

June 2, 2014

To: City Council

From: Marcos D. Martínez, Assistant City Attorney MDM

Via: Kelley Brennan, City Attorney KB
Brian Snyder, City Manager BS

Re: Legal Services Agreement with Jeffrey Albright of Lewis Roca Rothgerber LLP to represent the City in PRC Case # 13-00390-UT.

Background

On March 12, 2014 the City Council approved Resolution 2014-22 "Directing Staff to Intervene in Case # 13-00390-UT that is currently before the New Mexico Public Regulation Commission – In the Matter of the Application of the Public Service Company of New Mexico for Approval to Abandon San Juan Generating Station Units 2 and 3, Issuance of Certificates of Public Convenience and Necessity for Replacement Power Resources, Issuances and Accounting Order and Determination of Related Rate Making Principles and Treatment."

The resolution directed staff "to engage outside counsel to represent the City before the PRC." Additionally, a friendly amendment requested "that if we do engage counsel to act on behalf of the City in connection with this rate case, or the PNM filing, that that matter be brought to the Council for action." *Minutes, City of Santa Fe Council Meeting: March 12, 2014.*

The City Attorney's Office filed an intervention in the matter shortly following adoption of the resolution. Subsequently, the City Attorney's Office discussed the possibility of engaging in a joint representation with Santa Fe County and Bernalillo County. Both Santa Fe County and Bernalillo County have engaged with Jeffrey Albright, a partner in the firm of Lewis & Roca. Moreover, both Santa Fe and Bernalillo County are interested in cost-sharing outside counsel with the City on this matter.

Recommendation

The City Attorney's Office recommends entering into a legal services agreement with Lewis & Roca. Mr. Jeffrey Albright has extensive experience before the PRC. For both Santa Fe County and Bernalillo County, the issues involve balancing long term energy needs with reasonable rates and new more environmentally energy sources, particularly in light of the additional rate case that PNM plans to file in November of this year.

CITY OF SANTA FE
LEGAL SERVICES AGREEMENT

THIS LEGAL SERVICES AGREEMENT ("Agreement") is made and entered into by and between the City of Santa Fe (the "City") and Lewis Roca Rothgerber LLP (Attorney Jeffrey H. Albright) (the "Contractor"). The date of this Agreement shall be the date when it is executed by the City. For purposes of this Agreement, the City and the Contractor will collectively be referred to as the "Parties" or individually as a "Party" and not to be confused with "parties" in reference to other entities involved in Case No. 13-00390-UT (*In the Matter of the Application of Public Service Company of New Mexico for Approval to Abandon San Juan Generation Stations Units 2 and 3, Issuance of Certificates of Public Convenience and Necessity . . .*).

1. SCOPE OF SERVICES

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

A. Represent the City before the New Mexico Public Regulation Commission "NM PRC" regarding Case No 13-00390-UT, including but not limited to assisting in the preparation and review of pre-filed testimony, attendance and participation in scheduling conferences, attendance at hearings, review of various motions and discovery relevant to the proceeding, briefings of the City Attorney and other City officials, and joint discussions with the County of Santa Fe and Bernalillo County and other parties, PRC Staff and intervenors in the aforementioned case.

2. STANDARD OF PERFORMANCE; LICENSES

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

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

3. COMPENSATION

A. The City shall pay to the Contractor in full payment for services rendered, a sum not to exceed twenty-five thousand dollars (\$25,000), plus applicable gross receipts taxes.

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

C. Invoices for services will be made on a monthly basis and mailed by Contractor to the following address unless otherwise directed in writing by the City: City Attorney's Office, City of Santa Fe, P.O. Box 909, Santa Fe, NM 87501. Payment shall be made upon receipt and approval by the City of detailed statements containing a report of services completed. Compensation shall be paid only for services actually performed.

D. The Contractor shall bill at a rate not to exceed \$185.00 per hour plus applicable New Mexico Gross Receipts Tax (NMGRT).

E. Costs by the Contractor are included within the \$25,000, with no mark-up to the client. No legal fees will be charged for travel time to or from Albuquerque to Santa Fe, and travel/mileage and other costs will be pro-rated with the County of Santa Fe and Bernalillo County unless the costs are incurred for the sole benefit of the City.

F. Legal fees will be pro-rated with the County of Santa Fe and Bernalillo County unless the work is performed exclusively on behalf of the City.

4. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City, this Agreement shall terminate upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

5. TERM AND EFFECTIVE DATE

This Agreement shall be effective when signed by the City and terminate on June 30, 2015, unless sooner pursuant to Article 6 below.

6. TERMINATION

A. This Agreement may be terminated by the City upon 10 days written notice to the Contractor.

(1) The Contractor shall render a final report of the services performed up to the date of termination and shall turn over to the City original copies of all work product, research or papers prepared under this Agreement, subject to the provisions of any Common Interest/Joint Litigation Agreement that may be entered into between the City and the County of Santa Fe and/or Bernalillo County.

(2) If compensation is not based upon hourly rates for services rendered, the City shall pay the Contractor for the reasonable value of services

satisfactorily performed through the date Contractor receives notice of such termination, and for which compensation has not already been paid.

(3) If compensation is based upon hourly rates and expenses, then 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. The Contractor and its agents and employees are independent contractors performing professional services for the City and are not employees of the City. The Contractor, and its agents and employees, shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City as a result of this Agreement.

B. Contractor shall be solely responsible for payment of wages, salaries and benefits to any and all employees or subcontractors retained by Contractor in the performance of the services under this Agreement.

C. The Contractor shall comply with City of Santa Fe Minimum Wage, Article 28-1-SFCC 1987, as well as any subsequent changes to such article throughout the term of this Agreement.

8. 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 City.

9. CONFLICT OF INTEREST

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. Contractor further agrees that in the performance of this Agreement no persons having any such interests shall be employed.

10. ASSIGNMENT; SUBCONTRACTING

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

11. RELEASE

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

12. INSURANCE

A. The Contractor, at its own cost and expense, shall carry and maintain in full force and effect during the term of this Agreement, comprehensive

general liability insurance covering bodily injury and property damage liability, in a form and with an insurance company acceptable to the City, with limits of coverage in the maximum amount which the City could be held liable under the New Mexico Tort Claims Act for each person injured and for each accident resulting in damage to property. Such insurance shall provide that the City is named as an additional insured and that the City is notified no less than 30 days in advance of cancellation for any reason. The Contractor shall furnish the City with a copy of a Certificate of Insurance as a condition prior to performing services under this Agreement.

A. Contractor shall obtain and maintain Workers' Compensation insurance as required by law to provide coverage for Contractor's employees, if any, throughout the term of this Agreement. Contractor shall provide the City with evidence of its compliance with such requirement if applicable.

B. Contractor shall maintain professional liability insurance throughout the term of this Agreement providing a minimum coverage in the amount required under the New Mexico Tort Claims Act. The Contractor shall furnish the City with proof of insurance of Contractor's compliance with the provisions of this section as a condition to this Agreement.

13. INDEMNIFICATION

The Contractor shall indemnify, hold harmless and defend the City from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from Contractor's performance under this Agreement as well as the performance of Contractor's employees, agents, representatives and subcontractors.

14. NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to 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 City and the Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

16. RECORDS AND AUDIT

The 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 City, the Department of Finance and Administration, and the State Auditor. The City shall have the right to audit the billing both before and after payment. Payment under this Agreement shall not foreclose the right of the City 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 City of Santa Fe. In any

action, suit or legal dispute arising from this Agreement, the 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 hereto.

19. SCOPE OF AGREEMENT

This Agreement incorporates all the agreements, covenants, and understandings between the Parties hereto concerning the services to be performed hereunder, and all such agreements, covenants and understandings have been merged into this Agreement. This Agreement expresses the entire Agreement and understanding between the Parties with respect to said services. 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 services by Contractor hereunder, 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

In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

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:

City of Santa Fe:
Water Division Director
Water Division
801 W. San Mateo
Santa Fe, NM 87504

Contractor:

Jeffrey H. Albright, Partner
Lewis Roca Rothgerber LLP
Bank of Albuquerque Bldg Suite 1950
201 Third Street NW
Albuquerque, New Mexico 87102-4388
(T) (505) 764-5435 | (F) 505.764.5462
JAlbright@LRRLaw.com www.LRRLaw.com

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

CITY OF SANTA FE:

CONTRACTOR:

BRIAN K. SNYDER, CITY MANAGER

(Name & Title)

DATE: _____

Date: _____

CRS # _____
City of Santa Fe Business
Registration # _____

ATTEST:

YOLANDA Y. VIGIL
CITY CLERK

APPROVED AS TO FORM:

 FOR _____
KELLEY A. BRENNAN,
INTERIM CITY ATTORNEY

APPROVED:

MARCOS A. TAPIA, FINANCE DEPARTMENT

52300.510200
Business Unit Line Item