

AGR21-944



INCORPORATED COUNTY OF LOS ALAMOS SERVICES AGREEMENT

This **SERVICES AGREEMENT** (this "Agreement") is entered into by and between the **Incorporated County of Los Alamos**, an incorporated county of the State of New Mexico ("County"), and **Kutak Rock, LLP**, a limited liability partnership ("Contractor"), to be effective for all purposes February 24, 2021.

WHEREAS, procurement of the Services was made in accordance with professional service procurement procedures established by the County Procurement and Contracts Division; and

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

WHEREAS, the County Council approved this Agreement at a public meeting held on February 23, 2021.

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

SECTION A. SERVICES: Contractor shall provide legal advice and counsel to County as requested by the Office of the County Attorney or County Manager on any federal issues or any other legal issues.

SECTION B. TERM: The term of this Agreement shall commence February 24, 2021, and shall continue until February 23, 2028, unless sooner terminated, as provided herein.

SECTION C. COMPENSATION:

- 1. Amount of Compensation.** County shall pay compensation for the performance of the Services in an amount not to exceed THREE HUNDRED FIFTY THOUSAND DOLLARS (\$350,000.00), which amount does not include applicable New Mexico gross receipts taxes and reimbursable expenses. Reimbursable expenses shall be paid in accordance with the schedule set out in Exhibit "A," attached hereto and made a part hereof for all purposes.
- 2. Monthly Invoices.** Contractor shall submit monthly invoices to the County Attorney. Invoices shall provide a detailed description of services provided each day; the amount of time spent by Contractor on a daily basis; the hourly rate; the total number of hours spent in providing the service; the amount of compensation for services; itemized reimbursable expenses, if any, and total amount of such expenses; amount of any New Mexico gross receipts taxes; 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 responsible for payment of any State of New Mexico gross receipts taxes or similar taxes of other jurisdictions 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 will 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 card, 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.

SECTION F. STANDARD OF PERFORMANCE: Contractor agrees and represents that it has the personnel, experience and knowledge necessary to qualify it for the particular duties to be performed under this Agreement.

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 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 may 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 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. No Services shall be performed under this Agreement by a subcontractor except with the express prior written consent of County.

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 are 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 will 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. Professional Liability Insurance. ONE MILLION DOLLARS (\$1,000,000.00). Professional Liability Insurance shall provide coverage for Services provided hereunder during the term of this Agreement and for a period of at least five (5) years thereafter.

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 and regulations and shall perform the Services in accordance with all applicable laws 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 is skilled in the professional calling necessary to the services and duties agreed to be performed and County relies upon the skills and knowledge of Contractor. Contractor agrees to indemnify County, any of its departments, agencies, officers, or employees from all expenses (including attorney's fees) from claims of wrongful act or omission by Contractor or any others for whose acts Contractor is legally liable arising out of or resulting in any way from the performance of professional services for County. Contractor's duty to indemnify County, its agents, officers and employees from any liability, whether arising in contract or tort, shall be limited to the percentage extent such wrongful act or omission of Contractor, its employees or subcontractors or others for which Contractor is legally liable resulted in the imposition of liability on County, department, agency, officer or employee.

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 may 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 will not employ any person having such an interest to perform services under this Agreement. No County Council member or other elected official in 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:

1. **Generally.** 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. 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.
2. **Funding.** This Agreement shall terminate 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.
3. **By Contractor.** Contractor may terminate this Agreement with or without cause upon ninety (90) days prior written notice to County.

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:

County Attorney
Incorporated County of Los Alamos
1000 Central Avenue, Suite 340
Los Alamos, New Mexico 87544

Contractor:

Kutak Rock, LLP
1625 Eye Street
Suite 800
Washington, DC 20006

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 is attached as Exhibit "B." Contractor must submit this form with this Agreement, if applicable, and in accordance with Chapter 81 of the Laws of 2006 of the State of New Mexico.

SECTION V. LEGAL RECOGNITION OF ELECTRONIC SIGNATURES: Pursuant to NMSA 1978 § 14-16-7, this Agreement may be signed by electronic signature.

SECTION W. DUPLICATE ORIGINAL DOCUMENTS: This document may be executed in counterparts, each of which shall be deemed an original.

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:

/s/ J. Alvin Leaphart
J. ALVIN LEAPHART
COUNTY ATTORNEY

KUTAK ROCK, LLP

BY: _____
SETH D. KIRSHENBERG **DATE**
PARTNER

Exhibit "A"
Compensation Rate Schedule
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Fees for Services shall be based on time actually spent rendering Services satisfactory to County at the following hourly rates:

George Schlossberg	\$395.00
Barry Steinberg	\$395.00
Walt Griffiths	\$375.00
Seth D. Kirshenberg	\$395.00
Joseph Fuller	\$395.00
Hilary Jackler	\$395.00
Associates	\$310.00
Dylan Kama	\$250.00
Paralegal/Legislative	\$150.00

Reimbursable expenses shall be limited to and paid at the following rates:

- Commercial Messenger/Delivery Services – Actual Charge
- Facsimile – Actual Phone Charge
- Photocopies - .10 per copy or actual costs for large copying projects completed outside the Contractor's Office
- LEXIS, WESTLAW, DIALOG, NM Legal Net Computerized Legal Research – Actual cost with approval of the County Attorney
- Long Distance Telephone Calls – Actual Cost
- Postage – Actual out-of-the ordinary postage costs (i.e., federal express or similar express mail)
- Travel Costs – Actual Cost

Exhibit "B"
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CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Any prospective contractor seeking to enter into a contract with the Incorporated County of Los Alamos must file this form disclosing whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official during the two (2) years prior to the date on which prospective contractor submits a proposal or, in the case of a sole source or small purchase contract, the two (2) years prior to the date prospective contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds TWO HUNDRED FIFTY DOLLARS (\$250.00) over the two (2) year period.

THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

"Applicable public official" means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

"Campaign Contribution" means a gift, subscription, loan, advance or deposit of money or other things of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to either statewide or local office. "Campaign Contribution" includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

"Contract" means any agreement for the procurement of items of tangible personal property, services, professional services, or construction.

"Family member" means a spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of:

- (a) a prospective contractor, if the prospective contractor is a natural person; or
- (b) an owner of a prospective contractor;

"Pendency of the procurement process" means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

"Person" means any corporation, partnership, individual, joint venture, association or any other private legal entity.

“Prospective contractor” means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract.

“Representative of a prospective contractor” means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

DISCLOSURE OF CONTRIBUTIONS: (Report any applicable contributions made to the following
- COUNTY COUNCILORS: Denise Derkacs; David Izraelevitz; David Reagor; James Robinson; Randal Ryti; Sara Scott; and Sean Williams.)

Contribution Made By:			
Relation to Prospective Contractor:			
Name of Applicable Public Official:		Governor _____	
Contribution(s) Date(s)	Contribution Amount(s):	Nature of Contribution(s):	Purpose of Contribution(s):
	\$		
	\$		
	\$		
	\$		
	\$		

(Attach extra pages if necessary)

Signature Date

Title (position)

—OR—

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250.00) WERE MADE to an applicable public official by me, a family member or representative.

Signature Date

Title (position)