

“SOLE SOURCE” PROCUREMENT JUSTIFICATION

Sole source purchases are goods and services available from only one vendor. There may be just one vendor because of patents or copyrights or simply because the vendor is the only one which supplies the good or service. Using Department must provide a written explanation as to why only this particular product/service is acceptable and why no other will be suitable or acceptable to meet the need. A quote must accompany this form.

Department name: Legal

1. Name of product or service: Legal Services regarding Opioid Litigation
2. Name of product manufacturer: N/A
3. Name of “sole” product supplier or service provider: Robles, Rael & Anaya, P.C. /
Baron & Budd, P.C.
4. Describe in general terms the product/service you are requesting and the intended application.
 - A. Legal Consulting Services for Opioid Litigation
 - B. Represent Doña Ana County in litigation against opioid manufacturers, distributors and other related to the impact of the opiate epidemic on Doña Ana County
5. Describe the unique features/capabilities/characteristics that distinguish it from other products/services.

Robles, Rael & Anaya and Baron & Budd were selected to represent Doña Ana County in litigation against opioid manufactures, distributors and other through an RFP that was approved the BOCC in May 2018. A contract was issued in July 2018 that provided for contract renewals for up to four years with the last renewal having been executed in July 2021 for the period through June 2022.

The litigation is ongoing at this time. A settlement has been reached with a number of the manufacturing defendants, however, the litigation is continuing with regards to other defendants. Robles, Rael & Anaya and Barron and Budd have been handling the case for four years during which time they have accumulated a great deal of information and produces work product that would have to be duplicated if new attorneys were retained to represent Doña Ana County. The continuity of the lawsuit and the interest of the county will be best served by continuing with these law firms.

Additionally, if the county were to seek new counsel at this point in the litigation it is likely that the costs to the county would increase. The current contract is based on a contingency fee which is a sliding scale based on the amount recovered. Since there has already been a partial recovery in the this case, it is likely that any newly retained counsel would seek a higher percentage since the amount the remaining potential recover is reduced.

6. How did you determine there was only one source for the product or service? Provide information on the research that was performed to locate suppliers for this product(s) or service(s). (Please furnish names, addresses and other documentation).

The basis for the sole source is maintaining of representation by the law firms that have been representing the county in this pending litigation for over four years and their knowledge and expertise in this case. Retention of a new law firm at this point would result in duplication of work and increased costs to the county.

7. What product supplier or service provider has your Department used until now to satisfy similar requirements?

Doña Ana County has been represented by Robles, Rael & Anaya and Barron & Budd for the past four years in this litigation through a contract awarded through an RFP in May 2018. The original contract provided for four one year renewals which have been with the last renewal expiring June 30, 2022.



August 10, 2022

Signature of Department Head

Date

(Attach Quote and Use Additional Sheets As Necessary)

****This form is used by Purchasing Department to determine if a "Sole Source" procurement criterion is met. Completing this form does not guarantee approval of this type of procurement.**

CONTRACT # 19-038
Effective Date: 25 Jul 18

DOÑA ANA COUNTY CONTRACT FOR GOODS AND SERVICES

This Contract is entered into between Doña Ana County, hereinafter referred to as the "County," and "Contractor" described below, collectively the "Parties", to provide services on behalf of Doña Ana County.

Contractor Legal Name: Robles, Rael & Anaya, P.C. / Baron & Budd, P.C.

Services Summary Description: Legal Consulting Services for Opioid Litigation

Initial Period of Performance shall be through: June 30, 2019

Pre-GRT, Total Annual Charges to this contract may not exceed: 25% on Gross Recovery

This Contract complies with New Mexico and County procurement requirements as follows:

- ☒ RFP # 18-0039, ☐ Under \$50,000/yr or ☒ BOCC approval date 05/22/2018
☐ Bid # , ☐ Under \$50,000/yr or ☐ BOCC approval date
☐ "Qualified" Professional Service, Under \$50,000 annually. Qualifications attached.
☐ Three Written Quotes under \$30,000 annually. ☐ Quotes under \$10,000 annually.
☐ Other: Revenue; non-financial MOA; or

No services shall be rendered nor shall any goods be provided until this contract has been executed by all parties, regardless of the indicated effective date.

NOTICES: All correspondence regarding this contract shall be sent to:

Doña Ana County Government	Contractor: Robles, Rael & Anaya P.C.
Department: Legal / Risk Management	ATTN: Marcus J. Rael, Jr.
ATTN: Nelson J. Goodin, County Attorney	Title: Managing Partner
Street: 845 N. Motel Blvd.	Street: 500 Marquette Ave NW, Suite 700
City, State, Zip: Las Cruces, NM 88007	City, State, Zip: Albuquerque, NM 87102
Phone: 575-525-5920	Phone: 505-252-2228
Fax: 575-525-5925	Fax:
Cell:	Cell: 505-440-6324
Email: nelsong@donaanacounty.org	Email: marcus@roblesrael.com

ARTICLE 1 - SERVICES AND/OR GOODS TO BE PROVIDED: For RFP or Professional Services contracts, the Contractor shall provide services to the County on matters relating to the contractor's specialized areas of expertise as defined in this Contract and its referenced or incorporated Attachments. Negotiated fees are fixed for the first year. Price adjustments thereafter are subject to review and written determination on an individual contract basis.

For Sealed Bid / Indefinite Quantity contracts, the Contractor shall have the item(s) or service(s) available, as defined in this contract, on an "as ordered" basis. No funds are obligated under Sealed Bid / Indefinite Quantity contracts. Funds for Sealed Bid / Indefinite Quantity contracts are obligated by purchase orders on an "as needed" basis. Prices are fixed for the first year of a Sealed Bid / Indefinite Quantity contract. Thereafter, in the event of a product cost increase an escalation request will be reviewed by the County on an individual basis. Escalation requests are only to compensate for an actual cost increase and will not be considered for an increase in profit margin.

All Contractors shall secure and remain current on all insurances, licenses, permits, certificates, fees, etc., required for the performance of this contract.

ARTICLE 2 - CONTRACT DOCUMENTS: The Contract shall be comprised of this contract document, its Attachments and all documents referenced herein. As applicable, the Contract shall also include all Proposal or Bid documents, including the Contractor's responses, Reference Specifications, Special Conditions, Technical Specifications, Standard Details, any addenda thereto, and all negotiation records, all of which are incorporated herein and made a part of the Contract.

In instances where there exists a conflict between any of the Contract documents described above, this Contract plus attachments hereto, negotiation records, the County's solicitation documents, and the Contractor's response to the solicitation, in that order, shall control the interpretation of the parties' respective rights and obligations.

ARTICLE 3 - PERIOD OF PERFORMANCE: The period of performance of this Contract shall commence July 1, 2018 or date of last signature, whichever is later, and continue through the Initial Period of Performance date detailed above. If stipulated in a formal Proposal or Bid solicitation by the County, this Contract may be renewed for up to three (3) additional years, not to exceed a total of four (4) years.

ARTICLE 4 - PLACE OF PERFORMANCE: The Contractor shall provide the required services or goods for Doña Ana County when and where appropriate or as required by the County.

ARTICLE 5 - COST AND PAYMENT: The Contractor shall be paid for services rendered satisfactorily per the negotiated fee(s) and payment schedules incorporated hereto in applicable attachments, including Attachments A and B. All payments will be in arrears. Payment shall be made per request upon receipt of a detailed invoice that shall include description of work completed or goods delivered pursuant to the deliverable(s) agreements and measures of attainment of this contract for the period covered by the invoice. The invoice submitted shall note the purchase order number and this Contract number and may be delivered to the Department contact specified in "Notices" above. The County shall pay to the Contractor the New Mexico Gross Receipts Tax on labor and services only as levied on the amounts invoiced and payable under this contract. The Contractor will pay the New Mexico Gross Receipts Tax levied on the amounts payable under this contract and remitted to them by Doña Ana County to the appropriate state agency.

ARTICLE 6 - AMENDMENTS: This Contract shall not be altered, changed, or amended except by written instrument signed by both parties.

ARTICLE 7 - ASSIGNMENT: The Contractor shall not assign nor delegate specific duties as part of this Contract nor transfer any interest nor assign any claims for money due or to become due under this Contract without the written consent of the County.

ARTICLE 8 - BINDING EFFECT OF CONTRACT: Both Parties agree that the terms of this Contract and any extension or renewal thereof shall extend to and be binding upon the administrators, assigns, successors, and transferees of the contracting parties.

ARTICLE 9 - COMPLIANCE WITH GOVERNING LAW: This Contract shall be construed in agreement with New Mexico law. The Contractor shall keep fully informed of and shall also comply with all applicable federal, state, and local laws, ordinances, and regulations and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed, or the work, or which in any way affect the conduct of the work. By way of illustration, but not of limitation, the Contractor shall comply with laws relating to employment eligibility including: the Immigration Reform and Control Act of 1986 (Public Law 99-603) and the Immigration Act of 1990 (Public Law 101-649) regarding employment verification and retention of verification forms for any individual(s) hired on or after November 6, 1986, that will perform any labor or services under this Contract. The Contractor shall comply with all federal statutes relating to non-discrimination including, but not limited to: Title VI and VII of the Civil Rights Act of 1964 (Public Law 88-352), which prohibits discrimination on the basis of race, color, or national origin; Title IX of the Education Amendments of 1972, as amended [20 U.S.C.A. Section 504 of the Rehabilitation Act of 1973 (Public Law 93-112)], which prohibits discrimination on the basis of handicap; the Age Discrimination in Employment Act of 1967 (Public Law 90-202), as amended; the Americans with Disabilities Act of 1990 (Public Law 101-336); and all amendments to each, and all requirements imposed by the regulations issued pursuant to these acts, especially 45 CFR Part 80 (relating to race, color, and national origin), 45 CFR Part 84 (relating to handicap), 45 CFR Part 86 (relating to sex), and 45 CFR Part 91 (relating to age).

ARTICLE 10 - CONFIDENTIAL INFORMATION: Any confidential information, not subject to disclosure under the Inspection of Public Records Act, given to or developed by the Contractor, its officers, directors, employees, agents, or sub-consultants in the performance of this Contract will be kept confidential and will not be made available to any individual, organization, or other entity by the Contractor without prior written approval of the County.

ARTICLE 11 - CONFLICT OF INTEREST: The Contractor warrants that it presently has no interest and shall not acquire any interest during the term of this Contract which would have the potential to conflict with the performance of the services required under this Contract. In the event such a conflict arises, it shall immediately be brought to the attention of the County and appropriate action acceptable to the County shall be taken. The Contractor's failure to inform the County of the existence of a potential conflict of interest constitutes default and shall be grounds for immediate termination of Contract by the County.

ARTICLE 12 - CONFLICTS OF LAW: If any provision of this contract conflicts with governing federal or state law or County ordinances, then that law or ordinance shall supersede the conflicting provision of this contract.

ARTICLE 13 - HIPAA COMPLIANCE: As applicable, the parties agree to comply with the provision of the Health Insurance Portability and Accountability Act of 1996, and related regulations, as amended ("HIPAA") in the event the Contractor receives patient records or information (Protected Health Information as defined by HIPAA).

ARTICLE 14 - INDEMNIFICATION AND HOLD HARMLESS AGREEMENT:

Non-Governmental Entity The Contractor shall hold harmless, indemnify and defend the County and its "public employees" as defined in the New Mexico Tort Claims Act, Sections 41-4-1 to 41-4-29, NMSA 1978, as amended, against and from any and all claims, losses, demands, judgments, damages, liabilities, lawsuits, expenses, attorneys fees, costs or actions of any kind resulting from or related to the Contractor's intentional acts, errors or omissions in the Contractor's performance under this contract. The Contractor's agreement to hold harmless, indemnify and defend shall not be affected or terminated by the cancellation, expiration of the term or any renewal or any other modification of the Contract for any reason and shall survive the cancellation, expiration of the term or any renewal or any other modification of this contract, acts, errors or omissions to act occurring during the term of this contract.

Governmental Entity: Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Contract. Any liability incurred in connection with this Contract is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA, 1978 § 41-4-1 et. seq. and its amendments, where applicable.

ARTICLE 15 - INDEPENDENT CONTRACTOR: Nothing in this Contract is intended or should be construed in any way to create or establish a partnership relationship between the Parties or to establish the Contractor as an agent, representative, or employee of the County for any purpose or any manner whatsoever. Contractor and its employees shall not accrue leave, retirement, insurance, or any other benefits afforded to employees of the County. Contractor is an independent contractor of the County. The Contractor, its officers, directors, employees, servants, agents, or representatives are not and shall not be deemed employees of the County and shall not bind the County in any respect.

ARTICLE 16 - INSURANCE: For the duration of the contract and until all work specified in the contract is completed, the Contractor shall maintain in effect current Certificates of all insurance as required below and comply with all limits, terms and conditions stipulated therein. ~~The County shall be named as an additional insured as stipulated.~~ Contractor's who are required to provide Certificate(s) of Insurance, must provide a new current Certificate(s) no less than annually. As applicable, work under this contract shall not commence until evidence of all required insurance is provided to the respective County Department for inclusion with this Contract. All insurance shall be written to conform to the requirements stipulated. Evidence of such insurance shall consist of a completed certificate of insurance, signed by the insurance agent for the Contractor and returned to the County attesting that all required insurance is in effect. If for any reason any material change occurs in the coverage during the course of the contract such change will not become effective until 30 days after the County has received written notice of such change.

Required Insurance: As specified in the RFP, BID documents or Attachment A.

ARTICLE 17 - KEY PERSONNEL: The Contractor shall identify all key personnel assigned to the performance of this Contract in Section II, Attachment H of this Contract. Key personnel may not be changed without prior written approval of the County Manager and inclusion of that written approval in the official Contract File in the County Purchasing Department.

ARTICLE 18 - MEDIATION: In the event that a dispute arises with respect to any of the provisions contained in this Contract or any other matter affecting this contractual relationship between the County and the Contractor, the Parties agree that prior to filing any court action to enforce the Contract or rights under the Contract, they will use the services of a mediator. The mediator shall either be certified as a mediator or shall have experience as a mediator. The parties shall mutually agree upon the choice of mediator. In the event the Parties have not agreed to a mediator within three days of written notice to the other regarding the dispute, then a list of seven potential mediators will be obtained from the Court or other professional association, and the Parties shall use a striking process until a mediator is agreed upon. Each party shall be responsible for their respective mediation costs.

ARTICLE 19 - MERGER OF PRIOR CONTRACTS: This Contract incorporates all the conditions, contracts, agreements, and understandings of the Parties concerning the subject matter of this Contract. All such conditions, understandings, and agreements have been merged into this written Contract. No prior condition, contract, agreement, or understanding, verbal or otherwise, shall be valid or enforceable unless embodied in this Contract, either explicitly or by reference.

ARTICLE 20 - NON-APPROPRIATION: This provision was deleted by consent of all parties.

ARTICLE 21 - NON-WAIVER OF RIGHTS: No failure of either party to exercise any power given to it hereunder or to insist upon strict compliance by the other party with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof, nor any payment under this Agreement shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

ARTICLE 22 - NOTICE TO PROCEED OR COMMENCEMENT OF WORK: It is expressly understood that this Contract is not binding upon the County until approved and signed by the County and, further, that the Contractor shall not proceed with its obligations until the Contract has been signed by all Parties.

ARTICLE 23 - PARAGRAPH HEADINGS: Paragraph headings are for convenience and reference and are not intended to limit the scope of any provision of this Contract.

ARTICLE 24 - PERSONAL LIABILITY: No elected or appointed official, employee, servant, agent, or law enforcement officer of the County shall be held personally liable under this Contract or any extension or renewal thereof because of its enforcement or attempted enforcement, provided they are acting within the course and scope of their employment or governmental duty and responsibility.

ARTICLE 25 - PROCUREMENT CODE: The Procurement Code, § 13-1-25 through § 13-1-199, NMSA 1978 as amended, imposes civil and criminal penalties for its violation. In addition, New Mexico Criminal Statutes impose felony penalties for illegal bribes, gratuities and kickbacks. Pursuant to the above, it is unlawful for any Contractor to engage in bribery, offering gratuities with the intent to solicit business, or offering or accepting kickbacks of any kind. All other similar act(s) of bribes, gratuities, and/or kickbacks are likewise prohibited.

ARTICLE 26 - PROPRIETARY INFORMATION: All documents, writings, electronic formats, drawings, designs, specifications, notes, project manuals, or related documents and other work developed in the performance of this Contract by the Contractor shall become the sole property of the County, except as to shared materials created for multiple clients, whether the activity for which they are developed is implemented or not. The Contractor shall provide the County with a complete set of all such proprietary information as requested by the County, but no later than the effective termination date of the contract. Contractor is strictly prohibited from reproducing, duplicating or printing any such proprietary information in any format for personal or monetary recognition, use or gain without the advance written permission of the County.

ARTICLE 27 - RECORD KEEPING AND AUDITS: The Contractor shall compile, maintain, and make available for inspection all records relating to the services to be provided under this Contract. These records shall be subject to inspection by the County or designated auditor. The County shall have the right to audit billings both before and after payment; payment under this Contract shall not foreclose the right of the County to be reimbursed any excessive or illegal payment amounts made to the Contractor during the term of this Contract. Pursuant to State of New Mexico General Records Retention requirements, Contractor will retain all original, source and supporting documents and records related to this contract for a minimum of six (6) years after the ending date of this contract.

ARTICLE 28 - RELEASE: The Contractor, upon final payment of amounts due under this Contract for work completed and accepted by the County, releases the County, its officers and employees from all liabilities, claims, and obligations whatsoever arising from or under this Contract. The Contractor agrees not to bind the County to any obligation not assumed in this Contract by the County, unless the Contractor has express written authority from the County Manager to do so, and then only within the limits of the expressed written authority.

ARTICLE 29 - SEVERABILITY: If any clause or provision of the Contract is held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, then it is the intention of the parties hereto that the remainder of the Contract shall remain in full force and effect. However, in the event that either Party can no longer reasonably perform pursuant to the remaining Contract terms, or if the purpose of the Contract can no longer be carried out by either Party, the Contract may be voided and no damages shall accrue to either party.

ARTICLE 30 - SOVEREIGN IMMUNITY:

Non-Governmental Entity: By entering into this Contract, the County and its "public employees" as defined in the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1 through 41-4-29, as amended, do not waive sovereign immunity, do not waive any defense, and do not waive any limitations of liability pursuant to law. No provision in this Contract modifies or waives any provision of the New Mexico Tort Claims Act, *supra*.

Robles, Rael & Anaya, P.C. / Baron & Budd, P.C.

Governmental Entity: By entering into this Contract, the County and the Governmental Entity Contractor do not waive sovereign immunity, do not waive any defense and do not waive any limitations of liability pursuant to law. No provision in this Contract modifies or waives any provision of the New Mexico Tort Claims Act, supra.

ARTICLE 31 - SUBCONTRACTING: This provision was deleted by consent of all parties.

ARTICLE 32 - TERMINATION: The County may terminate this contract for convenience, in whole or in part, by providing written notice to the Contractor thirty (30) days prior to termination. In the event of contract termination, the Contractor shall be paid for work completed to the date of termination. In no event shall the dollar amount to be paid upon termination exceed a total of the maximum contracted amount and any additional amount provided for by amendment(s).

- a. Where a Party to this Contract has committed a major breach that is capable of remedy, the Party who is not in breach may serve a written notice, with a fixed period in which to remedy the breach. The period given shall be determined at the sole discretion of the Party serving the notice but subject to a minimum period of two weeks.
- b. The County and Contractor shall have the right, such right being exercised at their absolute discretion, to terminate this Contract, in writing, if a major breach has been committed that can not be remedied. Further, the Parties may terminate this contract, in writing, if a breach has not been remedied to the reasonable satisfaction of the Party serving the notice of breach within the period specified in any such notice.

ARTICLE 33 - THIRD PARTY BENEFICIARY: It is agreed between the Parties executing this Contract that it is not intended by any of the provisions of this Contract to create on behalf of the public or any member thereof the status of third party beneficiary nor to authorize anyone not a party to the agreement to maintain a suit based upon this Contract.

ARTICLE 34 - WAIVER: Any waiver by the County of any breach of any covenant, term, condition, or agreement in this Contract to be kept and performed by Contractor shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent County from declaring a default for any succeeding breach either of the same covenant, term, condition, or agreement or another. All remedies afforded in this Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided herein or by law.

ARTICLE 35 - DUPLICATE ORIGINALS: This document shall be executed in no less than two (2) counterparts, each of which shall be deemed an original.

SIGNATURES:

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their duly authorized representatives.

DOÑA ANA COUNTY:

Fernando R. Macias
County Manager

Date: 7/25/18

Robles, Rael & Anaya, P.C. / Baron & Budd, P.C.

Marcus J. Rael Jr. / Russell W. Budd
Managing Partner / Founder & Managing Partner

Date: 7/24/2018

Contractor's NM Taxation and Revenue Department ID Number: L0675312944

The following Attachments and Addenda have been reviewed and approved by the County Contract Officer or approved designee:

Document Name	Approved	Comments	Notes
Attachment A - Scope of Work			Required all Contracts
Attachment B - Cost per Unit Service			Required all Contracts
Attachment C - Contribution Disclosure			Required all Contracts
Attachment D - Related Party Disclosure			Required all Contracts
Attachment E - Debarment Certification			Required all Contracts
Attachment F - Non Collusion Affidavit			Required all Contracts
Attachment G - Insurance Certificates	✓		By Attachment A Specifications
Attachment H - 1. Business License(s) 2. Professional Licenses 3. Staff Resumes	✓		1. Required All Contracts 2. Required Licensed Professionals 3. Required all contracts
Attachment I - Procurement Method	✓		Purchasing Dept. Determines
Attachment J - Other	✓		Purchasing Dept. Determines

Section I, Appendix A

Title VI Plan Compliance

Title VI Policy Statement

Dofia Ana County is committed to compliance with Title VI of the Civil Rights Act of 1964, 49 CFR, part 2, and all related regulations and directives. Dofia Ana County assures that no person shall on the grounds of race, color, national origin, gender, age, or disability be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity under any Dofia Ana County program, activity or service.

Prohibited discrimination may be intentional or unintentional. Seemingly neutral acts that have disparate impacts on individuals of a protected group and lack a substantial legitimate justification are a form of prohibited discrimination. Harassment and retaliation are also prohibited forms of discrimination.

Examples of prohibited types of discrimination based on race, color, national origin, sex, disability, or age include: Denial to an individual any service, financial aid, or other benefit; Distinctions in the quantity, quality, or manner in which a benefit is provided; Segregation or separate treatment; Restriction in the enjoyment of any advantages, privileges, or other benefits provided; Discrimination in any activities related to highway and infrastructure or facility built or repaired; and Discrimination in employment.

CONTRACTOR COMPLIANCE:

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time-to-time, (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate either directly or indirectly in the discrimination prohibited by THE Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of the 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be

determined by the New Mexico Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to Doña Ana County or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of the contractor's non-compliance with the nondiscrimination provisions of this contract, Doña Ana County will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating or suspending the contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as Doña Ana County or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request Doña Ana County to enter into any litigation to protect the interests of Doña Ana County. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

CONTRACTOR COMPLIANCE WITH STATUTES AND AUTHORITIES:

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et. seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), {prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects};
- Federal-Aid Highway Act of 1973, {29 U.S.C. § 324 *et seq.*}, (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, {29 U.S.C. § 794 *et seq.*}, as amended, {prohibits discrimination on the basis of disability}; and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);

- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the program or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 - 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. §47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your program (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (U.S.C. 1681 *et seq.*

ATTACHMENT A

ROBLES, RAEL & ANAYA, P.C.

INSURANCE, SCOPE OF SERVICES, ADDITIONAL TERMS

I. INSURANCE

Contractor shall provide a current Certificate of Insurance (COI) documenting coverage specified below. Contractor is required to maintain a current COI on file with the County Purchasing Department for the life of this contract. This contract requires the following minimum insurances:

	Standard Insurance	Limits Not Less Than
	Commercial and General Liability	\$1,000,000/\$2,000,000
	Automobile Liability	\$1,000,000/\$1,000,000
	Worker's Compensation as required by State Law	As required by Law
	Other legally required of the employer or for the contractor's occupation / profession.	As required by Law
	Specialized Insurance	
X	Professional Liability	\$1,000,000
	Garage Keeper's Liability	\$50,000
	Medical and Clinic Liability under the Federal Tort Claims Act (FTCA)	\$1,000,000
	Other / Specify:	

II. SCOPE OF SERVICES

Doña Ana County is in the midst of a public health crisis stemming from the flood of opioids pouring into the County. Doña Ana County government enhances the health, safety, and quality of life for all residents as determined by law and community interests. Services are provided through innovative leadership and teamwork in a fair, respectful and professional manner.

In support of this mission, and to effectively combat the opioid crisis in Doña Ana County, Robles, Rael & Anaya, P.C. and Baron & Budd, P.C. (Contractor) shall bring their combined expertise to provide legal consulting services for opioid litigation in accordance with Contractor response to RFP 18-0058 hereby incorporated by reference into this contract, Contractor shall provide advice and legal representation to the County in connection with an investigation and possible litigation involving the manufacture, marketing, sale, and distribution of prescription opioid products in Doña Ana County. Contractor's response to RFP 18-0039 is hereby incorporated by reference into this contract.

A. Description of Services

Contractor will evaluate the merits of and, to the extent desired by the County, to pursue litigation against opiate manufacturers, distributors and others related to the impact of opiate manufacturing, marketing, distribution and use on Doña Ana County. Contractor

shall be retained on a contingency fee basis with no costs or other compensation paid to counsel except as a percentage of any settlement monies received or damages awards paid. The County is not responsible for any of the costs or fees of the legal services. Contractor must as a matter of course, possess resources sufficient to advance all costs, including the costs of any experts needed to perform or assist in the performance of the work.

Representation will include significant evaluative and investigative work. Contractor will communicate with the County Attorney on a regular basis and may be required to meet and/or confer with the Board of County Commissioners (BOCC) from time to time. Litigation may include drafting of pleadings, motions, briefs, and allow other papers to be filed in court; conducting and responding to discovery; attending all settlement negotiations, pre-trial and post-trial court appearances; and handling all appeals.

Contractor shall:

1. Evaluate the merits of and, to the extent desired by the County, pursuing litigation against opiate manufacturers, distributors and others related to the impact of the opiate epidemic on Doña Ana County. Contractor shall collaborate with other public entities if the County, in consultation with the Contractor determines such collaboration to be in the best interest of the County.
2. Be responsible for legal research, advice and representation concerning the distribution and manufacture of opiate and the impact of opiates on Doña Ana County.
3. Brief County officials, employees and the County Attorney on all matters related to the Scope of Work of this contract.
4. Provide copies of all litigation correspondence and pleadings produced and received in connection with that litigation and give timely written notice to the County attorney on any and all pleadings, dispositive motions, rulings, hearings, trials, mediations or settlement negotiations and any other legal events relevant to the Scope of Work of this contract.
5. Meet, coordinate with and submit interim reports to the County Attorney on a basis to be determined by the County Attorney, but not less than monthly.

B. Delivery of Services

Contractor (also referred to as “the Firms”) delivery of services will deliver services throughout the following stages of litigation:

Investigation. Upon award of the contract, the Firms shall immediately commence an investigation into potential claims. The Firms will investigate the degree to which opioid distributors (McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen) breached their non-delegable duties to prevent the diversion of prescription opioids into illicit channels, and the costs to the County of abating the opioid epidemic. The Firms also will investigate the opioid prescription manufacturers’ role in fraudulently marketing opioids for the treatment of chronic pain. The Firms will review relevant

County documents and interview relevant County personnel. Upon completion of the investigation, the Firms will report their findings to the County and recommend a litigation strategy.

Commencing Litigation. Following the Firm's investigation and consultation with the County regarding litigation strategy, the Firms will commence litigation against opioid manufacturers and/or distributors. Upon full consideration of potential causes of action and available damages, the Firms will draft and file a complaint against the potentially liable parties. The Firms will also service appropriate summonses upon the defendants.

Discovery. After the litigation is commenced, the Firms will turn their attention to the discovery phase. The Firms will draft and respond to all forms of discovery propounded by or served upon the County. The Firms will prepare witnesses for, take, and defend depositions. The Firms will also engage in discovery motion practice, such as filing or responding to motions to compel or to strike.

Experts. The Firms will obtain and consult with plaintiff experts, assist plaintiff experts with report preparation, prepare plaintiff experts for depositions, prepare *Daubert* motions filed against plaintiff experts, etc.

Pretrial. The Firms will engage in pretrial motion practice, involving motions to dismiss, for judgment on the pleadings, for summary judgment, etc.

Trial. The Firms will prepare for trial by identifying relevant portions of deposition testimony, preparing witnesses for live testimony, and identifying documents and exhibits to prove the County's case in court.

Settlement. Throughout all stages, the Firms will also entertain settlement offers by the defendants, in consultation with the County.

Communication. Throughout all stages of litigation, the Firms will maintain regular and substantive contact with the County to accomplish these tasks.

C. Deliverables and Reporting Requirements

Contractor shall supply status reports not less than monthly, and final invoices upon completion of litigation detailing dates of service, description of expenses, and any other related information which shall be submitted to the following.

Nelson R. Goodin, County Attorney
845 N. Motel Blvd
Las Cruces, NM 88007
nelsong@donaanacounty.org
Telephone: (575) 525-5920

Copy to:

Rebecca Chavez, Paralegal
rebeccav@donaanacounty.org
Telephone: (575) 525-5916

D. Contingency Fee Arrangements and Available Resources

Contractor intends to present a damage model designed to abate the public health and safety crisis. This damage model may take the form of money damages and/or equitable remedies (e.g., an abatement fund). The purpose of the lawsuit is to seek reimbursement of the costs incurred in the past fighting the opioid epidemic and/or recover the funds necessary to abate the health and safety crisis caused by the unlawful conduct of the wholesale distributors and manufacturers of opioids. Contractor shall finance the cost of any matter brought on behalf of the County through all stages of litigation. Contractor understands that the County is retaining them as counsel pursuant to a contingency-fee arrangement of 25% on gross recovery, calculated before reimbursement of costs and expenses, and that Contractor will not receive any payment whatsoever unless the County recovers a monetary award or monetary equitable relief at trial or through settlement. Contractor further understands that they will advance all costs and expenses of the representation, subject to reimbursement by the County only if the County recovers a monetary award or monetary equitable relief at trial or through settlement. For instance, if the remedy is in the form of monetary damages, the COUNTY agrees to pay 25% of the gross amount to Contractor as compensation and then reimburse the reasonable litigation expenses. If the remedy is in the form of non-injunctive, monetary equitable relief (e.g., abatement fund), the COUNTY agrees to pay 25% of the gross value of the equitable relief to Contractor as compensation and then reimburse the reasonable litigation expenses. However, any judgment arising from successful prosecution of the case, or any consideration arising from a settlement of the matter, whether monetary or equitable, shall not be considered public funds for purposes of calculating the contingent fee unless required by law. Under no circumstances shall the COUNTY be obligated to pay any attorneys fee or any litigation expenses except from moneys expended by defendant(s) pursuant to the resolution of the COUNTY's claims. If the defendant(s) expend their own resources to abate the public health and safety crisis in exchange for a release of liability, then Contractor will be paid the designated contingent fee from the resources expended by the defendant(s). The COUNTY acknowledges this is a necessary condition required by Contractor to dedicate their time and invest their resources on a contingent basis to this enormous project. If the defendant(s) negotiate a release of liability, then Contractor should be compensated based upon the consideration offered to induce the dismissal of the lawsuit.

County shall pay no costs unless a recovery is obtained for the County. Contractor shall front all costs of the litigation. Contractor shall make every attempt to keep costs as low as possible. To alleviate any concerns about high costs, Contractor shall commit to cap total costs and legal fees at 35% of the recovery. Therefore, in the event that prolonged and hard-fought litigation results in costs, which, when combined with fees, exceed 35% of the recovery to the County, Contractor shall forgive costs and/or reduce its fee, so that the County received at least 65% of the total recovery.

E. Contract Evaluation

1. The County Attorney and/or designated staff will monitor the contract on a regular basis throughout the term of the contract to ensure compliance with established contract requirements and status regarding the use of allocated funds.

2. Contract evaluation shall consist of review of each of the specified deliverables throughout the term of the contract.
3. Periodic review and an annual written evaluation will be conducted per County and Purchasing Department policies and procedures.

III. ADDITIONAL TERMS AND CONDITIONS

A. Section I: The following revisions are made and hereby incorporated:

1. **Article 16, Insurance:** The second sentence "The County shall be named as an additional insured as stipulated" is hereby DELETED in its entirety.
2. **Article 20, Non-Appropriation:** This article is hereby DELETED in its entirety.
3. **Article 26, Proprietary Information:** The first sentence is REVISED as follows: "All documents, writings, electronic formats, drawings, designs, specifications, notes, project manuals, or related documents and other work developed in the performance of this Contract by the Contractor shall become the sole property of the County, except as to shared materials created for multiple clients, whether the activity for which they are developed is implemented or not."
4. **Article 31, Subcontracting:** This article is hereby DELETED in its entirety.

B. Automated Clearing House: Contractor agrees to accept ACH (Automated Clearing House) payments for invoices submitted and approved by the County and will complete and submit any required documents to implement the ACH process.

C. Existing Contract: In accordance with NMSA 13-1-129 of Procurement Code, Contractors are hereby notified that other government entities within the State of New Mexico, or as otherwise allowed by their respective governing directives, may contract for the goods or services included in this procurement document with the awarded contractor. Contractual engagements accomplished under this provision shall be solely between the awarded vendor and the contracting government entity with no obligation by Dona Ana County.

D. Pre-existing or Proprietary Information: Notwithstanding any other provision of this Agreement between the Contractor and the County or any provision of the scope of work, work assignments, work authorizations, or any amendment issued hereunder, all of the Contractor's pre-existing or proprietary information, documents, materials, computer programs, or software developed by the Contractor outside of this Agreement shall remain the exclusive property of Contractor.

E. Standard of Care:

1. Contractor shall perform all of the provisions of this Agreement with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under the same or similar circumstances. The County shall base its determination of the Contractor's fulfillment of the scope of the work in accordance with accepted professional consulting standards.
2. Contractor shall be responsible for the accuracy of its professional services under this Agreement and shall promptly make revisions or corrections resulting from its errors, omissions, or negligent acts without additional compensation. The County's

acceptance of any of Contractor's professional services shall not relieve Contractor of its responsibility to subsequently correct any such errors or omissions.

3. County shall provide written notice to the Contractor of any errors and/or omissions and Contractor shall provide a written response with a plan of action to address the error or omission within 24 hours. County shall, in turn, accept the plan of action or provide further direction to the Contractor for acceptable remedy of the error or omission.

ATTACHMENT B

ROBLES, RAEL & ANAYA, P.C.

TOTAL COST, PAYMENTS, UNIT VALUE OF SERVICE

- A.** Contractor will be compensated for service performed only if the Contractor obtains Recovery for the County. Recovery means a monetary recovery stemming from performance of the scope of work set forth herein, acceptable to the County, and obtained by Contractor, whether by suit, settlement, or otherwise. Absent Recovery, Contractor will not be compensated for fees and costs associated with this contract. The County agrees to pay twenty-five percent (25%) of the gross Recovery in favor of the County as an attorney fee. The gross Recovery shall be calculated on the amount obtained before the deduction of costs and expenses. Total fees, costs, and expenses shall not exceed thirty-five (35%) percent of the gross Recovery. The County will make payment exclusively to the Contractor and will not make payment to third parties whose services are rendered to the Contractor as part of Contractor's Scope of Work under this contract. In the event of a loss at trial or abandonment of the claim prior to recovery of any sums, no monies shall be paid to Contractor for any work performed or any costs incurred.
- B.** Contractor shall receive the above-stated percentage fee in consideration of its services under and pursuant to this contract, but if the County does not prevail in the above-stated matter for which Contractor is employed, Contractor shall not receive any sum whatsoever.
- C.** Contractor's fee set forth above is not set or regulated by law but has been freely negotiated between the Contractor and County. Unless Contractor and County negotiate and execute a separate agreement, the County need not pay Contractor for any matter related to, but not specifically covered in, this contract.
- D.** No settlement or compromise of any nature shall be made of any of the County's claims without the County's prior written approval.
- E.** Payment of Contractor's fee under this contract shall not foreclose the right of the County to recover excessive or illegal payment.
- F.** Contractor will incur various costs and expenses in performing these legal services. Cost and expenses shall include court fees, jury fees, service of process charges, court and deposition reporters' fees, photocopying and reproduction costs, notary fees, long distance telephone charges, messenger and other delivery fees, postage, deposition costs, travel costs including parking, mileage, transportation, meals and hotel costs, investigation expenses, consultant, expert witness, professional mediator, and arbitrator and/or special master fees. Costs and expenses will be compensated at cost in the event of a sufficient recovery. In office photocopying shall be charged at the rate of 15cents/page. Facsimile charges shall be charged at the rate of 0 cents/page. Mileage shall be compensated at the rate of \$.43 cents per mile.