

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

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

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

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

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

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

**1. SCOPE OF THE WORK**

The contractor shall:

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

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

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

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

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

**2. COMPENSATION, INVOICING, AND SET-OFF**

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

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

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

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

B. The Contractor shall submit a written request for payment to the County when payment is due under this Agreement. Upon the County's receipt of the written request, the County shall issue a written certification of complete or partial acceptance or rejection of the contractual items or services for which payment is sought. The Contractor acknowledges and agrees that the County may not make any payment hereunder unless and until it has issued a written certification accepting the contractual items or services. Within thirty (30) days of the issuance of a written certification accepting the contractual items or services, the County shall tender payment for the accepted items or services. In the event the County fails to tender payment within thirty (30) days of the written certification accepting the items or services, the County shall pay late payment charges of one and one-half percent (1.5%) per month, until the amount due is paid in full.

C. In the event the Contractor breaches this Agreement, the County may, without penalty, withhold any payments due the Contractor for the purpose of set-off until such time as the County determines the exact amount of damages it suffered as a result of the breach.

D. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payment.

### **3. EFFECTIVE DATE AND TERM**

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

### **4. ADDITIONAL SERVICES**

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

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

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

## **5. TERMINATION**

A. Termination of Agreement for Cause. Either party may terminate the Agreement based upon any material breach of this Agreement by the other party. The non-breaching party shall give the breaching party written notice of termination specifying the grounds for the termination. The termination shall be effective thirty (30) days from the breaching party's receipt of the notice of termination, during which time the breaching party shall have the right to cure the breach. If, however, the breach cannot with due diligence be cured within thirty (30) days, the breaching party shall have a reasonable time to cure the breach, provided that, within thirty (30) days of its receipt of the written notice of termination, the breaching party began to cure the breach and advised the non-breaching party in writing that it intended to cure.

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

## **6. APPROPRIATIONS AND AUTHORIZATIONS**

This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Board of County Commissioners of the County and/or, if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Agreement shall terminate upon written notice by the County to the Contractor. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse the Contractor for expenditures made in the performance of this Agreement. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. The County's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by the Contractor in any way or forum, including a lawsuit.

## **7. INDEPENDENT CONTRACTOR**

The Contractor and its agents and employees are independent contractors and are not employees or agents of the County. Accordingly, the Contractor and its agents and employees shall not

accrue leave, participate in retirement plans, insurance plans, or liability bonding, use County vehicles, or participate in any other benefits afforded to employees of the County. Except as may be expressly authorized elsewhere in this Agreement, the Contractor has no authority to bind, represent, or otherwise act on behalf of the County and agrees not to purport to do so.

**8. ASSIGNMENT**

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the advance written approval of the County. Any attempted assignment or transfer without the County's advance written approval shall be null and void and without any legal effect.

**9. SUBCONTRACTING**

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

**10. PERSONNEL**

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

B. The Contractor represents that it has, or will secure at its own expense, all personnel required to discharge its obligations under this Agreement. Such personnel (i) shall not be employees of or have any contractual relationships with the County and (ii) shall be fully qualified and licensed or otherwise authorized or permitted under federal, state, and local law to perform such work.

**11. RELEASE**

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

**12. CONFIDENTIALITY**

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

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

A. The County has the unrestricted right to publish, disclose, distribute and otherwise

use, in whole or in part, any reports, data, or other material prepared under or pursuant to this Agreement.

B. The Contractor acknowledges and agrees that any material produced in whole or in part under or pursuant to this Agreement is a work made for hire. Accordingly, to the extent that any such material is copyrightable in the United States or in any other country, the County shall own any such copyright.

**14. CONFLICT OF INTEREST**

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

**15. NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED**

This Agreement may not be modified, altered, changed, or amended orally but, rather, only by an instrument in writing executed by the parties hereto. The Contractor specifically acknowledges and agrees that the County shall not be responsible for any changes to Section 1, "SCOPE OF WORK", of this Agreement unless such changes are set forth in a duly executed written amendment to this Agreement.

**16. ENTIRE AGREEMENT; INTEGRATION**

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

**17. NOTICE OF PENALTIES**

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

**18. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE**

A. The Contractor agrees to abide by all federal, state, and local laws, ordinances, and rules and regulations pertaining to equal employment opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, the Contractor specifically agrees not to discriminate against any person with regard to employment with the Contractor or participation in any program or activity offered pursuant to this Agreement on the grounds of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation, or gender identity.

B. The Contractor acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Agreement.

## **19. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW**

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

B. Contractor shall comply with the requirements of Santa Fe County Ordinance 2014-1 (Establishing a Living Wage).

C. This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules. Contractor and the County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be federal and state district courts of New Mexico, located in Santa Fe County.

## **20. RECORDS AND INSPECTIONS**

A. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to the County as part of the procurement process, the Contractor agrees to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under this Agreement; (ii) allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with generally accepted accounting principles (GAAP).

B. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to County as part of the procurement process, the Contractor also agrees to require any subcontractor it may hire to perform its obligations under this Agreement to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under the subcontract; (ii) to allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with GAAP.

## **21. INDEMNIFICATION**

A. The Contractor shall defend, indemnify, and hold harmless the County and its elected officials, agents, and employees from any losses, liabilities, damages, demands, suits, causes of action, judgments, costs or expenses (including but not limited to court costs and attorneys' fees) resulting from or directly or indirectly arising out of the Contractor's performance or non-performance of its obligations under this Agreement, including but not limited to the Contractor's breach of any representation or warranty made herein.

B. The Contractor agrees that the County shall have the right to control and participate in the defense of any such demand, suit, or cause of action concerning matters that

relate to the County and that such suit will not be settled without the County's consent, such consent not to be unreasonably withheld. If a conflict exists between the interests of the County and the Contractor in such demand, suit, or cause of action, the County may retain its own counsel to represent the County's interest.

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

## **22. SEVERABILITY**

If any term or condition of this Agreement shall be held invalid or non-enforceable by any court of competent jurisdiction, the remainder of this Agreement shall not be affected and shall be valid and enforceable to the fullest extent of the law.

## **23. NOTICES**

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

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

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

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

The Contractor hereby represents and warrants that:

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

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

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

**25. FACSIMILE SIGNATURES**

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

**26. NO THIRD-PARTY BENEFICIARIES**

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

**27. INSURANCE**

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

B. General Liability Insurance, Including Automobile. The Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,000,000.00 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the County by the Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Agreement is an insured contract. The County of Santa Fe shall be a named additional insured on the policy.

C. Workers' Compensation Insurance. The Contractor shall comply with the provisions of the Workers' Compensation Act.

D. Increased Limits. If, during the life of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended), the Contractor shall increase the maximum limits of any insurance required herein.

**28. PERMITS, FEES, AND LICENSES**

Contractor shall procure all permits and licenses, pay all charges, fees, and royalties, and give all notices necessary and incidental to the due and lawful performance of its obligations hereunder.

**29. NEW MEXICO TORT CLAIMS ACT**

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

**30. CAMPAIGN CONTRIBUTION DISCLOSURE FORM**

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

**31. SURVIVAL**

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

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

**SANTA FE COUNTY:**

Katherine Miller  
Katherine Miller  
Santa Fe County Manager

5.27.14  
Date

**Approved as to Form**

Gregory Shaffer  
Gregory Shaffer  
Santa Fe County Attorney

6/24/14  
Date

**Finance Department Approval**

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

5/27/14  
Date

**CONTRACTOR:**

DA  
(Signature)

6/3/14  
Date

Roman Abuyk  
(Print Name)

Chief Professional Officer  
(Print Title)

FEDERAL ID NUMBER: 850102948

