



Contract Number: CT-CEO-14\*435  
 Effective Date: 1-1-14  
 Term Date: 12-31-14  
 Cost: \$67,591.73  
 Revenue: \_\_\_\_\_  
 Total: \_\_\_\_\_ NTE: \_\_\_\_\_  
 Action: \_\_\_\_\_  
 Renewal By: 10-1-14  
 Term: 12-31-14  
 Reviewed by: HR

**BOARD OF SUPERVISORS AGENDA ITEM SUMMARY**

Requested Board Meeting Date: May 13, 2014 (Addendum)

**ITEM SUMMARY, JUSTIFICATION &/or SPECIAL CONSIDERATIONS:**

Requesting approval of a Professional Services Contract with United Way of Tucson and Southern Arizona, Inc., for services provided in organizing and operating the County's 2014 Employee Combined Appeal Program (ECAP) Campaign.  
 Total contract amount is \$67,591.73.

MAY 06 14 AM 11:18 PC CLK OF BD

CONTRACT NUMBER (If applicable): CT 14\*435

**STAFF RECOMMENDATION(S):**

Recommend approval of Professional Services Contract with United Way for the 2014 ECAP Campaign.

Procure Dept 05/05/14 AM 08:23

CORPORATE HEADQUARTERS: Tucson, Arizona – Pima County

To: CHH - 5-5-14 By Dept  
 COB - 5-6-14  
 Agenda 5-13-14  
 Addendum (1)

Page 1 of 2 Ver. 1  
 Vendor - 1  
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CLERK OF BOARD USE ONLY: BOS MTG. \_\_\_\_\_

ITEM NO. \_\_\_\_\_

PIMA COUNTY COST: \$67,591.73 and/or REVENUE TO PIMA COUNTY: \$ -0-

FUNDING SOURCE(S): General Fund/Community & Economic Development Budget  
(i.e. General Fund, State Grant Fund, Federal Fund, Stadium D. Fund, etc.)

**Advertised Public Hearing:**

	<input type="checkbox"/>	YES	<input checked="" type="checkbox"/>	NO
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**Board of Supervisors District:**

1	<input type="checkbox"/>	2	<input type="checkbox"/>	3	<input type="checkbox"/>	4	<input type="checkbox"/>	5	<input type="checkbox"/>	All	<input checked="" type="checkbox"/>
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**IMPACT:**

**IF APPROVED:**

United Way will provide assistance in operating the 2014 Employee Combined Appeal Program (ECAP) Campaign by providing employee education, staff training, collection, and distribution and accounting services for payroll donations from County employees for distribution to charitable organizations.

**IF DENIED:**

Pima County will miss the opportunity to have United Way provide assistance in operating the 2014 Employee Combined Appeal Program (ECAP) Campaign by providing employee education, staff training, collection, and distribution and accounting services for payroll donations from County employees for distribution to charitable organizations.

DEPARTMENT NAME: Community and Economic Development Administration - CED

CONTACT PERSON: Celina Cuaron for Hank Atha TELEPHONE NO.: 724-8228/724-3992

**PIMA COUNTY DEPARTMENT OF COMMUNITY  
AND ECONOMIC DEVELOPMENT  
ADMINISTRATION**

**PROJECT: EMPLOYEE COMBINED APPEAL  
PROGRAM (ECAP 2014 Campaign)**

**Contractor: UNITED WAY OF TUCSON AND  
SOUTHERN ARIZONA  
330 N. Commerce Park Loop, Suite 200  
Tucson, AZ 85754**

**AMOUNT: \$67,591.73 FOR FISCAL YEAR 2014-2015**

**FUNDING: General Fund – Community & Economic  
Development Administration Budget**

**CONTRACT**

NO. CT.CED-14/0000 0000 0000 435

AMENDMENT NO. \_\_\_\_\_

This number must appear on all  
invoices, correspondence and  
documents pertaining to this  
contract.

(STAMP HERE)

**PROFESSIONAL SERVICES CONTRACT – Board of Supervisors**

THIS PROFESSIONAL SERVICES CONTRACT ("Contract") is entered into between Pima County, a body politic and corporate of the State of Arizona, (hereinafter called "County"); and United Way of Tucson and Southern Arizona, Inc. a nonprofit corporation, (hereinafter called "Contractor").

**WITNESSETH**

WHEREAS, County wishes to operate an Employee Combined Appeal Program ("ECAP") that will allow County employees to use payroll deductions for distribution to charitable organizations; and

WHEREAS, County requires the services of a Contractor qualified to assist in the operation of ECAP through the provision of employee education, staff training, collection and distribution of donations and the distribution of same to organizations; and

WHEREAS, County may, under Pima County Code Sec. 11.12.050, procure services without competition when there is only one source for the required service or if no reasonable alternative source exists; and

WHEREAS, County has determined that Contractor is the only agency in the community with the necessary experience and charitable agency network to provide such services; and

WHEREAS, County employees have continued to make contributions, through payroll deductions, in the 2014 calendar year for charitable contributions; and

WHEREAS, other County employees have made cash contributions for charities between July 1, 2013 and December 31, 2013; and

WHEREAS, Contractor is the only agency in the community equipped to distribute such contributions as designated by each individual employee.

NOW, THEREFORE, the parties hereto agree as follows:

**PROGRAM GLOSSARY**

**ECAP**

Employee Combined Appeal Program

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**ECAP Campaign**

Opportunity offered to Pima County employees to contribute to charities of the individual employee's choice through either a one-time cash contribution or through bi-weekly payroll deductions.

**2014 ECAP Campaign**

FY 2014 – 2015 = July 1, 2014 through June 30, 2015

**Defined Contribution Period**

Calendar year for which Contractor administers the employee contributions to distribution to the charitable organizations as designated by each Pima County employee participating in an ECAP Campaign.

**2014 Defined Contribution Period** January 1, 2014 through December 31, 2014

**ARTICLE I - TERM AND EXTENSION/RENEWAL/CHANGES**

- A. This Contract, as awarded by the Board of Supervisors, shall commence on **January 1, 2014** and shall terminate on **December 31, 2014** unless sooner terminated or further extended pursuant to the provisions of this Contract. The parties shall have the option to extend this Contract for four (4) additional 12 month periods or any portion thereof.
- B. Any modification, or extension, of the contract termination date shall be by formal written amendment executed by the Parties hereto.
- C. Amendments to the Contract must be approved by the Board of Supervisors or the Procurement Director, as required by the Pima County Procurement Code, before any work or deliveries under the Amendment commences.

**ARTICLE II – SCOPE OF SERVICES**

- A. Overview. Contractor shall provide organization, publicity, associated informational services and fiscal administrative services for the **2014 Defined Contribution Period**.
- B. Campaign Organization and Implementation. Contractor shall provide the following services for the **2014 ECAP Campaign**:
  - 1. Provide professional and volunteer staff to help organize the campaign.
  - 2. Develop and provide, no later than January 30, 2015, written information to County for distribution to County Board of Supervisors and employees. Information shall include, but is not limited to:
    - a. Total contributions collected from each County Department;
    - b. Average contribution from employees of each County Department; and
    - c. List of all recipient agencies with total amount of contributions designated for each agency.
  - 3. For the ECAP Campaign kick-off meeting and in presentations to County departments at County's request:
    - a. Explain the process of charitable giving through ECAP and the importance of charitable giving to the community; and
    - b. Coordinate brief presentations by non-profit agencies and community service organizations regarding the services being provided within the community.

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4. Work with non-profit agencies and community service organizations to develop information tables regarding services being provided within the community.
5. Provide the following reports to County:

Report	Contents	Dates Covered	Date Due
Mid-Year	Total amount of donations received by United Way from all sources, including Pima County	January 1 – June 30	July 15
	Total amount distributed by United Way to agencies within Pima County		
Year-End	Total amount of donations received by United Way from all sources, including Pima County	January 1 – December 31	January 15 of following year
	Total amount distributed by United Way to agencies within Pima County		

6. Provide the following materials to County to promote the ECAP Campaign:

PROMOTIONAL MATERIAL	AMOUNT	DUE TO COUNTY NO LATER THAN
<b>ECAP posters</b> with Pima County and ECAP logo only	450	August 29, 2014
<b>Agency Directories</b> with Pima County and ECAP logo only	300	August 29, 2014
<b>Training Manuals</b> with Pima County and ECAP logo only	150	August 29, 2014
<b>Door prizes</b> for ECAP Awards luncheon	10	March 2, 2015
<b>Solicitor, Coordinator and Department Certificates</b> for Awards luncheon	As needed	March 2, 2015

C. Fiscal Administration. For the **2014 Defined Contribution Period**, Contractor shall:

1. Establish and permanently maintain an electronic system that accurately records and tracks both the name of the charitable organization(s) and the amount of the contribution(s) designated by each employee.
2. Establish a bank account for Pima County ECAP cash contributions and employee payroll deductions that is separate and segregated from any other United Way transactions ("the Pima County ECAP Account").
3. Deposit all payroll and cash donations received from County into the Pima County ECAP Account.
4. Pay all bank and check fees associated with the Pima County ECAP Account.
5. Immediately upon receipt from County, distribute the cash contributions to the charitable organizations as designated by the employee that provided such contribution.
6. Within 15 days from the end of each calendar quarter of 2014:

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- a. Distribute the funds donated through payroll deductions to the charitable organizations as designated by each employee; and
  - b. Provide a written report to County detailing both the distributions for each calendar quarter and year-to-date distributions. Reports shall include: the names of the charitable organizations, the amounts received by each organization, the investment earnings received by Contractor and expenses incurred by Contractor.
7. Upon verified request by an individual County employee, provide that employee with an accounting of his or her deductions and contributions.
  8. Provide an annual written report to County, no later than January 15, 2015, detailing each employee's payroll deductions and contributions for the 2014 defined Contribution Period.
- D. Contractor shall perform the work in accordance with the terms of this Contract and to the best of Contractor's ability. Contractor shall employ suitably trained and skilled professional personnel to perform all consultant services under this Contract.

### ARTICLE III – COMPENSATION AND PAYMENT

- A. In consideration for the services specified in this Contract, the County agrees to pay Contractor the maximum authorized amount to be calculated as set forth below:
1. Reasonable 2014 calendar year bank and check fees (less interest earned by Contractor);  
**PLUS**
  2. Fifteen-percent (15%) of the following actual County employee ECAP donations:
    - a. One-time cash donations made between September 1, 2014 and December 31, 2014; and
    - b. Payroll deductions collected and distributed between January 1, 2014 and December 31, 2014.
- B. The estimated not-to-exceed amount for 2014 is **\$67,591.73**
- C. Periodic Payments. County shall make payments to Contractor as follows:
1. First Payment: Within 30 days after execution of this Contract:
    - a. Seven and one-half percent (7.5%) of the amount ***pledged*** during the **2014 ECAP Campaign**;
    - b. Seven and one-half percent (7.5%) of the County employee ECAP payroll deductions ***actually collected and distributed*** in the first calendar quarter of 2014; **PLUS**
    - c. All reasonable bank and check fees for that first calendar quarter of 2014, **LESS** any interest earned by the Pima County ECAP bank account established pursuant to Paragraph II(C)(2).
  2. Second and Third Payments. Within 30 days after receipt of the reports that describe activities for the first three quarters of the **2014 ECAP Campaign**, County shall pay Contractor:

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- a. Seven and one-half percent (7.5%) of the County employee ECAP payroll deductions **actually collected and distributed** in the second and third calendar quarters of 2014; PLUS
  - b. All reasonable bank and check fees for the second and third calendar quarters of 2014, LESS any interest earned by the Pima County ECAP bank account established pursuant to Paragraph II(C)(2).
- D. Final Payment. After review and reconciliation, and within 45 days after receipt of the final quarterly and annual reports described in Paragraphs II(C)(6)(b) and (8), County shall pay Contractor:
- 1. Fifteen percent (15%) of all one-time cash donations made between September 1 and December 31, 2014 and payroll deductions actually collected and distributed during calendar year 2014; PLUS
  - 2. Reasonable bank and check fees for the fourth calendar quarter of 2014 ; LESS
  - 3. Periodic payments made pursuant to Paragraph III(C) PLUS interest earned by the Pima County ECAP bank account established pursuant to Paragraph II(C)(2).

#### ARTICLE IV - INSURANCE

- A. Contractor shall obtain and maintain at its own expense, during the entire term of this Contract the following type(s) and amounts of insurance:
- 1. Commercial General Liability in the amount of \$1,000,000.00 combined single limit Bodily Injury and Property Damage. Pima County is to be named as an additional insured for all operations performed within the scope of the Contract between Pima County and Contractor;
  - 2. Commercial or Business automobile liability coverage for owned, non-owned and hired vehicles used in the performance of this Contract with limits in the amount of \$1,000,000.00 combined single limit or \$1,000,000.00 Bodily Injury, \$1,000,000.00 Property Damage;
  - 3. If this Contract involves professional services, professional liability insurance in the amount of \$1,000,000.00; and,
  - 4. If required by law, workers' compensation coverage including employees' liability coverage.
- B. Contractor shall provide County with current certificates of insurance. All certificates of insurance must provide for guaranteed thirty (30) days written notice to the County of cancellation, non-renewal or material change.

#### ARTICLE V - INDEMNIFICATION

- A. Contractor shall indemnify, defend, and hold harmless County, its officers, employees and agents from and against any and all suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto, arising out of any act, omission, fault or negligence by the Contractor, its agents, employees or anyone under its direction or control or on its behalf in connection with performance of this Contract.
- B. Contractor warrants that all products and services provided under this contract are non-infringing. Contractor will indemnify, defend and hold County harmless from any claim of infringement arising from services provided under this contract or from the provision, license, transfer or use for their intended purpose of any products provided under this Contract.

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## **ARTICLE VI - COMPLIANCE WITH LAWS**

Contractor shall comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Contract. The laws and regulations of the State of Arizona shall govern the rights of the parties, the performance of this Contract, and any disputes hereunder. Any action relating to this Contract shall be brought in a court of the State of Arizona in Pima County. Any changes in the governing laws, rules, and regulations during the terms of this Contract shall apply, but do not require an amendment.

## **ARTICLE VII - INDEPENDENT CONTRACTOR**

The status of the Contractor shall be that of an independent Contractor. Neither Contractor, nor Contractor's officer's agents or employees shall be considered an employee of Pima County or be entitled to receive any employment-related fringe benefits under the Pima County Merit System. Contractor shall be responsible for payment of all federal, state and local taxes associated with the compensation received pursuant to this Contract and shall indemnify and hold County harmless from any and all liability which County may incur because of Contractor failure to pay such taxes. Contractor shall be solely responsible for program development and operation.

## **ARTICLE VIII - SUBCONTRACTOR**

Contractor will be fully responsible for all acts and omissions of any subcontractor and of persons directly or indirectly employed by any subcontractor and of persons for whose acts any of them may be liable to the same extent that the Contractor is responsible for the acts and omissions of persons directly employed by it. Nothing in this contract shall create any obligation on the part of County to pay or see to the payment of any money due any subcontractor, except as may be required by law.

## **ARTICLE IX – ASSIGNMENT**

Contractor shall not assign its rights to this Contract, in whole or in part, without prior written approval of the County. Approval may be withheld at the sole discretion of County, provided that such approval shall not be unreasonably withheld.

## **ARTICLE X - NON-DISCRIMINATION**

Contractor agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09 including flow down of all provisions and requirements to any subcontractors. Executive Order 2009-09 supersedes Executive Order 99-4 and amends Executive Order 75-5 and may be viewed and downloaded at the Governor of the State of Arizona's website [http://www.azgovernor.gov/dms/upload/EO 2009 09.pdf](http://www.azgovernor.gov/dms/upload/EO_2009_09.pdf) which is hereby incorporated into this contract as if set forth in full herein. During the performance of this contract, Contractor shall not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

## **ARTICLE XI - AMERICANS WITH DISABILITIES ACT**

Contractor shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.

**ARTICLE XII - AUTHORITY TO CONTRACT**

Contractor warrants its right and power to enter into this Contract. If any court or administrative agency determines that County does not have authority to enter into this Contract, County shall not be liable to Contractor or any third party by reason of such determination or by reason of this Contract.

**ARTICLE XIII - FULL AND COMPLETE PERFORMANCE**

The failure of either party to insist on one or more instances upon the full and complete performance with any of the terms or conditions of this Contract to be performed on the part of the other, or to take any action permitted as a result thereof, shall not be construed as a waiver or relinquishment of the right to insist upon full and complete performance of the same, or any other covenant or condition, either in the past or in the future. The acceptance by either party of sums less than may be due and owing it at any time shall not be construed as an accord and satisfaction.

**ARTICLE XIV - CANCELLATION FOR CONFLICT OF INTEREST**

This Contract is subject to cancellation for conflict of interest pursuant to ARS § 38-511, the pertinent provisions of which are incorporated into this Contract by reference.

**ARTICLE XV – TERMINATION**

- A. County reserves the right to terminate this Contract at any time and without cause by serving upon Contractor 30 days advance written notice of such intent to terminate. In the event of such termination, the County’s only obligation to Contractor shall be payment for services rendered prior to the date of termination.
- B. This Contract may be terminated at any time without advance notice and without further obligation to the County when the Contractor is found by County to be in default of any provision of this Contract.
- C. Notwithstanding any other provision in this Contract, this Contract may be terminated if for any reason, there are not sufficient appropriated and available monies for the purpose of maintaining County or other public entity obligations under this Contract. In the event of such termination, County shall have no further obligation to Contractor, other than to pay for services rendered prior to termination.

**ARTICLE XVI - NOTICE**

Any notice required or permitted to be given under this Contract shall be in writing and shall be served by personal delivery or by certified mail upon the other party as follows:

**COUNTY:**

Mr. Hank Atha  
Deputy County Administrator  
Pima County Government  
130 West Congress Street, 10<sup>th</sup> Floor  
Tucson, AZ 85701  
(520) 724-3992 Direct  
(520) 724-8171 Fax

**CONTRACTOR: United Way of Tucson**

Mr. Tony Penn  
President & CEO  
United Way of Tucson & Southern Arizona  
330 N. Commerce Park Loop, Suite 200  
Tucson, AZ 85754-7650  
(520) 903-9000 Direct  
(520) 903-9002 Fax

## **ARTICLE XVII - NON-EXCLUSIVE CONTRACT**

Contractor understands that this Contract is nonexclusive and is for the sole convenience of County. County reserves the right to obtain like services from other sources for any reason.

## **ARTICLE XVIII - REMEDIES**

Either party may pursue any remedies provided by law for the breach of this Contract. No right or remedy is intended to be exclusive of any other right or remedy and each shall be cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Contract.

## **ARTICLE XIX - SEVERABILITY**

Each provision of this Contract stands alone, and any provision of this Contract found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Contract.

## **ARTICLE XX - BOOKS AND RECORDS**

- A. Contractor shall keep and maintain proper and complete books, records and accounts, which shall be open at all reasonable times for inspection and audit by duly authorized representatives of County.
- B. County shall monitor Contractor's books and records at least once annually.
- C. In addition, Contractor shall retain all records relating to this Contract at least 5 years after its termination or cancellation or, if later, until any related pending proceeding or litigation has been closed.

## **ARTICLE XXI – PUBLIC INFORMATION**

- A. Pursuant to A.R.S. § 39-121 et seq., and A.R.S. § 34-603(G) in the case of construction or Architectural and Engineering services procured under A.R.S. Title 34, Chapter 6, all information submitted in response to this solicitation, including, but not limited to, pricing, product specifications, work plans, and any supporting data becomes public information and upon request, is subject to release and/or review by the general public including competitors.
- B. Any records submitted in response to this solicitation that respondent believes constitute proprietary, trade secret or otherwise confidential information must be appropriately and prominently marked as CONFIDENTIAL by respondent prior to the close of the solicitation.
- C. Notwithstanding the above provisions, in the event records marked CONFIDENTIAL are requested for public release pursuant to A.R.S. § 39-121 et seq., County shall release records marked CONFIDENTIAL ten (10) business days after the date of notice to the respondent of the request for release, unless respondent has, within the ten day period, secured a protective order, injunctive relief or other appropriate order from a court of competent jurisdiction, enjoining the release of the records. For the purposes of this paragraph, the day of the request for release shall not be counted in the time calculation. Respondent shall be notified of any request for such release on the same day of the request for public release or as soon thereafter as practicable.

- D. County shall not, under any circumstances, be responsible for securing a protective order or other relief enjoining the release of records marked CONFIDENTIAL, nor shall County be in any way financially responsible for any costs associated with securing such an order.

#### **ARTICLE XXII – LEGAL ARIZONA WORKERS ACT COMPLIANCE**

- A. Contractor hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to Contractor's employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Contractor shall further ensure that each subcontractor who performs any work for Contractor under this contract likewise complies with the State and Federal Immigration Laws.
- B. County shall have the right at any time to inspect the books and records of Contractor and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.
- C. Any breach of Contractor's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, shall be deemed to be a material breach of this Contract subjecting Contractor to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Contractor shall be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, as soon as possible so as not to delay project completion.
- D. Contractor shall advise each subcontractor of County's rights, and the subcontractor's obligations, under this Article by including a provision in each subcontract substantially in the following form.

"Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to subcontractor's employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that County may inspect the subcontractor's books and records to insure that subcontractor is in compliance with these requirements. Any breach of this paragraph by subcontractor will be deemed to be a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract."

- F. Any additional costs attributable directly or indirectly to remedial action under this Article shall be the responsibility of Contractor. In the event that remedial action under this Article results in delay to one or more tasks on the critical path of Contractor's approved construction or critical milestones schedule, such period of delay shall be deemed excusable delay for which Contractor shall be entitled to an extension of time, but not costs.

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**ARTICLE XXIII - ENTIRE AGREEMENT**

This document constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. This Contract may be modified, amended, altered or extended only by a written amendment signed by the parties.

IN WITNESS THEREOF, the parties have affixed their signatures to this Contract on the date written below.

**PIMA COUNTY**

**CONTRACTOR – United Way of Tucson**

\_\_\_\_\_  
Chairman, Board of Supervisors

Date: \_\_\_\_\_

  
\_\_\_\_\_  
Authorized Officer Signature

TONY PENN, PRESIDENT & CEO  
Printed Name and Title

4/30/14

\_\_\_\_\_  
Date

**ATTEST:**

\_\_\_\_\_  
Clerk of the Board

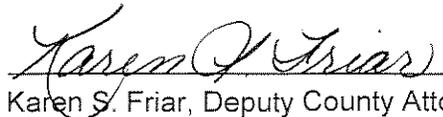
Date: \_\_\_\_\_

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Hank Atha, Deputy County Administrator

Date: 4-16-2014

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Karen S. Friar, Deputy County Attorney

Date: April 16, 2014