

**SANTA FE COUNTY  
PROFESSIONAL SERVICES AGREEMENT  
WITH SANDERS & WESTBROOK, P.C.  
TO PROVIDE LEGAL SERVICES**

**THIS AGREEMENT** is made and entered into this 17<sup>th</sup> day of September, 2014 by and between **Santa Fe County**, hereinafter referred to as the "County," and the law office of **Sanders & Westbrook, P.C.**, 102 Granite Ave. NW, Albuquerque, NM 87102-2310, hereinafter referred to as the "Contractor."

**WHEREAS**, pursuant to the New Mexico Procurement Code, § 13-1-125(A), NMSA 1978, of the New Mexico Procurement Code, this contract for professional services is procured as a "small purchase";

**WHEREAS**, the County desires to engage the Contractor to render legal services related to potential litigation against the New Mexico Secretary of State involving advisory questions for the November 2014 election ballot and the Contractor and County wish to enter into this Agreement;

**WHEREAS**, the Contractor is willing and qualified to provide such legal services.

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

**1. SCOPE OF WORK AND AGREEMENT OF THE PARTIES**

The Contractor shall:

A. Under the direction of the Santa Fe County Attorney (County Attorney) or County Attorney's designee, Contractor shall represent as co-counsel the Board of County Commissioners of the County of Santa Fe (Board) and Santa Fe County Clerk (Clerk) in litigation brought by or against the Board or Clerk concerning the placement on the 2014 general election ballot of the advisory question posed by Santa Fe County Resolution No. 2014-87. Unless otherwise authorized by the County Attorney, professional legal services to be provided under this Agreement shall be performed by Maureen A. Sanders.

B. Contractor also represents as co-counsel the Board of County Commissioners of the County of Bernalillo (Bernalillo BCC) in a matter pending against the Secretary of State in the Supreme Court of the State of New Mexico, Cause No. 34,890. The parties acknowledge and agree that the Bernalillo BCC and Board and Clerk have a common interest with respect to litigation concerning advisory questions on the 2014 general election ballot and, accordingly, that communications by, between, and among the Santa Fe County Attorney's Office, Bernalillo County Attorney's Office, and Contractor concerning such litigation are subject to the lawyer-client privilege, pursuant to Rule 11-503 NMRA, and trial preparation or work product privilege, pursuant to Rule 1-026(B)(5) NMRA.

## 2. COMPENSATION AND INVOICING

- A. In consideration of its obligations under this Agreement the Contractor shall be compensated as follows:
- (i) The County shall pay Contractor at the hourly rate of Two Hundred and Fifty Dollars (\$250.00) per hour, exclusive of NM gross receipts tax, for services performed.
  - (ii) In no event shall the total compensation paid to Contractor by County under this Agreement exceed Ten Thousand Dollars (\$10,000.00), exclusive of NM gross receipts tax.
- B. Contractor shall not bill or invoice the County and Bernalillo BCC for the same services; provided, however, that the County and Bernalillo BCC may agree to split or otherwise share the cost of services that are rendered to and benefit both counties.
- C. The Contractor shall submit a written request for payment to the County when payment is due under this Agreement. 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 thirty (30) days of the issuance of a written certification accepting the contractual items or services, the County shall tender payment for the accepted items or services. In the event the County fails to tender payment within thirty (30) days of the written certification accepting the items or services, the County shall pay late payment charges of one and one-half percent (1.5%) per month, until the amount due is paid in full.
- D. 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.
- E. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payment.

## 3. EFFECTIVE DATE AND TERM

This Agreement shall, upon due execution by all parties, become effective as of the date of last signature by the parties hereto and shall terminate one (1) year later, unless earlier terminated pursuant to Section 4 (Termination) or Section 10 (Appropriations), of this Agreement.

**4. 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 thirty (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 thirty (30) days, the breaching party shall have a reasonable time to cure the breach, provided that, within thirty (30) days of its receipt of the written notice of termination, the breaching party began to cure the breach and 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 fifteen (15) days from the Contractor's receipt of the notice. The County shall pay the Contractor for acceptable work, determined in accordance with the specifications and 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.

**5. 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 the 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.

**6. 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 nor 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.

**7. 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.

## **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. 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 County as part of the procurement process, the Contractor agrees to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under this Agreement; (ii) allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with generally accepted accounting principles ("GAAP").
- 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 County 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 six (6) years from the date of final payment under the subcontract; (ii) to 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 GAAP.

## **10. 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.

**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. 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.

**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 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. 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.

**17. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW**

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

the County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be the federal and state district courts of New Mexico, located in Santa Fe County.

**18. 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.

**19. NO THIRD-PARTY BENEFICIARIES**

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

**20. FACSIMILE SIGNATURES**

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

**21. LIMITATION OF LIABILITY**

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

**22. NEW MEXICO TORT CLAIMS ACT**

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

**23. INSURANCE**

Contractor shall submit to the County a copy of its certificate of insurance.

**24. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES**

The Contractor hereby represents and warrants that:

- A. It is a professional association duly organized and in good standing under the laws of the State of New Mexico.
- B. 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.

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

## **25. CAMPAIGN CONTRIBUTION DISCLOSURE FORM**

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

## **26. NOTICES**

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

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

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

Maureen A. Sanders or  
Duff Westbrook  
Sanders & Westbrook, P.C.  
102 Granite Avenue NW  
Albuquerque, NM 87102-2310  
m.sanderswestbrook@qwestoffice.net

## **27. SURVIVAL**

The provisions of following paragraphs shall survive termination of this Contract; INDEMNITY, RECORDS AND INSPECTION, RELEASE, CONFIDENTIALITY, COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW, NO THIRD-PARTY BENEFICIARIES, NEW MEXICO TORT CLAIMS ACT, INSURANCE, AND SURVIVAL.

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

SANTA FE COUNTY

  
Katherine Miller  
Manager

9.10.14  
Date

APPROVED AS TO FORM

  
Gregory S. Shaffer  
Santa Fe County Attorney

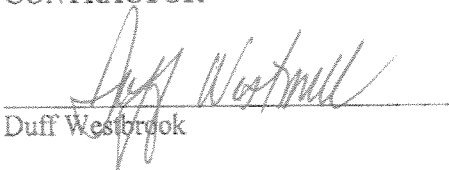
9/17/14  
Date

FINANCE DEPARTMENT

  
Teresa C. Martinez, Director

9/18/14  
Date

CONTRACTOR

  
Duff Westbrook

9-17-14  
Date

Federal Tax Number: 85-0437707