

**SANTA FE SOLID WASTE MANAGEMENT AGENCY
PROFESSIONAL SERVICES AGREEMENT WITH
KOMER, LONG & ASSOCIATES, P.A.
(Legal Services – 2023)**

This PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made and entered into by and between the Santa Fe Solid Waste Management Agency (“the Agency”) and Long Komer & Associates, P.A. (the “Contractor”) to provide legal services as described below (RFP No. 23/55/P). The Agreement shall be effective as of the date this Agreement is executed by the Agency.

1. SCOPE OF SERVICES

The Contractor shall provide the following legal services for the Agency:

- A. Provide legal advice, counsel services, and consultation to the Agency on a wide variety of general issues and areas including, but not limited to, the following:
- Government Contracts, Agreements, Leases and Other Documents
 - Union Contracts (Collective Bargaining Agreements)
 - Injury and Tort Law
 - Labor and Employment Law
 - Environmental Law
 - Construction Law
 - Corporate Law
 - Property Law & Real Estate Law
 - Insurance Law
- B. Attend the Agency’s Joint Powers Board (“Board”) meetings and upon request attend the Santa Fe County Board of County Commissioners (BCC) and City of Santa Fe Council meetings.
- C. Review and revise Agency ordinances, resolutions and policies for legal accuracy and compliance.

D. Provide guidance to Board members and Agency employees on awareness of ethical standards.

E. Provide guidance and legal advice on the following:

- Open Meetings Act
- Freedom of Information Act
- Robert's Rules of Order, and
- Agency's Joint Powers Agreement.

F. Work cooperatively with other attorneys (e.g., City of Santa Fe, Santa Fe County, State of New Mexico), as needed, to assure proper management of legal issues, and proper coordination and transition of legal information among attorneys.

G. Furnish the Board or Executive Director of the Agency with opinions on legal subjects as requested.

H. Provide legal advice on union grievance proceedings up to arbitration.

I. Performs other legal services and tasks, as requested.

2. STANDARDS OF PERFORMANCE; LICENSES

A. Contractor represents that it possesses the experience and knowledge necessary to perform the services described in this Agreement.

B. Contractor agrees to obtain and maintain throughout the term of this Agreement all applicable professional and business licenses required by law for itself and its employees, agents, representatives and subcontractors.

3. COMPENSATION

A. The Agency shall pay to the Contractor in full payment for services rendered, a sum not to exceed Thirty Thousand Dollars and No Cents (\$30,000.00), including applicable gross receipts taxes.

- B. The Contractor will bill the Agency in 0.10 billing units at the following hourly rates:

Title	Hourly Rate
Partner	\$225
Principal Attorney	\$225
Associate Attorney	\$225
Paralegal	\$125

- C. The Contractor will bill the Agency for reimbursable costs at the following reimbursable costs schedule:

Expense	Estimated Cost
Mileage (out of city travel)	Billed at current IRS mileage rate
Computerized legal research	Billed at cost for out-of-plan research
Filing fees	Billed at cost
Photocopies for large projects	\$0.08 per page for color; no charge for black & white
Courier (i.e., FedEx, UPS, or similar express mail carriers)	Billed at cost
Travel expenses (i.e., meals, car rental, lodging, etc.)	Billed at cost
Third-party expenses	Billed at cost
Miscellaneous (i.e., special supplies)	Billed at cost

- D. The Contractor shall not bill the Agency for expenses that are part of the Contractor's overhead (i.e., routine in-house copying, in-city limits mileage, long distance calls, in-city limits courier services, facsimiles).

- E. The Contractor shall be responsible for payment of gross receipts taxes levied by the State of New Mexico on the sums payable under this Agreement.

F. Payment shall be made upon receipt and approval by the Agency of detailed statements containing a report of services completed. Compensation shall be paid only for services actually performed.

G. Detailed statements containing reimbursement expenses shall be itemized.

4. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations to and authorization from the Joint Powers Board for the Agency for the performance of this Agreement. If sufficient appropriations are not made or authorization provided, this Agreement shall terminate upon written notice from the Agency to Contractor. The Agency shall be responsible for charges incurred up to the date of notification under this Article and Article 6 of this Agreement. The Agency's decision as to whether sufficient appropriations are available shall be accepted by Contractor and shall be final.

5. TERM AND EFFECTIVE DATE

A. This Agreement shall be effective when signed by the Agency and terminate on May 18, 2024, unless it is terminated sooner pursuant to Article 4 or Article 6 of this Agreement.

B. Pursuant to the limitations on multi-term contracts for professional services codified in NMSA 1978 § 13-1-150, this Agreement may not exceed four years, including all extensions and renewals. Subject to that limitation, the Agreement can be renewed annually, if agreed upon by the Agency and Contractor and approved by the Joint Powers Board.

6. TERMINATION

A. The Agency shall be entitled to immediately terminate this Agreement if in Agency's opinion Contractor fails to perform the services to Agency's reasonable satisfaction.

B. The Agency may also terminate this Agreement at any time and for any reason by giving ten (10) days written notice to Contractor. If the Agency terminates the Agreement:

- 1) Contractor shall render a final report of the services performed up to the date of termination and shall turn over to the Agency original copies of all work product, research, or papers prepared for the services covered by this Agreement. The Agency shall pay Contractor for services rendered and expenses incurred under this Article, including for preparation of the final report.
- 2) If compensation is not based upon hourly rates for services rendered, the Agency shall pay Contractor for the reasonable value of services satisfactorily performed through the date Contractor receives notice of such termination for which compensation has not already been paid.
- 3) If compensation is based upon hourly rates and expenses, Contractor shall be paid for services rendered and expenses incurred through the date Contractor receives notice of such termination.

7. STATUS OF CONTRACTOR; RESPONSIBILITY FOR PAYMENT OF EMPLOYEES AND SUBCONTRACTORS

A. Contractor, its agents, and its employees are independent contractors performing professional services for The Agency and are not employees of the Agency.

B. Contractor, its agents, and its employees shall not accrue leave, retirement, insurance, bonding, or any other benefits afforded to employees of the Agency, and shall not be permitted to use Agency vehicles in the performance of this Agreement.

C. Contractor shall be solely responsible for payment of wages, salaries, and benefits to any and all employees or subcontractors Contractor retains to perform any of its obligations pursuant to this Agreement.

8. CONFIDENTIALITY

Any confidential information provided to or developed by Contractor in the performance of this Agreement shall be kept confidential, and shall not be made available to any individual or organization by Contractor without the Agency's prior written approval.

9. CONFLICT OF INTEREST

Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with its performance of its obligations pursuant to this Agreement. Contractor further agrees that it shall not employ or contract with anyone in the performance of this Agreement that has any such conflict of interest.

10. ASSIGNMENT; SUBCONTRACTING

Contractor shall not assign or transfer any rights, privileges, obligations or other interests under this Agreement, including any claims for money due, without the Agency's prior written consent. Contractor shall not subcontract any portion of the services to be performed under this Agreement without the Agency's prior written approval.

11. RELEASE

Contractor, upon acceptance of final payment of the amount due under this Agreement, releases the Agency, its officers, and its employees from all liabilities, claims, and obligations whatsoever arising from or under this Agreement. Contractor agrees not to purport to bind the Agency to any obligation not assumed herein by the Agency unless Contractor has express written authority to do so, and then only within the strict limits of that authority.

12. INSURANCE

A. Contractor, at its own cost and expense, shall carry and maintain in full force and effect during the term of this Agreement professional liability insurance of \$2,000,000 for each claim,

comprehensive general liability insurance of \$1,000,000 for each occurrence and \$2,000,000 in general aggregate coverage for bodily injury and property damage liability, in a form and with an insurance company acceptable to the Agency. The Agency shall be named as an additional insured under the insurance policy, and the policy shall provide that the Agency will be notified no less than 30 days before the policy is canceled for any reason. Contractor has furnished the Agency with a copy of a Certificate of Insurance or other evidence of Contractor's compliance with the provisions of this Article as a condition of entering into this Agreement.

B. Contractor shall carry and maintain Workers' Compensation insurance in accordance with New Mexico law to provide coverage for Contractor's employees throughout the term of this Agreement. Contractor shall provide the Agency with evidence demonstrating that appropriate Workers' Compensation insurance has been obtained.

C. Contractor shall also carry and maintain sufficient automobile liability insurance throughout the term of this Agreement to cover no less than \$1,000,000 combined single limit for each accident.

13. INDEMNIFICATION

Contractor shall indemnify, hold harmless and defend the Agency from all losses, damages, claims or judgments, including payment of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action, or demand whatsoever to the extent arising from the negligent acts, errors, or omissions, or willful and reckless disregard of obligations under this Agreement, in the performance of any services covered by this Agreement, whether occurring on Agency managed or owned property or otherwise, by Contractor or its employees, agents, representatives, or subcontractors, excepting only such liability that arises out of the Agency's negligence.

14. NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the Agency in connection with this Agreement is subject to the immunities and limitations set forth in the New Mexico Tort Claims Act, NMSA 1978 §§ 41-4-1 to 41-4-27. The Agency and its employees do not waive sovereign immunity, any available defense, or any limitation of liability recognized by law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

15. THIRD PARTY BENEFICIARIES

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

16. RECORDS AND AUDIT

Contractor shall maintain throughout the term of this Agreement and for a period of three years thereafter detailed records that indicate the date, time, and nature of services rendered. These records shall be subject to inspection by the Agency, the City of Santa Fe Finance Department, and the State Auditor. The Agency shall have the right to audit the billing both before and after payment. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments.

17. APPLICABLE LAW; CHOICE OF LAW; VENUE

Contractor shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the Agency. In any action, suit, or legal dispute arising from this Agreement, Contractor agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state

court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

18. AMENDMENT

This Agreement shall not be altered, changed, or modified except by an amendment in writing executed by the parties.

19. SCOPE OF AGREEMENT

This Agreement expresses the entire agreement and understanding between the parties with respect to the services set forth in the Scope of Work as described in Article 1. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

20. NON-DISCRIMINATION

During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of the services Contractor undertakes pursuant to this Agreement on the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

21. SEVERABILITY

If one or more of the provisions of this Agreement or any application thereof is found to be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions of the Agreement and any other application thereof shall not in any way be affected or impaired.

22. NOTICES

Any notices required to be given under this Agreement shall be in writing and served by personal delivery or by mail, postage prepaid, to the parties at the following addresses:

AGENCY: Mr. Randall Kippenbrock, P.E.
Executive Director
Santa Fe Solid Waste Management Agency
149 Wildlife Way
Santa Fe, NM 87506

CONTRACTOR: Mr. Mark E. Komer
Vice President
Long, Komer & Associates, P.A.
P.O. Box 5098
Santa Fe, NM 87502-5098

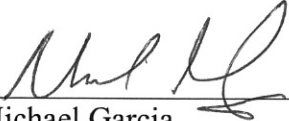
23. COMPLIANCE WITH LAWS AND REGULATIONS; PROHIBITION OF BRIBES, GRATUITIES, AND KICKBACKS

Contractor shall comply with all applicable federal, state, and local laws and regulations throughout the term of this Agreement. Contractor expressly acknowledges that the New Mexico Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation, and New Mexico criminal statutes impose penalties for bribes, gratuities, and kick-backs.

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IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.

SANTA FE SOLID WASTE MANAGEMENT AGENCY:



Michael Garcia
Chairperson

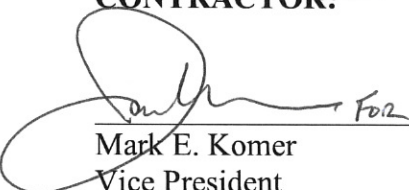
5/18/2023
Date:

ATTEST:




Kristine Bustos-Mihelcic
Santa Fe City Clerk


CONTRACTOR:



Mark E. Komer
Vice President
Long, Komer & Associates, P.A.

5.18.2023
Date:

APPROVED AS TO FORM:



Jenny F. Kaufman
Attorney
Jones, Snead, Wertheim & Clifford, P.A.

5/12/2023
Date: