

YOLANDA P. ESPARZA
HUDSPETH COUNTY AUDITOR
P.O. BOX 279
SIERRA BLANCA, TEXAS 79851
PHONE #915-369-4147
FAX # 915-369-2407

RECEIVED

DEC 27 2006

OPINION COMMITTEE

December 18, 2006

Greg Abbott
Attorney General Of Texas
Attn: Nancy Fuller
P.O. Box 12548
Austin, Texas 78711-2548

FILE # ML-45089-D16
I.D. # 45089

Re: Hudspeth County Contract with Scott Foster

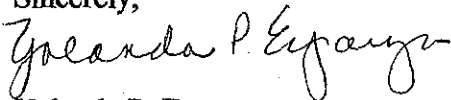
RQ-0557-6A

Dear Mr. Abbott:

I am the County Auditor for Hudspeth County and I really need an opinion on an important matter. Hudspeth County entered into a Contract with Mr. Scott Foster on October 16, 2006, a copy of which is attached hereto. I myself and the County Judge asked for an opinion from our county attorney and in fact did receive one, a copy of which is attached hereto. The Treasurer and myself are worried about this if in case this is an illegal contract, since our signatures go on the checks to be paid to Mr. Scott Foster. My question to you is "should I pay Mr. Foster pursuant to this Contract or is it an illegal Contract?". Attached hereto is an Opinion written by C.R. Kit Bramblett, Hudspeth County Attorney. Also attached is an Opinion that he furnished to the County Judge and Commissioners' Court concerning a similar Contract that was offered in September of 2006. This contract is also attached hereto and although voted on, was never signed because Mr. Bramblett, Hudspeth County Attorney and Mr. Jaime Esparza, District Attorney objected. Mr. Esparza wrote the Hudspeth County Commissioners' Court outlining his position concerning the Felony Prosecution and the advise concerning that to be furnished to the Sheriff, which is attached hereto.

My question to you again, should I or should I not pay this Contract? I would appreciate any help I can get.

Sincerely,



Yolanda P. Esparza
Hudspeth County Auditor

**C. R. (KIT) BRAMBLETT
HUDSPETH COUNTY ATTORNEY**

P.O. Box 221528
El Paso, Texas 79913-1528

(915) 877-4173 (El Paso Office)
(915) 986-2495 (Ranch)
(915) 877-7146 (Fax)

September 28, 2006

CMRRR: 7006 0100 0006 6044 8435

Becky Dean-Walker, County Judge
P.O. 68
Hudspeth County Courthouse
Sierra Blanca, TX 79851-0068

Re: Authority of Hudspeth County commissioners court to contract with attorney absent county attorney approval

Dear Judge Walker:

Your September 18, 2006 letter asked me to provide a written opinion concerning the legality of the agreement for professional services between the County of Hudspeth and Scott Foster, Attorney at Law. For the reasons discussed herein, the agreement represents an unlawful usurpation of the authority of the Hudspeth County Attorney. Therefore, the contract is illegal.

A County Commissioners Court has broad discretion in conducting County business, but its authority is not unlimited; the legal basis for any action must be grounded in the Constitution or statutes, or implied from the power to accomplish its legitimate objectives as administrative head of county government. *Guynes v. Galveston County*, 861 S.W.2d 861, 863 (Tex. 1993); Tex. Att'y Gen. Op. JM-1281 (1990). Further, the Commissioners Court can not lawfully deprive a public officer of the powers, rights, and duties which inhere in his office. Tex. Att'y Gen. Op. JM-1281. Thus, where a County official is vested by the Constitution or the Legislature with exclusive authority to perform a duty, the Commissioners may not employ or authorize the employment of another person to perform that duty. *Id.* The authority of the Commissioners to hire legal counsel to represent the County is limited to those instances in which the statutory duties of the County Attorney and other County officials are not usurped. *Id.*; *Guynes*, 861 S.W.2d at 863-64.

Hudspeth County's agreement with Mr. Foster calls for him to provide advice and assistance to the County and its law enforcement personnel concerning criminal investigation and related matters, and prepare criminal judgments and related documents. Under the Texas Constitution, County Attorneys and District Attorneys are charged primarily with enforcing criminal statutes. Tex. Const. art. V, § 21; Tex. Att'y Gen. Op. GA-0153 (2004). The actions which the County has contracted Mr. Foster to perform fall within the scope of the County Attorney's and District

Becky Dean-Walker, County Judge

September 28, 2006

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Attorney's authority to "represent the State" in enforcing the criminal laws. Tex.Const. Art. V, § 21; Tex. Att'y Gen. Op. GA-0153. By contracting with an attorney to represent the County in criminal cases without the consent of the County Attorney or the District Attorney, the Commissioners Court has unlawfully usurped the County Attorney's role.

Similarly, Hudspeth County's agreement with Mr. Foster calls for him to provide advice and research assistance to the County Attorney of Hudspeth County and other elected officials with the consent of the County Attorney. However, Government Code section 41.102 provides that a prosecuting attorney (which is defined to include a county attorney) may employ assistant attorneys. The procedure for employment of deputies or assistants to district, county, and precinct officers is described in Local Government Code section 151.001, which requires such an officer to file a sworn application with the Commissioners' Court. Under these provisions, according to the Texas Attorney General, "The authority to choose the employees to assist the county attorney in performing his duties is vested in the county attorney and not in the commissioners court or the sheriff. Further, neither the commissioners court nor the sheriff may usurp the county attorney's duties by attempting to assign them to persons under the court's control or the control of any other county official." Tex. Att'y Gen. Op. JM-1281.

For these reasons, the Texas Attorney General determined in 1990 that Harris County lacked authority to create a position to be filled by a licensed attorney appointed by an individual County Commissioner or the sheriff for the purpose of giving legal advice to the Commissioner or the sheriff about his or her official powers and duties. Tex. Att'y Gen. Op. JM-1281. More recently, in 2003, the Texas Attorney General concluded that the El Paso County Bail Bond Board, as a county entity, did not possess the authority to contract with a private attorney to represent the Board without the consent of the El Paso County Attorney, since it would unlawfully divest the County Attorney of his authority. Tex. Att'y Gen. Op. GA-0074 (2003).

Neither the Hudspeth County Attorney nor the District Attorney have consented to the contract between Hudspeth County and Mr. Foster. That contract unlawfully usurps the authority exclusively granted to the County Attorney by the Texas Constitution and by the Texas Legislature. Therefore, the agreement is unlawful.

Respectfully submitted,



C.R. 'Kit' Bramblett

Hudspeth County Attorney

Becky Dean-Walker, County Judge

September 28, 2006

Page 3

cc: Wayne West
P.O. Box 131
Sierra Blanca, 79851

Curtis Carr
P.O. Box 111
Ft. Hancock, Texas 79839

Jim Ed Miller
P.O. Box 205
Ft. Hancock, Texas 79839

Jim Kiehne
21403 Hwy 62/180
El Paso, Texas 79938



JAIME ESPARZA

District Attorney
Thirty-Fourth Judicial District
(El Paso, Culberson and Hudspeth Counties)

October 13, 2006

Honorable C. R. "Kit" Bramblett
Hudspeth County Attorney
Hudspeth County Courthouse
Sierra Blanca, Texas 79851

P.O. Box 221528
El Paso, Texas 79913-1528

Dear Mr. Bramblett:

This is in response to your inquiries regarding the following:

1. Whether District Attorney Jaime Esparza has made his office available to your Sheriff on an around-the-clock basis; and
2. Whether District Attorney Jaime Esparza has concerns of contract provisions between Hudspeth County and non-DA-deputized outside counsel, in which such outside counsel would "provide advice, and assistance to law enforcement personnel regarding civil rights ... criminal investigation and related matters, with consent of the Sheriff of Hudspeth County."

As to the first matter, I would direct your attention to a letter that I sent Sheriff West on August 4, 2005, spelling out the availability of our office to his office, at all times (copy enclosed). The letter also spells out the designated contacts within our office (see provision numbers 2 and 3). In fact, the letter even provides him with my mobile phone number, which has not changed since I sent the letter. I am surprised by your first inquiry, since I am not aware of any instance since that date, in which our office could not be contacted by your Sheriff, even on holidays (I am of the understanding that we were available when we were contacted, for example, this past Labor Day holiday).

As to the second matter, I again direct you to my letter of August 4, 2005, provision number 10:

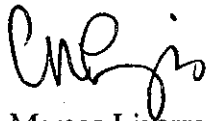
“For the record, we do not agree to, or acquiesce to, anyone that is not a deputized Assistant District Attorney for the 34th Judicial District of Texas, to perform any attorney-prosecutor functions on cases in which we have jurisdiction in Hudspeth County. If we would agree to any exceptions to this, we would do so in writing.”
(*My emphasis*).

This provision of my letter continues to intend any law enforcement personnel, and not just the Hudspeth County Sheriff and his office. As of this date, Mr. Esparza has not executed any writing to indicate a different intention on his part.

The contract provision is especially disconcerting because it seems to presume that your Sheriff is vested with the power to consent to an encroachment on the District Attorney's unique constitutional and statutory authority (noting it is authority that is unqualified as to anyone holding the sheriff's office) in the enforcement of criminal statutes within his jurisdiction.

I hope this answers your questions. Please let me know if I can clarify. On discussion with you, I am taking the liberty of copying this letter to your Commissioners Court, and to Sheriff West.

Sincerely,



Marcos Lizarraga
First Assistant District Attorney
34th Judicial District of Texas

cc: Hon. Becky Dean Walker, County Judge (via e-mail j....@yahoo.com);
Hon. Curtis Carr, Commissioner, Precinct 2 (via e-mail j....@yahoo.com);
Hon. Jim Kiehne, Commissioner, Precinct 3 (via e-mail j....@yahoo.com);
Hon. Jim Miller, Commissioner (via e-mail d....@aol.com);
Hon. Wayne West, Commissioner (via e-mail j....@yahoo.com); and
Sheriff Arvin West, Hudspeth County Courthouse, Sierra Blanca, Texas 79851
(CM/RRR No. 7004 1160 0007 2430 7662)



JAIME ESPARZA

District Attorney
Thirty-Fourth Judicial District
(El Paso, Culberson and Hudspeth Counties)

August 4, 2005

Sheriff Arvin West
Hudspeth County Courthouse
Sierra Blanca, Texas 79851

CM / RRR NO.
7005 0390 0000 7774 0339

Dear Sheriff West,

I have met with Deputy Chief Doyle a couple of times since Mr. Esparza and I met with you on June 30. I would like to take this opportunity to formalize some business practices and address other matters between our offices, to make our mutual operations more efficient:

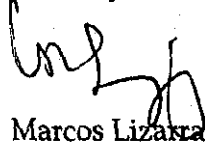
1. When and if the status of the RIC cases changes to non-acceptance of such cases by the DA's Office, on the grounds that the primary prosecutorial jurisdiction of such cases is the federal government's (or, of course, for any other reason), you will be notified. At this time and until further notice, the DA is accepting such cases.
2. Kelly Aguilar is our Intake Division Chief. She has been the Division Chief supervisor for matters regarding Hudspeth County (and as I expect you know, was Scott Foster's supervisor) for the past years, and continues in such duties. She also oversees the support staff that services your County. You should feel free to contact her or her designate on any District Attorney matters that you do not contact Mr. Esparza or myself on.
3. Juan Sanchez is our DA Chief Investigator, and Ed Porterfield is our Deputy Chief Investigator. These individuals are in charge of our DA Investigator staff, all of whom are peace officers. You should feel free to contact these individuals on DA or law enforcement matters that you do not contact Mr. Esparza, Ms. Aguilar, or myself on.
4. As discussed with Chief Doyle, our Intake Division now has a specially-designated in-box for your cases. It is my understanding that you have set up a regular courier system between our offices. We prefer prompt submissions of cases to our office, and Kelly has talked to Chief Doyle about a system to sign for the cases, and to document our return of cases to you.
5. From your conversation with Mr. Esparza when he was in Sierra Blanca, I got the impression that you are able to facilitate assembling the Hudspeth Grand Jury on short notice, when necessary. Besides our regularly-scheduled grand jury sessions, there might be occasions when it would be practical to assemble a grand jury because of your jail occupancy, or for a tactical law enforcement

reason (particularly if waivers of indictment will not be used to the extent as in the past). In the instances that you deem advisable a grand jury session date that is not on the regular schedule, please feel free to contact Kelly Aguilar.

6. We have been able to make alternate transportation arrangements for our work in Hudspeth County. Please let me know to whom the 2001 Toyota Avalon, Vin-4T1BF28BX1U136599, should be returned for signature and inventory. I would like to do this while in Sierra Blanca for grand jury, on Friday August 19. If you do not have a particular designate to sign for this item, we'll leave the keys with your office staff.
7. We have a computer laptop belonging to your office. Please let me know to whom that unit should be returned for signature and inventory. I would like to do this while in Sierra Blanca for grand jury, on Friday August 19. If you do not have a particular designate to sign for this item, we'll leave the unit with your office staff.
8. During a visit to Sierra Blanca last year, Scott Foster showed me a designated DA space in the courthouse. The DA has apparently lost that secure area, and the new space for our needs is in a sort of ante-room that has no security. Please let me know if you know of any available space that is secured (i.e., where we could maintain under lock and key), which could be used for Hudspeth County matters on a regular basis, by the District Attorney's Office
9. At a docket session a month ago, I had the contents of a case file faxed to me from the DA's El Paso office, to Sierra Blanca, so that I could provide discovery to a defense attorney. When I lent the fax to that attorney, he told me he did not need to see it, advising me that he himself had brought the sheriff's file to court during a previous session. Please let me know if you have any policies or exercise any discretion in allowing defense counsel to view the investigative file after you have submitted cases to our office. This will better help us formulate our discovery practices and tactics in your jurisdiction.
10. For the record, we do not agree to, or acquiesce to, anyone that is not a deputized Assistant District Attorney for the 34th Judicial District of Texas, to perform any attorney-prosecutor functions on cases in which we have jurisdiction in Hudspeth County. If we would agree to any exceptions to this, we would do so in writing.

Please let me know if you believe there are any further matters that should be addressed at this time. I believe Kelly Aguilar has provided your office with phone numbers where our office can be contacted by you. I am reasonably easy to get a hold of: during regular business hours my secretary, Blanca (DA extension 3584), can track me down fairly quickly. For direct contact, my mobile number is 915-474-1600.

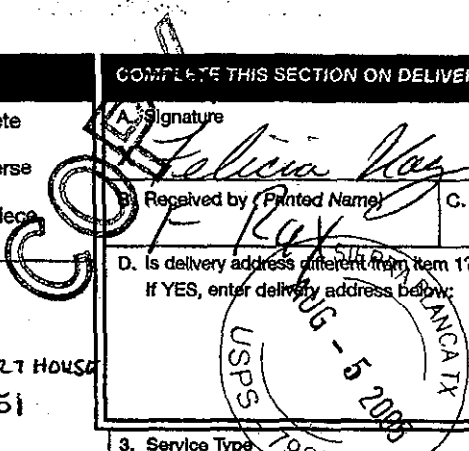
Sincerely,



Marcos Lizarraga
First Assistant

cc - Kelly Aguilar, Division Chief; Juan Sanchez, Chief Investigator

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece or on the front if space permits. 	<p>A. Signature <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p> <p>Received by (Printed Name) C. Date of Delivery</p>
<p>1. Article Addressed to:</p> <p>SHERIFF ARVIN WEST HUDSPETH COUNTY COURTHOUSE SIERRA BRANCA, TX 79851</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number (Transfer from service label)</p>	<p>7005 0390 0000 7774 0339</p>
<p>PS Form 3811, February 2004</p>	<p>Domestic Return Receipt 102585-02-M-1540</p>



C. R. (KIT) BRAMBLETT
HUDSPETH COUNTY ATTORNEY

P.O. Box 221528
El Paso, Texas 79913-1528

(915) 833-2144 (El Paso Office)
(915) 986-2495 (Ranch)
(915) 833-2517 (Fax)

October 19, 2006

Yolanda Esparza
Hudspeth County Auditor
Box 279
Sierra Blanca, Texas 79851

Dear Mrs. Esparza:

As you have requested a Legal Opinion from the County Attorney concerning the validity of the Contract entered into by Scott Foster and Hudspeth County on the October 16, 2006. It is my opinion that this is an illegal Contract. That it is illusionary and that it usurps authority exclusively granted to the County Attorney and/or District Attorney by the Constitution and the Statutes.

It is my understanding that you may request of the Attorney General an Opinion as to whether or not you should pay the salary set out in the Contract.

Enclosed is a copy of the Opinion that I furnished Judge Walker on the Original Contract which Scott Foster had presented Commissioners' Court. It is my opinion that Mr. Foster can do the same things under his revised contract as he was proposing to do under the first Contract. According to Opinion of Attorney General 1946 No. 0-7474

The County Commissioners' Court shall not employ counsel on a salary basis to advise and represent it in whatever matters might arise.

This is exactly what the Contract of October 16 does. Another problem I have with the contract, although it was entered into on October 16, 2006, it calls for the gentlemen to be paid for the two (2) weeks prior to that.

Sincerely,



C. R. Kit Bramblett
Hudspeth County Attorney

STATE OF TEXAS

COUNTY OF HUDSPETH

§
§
§

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement made and entered into this day by and between the County of Hudspeth, Texas, a political subdivision of the State of Texas, hereinafter referred to as "Hudspeth County", and Scott P. Foster, Attorney At Law, whose principal place of business at 718 Myrtle, El Paso, El Paso County, Texas, hereinafter referred to as "Scott P. Foster."

WITNESSETH:

WHEREAS, Hudspeth County and Scott P. Foster have agreed that in order to provide certain professional and legal services for Hudspeth County more fully described herein.

NOW THEREFORE, in consideration of the terms and conditions herein which fairly compensate the performing party, it is mutually agreed as follows:

1. PURPOSE OF AGREEMENT.

The purpose of this Agreement is to more efficiently and effectively enact law enforcement, judicial, and governmental legal services in Hudspeth County by the provision of dedicated professional services arising in and for Hudspeth County. This agreement addresses the issues of compensation and all the terms and conditions relating to those services.

2. TERM.

This Agreement shall be effective October 1, 2006 and shall terminate on September 30, 2007. The agreement may be extended, renewed or amended by written agreement of the parties.

3. DUTIES OF SCOTT P. FOSTER.

3.1 Scott P. Foster shall provide legal and professional services arising out of Hudspeth County and perform such other related services as may be required by mutual agreement of Scott P. Foster and Hudspeth County, including, but not limited to the following:

- (a) Compilation of data for the Southwest Border Initiative project (otherwise known as "Federally Initiated Cases;")
- (b) Provide advice and assistance to law enforcement personnel regarding civil rights, administrative procedures, criminal investigation and related matters, with consent of the Sheriff of Hudspeth County;
- (c) Provide advice and research assistance to the County Attorney of Hudspeth County, and other elected officials in and for Hudspeth County with consent of the County Attorney for Hudspeth County;
- (d) Provide research assistance to the elected Judiciary in and for Hudspeth County regarding matters which are of interest to the Courts;
- (e) Provide assistance to the County Clerk of Hudspeth County in the preparation of criminal judgments and related documents;
- (f) Act as Special Prosecutor, upon assignment by the County Judge of Hudspeth County, if and when the County Attorney advises the Court that such special prosecutor is necessary, and where the Court deems such assignment is appropriate.

3.2 Scott P. Foster shall provide communications and necessary equipment and research tools as required to fulfill said obligations to Hudspeth County.

3.3 Nothing in this Agreement precludes Scott P. Foster from providing more and other services and resources, to and on behalf of, Hudspeth County.

4. DUTIES OF HUDSPETH COUNTY.

4.1 Hudspeth County agrees to budget \$61,200 annually beginning October 1, 2006 for compensation to Scott P. Foster for services which are contemplated by this Agreement. Said compensation shall be paid on the last business day of each month in the amount of \$5,100, subject to deductions listed in 4.3 below.

4.2 Hudspeth County shall make available an office area and telephone which may be used by Scott P. Foster in performing his duties for Hudspeth County.

4.3 Hudspeth County shall provide a vehicle to Scott P. Foster, who will lease said vehicle at the rate of \$100 per month to compensate Hudspeth County for use not related to Hudspeth County business. Scott P. Foster will provide maintenance, liability insurance, and fuel costs for the vehicle. The payment for the lease shall be deducted from the monthly payments to Scott P. Foster, such that the payments in 4.1 above shall be \$5,100 less \$100 for a total of \$5,000.

4.4 Nothing in this Agreement precludes Hudspeth County from providing any additional resources to enhance the services received from Scott P. Foster.

5. NOTICE.

Official notice shall be by written notice and delivery to all of the parties to this Agreement. Delivery shall be by fax or deposit in the United States Postal Service, first class, return receipt requested to:

TO SCOTT P. FOSTER: Scott P. Foster, Attorney At Law
718 Myrtle
El Paso, Texas 79901

TO HUDSPETH COUNTY: County Judge Becky Dean-Walker
The County of Hudspeth
County Courthouse
Sierra Blanca, Texas 79851-0068

6. LEGAL RELATIONSHIP.

Nothing contained herein shall be construed as creating the relationship of employer and employee or principal and agent between Hudspeth County and Scott P. Foster. Each party is responsible for their own acts and deeds and for those of their agents, employees, and contractors during the performance of any work or services to the extent provided by law.

7. LEGAL CONSTRUCTION.

In case any one or more of the provisions contained in this agreement shall be held to be invalid, illegal, or unenforceable in any respect such invalidity, illegality or unenforceability shall not affect any other

provision of this Agreement and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained in this Agreement.

This Agreement is enforceable in Hudspeth County, Texas according to the applicable law of the State of Texas.

8. **AMENDMENT.**

This Agreement may be amended from time to time as deemed necessary in order to more fully describe any obligations by the parties. Such amendment shall be in written form executed in the same manner as this agreement, and attached thereto so as to be read as a part of the original, and filed with in the same manner as such other contracts with Hudspeth County.

9. **TERMINATION.**

This Agreement may be terminated by either party upon 30 days written notice to the other party to the addresses set forth in Section 5.

10. **EXECUTION.**

IN WITNESS WHEREOF this Agreement has been executed on behalf of the County of Hudspeth, State of Texas and Scott P. Foster in the manner provided by law on this the 28th day of August, 2006.

Scott P. Foster, Attorney At Law
718 Myrtle
El Paso, Texas 79901
TX Bar No. 00787489

ATTEST

THE COUNTY OF HUDSPETH

Paula Hoover
County Clerk

By _____
County Judge Becky Dean-Walker
With consent of the Commissioners' Court
Of Hudspeth County, Texas

APPROVED AS TO FORM:

C. R. Bramblett
County Attorney

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement made and entered into this day by and between the County of Hudspeth, Texas, a political subdivision of the State of Texas, hereinafter referred to as "Hudspeth County", and Scott P. Foster, Attorney At Law, whose principal place of business at 718 Myrtle, El Paso, El Paso County, Texas, hereinafter referred to as "Scott P. Foster."

WITNESSETH:

WHEREAS, Hudspeth County and Scott P. Foster have agreed that in order to provide certain professional and legal services for Hudspeth County more fully described herein.

NOW THEREFORE, in consideration of the terms and conditions herein which fairly compensate the performing party, it is mutually agreed as follows:

1. PURPOSE OF AGREEMENT.

The purpose of this Agreement is to more efficiently and effectively enact judicial, and governmental legal services in Hudspeth County by the provision of dedicated professional services arising in and for Hudspeth County. This agreement addresses the issues of compensation and all the terms and conditions relating to those services.

2. TERM.

This Agreement shall be effective October 1, 2006 and shall terminate on September 30, 2007. The agreement may be extended, renewed or amended by written agreement of the parties.

3. DUTIES OF SCOTT P. FOSTER.

3.1 Scott P. Foster shall provide legal and professional services arising out of Hudspeth County and perform such other related services as may be required by mutual agreement of Scott P. Foster and Hudspeth County, including, but not limited to the following:

- (a) Compilation of data for the Southwest Border Initiative project (otherwise known as "Federally Initiated Cases;")
- (b) Provide advice and assistance to law enforcement personnel regarding civil rights, administrative procedures, and related matters, with consent of the Sheriff of Hudspeth County;
- (c) Provide advice and research assistance to the elected officials in and for Hudspeth County on civil and administrative matters; and
- (d) Provide assistance to the County Clerk of Hudspeth County in the preparation of documents for the County and District Court.

3.2 Scott P. Foster shall provide communications and necessary equipment and research tools as required to fulfill said obligations to Hudspeth County.

3.3 Nothing in this Agreement precludes Scott P. Foster from providing more and other services and resources, to and on behalf of, Hudspeth County.

4. DUTIES OF HUDSPETH COUNTY.

4.1 Hudspeth County agrees to budget \$49,200 annually beginning October 1, 2006 for compensation to Scott P. Foster for services which are contemplated by this Agreement. Said compensation shall be paid on the last business day of each month in the amount of \$4,100, subject to deductions listed in 4.3 below.

4.3 Hudspeth County shall provide a vehicle to Scott P. Foster, who will lease said vehicle at the rate of \$100 per month to compensate Hudspeth County for use not related to Hudspeth County business. Scott P. Foster will provide maintenance, liability insurance, and fuel costs for the vehicle. The payment for the lease shall be deducted from the monthly payments to Scott P. Foster, such that the payments in 4.1 above shall be \$4,100 less \$100 for a total of \$4,000.

4.4 Nothing in this Agreement precludes Hudspeth County from providing any additional resources to enhance the services received from Scott P. Foster.

5. NOTICE.

Official notice shall be by written notice and delivery to all of the parties to this Agreement. Delivery shall be by fax or deposit in the United States Postal Service, first class, return receipt requested to:

TO SCOTT P. FOSTER: Scott P. Foster, Attorney At Law
718 Myrtle
El Paso, Texas 79901

TO HUDSPETH COUNTY: County Judge Becky Dean-Walker
The County of Hudspeth
County Courthouse
Sierra Blanca, Texas 79851-0068

6. LEGAL RELATIONSHIP.

Nothing contained herein shall be construed as creating the relationship of employer and employee or principal and agent between Hudspeth County and Scott P. Foster. Each party is responsible for their own acts and deeds and for those of their agents, employees, and contractors during the performance of any work or services to the extent provided by law.

7. LEGAL CONSTRUCTION.

In case any one or more of the provisions contained in this agreement shall be held to be invalid, illegal, or unenforceable in any respect such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained in this Agreement.

This Agreement is enforceable in Hudspeth County, Texas according to the applicable law of the State of Texas.

8. AMENDMENT.

This Agreement may be amended from time to time as deemed necessary in order to more fully describe any obligations by the parties. Such amendment shall be in written form executed in the same

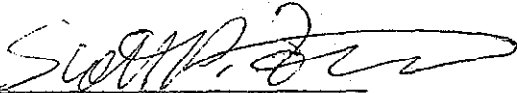
manner as this agreement, and attached thereto so as to be read as a part of the original, and filed with in the same manner as such other contracts with Hudspeth County.

9. TERMINATION.

This Agreement may be terminated by either party upon 30 days written notice to the other party to the addresses set forth in Section 5.

10. EXECUTION.

IN WITNESS WHEREOF this Agreement has been executed on behalf of the County of Hudspeth, State of Texas and Scott P. Foster in the manner provided by law on this the 16th day of October, 2006.



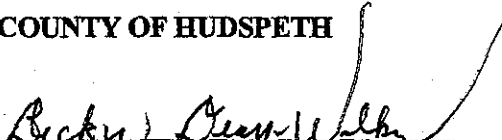
Scott P. Foster, Attorney At Law
718 Myrtle
El Paso, Texas 79901
TX Bar No. 00787489

ATTEST




Paula Hoover
County Clerk

THE COUNTY OF HUDSPETH

By 
County Judge Becky Dean-Walker
With consent of the Commissioners' Court
Of Hudspeth County, Texas



A TRUE AND CORRECT COPY
I CERTIFY


County of District Clerk, Hudspeth County, Texas

By  Deputy