpired agreements that were entered into under the terms and conditions of this agreement shall survive this agreement

**28. Succession.**

This agreement shall extend to and be binding upon the successors and assigns of the parties.

**29. Force Majeure.**

A party shall be excused from performance under this agreement for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.

**30. Mediation.**

In the event a dispute arises as to the rights and obligations among the parties hereto, the parties agree to attempt to resolve the dispute through mediation as a condition precedent to seeking legal and equitable remedies. The parties agree to evenly split the costs of any such mediation services. The parties shall mutually agree upon the choice of mediator. In the event the parties have not agreed upon a mediator within twenty (20) days of written notice to the other regarding the dispute, then a list of seven potential mediators will be obtained from the New Mexico Association of Counties and the parties shall utilize a striking process until a mediator is agreed upon.

**31. Notice to Proceed.**

It is expressly understood that this Agreement is not binding upon the County until it is executed by the Board of County Commissioners after voting on the contract at a public meeting or unless it is executed by the Valencia County Manager, if the amount of the contract is \$5,000.00 or less. Further, the Contractor is not to proceed with its obligations under the Agreement until the Contractor has received a fully signed copy of the Agreement.

**32. Attorney's Fees.**

In the event this Agreement results in dispute, mediation, litigation, or settlement between the parties to this Agreement, the prevailing party of such action shall NOT be entitled to an award of attorneys' fees and court costs.

**33. Cooperation.**

All parties hereto will fully cooperate with the other and their respective counsel, accountant, and agents in connection with any steps required to be taken under this Agreement.

**34. Incorporation and Order of Precedence.**

Request for Proposals No. VCR-FY12-501 and the contractor's proposal are incorporated by reference into this agreement and are made a part of this agreement. In the event of any conflict among these documents, the following order of precedence shall apply:



1. Any contract amendment(s), in reverse chronological order; then
2. this contract itself; then
3. the Request for Proposals; then
4. the Contractors Best and Final Offer(s), in reverse chronological order; then
5. the contractor's proposal; then
6. the contractor's standard agreement terms and conditions (which may or may not have been submitted as part of the contractor's proposal).

**35. Patent, Copyright, Trademark and Trade Secret Indemnification.**

A. The contractor shall defend, at its own expense, the County of Valencia against any claim that any product or service provided under this agreement infringes any patent, copyright or trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against the County of Valencia based upon the contractor's trade secret infringement relating to any product or service provided under this agreement, the contractor agrees to reimburse the County of Valencia for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the County of Valencia shall:

- i. give the contractor prompt written notice of any claim;
- ii. allow the contractor to control the defense or settlement of the claim; and
- iii. cooperate with the contractor in a reasonable way to facilitate the defense or settlement of the claim.

B. If any product or service becomes, or in the contractor's opinion is likely to become the subject of a claim of infringement, the contractor shall at its option and expense:

- i. provide a procuring agency of the County the right to continue using the product or service;
- ii. replace or modify the product or service so that it becomes non-infringing; or
- iii. accept the return of the product or service and refund an amount equal to the depreciated value of the returned product or service, less the unpaid portion of the purchase price and any other amounts which are due to the contractor. The contractor's obligation will be void as to any product or service modified by the procuring agency of the County to the extent such modification is the cause of the claim.

**36. Working Papers**

A. The Contractor shall retain the working papers of the Agency's audit conducted pursuant to this Contract for a period of five (5) years from the date shown on the opinion letter of the audit report, or longer if requested by the federal cognizant agency for audit, oversight



agency for audit, pass through-entity or the State Auditor. The State Auditor shall have access to the working papers at the State Auditor's discretion. When requested by the State Auditor, the Contractor shall deliver the original or clear, legible copies of all working papers to the State Auditor.

B. The working papers of a predecessor Contractor are to be made available to a successor Contractor in accordance with SAS No. 84. Any costs incurred are to be borne by the requestor Contractor.

**37. 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:        Bruce Swingle, County Manager  
                              PO Box 1119  
                              Los Lunas, NM 87031

To the Contractor:    Accounting and Consulting Group, LLP  
                              2700 San Pedro NE  
                              Albuquerque, NM 87110

**IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature by the Board of County Commissioners below.**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
      Contractor

Printed Name: \_\_\_\_\_  
      Address: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_  
      Valencia County Manager

Printed Name: \_\_\_\_\_  
      Address: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_  
      Valencia County Purchasing Agent



**BOARD OF COUNTY COMMISSIONERS**

**APPROVED, ADOPTED AND PASSED** on this \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Donald E. Holliday  
Chair, District V

\_\_\_\_\_  
Georgia Otero-Kirkham  
Vice-Chair, District II

\_\_\_\_\_  
Mary J. Andersen  
Commissioner, District I

\_\_\_\_\_  
Lawrence R. Romero  
Commissioner, District III

\_\_\_\_\_  
Ron Gentry  
Commissioner, District IV

Attest:

\_\_\_\_\_  
Sally Perea  
Valencia County Clerk

This Agreement has been approved by:

**STATE AUDITOR**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

State Auditor Contract No. \_\_\_\_\_



## Attachment 1

### Scope of Work

#### 1. SCOPE OF WORK

A. The Contractor shall conduct a financial and compliance audit of the following applicable statements and schedules of the Agency for the period from **July 1, 2011 through June 30, 2012**:

(1) Basic Financial Statements consisting of the government-wide financial statements, fund financial statements, budgetary comparison statements for the general fund and major special revenue funds (GASB 34, footnote 53), and the notes to the financial statements;

(2) Required supplemental information (RSI), if applicable, consisting of budgetary comparison schedules for the general fund and major special revenue fund data presented on a fund, organization, or program structure basis because the budgetary information is not available on the GAAP fund structure basis for those funds (*GASB Statement No. 41, Budgetary Comparison Schedules-Perspective Differences an amendment of GASB Statement No. 34*) must be audited and included in the auditor's opinion (AAG-SLV 14.53);

(3) Supplemental Information (SI) that must be audited and included in the auditor's opinion (AAG-SLV 14.53), if applicable, consisting of:

(a) Component unit fund financial statements and related combining statements (if there are no separately issued financial statements on the component unit per AAG-SLV 3.20);

(b) Combining financial statements;

(c) Individual fund budget comparison statements for remaining funds that have an adopted budget, including proprietary funds, that did not appear as basic financial statement budget comparisons for the general fund, major special revenue funds or as RSI as described above; and

(d) Remaining supplemental information on schedules as required by Section 2.2.2.10(A)(2)(e) NMAC.

B. The contractor shall apply certain limited procedures to the following required supplemental information (RSI), if applicable, and report deficiencies in or the omission of required information in accordance with the requirements of SAS AU 558.06 through .08:

(1) The Management Discussion and Analysis (MD&A);

(2) RSI data required by Statements 25, 27, 43 and 45 regarding pension plans and post employment healthcare plans administered by defined benefit pension plans; and

(3) Schedules derived from asset management systems (GASB 34, paragraphs 132 to



133).

C. The audit shall be conducted in accordance with auditing standards generally accepted in the United States of America, *Government Auditing Standards*, OMB Circular A-133, and *Requirements for Contracting and Conducting Governmental Audits* (2.2.2 NMAC).

D. If this contract is for a:

1) hospital that does not qualify as a governmental entity under the criteria in Sections 1.01 and 1.02 of the *AICPA Audit and Accounting Guide State and Local Governments* (May 1, 2006), then another appropriate reporting model should be used; or

2) school district, the audit will include the audit of any related charter schools and their respective foundations that qualify as component units of those charter schools in accordance with the provisions specified in Sections 2.2.2.10(A)(1), 2.2.2.12(C)(2) and 2.2.2.12(C)(5) NMAC, *Requirements for Contracting and Conducting Audits of Agencies*. If a 501(c)(3) component unit organization had a gross annual income in excess of \$100,000, Section 6-5A-4 NMSA 1978 requires that entity to be audited regardless of materiality.

## 2. DELIVERY AND REPRODUCTION

A. In order to meet the delivery terms of this Contract, the Contractor shall deliver the following documents to the Office of the State Auditor, hereinafter referred to as "State Auditor," on or before **November 15, 2012** and in accordance with 2.2.2.9 NMAC:

- (1) an organized, bound and paginated hard copy of the Agency's audit report for review;
- (2) a copy of the dated and signed engagement letter required by Section 2.2.2.8(L) NMAC if not previously submitted;
- (3) a copy of the signed management representation letter required by SAS 85;
- (4) a list of the passed adjustments required by SAS 89; and
- (5) a copy of the completed State Auditor Report Review Guide available at [www.osanm.org](http://www.osanm.org).

B. For purposes of 2.2.2 NMAC, reports postmarked by the Agency's due date provided in Section 2.2.2.9(A) NMAC will be considered received by the due date provided in that section. Unfinished or excessively deficient reports will not satisfy this requirement; such reports will be rejected and returned to the Contractor and the State Auditor may take action in accordance with Subsection C of 2.2.2.13 NMAC. If copies of the engagement letter, management representation letter, list of past adjustments and the completed Report Review Guide are not received by the State Auditor with the audit report or prior to submittal of the audit report, the report will not be considered submitted to the State Auditor.



C. As soon as the Contractor becomes aware that circumstances exist that will make the Agency's audit report late, the Contractor shall immediately provide written notification of the situation to the State Auditor. The notification shall include an explanation regarding why the audit report will be late, when the IPA expects to submit the report and a concurring signature by the Agency. The Agency's oversight agency should be notified, but confidential audit information shall be omitted from that notification.

D. Pursuant to Section 2.2.2.8(L) NMAC, the Contractor shall prepare a written and dated engagement letter which identifies the specific responsibilities of the Contractor and the Agency. The Contractor shall submit to the State Auditor a copy of the signed and dated engagement letter and a list of client prepared documents with expected delivery dates within ten (10) days of the entrance conference.

E. After its review of the audit report pursuant to 2.2.2.13 NMAC, the State Auditor will authorize the Contractor to print and submit the final audit report. Within two business days from the date of the authorization to print and submit the final audit report, the Contractor shall provide the State Auditor with THREE copies of the report and an electronic version of the audit report, in PDF format. After the State Auditor officially releases the audit report by issuance of a release letter, the Contractor shall deliver 15 copies of the audit report to the Agency. Every member of the Agency's governing authority shall receive a copy of the report.

F. The Agency, upon delivery of its audit report, shall submit the required copies of the data collection form, audit report and corrective action plan to the federal clearinghouse designated by the Office of Management and Budget and each federal awarding agency if the schedule of findings and questioned costs disclose audit findings directly related to federal awards.



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# VALENCIA COUNTY

## Board of County Commissioners

### Agenda Request Form

**Department Head:** Christina Card

**Individual Making Request:** Christina Card

**Presentation at Meeting on:** May 2, 2012

**Date Submitted:** April 27, 2012

**Title of Request:** MOU between City of Belen and Valencia County

**Action Requested of Commission:**

Request approval of Memorandum of Understanding to provide financial support for the Summer Recreation Program in the City of Belen.

**Information Background and Rationale:**

The purpose of this agreement is to provide financial support of the Summer Recreation Program for the benefit of the children and youth of the City of Belen.

**What is the Financial Impact of this Request?**

Valencia County will contribute \$3,000 to the Summer Recreation Program.

**Staff Comments:**

**Legal:**

Approved as to form. D.P.

**Finance:**

Funds are budgeted for this program.



MEMORANDUM OF UNDERSTANDING  
(MOU)

THIS AGREEMENT is entered into between the City of Belen and Valencia County.

I. Purpose

The purpose of this agreement is to provide financial support of the Summer Recreation Program, for the benefit of the children and youth of the City of Belen and Valencia County to be conducted through the uses of public parks, recreation programs, playgrounds, and other recreational facilities owed or operated and located within their respective jurisdiction of the parties.

II. Parties Agree that:

- A. The parties shall contribute the following sums to the program to support the hiring of recreation leaders and aids or other necessary personnel and to pay for attendant program costs:

Party	Amount
County of	\$3,000
Valencia	

Dates of payments to the City of Belen, all of contribution payable on/or before May 30, 2012.

- B. The City of Belen is hereby designated to be the entity to Administer or execute the Memorandum of Understanding. The City of Belen shall possess the common powers specified or necessarily implied in the Agreement and may exercise such in accordance with State and Federal Law.

The administering agent shall be responsible for selection and supervision of all personnel subject to this memorandum.

- C. Each Party Shall keep and maintain the facilities owned or operated by it in a reasonable state of repair and preservation, and shall not suffer or permit any continuing nuisance therein. The respective parties shall pay for all necessary utilities to such facilities used in the program and will hold other parties to this agreement harmless there from.



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# VALENCIA COUNTY

## Board of County Commissioners

### Agenda Request Form

**Department Head:** Christina Card

**Individual Making Request:** Christina Card

**Presentation at Meeting on:** May 2, 2012

**Date Submitted:** April 27, 2012

**Title of Request:** MOU between Village of Bosque Farms and Valencia County

**Action Requested of Commission:**

Request approval of Memorandum of Understanding to provide financial support for the Summer Recreation Program in the Village of Bosque Farms.

**Information Background and Rationale:**

The purpose of this agreement is to provide financial support of the Summer Recreation Program for the benefit of the children and youth of the Village of Bosque Farms.

**What is the Financial Impact of this Request?**

Valencia County will contribute \$1,000 to the Summer Recreation Program.

**Staff Comments:**

**Legal:**

Approved as to form. D.P.

**Finance:**

Funds are budgeted for this program.



## MEMORANDUM OF UNDERSTANDING

THIS AGREEMENT is entered into between the Village of Bosque Farms and Valencia County.

### I. PURPOSE:

The purpose of this agreement is to provide financial support for the Summer Recreation Program, for the benefit of the children and youth of the Los Lunas School District, Village of Bosque Farms, Town of Peralta and Valencia County to be conducted through the use of public parks, playgrounds and other recreational facilities owned, operated and located within the Village of Bosque Farms.

### II. PARTIES AGREE THAT:

A. The parties shall contribute the following sums of money to the program to support the hiring of recreation leaders and aids or other necessary personnel and to pay for attendant program costs:

Village of Bosque Farms	\$8,741.00
Valencia County	\$1,000.00

Payment of all contributions to the Village of Bosque Farms will be on or before May 30, 2012.

B. The Village of Bosque Farms is hereby designated to be the entity to administer or execute the Memorandum of Understanding. The Village of Bosque Farms shall possess the common powers specified or necessarily implied in the Agreement and may exercise such in accordance with State and Federal Law.

The Administering Agent shall be responsible for selection and supervision of all personnel subject to this memorandum.

C. The Village of Bosque Farms shall keep and maintain the facilities owned or operated by it in a reasonable state of repair and preservation and shall not suffer or permit any continuing nuisance therein. The Village of Bosque Farms shall pay for all necessary utilities to such facilities used in the program and will hold other parties to this agreement harmless therefrom.

D. The Village of Bosque Farms is designated as the fiscal agent hereafter. The fiscal agent shall be strictly accountable for all receipts and disbursements under the Agreement.



E. This Agreement may be terminated by either party by written notice to the other, up to thirty (30) days prior to the intended termination date. By such termination, no party may escape obligations incurred for performance prior to the date of termination.

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

G. This Agreement shall not be altered, changed or amended except by the instrument in writing and executed by the parties hereto.

H. No party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitation of the New Mexico Tort Claims Act, sections 41-4-1 et. Seq., NMSA 1978, as amended.

IN WITNESS, WHEREOF, the undersigned Village of Bosque Farms and Valencia County have caused this Agreement to be executed by their respective officers.

BY: Gayle A. Jones Clerk/Admin. 4/17/12  
Village of Bosque Farms Title Date

BY: \_\_\_\_\_  
Valencia County Title Date