

AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, _____, by and between the City of Albuquerque, New Mexico, a municipal corporation (hereinafter referred to as the "City"), and John R. O'Donnell, an individual, 101 Constitution Ave. NW, Suite 900, Washington, DC 20001 (hereinafter referred to as the "Contractor").

RECITALS

WHEREAS, the City requires the services of a lead Washington Representative for the City of Albuquerque; and

WHEREAS, the Contractor is qualified and experienced in providing such services; and

WHEREAS, the City desires to engage the Contractor to render certain services in connection therewith and the Contractor is willing to provide such services.

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

1. **Scope of Services.** The Contractor shall perform the following services (hereinafter referred to as the 'Services') in a satisfactory and proper manner, as determined by the City:

A. Act as the lead Washington Representative to the City of Albuquerque and in Washington D.C. on federal legislation and project matters as requested by the Mayor, and City Council.

B. Proportionate to the level of payment for Services specified herein, furnish requisite office space, utilities, furnishings and equipment, secretarial services, common-use office supplies and services, general administrative support and consultation with local government associations' research staff and access to those ongoing research activities and studies of the National League of Cities, U.S. Conference of Mayors and National Association of Counties required by the Contractor in the performance of Services under this Agreement.

C. Confer with the Mayor and, City Council, and such other City personnel as the Mayor or City Council, may designate at the times and places mutually agreed to on all organizational planning and program activity which has a bearing on the ability of the City to make the best of federal aid programs.

D. Review federal executive proposals, legislation under consideration, proposed and adopted administrative rules and regulations and other Washington developments for the purpose of advising the City of those items which may have a bearing on City policies or programs, and deliver memoranda and reports to the City in a timely fashion and in a level of detail to be mutually agreed upon.

- E. Secure and furnish such detailed information as may be available on federal programs in which the City indicates an interest.
- F. Review and comment on legislative proposals and projects of the City being prepared for submission to federal agencies when requested to do so by the Mayor or City Council, or designee.
- G. Maintain liaison with the congressional delegation and assist the delegation in any matter which the City determines to be in its best interest in the same manner as any other member of the City's administrative staff might render assistance.
- H. Counsel with the City regarding appearances by their personnel before congressional committees and administrative agencies, arrange for appointments and accommodations for its personnel; and prepare written testimony for the City to present to Congressional committees, as necessary.
- I. Contact federal agencies on the City's behalf when City applications are under consideration by such agencies and otherwise take whatever steps appear to be required to obtain the most favorable consideration of such applications. Coordinate other City federal lobbying activities to ensure that the City's proposals receive appropriate consideration and congressional support.
- J. In providing Services under this Agreement, act in the name of the City and with the title of Washington Representative to the City.
- K. Keep the City's Chief Administrative Officer and the City's Director of Council Services advised as to the expenses incurred under this Agreement.
- L. In providing Services under this Agreement, the Contractor will not directly or indirectly participate in or intervene in any political campaign on behalf of or in opposition to any candidate for public office; nor take a position on pending legislation, nor attempt to influence legislation by propaganda or otherwise.
- M. Any change in the person of the Washington Representative from the person representing the City and the County as of the effective date of this Agreement must be approved by the City.
- N. The Mayor, the City's Chief Administrative Officer and the City's Director of Council Services are authorized to request the Services of the Contractor and shall be kept advised by the Contractor. The City will advise the Contractor of any other individuals authorized to request Services.
- O. The City and the County will supply the Contractor with a summary of all federal programs in which the City is participating and provide the Contractor with information as to when new applications are filed, together with pertinent details as to the substance of such

applications.

2. **Time of Performance.** Services of the Contractor shall commence July 1, 2009, and shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purposes of this Agreement; provided, however, that in any event, all of the Services required hereunder shall be completed by June 30, 2010.

3. **Compensation and Method of Payment.**

A. **Compensation.** For performing the Services specified and all expenditures made and expenses incurred by the Contractor in performing Services for the City as specified in Section 1 hereof, the City agrees to pay the Contractor up to the amount of Ninety Thousand and 00/100 Dollars (\$90,000). Such amounts includes any applicable gross receipts taxes and which amount shall constitute full and complete compensation for the Contractor's Services under this Agreement, including all expenditures made and expenses incurred by the Contractor in performing the Services.

B. **Method of Payment.** Such amount shall be payable as follows: (i) twelve (12) equal monthly installments of Seven Thousand Five Hundred and 00/100 Dollars (\$7,500) for the performance of Services for the City. All amounts stated above include any applicable gross receipts taxes and shall be paid to the Contractor monthly upon separate receipt by the City of properly documented invoices for payment as determined by the budgetary and fiscal guidelines of the City and on the condition that the Contractor has accomplished the Services to the satisfaction of the City. In the event of termination of the Agreement prior to June 30, 2010, the compensation for Services shall be limited to payment for the actual number of months, or portion thereof, that the Agreement was in effect.

C. **Appropriations.** Notwithstanding any provision in this Agreement to the contrary, the terms of this Agreement are contingent upon the Albuquerque City Council making the appropriations necessary for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the Albuquerque City Council, this Agreement may be terminated at the end of the current Fiscal Year upon written notice given by the City to the Contractor. Such event shall not constitute an event of default. All payment obligations of the City and all of its interest in this Agreement will cease upon the date of termination. The City decision as to whether sufficient appropriations are available shall be accepted by Contractor and shall be final.

4. **Independent Contractor.** Neither the Contractor nor its employees are considered to be employees of the City of Albuquerque for any purpose whatsoever. The Contractor is considered an independent contractor at all times in the performance of the Services described in Section 1. The Contractor further agrees that neither it nor its employees are entitled to any benefits from the City under the provisions of the Workers' Compensation Act of the State of New Mexico, or to any of the benefits granted to employees of the City under the provisions of the Merit System Ordinance as now enacted or hereafter amended.

5. **Personnel.**

A. The Contractor represents that it has, or will secure at its own expense, all personnel required in performing all of the Services required under this Agreement. Such personnel shall not be employees of or have any contractual relationships with the City.

B. All the Services required hereunder will be performed by the Contractor or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such Services.

C. None of the work or the Services covered by this Agreement shall be subcontracted without the prior written approval of the City. Any work or Services subcontracted hereunder shall be specified by written contract or Agreement and shall be subject to each provision of this Agreement.

6. **Indemnity.** The Contractor agrees to defend, indemnify and hold harmless the City and its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said parties because of any injury or damage received or sustained by any person, persons or property arising out of or resulting from the Services performed by the Contractor under this Agreement or by reason of any asserted act or omission, neglect or misconduct of the Contractor or Contractor's agents or employees or any subcontractor or its agents or employees. The indemnity required hereunder shall not be limited by reason of the specification of any particular insurance coverage in this Agreement.

7. **Insurance.** The Contractor shall procure and maintain at its expense until final payment by the City for Services covered by this Agreement, insurance in the kinds and amounts hereinafter provided with insurance companies authorized to do business in the State of New Mexico, covering all operations under this Agreement, whether performed by it or its agents. Before commencing the Services and on the renewal of all coverages, the Contractor shall furnish to the City a certificate or certificates in form satisfactory to the City showing that it has complied with this Section. All certificates of insurance shall provide that thirty (30) days' written notice be given to the Risk Manager, Department of Finance and Administrative Services, City of Albuquerque, P.O. Box 470, Albuquerque, New Mexico 87103, before a policy is canceled, materially changed, or not renewed. Various types of required insurance may be written in one or more policies. With respect to all coverages required other than professional liability or workers' compensation, the City shall be named an additional insured. All coverages afforded shall be primary with respect to operations provided. Kinds and amounts of insurance required are as follows:

A. **Commercial General Liability Insurance.** N/A

B. **Automobile Liability Insurance.** N/A

C. **Workers' Compensation Insurance.** Workers' Compensation Insurance for its employees in accordance with the provisions of the Workers' Compensations Act of the State of New Mexico.

D. **Increased Limits.** If, during the term of this Agreement, the City requires

the Contractor to increase the maximum limits of any insurance required herein, an appropriate adjustment in the Contractor's compensation will be made.

8. **Discrimination Prohibited.** In performing the Services required hereunder, the Contractor shall not discriminate against any person on the basis of race, color, religion, gender, sexual preference, sexual orientation, national origin or ancestry, age, physical handicap, or disability as defined in the Americans With Disabilities Act of 1990, as now enacted or hereafter amended.

9. **ADA Compliance.** In performing the Services required hereunder, the Contractor agrees to meet all the requirements of the Americans With Disabilities Act of 1990, and all applicable rules and regulations (the 'ADA'), which are imposed directly on the Contractor or which would be imposed on the City as a public entity. The Contractor agrees to be responsible for knowing all applicable requirements of the ADA and to defend, indemnify and hold harmless the City, its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said parties as a result of any acts or omissions of the Contractor or its agents in violation of the ADA.

10. **Reports and Information.** At such times and in such forms as the City may require, there shall be furnished to the City such statements, records, reports, data and information, as the City may request pertaining to matters covered by this Agreement. Unless otherwise authorized by the City the Contractor will not release any information concerning the work product including any reports or other documents prepared pursuant to this Agreement until the final product is submitted to the City.

11. **Open Meetings Requirements.** Any nonprofit organization in the City which receives funds appropriated by the City, or which has as a member of its governing body an elected official, or appointed administrative official, as a representative of the City is subject to the requirements of § 2-5-1 et seq., R.O.A. 1994, Public Interest Organizations. The Contractor agrees to comply with all such requirements, if applicable.

12. **Establishment and Maintenance of Records.** Records shall be maintained by the Contractor in accordance with applicable law and requirements prescribed by the City with respect to all matters covered by this Agreement. Except as otherwise authorized by the City, such records shall be maintained for a period of three (3) years after receipt of final payment under this Agreement.

13. **Audits and Inspections.** At any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination all of the Contractor's records with respect to all matters covered by this Agreement. The Contractor shall permit the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement. The Contractor understands and will comply with the City's Accountability in Government Ordinance, §2-10-1 et seq. R.O.A. 1994, and also agrees to provide requested information and records and appear as

a witness in hearings for the City's Board of Ethics and Campaign Practices pursuant to Article XII, Section 8 of the Albuquerque City Charter.

14. **Publication, Reproduction and Use of Material.** No material produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country. The City shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement.

15. **Compliance With Laws.** In performing the Services required hereunder, the Contractor shall comply with all applicable laws, ordinances, and codes of the federal, state and local governments.

16. **Changes.** The City may, from time to time, request changes in the Services to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the City and the Contractor, shall be incorporated in written amendments to this Agreement.

17. **Assignability.** The Contractor shall not assign any interest in this Agreement and shall not transfer any interest in this Agreement (whether by assignment or novation), without the prior written consent of the City thereto.

18. **Termination for Cause.** If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations under this Agreement or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement by giving written notice to the Contractor of such termination and specifying the effective date thereof at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, maps, studies, surveys, drawings, models, photographs and reports prepared by the Contractor under this Agreement shall, at the option of the City, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Contractor, and the City may withhold any payments to the Contractor for the purposes of offset until such time as the exact amount of damages due the City from the Contractor is determined.

19. **Termination for Convenience of City.** The City may terminate this Agreement at any time by giving at least fifteen (15) days' notice in writing to the Contractor. If the Contractor is terminated by the City as provided herein, the Contractor will be paid an amount which bears the same ratio to the total compensation as the Services actually performed bear to the total Services of the Contractor covered by this Agreement, less payments of compensation previously made. If this Agreement is terminated due to the fault of the Contractor, the preceding Section hereof relative to termination shall apply.

20. **Construction and Severability.** If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or unenforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion.

21. **Enforcement.** The Contractor agrees to pay to the City all costs and expenses including reasonable attorney's fees incurred by the City in exercising any of its rights or remedies in connection with the enforcement of this Agreement.

22. **Entire Agreement.** This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

23. **Applicable Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico, and the laws, rules and regulations of the City of Albuquerque.

24. **Approval Required.** This Agreement shall not become effective or binding until approved by the City's Chief Administrative Officer.

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IN WITNESS WHEREOF, the City and the Contractor have executed this Agreement as of the date first above written.

CITY OF ALBUQUERQUE

Approved By:



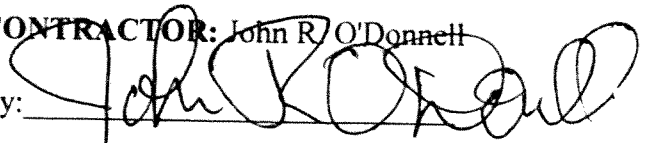
Ed Adams, P.E.

Chief Administrative Officer *JJD RMW*

Date: 9-14-09

CONTRACTOR: John R. O'Donnell

By:



Title:



State Taxation and Revenue Department
Taxpayer Identification Number:

Federal Taxpayer Identification Number:
521926111