Agenda Item Number: 8-8-13.6l

SANDOVAL COUNTY
BOARD OF COUNTY COMMISSIONERS

Date of Commission Meeting:	August 8, 2013
Division / Elected Office:	Juvenile Services
Staff Contact:	Michele Rael, Continuum Coordinator
Title of Item:	Professional Services Agreement with Bernalillo Public Schools
Action Requested:	Motion to Approve a Professional Services Agreement between Sandoval County and Bernalillo Public Schools for an Alternative to Suspension Program (Learning Lab), in the amount of $63,209, and Approval to Authorize the County Manager to Approve Agreement
Summary:	The Agreement between Sandoval County and Bernalillo Public Schools is for the purpose of implanting a Learning Lab Program, which serves as an alternative to suspension program.
Attachments:	Professional Services Agreement

FISCAL IMPACT

$63,209.00– Budgeted to Professional Services

STAFF ANALYSIS SUMMARY

County Manager:	Recommend Board of County Commission approval. PPR 07/30/2013
Initiating Elected Official / Division Director:	Recommend approval. MR 7/31/13
Legal:	Approved as to form. PFT 7/31/2013
Finance:	Budgeted Expense-Recommend Approval CCH 7/31/13

SANDOVAL COUNTY
PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into by and between **SANDOVAL COUNTY, and BERNALILLO PUBLIC SCHOOLS**, hereinafter referred to as (the "Contractor").

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

A. The Contractor shall perform the following work through the Bernalillo High School Alternative to Suspension Program (Learning Lab):

1. Expand the current Bernalillo High School learning lab with a licensed teacher to serve at-risk and suspended students referred by administration.
2. Work in collaboration with the RAC provider, law enforcement, JPPO, tribal representatives, local services and families to ensure rural and tribal youth are receiving the RAC and Learning Lab services.
3. Work in collaboration with the RAC provider, law enforcement, JPPO, tribal representatives, local services and families to implement a seamless service from Bernalillo High School to the RAC, Learning Lab and transition back to the student's local community or pueblo.
4. Include funds in the Learning Lab budget and sub-contract for a substitute teacher when the Learning Lab teacher is absent from class.
5. Provide written monthly report on accomplishments of the program to the Juvenile Continuum Coordinator no later than the 5th of the following month. The Contractor's failure to submit the monthly report within this time period may result in notice to the Contractor of non-availability of funds and/or the denial of payment to the Contractor.
6. Collect data necessary to measure the outcomes, performance measures and effectiveness of the activities and tasks described in the Performance Measures of this contract. Provide the required data reports to the Juvenile Continuum Coordinator no later than the 5th of the following month. The Contractor's failure to submit the monthly data within this time period may result in notice to the Contractor of non-availability of funds and/or the denial of payment to the Contractor.
7. Submit monthly invoice with monthly report from item #5 to the Sandoval County Continuum Coordinator no later than the 1st of the following month, unless other arrangements are made with the Sandoval County Continuum Coordinator. The Contractor's failure to submit the invoice and monthly report within this time period may result in notice to the Contractor of non-availability of funds and/or the denial of payment to the Contractor.
8. Provide presentations on the Alternative to Suspension Program/Learning Lab as required by the Continuum Coordinator and the Sandoval County Juvenile Justice Board.
9. Provide a plan to the Continuum Coordinator that addresses a gender specific and culturally appropriate curriculum in the program.

10. Provide gender-specific and culturally appropriate services for clients referred to the program. Include progress in this area on the monthly report.

B. Services will be performed as required by the Sandoval County Continuum Facilitator and the Sandoval County Juvenile Justice Board.

C. *Performance Measures.*

Contractor shall substantially perform the following Performance Measures:

1. Number of program youth served.
2. Number of youth served by gender.
3. Number of youth served by ethnicity.
4. Number of youth served by grade level.
5. Number of youth served by pueblo.
6. Number of days from intake to receipt of case plan.
7. Number and percent of program youth successfully and unsuccessfully completing program requirements.
8. Client's successful completion of homework requirements.
9. Number of Learning Lab referrals to the RAC.
10. Number of program youth remaining in school for the remainder of the school year.
11. Number of program youth graduating from BHS.

2. Compensation.

A. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed ($63,209.00) This amount is a maximum and not a guarantee that the work assigned to Contractor under this Agreement to be performed shall equal the amount stated herein. A quarterly review of the program budget will be conducted by Sandoval County with the contractor to determine the program rate of expenditure and ability to maintain the program. If there is insufficient funds to continue the program, Sandoval County may terminate the contract.**

B. Sandoval County shall pay to the Contractor in full payment for services satisfactorily performed for the amount of **($63,209.00)** based upon DELIVERABLES, MILESTONES, BUDGET, ETC.), such compensation not to exceed **($63,209.00)** (as set forth in Paragraph A) including gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling **($63,209.00)** shall be paid by the Contractor. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below. All invoices MUST BE received by Sandoval County no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

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

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

3. Term.

This agreement shall not become effective until the department of finance and administration has given administrative approval, and shall become fully executed upon the date of the last signatory, **and shall terminate on June 30, 2014** unless terminated pursuant to paragraph 4, infra, or paragraph 5. In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978. Sandoval County reserves the option of renewing the initial contract on an annual basis for three (3) additional years or any portion thereof.

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 (30) days prior to the intended date of termination. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by Sandoval County or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of state funds or due to the Appropriations paragraph herein. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE COUNTY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*

B. Termination Management.

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

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 Sandoval County to the Contractor. Sandoval County's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If Sandoval County proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

6. Status of Contractor.

The Contractor and its agents and employees are independent contractors performing professional services for Sandoval County and are not employees of Sandoval County. 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 Sandoval County as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind Sandoval County unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

7. Assignment.

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of Sandoval County.

8. Subcontracting.

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of Sandoval County.

9. Insurance.

The Contractor must provide proof of liability insurance in the amounts required under the New Mexico Tort Claims Act, as amended. Such insurance policy shall name the County as an additional insured.

10. Credentials.

The Contractor shall ensure that all persons employed pursuant to this contract maintain all necessary credentials and licensure as required by law.

11. Release.

Final payment of the amounts due under this Agreement shall operate as a release of Sandoval County, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under 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 Sandoval County, and furthermore in accordance with law.

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

14. Conflict of Interest; Governmental Conduct Act.
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 or former state employee have been followed.

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

16. 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.

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

18. 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 assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this

Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

19. Applicable Law.
The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

20. 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 Sandoval County.

21. 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 Sandoval County, the Department of Finance and Administration and the State Auditor. Sandoval County shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of Sandoval County to recover excessive or illegal payments

22. Indemnification.
The Contractor shall defend, indemnify and hold harmless Sandoval County from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the 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 Sandoval County by certified mail.

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

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

writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights. The Contractor agrees to pay to the County all costs and expenses including reasonable attorney's fee incurred by the County in exercising any of its rights or remedies in connection with the enforcement of this Agreement.

25. Changes.

The County may, from time to time, request changes in the Scope of Services 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 Contractor, shall be incorporated in written amendments to this Agreement. This Agreement shall not be altered, changed or amended except by an instrument in writing executed by the parties hereto.

26. Assignability.

The Contractor shall not assign any interest in this Agreement and shall not transfer any interest in this Agreement (whether by assignment or notation), without prior written consent of the County thereto.

27. Construction and Severability.

If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion.

28. Approval Required.

This Agreement shall not become effective or binding until approved by the Sandoval County Board of County Commissioners.

29. 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 Contractor: Bernalillo Public Schools, c/o Keith Cowan, Bernalillo High School, Bernalillo, NM 87004

To Sandoval County: Michele Rael, Continuum Coordinator, 1500 Idalia Road, Building D, Bernalillo, NM 87004, P.O. Box 40, Bernalillo, NM 87004

30. Authority.

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represent and warrant that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract. The County shall designate the County Manager or designee to act as liaison between the County and the Contractor.

IN WITNESS WHEREOF, this agreement shall become fully executed upon the date of the final signature below.

CONTRACTOR:

_____

Mr. Allan Tapia
Bernalillo Public Schools
Superintendent

Date: _____

SANDOVAL COUNTY

_____

Phil Rios
Sandoval County Manager

Date: _____

APPROVAL AS TO FORM:

_____

Patrick Trujillo, Sandoval County Attorney

Date_____