PROFESSIONAL SERVICES AGREEMENT BETWEEN SANTA FE COUNTY AND MONTGOMERY & ANDREWS, P.S., FOR LEGAL SERVICES

THIS AGREEMENT is made and entered into this 30 day of April 2013, by and between **Santa Fe County**, hereinafter referred to as the "County" and the law firm of Montgomery & Andrews, with its principal place of business located at 325 Paseo de Peralta, Santa Fe, New Mexico 87501, hereinafter referred to as the "Contractor".

WHEREAS, the County requires legal assistance on matters as directed by the County Attorney;

WHEREAS, pursuant to NMSA 1978, Sections 13-1-112 and 13-1-153 of the Procurement Code, a request for proposals was issued for a multiple source award for legal services and completed through RFP No. 2013-0170-LG/PL;

WHEREAS, the County requires the services of the Contractor and the Contractor is willing to provide these services and both parties wish to enter into this Agreement.

NOW, THEREFORE, it is agreed between the parties:

1. SCOPE OF WORK

The Contractor shall render the following legal services:

A. Legal services, including without limitation matters of environmental law, water law, appellate practice, condemnation (inverse and direct), and other legal matters as directed by the Santa Fe County Attorney;

B. Legal representation of Santa Fe County in state and federal courts, state agencies and other governmental entities;

C. Legal assistance with litigation involving Santa Fe County;

D. As directed by the Santa Fe County Attorney, brief County officials, employees, legal counsel and consultants. Contractor shall also participate in consultations with County officials, employees and consultants on questions of federal and state law which impact the County.

2. COMPENSATION AND INVOICING

A. The total compensation to be paid under this Agreement, including fees and costs, shall not exceed Ninety-Five Thousand Dollars ($95,000.00) exclusive of gross receipts tax.

The County shall pay to the Contractor for fees and reimbursable expenses based on the following:

Staff Member	Hourly Rate
Senior Partner	$ 225.00
Consultants	$ (requires County pre-approval)
Partners	$ 200.00
Associates	$ 125.00
Law Clerks	$ 55.00
Paralegals	$ 55.00
Clerical	$ (requires County pre-approval)
Travel (mileage)	$ .44/mile
Copies or document reproduction:	$ Actual costs (supported by invoice or receipt)
Other (please describe)	$ (Actual costs shall be supported by invoice or receipt)

B. The Contractor shall submit quarterly status reports to the County Attorney updating the County Attorney on the status of any litigation and all legal matters including related expenditures, for which the Contractor has provided legal services pursuant to this Agreement.

C. The Contractor shall provide copies of all pleadings and correspondence produced by the Contractor and received by the Contractor in connection with any litigation or legal matter engaged in by the Contractor pursuant to this Agreement.

D. The Contractor shall submit a written request for payment to the County once a month. Upon the County's receipt of the written request, the County shall issue a written certification of complete or partial acceptance or rejection of the contractual items or services for which payment is sought. The Contractor acknowledges and agrees that County may not make any payment hereunder unless and until it has issued a written certification accepting the contractual items or services. Within thirty (30) days of the issuance of a written certification accepting the contractual items or services, the County shall tender payment for the accepted items or services. In the event the County fails to tender payment within thirty (30) days of the written certification accepting the items or services, the County shall pay late payment charges of one and one-half percent (1.5%) per month, until the amount due is paid in full.

E. The County shall reimburse the Contractor reasonable travel expenses. Authorized travel shall be reimbursed at the rate set forth in the Travel and Per Diem Act, NMSA 1978, Section 10-8-4, et.seq as amended by the County and at the mileage rate set forth in the Per Diem and Mileage Act and DFA Rule 95-1 regulations governing the Per Diem and

Mileage Act. Reimbursement for approved travel expenses shall not exceed amounts established in the Per Diem and Mileage Act and DFA Rule (2.42.2 NMAC).

F. In the event the Contractor breaches this Agreement, the County may, without penalty, withhold any payments due the Contractor for the purpose of set-off until such time as the County determines the exact amount of damages it suffered as a result of the breach.

G. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payment.

3. EFFECTIVE DATE AND TERM

This Agreement shall be effective upon the date indicated above and the Compensation set forth in Section 2 above shall be for legal services rendered from April 1, 2013 to March 31, 2015. The term of this Agreement is subject to extension in one (1) year increments not to exceed a term of four (4) years total, unless earlier terminated pursuant to Section 5 (Termination), of this Agreement.

4. ADDITIONAL SERVICES

A. The parties agree that all tasks set forth in Paragraph 1 (Scope of Work) of this Agreement, shall be completed in full, to the satisfaction of the County, for the amount set forth in Paragraph 2 (Compensation and Invoicing) of this Agreement, and for no other cost, amount, fee, or expense.

B. The County may from time to time request changes in the Scope of Work to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the County and the Contractor, shall be incorporated in written amendments to this Agreement.

5. TERMINATION

A. Termination of Agreement for Cause. Either party may terminate the Agreement based upon any material breach of this Agreement by the other party. The non-breaching party shall give the breaching party written notice of termination specifying the grounds for the termination. The termination shall be effective fifteen (15) days from the breaching party's receipt of the notice of termination, during which time the breaching party shall have the right to cure the breach. If, however, the breach cannot with due diligence be cured within fifteen (15) days, the breaching party shall have a reasonable time to cure the breach, provided that, within ten (10) days of its receipt of the written notice of termination, the breaching party (i) began to cure the breach and (ii) advised the non-breaching party in writing that it intended to cure.

B. Termination for Convenience of the County. The County may, in its discretion, terminate this Agreement at any time for any reason by giving the Contractor written notice of

termination. The notice shall specify the effective date of termination, which shall not be less than ten (10) days from the Contractor's receipt of the notice. The County shall pay the Contractor for acceptable work, determined in accordance with the standards set forth in this Agreement, performed before the effective date of termination but shall not be liable for any work performed after the effective date of termination.

6. INDEPENDENT CONTRACTOR

The Contractor and its agents and employees are independent contractors and are not employees or agents of the County. Accordingly, the Contractor and its agents and employees shall not accrue leave, participate in retirement plans, insurance plans, or liability bonding, use County vehicles, or participate in any other benefits afforded to employees of the County. Except as may be expressly authorized elsewhere in this Agreement, the Contractor has no authority to bind, represent, or otherwise act on behalf of the County and agrees not to purport to do so.

7. PERSONNEL

A. All work performed under this Agreement shall be performed by the Contractor or under its supervision.

B. The Contractor represents that it has, or will secure at its own expense, all personnel required to discharge its obligations under this Agreement. Such personnel (i) shall not be employees of or have any contractual relationships with the County and (ii) shall be fully qualified and licensed or otherwise authorized or permitted under federal, state, and local law to perform such work.

8. ASSIGNMENT

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the advance written approval of the County. Any attempted assignment or transfer without the County's advance written approval shall be null and void and without any legal effect.

9. SUBCONTRACTING

The Contractor shall not subcontract or delegate any portion of the services to be performed under this Agreement without the advance written approval of the County. Any attempted subcontracting or delegating without the County's advance written approval shall be null and void and without any legal effect.

10. INDEMNITY

A. The Contractor shall defend, indemnify, and hold harmless the County and its Elected Officials, agents, and employees from any losses, liabilities, damages, demands, suits, causes of action, judgments, costs or expenses (including but not limited to court costs and attorneys'

fees) resulting from or directly or indirectly arising out of Contractor's performance or non-performance of its obligations under this Agreement, including but not limited to the Contractor's breach of any representation or warranty made herein.

B. The Contractor agrees (i) that the County shall have the right to control and participate in the defense of any such demand, suit, or cause of action concerning matters that relate to the County and (ii) that such suit will not be settled without the County's consent, such consent not to be unreasonably withheld. If a conflict exists between the interests of the County and the Contractor in such demand, suit, or cause of action, counsel shall be retained to represent the County's interest.

C. The Contractor's obligations under this section shall not be limited by the provisions of any insurance policy the Contractor is required to maintain under this Agreement.

11. RECORDS AND INSPECTIONS

To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to the County as part of the procurement process, the Contractor agrees to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under this Agreement; (ii) allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with generally accepted accounting principles ("GAAP").

12. APPROPRIATIONS AND AUTHORIZATIONS

This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Board of County Commissioners of the County and/or, if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Agreement shall terminate upon written notice by the County to the Contractor. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse the Contractor for expenditures made in the performance of this Agreement. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. The County's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by the Contractor in any way or forum, including a lawsuit.

13. PERMITS, FEES, AND LICENSES

Contractor shall procure all permits and licenses, pay all charges, fees, and royalties, and give all notices necessary and incidental to the due and lawful performance of its obligations hereunder.

14. RELEASE

Upon its receipt of all payments due under this Agreement, the Contractor releases the County, its Elected Officials, officers, agents and employees from all liabilities, claims, and obligations whatsoever arising from or under or relating to this Agreement.

15. CONFIDENTIALITY

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without prior written approval of the County.

16. PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT

The County has the unrestricted right to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other material prepared under or pursuant to this Agreement.

17. CONFLICT OF INTEREST

The Contractor represents that it has no and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of its obligations under this Agreement.

18. NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED

This Agreement may not be modified, altered, changed, or amended orally but, rather, only by an instrument in writing executed by the parties hereto. The Contractor specifically acknowledges and agrees that the County shall not be responsible for any changes to Section 1 (Scope of Work) of this Agreement unless such changes are set forth in a duly executed written amendment to this Agreement.

19. ENTIRE AGREEMENT; INTEGRATION

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this written Agreement. No prior or contemporaneous agreement, covenant or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

20. EQUAL OPPORTUNITY COMPLIANCE

A. The Contractor agrees to abide by all Federal, State, and local laws, ordinances, and rules and regulations pertaining to equal opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, the Contractor specifically agrees not to discriminate against any person with regard to employment with the Contractor or

participation in any program or activity offered pursuant to this Agreement on the grounds of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation, or gender identity.

B. The Contractor acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Agreement.

21. SEVERABILITY

If any term or condition of this Agreement shall be held invalid or non-enforceable by any court of competent jurisdiction, the remainder of this Agreement shall not be affected and shall be valid and enforceable to the fullest extent of the law.

22. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW

A. In performing its obligations hereunder, the Contractor shall comply with all applicable laws, ordinances, and regulations.

B. This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules.

23. NOTICE OF PENALTIES

The Procurement Code, NMSA 1978, Section 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation. In addition, New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks.

24. NO THIRD-PARTY BENEFICIARIES

This Agreement was not intended to and does not create any rights in any persons not a party hereto.

25. FACSIMILE SIGNATURES

The parties hereto agree that a facsimile signature has the same force and effect as an original for all purposes.

26. LIMITATION OF LIABILITY

The County's liability to the Contractor for any breach of this Agreement by the County shall be limited to direct damages and shall not exceed the maximum amount of potential compensation specified in Section 2 (Compensation and Invoicing) of this Agreement. In no event shall the County be liable to the Contractor for special or consequential damages, even if the County was advised of the possibility of such damages prior to entering into this Agreement.

27. NEW MEXICO TORT CLAIMS ACT

No provision of this Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by County or its "public employees" at common law or under the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1, et seq.

28. INSURANCE

General Conditions. The Contractor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.

General Liability Insurance, Including Automobile. The Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than $1,050,000 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the County by the Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Agreement is an insured contract. The County of Santa Fe shall be a named additional insured on the policy.

Workers' Compensation Insurance. The Contractor shall comply with the provisions of the Workers' Compensation Act.

Increased Limits. If, during the life of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended), the Contractor shall increase the maximum limits of any insurance required herein.

Malpractice/Errors and Omissions Insurance. The Contractor shall procure and maintain during the life of this Agreement professional liability or errors and omissions insurance in amounts not less than $3 million.

29. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

The Contractor hereby represents and warrants that:

A. This Agreement has been duly authorized by the Contractor, the person executing this Agreement has authority to do so, and, once executed by the Contractor, this Agreement shall constitute a binding obligation of the Contractor.

B. This Agreement and Contractor's obligations hereunder do not conflict with Contractor's corporate agreement or any statement filed with the Secretary of State on Contractor's behalf.

30. SURVIVAL

The provisions of paragraphs 8, 9, 10, 11, 14, 15, 16, 22, 26, 27 and 28 shall survive termination of this Agreement.

31. CAMPAIGN CONTRIBUTION DISCLOSURE FORM

The Contractor agrees to compute and submit simultaneous with execution of this Agreement a Campaign Contribution Disclosure Form approved by the County.

32. NOTICES

All notices required to be given to the County under this Agreement shall be mailed (pre-postage paid) to:

Santa Fe County
Office of the County Attorney
102 Grant Ave.
Santa Fe, NM 87504

All notices required to be given to the Contractor under this Agreement shall be mailed (pre-postage paid) to:

Stephen S. Hamilton
Montgomery & Andrews Law Firm
325 Paseo de Peralta
Santa Fe, New Mexico 87501

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

SANTA FE COUNTY:

Kathy Holian, Chairperson
Board of County Commissioners

4/30/2013
Date

ATTEST

Geraldine Salazar
Santa Fe County Clerk

4/30/13
Date

COUNTY CLERK
GERALDINE SALAZAR
SANTA FE COUNTY NEW MEXICO

APPROVED AS TO FORM:

Stephen C. Ross,
Santa Fe County Attorney

April 8, 2013
Date

FINANCE DEPARTMENT APPROVAL:

Teresa C. Martinez
Santa Fe County Finance Director

4/13/13
Date

CONTRACTOR:

(Signature) Montgomery Andrews

4/1/13
Date

STEPHEN HAMILTON
(Print Name)

FEDERAL IDENTIFICATION NO.: 850262814