PROFESSIONAL SERVICES AGREEMENT
WITH ML CONSULTING
FOR CONSULTING SERVICES FOR STRATEGIC PLAN USING RAPID RESULTS PLANNING MODEL

THIS AGREEMENT is made and entered into on this 1st day of May, 2012, by and between SANTA FE COUNTY (hereinafter referred to as the “County”), a New Mexico political subdivision, and ML Consulting, a Limited Liability Corporation whose address is 3 Pin Cushion Place, Santa Fe, New Mexico 87508 (hereinafter referred to as the “Contractor”).

WHEREAS, the Santa Fe County DWI Planning Council in accordance with the New Mexico Community Alcoholism and Alcohol Abuse Prevention, Screening and Treatment Act provide Santa Fe County with comprehensive plans that document’s the Santa Fe County and the City of Santa Fe’s alcoholism problem, DWI resources, and needs regarding DWI, alcoholism, and alcohol9 and other drug abuse issues including prevention, screening, assessment, treatment and alternate sentencing programs;

WHEREAS, pursuant to NMSA 1978, Section 13-1-125 NMSA 1978, the County wishes to procure the consulting services in a Professional Services Agreement as a small purchase with the Contractor to provide the facilitation of a strategic planning processes using the Rapid Results Method;

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

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

1. SCOPE OF WORK

   A. Draft Strategic Plan Using Rapid Results Planning Model. Contractor will be using a results-driven planning and performance model (Rapid Results Planning) that helps groups focus on developing a plan with 3-5 strategic priorities with outcome goals, actions to be taken within 90 days, responsibility, timeline and milestone measures identified. The Contractor’s services will include facilitation of a strategic planning process including a retreat and meetings to gather input and ideas for the Santa Fe County DWI Council Strategic Plan from execution of this Agreement through June 30, 2012. Contractor will work with the Santa Fe County DWI Council executive team and staff to develop agendas and facilitate meetings to solicit input from council members as well as key stakeholders from the community. Contractor will also provide a summary report following the retreat and planning meetings for Santa Fe DWI Council and staff and will provide technical assistance in the development of a Rapid Results Strategic Plan. The Contractor’s services will include, but are not limited to:
1) Consultation on the development of a Rapid Results Strategic Plan.

2) Handouts, resources and technical assistance on Rapid Results Planning methodology and how to develop performance-centered, outcome goals.

3) Research and information gathering including facilitator participation at the May 10, 2012 DWI Planning Council meeting focused on the presentation of SWOT analysis from sub-groups.

4) Planning and facilitation of retreat and follow up meetings, as needed.

B. Key Components of Contractor’s Services

1) Santa Fe County DWI Planning Council, staff and key stakeholder engagement.

2) Focus on Measurable Outcomes. Contractor will provide technical assistance to assist in the development of a plan that includes measurable outcomes as opposed to activity measures. For each goal, staff and DWI Planning Council members will be encouraged to develop outcome measures/data metrics that provide information about whether the kids and/or adults are better off due to efforts over time.

3) Consensus-Driven Strategy Priority Setting. Contractor will use a consensus model of decision-making to help groups set outcome-based goals, and develop action plans with group ownership of outcomes.

4) Use of Appreciative Inquiry Approach. An Appreciative Inquiry approach will be used to draw out best practices from the field to incorporate in action planning. This approach allows us to build upon the strengths of existing successful initiatives.

C. Contractor’s Planned Activities

<table>
<thead>
<tr>
<th>Process</th>
<th>Task/Method</th>
<th>Timeline</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assessment/Fact Gathering</td>
<td>Meetings with Council members and staff, preparation of agenda and consultation on Rapid Results Planning</td>
<td>Completion by May 2012</td>
</tr>
<tr>
<td>SWOT Analysis</td>
<td>Sub-Group presentations of SWOT Analysis at May Council Meeting</td>
<td>Completion by May 10, 2012</td>
</tr>
<tr>
<td>Retreat/Input Session(s)</td>
<td>Facilitated session(s) to identify strategic priorities and outcomes</td>
<td>Completion by May or June 2012</td>
</tr>
<tr>
<td>Follow up Planning Sessions and Development of the Draft Plan</td>
<td>Facilitator will work with staff and Council members to draft a Rapid Results Strategic Plan</td>
<td>Completion by June 2012</td>
</tr>
</tbody>
</table>
D. Deliverables

1) Meeting Summary Notes delivered no later than 1 week following each group meeting/retreat
2) Draft Rapid Results Strategic Plan with outcome goals identified by June 29, 2012

2. COMPENSATION, INVOICING, AND SET-OFF

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

1) County shall pay to the Contractor in full payment for services satisfactorily performed in an amount not to exceed Four Thousand Nine Hundred Dollars ($4,900.00) exclusive of GRT.

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. County will notify Contractor when County as paid Contractor the full not-to-exceed amount stated above prior to the expiration of the term of this Agreement. Absent an approved amendment to the contract amount, Contractor will not be compensated in excess of the not-to-exceed amount stated above for deliverables and services performed.

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

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

D. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payment.
3. EFFECTIVE DATE AND TERM

This Agreement shall, upon due execution by all parties, become effective as of the date first written above and shall terminate on July 31, 2012.

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 not 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 requirements 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 are deliverables belonging to Santa Fe County. Accordingly, to the extent that any such material is copyrightable in the United States or in any other country, the County shall own any such copyright.

14. CONFLICT OF INTEREST

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

15. NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED

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

16. ENTIRE AGREEMENT; INTEGRATION

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

17. NOTICE OF PENALTIES

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

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

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

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

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

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

20.  **RECORDS AND INSPECTIONS**

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

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

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

B. The Contractor agrees that the County shall have the right to control and participate in the defense of any such demand, suit, or cause of action concerning matters that relate to the County and that such suit will not be settled without the County’s consent, such consent not to be unreasonably withheld. If a conflict exists between the interests of the County and the Contractor in such demand, suit, or cause of action, the County may retain its own counsel to represent the County’s interest.

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

22. SEVERABILITY

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

23. NOTICES

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

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

To the Contractor: ML Consulting, LLC
   3 Pin Cushion Place
   Santa Fe, New Mexico  87508
24. CONTRACTOR’S REPRESENTATIONS AND WARRANTIES

The Contractor hereby represents and warrants that:

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

B. This Agreement and Contractor’s obligations hereunder do not conflict with Contractor’s corporate agreement or any statement filed with the Public Regulation Commission on Contractor’s behalf.

25. FACSIMILE SIGNATURES

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

26. LIMITATION OF LIABILITY

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

27. NO THIRD-PARTY BENEFICIARIES

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

28. INSURANCE

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

B. General Liability Insurance, Including Automobile. The Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than $1,050,000.00 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Non-hired vehicle insurance coverage will be required for employees, temporary employees, and subcontractor using their personal vehicle. The Contractor will also have an Employee Dishonesty endorsement with their General Liability. Said policies of insurance shall include coverage for all operations performed for the County by the Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Agreement is an insured contract. The County of Santa Fe shall
be a named additional insured on the policy.

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

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

E. Performance Surety Bond. Contractor will provide a Performance Surety Bond equal to 100 percent of the contract value, the condition of which shall be the performance of the contract, which bond shall be issued by a reputable bonding company authorized to do business in the State of New Mexico. Said bond shall include the defense requirements of these specifications. Also, said bond shall be in a form satisfactory to and approved by the County Attorney.

29. PERMITS, FEES, AND LICENSES

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

30. NEW MEXICO TORT CLAIMS ACT

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

31. CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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

32. APPOINTMENT OF AGENT FOR SERVICE OF PROCESS

The Contractor hereby irrevocably appoints, Michele Lis, 3 Pin Cushion Place, Santa Fe, New Mexico 87508, as its agent upon whom process and writs in any action or proceeding arising out of or related to this Agreement may be served. The Contractor acknowledges and agrees that service upon its designated agent shall have the same effect as though the Contractor were actually and personally served within the state of New Mexico.

32. SURVIVAL

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

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

SANTA FE COUNTY:

Katherine Miller
Santa Fe County Manager

4/30/12
Date

Approved as to Form:

Stephen C. Ross
Santa Fe County Attorney

April 19, 2012
Date

Finance Department Approval:

Teresa Martinez
Santa Fe County Finance Director

4/23/12
Date

ML Consulting, LLC

Michele Lis
Owner, ML Consulting, LLC

4/24/12
Date

Federal Identification: 073-52-3129
WITH APPLICABLE LAW; CHOICE OF LAW; NO THIRD-PARTY BENEFICIARIES; SURVIVAL.

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

SANTA FE COUNTY:

Katherine Miller
Santa Fe County Manager

Approved as to Form:

Stephen C. Ross
Santa Fe County Attorney

Finance Department Approval:

Teresa Martinez
Santa Fe County Finance Director

ML Consulting, LLC

______________________________
Signature

______________________________
Title

______________________________
Federal Identification: