

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN SANTA FE COUNTY AND  
PERKINS COIE, LLP  
FOR LEGAL SERVICES**

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2015, by and between **Santa Fe County**, hereinafter referred to as the "County" and **Perkins Coie, LLP**, with its principal place of business located at 700 13<sup>th</sup> Street, NW, Suite 600, Washington, DC 20005-3960, hereinafter referred to as the "Contractor".

**WHEREAS**, the County requires legal assistance on matters involving questions of Indian law, Indian country, or Indian tribes; and

**WHEREAS**, pursuant to NMSA 1978, Sections 13-1-112 and 13-1-117 of the Procurement Code, Request for Proposals No. 2015-0349-LG/MY 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 and set forth in the engagement letter between Santa Fe County and Perkins Coie, 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. Legal research, advice and representation concerning Indian law issues and other issues related to Indian country and doing business with Indian tribes, including but not limited to, tribal sovereign immunity, public roads law, state and federal court jurisdiction, and real property transactions.
- B. Negotiate and/or draft joint powers agreements and other agreements with Indian tribes or pueblos.
- C. Represent the County before federal and state courts, agencies, and other governmental entities and in arbitration on matters involving Indian tribes or pueblos and involving Indian law and related issues.
- D. Brief County officials, employees and counsel, and consultants on matters related to this Scope of Work.
- E. In the event litigation is initiated as part of Contractor's services under this Agreement, Contractor shall provide copies of all correspondence and pleadings produced by the Contractor and received by the Contractor in connection with any litigation or legal matter engaged in by the Contractor pursuant to this Agreement.

**2. COMPENSATION AND INVOICING**

A. In consideration of its obligations under this Agreement the Contractor shall be compensated based on the following hourly rates for services provided by the following staff identified below.

<u>Name</u>	<u>Title</u>	<u>Office</u>	<u>Hourly Rate</u>
Jena MacLean	Partner	Washington, DC	\$525.00
Kris Wilson	Partner	Seattle, WA	\$475.00
Lindsay Jewell	Counsel	Phoenix, AZ	\$370.00
Meredith Weinberg	Counsel	Phoenix, AZ	\$475.00
Odin Smith	Sen. Counsel	Washington, DC	\$475.00
Laura Wolff	Associate	Washington, DC	\$325.00
Laura Kerr	Associate	Portland, OR	\$245.00
Sheri Pais	Sen. Paralegal	Washington, DC	\$300.00

Services provided by any staff other than those listed above will require approval of the County. Professional services rendered shall be billed in six (6) minute increments.

B. County will also reimburse Contractor for reasonable expenses for the following that are incurred in the performance of the Scope of Work under this Agreement:

- (i) Travel expenses
- (ii) Courier and messenger expenses

C. County will compensate Contractor for certain of Contractor's internal costs for the following:

- (i) Photocopying and printing
- (ii) Optical character recognition (OCR) services
- (iii) Time for Contractor's research on computer assisted research
- (iv) Telecommunications by telephone and cell phone
- (v) Specialized mailing other than regular mail
- (vi) Essential overtime by staff indicated in 2.A. above.

D. The County shall be notified in advance of costs and expenses for additional services not listed above that are associated with third-party consultants, experts, other subcontractors, or if Contractor is required to testify, produce documents, or respond to requests in connection with litigation or other proceedings commenced by third parties that relate to services being provided by the Contractor under this Agreement. The County shall approve in advance the Contractor's use or employment of such additional costs or third-party consultants or additional services and fees to be used in performing the Scope of Work under this Agreement.

E. The Contractor shall submit a written request for payment to the County when payment is due under this Agreement. Contractor's invoices shall be reasonably itemized and charges by third parties that are incurred by the Contractor in performing the Scope of Work shall be supported

by invoice. Upon the County's receipt of the written request, the County shall issue a written certification of complete or partial acceptance or rejection of the contractual items or services for which payment is sought. The Contractor acknowledges and agrees that the County may not make any payment hereunder unless and until it has issued a written certification accepting the contractual items or services. Within 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. If the County has not paid the Contractor by the 30<sup>th</sup> day from the date that written certification of acceptance is issued, late payment charges shall be paid to the Contractor on the unpaid balance at the rate of 1.0% per month.

E. 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.

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

G. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payment. Unless otherwise agreed to in writing by the County, no advance payments will be made under this Agreement and no escrow or trust fund accounts will be established for payment of third-party services.

H. The total compensation to be paid under this Agreement, including fees and costs, shall not exceed eighty thousand dollars (\$80,000.00), exclusive of applicable gross receipts or sales tax. Any such taxes levied on the amounts payable under this Agreement shall be paid by the County to the Contractor.

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

This Agreement shall be effective upon the date indicated above (Effective Date) and the term shall be one year from the Effective Date, unless earlier terminated pursuant to Section 5 (Termination) or Section 6 (Appropriations and Authorizations), 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 the 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 amount set forth in Section 2 (Compensation and Invoicing) of this Agreement, and for no other cost, amount, fee, or expense.

B. The County may from time to time request changes in the Scope of Work to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's

compensation, which are mutually agreed upon by and between the County and the Contractor, shall be incorporated in written amendments to this Agreement.

## 5. TERMINATION

- A. Termination of Agreement for Cause. Either party may terminate the Agreement based upon any material breach of this Agreement by the other party. The non-breaching party shall give the breaching party written notice of termination specifying the grounds for the termination. The termination shall be effective 30 days from the breaching party's receipt of the notice of termination, during which time the breaching party shall have the right to cure the breach. If, however, the breach cannot with due diligence be cured within 30 days, the breaching party shall have a reasonable time to cure the breach, provided that, within ten days of its receipt of the written notice of termination, the breaching party (i) began to cure the breach and (ii) advised the non-breaching party in writing that it intended to cure.
- B. Termination for Convenience of the County. The County may, in its discretion, terminate this Agreement at any time for any reason by giving the Contractor written notice of termination. The notice shall specify the effective date of termination, which shall not be less than 15 days from the Contractor's receipt of the notice. The County shall pay the Contractor for acceptable work, determined in accordance with the standards set forth in this Agreement, performed before the effective date of termination but shall not be liable for any work performed after the effective date of termination.

## 6. APPROPRIATIONS AND AUTHORIZATIONS

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

## 7. 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.

## **8. ASSIGNMENT**

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

## **9. SUBCONTRACTING**

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

## **10. 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.

## **11. 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.

## **12. 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.

## **13. 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.

**14. 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.

**15. ENTIRE AGREEMENT; INTEGRATION**

This Agreement and the engagement letter between Santa Fe County and Perkins Coie incorporate 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.

**16. 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

**17. 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.

**18. 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.

**19. RECORDS AND INSPECTIONS**

To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to the County as part of the procurement process, the Contractor agrees to (i)

maintain such books and records during the term of this Agreement and for a period of six years from the date of final payment under this Agreement; (ii) allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with generally accepted accounting principles (“GAAP”).

## **20. 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.

## **21. NOTICES**

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

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

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

Jena A. MacLean, Partner  
Perkins Coie, LLP  
700 13th Street, N.W. Suite 600  
Washington, DC 20005-3960

## **22. CONTRACTOR’S REPRESENTATIONS AND WARRANTIES**

The Contractor hereby represents and warrants that:

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

B. This Agreement and Contractor’s obligations hereunder do not conflict with Contractor’s corporate agreement.

C. Contractor 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.

### **23. FACSIMILE SIGNATURES**

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

### **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. 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.

### **26. 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.

### **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. 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.

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

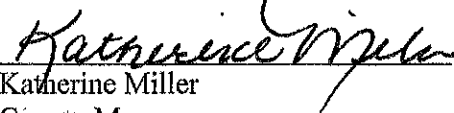
The Contractor appoints Jena A. MacLean, attorney, Perkins Coie, LLP, 700 13<sup>th</sup> Street, N.W. Suite 600, Washington, DC 20005-3960, as its agent upon whom process and writs in any action or proceeding arising out of or related to this Agreement may be served. The Contractor acknowledges and 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.

**30. 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 first written above.

SANTA FE COUNTY:

  
Katherine Miller  
County Manager

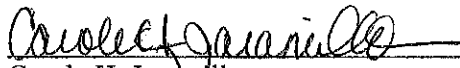
7.29.15  
Date

Approved as to form:

  
Gregory S. Shaffer  
County Attorney

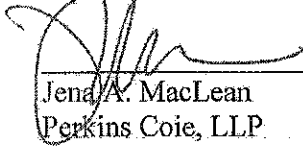
7/28/15  
Date

Finance Department:

  
Carole H. Jaramillo  
Finance Director

7/29/15  
Date

**CONTRACTOR:**

  
\_\_\_\_\_  
Jena A. MacLean  
Perkins Coie, LLP

7/28/15  
Date