

**LEGAL SERVICES
AGREEMENT #XX-XXXXXA**

THIS SERVICES AGREEMENT (this "Agreement") effective as of this ____ day of _____, 20__ ("Effective Date") is entered into by and between [**Name of Law Firm**], a [**Business Entity Type and state in which it is incorporated**] (the "Law Firm") and **City of Farmington**, a New Mexico municipal corporation ("City"). Law Firm and City may be referred to collectively as the "Parties" or individually as a "Party."

RECITALS

WHEREAS, Law Firm has represented to City that it is specifically qualified to perform services of the nature contemplated by this Agreement; and

WHEREAS, City desires to engage the services of Law Firm and Law Firm agrees to complete such services for City.

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions set forth in this Agreement, Law Firm and City agree as follows:

1. Services. Law Firm agrees to perform the services as set forth in **Exhibit A-1** attached hereto ("**Services**") in a timely manner and in accordance with the terms and conditions of this Agreement and applicable laws. Law Firm shall furnish, at its own expense, all labor, transportation, materials, consumables, qualified supervisory personnel, tools, equipment and facilities, to properly perform the Services, except as otherwise provided in the Scope of Services.

2. Compensation.

2.1 For performance and completion of the Services, City shall pay Law Firm according to Section 2.1.1 as set forth and described herein

2.1.1 The hourly rates set forth in **Exhibit A-1, Section V** attached hereto, which rate shall include all overhead, administrative costs and profit margins whatsoever, plus applicable gross receipts taxes which are payable by Law Firm to the relevant taxing authority and reimbursable by City pursuant to **Section 11 "Taxes."** The total amount paid by City to Law Firm for completion of the Services at the above hourly rate(s) shall not exceed [**Dollar Amount in Words**] and [**00 thru 99**] dollars (\$[**Dollars & Cents in #**]), plus applicable gross receipts taxes which are payable by Law Firm to the relevant taxing authority and reimbursable by City pursuant to **Section 11 "Taxes."**

2.2 Except, as specifically otherwise provided for in the Agreement, the foregoing compensation shall constitute the sole compensation payable to Law Firm for performance of the work or anything done in connection thereto.

3. Changes to Services. City may, at any time, revise the Services by providing written notice to Law Firm of the required changes. Law Firm may propose changes to the Services to City, but such proposed changes will only become effective upon obtaining the written approval of a City contracting agent or City officer/official. The rate of compensation set forth in **Section**

2 “Compensation” may only be changed by a written agreement of the Parties signed and dated by a City contracting agent or City officer/official and Law Firm.

4. Term. This Agreement shall remain in full force and effect from the Effective Date until _____, unless terminated earlier as provided herein. This Agreement shall be renewed automatically, subject to the appropriation of funds by the City Council, from year to year for ~~three (3)~~ **five (5)** additional consecutive one (1) year periods, unless written notice is given by either party to the other of its intent not to renew.

5. Termination.

5.1 Termination by City for Cause. In the event of a default by Law Firm and if City elects to terminate this Agreement and the Services, then City shall give written notice of termination to Law Firm specifying the date of termination. City may, at its option, (a) take possession of work performed by Law Firm as of the date of termination to maintain the orderly progress of, and to finish the Services; or (b) finish the Services by whatever other reasonable method City deems expedient.

5.1.1 If the unpaid balance of Law Firm’s compensation under **Section 2 “Compensation”** for Services performed prior to the effective date of termination exceeds the cost of finishing the Services and any other extra costs or damages incurred by City in completing the Services, or otherwise as a result of Law Firm’s default, such excess shall be paid to Law Firm. If such costs exceed the unpaid balance of Law Firm’s compensation for Services performed prior to the effective date of termination, Law Firm shall pay the difference to City. These obligations for payment survive termination.

5.1.2 Termination of this Agreement and the Services in accordance with this **Section 5.1** shall not relieve Law Firm of any responsibilities for Services performed.

5.1.3 If City terminates this Agreement for default under this **Section 5.1** and it is later determined that Law Firm was not in default, then such termination shall be deemed a termination for convenience pursuant to **Section 5.2 “Termination by City for Convenience.”**

5.2 Termination by City for Convenience. The City Manager may, upon advance written notice to Law Firm, suspend, abandon or terminate the Services, or any portion of the Services thereof, and terminate this Agreement, for any reason whatsoever including for the convenience of City without regard to whether or not Law Firm has defaulted or failed to comply with the provisions of this Agreement. If the City Manager terminates the Services, or any portion of the Services thereof for convenience, City shall pay Law Firm for all parts of the Services performed prior to the effective date of termination, including materials provided, in conformity with this Agreement, plus an amount for the Law Firm’s substantiated, reasonable direct costs necessarily incurred in preparation for the parts of the Services not yet performed and in shutting down its operations; plus an amount for a reasonable part of the profit Law Firm would otherwise have earned for the percentage of Services performed prior to such termination, provided that the total sum payable to Law Firm upon termination shall not exceed the unpaid balance of Law Firm’s compensation under **Section 2 “Compensation”**. Law Firm shall not be entitled to any other costs or damages whatsoever arising out of Law Firm’s performance of the Services and the termination by City for convenience.

5.3 Stopping Services. When City terminates the Services in accordance with **Section 5.1 “Termination by City for Cause”** or **Section 5.2 “Termination by City for Convenience,”**

Law Firm shall take the actions set forth herein. Unless City directs otherwise, after receipt of a written notice of termination for either cause or convenience, Law Firm shall promptly (a) stop performing Services on the date and as specified in the notice of termination; (b) place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Services that is not terminated; (c) cancel orders and subcontracts, upon terms acceptable to City, to the extent that they relate to the performance of Services terminated; (d) assign to City all of the right, title, and interest of Law Firm in all orders and subcontracts related to Services which shall continue; (e) deliver completed work to City and take such action as may be necessary or as directed by City to preserve and protect the work, work site, and any other property related to the Services in the possession of Law Firm in which City has an interest; and (f) continue performance only to the extent not terminated.

5.4 Suspension of the Services. City may, for any reason, at any time and from time-to-time, by written notice to Law Firm, suspend the carrying out of the Services or any part thereof, whereupon Law Firm shall suspend the carrying out of the Services or any part thereof for such time or times and in such manner as City may require. During any such suspension, Law Firm shall properly protect and secure the results of the Services in such manner as City may reasonably require. Unless otherwise instructed by City, Law Firm shall, during any such suspension, maintain its staff and labor on or near the work site and otherwise be ready to proceed with the Services upon receipt of City's further instructions. City and Law Firm shall negotiate a change order to address the impact of such suspension on Law Firm's compensation and the term of this Agreement in accordance with **Section 3 "Changes to Services"** of this Agreement.

5.5 Termination by Law Firm for City Default. Subject to City's right of set-off, if City fails to pay Law Firm any undisputed amount due hereunder, and such failure continues for thirty (30) days following receipt of written notice thereof from Law Firm, then Law Firm shall be entitled to suspend further performance of the Services and be paid its costs during the period of suspension in the same manner as provided in **Section 5.4** until the undisputed amount due, plus applicable interest, has been paid. If (a) such failure continues for an additional period of thirty (30) days or (b) Law Firm's Services under this Agreement are delayed by an event of Uncontrollable Forces (as defined in **Section 14** herein), and/or suspended by City, for one hundred eighty (180) days or more, then Law Firm shall be entitled to terminate this Agreement by written notice to City and be paid its costs in the same manner as provided in **Section 5.4**.

5.6 Delivery of Documents. Upon the suspension, abandonment, or termination of this Agreement, in whole or in part, Law Firm shall execute and deliver all such instruments and take all such steps, including assignment of its contractual rights with third parties, as may be required to fully vest in City all right, title, and interest in all Services, including but not limited to all plans, specifications, materials, and equipment procured and all contractual rights, and/or cancel or terminate, at City's option, such of those contractual rights including, but not limited to, subcontracts and purchase orders as may be requested in writing by City.

6. Law Firm Representations and Corrective Action.

6.1 In addition to other representations and warranties contained in this Agreement, Law Firm represents and warrants to City that:

- (a) Law Firm has performed similar Services and possesses the specific training, skills, knowledge, necessary personnel, and legal right to perform the Services. Law Firm shall provide in connection with the Services the standard of care, skill,

and diligence normally provided by a Law Firm in the performance of similar services and warrants that all such Services shall be performed in accordance with sound and accepted industry standards and practices, and in accordance with all applicable federal, state and local laws, statutes, regulations, rules and ordinances, as amended from time to time (including but not limited to all applicable environmental, health and safety, cultural preservation and natural resources management laws, statutes, regulations, rules, and ordinances, as amended from time to time).

- (b) The compensation described in **Section 2 “Compensation”** is reasonable compensation for the performance of the Services, as represented by this Agreement, including all exhibits, and Law Firm’s independent evaluation of the Services to be performed and investigation of site conditions.
- (c) Law Firm is financially solvent, able to pay its debts as they mature, and possesses sufficient working capital to complete the Services and perform Law Firm’s obligations required by this Agreement.
- (d) Law Firm is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Services and perform the obligations required by this Agreement and has sufficient experience and competence to do so and is properly insured and licensed to perform the Services.
- (e) Law Firm is the holder of or will take the necessary action to obtain all consents, licenses, permits, or other authorizations required to allow it to operate or conduct its business now and as contemplated by this Agreement and to perform the Services under this Agreement.
- (f) No services performed or goods provided by Law Firm shall cause any process, procedure, hardware, software, firmware, micro-code, equipment, component or device or any part thereof that is used in City’s operations and is currently Date Data Compliant, to thereafter cease to be Date Data Compliant. Law Firm represents and warrants that all services rendered by Law Firm to City pursuant to this Agreement shall be Date Data Compliant and that all processes, procedures, hardware, software, firmware, micro-code, equipment, components, devices or any part thereof provided by Law Firm to City in rendering such services are designed to be Date Data Compliant. For purposes of this Agreement, “Date Data Compliant” means that all date-data is electronically recognized, handled and manipulated without interruptions or inaccuracies.

6.2 Law Firm shall remedy, at its own expense, any problems or damages arising out of Law Firm’s failure to perform the Services in accordance with this Agreement. If Law Firm does not take the necessary corrective action within a reasonable time after receipt of City’s written notice of the problem, City may take such corrective action through itself or through contract with others, and shall charge Law Firm for all such costs incurred by City. The rights and remedies of City provided for in this **Section 6** are in addition to and do not limit any other rights and remedies available to City at law or in equity.

7. Regulatory Proceedings. Law Firm shall testify, when required by City, on City’s behalf in any court or governmental or regulatory agency hearings or proceedings relative to the Services performed under this Agreement. Law Firm’s testimony shall be limited to the scope

of services performed by Law Firm per the Services, subject to compensation at negotiated rates.

8. Independent Contractor. In performing the Services, Law Firm is acting and shall be deemed for all purposes to be an independent Law Firm. City and Law Firm are not partners, agents or joint venturers with each other, and this Agreement is not intended to nor shall it be construed to create a partnership, joint venture, or agency relationship between City and Law Firm. Law Firm shall complete the Services according to Law Firm's own means and methods of work, which shall be in the exclusive charge and control of Law Firm, and which shall not be subject to the control and supervision of City, except as to the results of the Services. Law Firm shall be entirely and solely responsible for its acts and the acts of its employees and agents while engaged in the performance of the Services. Law Firm, its employees and agents shall not hold themselves out as employees or agents of City. Law Firm and its employees are hereby expressly precluded from and not entitled to any employee benefits from City. For the purpose of clarifying the ineligibility of the Law Firm under City's employee benefits plans or programs, Law Firm and its employees are hereby specifically excluded from any eligibility and/or are deemed a "temporary employee" when such term is used to define ineligibility in benefits in any City employee benefit plan or program.

9. Invoicing and Payment. Law Firm shall submit a **Detailed** Invoice, referencing this Agreement number and Purchase Order number, together with such documentation as City may require, via email to the Department designee or designees to which the law firm is providing legal services. Said email address should be obtained by the Law Firm from the requestor of services.

A **Summary** invoice shall be sent to the Attention of Accounts Payable:

Address: City of Farmington
800 Municipal Drive
Farmington, New Mexico 87401
Attn: Accounts Payable
Email: accountspayable@fmtn.org

Invoices for services provide to the Farmington Electric Utility Services (FEUS) shall include the following information as an attachment to the invoice or as a body of the invoice itself as shown by category of cost:

(1) Direct Labor - Identify the number of hours (by contractor labor category and total) and the total loaded direct labor hours billed for the period in the invoice.

(2) Indirect Cost Rates - Identify by cost center, the indirect cost rate, the period, and the cost base to which it is applied.

(3) Subcontracts - Identify the major cost elements for each subcontract.

(4) Other Direct Costs - When the cost for an individual cost (e.g., photocopying, material and supplies, telephone usage) exceeds \$1,000 per the invoice period, provide a detailed explanation for that cost category.

(5) Contractor Acquired Equipment (if authorized by the contract) - Identify by item the quantities, unit prices, and total dollars billed.

(6) Contractor Acquired Software (if authorized by the contract) - Identify by item the quantities, unit prices, and total dollars billed.

(7) Travel - When travel costs exceed \$2,000 per invoice period, identify by trip, the number of travelers, the duration of travel, the point of origin, destination, purpose of trip, transportation by unit price, per diem rates on daily basis and total dollars billed. Detailed reporting is not required for local travel. The manner of breakdown, e.g., task order/delivery order basis with/without separate program management, contract period will be specified in the contract instructions.

If City has no objections to an invoice, it shall pay the invoice in full within thirty (30) days after receipt of such invoice. If City objects to an invoice or any portion thereof, it shall notify the Law Firm of its objections within thirty (30) days after receipt and may withhold payment of the disputed amount. Any objections or disputes concerning invoices shall be resolved in accordance with **Section 21 "Dispute Resolution."**

The City will not pay for more than one person to travel or attend meetings or hearings on behalf of the City unless the Law Firm has received the advance permission of the City. The City will not pay tax on travel expenditures that already include tax.

10. Audit. Per NMSA 13-1-161, Law Firm shall maintain complete and accurate records concerning the Services and all related transactions for at least three (3) years from the date of final payment for the Services. At any time but not later than three (3) years after final payment under this Agreement, City may make such audit of the invoices and substantiating material (including time records) as deemed necessary by City. Each payment made shall be subject to reduction and refund to City, or offset on future payments due Law Firm, to the extent of amounts which are found by City not to have been properly payable or to have been overpaid, and shall also be subject to increase and payment to Law Firm for underpayments to the extent of any amounts which are found by City to have been underpaid. Upon request by City, Law Firm shall insert a clause containing all the provisions of this **Section 10** in all subcontracts to permit City to make identical audits and inspections of the records of all subcontractors involved in performance of the Services.

11. Taxes. Law Firm shall pay all taxes and contributions for unemployment insurance, retirement benefits, pensions, annuities, and similar benefits, which may now or hereafter be imposed on Law Firm by law or collective bargaining agreements with respect to persons employed by Law Firm for performance of the Services. Law Firm shall be liable for and shall pay and shall indemnify, defend, and hold City harmless from, all such taxes and contributions or any interest accrued and penalties imposed, and reasonable attorney fees and all taxes (including but not limited to, income, withholding, gross receipts, compensating, use and all other taxes of whatsoever kind and whatsoever nature), excises, assessments, and other charges levied by any governmental agency or authority on or because of the Services, or on any materials, equipment, services, or supplies furnished in the performance of the Services. On all invoices, Law Firm shall separately show all New Mexico gross receipts, compensating, sales, and other similar taxes which are reimbursable by City to Law Firm, provided that in no event will interest or penalties on such taxes be reimbursable by City. Law Firm shall utilize appropriate New Mexico Nontaxable Transaction Certificates, or similar certificates from other states, where applicable, to minimize such gross receipts, compensating, sales, and other similar taxes.

12. Liability.

12.1 Contractor General Indemnity. To the fullest extent permitted by law, Law Firm shall indemnify and hold harmless City, including its affiliates, directors, officers, officials, employees, and agents, from and against liability, claims, damages, losses or expenses, including attorney fees, arising out of, or resulting from performance of the Services or this Agreement, but only to the extent that the liability, damages, losses, or costs are caused by, or arise out of, the acts or omissions of Law Firm, any subcontractors of Law Firm, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable. This indemnification provision shall apply equally to injuries to Law Firm's employees.

12.2 Compliance with Laws. Law Firm shall indemnify, defend, and hold harmless City from and against any claims, damage and expense (including reasonable attorney fees) arising out of the violation by Law Firm of any applicable law, rule regulation, or ordinance relating to Law Firm's operations and performance of the Services.

12.3 Intellectual Property Rights Infringement Indemnity. Law Firm warrants that none of the Services, or the results thereof, performed by Law Firm, or the documents, goods or equipment produced, designed, fabricated, or assembled by Law Firm pursuant to this Agreement infringe upon or violate any patent, copyright, trade secret, or any other intellectual or property rights of any third party. If any third party makes a claim or commences a proceeding against City alleging such an infringement or violation, Law Firm shall indemnify, defend and save harmless City, its directors, officers, officials, employees, agents and affiliates from and against all damages and costs incurred by or awarded against City (including court costs and reasonable attorney fees). City will notify Law Firm if any such claim is made or proceeding is commenced. City may, at its option, be represented by separate legal counsel in any such claim or proceeding. Law Firm shall reimburse City the costs and expenses incurred by City in being so represented, including reasonable attorney fees. If the use of any of the Services, or the results of such Services, or documents, goods, or equipment, or any part thereof, furnished under this Agreement is held in any such claim or proceeding to constitute an infringement and/or is enjoined, whether temporarily or permanently, Law Firm shall, at its sole cost and expense, either:

- (a) procure for City the right to use the results of such Services or such documents, goods and equipment; or
- (b) replace the results of such Services or such documents, goods, or equipment with non-infringing results, documents, goods or equipment having the equivalent functionality as the infringing or allegedly infringing results, documents, goods or equipment; or
- (c) modify the results of such Services or such documents, goods, or equipment so as to make them non-infringing, but equivalent in functionality.

12.3.1 Best Efforts. Law Firm shall use its best efforts to obtain for the benefit of City identical intellectual property rights indemnification protection in all subcontracts, purchase orders, and other agreements entered into under this Agreement.

12.4 Limitation. NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, INDIRECT, NOR CONSEQUENTIAL DAMAGES RESULTING FROM OR ARISING OUT OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS OR BUSINESS INTERRUPTION, HOWEVER SAME MAY BE CAUSED. THIS LIMITATION ON

CONSEQUENTIAL DAMAGES DOES NOT APPLY TO CLAIMS FOR PERSONAL INJURY, WRONGFUL DEATH OR DIRECT DAMAGES TO PROPERTY. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR PUNITIVE DAMAGES.

12.5 Bribes and Gratuities. By law (Section 13-1-191, NMSA, 1978) the City is required to inform Offerors/Bidders/Law Firms/Consultants/Sellers/Suppliers of the following:

- (a) it is a third-degree felony under New Mexico law to commit the offense of bribery of a public officer or public employee (Section 30-24-1, NMSA, 1978);
- (b) it is a third-degree felony to commit the offense of demanding or receiving a bribe by a public officer or public employee (Section 30-24-2, NMSA, 1978);
- (c) it is a fourth-degree felony to commit the offense of soliciting or receiving illegal kickbacks (Section 30-41-1, NMSA, 1978); and
- (d) it is a fourth-degree felony to commit the offense of offering or paying illegal kickbacks (Section 30-41-2, NMSA, 1978).

13. Insurance.

13.1 Obtaining Insurance. Prior to commencement of the Services, Law Firm shall obtain the insurance required by this Agreement and all insurance that may be required under Applicable Laws. Unless otherwise indicated below, each insurance policy of Law Firm shall provide, either in its printed text or by endorsement, that it shall be primary with respect to the interest of the City, and any insurance maintained by the City is in excess and not contributory to Law Firm's insurance policies regardless of any like insurance coverage that the City may have. Law Firm will provide the City with certificate(s) of insurance (COI) evidencing that all coverages, limits, and endorsements required herein are in full force and effect. Such COI(s) shall also reference this Agreement/Contract number. With respect to any insurance policy referenced on a COI, Law Firm will (or he will cause the respective insurance carrier to) provide the City with a minimum thirty (30) days written notice in the event of cancellation, termination, non-renewal, or any other material change. Any such written notice shall also include copies of the non-renewal or cancellation notice originated by the insurance carrier. Written notice may be submitted via courier, or postal service in accordance with the notice provision herein.

If Law Firm fails to obtain and keep in force the insurance required hereunder, the City may obtain and maintain the required insurance in the name of Law Firm and the cost thereof shall be payable by Law Firm to the City on demand. Review of Law Firm's insurance by the City shall not relieve or increase the liability of Law Firm. Nothing in this Agreement/Contract shall be deemed to limit Law Firm's liability under this Agreement/Contract to the limits of the insurance coverages required hereunder. Law Firm shall be solely responsible for payment of all deductible or retention amounts pertaining to any insurance required hereby.

Where applicable, all insurance policies shall provide for waiver of subrogation in favor of the City, include cross liability provisions, and all policies, except Workers' Compensation, shall name the City and its directors, officers, officials, managers, representatives, agents and employees as additional insured, to the extent allowable under such policies.

13.2 Minimum Coverage. Without limiting any of the liabilities or other obligations of Law Firm under this Agreement, including but not limited to **Section 12 "Liability,"** Law Firm shall

obtain and maintain in effect, at its sole cost and expense, with forms and insurers acceptable to City, until all the obligations under this Agreement are satisfied, insurance policies providing coverage protecting against claims for personal and bodily injury or death, as well as claims for property damage which may arise from operations in connection with the Services whether such operations are by Law Firm or any subcontractors for at least the following minimum coverage:

- (a) **Worker's Compensation Insurance.** To cover obligations imposed by federal and state statutes pertaining to Law Firm's employees engaged in the performance of any services, and Employer's Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000).
- (1) **This Section Intentionally Deleted.**
- (b) **Commercial General Liability Insurance,** or the equivalent, with a minimum limit of One Million Dollars (\$1,000,000) per occurrence. The policy shall include coverage for bodily injury liability, broad form property damage liability, blanket contractual, Law Firm's protective, products liability and completed operations. Where applicable, the policy shall include coverage for the hazards commonly referred to as "XCU." The policy shall be endorsed to include City as an additional insured only to the extent City is vicariously liable for the negligence, acts or omissions of Law Firm.
- (c) **Business Automobile Liability Insurance,** or the equivalent, with limit of not less than One Million Dollars (\$1,000,000) per accident with respect to Law Firm's vehicles whether owned, hired, or non-owned, assigned to or used in the performance of any Services required to be performed by Law Firm pursuant to the Agreement.
- (d) **This Section Intentionally Deleted.**

13.3 Subcontractors. Law Firm shall require that each subcontractor comply with the insurance requirements set forth in **Section 13.2 "Minimum Coverage."**

14. Uncontrollable Forces. Neither Party shall be considered to be in default in respect to any obligation hereunder, if delays in or failure of performance shall be due to Uncontrollable Forces. The term "Uncontrollable Forces" shall mean any cause beyond the control of the Party affected and not due to its fault or negligence, including, but not limited to, acts of God, flood, earthquake, storm, fire, lightning, epidemic, war, terrorist activity, riot, civil disturbance, sabotage, inability to obtain permits, licenses, and authorizations from any local, state, tribal, or federal agency or person for any of the materials, supplies, equipment, or services required to be provided hereunder, fuel shortages, breakdown or damage to generation and transmission facilities belonging to City, failure of facilities, strikes or other labor disputes, or restraint by court or public authority, any of which by exercise of due foresight such Party could not reasonably have been expected to avoid, and which by the exercise of due diligence it is unable to overcome. Neither Party shall, however, be relieved of liability for failure of performance if such failure is due to removable or remediable causes which it fails to remove or remedy with reasonable dispatch. Nothing contained herein, however, shall be construed to require either Party to prevent or settle a strike or other labor disputes against its will. The Party whose performance hereunder is so affected shall immediately notify the other Party of all pertinent facts and take all reasonable steps to promptly and diligently prevent such causes if feasible to do so, or to minimize or eliminate the effect thereof without delay. Law Firm shall make no claim for additional compensation or

damages by reason of any delay due to an Uncontrollable Force; however, Law Firm shall be entitled to a reasonable extension to the time schedule for delays resulting from an Uncontrollable Force.

15. Confidentiality. Any information or data of City provided to Law Firm or to which Law Firm is given access during the term of this Agreement, whether such information is in written, verbal, electronic or any other form, is proprietary to City and shall be treated as confidential and not disclosed by Law Firm to any third party, without City's prior written consent. Law Firm may disclose such information and data to its employees and Law Firms, but only on a "need to know" basis. Such information and data may only be used for the purpose of performing the Services that are required of Law Firm pursuant to this Agreement, and for no other purpose. Such information and data may not be copied except as required to perform the Services, and upon completion of the Services, Law Firm shall destroy all copies in its possession. Further, Law Firm acknowledges and agrees that all data and information collected, produced or generated, and all reports, test results, plans, models, documents and other written materials produced pursuant to this Agreement or in connection with any services to be performed hereunder shall be and remain the sole property of City, shall be confidential, shall not be copied or reproduced in any way, except for the use of the Law Firm and City personnel assigned to this project, and shall not be disclosed or communicated, verbally or in writing, by Law Firm to any third party, or used in any way except as required by law or for the purposes required or intended by the Agreement. If required by City, Law Firm and any of its employees or agents performing services under or in connection with this Agreement shall execute confidentiality and nondisclosure agreements in the form required by City. If Law Firm is served with process of law, including but not limited to subpoenas requiring Law Firm to produce, release or disclose information of a confidential nature received, collected, produced or generated by Law Firm pursuant to this Agreement, Law Firm shall immediately notify City and allow City, at its sole expense and cost, to challenge the process of law, including any subpoena. The duties of this **Section 15** will survive the expiration or early termination of this Agreement following such expiration or early termination. This Agreement is subject to the provisions of the New Mexico Inspection of Public Records, Sections 14-2-1 through 14-2-12 NMSA 1978 and the Public Records Act Chapter 14 Article 3 NMSA 1978.

16. Conflict of Interest.

16.1 Law Firm shall exercise reasonable care and diligence to prevent any actions or conditions which would result in a conflict with City's interest. Law Firm shall immediately notify the person specified in **Article 25, Notices** of this Agreement in the event a conflict with the City's interest is recognized.

16.2 Law Firm warrants that it has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Services under this Agreement.

16.3 Law Firm shall notify the City's Chief Procurement Officer if any employee(s) of the requesting department or the Purchasing Division have a financial interest in the Law Firm's business operations.

17. Intellectual Property.

17.1 Intellectual Property Rights. Law Firm agrees that all inventions made, works created and trade secrets learned by Law Firm in connection with providing products or services to City

pursuant to this Agreement and which relate to the business of City, including all patent, trademark, copyright, and trade secret rights thereto, belong to City. Law Firm hereby assigns all such rights to City and agrees to execute all documents necessary to effect such assignment. Law Firm further agrees to cooperate with City, at City's expense, in all steps necessary to protect such rights, including assisting in preparing applications, signing all necessary documents, testifying in court proceedings, and retaining secret information concerning an invention that is not public knowledge.

17.2 License. Law Firm hereby grants to City a fully paid, royalty fee, non-exclusive, non-terminable, perpetual license to use, copy, and create derivative works of any pre-existing copyrighted, patented and/or proprietary work that is incorporated into the Services or the results of the Services, or into the documents, goods and equipment produced, designed, fabricated and assembled by Law Firm pursuant to this Agreement, including the right to create sub-licenses without any duty to account to Law Firm. If so requested by City, Law Firm shall cooperate with City in executing all such assignments, oaths, declarations and other documents as may be prepared by City to effect and evidence the foregoing.

17.3 Best Efforts. Law Firm shall use its best efforts to obtain for the benefit of City identical intellectual property indemnification protection in all subcontracts, purchase orders, and other agreements entered into under this Agreement.

18. Executive Orders and Utilization of Small Disadvantaged Businesses.

18.1 Executive Orders. City is an equal opportunity employer. Pursuant to Executive Orders 11246, 11625, 11701, 11758 and 13201, as amended or superseded, in whole or in part from time-to-time, and all regulations issued thereunder, it is agreed that all applicable laws, rules, and regulations are incorporated by reference in this Agreement and bind Law Firm as a Law Firm of City.

18.2 This Subsection Intentionally Deleted.

19. Drug and Alcohol Policy.

19.1 Law Firm, in the performance of any Services requiring the physical presence of its employees on City's property or on the property of others for which City has acquired access rights, shall maintain a drug and alcohol policy, as respects its employees and subcontractors involved in the performance of such Services, which policy at a minimum includes reasonable testing procedures and which advances the policy of providing a work environment that is free from the use, consumption, possession, sale, or distribution of illegal drugs or alcohol, and from the misuse of legal drugs on City's premises and work sites, including vehicles used on company business.

19.2 Law Firm shall also comply with all applicable laws concerning drug and alcohol use, including, if applicable, requirements of the United States Department of Transportation. Law Firm shall require that each subcontractor complies with the drug and alcohol policy requirements and applicable laws as set forth herein and, upon request by City, will provide to City verification of Law Firm's and subcontractor's compliance with such policy requirements and applicable laws.

19.3 Law Firm shall provide City and any public authority having jurisdiction with access to Law Firm's facilities and records to audit Law Firm's drug and alcohol policy, records and testing

program including, if applicable, United States Department of Transportation requirements, as provided in **Section 10 “Audit.”**

19.4 This Section Intentionally Deleted.

19.5 City may remove (or cause Law Firm to remove) a Law Firm’s employee from any work or work site if City reasonably suspects the employee is under the influence of controlled substances or alcohol until such time as Law Firm confirms by testing that the employee is fit for duty.

19.6 Law Firm shall notify City in writing within ten (10) days any time there is a change in the person or personnel administering Law Firm’s drug and alcohol program.

20. Fair Labor Standards Act. Law Firm shall comply with the Fair Labor Standards Act of 1938, as amended, and any regulations issued pursuant thereto by the Department of Labor. It is agreed that all applicable laws, rules and regulations are incorporated herein by referenced in this Agreement and bind Law Firm as a Law Firm of City.

21. Unlawful Discriminatory Practice. In responding to this solicitation, the Law Firm represents that it will not practice unlawful discrimination per Section 28-1-7 NMSA 1978 and Title VI of the Civil Rights Act of 1964 - 49 CFR part 21, with regard to, but not limited to, the following: race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, spousal affiliation, physical or mental handicap, age or serious medical condition.

22. Dispute Resolution. If the Parties are unable to resolve any dispute within thirty (30) days of the occurrence of the event or circumstances giving rise to the dispute, the dispute may be submitted to mediation upon the mutual agreement of the Parties. In the event the Parties do not agree to mediate the dispute or are unable to resolve the dispute through mediation and the aggregate amount of the claim (including counterclaims) is less than Two Hundred Fifty Thousand Dollars (\$250,000), then the dispute shall be resolved by binding arbitration. Such arbitration shall be governed by the New Mexico Uniform Arbitration Act, § 44-7A-8, *et seq.* (2001), as amended from time to time. A Party demanding arbitration shall give the other Party timely notice of such election pursuant to **Section 25 “Notices”** and such notice shall describe the nature of the dispute and the amount in controversy. The Parties shall then jointly select an arbitrator and failing such mutual agreement, the arbitrator shall be appointed by a District Court Judge from San Juan County, New Mexico. The arbitration shall be held in Farmington, New Mexico. Discovery shall be by agreement of the Parties or as ordered by the arbitrator, provided that the Parties shall comply with the following minimum discovery requirements: at least ten (10) calendar days prior to the arbitration, the Parties shall exchange copies of all exhibits to be used at the arbitration and a list of witnesses and a summary of the matters as to which each witness is expected to testify.

In the event the Parties do not agree to mediate the dispute or are unable to resolve the dispute through mediation, and the aggregate amount of the claim in dispute equals or exceeds Two Hundred Fifty Thousand Dollars (\$250,000), then the Parties may agree to submit the matter to binding arbitration under the New Mexico Uniform Arbitration Act, § 44-7A-8, *et seq.* (2001), as amended from time to time, and failing such agreement, either Party may bring an action in the federal or state courts of New Mexico.

All costs of mediation or arbitration, including the fees of the mediator or arbitrator, shall be split equally by the Parties, except that the Parties shall be responsible for payment of their

own attorney fees, expert fees, preparation fees, travel, and similar costs. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law of the State of New Mexico. Indemnity claims are not subject to mandatory arbitration. Nothing in this **Section 22** shall affect restrict, condition, or otherwise limit a Party's right to terminate this Agreement pursuant to **Section 5 "Termination."**

In the event of a conflict between the terms and provisions of any Purchase Order (that is incorporated herein by reference) and the terms and provisions contained in the main body or any other part of this Agreement, the terms and provisions of the Agreement shall govern and control. In the event of a conflict between or among the terms and provisions of any of the other documents forming a part of the Agreement (incorporated by reference), the following order of priority shall apply (with higher-listed documents governing and controlling over lower-listed documents):

First: Changes to Services
Second: Exhibits and Attachments
Third: Scope and Drawings
Fourth: City's RFB/RFP
Fifth: Specifications
Sixth: Best and Final Offer (if applicable)
Seventh: Law Firm's proposal

23. Non-Exclusive Relationship. Law Firm expressly acknowledges and agrees that City may enter into similar contractual arrangements with other parties and that City may assign similar services to such other parties. Further, City acknowledges and agrees that Law Firm may enter into contractual arrangements with other parties during the term of this Agreement provided that the obligations of Law Firm pursuant to such contractual arrangements do not in any manner interfere with Law Firm's performance of its obligations to City pursuant to this Agreement.

24. Prohibition Against Assignment and Subcontracting. It is understood and agreed that City has chosen Law Firm based on Law Firm's qualifications to perform services of the nature contemplated by this Agreement. Accordingly, Law Firm shall not assign, transfer, subcontract or otherwise dispose of any of its obligations pursuant to this Agreement without first obtaining the written consent of City, which consent may be withheld if City, in its sole opinion, considers that it is not in its best interests, economic or otherwise, to do so.

25. Notices. Except as expressly provided otherwise herein, any formal notice, demand, or request provided for in this Agreement shall be in writing and shall be deemed properly made if personally delivered, delivered by courier, or sent by first-class mail, postage prepaid, or by electronic transmission to the person specified below and shall be deemed received, if personally delivered, or delivered by courier, upon delivery, and if mailed, on the third day following deposit in the U.S. mail, and if sent by electronic transmission, upon transmission as evidenced by an email read receipt.

To Law Firm:	Address:	FILL IN "Name" FILL IN "Address" FILL IN "Address"
	Attention:	FILL IN "Name or Department"
	Phone:	FILL IN "Phone #"

Email: **FILL IN "Email"**

To City: Address: City of Farmington
800 Municipal Drive
Farmington, New Mexico 87401
Attention: Chief Procurement Officer
Phone: 505-599-1365
Email: jharbour@fmtn.org

The Parties may change their addresses, contact persons, or facsimile numbers to which notices are to be sent by providing the other Party with notice of such changes in the manner provided in this **Section 25**. Nothing contained herein shall preclude the transmission of routine invoices or correspondence, messages and information between the Parties by a representative of a Party in the ordinary course of performing their respective obligations under this Agreement.

26. Designated Representative and Project Manager.

26.1 City's Designated Representative. City appoints the following individual as its "Designated Representative":

Name:	
Address:	
E-mail:	
Telephone:	

The Designated Representative's authority shall encompass but not be limited to (1) issuance of instructions, (2) interpretation of plans, (3) review and inspection of Law Firm's Services, (4) rejection of nonconforming Work, (5) determination of when Services is complete, (6) approval of progress payments and final payment, and (7) first point of contact for certain Change Orders as set forth in **Article 3 "Changes to Services"**. All field communications from Law Firm to City shall be directed to the Designated Representative. City may appoint another Contract Administrator at any time by written notice to Law Firm.

26.2 Law Firm's Project Manager. Law Firm appoints the following individual as its "Project Manager" in charge of Law Firm's performance and execution of the Services:

Name:	
Address:	
E-mail:	
Telephone:	
Cell Phone:	

All instructions, requests for Change to Services and other communications from the City to the Law Firm shall be directed to the Project Manager. Law Firm may appoint another Project Manager upon ten (10) calendar days' prior written notice to City. If City objects to the new appointee, Law Firm shall appoint a Project Manager acceptable to City.

27. No Waiver. No term, covenant or condition of this Agreement or any breach thereof shall be deemed waived, unless such waiver shall be in writing and executed by the Party claimed to

have waived the same. The waiver of any breach by a Party, whether express or implied, shall not constitute a waiver of any subsequent breach.

28. Severability. If a court or regulatory agency having jurisdiction over the Parties determines that a condition of this Agreement, or any part thereof, is void, illegal or unenforceable, said condition or part shall be deemed to have been severed from this Agreement, and the remaining conditions, or parts, shall be unaffected and shall be enforced to the fullest extent allowed by law.

29. Binding Effect. This Agreement and all provisions hereof shall inure to the benefit of and be binding upon the Parties, their successors, and permitted assigns.

30. Governing Law and Venue. This Agreement shall be governed and interpreted in accordance with the laws of the State of New Mexico, without regard to the conflicts of law rules of that State. Any action at law or in equity or judicial proceedings instituted by a Party for the enforcement of this Agreement shall be instituted only in state or federal courts of the State of New Mexico.

31. Counterparts. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument. City and Law Firm may retain a duplicate copy (e.g. electronic image, photocopy, facsimile) of this Agreement, which shall be considered an equivalent to this original.

32. Survival of Obligations. In addition to the continuation of confidentiality obligations as specified in **Section 15 "Confidentiality,"** Law Firm's representations and warranties under **Section 6 "Law Firm Representations and Corrective Action,"** indemnity obligations, including those under **Section 12 "Liability,"** and **Section 19 "Drug and Alcohol"** of this Agreement, shall survive the expiration or any termination of the Agreement, it being agreed that said obligations are and shall be of a continuing nature.

33. Agreement Authors. The Parties have agreed to this Agreement and no ambiguity shall be construed against any Party based on the identity of the author or authors of this Agreement.

34. Entire Agreement. This Agreement represents the entire agreement and understanding between City and Law Firm with respect to the subject matter hereof and performance of the Services, and supercede any prior understandings, representations or agreements, whether verbal or written, prior to execution of this Agreement. If any Services were performed by Law Firm under verbal agreement or under a limited notice to proceed prior to the execution of this Agreement, then this Agreement shall apply thereto in the same manner as if made before such Services were performed.

IN WITNESS WHEREOF, Law Firm and City have caused this Agreement to be executed on their behalves by their duly authorized representatives as of the Effective Date set forth above.

CITY OF FARMINGTON
A Municipal Corporation

INSERT LAW FIRM NAME

By: _____
Title: Mayor

Date

(SEAL)

ATTEST:

City Clerk

Date

Approves Compliance NMSA 1978
Annotated, Chapter 13 Public
Purchases and Property:

Chief Procurement Officer

Date

Department Head Approval

Date

Legal Department Approved to Form

Date

By: _____
Duly Authorized Signature

By: _____
(Printed Name)

Title: _____

Date

Signer has read the document and
affirms that it is true and complete and
accurately represents the agreement of
the parties.

NOTARY PUBLIC SIGNATURE
(REQUIRED IF NOT SIGNED
ELECTRONICALLY IN ADOBE)

State of _____
County of _____

(SEAL) Signature of notarial officer
My commission
expires: _____

Exhibit A-1

Services

Introduction

Law Firm shall provide professional legal services as counsel to assist the City Attorney and designated officers with various projects that may be assigned from time to time.

The Law Firm shall provide services in the following area of expertise:

I. Location Services to be Performed

State descriptive location ... may include address if appropriate

Example:

Approximately _____ percent (__ %) of the Services performed under this Agreement will consist of research, document development, architectural and design, analysis, phone solicitation, civil engineering (electrical, mechanical, chemical, etc.) and such shall be performed within the immediate confines of Law Firm's office premise located at (CITY, STATE) USA

Approximately _____ percent (__ %) of the Services performed under this Agreement will consist of traveling in Law Firm owned or rented vehicle to and from (CITY, STATE) and Farmington, NM . Law Firm's designated representative will attend meetings in the City's offices located at City Hall, 800 Municipal Drive, Farmington, NM to discuss scope, issues, progress, alternatives, etc.

II. Scope of Services

All Law Firms shall perform the following task(s) and provide the following deliverables:

- a. Law Firm shall respond to the City's auditor during each annual audit process. This response shall be provided by the Law Firm at no charge to the City.
- b. Law Firm shall copy the Claims Manager, Department Director, or other City personnel as directed on all emails, letters, court notifications, filings and documents for each lawsuit.
- c. Law Firm shall obtain Department Director, Claims Manager, or City Attorney approval for expenditures such as retention of expert witnesses, out of the ordinary lawsuit expenses, and permission to research, write, and file motions.
- d. Law Firm shall make presentation to Farmington City Council when requested settlement exceeds \$50,000.
- e. When the lawsuit is complete, the Law Firm shall return to City authorized representative, all original lawsuit and release documents that were not previously provided to the City.

In addition Law Firms defending the City of Farmington lawsuits shall perform the following task(s) and provide the following deliverables:

- a. Law Firm shall provide Case Management Plan updates on a quarterly basis. If no changes have taken place during the quarter, an email to the case manager is sufficient.
- b. Law Firm shall add Claims Manager to Federal District Court email listing when jurisdiction is Federal Court.
- c. Law Firm shall add the excess insurance carrier claim representative to distribution list for copies of emails, letters, court notification, filings and documents when directed by City personnel.
- d. Law Firm shall prepare case evaluations for scheduled settlement conferences or mediations.

City shall perform the following tasks:

- a. City shall provide a room for depositions at a City facility free of charge when depositions are held in Farmington.
- b. The Claims Manager, with the help of applicable City personnel, will obtain and coordinate responses to discovery requests.
- c. City personnel will assist the Law Firm in completing tasks that save defense costs for the City.

III. Deadlines and/or Milestones

Law Firm shall furnish an executed Release Document and Court Dismissal before the check for the Settlement proceeds is given to the Plaintiff or the Plaintiff's Attorney.

Monthly progress payments shall be paid to the Law Firm for services rendered during the previous month.

IV. Rate Schedule

See attached Exhibit A for rates and fees

V. Variances and/or Directions Relating to Compensation, Fees, Costs and Expenses

N/A