

**SANTA FE COUNTY  
ATTORNEY'S OFFICE**

**REQUEST FOR PROPOSALS**



**SPECIAL LEGAL COUNSEL SERVICES  
FOR OPIOID INVESTIGATION/LITIGATION**

**RFP NO. 2018-0236-AT/MM**

**FEBRUARY 2018**

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## I. ADVERTISEMENT

### REQUEST FOR PROPOSALS SPECIAL LEGAL COUNSEL SERVICES FOR OPIOID INVESTIGATION/LITIGATION RFP NO. 2018-0236-AT/MM

The Santa Fe County Attorney's Office is requesting proposals from qualified Offerors to provide special legal counsel for opioid investigation and/or litigation. All proposals submitted shall be valid for 90 days subject to action by the County. Santa Fe County reserves the right to reject any and all proposals in part or in whole. A completed proposal shall be submitted in a sealed container indicating the proposal title and number along with the Offeror's name and address clearly marked on the outside of the container. **All proposals must be received by 2:00 PM on Tuesday, March 6, 2018, at the Santa Fe County Purchasing Division, 142 W. Palace Avenue (Second Floor), Santa Fe, NM 87501.** By submitting a proposal for the requested services each Offeror is certifying that their proposal complies with regulations and requirements stated within the Request for Proposals.

A **Pre-Proposal Conference** will be held on **Thursday, February 15, 2018 at 10:00 AM** in the Legal Conference room, located at 102 Grant Avenue, Second floor, Santa Fe, New Mexico 87501. Teleconferencing will be available by calling 1-877-820-7831 and utilizing passcode: 445752. Attendance to the pre-proposal conference is not mandatory but is strongly encouraged.

**EQUAL OPPORTUNITY EMPLOYMENT:** All qualified Offerors will receive consideration of contract(s) without regard to race, color, religion, sex, national origin, ancestry, age, physical and mental handicap, serious mental condition, disability, spousal affiliation, sexual orientation or gender identity.

Request for Proposals are available by contacting Maricela Martinez, Procurement Specialist Senior at 142 W. Palace Avenue, Second Floor, Santa Fe, New Mexico 87501, or by telephone at (505) 992-9864, or by email at [mcmartinez@santafecountynm.gov](mailto:mcmartinez@santafecountynm.gov) or on the county's website at [http://www.santafecountynm.gov/asd/current\\_bid\\_solicitations](http://www.santafecountynm.gov/asd/current_bid_solicitations)

**PROPOSALS RECEIVED AFTER THE DATE AND TIME SPECIFIED ABOVE WILL NOT BE CONSIDERED AND WILL BE REJECTED BY SANTA FE COUNTY.**

Santa Fe County  
Purchasing Division  
Advertised February 4 & 5, 2018

## II. CONTRACT OBJECTIVES

### A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The Santa Fe County Attorney's Office is seeking proposals to retain the services of a law firm to evaluate the merits of and, to the extent desired by the County, pursue litigation against opiate manufacturers, distributors and others related to the impact of opiate manufacturing, marketing, distribution and use on the Santa Fe County.

### B. SCOPE OF WORK

Counsel will evaluate the merits of and, to the extent desired by the County, pursue litigation against opiate manufacturers, distributors and others related to the impact of opiate manufacturing, marketing and distribution and use on Santa Fe County. Counsel shall be retained on a contingency fee basis with no costs or other compensation paid to counsel except as a percentage of any settlement monies received or damages awards paid. The County is not responsible for any of the costs or fees of the legal services. The law firm must as a matter of course, possess resources sufficient to advance all costs, including the costs of any experts needed to perform or assist in the performance of the work contemplated by this Request for Proposal.

Representation will include significant evaluative and investigative work. Counsel will have to communicate with the County Attorney on a regular basis and may have to meet and/or confer with the Board of County Commissioners from time to time. Litigation may include drafting of pleadings, motions, briefs, and allow other papers to be filed in court; conducting and responding to discovery; attending all settlement negotiations, pre-trial, trial and post-trial court appearances; and handling all appeals.

Contractor shall:

- a) Evaluate the merits of and, to the extent desired by the County, pursuing litigation against opiate manufacturers, distributors and others related to the impact of the opiate epidemic on Santa Fe County. The successful offeror shall collaborate with other public entities if the County, in consultation with the successful offeror determines such collaboration to be in the best interest of the County.
- b) Be responsible for legal research, advice and representation concerning the distribution and manufacture of opiate and the impact of opiates on Santa Fe County.
- c) Brief County officials, employees and the County Attorney on all matters related to this Scope of Work of this RFP.
- d) Provide copies of all litigation correspondence and pleadings produced and received in connection with that litigation and give timely written notice to the County Attorney on any and all pleadings, dispositive motions, rulings, hearings, trials, mediations or settlement negotiations and any other legal events relevant to the Scope of Work of this RFP.

- e) Meet, coordinate with and submit interim reports to the County Attorney on a basis to be determined by the County Attorney, but not less than monthly.

**C. QUALIFICATIONS**

Offerors shall have been admitted to practice in the state and federal courts in the State of New Mexico for a minimum of five years or be admitted to practice in the state and federal courts of any other jurisdiction within the United States and associate with a duly licensed New Mexico attorney for court appearances.

Offerors must not be disbarred or suspended from practice in any jurisdiction and must be authorized to provide the requested services in accordance with Rule 16-505 NMRA.

**D. INSURANCE REQUIREMENTS**

The insurance required by Offerors are listed below.

1. General Conditions. 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.
2. General Liability Insurance, Including Automobile. 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 \$1,000,000 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 County by 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. County of Santa Fe shall be a named additional insured on the policy.
3. Workers' Compensation Insurance. The Contractor shall comply with the provisions of the Workers' Compensation Act.
4. 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, Section 41-4-1 et seq., Contractor shall increase the maximum limits of any insurance required herein.
5. Malpractice/Errors and Omissions Insurance. Contractor shall procure and maintain during the life of this Agreement professional liability (errors and omissions) insurance with policy limits of not less than \$1,500,000.00 per occurrence, \$2,500,000.00 per aggregate.

**E. PROCUREMENT MANAGER**

The County has designated a Procurement Manager who is responsible for the conduct of this procurement whose name, address and telephone number is listed below. All deliveries via express carrier should be addressed as follows:

Maricela Martinez, Procurement Specialist Senior  
 Santa Fe County Purchasing Division  
 142 W. Palace Avenue (Second Floor)  
 Santa Fe, New Mexico 87501  
 Phone (505) 992-9864  
 Fax (505) 989-3243  
[mcmartinez@santafecountynm.gov](mailto:mcmartinez@santafecountynm.gov)

Any inquiries or requests regarding this procurement should be submitted to the Procurement Manager in writing. Offerors may contact ONLY the Procurement Manager regarding the procurement. Other County employees do not have the authority to respond on behalf of the County.

**F. DEFINITION OF TERMINOLOGY**

This section contains definitions and abbreviations that are used throughout this procurement document.

**“BCC”** means the elected Board of County Commissioners.

**“Close of Business”** means 5:00 PM Mountain Standard Time or Mountain Daylight Time, whichever is in effect on the date given.

**“Contract” or “Agreement”** means a written agreement for the procurement of items of tangible personal property or services.

**“Contractor”** means a successful Offeror who enters into a binding contract.

**“County”** means Santa Fe County.

**“Determination”** means the written documentation of a decision by the Procurement Manager including findings of fact supporting a decision. A determination becomes part of the procurement file.

**“Desirable”** The terms “may”, “can”, “should”, “preferably”, or “prefers” identify a desirable or discretionary item or factor (as opposed to “mandatory”).

**“Evaluation Committee”** means a body appointed by the County management to perform the evaluation of Offeror proposals.

**“Finalist”** is defined as an Offeror who meets all the mandatory specifications of this Request for Proposals and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.

**“Mandatory”** The terms “must”, “shall”, “will”, “is required”, or “are required”, identify a mandatory item or factor (as opposed to “desirable”). Failure to meet a mandatory item or factor will result in the rejection of the Offeror’s proposal.

**“Offeror”** is any person, corporation, or partnership who chooses to submit a proposal.  
**“Procurement Manager”** means the person or designee authorized by the County to manage or administer a procurement requiring the evaluation of competitive sealed proposals.

**“Purchasing Division”** means the Santa Fe County Purchasing Division, Administrative Services Department.

**“Request for Proposals” or “RFP”** means all documents, including those attached or incorporated by reference, used for soliciting proposals.

**“Responsible Offeror”** means an Offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services or items of tangible personal property described in the proposal.

**“Responsive Offer” or “Responsive Proposal”** means an offer or proposal which conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to, price, quality, quantity or delivery requirements.

### III. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the schedule for the procurement, describes the major procurement events and the conditions governing the procurement.

#### A. SEQUENCE OF EVENTS

The Procurement Manager will make every effort to adhere to the following schedule:

<u>Action</u>	<u>Responsibility</u>	<u>Date</u>
1. Issuance of RFP	Purchasing Division	February 4 & 5, 2018
2. <b>Pre-Proposal Conference</b>	<b>Owner/Offerors/ Purchasing</b>	<b>February 15, 2018, 10:00AM Santa Fe County Legal Conference Room</b>
3. Acknowledgement of Receipt Form Due	Offerors	February 15, 2018 5:00pm
4. Deadline to Submit Additional Questions	Offerors	February 20, 2018
5. Response to Written Questions	Purchasing Division	February 22, 2018
6. <b>Submission of Proposal (2:00pm – MST)</b>	<b>Offerors</b>	<b>March 6, 2018, 2:00pm SF County Purchasing Division, 142 W. Palace Ave., (2<sup>nd</sup> Floor) Santa Fe, NM 87501</b>
7. Proposal Evaluation	Evaluation Committee	<b>March 2018 Finance Conference Room, 142 W. Palace Ave., (2<sup>nd</sup> Floor) Santa Fe, NM 87501</b>
8. Selection of Finalists	Evaluation Committee	<b>March 2018 Finance Conference Room, 142 W. Palace Ave., (2<sup>nd</sup> Floor) Santa Fe, NM 87501</b>
9. Best and Final Offers from Finalists (if applicable)	Offerors	March 2018
10. Oral Presentation by Finalists (if applicable)	Offerors	March 2018
11. Contract Negotiations	County, Offeror	March 2018
12. Contract Award	Purchasing Division	March 2018

**Note:** *If the Evaluation Committee makes a selection at the Selection of Finalist, Events 9-10 will not apply.*

**B. EXPLANATION OF EVENTS**

The following paragraphs describe the activities listed in the Sequence of Events shown in Section III, Paragraph A.

**1. Issuance of RFP**

This RFP is being issued by the Santa Fe County Attorney's Office and Purchasing Division.

**2. Pre-Proposal Conference**

A Pre-Proposal Conference is scheduled to be held on the date indicated in the "Sequence of Events" at Section III.A. Questions may be submitted at the Pre-Proposal Conference and after up until the date indicated in the "Sequence of Events" at Section III.A. A public log will be kept of the names of potential Offerors who attend the pre-proposal conference.

**3. Acknowledgement of Receipt Form Due**

A potential Offeror should hand-deliver, return by facsimile or e-mail the "Acknowledgement of Receipt Form" provided as Appendix A to have its name and firm placed on the procurement distribution list. The form should be signed by an authorized representative of the organization, dated and returned by close of business on the date indicated in the "Sequence of Events" at Section III.A.

The procurement distribution list will be used for the distribution of written responses to questions and any RFP addenda.

**4. Deadline to Submit Additional Written Questions**

Potential Offerors may submit written questions regarding this RFP until the close of business on the date indicated in the "Sequence of Events" at Section III.A. All written questions must be addressed to the Procurement Manager, listed in Section II, Paragraph E and sent via facsimile or e-mail.

**5. Response to Written Questions**

Written responses to written questions and any RFP addenda will be distributed on the date indicated in the "Sequence of Events" at Section III.A, to all potential Offerors whose names appear on the procurement distribution list.

Additional written requests for clarification of distributed answers or addenda must be received by the Procurement Manager no later than one (1) day after the answers or addenda were issued.

**6. Submission of Proposal**

**ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 2:00 P.M. ON TUESDAY, MARCH 6, 2018. Proposals received after this deadline will not be accepted.** The date and time of receipt will be recorded on each proposal. Proposals must be addressed and delivered to the Procurement Manager at the address listed in Section II, E. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the County's **Request for Proposals for Special Legal Counsel services Opioid Investigation/litigation for RFP# 2018-0236-AT/MM.** Proposals submitted by facsimile or other electronic means will not be accepted.

*Proposals must be delivered to:*

Maricela Martinez, Senior Procurement Specialist  
 Santa Fe County Purchasing Division  
 142 W. Palace Avenue (Second Floor)  
 Santa Fe, New Mexico 87501

A public log will be kept of the names of all Offerors who submit proposals. Pursuant to NMSA 1978, Section 13-1-116, the contents of any proposal shall not be disclosed so as to be available to competing Offerors during the negotiating process.

**7. Proposal Evaluation**

The evaluation of proposals will be performed by an Evaluation Committee appointed by the Procurement Manager. This process will take place during the timeframe indicated in the "Sequence of Events" at III.A. During this time, the Procurement Manager may initiate discussions with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals, but proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by Offerors.

**8. Selection of Finalists**

The Evaluation Committee may select and the Procurement Manager may notify the Finalist Offerors on the date indicated in the Sequence of Events at Section III.A. Only Finalists will be invited to participate in the subsequent steps of the procurement, if the Finalist process is used.

**9. Best and Final Offers from Finalists (If Applicable)**

Finalist Offerors may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers by the date indicated in the "Sequence of Events" at Section III.A.

**10. Oral Presentation by Finalists (If Applicable)**

Finalist Offerors may be required to present their proposals to the Evaluation Committee. The Procurement Manager will schedule the time for each Offeror presentation. All Offeror presentations will be held at the Santa Fe County Purchasing Division, 142 W. Palace Avenue (Second Floor), Santa Fe, New Mexico. Each presentation will be limited to one (1) hour in duration.

**11. Contract Negotiations**

Contract will be finalized with the most advantageous Offeror during the timeframe indicated in the "Sequence of Events" at Section III.A. In the event that mutually agreeable terms cannot be reached within the time specified, the County reserves the right to finalize a contract with the next most advantageous Offeror without undertaking a new procurement process.

**12. Contract Award**

The County anticipates awarding the contract on the date in the "Sequence of Events" at Section III.A. These dates are subject to change at the discretion of the Santa Fe County Purchasing Manager.

The contract shall be awarded to the Offeror or Offerors whose proposal is most advantageous to the County, taking into consideration the evaluation factors set forth in the RFP. The most advantageous proposal may or may not have received the most points.

**13. Right to Protest**

Any protest by an Offeror must be timely and in conformance with NMSA 1978, Section 13-1-172 and applicable procurement regulations. Protests must be written and must include the name and address of the protestor and the request for proposals number. It must also contain a statement of grounds for protest including appropriate supporting exhibits. The protests must be delivered to:

Bill Taylor, Procurement Manager  
 Santa Fe County Purchasing Division  
 142 W. Palace Avenue, 2<sup>nd</sup> Floor  
 Santa Fe, New Mexico 87501

***Protests will not be accepted by facsimile or other electronic means.  
 Protests received after the deadline will not be accepted.***

## C. GENERAL REQUIREMENTS

This procurement will be conducted in accordance with Chapter 13, NMSA 1978, NMAC 1.4.1 and the Santa Fe County Procurement Regulations.

### 1. Acceptance of Conditions Governing the Procurement

Offerors must indicate their acceptance of the Conditions Governing the Procurement section in the Letter of Transmittal. Submission of a proposal constitutes acceptance of the contract template attached hereto as Appendix D.

### 2. Incurring Cost

Any cost incurred by the Offeror in preparation, transmittal, presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror.

### 3. Prime Contractor Responsibility

Any contract that may result from this RFP shall specify that the prime contractor is solely responsible for fulfillment of the contract with the County including any payments to subcontractors. The County will make contract payments to only the prime contractor.

### 4. Subcontractors

Use of subcontractors must be clearly explained in the proposal, and major subcontractors must be identified by name. The prime contractor shall be wholly responsible for the entire performance whether or not subcontractors are used.

### 5. Amended Proposals

An Offeror may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals must be complete replacements for a previously submitted proposal and must be clearly identified as such in the transmittal letter. County personnel will not merge, collate, or assemble proposal materials.

### 6. Offerors' Rights to Withdraw Proposal

Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The Offeror must submit a written withdrawal request signed by the Offeror's duly authorized representative addressed to the Procurement Manager. The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations.

**7. Proposal Offer Firm**

Responses to this RFP, including proposal prices, will be considered firm for ninety (90) days after the due date for receipt of proposals or ninety (90) days after receipt of a best and final offer if one is submitted.

**8. Disclosure of Proposal Contents**

After award, proposals, except contents for which the Offeror has made a written request for confidentiality, shall be public record. The Procurement Manager will not disclose or make public any pages of a proposal on which the Offeror has stamped or imprinted "*proprietary*" or "*confidential*" subject to the following requirements.

Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. Confidential data is normally restricted to confidential financial information concerning the Offeror's organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, 57-3A-1 to 57-3A-7, NMSA 1978. The price of products offered or the cost of services proposed shall not be designated as proprietary or confidential information.

If a request is received for disclosure of data for which an Offeror has made a written request for confidentiality, the Santa Fe County Procurement Manger shall examine the Offeror's request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be considered a public record subject to inspection subject to any continuing prohibition on the disclosure of confidential data.

**9. No Obligation**

This procurement in no manner obligates Santa Fe County or any of its departments to the use of any proposed professional services until a valid written contract is awarded and approved by the appropriate authorities.

**10. Termination**

This RFP may be canceled at any time and any and all proposals may be rejected in whole or in part when the County determines such action to be in the best interest of the County.

**11. Sufficient Appropriation**

Any contract awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations do not exist. Such termination will be effected by sending written notice to the contractor. The County's decision as to whether sufficient appropriations and authorizations are available will be accepted by the contractor as final.

**12. Legal Review**

The County requires that all Offerors agree to be bound by the General Requirements contained in this RFP. Any Offeror concerns must be promptly brought to the attention of the Procurement Manager.

**13. Governing Law**

This procurement and any agreement with Offerors that may result shall be governed by the laws of the State of New Mexico.

**14. Basis for Proposal**

Only information supplied by the County in writing through the Procurement Manager or in this RFP should be used as the basis for the preparation of Offeror proposals.

**15. Contract Terms and Conditions**

The contract between the County and the Contractor will follow the format specified by the County and contain the terms and conditions set forth in Appendix D.

However, the County reserves the right to negotiate with a successful Offeror provisions in addition to those contained in this RFP.

If an Offeror objects to any of the County's terms and conditions as contained in this Section or in Appendix D, that Offeror must propose specific alternative language. The County may or may not accept the alternative language. General references to the Offeror's terms and conditions or attempts at complete substitutions are not acceptable to the County and will result in disqualification of the Offeror's proposal.

Offerors must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording.

**16. Offeror's Terms and Conditions**

Offerors must submit with the proposal a complete set of any additional and/or different terms and conditions which they expect to have included in a contract negotiated with the County.

**17. Contract Deviations**

Any additional terms and conditions, which may be the subject of negotiation, will be discussed only between the County and the selected Offeror and shall not be deemed an opportunity to amend the Offeror's proposal.

**18. Offeror Qualifications**

The Evaluation Committee may make such investigations as necessary to determine the ability of the Offeror to adhere to the requirements specified within this RFP. The Evaluation Committee will reject the proposal of any Offeror who is not a responsible Offeror or fails to submit a responsive offer as defined in Sections 13-1-83 and 13-1-85 NMSA, 1978, subject to approval by the Procurement Manager.

**19. Right to Waive Minor Irregularities**

The Evaluation Committee reserves the right to waive minor irregularities. The Evaluation Committee also reserves the right to waive mandatory requirements provided that doing so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee, subject to approval by the Procurement Manager.

**20. Change in Contractor Representatives**

The County reserves the right to require a change in contractor representatives if the assigned representatives are not, in the opinion of the County, meeting its needs adequately. Any change in contractor representative must receive prior County approval.

**21. Notice**

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

**22. County Rights**

The County reserves the right to accept all or a portion of an Offeror's proposal.

**23. Right to Publish**

Throughout the duration of this procurement process and contract term, potential Offerors and contractors must secure from the County written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement or the subsequent contract. Failure to adhere to this requirement may result in disqualification of the Offeror's proposal or termination of the contract.

**24. Ownership of Proposals**

All documents submitted in response to this Request for Proposals shall become the property of the County. However, any technical or user documentation submitted with the proposals of non-selected Offerors shall be returned after the expiration of the protest period.

**25. Electronic Mail Address**

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). It is recommended that Offeror should have a valid e-mail address to receive this correspondence.

**26. Preference in Procurement by Santa Fe County**

**a. New Mexico Resident Business Preference**

New Mexico law, Section 13-1-21 NMSA 1978, provides a preference in the award of a public works contract for an “**in-state resident business.**” Application of a resident business preference for any Offeror requires the Offeror to provide a copy of a valid and current certificate as a resident business. Certificates are issued by the state taxation and revenue department.

If an Offeror submits with its proposal a copy of a valid and current in-state resident business certificate, 5% of the total weight of all evaluation factors used in the evaluation of proposals may be awarded or added to the Offerors score.

Certification by the department of taxation and revenue for the resident contractor takes into consideration such activities as the business or contractor’s payment of property taxes or rent in the state and payment of unemployment insurance on employees who are residents of the state.

**OR**

**b. New Mexico Resident Veteran Business Preference**

New Mexico law, Section 13-1-22 NMSA 1978, provides a preference in the award of a public works contract for an “**in-state resident veteran business.**” Certification by the department of taxation and revenue for the resident veteran business requires the Offeror to provide evidence of annual revenue and other evidence of veteran status.

An Offeror who wants the veteran contractor preference to be applied to its proposal is required to submit with its proposal the certification from the NM Department of Taxation and Revenue and the sworn affidavit attached hereto as Appendix C.

If an Offeror submits with its proposal a copy of a valid and current veteran resident business certificate, 10%, 8% or 7% of the total weight of all the evaluation factors used in the evaluation of proposals may be awarded or added to the Offeror’s score, depending on the business’ annual revenue.

**The resident business preference is not cumulative with the resident veteran business preference.**

**AND**

**c. Santa Fe County Business Preference**

Santa Fe County Ordinance 2012-4 provides for a **County preference** for a “Santa Fe County business.” Application of the County preference in procurement requires an Offeror to obtain and provide a Santa Fe County Business Certificate issued by the Santa Fe County Procurement Manager. Certification by the Procurement Manager takes into consideration the business’ corporate standing in the state, business licensure or registration, the duration of the business’ primary office location and the payment of taxes.

If an Offeror submits with its proposal a copy of its Santa Fe County Business Certificate issued by the Purchasing Manager, 5% of the total weight of all the evaluation factors used in the evaluation of proposals may be awarded to the Offerors score.

*The Resident Business, Resident Veteran Business or Santa Fe County Business preferences do not apply to procurement of services or goods involving federal funds or federal grant funds.*

**27. Double-Sided Documents**

All submitted bid / proposal documents shall be double-sided, pursuant to Santa Fe County Resolution 2013-7, Adopting Sustainable Resource Management Principles, Section 2. A. Waste Reduction and Reuse...”all documents are to be double-sided, including those that are generated by outside entities using County funds and by consultants and contractors doing business with the County”.

**28. Living Wage**

Contractor shall comply with the requirements of Santa Fe County Ordinance No. 2014-1 (Establishing a Living Wage).

## IV. RESPONSE FORMAT AND ORGANIZATION

### A. NUMBER OF RESPONSES

Offerors shall submit only one proposal in response to this RFP.

### B. NUMBER OF COPIES

Offerors shall deliver one (1) original and five (5) identical copies of their proposal to the location specified in Section II, Paragraph E, on or before the closing date and time for receipt of proposals.

### C. PROPOSAL FORMAT

All proposals shall be limited to thirty (30) pages, with exception to professional licenses and certifications, which shall be added as appendices. The document shall be typewritten on standard 8 1/2 x 11 paper, with a font no smaller than 12 pt. pitch, with nominal 1" margins and normal line spacing. Proposals shall be placed within a binder with tabs delineating each section.

#### 1. Proposal Organization

The proposal must be organized and indexed in the following format and must contain, as a minimum, all listed items in the sequence indicated.

- a) Letter of Transmittal
- b) Table of Contents
- c) Proposal Summary (optional)
- d) Response to Mandatory Evaluation Factors
- e) Response to County Terms and Conditions
- f) Offeror's Additional and/or Different Terms and Conditions
- g) A copy of the law firm's malpractice insurance showing coverage of at least one million dollars (\$1,000,000) for every attorney who will provide legal services to the County.

Within each section of their proposal, Offerors should address the items in the order in which they appear in this RFP under Section V., Paragraph B. Mandatory Evaluation Factors. All forms provided in the RFP must be thoroughly completed and included in the appropriate section of the proposal.

Any proposal that does not adhere to these requirements may be deemed non-responsive and rejected on that basis.

The proposal summary may be included by Offerors to provide the Evaluation Committee with an overview of the technical and business features of the proposal; however, this material will not be used in the evaluation process unless specifically referenced from other portions of the Offeror's proposal.

Offerors may attach other materials that they feel may improve the quality of their responses. However, these materials should be included as items in a separate appendix.

2. **Letter of Transmittal**

Each proposal must be accompanied by a letter of transmittal. The letter of transmittal **MUST**:

- a) Identify the submitting organization;
- b) Identify the name and title of the person authorized by the organization to contractually obligate the organization;
- c) Identify the name, title and telephone number of the person authorized to negotiate the contract on behalf of the organization;
- d) Identify the names, titles and telephone numbers of persons to be contacted for clarification;
- e) **Explicitly** indicate Acceptance of the Conditions Governing the Procurement stated in Section III, Paragraph C.1;
- f) Be signed by the person authorized to contractually obligate the organization;
- g) Acknowledge receipt of any and all amendments to this RFP.
- h) Acknowledge and accept the terms and conditions of the Contingency Fee Agreement attached as Appendix D and propose additional and/or different terms and conditions.

**THIS SECTION LEFT BLANK INTENTIONALLY**

## V. SPECIFICATIONS

Offerors should respond in the form of a thorough narrative to each evaluation criteria. The narratives together with required supporting materials will be evaluated and assigned points according.

### A. INFORMATION

#### Time Frame

The contract is anticipated to commence in or around March 2018. Santa Fe County intends on awarding a contract with an initial term of two (2) years with the option to extend the term in one year increments, not to exceed a total of four (4) years.

### B. MANDATORY EVALUATION FACTORS

Brief explanations of each evaluation factor are listed below. Offerors are encouraged to fully address each factor, as points are available for the Offeror's response to each. Failure to respond to a mandatory evaluation factor will result in the disqualification of the proposal as non-responsive. All factors within this section are mandatory.

#### 1. Organization

- Provide a history of the Offeror's firm, include a full description of your firm for the last 3 years starting with the year your firm was organized and began its practice in the relevant practice area, as well as any material developments in your organization (i.e. changes in ownership) over the past three years and any potential material developments anticipated in the near future.
- Provide information on the law firm's office locations and staffing at each office as well as the types of legal services/specialized area of expertise each office location provides.
- Describe any malpractice claims against your law firm or any attorney in your firm within the last five years and the status or outcome of each claim.

#### 2. Professional Competence and Specialized Experience

- Provide an overview of current and prior experience in work comparable to the Scope of Work required in this RFP.
- Provide resumes of key staff, consultants or other team members describing specific relevant experience of each proposed staff.
- Include background, qualifications, education, training and years of experience relevant to this RFP.
- Include a summary of experience before the New Mexico Courts, Federal Courts, particularly related to the relevant legal services within this RFP;
- Provide information about any specialized experience with providing legal services for projects of similar scope that demonstrate competence to successfully complete the project including experience related to complex commercial litigation.

- Set forth each attorney within your firm who is on the MDL Leadership Team established in the consolidated litigation within the United States District Court in the Northern District of Ohio, MDL No. 2804 before Judge Dan Aaron Polster and specify in what capacity they are a part of that team.
- Set forth each attorney within your firm who is on the Executive Committee established in the consolidated litigation within the United States District Court in the Northern District of Ohio, MDL No. 2804 before Judge Dan Aaron Polster.
- Set forth each attorney within your firm who is on the Steering Committee established in the consolidated litigation within the United States District Court in the Northern District of Ohio, MDL No. 2804 before Judge Dan Aaron Polster.
- Apart from the consolidated litigation within the United States District Court in the Northern District of Ohio, MDL No. 2804 before Judge Dan Aaron Polster, provide a list of all cases related to opiate manufacturers and distributors (identifying by case name and proper legal citation) in which attorneys from your law firm have appeared, the extent of involvement from the attorneys in your law firm and the ultimate outcome or current status of each case.

### 3. Evidence of Understanding Scope of Work

- Provide an in-depth response and understanding of the requested scope of work;
- Include an itemized description of services to be provided that correlates to the scope of work.
- Discuss challenges that might be expected related to the scope of work.
- Include all information for any subcontractor or consultant that the Offeror has indicated to be part of the project team including what areas of work they will perform.
- Demonstrate the possession of resources to fund the investigation and litigation of complex commercial litigation-preferably complex consumer fraud and unfair deceptive trade practices litigation, and/or complex fraud and regulatory-related investigations against multiple defendants on a contingency fee basis with no costs paid by the County except those recuperated from a Recovery as that term is defined in the attached sample Contingency fee Agreement (Appendix D).
- Describe in detail the understanding of the required fee arrangements.
- Any services that cannot be provided should also be noted.

### 4. Capacity and Capability

- Describe your administrative structure of representation (i.e. proposed staffing assignments, their qualifications and capabilities, years of experience, specific roles, skills and/or strengths and their office locations), and an understanding of the needs of the County in this litigation. Specify your firm's knowledge of and experience representing local government boards and commissions.
- Include information about Offeror's approach in providing the required services and capacity to implement the services and deliverables in a timely manner including whether you expect to assign or subcontract certain aspects of the work to other law firms or attorneys not employed by your law firm, and

confirmation that you will have an attorney assigned to this matter, or affiliate with an attorney, who has been admitted to practice in the State of New Mexico and federal courts for a minimum of five (5) years. For each attorney expected to work on the scope of work of this RFP:

1. their name;
  2. a current resume which includes education, years and jurisdiction
  3. of admission to practice, work experience, any professional distinctions and memberships in any professional organizations;
  4. a detailed description of the legal experience related to the relevant legal services contained in this RFP. The description should include: (a) years of experience in the relevant legal services contained in this RFP, (b) percent of practice related to the relevant legal services contained in this RFP, and (3) percent of the relevant legal services contained in this RFP representing plaintiffs and percent representing defendants;
  5. a summary of experience before New Mexico Courts and federal courts and administrative bodies, particularly related to the relevant legal services contained in this RFP; and
  6. a statement that each attorney is a member in good standing in each jurisdiction they are licensed.
- Provide information on the ability to comply with the applicable state and federal laws regarding access to and retention of records requirements, including all ethical and professional standards.
  - Describe the extent of your firm's knowledge and/or experience representing local government boards and commissions, including knowledge of, and experience in the investigation and litigation of, claims on behalf of local government against manufacturers, distributors, and ancillary persons or entities who introduce dangerous, but otherwise lawful, substances to residents of the local government.
  - Describe any material arrangements, relationships, associations, employment or other contracts that may cause a conflict of interest or the appearance of a conflict of interest if your law firm is awarded a contract for legal services by Santa Fe County.
  - Indicate the relationship of the services requested in this RFP to other current projects/contracts the Offeror or firm may be involved in, including identification of legal services being provided for other clients that may create conflicts of interest with the Offeror's services for the County.
  - Set forth the extent each participant in the proposed litigation team is already committed to other legal matters and an explanation of how the participants will have necessary to devote to this matter.

##### 5. Past Record of Performance

- Provide a list of governmental entities, agencies or other political subdivisions that the law firm represents and/or has represented including the time period of representation and the nature of the work performed.
- Provide a list of major private clients that your law firm represents and the nature of work being performed.

- Provide a list of opiate manufacturers, distributors or prescribers that the law firm has represented in the last ten years and the nature of the work performed.
- Describe any ethics complaints against your law firm or any attorney in your firm within the last five years and the status of outcome of each complaint.
- Provide a list of any material arrangements, relationships, associations, employment or other contracts that may cause a conflict of interest or the appearance of a conflict of interest if your firm is awarded a contract for legal services by Santa Fe County. Such list should include opiate manufacturers, distributors or prescribers that the law firm has represented in the last ten years and the nature of work performed. In regard to work for a prescriber of opioids, the nature of the work would only be required if it pertained to prescribing opioids.
- Provide a minimum of three references from organizations who the Offeror previously or currently provides the services described in this RFP. The minimum information that should be provided about each reference is:
  - Name of individual or entity for which services were provided.
  - Address of individual or entity.
  - Name, email, fax and telephone number of contact person.
  - Types of services provided and dates services were provided.

**VI. EVALUATION**

**A. EVALUATION SCORING**

The County will evaluate responsive proposals and assign a numerical score in each category, not to exceed the maximum allowed score for that category, as determined through the Offeror’s attention to the factor detailed in the following sections. The amount of discussion to be applied to each listed topic is an individual choice of the Offeror; however, discussion should be detailed enough to inform and educate the Evaluation Committee.

Proposals will be scored based upon a comparison of the information submitted by each Offeror against the evaluation factors outlined below. Each Evaluation Factor is assigned the following points:

- 1. Organization..... 100 points
  - 2. Professional Competence and Specialized Experience ..... 300 points
  - 3. Evidence of Understanding Scope of Work.....100 points
  - 4. Capacity and Capability.....250 points
  - 5. Past Record of Performance.....250 points
- TOTAL POINTS..... 1000 points**

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## **PREFERENCES**

If a proposal contains New Mexico Resident Business Certificate or New Mexico Resident Veterans Business Certificate and/or Santa Fe County Business Certificate, the applicable preference will be applied in accordance with Section 13-1-21-NMSA 1978, and the County Purchasing Regulations.

- |            |  |                   |
|------------|--|-------------------|
| 6.         | Proposal contains a valid N.M. Resident Business Certificate.....        | <b>50 points</b>  |
| <b>OR</b>  |  |                   |
| 7.         | Proposal contains valid N.M. Resident Veteran Business Certificate ..... | <b>100 points</b> |
| <b>AND</b> |  |                   |
| 8.         | Proposal contains a valid Santa Fe County Business Certificate.....      | <b>50 points</b>  |

## **B. EVALUATION PROCESS**

The evaluation process will follow the steps listed below:

1. All Offeror proposals will be reviewed for compliance with the mandatory specifications stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Procurement Manager may contact the Offeror for clarification of the response as specified in Section III.B.7.
3. The Evaluation Committee may use other sources of information to perform the evaluation as specified in Section III.C.18.
4. Responsive proposals will be evaluated on the factors in Section V that have been assigned a point value. The responsible Offerors with the highest scores will be selected as finalist Offerors ‘shortlisted’ based upon the proposals submitted. If an oral presentation is recommended, the ‘shortlisted’ firms will be provided questions by the Selection Committee for their “Oral Presentations.” Each presentation will be evaluated by the Selection Committee. The oral presentation that receives the highest points and is most advantageous to the County, taking into consideration the evaluation factors in Section V, will be recommended for contract award as specified in Section III.B.11. Only the points from the Oral Presentation will be calculated for most & highest qualified Offeror. Points from the “shortlisted” evaluations will only be used if there is a tie resulting from the Oral Presentations. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

**APPENDIX A**

**ACKNOWLEDGEMENT OF RECEIPT FORM  
SPECIAL LEGAL COUNSEL SERVICES  
FOR OPIOID INVESTIGATION/LITIGATION  
RFP NO. 2018-0236-AT/MM**

In acknowledgement of receipt of this Request for Proposal the undersigned agrees that he/she has received a complete copy, beginning with the title page and table of contents, and ending with **Appendix D**.

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than close of business on **Thursday, February 15, 2018**. Only potential Offerors who elect to return this form completed with the indicated intention of submitting a proposal will receive copies of all Offeror written questions and the County's written responses to those questions as well as RFP amendments, if any are issued.

FIRM: \_\_\_\_\_

REPRESENTED BY: \_\_\_\_\_

TITLE: \_\_\_\_\_ PHONE NO.: \_\_\_\_\_

E-MAIL: \_\_\_\_\_ FAX NO.: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

This name and address will be used for all correspondence related to the Request for Proposal.

Firm does/does not (**circle one**) intend to respond to this Request for Proposals.

Maricela Martinez  
Santa Fe County Purchasing Division  
142 W. Palace Avenue (Second Floor)  
Santa Fe, New Mexico 87501  
(505) 992-9864  
(505) 989-3243  
[mcmartinez@santafecountynm.gov](mailto:mcmartinez@santafecountynm.gov)

## APPENDIX B

### CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, § 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, any prospective contractor seeking to enter into a contract with any state agency or local public body **for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources** must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the 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 and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body may cancel a solicitation or proposed award for a proposed contract pursuant to Section 13-1-181 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section 13-1-182 NMSA 1978 of the Procurement Code if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

The state agency or local public body that procures the services or items of tangible personal property shall indicate on the form the name or names of every applicable public official, if any, for which disclosure is required by a prospective contractor.

**THIS FORM MUST BE INCLUDED IN THE REQUEST FOR PROPOSALS AND 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 thing 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 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.

“**Family member**” means 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.

“**Prospective contractor**” means a person or business that 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 or business 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.

Name(s) of Applicable Public Official(s) if any: \_\_\_\_\_  
(Completed by State Agency or Local Public Body)

**DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:**

Contribution Made By: \_\_\_\_\_

Relation to Prospective Contractor: \_\_\_\_\_

Date Contribution(s) Made: \_\_\_\_\_  
\_\_\_\_\_

Amount(s) of Contribution(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) WERE MADE** to an applicable public official by me, a family member or representative.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title (Position)

**APPENDIX C**

**Resident Veterans Preference Certification**

\_\_\_\_\_ (NAME OF CONTRACTOR) hereby certifies the following in regard to application of the resident veterans’ preference to this procurement.

**Please check one box only:**

- I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is less than \$1M allowing me the 10% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.
- I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$1M but less than \$5M allowing me the 8% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.
- I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$5M allowing me the 7% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

“I agree to submit a report or reports to the State Purchasing Division of the General Services Department declaring under penalty of perjury that during the last calendar year starting January 1 and ending on December 31, the following to be true and accurate:

“In conjunction with this procurement and the requirements of this business application for a Resident Veteran Business Preference/Resident Veteran Contractor Preference under Sections 13-1-21 or 13-1-22 NMSA 1978, which awarded a contract which was on the basis of having such veterans preference, I agree to report to the State Purchasing Division of the General Services Department the awarded amount involved. I will indicate in the report the award amount as a purchase from a public body or as a public works contract from a public body as the case may be.”

“I understand that knowingly giving false or misleading information on this report constitutes a crime”.

I declare under penalty of perjury that this statement is true to the best of my knowledge. I understand that giving false or misleading statements about material fact regarding this matter constitutes a crime.

\_\_\_\_\_  
(Signature of Business Representative)\*

\_\_\_\_\_  
(Date)

\*Must be an authorized signatory of the Business.

The representations made in checking the boxes constitutes a material representation by the business that is subject to protest and may result in denial of an award or un-award of the procurement involved if the statements are proven to be incorrect.

SIGNED AND SEALED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:  
\_\_\_\_\_

**APPENDIX D  
PROFESSIONAL SERVICES AGREEMENT  
BETWEEN SANTA FE COUNTY AND**

**FOR**

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2018, by and between **Santa Fe County**, hereinafter referred to as the “County” and with a principal place of business located a \_\_\_\_\_, hereinafter referred to as the “Contractor”.

**WHEREAS**, the County requires legal assistance on matters involving the national opioid epidemic or opioid crisis and its effect on Santa Fe County; and

**WHEREAS**, pursuant to NMSA 1978, Sections 13-1-112 and 13-1-117 of the Procurement Code, Request for Proposals No. 2018-\_\_\_\_\_ was issued to procure these legal services; and

**WHEREAS**, the County requires the services of the Contractor and the Contractor is qualified and 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 mutually agree as follows:

**1. SCOPE OF WORK**

At the discretion of the County Attorney or the County Attorney’s designee, Contractor shall provide the following professional legal services:

- a) Evaluate the merits of and, to the extent desired by the County, initiate and pursue litigation against opiate manufacturers, distributors and others related to the impact of the opiate epidemic and crisis on Santa Fe County. Contractor shall collaborate with other public entities if the County, in consultation with the Contractor, determines such collaboration to be in the best interest of the County.
- b) Be responsible for legal research, advice and representation concerning the marketing, advertising, distribution, and manufacture of opiates and the impact of opiates on Santa Fe County. Contractor shall be solely responsible for all fees and costs associated with this representation unless there is a Recovery.
- c) Brief County officials and the County Attorney on all matters related to this Scope of Work.
- d) Provide copies of all litigation correspondence and pleadings produced and received in connection with litigation on behalf of the County and give timely written notice to the County Attorney on any and all pleadings, dispositive

motions, rulings, hearings, trials, mediations or settlement negotiations and any other legal events relevant to this Scope of Work.

- e) Meet, coordinate with and submit interim reports to the County Attorney on a basis to be determined by the County Attorney, but not less than monthly.
- f) Refrain from making any settlement or compromise of any nature of any of the County's claims without the County's prior approval. The County has the absolute right to accept or reject any settlement or compromise. The County agrees to seriously consider any settlement offer Contractor recommends before making a decision to accept or reject such offer.

## **2. CONTINGENT FEE COMPENSATION; COSTS AND EXPENSES**

A. Contractor will be compensated for service performed only if the Contractor obtains Recovery for the County. Recovery means a monetary recovery stemming from performance of the scope of work set forth herein, acceptable to the County, and obtained by Contractor, whether by suit, settlement, or otherwise. Absent Recovery, Contractor will not be compensated for fees and costs associated with this Agreement. From any Recovery, Contractor will first be reimbursed for all costs and expenses associated with representation of Santa Fe County in this matter. The fee then paid Contractor will be \_\_\_% of the remaining balance of the Recovery. The County will make payment exclusively to the Contractor and will not make payment to third parties whose services are rendered to the Contractor as part of Contractor's Scope of Work under this Agreement. In the event of a loss at trial or abandonment of the claim prior to recovery of any sums, no monies shall be paid to Contractor for any work performed or any costs incurred.

B. Contractor shall receive the above-stated percentage fee in consideration of its services under and pursuant to this Agreement, but if the County does not prevail in the above-stated matter for which Contractor is employed, Contractor shall not receive any sum whatsoever.

C. Contractor's fee set forth above is not set or regulated by law but has been freely negotiated between the Contractor and County. Unless Contractor and County negotiate and execute a separate agreement, the County need not pay Contractor for any matter related to, but not specifically covered in, this Agreement.

D. No settlement or compromise of any nature shall be made of any of the County's claims without the County's prior written approval.

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

F. Contractor will incur various costs and expenses in performing these legal services. Costs and expenses shall include court fees, jury fees, service of process charges, court and deposition reporters' fees, photocopying and reproduction costs, notary fees, long distance telephone charges, messenger and other delivery fees, postage, deposition costs, travel costs including parking, mileage, transportation, meals and hotel costs, investigation expenses,

consultant, expert witness, professional mediator, and arbitrator and/or special master fees. Costs and expenses will be compensated at cost in the event of a sufficient recovery. In office photocopying shall be charged at the rate of /page. Facsimile charges shall be charged at the rate of /page. Mileage shall be compensated at the rate of .43 cents per mile.

### **3. EFFECTIVE DATE AND TERM**

This Agreement shall be effective upon the date indicated above (Effective Date) and the term shall be two years from the Effective Date, unless earlier terminated pursuant to Section \_\_\_\_ (Termination) of this Agreement. The County has the option to extend the term of this Agreement in one-year increments and at the same rates, terms and conditions, for a term not to exceed a total of four years. The County may exercise this option by submitting a written notice to the Contractor that the term will be extended another year. The notice must be submitted to the Contractor at least 60 days prior to the expiration of the term of this Agreement.

### **4. ADDITIONAL SERVICES**

A. The parties agree that all tasks set forth in Section 1 (Scope of Work) of this Agreement, shall be completed in full, to the satisfaction of the County, for the contingent fee set forth in Section 2 (Contingent Fee Compensation; Cost and Expenses) 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 shall not affect the Contractor's compensation as set forth in Section 3 above. Any changes, amendments or modifications to the Scope of Work shall be incorporated in written amendments to this Agreement.

### **5. DISCHARGE AND WITHDRAWAL**

The County may discharge the Contractor at any time and in the event of such termination neither party shall have any rights against the other party, except as follows. In the event of a recovery by the County against the Defendants of a claim brought by Contractor subsequent to termination, Contractor shall have rights in the nature of *quantum meruit* to recover fees, costs and expenses reasonably allocable to their work prior to termination. Contractor may withdraw with the County's consent or, within a reasonable time after giving notice to the County, for good cause. Good cause includes the County's breach of this Agreement and/or the County's refusal to cooperate with the Contractor in pursuing this litigation, the Contractor's determination that there is a lack of merit to any claims, or any other fact or circumstance that would render Contractor's continuing representation unlawful or unethical.

### **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. ASSIGNMENT**

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for compensation 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.

## **8. 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.

## **9. 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.

## **10. 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.

## **11. 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.

## **12. PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT;**

A. 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.

B. The Contractor acknowledges and agrees that any material produced in whole or in part under this Agreement is a work made for hire. Accordingly, to the extent that any such

material is copyrightable in the United States or in any other country the County shall own such copyright.

### **13. 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.

### **14. 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.

### **15. 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

### **16. 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.

### **17. 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.

## **18. 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 in accordance with Santa Fe County's records retention schedule and dispose of such records in accordance with the disposition of public records process in effect for Santa Fe County at the time of disposition of those records; (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").

## **19. SEVERABILITY**

If any term or condition of this Agreement is 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.

## **20. NOTICES**

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

Santa Fe County  
Attn: Santa Fe County Attorney  
P.O. Box 276  
102 Grant Ave.  
Santa Fe, NM 87504-0276

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

## **21. CONTRACTOR'S REPRESENTATIONS**

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.

C. Contractor represents and warrants that it has completed diligent inquiry within its offices and conducted a search of other clients to determine whether Contractor's performance of the Scope of Work under this Agreement might create a potential conflict of interest with any other clients.

## **22. FACSIMILE SIGNATURES**

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

## **23. NO THIRD-PARTY BENEFICIARIES**

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

## **24. INSURANCE**

A. 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.

B. 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 \$1,000,000 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.

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

D. 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.

E. Professional Liability [Malpractice/Errors and Omissions Insurance]. The Contractor shall procure and maintain during the life of this Agreement professional liability (errors and omissions) insurance with policy limits of not less than \$1,500,000.00 per occurrence, \$2,500,000.00 per aggregate.

## **25. 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.

## **26. 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.

**27. 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.

**28. APPOINTMENT OF AGENT FOR SERVICE OF PROCESS.**

The Contractor appoints \_\_\_\_\_, as its agent upon whom process and writs in any action or proceeding arising out of or related to this Agreement may be served. The Contractor acknowledges and agrees that service upon its designated agent shall have the same effect as though the Contractor were actually and personally served within the state of New Mexico.

**29. SURVIVAL**

The following provisions shall survive termination of this Agreement: RECORDS AND INSPECTION, RELEASE, CONFIDENTIALITY, PUBLICATION AND USE OF MATERIAL, COMPLIANCE WITH APPLICABLE LAW, NO THIRD-PARTY BENEFICIARIES, AND SURVIVAL.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date of last signature by the parties below.

**SANTA FE COUNTY:**

\_\_\_\_\_  
Anna Hansen, Chair  
Board of County Commissioners of Santa Fe County

**ATTESTATION:**

\_\_\_\_\_  
Geraldine Salazar  
Santa Fe County Clerk

\_\_\_\_\_  
Date

Approved as to form:

\_\_\_\_\_  
R. Bruce Frederick  
Santa Fe County Attorney

\_\_\_\_\_  
Date

Finance Department:

\_\_\_\_\_  
Stephanie S. Clarke  
Finance Director

\_\_\_\_\_  
Date

**CONTRACTOR:**

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
Date

\_\_\_\_\_  
(print name and title)