

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN SANTA FE COUNT
REGIONAL EMERGENCY COMMUNICATION CENTER BOARD
AND BARDACKE ALLISON, LLP**

THIS AGREEMENT is made and entered into this 10th day of May 2019, by and between the **Santa Fe Regional Emergency Communication Center Board**, hereafter "RECC" and **Bardacke Allison, LLP**, 141 E. Palace Avenue, Santa Fe, NM 87501, hereinafter the "Contractor".

WHEREAS, the RECC was formed pursuant to the Restated Joint Powers Agreement (Restated JPA) dated July 5, 2007, between Santa Fe County and the City of Santa Fe; and

WHEREAS, pursuant to Article II (F) (Independent Counsel) of the Restated JPA, the RECC shall be represented by independent counsel; and

WHEREAS, pursuant to NMSA 1978, Section 13-1-125 (Small purchases) of the Procurement Code, a Letter of Interest was issued to procure the services of an independent legal counsel for the RECC for a value of less than \$60,000; and

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

NOW, THEREFORE, it is agreed between the parties:

- 1. SCOPE OF SERVICES.** The Contractor shall provide the following legal services.
 1. Provide legal services to the RECC including general legal assistance, such as review contracts, issue legal advice concerning organization, powers and duties, employment issues, liability issues, and general representation of the RECC before all federal and state courts and agencies.
 2. Attend all meetings of the Board of Directors of the RECC, as well as other meetings such as meetings of the Santa Fe Board of County Commissioners and the Santa Fe City Council, if necessary.
 3. Provide litigation representation that is not covered by insurance. Contractor will monitor and provide oversight of litigation in cases where the RECC's insurance covers or includes litigation coverage.
 4. Participate in meetings with the RECC Director at least once a month or as requested or required.
 5. Professional licensure. Contractor shall maintain licensure in good standing with the New Mexico State Bar and federal court.
 6. The Contractor will obtain and maintain throughout the term of this Agreement, all applicable professional and business licenses required by law, for Contractor and Contractor's employees, agents, representatives and subcontractors.

2. ADDITIONAL SERVICES

- A. The parties agree that all tasks set forth in Section 1 (Scope of Services), of this Agreement shall be completed in full, to the satisfaction of the RECC, in accordance with professional standards and for the amount set forth in Section 3 (Compensation and Invoicing) of this Agreement, and for no other cost, amount, fee or expense.
- B. The RECC may from time to time request changes in the Scope of Services 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 RECC and the Contractor, shall be incorporated in a written amendment to this Agreement.

3. COMPENSATION, INVOICING AND SET-OFF

- A. The total compensation to be paid under this Agreement, including fees and costs, shall not exceed \$25,000.00, exclusive of applicable NM grt.

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

<u>Staff Member</u>	<u>Hourly Rate</u>
Justin Miller	\$275/hour
Breanna Contreras	\$220/hour
Victor Grafe	\$150/hour
Paralegals	\$100/hour

- B. The Contractor shall submit quarterly status reports to the RECC regarding the status of any litigation and all legal matters including related expenditures, for which the Contractor has provided legal services pursuant to this Agreement.
- C. The Contractor shall provide copies of all pleadings and correspondence produced by the Contractor and received by the Contractor in connection with any litigation or legal matter engaged in by the Contractor pursuant to this Agreement.
- D. The Contractor shall submit a written request for payment to the RECC once a month. Contractor's request for payment shall contain an itemized statement of the services performed and the expenses incurred.
- E. Payment under this Agreement shall not foreclose the right of the RECC to recover excessive or illegal payment.

4. EFFECTIVE DATE AND TERM

The Effective Date of this Agreement is the date of last signature by the parties. The term of this Agreement is one year from the Effective Date. The term of this Agreement is subject to termination pursuant to Section 5 (Termination) or Section 6 (Appropriations and Authorizations). The RECC has the option to extend the term of this Agreement in one year increments not to exceed four years in total.

5. TERMINATION

Either party may terminate this Agreement upon 10 day's written notice to the other party. Contractor shall comply with the Code of Professional Responsibility in any termination of Contractor's services for the RECC.

6. APPROPRIATIONS AND AUTHORIZATIONS

This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Board of Directors of the RECC. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Agreement shall terminate upon written notice by the RECC to the Contractor. Such termination shall be without penalty to the RECC, and the RECC shall have no duty to reimburse the Contractor for expenditures made in the performance of this Agreement after the date of termination. The RECC is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the RECC. The RECC'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

Contractor is an independent contractor providing legal services to the RECC and not an employee of the RECC or Santa Fe County. Accordingly, the Contractor and its agents shall not accrue leave, participate in retirement plans, insurance plans, or use RECC or Santa Fe County vehicles, or participate in any other benefits afforded to employees of the RECC or Santa Fe County.

8. ASSIGNMENT; SUBCONTRACTING

A. 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 RECC. Any attempted assignment or transfer without the RECC's advance written approval shall be null and void and without any legal effect.

B. 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 RECC. Any attempted subcontracting or delegating without the RECC'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. Contractor shall be solely responsible for payment of wages, salary and benefits to any all employees or subcontractors retained by Contractor in the performance of services under this Agreement.

B. 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 RECC or Santa Fe County (ii) shall be fully qualified

and licensed or otherwise authorized or permitted under federal, state, and local law to perform such the legal services under this Agreement.

10. RELEASE

Upon its receipt of all payments due under this Agreement, the Contractor releases the RECC, its 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 the prior written approval of the RECC.

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

A. The RECC 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 or pursuant to 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 RECC shall own any such copyright.

13. CONFLICT OF INTEREST

The Contractor represents that it has no and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of its obligations under this Agreement. Contractor represents that it will not during the term of this Agreement represent any other client whose interest is adverse to the RECC without disclosure to the RECC and the consent of the RECC.

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 RECC shall not be responsible for any changes to Section 1 (Scope of Services), of this Agreement unless such changes are set forth in a duly executed written amendment to this Agreement.

15. 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.

16. NOTICE OF PENALTIES

The Procurement Code, NMSA 1978, Sections 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 EMPLOYMENT OPPORTUNITY COMPLIANCE

A. The Contractor agrees to abide by all federal, state, and local laws, ordinances, and rules and regulations pertaining to equal employment 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. Contractor and the RECC agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be state district courts of New Mexico, located in Santa Fe County.

19. RECORDS AND INSPECTIONS

A. 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 RECC 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 three years from the date of final payment under this Agreement; (ii) allow the RECC 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).

B. 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 RECC as part of the procurement process, the Contractor also agrees to require any subcontractor it may hire to perform its obligations under this Agreement to (i) maintain such books and records during the term of this Agreement and for a

period of three years from the date of final payment under the subcontract; (ii) to allow the RECC 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 GAAP.

20. INDEMNIFICATION

A. The Contractor shall defend, indemnify, and hold harmless the RECC and its officials, agents, and employees from any losses, liabilities, damages, demands, suits, causes of action, judgments, costs or expenses (including but not limited to court costs and attorneys' fees) resulting from or directly or indirectly arising out of the Contractor's performance or non-performance of its obligations under this Agreement, including but not limited to the Contractor's breach of any representation or warranty made herein.

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

21. SEVERABILITY

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

22. NOTICES

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the RECC: Regional Emergency Communication Center (RECC)
 Attn: Ken Martinez
 35 Camino Justicia
 Santa Fe, NM 87508

To the Contractor: Bardacke, Allison, LLP
 Attn: Justin Miller
 P.O. Box 1808
 141 Palace Avenue
 Santa Fe, NM 87504

23. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

The Contractor hereby represents and warrants that:

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

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

C. Contractor is legally registered and is properly licensed by the State of New Mexico to provide the services anticipated by this Agreement and shall maintain such registration and licensure in good standing throughout the duration of the Agreement.

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

C. Malpractice/Errors and Omissions Insurance. Contractor shall procure and maintain during the life of this Agreement professional liability or errors and omissions insurance in amounts not less than \$1,000,000 per occurrence.

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. NO THIRD PARTY BENEFICIARIES

The parties do not intend to create any right, title or interest in or for the benefit of any person other than the RECC and the Contractor. No person or entity shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary.

27. NEW MEXICO TORT CLAIMS ACT

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

28. SURVIVAL

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

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

Regional Emergency Communication Center:

Andrew Padilla, RECC Chair

Date

Ken Martinez, RECC Director

Date

CONTRACTOR:

(Signature)

Date

(Print name and title)

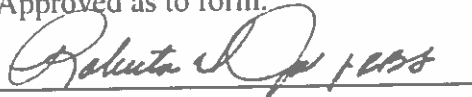
SANTA FE COUNTY

By: _____
Authorized Representative Signature

Date

Printed name and title

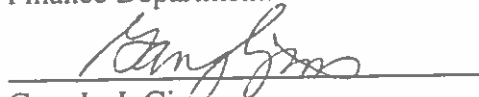
Approved as to form:



Date 5-1-19

R. Bruce Frederick
County Attorney

Finance Department:



Date 050219

Gary L. J. Giron
Finance Director

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

Regional Emergency Communication Center:



Andrew Padilla, RECC Chair


5-10-19
Date



Ken Martinez, RECC Director

5/9/19
Date

CONTRACTOR:



(Signature)

5/3/19
Date

Justin Miller - Partner
(Print name and title)

SANTA FE COUNTY

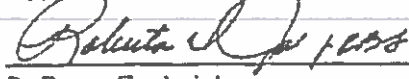
By: 

Authorized Representative Signature

5.3.19
Date

TONY FLORES DEPUTY COUNTY MANAGER
Printed name and title

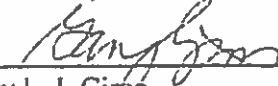
Approved as to form:



R. Bruce Frederick
County Attorney

Date 6-1-19

Finance Department:



Gary L. J. Giron
Finance Director

Date 050219

