

Contract No. **04-370-1000-01**
Budget Activity No.
Encumbrance No.

STATE OF NEW MEXICO
OFFICE OF THE SECRETARY OF STATE
PROFESSIONAL SERVICES AGREEMENT

This agreement is made and entered into by and between the State of New Mexico, Office of the Secretary of State, referred to as the "Secretary of State" and "Kupfer Consulting", 302 Montana Wells Rd., Rio Rancho, N.M. 87124, referred to hereafter as the "Contractor," and shall become effective only when and if approved by the Secretary of State and by the New Mexico Department of Finance and Administration.

It is agreed between the parties:

1. Scope of Services:

The Contractor shall provide the following services for the Secretary of State.

- a) The Contractor will assist in developing training material in conjunction with the requirements of the federal "Help America Vote Act of 2002" (HAVA) in New Mexico to be used in increase accessibility of polling places to voters with disabilities;
- b) The Contractor will research state agencies, other states, the federal government, disability agencies, and advocacy groups to determine where accessibility may be lacking and how it can be improved; the Contractor will inspect, test, and review the new "accessible" voting machines to determine if they are accessible and prepare a report on same for the Secretary of State;
- c) The Contractor will represent the Secretary of State to schedule and facilitate meetings of an advisory work group comprised of disability advocates and agencies. The Contractor will provide suggestions of community disability advocates to be appointed to this work group to the Secretary of State for consideration;

- d) The Contractor shall conduct meetings with the work group to develop this material jointly to ensure the training material about accessibility of polling places is accurate and sensitive;
- e) The Contractor will produce training materials for accessibility to polling places to be used by the 33 county clerks in order that may be in compliance with ADA and HAVA requirements. A manual for County Clerks to use in order to select or improve a polling site to be accessible will be of the highest priority; the training material will create a uniform understanding and guidelines for accessibility, privacy, participation, and independence of voters with various disabilities; the contractor will
- f) The Contractor will develop training materials to be used by the County Clerks in order that they can prepare poll workers to assist voters with disabilities and ensure that their assigned polling places are accessible; this may include printed or video material of a format that is readily reproduced;
- g) The Contractor will need to participate in disability advocacy conferences at the request of the Secretary of State, and conduct outreach contact with disability advocacy organizations;
- h) The Contractor will develop in conjunction with the work group a live in-person training session for the election school of the county clerks; this training will teach the best methods to improve the polling place access of individuals with a full range of disabilities; the contractor shall ensure that disability advocates will be participating in the actual preparation and performance of the training;
- i) The Contractor will research other states, the federal government, disability agencies, and advocacy groups to attempt to determine if training material content is available that may be used, either in part or in whole;
- j) The Contractor will continue to provide consulting services after the initial work is completed until the contract is fully expended, expires, or is cancelled by either party;

2. Payment Provisions:

A. The Secretary of State shall pay to the Contractor, as fees and expenses for services rendered in connection with the scope of services described in section one. The total amount of payments for such fees and expenses shall not exceed the sum of Dollars **(\$20,000.00), plus New Mexico gross receipts tax of (1,225.00).**

B. The Contractor is responsible for paying to the New Mexico Taxation and Revenue Department the New Mexico gross receipts tax on amounts earned by the Contractor under this agreement.

C. The Contractor shall transmit a detailed and certified statement of services, and charges, if any, to the Secretary of State within thirty days after the end of the month during which the services were performed. Expenses must be justified by receipts. The contractor shall notify the Office of the Secretary of State upon completion of work that is the equivalent of eighty percent (80%) of the total contract amount.

D. Secretary of State shall pay the Contractor after receipt and approval of a detailed and certified statement of services, and charges.

E. Upon determination by the Agency that the services or items of tangible personal property have been received and accepted, payment shall be tendered to the Contractor within forty five days. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. After the forty fifth day, late payment charges shall be paid on the unpaid balance due on the contract to the Contractor at the rate of 1-1/2% per month.

F. The total amount of the moneys payable to the Contractor under this Agreement, including fees and expenses, shall not exceed **\$20,000.00 plus New Mexico gross receipts tax.**

G. Noncompliance by the Contractor with any of the provisions of subparagraph C of this paragraph shall excuse the Secretary of State from any responsibility for payment to the Contractor for any services performed under this agreement unless otherwise agreed to in writing by the Secretary of State.

3. Terms:

A. This agreement shall terminate on **June 30, 2004**, unless terminated sooner as provided in section 4, Termination. This agreement may be renewed by agreement of the Secretary of State and the Contractor with Department of Finance and Administration approval. Any such renewals shall be upon terms agreed to by the Contractor and the Secretary of State, and shall depend upon sufficient authorizations and appropriations being made by the New Mexico Legislature.

B. THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL IT IS APPROVED BY THE SECRETARY OF STATE AND BY THE NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION. FURTHERMORE, THE SECRETARY OF STATE SHALL NOT BE RESPONSIBLE FOR PAYMENT TO THE CONTRACTOR FOR SERVICES PERFORMED UNDER THIS AGREEMENT PRIOR TO APPROVAL OF THE AGREEMENT BY THE NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION.

4. Termination:

This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least seven 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.

5. Status of Contractor:

The Contractor, and his agents and employees, are independent contractors performing professional services for the Secretary of State and are not employees of the State of New Mexico. The Contractor, and his agents and employees, shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement.

6. Assignments:

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 prior written approval of the Secretary of State and the Department of Finance and Administration.

7. Subcontracting:

The Contractor shall not subcontract any portion of the services to be performed under this agreement without prior written approval of the Secretary of State.

8. Records and Audit:

During the term of this Agreement and for three years thereafter, the Contractor shall maintain detailed records pertaining to the services rendered and products delivered. These records shall be subject to inspection by the Secretary of State, the Department of Finance and Administration, the State Auditor and appropriate federal authorities. The Secretary of State shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Secretary of State to recover excessive or illegal payments.

9. Appropriations:

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate upon written notice being given by the Secretary of State to the Contractor. The Secretary of State's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

10. Release:

The Contractor, upon final payment of the amount due under this agreement, releases the Secretary of State, his officers and employees, and the State of New Mexico, from all liabilities, claims, and obligations whatsoever arising from or under this agreement. The Contractor agrees not to purport to bind the State of New Mexico or the Secretary of State to any obligation not assumed under this agreement by the State of New Mexico or the Secretary of State, unless the Contractor has express written authority from the Secretary of State to do so, and then only within the limits of that authority.

11. 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 prior written approval by the Secretary of State.

12. Product of Services; Copyright:

All written materials developed or acquired by the Contractor under this agreement shall become the property of the State of New Mexico and shall be delivered to the Secretary of State not later than the termination date of this Agreement. Nothing produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for a copyright by or on behalf of the Contractor, without the prior written approval of the Secretary of State. The original and one copy of all materials, work papers, meeting notes, design documents, or other documents produced by the Contractor shall be indexed and placed in appropriately labeled binders and delivered to the Secretary of State's Office at conclusion of the Agreement.

13. Conflict of Interest:

The Contractor warrants that he presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. The Contractor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.

14. Equal Opportunity Compliance:

The Contractor agrees to abide by all Federal and State laws, 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, rules, and regulations, and executive orders of the Governor of the State of New Mexico, the Contractor agrees to assure that no person in the United States shall on the grounds of race, color, religion, national origin, sex, sexual preference, 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 Contractor is found to be not in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

15. Reference to the New Mexico Criminal Laws Prohibiting Bribes, Gratuities, and Kick-backs:

The New Mexico Procurement Code, Sections 13-1-28 et seq. NMSA 1978, imposes civil and criminal penalties for violation of its provisions. In addition, the New Mexico criminal laws prohibit and prescribe felony penalties for bribes, gratuities, and kick-backs.

16. Amendment:

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

17. Scope of Agreement:

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 agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

18. Approval of Contractor Personnel:

Once work has started, no changes of personnel will be made by the Contractor without the prior written consent of the Secretary of State. 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 ensure their being productive to the project immediately upon receiving assignments. Approval of replacement personnel shall not be unreasonably withheld.

The Secretary of State shall retain the right to request the removal of any of the Contractor's personnel at any time.

19. Indemnification:

The Contractor shall hold the state and its agencies and employees harmless and shall indemnify the state and its agencies and employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damages to property arising from the acts or omissions of the contractor, its agents, officers, employees or subcontractors.

20. Limitation of Liability:

The Contractor's liability to the Secretary of State for any cause whatsoever shall be limited to the purchase price paid to the Contractor for services that are the subject of the Secretary of State's claim. The foregoing limitation does not apply to Paragraph 18 of this Agreement or to damages resulting from personal injury caused by the Contractor's negligence.

21. Incorporation by Reference and Precedence:

In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) Amendments to the Agreement in reverse chronological order; (2) the Agreement, including the Scope of Work; (3) the Contractor's Best and Final Offer; (4) the Request for Proposals, including attachments thereto, written responses to questions and written clarifications; and (5) the Contractor's response to the Request for Proposals.

22. Warranties:

The Contractor warrants that all services provided under this Agreement will be free from defects. The warranty period for services will be for a period of six (6) months after the acceptance of the deliverable(s). Warranty work will be performed at the Contractor's expense.

23. Project Reporting:

The Contractor will provide periodic status reports to the Secretary of State. Status reports will include, as a minimum, a discussion of project progress, problems encountered and recommended solutions, identification of policy or management questions, and requested project plan adjustments.

24. Applicable Law:

This agreement shall be governed by the laws of the State of New Mexico.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of execution by the State Contracts Officer below.

STATE OF NEW MEXICO
New Mexico Secretary of State's Office

By: 
Rebecca Vigil-Giron

By: 
Kupfer Consulting

Secretary of State

Typed Name: Joe Kupfer

Title: President

Date: _____

Date: 4/05/04

This Agreement has been approved by:

DEPARTMENT OF FINANCE AND ADMINISTRATION

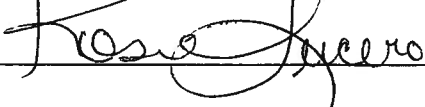
By: 
State Contracts Officer

Date: 04.07.04

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

TAXATION AND REVENUE DEPARTMENT

ID NO: CRS 02-355677-00-3

By: 

Date: 4/6/04

DEPARTMENT OF TAXATION AND REVENUE