



AGR18-30b

INCORPORATED COUNTY OF LOS ALAMOS SERVICES AGREEMENT

This **SERVICES AGREEMENT** ("Agreement") is entered into by and between the **Incorporated County of Los Alamos**, an incorporated county of the State of New Mexico ("County"), and **NFP Retirement, Inc.**, a California, corporation ("Contractor"), to be effective for all purposes July 1, 2018.

WHEREAS, The County Purchasing Agent determined in writing that the use of competitive sealed bidding was either not practical or not advantageous to County for procurement of the Services and County issued Request for Proposals No. 18-30 (the "RFP") on January 2, 2018, requesting proposals for Provider of Pension Services, as described in the RFP incorporated herein by reference for all purposes; and

WHEREAS, Contractor timely responded to the RFP by submitting a response dated February 16, 2018 ("Contractor's Response"), incorporated herein by reference for all purposes; and

WHEREAS, based on the evaluation factors set out in the RFP, Contractor was the successful Offeror for the Investment Advisor Services listed in the RFP; and

WHEREAS, the County Council approved this Agreement at a public meeting held on May 22, 2018; and

WHEREAS, Contractor shall provide the Services, as described below, to County.

NOW, THEREFORE, for and in consideration of the premises and the covenants contained herein, County and Contractor agree as follows:

SECTION A. SERVICES:

Contractor Services: Contractor shall provide County with Investment Advisory services for the Incorporated County of Los Alamos, New Mexico, Pension Plan and Trust (the Plan) pursuant to the terms of this Services Agreement and the Investment Advisory Agreement and 408(b)(2) Disclosure, attached hereto as Exhibit "B" and incorporated herein by reference for all purposes. Contractor is solely responsible for providing services as identified in this Agreement and Exhibit B - Investment Advisory Agreement and 408(b)(2) Disclosure.

As Investment Advisor, Contractor shall provide the following Services:

1. Contractor shall provide fiduciary investment management services with respect to the Plan to include the following:
 - a. Contractor shall provide, to the Plan Delegates, Plan Administrator or designee, independent and objective recommendations to replace existing mutual funds as needed, noting that County prefers to not frequently change fund offerings;
 - b. Contractor shall provide, quarterly, to the Plan Delegates, Plan Administrator or designee quarterly performance data on each of the funds selected, including historical, risk adjusted performance. Such data shall be compared to appropriate, commonly accepted, performance benchmarks of the same periods for each fund. These funds shall be compared to similar investments with comparable rates of return within the five (5) year to ten (10) year performance range;
 - c. Contractor shall provide risk tolerance testing for each individual Plan Participant, during the education meetings set by the County, and recommend appropriate asset allocation, if desired by the Plan Participant;
 - d. Contractor shall provide monthly educational and informational presentations to new Plan Participants, which shall include performance results and economic forecasting;

- e. Contractor shall provide Plan Participants with an analysis of the funds offered for purposes of providing a diversified portfolio of choices.
2. Contractor shall comply with the Plan Document, applicable Internal Revenue Code (IRC) regulations, and any other applicable Federal or state requirements;
3. Contractor shall meet at least quarterly, or as requested, with the Benefits and Pension Manager, Plan Administrator and Plan Delegates in Los Alamos;
4. Contractor shall provide toll-free customer service access and internet access to Plan Participants;
5. Contractor shall provide a copy of its annual independent audit to County within thirty (30) days of receipt of the final audit; and
6. Contractor shall map Plan investments offered under the recordkeeper and trustee.

Contractor Deliverables: As Investment Advisor, Contractor shall deliver the following:

1. Quarterly performance data on each of the funds selected, including historical, risk adjusted performance. This data shall be compared to appropriate, commonly accepted, performance benchmarks of the same periods for each fund. These funds shall be compared to similar investments with comparable rates of return within the three (3) year to ten (10) year performance range;
2. Make available any records produced by Contractor in conjunction with performing Services of this agreement for the benefit of the Plan for annual Plan audit by an independent auditor selected by County;
3. A copy of Contractor's audited financial statements (annually).

SECTION B. TERM: The term of this Agreement shall commence July 1, 2018 and shall continue through June 30, 2021, unless sooner terminated, as provided herein. At County's sole option the Agreement may be renewed for up to four (4) consecutive one-year periods, or one (1) continuous four (4) year period, unless sooner terminated, as provided therein.

SECTION C. COMPENSATION:

1. **Amount of Compensation.** County shall pay compensation for performance of the Services in an amount not to exceed SIX HUNDRED THOUSAND AND NO 00/100 (\$600,000.00), over the entire term of the Agreement, including renewals, which amount does not include applicable New Mexico gross receipts taxes ("NMGR"). Compensation shall be paid in accordance with the rate schedule set out in Exhibit "A," attached hereto and made a part hereof for all purposes.
2. **Monthly Invoices.** Contractor shall submit itemized *quarterly* invoices to County's Project Manager showing amount of compensation due, amount of any NMGR, and total amount payable. Payment of undisputed amounts shall be due and payable thirty (30) days after County's receipt of the invoice.

SECTION D. TAXES: Contractor shall be solely responsible for timely and correctly billing, collecting and remitting all NMGR levied on the amounts payable under this Agreement.

SECTION E. STATUS OF CONTRACTOR, STAFF AND PERSONNEL: This Agreement calls for the performance of services by Contractor as an independent contractor. Contractor is not an agent or employee of County and shall not be considered an employee of County for any purpose. Contractor, its agents or employees shall make no representation that they are County employees, nor shall they create the appearance of being employees by using a job or position title on a name plate, business cards, or in any other manner, bearing the County's name or logo. Neither Contractor nor any employee of Contractor shall be entitled to any benefits or compensation other than the compensation specified herein. Contractor shall have no authority to bind County to any agreement, contract, duty or obligation. Contractor shall make no representations that are intended to, or create the appearance of, binding County to any agreement, contract, duty, or obligation. Contractor shall have full power to continue any outside employment or business, to employ and discharge its employees or associates as it deems appropriate without interference from County; provided, however, that Contractor shall at all times during the term of this Agreement maintain the ability to perform the obligations in a professional, timely and reliable manner.

Services Agreement AGR18-30b
NFP Retirement, Inc.

SECTION F. STANDARD OF PERFORMANCE: Contractor agrees and represents that it has and will maintain the personnel, experience and knowledge necessary to qualify it for the particular duties to be performed under this Agreement. Contractor shall perform the Services described herein in accordance with a standard that meets the industry standard of care for performance of the Services.

SECTION G. DELIVERABLES AND USE OF DOCUMENTS: All deliverables required under this Agreement, including material, products, reports, policies, procedures, software improvements, databases, and any other products and processes, whether in written or electronic form, shall remain the exclusive property of and shall inure to the benefit of County as works for hire; Contractor shall not use, sell, disclose, or obtain any other compensation for such works for hire. In addition, Contractor shall not, with regard to all work, work product, deliverables or works for hire required by this Agreement, apply for, in its name or otherwise, any copyright, patent or other property right and acknowledges that any such property right created or developed remains the exclusive right of County. Contractor shall not use deliverables in any manner for any other purpose without the express written consent of the County.

SECTION H. EMPLOYEES AND SUB-CONTRACTORS: Contractor shall be solely responsible for payment of wages, salary or benefits to any and all employees or contractors retained by Contractor in the performance of the Services. Contractor agrees to indemnify, defend and hold harmless County for any and all claims that may arise from Contractor's relationship to its employees and subcontractors.

SECTION I. INSURANCE: Contractor shall obtain and maintain insurance of the types and in the amounts set out below throughout the term of this Agreement with an insurer acceptable to County. Contractor shall assure that all subcontractors maintain like insurance. Compliance with the terms and conditions of this Section is a condition precedent to County's obligation to pay compensation for the Services and Contractor shall not provide any Services under this Agreement unless and until Contractor has met the requirements of this Section. County requires Certificates of Insurance or other evidence acceptable to County that Contractor has met its obligation to obtain and maintain insurance and to assure that subcontractors maintain like insurance. Should any of the policies described below be cancelled before the expiration date thereof, notice shall be delivered in accordance with the policy provisions. General Liability Insurance and Automobile Liability Insurance shall name County as an additional insured.

1. **General Liability Insurance:** ONE MILLION DOLLARS (\$1,000,000.00) combined single limit per occurrence; TWO MILLION DOLLARS (\$2,000,000.00) aggregate.
2. **Workers' Compensation:** In an amount as may be required by law. County may immediately terminate this Agreement if Contractor fails to comply with the Worker's Compensation Act and applicable rules when required to do so.
3. **Automobile Liability Insurance for Contractor and its Employees:** ONE MILLION DOLLARS (\$1,000,000.00) combined single limit per occurrence; TWO MILLION DOLLARS (\$2,000,000.00) aggregate on any owned, and/or non-owned motor vehicles used in performing Services under this Agreement.
4. **Professional Liability Insurance:** A limit of not less than ONE MILLION DOLLARS (\$1,000,000.00) each claim, with a TWO MILLION DOLLARS (\$2,000,000.00) annual aggregate, without any restrictive "negligent act, negligent error, or negligent omission" clause, and with coverage extending for a three (3) year period from completion of this contract, against any and all claims which may arise from the Contractor's negligent performance of work described herein.

SECTION J. RECORDS: Contractor shall maintain, throughout the term of this Agreement and for a period of six (6) years thereafter, records that indicate the date, time, and nature of the services rendered. Contractor shall make available, for inspection by County, all records, books of account, memoranda, and other documents pertaining to County at any reasonable time upon request.

SECTION K. APPLICABLE LAW: Contractor shall abide by all applicable federal, state and local laws, regulations, and policies and shall perform the Services in accordance with all applicable laws, regulations, and policies during the term of this Agreement. In any lawsuit or legal dispute arising from the operation of this Agreement, Contractor agrees that the laws of the State of New Mexico shall govern. Venue shall be in the First Judicial District Court of New Mexico in Los Alamos County, New Mexico.

SECTION L. NON-DISCRIMINATION: During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of the obligations of Contractor under this Agreement, with regard to race, color, religion, sex, age, ethnicity, national origin, sexual orientation or gender identity, disability or veteran status.

SECTION M. INDEMNITY: Contractor shall indemnify, hold harmless and defend County, its Council members, employees, agents and representatives, from and against all liabilities, damages, claims, demands, actions (legal or equitable), and costs and expenses, including without limitation attorneys' fees, of any kind or nature, arising from Contractor's performance hereunder or breach hereof and the performance of Contractor's employees, agents, representatives and subcontractors.

SECTION N. FORCE MAJEURE: Neither County nor Contractor shall be liable for any delay in the performance of this Agreement, nor for any other breach, nor for any loss or damage arising from uncontrollable forces such as fire, theft, storm, war, or any other force majeure that could not have been reasonably avoided by exercise of due diligence.

SECTION O. NON-ASSIGNMENT: Contractor shall not assign this Agreement or any privileges or obligations herein without the prior written consent of County.

SECTION P. LICENSES: Contractor shall maintain all required licenses including, without limitation, all necessary professional and business licenses, throughout the term of this Agreement. Contractor shall require and shall assure that all of Contractor's employees and subcontractors maintain all required licenses including, without limitation, all necessary professional and business licenses.

SECTION Q. PROHIBITED INTERESTS: Contractor agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Contractor further agrees that it shall not employ any person having such an interest to perform services under this Agreement. No County Council member or other elected official of County, or manager or employee of County shall solicit, demand, accept or agree to accept a gratuity or offer of employment contrary to Section 31-282 of the Los Alamos County Code.

SECTION R. TERMINATION:

Subject to the terms identified, this Agreement may be terminated, as follows:

- a. **County may terminate this Agreement with or without cause upon ten (10) days prior written notice to Contractor. Upon such termination, Contractor shall be paid for Services actually completed to the satisfaction of County at the rate set out in Section C of the Service Agreement. Contractor shall render a final report of the Services performed to the date of termination and shall turn over to County originals of all materials prepared pursuant to this Agreement.**
- b. **By both parties on any date mutually agreed to in writing; or**
- c. **By either party, in the event of conduct by the other party constituting fraud, misrepresentation of material fact or material breach of the terms of this Agreement, upon written notice as identified in Section S above. No such termination shall take place without a reasonable attempt to contact the other party, and allow the other party to make corrective action.; or**
- d. **By Contractor, if County fails to pay timely all amounts due under this Agreement including, but not limited to, all amounts pursuant to and in accordance with the specifications of Exhibit A - Fee Schedule; or**

- e. This Agreement shall terminate without further action by County on the first day of any County fiscal year for which funds to pay compensation hereunder are not appropriated by the County Council. County shall make reasonable efforts to give Contractor at least ninety (90) days advance notice that funds have not been and are not expected to be appropriated for that purpose. Upon such termination, Contractor shall be paid for Services actually completed to the satisfaction of Contractor at the rate set out in Section C of the Service Agreement.

SECTION S. NOTICE: Any notices required under this Agreement shall be made in writing, postage prepaid to the following addresses, and shall be deemed given upon hand delivery, verified delivery by telecopy (followed by copy sent by United States Mail), or three (3) days after deposit in the United States Mail:

County:

Kat Brophy, Benefits and Pension Manager
 Incorporated County of Los Alamos
 1000 Central Avenue, Suite 230
 Los Alamos, New Mexico 87544

Contractor:

Chief Operating Officer
 NFP Retirement, Inc.
 120 Vantis, Suite 400
 Aliso Viejo, California 92656

SECTION T. INVALIDITY OF PRIOR AGREEMENTS: This Agreement supersedes all prior contracts or agreements, either oral or written, that may exist between the parties with reference to the services described herein and expresses the entire agreement and understanding between the parties with reference to said services. It cannot be modified or changed by any oral promise made by any person, officer, or employee, nor shall any written modification of it be binding on County until approved in writing by both County and Contractor.

SECTION U. CAMPAIGN CONTRIBUTION DISCLOSURE FORM: A Campaign Contribution Disclosure Form was submitted as part of the Contractor's Response and is incorporated herein by reference for all purposes. This Section acknowledges compliance with Chapter 81 of the Laws of 2006 of the State of New Mexico.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date(s) set forth opposite the signatures of their authorized representatives to be effective for all purposes on the date first written above.

ATTEST

INCORPORATED COUNTY OF LOS ALAMOS

NAOMI D. MAESTAS
COUNTY CLERK

BY: _____
HARRY BURGESS **DATE**
COUNTY MANAGER

Approved as to form:

J. ALVIN LEAPHART
COUNTY ATTORNEY

NFP RETIREMENT, INC, A CALIFORNIA CORPORATION

BY: _____
DATE

AGR18-30b
Exhibit "A"
Rate Compensation Schedule

FEE CATEGORY	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
Investment Advisory Services	\$40,000	\$40,000	\$40,000	Not to Exceed 3% above previous year.	Not to Exceed 3% above previous year.	Not to Exceed 3% above previous year.	Not to Exceed 3% above previous year.
Participant Education & Meetings	\$42,000	\$42,000	\$42,000	Not to Exceed 3% above previous year.	Not to Exceed 3% above previous year.	Not to Exceed 3% above previous year.	Not to Exceed 3% above previous year.

AGR18-30b
Exhibit "B"
Investment Advisory Agreement and 408(b)(2) Disclosure



Investment Advisory Agreement and 408(b)(2) Disclosure

This Investment Advisory Agreement ("Agreement") is made on the Effective Date identified below by and between NFP Retirement, Inc., a California corporation and a registered investment adviser with the SEC, ("Adviser" or "Contractor") and the Incorporated County of Los Alamos, an incorporated county of the State of New Mexico ("Client" or "County").

The Client sponsors and maintains the Incorporated County of Los Alamos, New Mexico, Pension Plan and Trust ("Plan") for the benefit of its employees. The Plan is a qualified employee benefit plan, which is intended to comply with all applicable federal laws and regulations, including the Internal Revenue Code of 1986, as amended. While the Client is exempt from the Employee Retirement Income Security Act of 1974 ("ERISA") as amended, the plan is intended to comply with the spirit of the ERISA Section 404(c).

In connection with and in discharge of its duties with respect to the Plan, Client desires to engage the services of the Adviser for the purposes specifically set forth in Service Agreement AGR18-30B and this Agreement. Service Agreement AGR18-30B and this Agreement represent the entire agreement and understandings between the parties hereto with respect to the investment and management of the Client's account and supersedes all prior negotiations and agreements below. Client hereby engages Adviser to provide investment advisory and other services described by Service Agreement AGR18-30B and this Agreement:

408(b)(2) Disclosure. Regulations promulgated by the U.S. Department of Labor, known as the "408(b)(2) regulations," require covered service providers to ERISA-covered retirement plans to provide disclosures, in writing, regarding their services and compensation. The disclosures contained in this Agreement are made in accordance with section 408(b)(2) regulations and are intended to assist the Client in determining whether Adviser's services and compensation are reasonable.

Within thirty (30) days of written request by the Client, the Adviser shall provide all information regarding this Agreement and compensation in order that Client complies with all reporting and disclosure requirements of ERISA.

In the event the Client desires additional information regarding Adviser's services and/or compensation, the Client may request further clarification in writing and the Adviser shall respond no later than thirty (30) days from receipt of written request.

In the event of any material change to the terms of the Agreement or compensation occur, the Adviser shall provide the Client disclosure of any change within a reasonable period of time after the Adviser becomes aware of the material change.

If the Adviser discovers any error or omission in the provision of disclosures required by section 408(b)(2) regulations, the Adviser shall notify the Client of same, and provide missing/corrected disclosures, within thirty (30) days of discovery.

1. Services (Disclosed pursuant to and in accordance with the 408(b)(2) regulation)
Investment Advice (Plan Level):

The Adviser shall provide research and analysis with regard to investment advice and fiduciary due

diligence services for the Client. The goal of the investment due diligence process is to establish a logical, technical, and prudent process that is consistently employed in the selection and ongoing monitoring of funds for plan sponsors and individuals, accompanied by an investment policy statement (for plan sponsors only), that defines the process utilized to recommend prudent investment actions to plan fiduciaries, or their representatives. In providing the investment advice to the Client's plan the Adviser shall follow the investment policy statement and undertake procedural due diligence to arrive upon, or facilitate, prudent investment-related recommendations.

The Adviser may employ many different calculations, processes, and screening techniques, to arrive at specific recommended investments within the array of investments offered by each investment provider being analyzed.

Services provided by the Adviser under this Agreement shall not include any services with respect to investments offered through a self-directed brokerage account or brokerage window, or any similar investment vehicle.

Adviser shall provide the abovementioned analysis quarterly.

Preparation of Investment Policy Statement

The Adviser shall provide a draft of a recommended Investment Policy Statement for Client's review. In addition, the Adviser shall evaluate Client's existing Investment Policy Statement, if applicable, and provide recommendations that are consistent with assisting the Client with meeting their fiduciary obligations under the spirit of ERISA Section 404(c). It is the responsibility of the Client to execute and follow an approved Investment Policy Statement.

Employee Plan and Investment Education

The Adviser shall provide group employee enrollment, re-enrollment, and investment education support. The goal of this process is to help employees make educated and informed choices about the plan and investment allocation under the investment education guidelines set forth by the U.S. Department of Labor.

Adviser shall annually provide up to twelve (12) days of group meetings as set by Client.

Plan Sponsor Service Provider Due Diligence Service Provider Search, Presentation, and Finalist Review

The Adviser shall assist Clients with the selection of a defined contribution provider or providers for their plan, based on detailed research and analysis of several Defined Contribution Plan Service Providers. The Service Provider review process includes an evaluation of administrative, recordkeeping, compliance, and employee communications services, administrative and investment-related fees, and an investment overview that incorporates a very similar analysis to the investment due diligence process described above. In performing service provider search support services, the Advisor acts solely in an advisory capacity; the Client shall be responsible for selecting the Plan's investment platform provider and other plan service vendors and determining whether their agreement and compensation is reasonable. The Advisor shall assist in the Client's determination of reasonableness.

Facilitation of Conversion Process

Adviser shall assist Client with conversions between investment providers, including: (i) interfacing with company consultants and relationship managers to facilitate the conversion, (ii) providing sample letters and correspondence related to the plan conversion, and (iii) monitoring the action items identified in the NFP Retirement Conversion Checklist™.

Fiduciary Fitness Program™

The Adviser provides a full program overlay to systemize and document steps taken to meet fiduciary best practices and compliance requirements for qualified plans. The overlay includes an on-going gap analysis of Client's fiduciary and administrative responsibilities, fiduciary education, an annual Fiduciary Plan

Review, and documentation of all best practices steps taken to meet fiduciary responsibilities. In particular the Fiduciary Plan Review includes an analysis of relevant design features, developments in the qualified plan landscape, educational modules, benchmarking of plan fees against national averages, documentation processes for fiduciary responsibilities, administrative compliance checklists and reviews. The Adviser shall also deliver a Reference Guide to assist the Client in understanding responsibilities and taking the proper steps to meet those responsibilities. The overlay shall be documented in the Fiduciary Fitness Program Report Card, which shall be updated as appropriate throughout the relationship between the Adviser and the Client.

Newsletter Campaign

Monthly and quarterly plan sponsor newsletter includes industry and marketplace updates, plan design and compliance suggestions, and legislative updates.

General Plan Consulting

The Adviser shall assign a Plan Consultant, who is responsible for responding to ongoing questions, concerns, and issues raised by the Client that are related to Client's qualified retirement plan.

2. Fiduciary Role under ERISA (*Disclosed pursuant to and in accordance with the 408(b)(2) regulation*)

For those services described in Section 1, Investment Advice (Plan Level), the Adviser acknowledges that it is a fiduciary with respect to the Plan under Section 3(21)(A)(ii) of the Employee Retirement Income Security Act of 1974, as amended (ERISA) and, as such, is a co-fiduciary with the plan sponsor fiduciary(ies) of the Client's Plan solely with respect to (a) the provision of investment education of the employer and/or plan participants (depending on the specific advisory services provided); (b) the periodic reporting on, and analysis of, the investment options available under the Plan, excluding investments made available through a brokerage account/window or similar such investment vehicle; and (c) the provision of advice to the plan sponsor fiduciary(ies) regarding the elimination or addition of investment options available under the Plan; provided, however, that the plan sponsor fiduciary(ies) acknowledge and agree that the plan sponsor fiduciary(ies) have the final and conclusive responsibility for the investment options selected to be available under the Plan. The Adviser shall not be responsible for investment decisions made by the Plan participants with respect to the investment of their individual accounts.

3. Information to be provided by Client

For those services described in Section 1, the Client shall be responsible for informing the Adviser of the investment objectives of the account and of any changes herein in writing. Adviser shall base its investment decisions on the totality of information provided by the Client at the initial meeting and as updated from time to time by the Client.

4. Reports to Client

For those services described in Section 1, based on the results of the periodic quarterly analysis, the Adviser may recommend changes to the core group of investment recommendations offered by one or more of the investment managers included in the analysis. As such, the Adviser shall provide plan fiduciaries with a periodic report that includes fund rankings in each category. If appropriate, a review of alternate investment choices and investment providers shall be discussed. However, when making any current or new recommendation(s) based on information as provided by Client, Adviser does not assume responsibility for the accuracy of information furnished by Client, or, unless the information is clearly inaccurate, any other person.

5. Communications

Any notices required to be given under this Agreement shall be delivered by hand or by overnight mail or sent by certified mail and shall be deemed given when received at the Client's address as specified and provided by the Client.

6. Custody

All assets in Client's account shall be held for safekeeping with a designated custodian as selected by the

Client. Adviser shall not act as custodian for any assets in the Client's account and shall not take possession of cash and/or securities of the Client's account. Adviser shall not be liable to Client for any act, conduct or omission by custodian. Adviser is not authorized or empowered to issue instructions to custodian or to request information about the Account from custodian.

7. Non-Discretion

The Adviser does not have discretionary authority over the Client's account. As such, the Adviser does not have any authority to implement or effect any recommendation made by the Adviser in the Client's account. Client shall make all decisions with respect to any recommendation made by the Adviser, especially under the following cases: (i) to direct, manage, and/or change the investment and reinvestment of the assets in the Client's account to include the any applicable proceeds thereof; (ii) to buy, sell, exchange, convert and otherwise trade in any and all stocks, bonds, and other securities products or investment instruments as the Adviser may select; and (iii) to establish and deal through accounts with one or more securities brokerage firms, dealers or banks as the Adviser may select.

8. Confidential Relationship

All information and advice furnished by either party to the other shall be treated as confidential and shall not be disclosed to third parties except as required by law. Each party agrees to abide by the terms of the Privacy Policy attached hereto, which terms are hereby incorporated by reference into this Agreement.

9. Non-Exclusive Agreement

Client understands that Adviser acts as an adviser to other clients, and may publish or give advice and take action in the performance of its duties for such other clients (including those who may have similar retirement plan arrangements as the Plan) which may differ from the advice given, or in the timing or nature of action taken, with respect to the Client and the Plan. Nothing in this Agreement shall be deemed to impose on Adviser any obligation to advise Client with respect to the Plan in the same manner as Adviser may advise any other clients. Client further understands that Adviser shall not have any obligation to make any recommendation(s) for any Client account if in their opinion such transaction appears inadvisable for the Client's account.

10. Standard of Care; Liability

In performing its duties hereunder, the Adviser shall act in a manner consistent with the spirit of requirements of a fiduciary under ERISA charged with performing the duties specified in this Agreement. Accordingly, the Client acknowledges that the standard of care imposed on the Adviser and its agents hereunder is to act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent investor acting in a like capacity would use.

The Client agrees that the only responsibilities of the Adviser hereunder are to render the services described by Service Agreement AGR18-30B and this Agreement, and the Adviser shall have no other responsibility with respect to the Client or the Plan. Neither the Adviser nor any "person associated with" the Adviser, as such term is defined in Section 202(a)(7) of the Advisers Act, shall have the authority to take custody or possession of any assets of the Plan.

The Adviser shall not be subject to liability for any act or omission in the course of, or connected with, its performance of this agreement, except in the case of misfeasance, bad faith or negligence on the part of the Adviser, or the intentional, negligent or reckless disregard by the Adviser of its obligations and duties under this Agreement, but nothing herein shall in any way constitute a waiver or limitation of any rights which Client may have under any federal or state securities law or the Employee Retirement Income Security Act of 1974 ("ERISA"), if applicable.

11. Representations (*Disclosed pursuant to and in accordance with the 408(b)(2) regulation*) Adviser represents and warrants that: (i) Adviser is registered as an investment adviser with the SEC, (ii) such registration is currently effective, (iii) all personnel assigned by Adviser to render services hereunder shall be licensed as required by law, (iv) Adviser has the power and authority to enter into and perform this Agreement, (v) it has no material affiliation or contractual relationship with any other party in the

development of the investment advice program, and (vi) it has no material affiliation or contractual relationship with any other party in the selection of the investment options under the Plan

Client represents and warrants that: (i) it has selected the investment(s) and investment manager(s) to be held by or offered under the Plan, (ii) it is solely responsible for the voting and proxies and exercise of other shareholder rights with respect to securities held by the Plan and the Adviser does not provide any advice with respect to such matters, (iii) it has been advised by the Adviser that investments fluctuate in value and the value of the investments when sold may be greater or lesser than the original cost, (iv) it acknowledges that the Adviser does not warrant or guarantee any level of performance by any of the investments or that any investment will be profitable over time, (v) the Plan and its participants are assuming the market risk involved in the investment of Plan assets, (vi) past performance does not necessarily guarantee any level of future investment performance, (vii) it acknowledges that the Adviser shall not, and cannot, provide legal, accounting or tax advice to the Client or the Plan, (viii) the Client is responsible for maintaining the Plan in compliance with applicable qualification requirements of the Internal Revenue Code including where applicable receipt of favorable determination letters and the Adviser shall have no responsibility for such matters, it shall seek the advice of its legal advisor as to matters that might arise relating to the operation and administration of the Plan, (ix) it is solely responsible for the administration of the Plan, including without limitation the timely transmission of plan contributions, the filing of required government reports and the provision of all required notices and communications to the Plan's participants in accordance with all applicable law and regulation, and (x) it acknowledges receipt of the Adviser's Brochure (Part 2A and 2B of Form ADV) prior to, or contemporaneously with, execution of this Agreement. The terms identified in Services Agreement AGRXXX and section 13 below shall govern the Termination of Agreement between the parties.

12. Duration of Agreement

The term of this Agreement shall commence July 1, 2018 and shall continue through June 30, 2021, unless sooner terminated, as provided herein. At County's sole option the Agreement may be renewed for up to four (4) consecutive one-year periods, or one (1) continuous four (4) year period, unless sooner terminated, as provided therein.

13. Termination of Agreement (*Disclosed pursuant to and in accordance with the 408(b)(2) regulation*)

- a. County may terminate this Agreement with or without cause upon ten (10) days prior written notice to Contractor. Upon such termination, Contractor shall be paid for Services actually completed to the satisfaction of County at the rate set out in Section C of the Service Agreement. Contractor shall render a final report of the Services performed to the date of termination and shall turn over to County originals of all materials prepared pursuant to this Agreement.
- b. By both parties on any date mutually agreed to in writing; or
- c. By either party, in the event of conduct by the other party constituting fraud, misrepresentation of material fact or material breach of the terms of this Agreement, upon written notice as identified in S of the Service Agreement. No such termination shall take place without a reasonable attempt to contact the County, and allow the Contractor to make corrective action; or
- d. By Contractor, if County fails to pay timely all amounts due under this Agreement including, but not limited to, all amounts pursuant to and in accordance with the specifications of Exhibit A -Fee Schedule; or
- e. This Agreement shall terminate without further action by County on the first day of any County fiscal year for which funds to pay compensation hereunder are not appropriated by the County Council. County shall make reasonable efforts to give Contractor at least ninety (90) days advance notice that funds have not been and are not expected to be appropriated for that purpose. Upon such termination, Contractor shall be paid for Services actually completed to the satisfaction of Contractor at the rate set out in Section C of the Service Agreement.

14. Compensation (Disclosed pursuant to and in accordance with the 408(b)(2) regulation)

TWENTY THOUSAND FIVE HUNDRED DOLLARS (\$20,500.00) shall be billed to and paid quarterly by Client.

Any compensation received from Client's service provider, directly attributable to Client's plan shall be used to offset the above fee. Such compensation shall include commissions and/or additional compensation; commissions are a percentage of the account invested in a particular product, additional discretionary compensation may be paid by a record-keeper (from their corporate assets, not the plan's assets) based on the type of work and size/scale of business handled by an advisor. In no event shall the compensation received be greater than the above stated fee level.

15. Acknowledgement of Disclosure Statement

Client hereby acknowledges receipt of Adviser's Disclosure Statement as required pursuant to Rule 204-3 (17CFR 275.204-3) under the Investment Advisers Act of 1940 prior to or contemporaneously with execution of this Agreement.

16. Dispute Resolution

Any dispute arising out of or relating to this Agreement shall be resolved in accordance with mutually agreed process and procedures. All negotiations pursuant to this Section 16 are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence. Except as provided otherwise in this Agreement, each party is required to continue to perform its obligations under this Agreement pending final resolution of any dispute arising out of or relating to this Agreement.

This Agreement shall be governed by, and shall be construed in accordance with, the laws of the state of New Mexico without regard to any state choice-of-law statutes, and any applicable federal law. All disputes between Adviser and Client arising out of or related to this Agreement shall be resolved in Los Alamos, New Mexico. Venue shall be in the First Judicial District Court of New Mexico in Los Alamos County, New Mexico. Changes in state or federal law or regulations or interpretations thereof may change the terms and conditions of the Services.

17. Entire Agreement

Service Agreement AGR18-30b and this Agreement represents the entire agreement and understandings between the parties hereto with respect to the investment and management of the Client's account and supersedes all prior negotiations and agreements.

18. Amendments.

No modifications, amendments or attempted waiver of any provisions of this Agreement shall be valid unless in writing and signed by both parties hereto.

19. Assignment

Neither party to this Agreement shall assign or delegate any rights or obligations hereunder without first obtaining the written consent of the other. Further, this Agreement shall be binding upon and inure to the benefit of the parties and their permitted successors and assigns.

20. Headings.

All headings used in this Agreement are for convenience of reference only and shall not form part of or affect the construction or interpretation of any of its provisions.

21. Severability.

If any term or condition of this Agreement shall be held or made invalid or unenforceable to any extent or in any application, whether by statute, rule, regulation, decision of tribunal or otherwise, then the remainder of this Agreement, and such term or condition except to the extent or in such application, shall not be affected thereby, and each and every term and condition of this Agreement shall be valid and enforceable to the fullest extent and in the broadest application permitted by law.

22. Governing Law.

This Agreement and the rights and obligations of the parties hereunder shall be construed and interpreted under the laws of the state of New Mexico.

The Parties intend and hereby cause this Agreement to be effective as of July 1, 2018 (the "Effective Date"). Agreed and Accepted by:

_____ Harry Burgess, County Manager	_____ Signature	_____ Date
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Accepted by: NFP Retirement, Inc.
120 Vantis, Suite 400
Aliso Viejo, CA 92656

_____ Signature of Representative	_____ Title	_____ Date
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_____ Signature (Authorized Officer)	_____ Title	_____ Date
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Privacy Policy

NFP Retirement requires that you provide current and accurate financial and personal information. NFP Retirement shall protect the information you have provided in a manner that is safe, secure and professional. NFP Retirement and its employees are committed to protecting your privacy and to safeguarding that information.

Safeguarding Customer Documents

We collect non-public customer data in checklists, forms, in written notations, and in documentation provided to us by our customers for evaluation, registration, licensing or related consulting services. We also create internal lists of such data.

During regular business hours access to customer records is monitored so that only those with approval shall access the files. During hours in which the company is not in operation, the customer records shall be locked.

No individual who is not so authorized shall obtain or seek to obtain personal and financial customer information. No individual with authorization to access personal and financial customer information shall share that information in any manner without the specific consent of a firm principal. Failure to observe NFP Retirement procedures regarding customer and consumer privacy shall result in discipline and may lead to termination.

Sharing Nonpublic Personal and Financial Information

NFP Retirement is committed to the protection and privacy of its customers' and consumers' personal and financial information. NFP Retirement shall not share such information with any affiliated or nonaffiliated third party except:

- a. When necessary to complete a transaction in a customer account, such as with the clearing firm or account custodians;
- b. When required to maintain or service a customer account;
- c. To resolve customer disputes or inquiries;
- d. With persons acting in a fiduciary or representative capacity on behalf of the customer;
- e. With rating agencies, persons assessing compliance with industry standards, or to the attorneys, accountants and auditors of the firm;
- f. In connection with a sale or merger of NFP Retirement's business;
- g. To protect against or prevent actual or potential fraud, identity theft, unauthorized transactions, claims or other liability;
- h. To comply with federal, state or local laws, rules and other applicable legal requirements;
- i. In connection with a written agreement to provide investment management or advisory services when the information is released for the sole purpose of providing the products or services covered by the agreement;
- j. In any circumstances with the customer's instruction or consent; or
- k. Pursuant to any other exceptions enumerated in the California Information Privacy Act.

Marketing Materials

Client acknowledges and agrees that, absent an affirmative election to the contrary, NFP Retirement shall have the right to use Client's name, logo, and description in its marketing activities and materials without further notice to or consent by Client.

Opt-Out Provisions

It is not a policy of NFP Retirement to share nonpublic personal and financial information with affiliated or unaffiliated third parties except under the circumstances noted above. Since sharing under the circumstances noted above is necessary to service customer accounts or is mandated by law, there are no allowances made for clients to opt out.