PROFESSIONAL SERVICES AGREEMENT BETWEEN SANTA FE COUNTY AND LONG, POUND & KOMER, P.A. FOR LEGAL SERVICES

THIS AGREEMENT is made and entered into this 8th day of April, 2009, by and between **Santa Fe County**, hereinafter referred to as "the County", and **Long, Pound & Komer, P.C.**, a New Mexico corporation with its principal place of business located at 2200 Brothers Rd., Santa Fe, NM, 87502, hereinafter referred to as "the Contractor".

WHEREAS, in accordance with NMSA 1978, Section 13-1-112, the County issued Request for Proposal (RFP) No. 29-0039-LG/JC for General Legal Services for Santa Fe County; and

WHEREAS, the Contractor submitted its proposal on November 10, 2008; and

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, in consideration of the premises and mutual obligations herein, the parties hereto do mutually agree as follows:

1. SCOPE OF WORK

The Contractor shall:

A. Provide legal counsel to the County on matters related to land use, litigation, employment law, and other matters as directed by the County Attorney; and

B. Represent the County on issues related to land use, litigation, employment law, and other matters as directed by the County Attorney, before courts of law, state agencies or other governmental entities; and

C. Assist the County Attorney, if requested, with any litigation in the areas of land use, litigation, and employment law; and

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

2. 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, in accordance with industry standards and the aforementioned statutes, for the amount set forth in Section 3, "COMPENSATION, INVOICING" of this Agreement, and for no other costs, amount fee or expense.

B. The County may from time to time request changes in the Project's 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.

3. COMPENSATION AND INVOICING

A. In consideration of its obligations under this Agreement the Contractor shall be compensated as follows:

1. The total compensation to be paid under this Agreement shall not exceed $95,000.00 exclusive of New Mexico Gross Receipts tax. The County shall pay to the Contractor at the following hourly rates for services performed:

i) The following Attorneys fees at the hourly rate of $ 160.00; Nancy R. Long, John B. Pound, Mark E. Komer, and Mark T. Baker.
ii) The following Attorney fees at the hourly rate of $150.00; Little V. West
iii) Paralegals at the hourly rate of $65.00;
iv) Hourly rates shall be tracked and billed in one-tenth (0.1) hour increments.

B. The Contractor shall submit a written request for payment to the County whenever payment is due under this Agreement. Within fifteen (15) days of 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.

C. 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.

D. No travel or per diem shall be paid by the County under this Agreement except as provided herein. All costs of travel, per diem, or living expenses for the Contractor's staff shall be the sole responsibility of the Contractor.

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

4. EFFECTIVE DATE AND TERM

This Agreement shall, upon due execution by all parties, become effective as of the date first written above and shall terminate four years later, unless earlier terminated pursuant to Section 5, TERMINATION, of this Agreement.

5. TERMINATION

A. Termination of Agreement for Cause. Either party may terminate the Agreement for cause based upon any material breach of this Agreement by the other party, provided the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party reasonable opportunity to correct the breach. If within seven (7) days after receipt of a written notice the breaching

party has not corrected the breach or in the case of breach which cannot be corrected in seven (7) days the breaching party has not begun and proceeded in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the Agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.

Notwithstanding the above, the Contractor shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of the Agreement by the Contractor, and the County may withhold any payments to the Contractor for the purpose of set-off until such time as the exact amount of damages due the County from the Contractor is determined.

B. Termination for Convenience of the County. The County may terminate this Agreement at any time by giving at least thirty (30) days notice in writing to the Contractor. Upon receipt of the notice of cancellation, Contactor shall suspend any further work. By such termination, neither party may nullify obligations already incurred for the performance or failure to perform work rendered prior to the date of termination of this Agreement. However, neither party shall have any obligation to perform services or make payment for services rendered after such date of termination, with the following exception: that any un-cancellable contract made on the County's written authorization, and still existing at the expiration of the agreed upon interval following notice, shall be carried to completion by the agency and paid for by the County unless mutually agreed in writing to the contrary.

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 services required hereunder shall be performed by the Contractor or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such services.

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 shall not be employees of or have any contractual relationships with the County.

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 prior written approval of the County.

9. SUBCONTRACTING

The Contractor shall not subcontract or delegate any portion of the services to be performed under this Agreement without prior written approval of the County.

10. INDEMNITY

A. The Contractor shall defend, indemnify, and hold harmless the County and it's Elected Officials, agents, and employees from any losses, liabilities, damages, demands, suits, causes of action, judgments, costs or expenses (including but not limited to reasonable court costs and attorneys' fees) to the extent caused by the Contractor's negligent performance of its obligations under this Agreement, including but not limited to 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

The Contractor shall maintain detailed books, documents, accounting records and other evidence pertaining to services and costs incurred in providing all services identified in Paragraph 1, "SCOPE OF WORK" of this Agreement. The Contractor shall make such materials available at their respective offices for inspection by the County at all reasonable times during the Agreement period, including before and after payment, and for six (6) years from the date of final payment under this Agreement.

12. APPROPRIATIONS AND AUTHORIZATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Board of County Commissioners or the Legislature of the State of New Mexico, if state funds are involved, for performance of this Agreement. If sufficient appropriations and authorizations are not made by the Santa Fe County Commission or the Legislature of the State of New Mexico, if state funds are involved, 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.

13. PERMITS, FEES, AND LICENSES

A. 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 the work. The Contractor shall obtain releases, licenses, permits or other authorization to use photographs, copyrighted materials, artwork or any other property or rights belonging to third parties obtained by the agency for use in performing services to the County. Upon receipt of releases, licenses, permits from other authorizations, the Contractor shall provide the County copies.

B. The County shall obtain the same for any such items obtained by the County which are used by the Contractor in performing such services, and shall be responsible for any claim with respect to such use.

14. RELEASE

The Contractor, upon final payment due under this Agreement, 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. The Contractor agrees not to purport to bind the County to any obligation not agreed

to herein unless the Contractor has express written authority from the County to do so, and then only within the strict limitations of that authority.

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; COPYRIGHTS

No material produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country. The County shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other material prepared under this Agreement.

17. CONFLICT OF INTEREST

The Contractor warrants that he presently has no and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required 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.

C. Any litigation arising out of or released to this Request for Proposal and the Agreement shall be resolved in state and federal courts located in Santa Fe County, New Mexico.

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.

Professional Liability. The Contractor shall carry professional liability (errors and omissions) insurance, with policy limits of not less than $1,000,000.00.

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 the Contractor's obligations hereunder do not conflict with the Contractor's articles of incorporation or by-laws or any corporate resolution adopted by the Contractor.

C. It is a corporation duly organized and in good standing under the laws of the State of New Mexico.

30. 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.

31. 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
Attention: Stephen C. Ross, Santa Fe 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:

Long, Pound & Komer, P.A.
Attention: Nancy Long
2200 Brothers Road, PO Box 509
Santa Fe, NM. 87502-5098

31. SURVIVAL

The provisions of paragraphs 10, 11, 12, 22, 24, 26, 27 and 28 shall survive termination of this Contract.

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

SANTA FE COUNTY

Roman Abeyta,
Santa Fe County Manager

APPROVED AS TO FORM:

Stephen C. Ross,
Santa Fe County Attorney

3-25-09
Date

FINANCE DEPARTMENT APPROVAL:

Teresa Martinez
Santa Fe County Finance Director

3/30/09
Date

LONG, POUND, & KOMER, P.C.:

By: Nancy R Long
(Signature)

4-8-09
Date

Its: Nancy R. Long
(Print name and title)

FEDERAL IDENTIFICATION NO.