

BC 16156

Contract Summary Form: _____ Contract Number : _____

Complete data below, print, obtain signature of authorized departmental representative, and submit this form (and attachments) to the Clerk of the Board (>\$100,000). If less than (<\$100,000) submit a Purchasing Requisition to the Purchasing Division of General Services. See "online purchasing manual" under General Services, Purchasing, Policies and Procedures. Form not applicable to revenue contracts.

- D1. Fiscal Year..... : FY 15-16
- D2. Budget Unit Number (plus -Ship/-Bill codes in paren's) :
- D3. Requisition Number..... :
- D4. Department Name..... : CEO/General County Programs
- D5. Contact Person..... : Richard Morgantini
- D6. Phone..... : 568-3551

- K1. Contract Type (check one): [] Personal Service [] Capital Project/Construction
- K2. Brief Summary of Contract Description/Purpose : Grant for land swap
- K3. Original Contract Amount..... : \$50,000
- K4. Contract Begin Date : 7/1/15
- K5. Original Contract End Date..... : 6/30/16
- K6. Amendment History (leave blank if no prior amendments):

<u>Seq#</u>	<u>EffectiveDate</u>	<u>ThisAmndt</u>	<u>AmtCum</u>	<u>AmndtTo</u>	<u>DateNew</u>	<u>TotalAmt</u>	<u>NewEnd</u>	<u>EndDate</u>	<u>Purpose (2-4 words)</u>
			\$			\$			

K7. Department Project Number..... :

- B1. Is this a Board Contract? (Yes/No) : Yes
- B2. Number of Workers Displaced (if any) : 0
- B3. Number of Competitive Bids (if any)..... : 0
- B4. Lowest Bid Amount (if bid)..... : \$0
- B5. If Board waived bids, show Agenda Date..... :
- B6. ... and Agenda Item Number..... : #
- B7. Boilerplate Contract Text Unaffected? (Yes / or cite ¶¶) :

- F1. Encumbrance Transaction Code..... : 1701
- F2. Current Year Encumbrance Amount..... : \$50,000
- F3. Fund Number : 0001
- F4. Department Number : 990
- F5. Division Number (if applicable) :
- F6. Account Number..... :
- F7. Cost Center number (if applicable) :
- F8. Payment Terms : Net 30

- V1. Vendor Numbers (A=uditor; P=urchasing)..... : 048465
- V2. Payee/Contractor Name : Los Alamos Cemetery District
- V3. Mailing Address..... : PO Box 702
- V4. City State (two-letter) Zip (include +4 if known) : Los Alamos CA 93440
- V5. Telephone Number :
- V6. Contractor's Federal Tax ID Number (EIN or SSN): 61-1724336

- V7. Contact Person :
- V8. Workers Comp Insurance Expiration Date : N/A
- V9. Liability Insurance Expiration Date[s] (G=enl; P=rofl) : 7/5/2016
- V10. Professional License Number..... : #N/A
- V11. Verified by (name of County staff)..... : Richard Morgantini
- V12. Company Type (Check one): [] Individual [] Sole Proprietorship [] Partnership [] Corporation

I certify: information complete and accurate; designated funds available; required concurrences evidenced on signature page.

Date : Authorized Signature  :

AGREEMENT FOR COUNTY GRANT

THIS AGREEMENT FOR COUNTY GRANT (hereafter Agreement) is made by and between the County of Santa Barbara, a political subdivision of the State of California (hereafter COUNTY) and Los Alamos Cemetery District (hereafter DISTRICT) with an address of P.O. Box 522, Los Alamos, CA 93440.

WHEREAS, DISTRICT requested COUNTY funding in the amount of \$50,000 in order to facilitate a land swap between the DISTRICT and the adjacent landowner, and to place the land in service, as described in Exhibit "A" attached hereto; and

WHEREAS, COUNTY finds that the project is eligible for a grant of COUNTY funds as a local community project; and

WHEREAS, COUNTY finds that this program is necessary to meet the social needs of the population of the COUNTY and it will serve public purposes of the COUNTY; and

WHEREAS, DISTRICT is authorized by Cal. Health & Safety Code Section 9074(a) to accept any grants from any local agency for any lawful purpose of DISTRICT; and

WHEREAS, the COUNTY Board of Supervisors has approved this request for funding and has authorized a COUNTY contribution to DISTRICT.

NOW, THEREFORE, it is mutually agreed between the parties hereto, as follows:

1. **PROJECT DESCRIPTION.** The project which is the subject of this Agreement is described in Exhibit "A" attached hereto, and incorporated herein by this reference, and also includes fencing (hereafter the "Project").
2. **GRANT OF COUNTY FUNDS.** COUNTY agrees to reimburse DISTRICT for costs incurred by DISTRICT for the Project, not-to-exceed a total of \$50,000. This not-to-exceed amount of \$50,000 includes \$20,000 that COUNTY shall hold in reserve for payment of permit and land use fees payable to the COUNTY related to the Project until due, at which time they shall be released to COUNTY for such payment. DISTRICT shall submit invoices or certified claims on the County Treasury for the costs incurred. These invoices or claims must cite the assigned Board Contract Number. Invoices submitted for payment must contain sufficient detail to enable an audit of the charges, and must provide supporting documentation. COUNTY representative shall evaluate whether the costs incurred were within the scope of the Project and whether supporting documentation is adequate, and if found to be satisfactory, shall initiate payment processing. COUNTY's failure to discover or object to any unsatisfactory billings prior to payment will not constitute a waiver of COUNTY's right to require DISTRICT to correct such billings or seek any other legal remedy.
3. **USE OF FUNDS.** DISTRICT agrees to apply the aforesaid grant funds solely to the Project for which the funds have been granted, as a community Project available for public use.
4. **PREVAILING WAGE.** The work described in Exhibit A is in part a "public work" as defined in Chapter 1 of Part 7 of Division 2 of the California Labor Code, to which Section 1771 applies, and DISTRICT shall cause work that is a "public work" to be performed as a "public work", including payment of prevailing wages.
5. **DESIGNATED REPRESENTATIVE.** Jette Christiansen at phone number 805-568-3400 is the representative of COUNTY and will administer this Agreement for and on behalf of COUNTY. Charles Gonzales at phone

number 805-344-6199 is the authorized representative for DISTRICT. Changes in designated representatives shall be made only after advance written notice to the other party.

6. **NOTICES.** Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by personal delivery or facsimile, or with postage prepaid by first class mail, registered or certified mail, or express courier service, as follows:

To COUNTY: County Executive Office, 105 East Anapamu Street, Room 406, Santa Barbara, CA 93101.
FAX: 805-568-3414

To DISTRICT: Charles Gonzales, Los Alamos Cemetery District, Post Office Box 522, Los Alamos, CA 93440. FAX: 805-344-4441

or at such other address or to such other person that the parties may from time to time designate in accordance with this Notices section. If sent by first class mail, notices and consents under this section shall be deemed to be received five (5) days following their deposit in the U.S. mail. This Notices section shall not be construed as meaning that either party agrees to service of process except as required by applicable law.

7. **TERM.** The term of this Agreement is from the date executed by COUNTY to completion of unless otherwise directed by COUNTY or unless earlier terminated. Notwithstanding the foregoing, reimbursements may be made by COUNTY pursuant to this Agreement for costs incurred by DISTRICT for the Project from July 1, 2015.

8. **INDEPENDENT CONTRACTOR.** It is mutually understood and agreed that DISTRICT (including any and all of its officers, agents, and employees), shall perform all of its work under this Agreement as an independent contractor as to COUNTY and not as an officer, agent, servant, employee, joint venturer, partner, or associate of COUNTY. Furthermore, COUNTY shall have no right to control, supervise, or direct the manner or method by which DISTRICT shall perform its work and function. However, COUNTY shall retain the right to administer this Agreement so as to verify that DISTRICT is performing its obligations in accordance with the terms and conditions hereof. DISTRICT understands and acknowledges that it shall not be entitled to any of the benefits of a COUNTY employee, including but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment insurance, workers' compensation and protection of tenure. DISTRICT shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, DISTRICT shall be solely responsible and save COUNTY harmless from all matters relating to payment of DISTRICT's employees, including compliance with Social Security withholding and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, DISTRICT may be providing services to others unrelated to the COUNTY or to this Agreement.

9. **DEBARMENT AND SUSPENSION.** DISTRICT certifies to COUNTY that it and its employees and principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, state, or county government contracts. DISTRICT certifies that it shall not contract with a subcontractor that is so debarred or suspended.
10. **TAXES.** DISTRICT shall pay all taxes, levies, duties, and assessments of every nature due in connection with any work under this Agreement and shall make any and all payroll deductions required by law. COUNTY shall not be responsible for paying any taxes on DISTRICT's behalf, and should COUNTY be required to do so by state, federal, or local taxing agencies, DISTRICT agrees to promptly reimburse COUNTY for the full value of such paid taxes plus interest and penalty, if any. These taxes shall include, but not be limited to, the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance.
11. **CONFLICT OF INTEREST.** DISTRICT covenants that DISTRICT presently has no employment or interest and shall not acquire any employment or interest, direct or indirect, including any interest in any business, property, or source of income, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. DISTRICT further covenants that in the performance of this Agreement, no person having any such interest shall be employed by DISTRICT. CONTRACTOR must promptly disclose to COUNTY, in writing, any potential conflict of interest. COUNTY retains the right to waive a conflict of interest disclosed by DISTRICT if COUNTY determines it to be immaterial, and such waiver is only effective if provided by COUNTY to DISTRICT in writing.
12. **RECORDS, AUDIT, AND REVIEW.** DISTRICT shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of DISTRICT's profession and shall maintain such records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting principles. COUNTY shall have the right to audit and review all such documents and records at any time during DISTRICT's regular business hours or upon reasonable notice. In addition, if this Agreement exceeds ten thousand dollars (\$10,000.00), DISTRICT shall be subject to the examination and audit of the California State Auditor, at the request of the COUNTY or as part of any audit of the COUNTY, for a period of three (3) years after final payment under the Agreement (Cal. Govt. Code Section 8546.7). DISTRICT shall participate in any audits and reviews, whether by COUNTY or the State, at no charge to COUNTY.
- If federal, state or COUNTY audit exceptions are made relating to this Agreement, DISTRICT shall reimburse all costs incurred by federal, state, and/or COUNTY governments associated with defending against the audit exceptions or performing any audits or follow-up audits, including but not limited to: audit fees, court costs, attorneys' fees based upon a reasonable hourly amount for attorneys in the community, travel costs, penalty assessments and all other costs of whatever nature. Immediately upon notification from COUNTY, DISTRICT shall reimburse the amount of the audit exceptions and any other related costs directly to COUNTY as specified by COUNTY in the notification.
13. **NON-ASSIGNMENT.** DISTRICT shall not assign, transfer or subcontract this Agreement or any of its rights or obligations under this Agreement without the prior written consent of COUNTY and any attempt to so assign, subcontract or transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

14. **TERMINATION.** Either party may terminate this Agreement at any time by written notice to the other party. In the event of termination, COUNTY shall pay DISTRICT for costs incurred in compliance with this Agreement less payments, if any, previously made. In no event shall DISTRICT be paid an amount in excess of the not-to-exceed amount under this Agreement. DISTRICT shall furnish COUNTY such financial information as in the judgment of COUNTY is necessary to determine the costs incurred by DISTRICT for the Project. In the event of a dispute, the decision of COUNTY shall be final. The foregoing is cumulative and shall not affect any right or remedy which COUNTY may have in law or equity.
15. **INDEMNIFICATION AND INSURANCE.** DISTRICT agrees to the indemnification and insurance provisions as set forth in Exhibit B attached hereto and incorporated herein by reference.
16. **SEVERABILITY.** If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
17. **REMEDIES NOT EXCLUSIVE.** No remedy herein conferred upon or reserved to COUNTY is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.
18. **TIME IS OF THE ESSENCE.** Time is of the essence in this Agreement and each covenant and term is a condition herein.
19. **NO WAIVER OF DEFAULT.** No delay or omission of COUNTY to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to COUNTY shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of COUNTY.
20. **ENTIRE AGREEMENT AND AMENDMENT.** In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.
21. **COMPLIANCE WITH LAW.** DISTRICT shall, at its sole cost and expense, comply with all County, State and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of DISTRICT in any action or proceeding against DISTRICT, whether COUNTY is a party thereto or not, that DISTRICT has violated any such ordinance or statute, shall be conclusive of that fact as between DISTRICT and COUNTY. DISTRICT shall be in compliance with Cal. Health & Safety Code Sections 8100-9703 as applicable to DISTRICT and shall ensure that if there are any gravesites on the property being transferred, they are handled appropriately according to law.
22. **CALIFORNIA LAW AND JURISDICTION.** This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa

Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.

23. **EXECUTION OF COUNTERPARTS.** This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.
24. **AUTHORITY.** All signatories and parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity (ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, DISTRICT hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which DISTRICT is obligated, which breach would have a material effect hereon.
25. **PRECEDENCE.** In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions of the Exhibits shall prevail over those in the numbered sections.
26. **SECTION HEADINGS.** The headings of the several sections, and any Table of Contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.
27. **SURVIVAL.** All provisions of this Agreement which by their nature are intended to survive the termination or expiration of this Agreement shall survive such termination or expiration.

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Agreement for County Grant between the **County of Santa Barbara** and **Los Alamos Cemetery District**.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by COUNTY.

ATTEST:

Mona Miyasato
County Executive Officer
Clerk of the Board

COUNTY OF SANTA BARBARA:

By: _____
Deputy Clerk

By: _____
Chair, Board of Supervisors

Date: _____

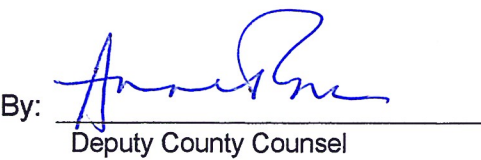
RECOMMENDED FOR APPROVAL:

County Executive Office

By: 
Department Head

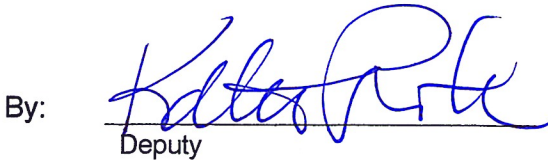
APPROVED AS TO FORM:

Michael C. Ghizzoni
County Counsel

By: 
Deputy County Counsel


APPROVED AS TO ACCOUNTING FORM:

Robert W. Geis, CPA
Auditor-Controller

By: 
Deputy

APPROVED AS TO FORM:

Risk Management

By: 
Risk Management

DISTRICT:

ATTEST:

LOS ALAMOS CEMETERY DISTRICT:

By: James E. Gill
JAMES Gill
TRUSTEE

By: Charles S. Gyal
Chair, Board of Trustees
Date: 11-13-15

EXHIBIT "A"

LOS ALAMOS CEMETERY

4777 DRUM CANYON ROAD

Telephone: (805) 344-4441

Mailing Address: P.O. Box 702

Los Alamos, CA 93440

Project Description:

The Los Alamos Cemetery District requested and was awarded funding in the amount of \$50,000 in order to facilitate a land swap between the District and the adjacent landowner, Joe Carrari, and to place the land into service.

The funding will be used for permitting, county application fees, re-zoning, surveys, plot-mapping, fencing, road-work, site-work and landscaping associated with the aforementioned and swap.

The land being swapped is rugged terrain unsuitable for gravesites. The land gained in the land swap is flat and suitable for gravesites.

EXHIBIT "B"

**Indemnification and Insurance Requirements
(For Service Contracts Not Requiring Professional Liability Insurance)**

INDEMNIFICATION

DISTRICT agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless COUNTY and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person or entity and for any costs or expenses (including but not limited to attorneys' fees) incurred by COUNTY on account of any claim except where such indemnification is prohibited by law. DISTRICT's indemnification obligation applies to COUNTY's active as well as passive negligence but does not apply to COUNTY's sole negligence or willful misconduct.

NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS

DISTRICT shall notify COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement. The indemnification provisions in this Agreement shall survive any expiration or termination of this Agreement.

INSURANCE

DISTRICT shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the DISTRICT, his agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance:

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if DISTRICT has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

If the DISTRICT maintains higher limits than the minimums shown above, the COUNTY requires and shall be entitled to coverage for the higher limits maintained by the DISTRICT. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the COUNTY.

B. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured** – COUNTY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the DISTRICT including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the DISTRICT's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).
2. **Primary Coverage** – For any claims related to this Agreement, the DISTRICT's insurance coverage shall be primary insurance as respects the COUNTY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, officials, employees, agents or volunteers shall be excess of the DISTRICT's insurance and shall not contribute with it.
3. **Notice of Cancellation** – Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the COUNTY.
4. **Waiver of Subrogation Rights** – DISTRICT hereby grants to COUNTY a waiver of any right to subrogation which any insurer of said DISTRICT may acquire against the COUNTY by virtue of the payment of any loss under such insurance. DISTRICT agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.
5. **Deductibles and Self-Insured Retention** – Any deductibles or self-insured retentions must be declared to and approved by the COUNTY. The COUNTY may require the DISTRICT to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
6. **Acceptability of Insurers** – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best's Insurance Guide rating of "A- VII".
7. **Verification of Coverage** – DISTRICT shall furnish the COUNTY with proof of insurance, original certificates and amendatory endorsements as required by this Agreement. The proof of insurance, certificates and endorsements are to be received and approved by the COUNTY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the DISTRICT's obligation to provide them. The DISTRICT shall furnish evidence of renewal of coverage throughout the term of the Agreement. The COUNTY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
8. **Failure to Procure Coverage** – In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, COUNTY has the right but not the obligation or duty to terminate the Agreement. Maintenance of required insurance coverage is a material element of the Agreement and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by COUNTY as a material breach of contract.

9. **Subcontractors** – DISTRICT shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and DISTRICT shall ensure that COUNTY is an additional insured on insurance required from subcontractors.
10. **Special Risks or Circumstances** – COUNTY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. DISTRICT agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of COUNTY to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of COUNTY.