

Special Meeting April 30, 2024

1. Call to Order

Chairman George Trujillo called the meeting to order at 11:03 a.m.

2. Pledge of Allegiance and Salute to the Flag of the State of New Mexico

All in attendance recited the Pledge of Allegiance and Saluted the Flag of the State of New Mexico.

3. Roll Call

Deputy Clerk Vivian Trujillo polled the board:

Commissioner George A. Trujillo	-	Present
Commissioner John H. Trujillo	-	Present
Commissioner Veronica M. Serna	-	Present

4. Approval of Agenda

County Manager Joseph Garcia stated I recommend approval.

Commissioner Veronica Serna made a motion to approve as presented.

Commissioner John Trujillo seconded the motion.

All in favor. Motion carried.

5. Discussion/Action: Approval of Minutes for April 15, 2024 (Special Meeting)

Manager Garcia stated there are no amendments, I recommend approval.

County Attorney Ernestina Cruz stated DesMarie has circulated my redline revisions, they are minor and not substantive. Mrs. Trujillo prepared these minutes, and it's a great set of minutes. The recommendation would be that you accept the proposed revisions as redlined.

Commissioner J. Trujillo made a motion to approve.

Commissioner V. Serna seconded the motion.

All in favor. Motion carried.

6. Discussion/Action: Approval of Professional Services Agreement with Thompson Consulting Services regarding Disaster Recovery

Attorney Cruz stated what you have before you is a redline draft of the Professional Services Agreement, which was initially drafted and circulated by Thompson Consulting. This agreement has seen some initial revisions that were made by Thomson, following some of the initial meetings that we had earlier in the month as they related to the

timeline for payment, and reference to New Mexico being the binding law, should there be any disputes.

There were some other revisions that were needed after the meeting that took place late last week. I will briefly walk you through the redline revisions. The opening paragraph makes reference to Mora County, New Mexico, being the client. I indicated by and through its Board of County Commissioners, the Governing Body that makes decisions regarding contracts.

Paragraph one, which is titled Term and Applicability. The initial draft reflected that the agreement would be in place for three years with successive terms. The successive term language would create some complications under the State's Procurement Code. When you have a Professional Services Agreement, it needs to be for no more than four years. I had to revise the language, which now reads that the agreement shall be for one year from the effective date of execution, which should be today, by both parties. And it may be renewed for three successive one-year periods, subject to County Commission consideration and approval on an annual basis and may result in an amended agreement. This is essentially a contract that could play out for a period of up to four years. I do think that it is best practice for you all as a Commission to be reviewing contracts on an annual basis. In addition to that, I would recommend that once this agreement is approved, this deadline be calendared to ensure that there is early discussion taking place between Thompson and the County. I would recommend that it be on the agenda for the regular meeting in April, which would mean that if there are any contract negotiations and discussions that need to take place that they're taking place in March.

Turning to the scope of work. The Scope of Work has been defined by Thomson. I added some amplifying language to include the following: This specific scope of work authorized through this agreement relates to disaster recovery projects, for which Mora County has received Senate Bill 6 funding from the State of New Mexico through the Department of Finance and Administration. In addition, this paragraph goes on to read as follows: the client's direct point of contact is the County Manager and/or designee as identified and authorized by the County Commission. The paragraph goes on to read further, consultant Thompson is directed to inform Mora County's HPCC legal team Singleton Schreiber, the County Manager, and the County Attorney of any and all work to be performed by consultant to ensure that Singleton Schreiber legal representation of Mora County is not adversely affected through the disaster recovery work to be performed by consultants, as described here.

Paragraphs three and four, and five remain unchanged.

Paragraph six is titled Fee for Services. Thompson has provided a fee schedule, and it's marked as Exhibit B; that was to their response to the RFP, and that's the fee schedule that will be in place. I didn't see anything that was particularly concerning regarding that

fee schedule because it represents what's customary in this line of work. In addition, as you've heard from Thompson, they do anticipate that they will not be exceeding 5%, which is reimbursable from FEMA.

Paragraph seven, titled Payment. John Hoyle proposed a timeline of 90 days to tender payment upon receipt of invoices. Anytime there's a contract that requires payment I do recommend that you sit down with the team that's going to be responsible for overseeing the contract so that they know and understand what the requirements are related to payments.

We will now turn to insurance. Insurance wasn't abundantly clear, as it related to exhibit A, so I changed it to indicate that would be the minimum limits within the New Mexico Tort Claims Act.

Work Product, this is an important paragraph as it relates to most independent contractors. It essentially stands for the proposition that the consultant, Thompson, will retain ownership of its trade secrets, proprietary and confidential information, which they have included as their Thomson Data Management System, TDMS, and all work products. This is a paragraph that needed some clarification because as a Public Entity, Mora County is subject to the Inspection of Public Records Act. It's a Sunshine Law that requires disclosure of documents unless there is a stated exception within the statute. Trade secrets is a stated exception, so to the extent there's a request for trade secrets, we will of course, immediately consult with Thomson, before a response is provided to any IPRA requestor. That is why I indicated in this paragraph that the County agrees to preserve the confidentiality of any trade secrets, confidential or proprietary information to the extent authorized by law, and I make reference to the extent authorized by law, because we do need to be mindful as a County Government about IPRA.

The remaining language is reflective of what Thompson has requested, with the exception of the final sentence, where again, I did have to indicate that this provision is subject to the New Mexico Inspection of Public Records. For Thompson team, I will provide you with a copy of the Inspection of Public Records Act so that you have a good understanding as to what those limitations are. The County is making a commitment by way of this agreement to protect your trade secrets and proprietary information.

Limitation of Liability. This is essentially standard language to place some limitation on liability related to this type of contract, it does provide that there will be insurance coverage and those terms are fine. The section related to paragraph eleven is No Consequential Damages. There's language indicating that the consultant Thompson is not going to be responsible for a whole host of reasons as to why the project cannot move forward. I did include some clarifying language, that it doesn't need to be beyond the

consultant's control. If there are delays that are within Thompson's control, well, then obviously, the County would want to hold them accountable for delays that are attributable to them, but if there's anything that's beyond their control, the County does need to be mindful and understanding that this was outside their scope of work.

We will next turn to Information Provided by Others, paragraph twelve has not been changed, it's acceptable. The same is true with regard to paragraph thirteen, Safety and Security.

Paragraph fourteen includes termination language, indicating that the agreement may be terminated upon 15 days prior written notice by either party. The paragraph itself has not been significantly amended, substantively. Paragraph fifteen had been clarified somewhat by John Clark and his team. It's a paragraph titled Governing Law and Forum. It previously indicated that this agreement would be governed by the laws of the State of New Mexico. That then goes on to say, and any suit brought by either party shall be brought in a court of competent jurisdiction in the State where the work is performed. That language is not completely acceptable. New Mexico law is best interpreted by New Mexico's judges. So, this paragraph will now read, this agreement shall be governed by the laws of the State of New Mexico, and any suit brought by either party shall be brought in a court of competent jurisdiction in the State of New Mexico.

Paragraph sixteen is Dispute Resolution. This is standard language that is integrated into contracts to avoid the parties from going into litigation, and indicates that if there's a dispute, the parties will attempt to resolve it by way of mediation, and in the event, it cannot be agreed to a resolution and mediation, then it can be litigated as provided in the prior paragraph number fifteen.

Paragraph seventeen is a paragraph which indicated that this contract could be subject to cooperative purchasing, which in its prior format read is followed: It is the intent of client to allow other governments and other governmental agencies to utilize this contract by entering into a cooperative purchasing agreement to the extent permissible by Local and State Law. I deleted that language and the subsequent sentence because this is a contract that's a standalone contract for Mora County, and you don't want to muddy the waters by having other governmental entities piggybacking onto this agreement. We need to keep it clean, focused and specific on the work that Thompson will be undertaking, specifically for Mora County.

Paragraph eighteen is Assignment, which is standard legal language, there's no need for revision. Paragraph nineteen is the notice requirement. The County Manager is identified as the point of contact for Mora County, and John Clark, President of Thomson Consulting Services is identified as the point of contact for Thompson Consulting. One

thing that I'm going to add to this provision is they do ask for a copy to be provided to Chad Brown, who is the Chief Legal Officer for Thompson. I am likewise going to include a copy to my office to ensure that we're not missing anything.

The next paragraph is titled paragraph twenty, Miscellaneous, that includes standard legal language that you typically would find in a contract. I did make an amendment to paragraph 20(c), to indicate that Thompson will retain records for at least four years, rather than three, and then I made a revision as well to paragraph 20 D, this is what would ordinarily be referred to as the statute of limitation language. This language is not in harmony with New Mexico Law indicating that the parties would bring suit within two years, from when the party knew or should have known that there was something that happened and you could bring a lawsuit that she should have known language can sometimes be complicating language, and then it also goes on to say, but in no case later than five years after consultant completes the work. You never want to have a statute of limitation type provision in an agreement of this type, which is not in harmony with New Mexico Law. I deleted that language and those provisions. It now reads, notwithstanding any statute to the contrary, the parties agree that any action to enforce or interpret this agreement shall be initiated within the applicable statute of limitations for subject claims, in accordance with New Mexico State Law.

With that being said, the summary that I have provided to you is a detailed summary of all of the revisions which have been made. The County Manager, should it be the pleasure of the Commission to approve this contract with the revisions as presented to you, will be able to sign the contract effective today.

Continued discussion took place with questions raised by representatives from Thompson Consulting.

Manager Garcia suggested taking a break for both parties to further discuss details of the agreement.

Commissioner G. Trujillo stated can I have a motion to take a 15-minute break?

Commissioner J. Trujillo made a motion.

Commissioner V. Serna seconded the motion.

All in favor. Motion carried.

The Commission entered a 15-minute break at 10:30 a.m.

Commissioner G. Trujillo stated can I have a motion to reconvene regular session after a 15-minute break?

Commissioner V. Serna made a motion to reconvene regular session.

Commissioner J. Trujillo seconded the motion.

All in favor. Motion carried.

The Commission reconvened regular session at 12:06 p.m.

Attorney Cruz stated I want to thank the Commission for giving us a short break to be able to visit with Thompson, and certainly want to thank Jonathan and Mike for their thoughtful concerns and questions so as to ensure that everybody is on the same page with regard to what the requirements are going to be, contractually. We had a productive dialogue regarding some of the provisions within the contract. I will say that County Manager Garcia was likewise in attendance, we did step away so that the Thompson team could have an opportunity to visit with their legal counsel or whoever else they felt the need to visit with. I have not heard anything more from them, so I will defer to them at this point in time so that they can let you know where they are at with regard to this contract.

Jonathan stated we certainly are anxious to get this going. We're at this point accepting all the changes that Ms. Cruz presented to you. We think that our work is good, we're going to show you how we're going to help the County and the residents, and I think there's a lot of opportunity in the contract to expand maybe at a later date, but for right now, we want to get started and want to start providing the service to residents.

County Clerk Arellano stated I could vouch for Thompson because you guys have been out there in the acequias and without you guys a lot of the stuff wouldn't have been brought to. Now that we're recognizing the damages reoccurring and stuff, things are changing, and that's what happens. We're changing what's happening, and everything's going forward, and what I want you to know, and to say to people here, that all these contractors in Mora County are doing, that they're being completed and 100% verified by you people. That's the way this system works. The Commission was asked to hire local people to do local work, that's happening, and through you guys, all these contracts have been fulfilled 100%.

Commissioner V. Serna stated I just want to clarify the difference. Mr. Arellano is talking about as to what you guys will be doing for us, you guys are brought on to Mora County as consultants for Category C projects. Mr. Arellano is talking about acequias. You guys were monitors and debris removal on acequias, so there's a difference. That is not what we have you here to do.

Clerk Arellano stated basically without people like you placed in the process, a lot of this work could be done, but that doesn't mean it would be done right. That's where you stood with us. That's what I was saying.

Attorney Cruz stated this is my recommendation, that the form of contract that has been discussed and presented to you with some very minor revisions, will be sent to DesMarie Romero, in clean form, for the Manager's approval following Commission authorization.

We will transmit it as quickly as we can today to John Clark for his signature, with the original being sent back. Mr. Clark can send his original signature, but we want to make sure that we do see it, to the extent possible today, the signed agreement so that we're all on the same page that it was signed today. Earlier there was mention about possible additional work, and I just want to be clear that the possible additional work, should there be any, is going to result by way of consultation between Singleton Schreiber, the County Manager, Thompson team and myself for presentation to the County Commission for review and approval if anything more needs to be done, for an amendment, and that's how that process is going to work.

In addition, I would like to say something that I shared with Mike and Jonathan when we were visiting earlier. Any contractor that is working for Mora County in this recovery effort is expected to come to the table and to work collaboratively in the best interests of Mora County. Mora County is the client, and Mora County is what's the primary focus and your interests as are going to be identified and defined, going forward, and that has already been identified and defined by the County Commission is going to be the direction that is going to be followed. I just wanted that to be memorialized in the minutes, because it's important that everybody know and understand that we're working as a collaborative team, so as to ensure that the County is protected, and that you get to move forward from this disaster in a way that's in harmony with the vision of the Governing Body.

Commissioner V. Serna stated I have some questions about the proposal. On section four, number seven. It states, if applicable, for permanent reconstruction of the roads. You stated there if applicable, but all our projects are permanent repair. Is that correct? They are all category C. So, you will be providing inspections and cost estimates and all of that for all those projects?

Jonathan Clark stated, yes, I am not sure how far along some of the work is, as far as estimating and stuff like that but that's the plan, you will only be charged for what is needed on these roads.

Commissioner V. Serna the design is for permanent work. The other question that I had, it says, you will assist with procurement, and RFPs and all that. I hope you guys are more involved than just assisting.

Jonathan Clark stated I think that'll be part of whatever task order was given exactly how involved you want us to be.

Commissioner V. Serna stated I know, Mr. Sandoval, that you are very familiar with State Procurement, and hopefully, Federal Procurement. I know there's three different

financial positions that you guys have. I don't know which position will be responsible for that, but I just want to make sure that we're compliant with both procurement processes. Just to make sure that there's no excuse for them not to reimburse us for any of that, because we cannot afford, not even a little bit of that loan to have to be paid back by Mora County.

Manager Garcia stated I recommend approval.

Commissioner J. Trujillo made a motion to approve.


Commissioner V. Serna seconded the motion.

All in favor. Motion carried.

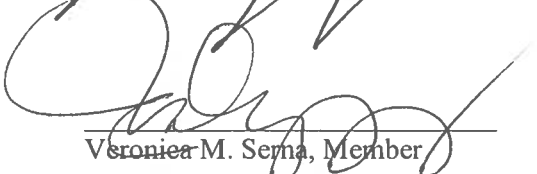
Attorney Cruz stated I have one last thing that needs to be reflected in the minutes. This contract, which the Manager will be signing shortly, and that will be transmitted to John Clark for his signature as well, is now the governing documents regarding the contractual relationship between Mora County and Thompson Consulting. I know that the Thompson team had made reference earlier to the RFP. I also appreciate that Commissioner Serna made reference to the response. Those are all forms of documents that lead up to the contract, we now have a clearly written contract, and what's going to take place going forward is this, important to make note of this Chairman, there has already been conversation with Singleton Schreiber, about scheduling a team meeting with Thomson; so that we have very clearly defined parameters regarding how they are going to be working collaboratively with one another, so as to ensure that they're both working on the same page, because while they're attending to work that's related to the disaster recovery in the HPCC claim, you want to make sure that the work that they're doing is in harmony and not creating potential conflict, with one entity going in one direction and the other going in another direction, which is why the language at Scope of Work section, at paragraph two was written in the way that it was. Again, I want to thank Thompson for understanding why this collaborative relationship needs to be built out.

In addition to that, I want to make clear that Thompson had some questions regarding how that relationship is going to work. So, we're going to get ahead of it as quickly as we can. I will be visiting with Britt so that we can identify some potential times for that initial team meeting to take place, and we'll coordinate with Thompson based upon their availability, to make sure that everybody has an opportunity to talk through what this process is going to look like. In addition to that, Thompson, we want to make sure that you have all of the information that you need, as it relates to the Senate Bill 6 projects. So, we'll be coordinating with you on that. This Commission and I defer to you all, of course, but based upon what I have seen and heard in past meetings, everyone understands that you are wanting to move forward as quickly as possible, and this RFP was top priority. Now that you're going to have a contract in place, I would recommend that early next week, there'll be a Commission meeting for you to hear from Thomson

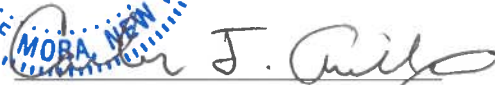
MORA COUNTY BOARD OF COMMISSION


George A. Trujillo, Chairman


John H. Trujillo, Vice-Chairman


Veronica M. Serna, Member




Carlos J. Arellano, County Clerk

regarding what these next steps may look like in terms of their familiarity with the projects, but this is something that can be discussed with them in further detail. But I do think that receiving some regular updates regarding the work initially is important so as to ensure that any questions you have are being properly addressed.

7. Executive Session: Threatened Litigation related to HPCC Claim and John Paul Vigil matter

Executive Session did not occur.

8. Discussion: Other Informational Items

Manager Garcia stated earlier, myself, and these two fine gentlemen, and Chairman, we went to the courthouse, they need some rental space. So, we showed them some potential rental space, and they're going to think about it. I'll keep you informed. We would need an MOU with Thomson. I think what they are agreeing to, tentatively, is to finish out one of the rooms and then they can utilize it for further operation during their time here, but they will pay for everything.

9. Signing of Approved Documents

The Commission signed the approved documents.

10. Adjournment

Commissioner Trujillo made a motion to adjourn.

Commissioner V. Serna seconded the motion.

All in favor. Motion carried.

The meeting adjourned at 12:24 p.m.

