



STATE OF NEW MEXICO

MARY HERRERA
SECRETARY OF STATE

DON FRANCISCO TRUJILLO II
DEPUTY SECRETARY OF STATE

August 27, 2009

Mr. Heath Haussamen
Owner, NMPolitics.net
Reporter, the New Mexico Independent
heath@haussamen.com

Dear Mr. Haussamen:

In response to your IPRA request dated Monday, August 24, 2009, at 10:26 PM and acknowledged on Tuesday, August 25, 2009, at 10:22 AM, attached you will find a scanned copy of contract # 06-370-1000-0603 between Kupfer Consulting and the former administration of the Office of the Secretary of State.

Sincerely,

A handwritten signature in black ink, appearing to read "Don Francisco Trujillo II".

Don Francisco Trujillo II
Deputy Secretary of State
Records Custodian

Contract # 06-370-1000-06
Encumbrance #
06-903-00000

STATE OF NEW MEXICO

DEPARTMENT OF FINANCE & ADMINISTRATION
PROFESSIONAL SERVICES CONTRACT #06-370-1000-0603

THIS AGREEMENT is made and entered into by and between the State of New Mexico, Office of the Secretary of State, hereinafter referred to as the "Agency" and Kupfer Consulting., of 302 Montana Wells Rd., Rio Rancho, N.M. 87124 hereinafter referred to as the "Contractor".

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. Scope of Work

- (a) The Contractor will consult the Secretary of State in matters pertaining to federally required compliance of Section 261 of the "Help America Vote Act" of "2002" in New Mexico.
- (b) The Contractor will coordinate a project plan to survey each of New Mexico's 1,200 polling places, inclusive of early polling sites, in order to carefully document any problems with inaccessibility to the disabled.
- (c) The Contractor will provide a report on each of the polling places citing the specific deficiencies with the polling place.
- (d) In order to prepare the report, the contractor will provide coordination of a polling place inspection survey to determine accessibility to person with disabilities; it is understood that due to the rural nature of the New Mexico, self-surveys in some locations may be necessary to ensure an alternative. The final decision on which sites can be self-surveyed will be determined by the Secretary of State.
- (e) The Contractor will coordinate the activities of the various parties who will physically conduct the onsite surveys including the Governor's Committee on the Concerns of the Handicapped, the commission for the Blind, the 33 county ADA Coordinators, paid experts, other disability advocates, and trained volunteers. Every effort shall be made to conduct an on-site survey of each polling place.
- (f) The Contractor will provide periodic status reports to the Secretary of State. Status report will include, as minimum, a discussion of project progress, problems encountered and recommended solution, identification of policy or management question, and requested project plan adjustments.
- (g) The Contractor will continue to provide consulting services after the initial survey is completed until the contract is fully expended, expires, or is cancelled by either party.

Performance Measures, default by Contractor – Contractor shall substantially perform the Performance Measures set forth in Attachment 1. In the event the Contractor fails to obtain the results described in Attachment 1, the Agency may provide written notice to the Contractor of the default and specify a reasonable period of time in which the Contractor shall advise the Agency of specific steps that it will take to achieve these results in the future and the timetable for implementation. Nothing in this subparagraph shall be construed to prevent the Agency from exercising its right pursuant to Paragraph 4 below.

2. Compensation.

A. **SINGLE YEAR** - The Agency shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work rendered including miscellaneous travel expenses as compensation not to exceed **\$30,000.00**, excluding gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling **\$2,137.50**, shall be paid by the Agency to the Contractor. The total amount of the monies payable to the Contractor under this Agreement, including gross receipts tax, shall not exceed **\$32,137.50**. The Contractor shall be responsible for the payment to the Taxation and Revenue Department.

B. Within fifteen days after the date the Agency receives written notice from the Contractor that payment is requested for services or items of tangible personal property delivered on site and received, the Agency shall issue a written certification of complete or partial acceptance or rejection of the services or items of tangible personal property. If the Agency finds that the services or items of tangible personal property are not acceptable, it shall, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, provide to the Contractor a letter of exception explaining the defect or objection to the services or delivered tangible personal property along with details of how the Contractor may proceed to provide remedial action. Upon certification 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 thirty days after the date of certification. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. After the thirtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the contract to the Contractor at the rate of 1.5% per month.

3. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE DEPARTMENT OF FINANCE AND ADMINISTRATION. This Agreement shall terminate on June 30, 2006, unless terminated pursuant to paragraph 4, infra, or paragraph 5. 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.

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 ten (10) 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. 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 Agency 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 state funds or due to the Appropriations paragraph herein. **THIS**

PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE STATE'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 Agency 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 Agency; 2) comply with all directives issued by the Agency in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the Agency shall direct for the protection, preservation, retention or transfer of all property titled to the Agency and [client records generated under this Agreement] and any non-expendable personal property or equipment purchased by the Contractor with contract funds shall become property of the Agency upon termination. On the date the notice of termination is received, the Contractor shall furnish to the Agency a complete, detailed inventory of non-expendable personal property purchased with funds provided under the existing and previous Agency agreements with the Contractor; the property listed in the inventory report including client records and a final closing of the financial records and books of accounts which were required to be kept by the Contractor under the paragraph of this Agreement regarding financial records.

5. 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 immediately upon written notice being given by the Agency to the Contractor. The Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or 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 Agency and are not employees of the State of New Mexico. The Contractor and its 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. The Contractor acknowledges that all sums received hereunder are personally reportable by it for income tax purposes as self-employment or business income and are reportable for self-employment tax.

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 Agency.

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 Agency.

9. Records and Audit.

The Contractor shall maintain, for three (3) years, detailed time records which indicate the date, time and nature of services rendered. These records shall be subject to inspection by the Agency and the State Auditor. The Agency shall have a right to audit billings both before and after payment; payment under this Agreement shall not foreclose the right of the Agency to recover excessive and/or illegal payments.

10. Release.

The Contractor's acceptance of final payment of the amount due under this Agreement shall operate as a release of the Agency, its 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 unless the Contractor has express written authority to do so, and then only within the strict 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 the prior written approval of the Agency.

12. Product of Service -- Copyright.

All 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 Agency no 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 copyright or other claim of ownership by or on behalf of the Contractor.

13. Conflict of Interest.

The Contractor warrants that it presently has no interest and 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. The Contractor certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer or state employee have been followed.

14. Amendment.

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

15. 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.
16. 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.
17. Equal Opportunity Compliance.
The Contractor 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 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.
18. Applicable Law.
The laws of the State of New Mexico shall govern this Agreement.
19. 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 Agency.
20. 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 Agency, the Department of Finance and Administration and the State Auditor. The Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments. If, pursuant to this Agreement, the Contractor receives federal funds subject to the Single Audit Act, the Contractor shall submit to the Agency an audit conducted by a certified public accountant in compliance with the Single Audit Act.
21. Indemnification.
[See, New Mexico Attorney General Opinion, No. 00-04, issued November 1, 2000, prohibiting public entities from agreeing to indemnify a contractor.] The Contractor shall defend, indemnify and hold harmless the Agency and the State of New Mexico 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 Agency and the Risk Management Division of the New Mexico General Services Department by certified mail.

22. Notices.

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

To the Agency: [Office of the Secretary of State].

To the Contractor: [Kupfer Consulting].

IN WITNESS WHEREOF, parties have executed this Agreement as of the date of signature by the DFA Contracts Review Bureau, below. [See, Joseph Montoya & Associates v. State, 103 N.M. 224, 704 P.2d 1100 (S. Ct. 1985).]

By: *Petera Vigil Arin* Date: 7/11/05
Agency

By: *D. Du* Date: 7-15-05
Agency's Legal Counsel - Certifying legal sufficiency

By: *Joe Kuper* Date: 7/11/05
Contractor

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. .

ID Number: 02-393626006

By: *Sheila Harris* Date: 7/22/05
Taxation and Revenue Department

The Attorney General has reviewed this agreement, if applicable:

By: _____ Date: _____
Attorney General

This Agreement has been approved by the DFA Contracts Review Bureau:

By: *Angie Yardis* Date: 08/09/05
DFA Contracts Review Bureau

**CONTRACT APPROVED
EFFECTIVE DATE JULY 1, 2005**

Attachment One

Scope of Work

Performance Measures

Attach a copy of a page or portion from the agency's Strategic Plan that connects the professional services contract to the agency's Strategic Plan's goals, objectives, activities, outputs and outcomes.

Performance Measures in Scope of Work shall contain measurable goals and objective that are linked to the performance measures of the Agency's Strategic Plan:

Goal: Reduce or Increase or Other Service [Increase the number of registered voters.¹

Objective: To reduce or increase or Other Service increase by 85,000 new registrant's

2

Activities: Due to the new election laws the contractor will advise the Secretary of State on issues that will affect the total outcome of the 85,000 new registrants that should occur in the next election cycle.

1 A goal is an "output" measure. It measures the quantity of a service provided. For example, the number of students graduated or promoted; the number of two-lane highways repaired; or the number of crimes investigated. It also can measure the quantity of a service provided that meets a certain quality requirement. For example, the number of students graduated or promoted who meet a minimum preset level of achievement; the number of miles of roads repaired to a minimum safety standard; or the number of criminal investigations performed that result in identification of a prime suspect.

2 An accomplishment is an "outcome" measure. These indicators measure accomplishments or results that occur (at least partially) because the services were provided. For example, the percentage of students achieving a specified skill level in reading, the percentage of miles of roads in excellent, good or fair condition; or the percent reduction in serious crimes or the percent of residents who perceive their neighborhoods as safe.

Attachment One

Scope of Work

Performance Measures

Attach a copy of a page or portion from the agency's Strategic Plan that connects the professional services contract to the agency's Strategic Plan's goals, objectives, activities, outputs and outcomes.

Performance Measures in Scope of Work shall contain measurable goals and objective that are linked to the performance measures of the Agency's Strategic Plan:

Example: **Goal:** Reduce or Increase or Other Service [Increase the number of registered voters.¹

Objective: To reduce or increase or Other Service increase by 85,000 new registrant's

²

Activities: Due to the new election laws the contractor will advise the Secretary of State on issues that will affect the total outcome of the 85,000 new registrants that should occur in the next election cycle.

¹ A goal is an "output" measure. It measures the quantity of a service provided. For example, the number of students graduated or promoted; the number of two-lane highways repaired; or the number of crimes investigated. It also can measure the quantity of a service provided that meets a certain quality requirement. For example, the number of students graduated or promoted who meet a minimum preset level of achievement; the number of miles of roads repaired to a minimum safety standard; or the number of criminal investigations performed that result in identification of a prime suspect.

² An accomplishment is an "outcome" measure. These indicators measure accomplishments or results that occur (at least partially) because the services were provided. For example, the percentage of students achieving a specified skill level in reading, the percentage of miles of roads in excellent, good or fair condition; or the percent reduction in serious crimes or the percent of residents who perceive their neighborhoods as safe.

**NEW MEXICO OFFICE OF THE SECRETARY OF STATE
STRATEGIC PLAN
Fiscal Year 2005-2006**

I. MISSION STATEMENT

The mission of the Office of the Secretary of State is to administer elections and government ethics in accordance with state and federal law; and, to maintain and provide access to the laws, official acts and other instruments that are vital to the efficient operation of New Mexico State Government. It is also the mission of the Office of the Secretary of State to file and maintain records vital to the interests of commerce and industry.

II. PHILOSOPHY

It is the philosophy of this agency to ensure that the citizens of New Mexico are encouraged to vote their conscience in a legal and open electoral process. This office must, through example and imperial administration of the law, be the bastion of ethical and moral political behavior, the keeper of records and the ombudsman for those who wish to redress their grievances, and will continue to oversee the electoral process for all involved. It must also provide timely and effective operational support for those seeking to file or register commercial documents within the duties and responsibilities given to this office by statute.

III. AGENCY DESCRIPTION

The Office of the Secretary of State is organized into three activities, which are the Elections and Ethics Administration, Commercial Recordings, and Administration Support, which include Information Systems.

- A. The Secretary of State, by statutory authority, is the Chief Elections Officer for the State of New Mexico. As such, and with the support of the Bureau of Elections, the Secretary ensures the secrecy of the ballot, the purity of elections and guards against the abuse of the elective franchise. Furthermore, the Secretary must maintain uniformity in the application, operation and interpretation of the Election Code, which is accomplished by the impartial administration of the Code. The Bureau of Elections also is responsible for the chaptering and receipt of signed or vetoed bills and the yearly distribution of session laws. Part of the Bureau of Elections, the Ethics Administration oversees the administration of the state's governmental ethics acts. This administration includes education candidates and public officials in compliance with the Campaign Reporting Act, the Financial Disclosure Act and the Governmental Conduct Act. In addition, Ethics Administration is responsible for ensuring compliance, registering reports under the Lobbyist Regulation Act.

- B. Commercial Recordings** maintains record vital to commerce and industry in New Mexico. This is accomplished by administering the following acts and processing the documents pertaining to them, including: Farm Products Secured Interest Act; Notary Public Commissions, Public Utility Filings; State Conservancy Districts; Trademark and Service Mark registration; Facsimile Signatures of Public Officials; Uniform Commercial Code Filings; Official Acts of the Governor (such as Executive Orders, Proclamations, Appointments and Commissions, Service of Summons and complaints on corporations; General Partnerships and Limited Liability Partnerships.
- C. Administration** is responsible for providing management and support services to the entire agency, including personnel matters, fiscal and budgetary functions mail and supplies, public relations sand desktop publishing services, Information Systems staff are also part of Administration Support and they provide for all the Secretary of State's data processing needs, including development of in-house application programs an corresponding data in use in the agency. Information Systems provides day-to-day technical support to the agency, while moving ahead on long-term development projects. The major issues in accomplishing its tasks are based on adequate funding and the ability to attract and keep good people.

IV. AGENCY GOALS BY ACTIVITY:

A: BUREAU OF ELECTIONS AND ETHICS ADMINISTRATION

To increase public confidence in the conduct of elections and in the electoral process; to successfully implement and carry out the provisions of the "Help America Vote Act;" to provide education and training to local election officials; to educate voters about their right and responsibilities; to ensure compliance with governmental ethics laws through education and enforcement; to successfully implement electronics filing of campaign reports; to adopt any administrative rules necessary to comply with statute and ensure that the purpose of the Election Code is achieved.

B. COMMERCIAL RECORDINGS:

To increase accessibility to public records through good records management systems and electronic availability; to provide easier means to file trademarks and service marks, partnerships registrations, and agricultural liens.

Agency Function

The Office of the Secretary of State is an elected state office, second in line of succession behind the Lieutenant Governor to assume the responsibilities of the Governor. The Secretary is the keeper of the Great Seal of the State of New Mexico, and affixes the seal to all commissions issued in the name of the Governor. By statutory authority, the Secretary of State is the Chief Election Officer for the State of New Mexico. The Secretary of State also maintains records relevant to commerce and industry in New Mexico.

Program Description

The Office of the Secretary of State has three program areas that carry out the functions described above.

The Elections and Ethics Administration oversees elections and the implementation of the State's governmental ethics statutes. The Bureau of Elections oversees the entire election process, which includes maintaining a computerized listing of the State's registered voters, testing and evaluating voting machines, and certifying precinct boundary maps. The bureau enforces uniformity in the application, operation and interpretation of the Election Code. The bureau is also responsible for the chaptering and receipting of signed or vetoed bills and the yearly distribution of session laws. The Ethics Administration regulates lobbyist activity, oversees the reporting of campaign finances by candidates for public office and political action committees, and reviews the financial disclosure reports of candidates and state officials.

The Commercial Recordings Office oversees compliance in filing documents required under several statutes regulating commerce and industry. For example, under the provisions of the Uniform Commercial Code and the Agricultural Filings Act, records of loans secured through financial institutions with the use of collateral must be filed with the office. All trademarks and trade names used in New Mexico must be registered with the office. All persons who wish to serve as notaries public must register with the Secretary of State's office.

The Administration Office provides management and program support for the agency.

Executive Recommendation**Key Elements of Recommendation**

The Executive recommendation funds the annualization of compensation increases and the higher costs associated with group health insurance; however, vacant positions are reduced to minimum salary and benefits levels. The recommendation for contractual services includes an increase for a maintenance contract for the Secretary of State knowledge base system, which

provides electronic filing for most of the agency's activities, including Uniform Commercial Code filings and campaign reporting. In order to fund the increases in the personal services and employee benefits and contractual services categories, spending in the other costs category was held to the lower of the FY05 request or FY04 operating level.

Policy and Performance

In FY05, the agency will continue implementing the requirements of the Help America Vote Act, including ensuring that appropriate voting equipment and procedures are available for the disabled. The increasing availability of online forms and payment options will allow the Commercial Recordings office to serve its customers more efficiently and effectively.