

STATE OF NEW MEXICO

Legislative Council Service

Agreement for Professional Services

This Agreement for professional services ("Agreement") is made between the Legislative Council Service ("LCS"), an agency of the legislative branch of the State of New Mexico ("State"), and Hewitt Ennis Knupp, Inc. ("Contractor").

In consideration of their mutual promises, the parties agree that:

1. **Scope of Work.** The Contractor will furnish the following independent governance review services to the LCS as generally requested and directed by the Director of the LCS and consistent with the tasks outlined below:

A. Review of Ongoing Audit Process.

1. Evaluate and make recommendations regarding the scope of work and proposed methodology of a "special audit" of the New Mexico Finance Authority ("the authority") requested by the authority and developed by the State Auditor.

2. Provide information to allow the New Mexico Finance Authority Oversight Committee ("the committee") to determine:

(a) whether the scope of work of the special audit is appropriately designed;

(b) whether the division of duties among the State Auditor, the Securities Division of the Regulation and Licensing Department and the Contractor maximizes expertise, productivity and efficiency and minimizes duplication of effort and cost; and

(c) whether the schedule for performance and completion of the special audit is optimal and employs best practices.

3. Provide information that will assist the authority in fully complying with the special audit and with rating agency and investor expectations in the most responsive and expeditious manner so that it may resume fulfilling statutory obligations and regular lending practices at preferable interest rates for qualified projects authorized by the New Mexico Legislature.

B. Governance and Organizational Structure. The Contractor will perform a

review of the governance and organizational structure of the authority and how it compares to similar institutions or best practices, including the:

1. makeup of the governing body, appointments, terms and level of expertise required;
2. qualifications and adequacy of staff;
3. adequacy of budget and financial resources;
4. level of monitoring and oversight provided in policies, procedures and actual practices, including the adequacy of the policies concerning delineation of roles and responsibilities of the authority, staff, authority finance-related service providers and others with administrative or oversight responsibilities; and
5. adequacy and appropriateness of the authority's respective policies, procedures and practices.

C. Policies, Procedures and Practices. The Contractor will evaluate the policies, procedures and practices of the authority and how they compare to similar institutions or best practices, including the:

1. delegation of key functions for appropriateness, effectiveness and efficiency;
2. appropriate level of staff autonomy;
3. delineation, documentation and communication of the lines of authority among staff and between the staff and the authority;
4. selection, compensation and role of the authority's staff who were or should be responsible for complying with audit requirements;
5. actions that require notification to the authority or the committee and the adequacy, consistency and timeliness of notification;
6. content of policies and procedures vis-a-vis actual practices, including internal documentation and communication among the authority's staff, the New Mexico Legislature and other pertinent state agencies;
7. level of transparency, accountability and reporting in the audit compliance process and sufficiency and timeliness in reporting to the committee;
8. authority's governance provisions and practices and how they compare

with state financial agencies in this state and other states, as well as industry standards and best practices;

9. adequacy and appropriateness of the authority's controls, safeguards, policies, procedures and capabilities to comply with state audit requirements, as well as ensuring compliance with policies and procedure; and

10. actions taken by the authority in response to the 2011 audit and how they compare with industry standards or best practices.

D. Deliverables. The Contractor shall provide:

1. a status report to the Director of the LCS on the review of the ongoing audit process as set forth above in Paragraph (1)(A), on or before September 12, 2012;

2. a status report to the Director of the LCS on the governance and organizational structure of the authority as set forth above in Paragraph (1)(B), by September 28, 2012;

3. a preliminary report to the committee on the scope of work in this Agreement and suggested changes or additions to the same, at the October 11-12, 2012 committee meeting;

4. identification of other issues that may warrant additional review; and

5. a final report to the committee at its November 29-30, 2012 committee meeting.

It is understood and agreed that the Contractor's ability to provide the deliverables identified above is contingent upon its ability to schedule interviews, the timely receipt of critical information necessary to perform the professional services required by this Agreement and the cooperation of the authority, the Office of the State Auditor and other related parties.

2. Compensation.

A. The total compensation to be paid to the Contractor during the term of this Agreement shall be paid at a blended hourly rate of four hundred dollars (\$400) per hour. The total amount billed shall not exceed one hundred thousand dollars (\$100,000), plus actual travel expenses not to exceed ten thousand dollars (\$10,000).

B. The LCS shall reimburse the Contractor the New Mexico gross receipts tax for which the Contractor is liable on the amount of compensation payable under this Agreement. The limitation of Subparagraph A of this paragraph does not include gross receipts tax passed on to the LCS.

C. Compensation shall be billed in monthly installments.

D. Payment shall be made upon receipt and review by the LCS of a detailed statement from the Contractor of the services performed.

3. **Term.** This Agreement is effective on the last date of the signature below and shall continue in effect until February 28, 2013, unless it is terminated earlier pursuant to Paragraph 4 of this Agreement.

4. **Termination.** This Agreement may be terminated without cause by either of the parties upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. A termination pursuant to this provision does not nullify a party's obligations for performance or liabilities for failure to perform services already incurred prior to the date of termination.

5. **Status of Contractor.** The Contractor is an independent contractor and is not an employee of the State.

6. **Assignment.** The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the LCS. An approved assignment or transfer shall include a provision that binds the assignee or transferee to all terms and conditions of this Agreement.

7. **Subcontracting.** The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the LCS.

8. **Records and Audit.** The Contractor shall maintain detailed time records that indicate the date, time and nature of services rendered. These records shall be provided by the Contractor for inspection by the LCS and the State Auditor upon written request of the LCS. The LCS has the right to audit billings both before and after payment. Payment under this Agreement is not a waiver of the right of the LCS to recover excessive or illegal payments.

9. **Appropriations.** The continuation of this Agreement is contingent upon sufficient appropriations and authorizations for expenditures being made by the New Mexico Legislature to permit those payments. If sufficient appropriations and authorizations are not made by the New Mexico Legislature, then this Agreement shall terminate upon the Contractor's receipt of written notice of termination from the LCS. The LCS's decision of whether sufficient appropriations and authorizations for expenditures have been made shall be accepted by the Contractor and shall be final. The LCS acknowledges and warrants that sufficient funds have been appropriated and authorized to pay the compensation set forth in Paragraph 2 of this Agreement.

10. **Release.** Upon receipt of final payment of the amount due under this Agreement, the Contractor shall release the LCS, its employees and the State from all liabilities, claims and

obligations arising from or under this Agreement.

11. **Authority.** The Contractor agrees not to purport to bind the State to any obligation not assumed in this Agreement by the State, unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

12. **Product of Services; Copyright.** All materials developed or acquired by the Contractor solely for the purposes of this Agreement are the property of the State and shall be delivered to the LCS not later than the termination date of this Agreement. Nothing produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright by or on behalf of the Contractor.

13. **Conflict of Interest.** The Contractor warrants that the Contractor currently has no interest and shall not acquire any interest, direct or indirect, that, to the best of its knowledge, does or would conflict in any manner or degree with the performance of services required under this Agreement. The Contractor further warrants that the Contractor has not violated the provisions of Section 10-16-8 or 10-16-13 NMSA 1978 by entering into this Agreement.

14. **Amendment.** This Agreement shall not be changed or supplemented except by a written instrument executed by the parties.

15. **Scope of Agreement.** This Agreement incorporates all the agreements and understandings between the parties concerning its subject matter, and all agreements and understandings have been merged into this Agreement. No prior or contemporaneous agreement or understanding, verbal or otherwise, of the parties or their agents concerning the subject matter of this Agreement is valid or enforceable unless included in this Agreement.

16. **Applicable Law.** This Agreement shall be governed by the laws of New Mexico.

17. **Notice.** This Agreement is subject to the applicable provisions of the Procurement Code. That act imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, illegal gratuities and kickbacks.

18. **Equal Opportunity Compliance.** The Contractor agrees to comply with all federal and state laws pertaining to equal employment opportunity. In accordance with all such laws, the Contractor agrees to assure that no person in the United States shall, on the grounds of race, color, national origin, gender, sexual orientation, age or handicap, be excluded from employment or participation in, be denied the benefits of or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If the Contractor is found to be not in compliance with these requirements during the life of this Agreement, the Contractor agrees to take appropriate steps to correct these deficiencies.

19. **Additional Terms and Conditions.**

A. The LCS will reimburse the Contractor for additional professional time and reasonable expenses incurred by the Contractor to produce its documents or to have its personnel appear as witnesses with respect to the Contractor's work for the LCS pursuant to this Agreement in responding to:

1. a request by the LCS or the committee; provided that any request by any other party shall be made to the LCS;

2. a request during session by the New Mexico Legislature; or

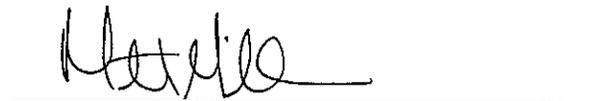
3. a legal requirement by a court, regulatory body or administrative body having appropriate jurisdiction in a proceeding in which the Contractor is not a party and for which the Contractor is not entitled to receive reimbursement by or through the court, regulatory body or administrative body or party to the proceeding; provided that the Contractor informs the LCS upon having received the notice of the legal requirement.

B. The Contractor's role is to act as a consultant to the LCS with respect to the matters described in this Agreement. The Contractor has no authority to commit the authority, the State Auditor or the Regulation and Licensing Department, which shall each retain the decision-making authority and responsibility as provided in statute and rule.

STATE OF NEW MEXICO
LEGISLATIVE COUNCIL SERVICE

By:


RAÚL E. BURCIAGA, Director


_____, Vice President, Legal
HEWITT ENNIS KNUPP, INC., Contractor

Date:

8/17/2012

Date:

8/16/12

N.M. Tax I.D. # _____

Federal Tax I.D. # 36-3109431