

City of Las Cruces[®]

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 19 Resolution# 09-10-375 Council District: _____

For Meeting of March 1, 2010

(Adoption Date)

A RESOLUTION APPROVING MULTIPLE INDEFINITE COST, INDEFINITE QUANTITY PROFESSIONAL SERVICES CONTRACTS FOR LEGAL SERVICES TO HOLT BABINGTON MYNATT PC, MARTIN, LUTZ, ROGGOW & EUBANKS, P.C. AND REEVES & REEVES, P.A. OF LAS CRUCES, NEW MEXICO; AND KELEHER & McLEOD, P.A. AND ROBLES, RAEL & ANAYA, P.C. OF ALBUQUERQUE, NEW MEXICO, FOR UP TO FOUR YEARS CONDITIONED UPON ANNUAL RENEWALS AND APPROVED BUDGETS; AND AUTHORIZING AN INCREASE IN THE TOTAL AMOUNT PAYABLE FOR LEGAL SERVICES CONTRACTS WITH THE LAW FIRMS IN AN AMOUNT NOT TO EXCEED \$200,000.00, AND TO ADJUST THE FISCAL YEAR 2009/2010 BUDGET.

PURPOSE(S) OF ACTION: To award professional services contracts for legal services so that the City Attorney can assign certain matters to outside counsel due to the complexity of a legal issue facing the City and/or time constraints of in-house attorneys and to authorize an increase in the total amount payable for legal services for FY2009/2010.

Name of Drafter: Monica Campbell <i>mc</i>		Department: Legal		Phone: 541-2128	
Department	Signature	Phone	Department	Signature	Phone
Originating Department			Budget	<i>Richard G. Hubbard</i>	541-2107
			Assistant City Manager	<i>[Signature]</i>	541-2271
Legal	<i>[Signature]</i>	541-2128	City Manager	<i>[Signature]</i>	541-2076

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

1. Legal Services Contracts.

Introduction. The City is self-insured for tort claims, civil rights, workers' compensation and litigation. The City Attorney manages claims and litigation against the City and made on behalf of the City, and assigns certain matters to outside counsel due to the complexity of an issue and/or time constraints of in-house attorneys. When matters are assigned to outside law firms, the City Attorney selects an attorney in a law firm which is under contract with the City to provide legal services.

The last time legal services contracts were awarded was in Fiscal Year 2005/2006. The law firms which exercised their options to renew those contracts had the term of the contract end on September 5, 2009. Those law firms are currently providing legal services

(Continue on additional sheets as required)

to the City on a month-to-month basis until proposals could be solicited and contracts awarded.

Proposals and Selection Advisory Committee. The Purchasing Department solicited proposals for legal services and 14 law firms submitted proposals. On January 12, 2010 the Selection Advisory Committee and the City Attorney's designees evaluated the 14 proposals and rated the law firms as follows:

Conklin, Woodcock & Ziegler	1870.0
Cuddy & McCarthy	1690.0
The Graeser Law Firm	1710.0
Holt Babington Mynatt	2455.0*
Jarmie & Associates	2037.0
Keleher & McLeod	2409.8*
Martin, Lutz, Roggow & Eubanks	2467.5*
Modrall Sperling Law Firm	2136.8
Morgan Lyman	2073.8
Reeves & Reeves	2289.0*
Robles Rael & Anaya	2436.0*
Rodey, Dickason, Sloan, Akin & Robb	2115.8
Sandenaw Law Firm	1905.8
Silva Saucedo & Gonzales	2021.3

* = 5 top rated law firms

The Selection Advisory Committee recommends awarding contracts to the 5 top rated law firms: Holt Babington Mynatt PC, Martin, Lutz, Roggow & Eubanks, P.C. and Reeves & Reeves, P.A. of Las Cruces, New Mexico; and Keleher & McLeod, P.A. and Robles, Rael & Anaya, P.C. of Albuquerque, New Mexico.

Location of 5-Top Rated Law Firms. Three of the law firms recommended are in Las Cruces (Holt, Martin, Reeves) and two of the law firms are in Albuquerque (Keleher, Robles). The City Attorney recognizes that using local law firms is preferable. From time to time, however, some matters require an expertise or specialization that can only be found with attorneys in one of the Albuquerque law firms. Examples of this include the El Paso Electric franchise negotiations, the Bravo/Detention Center case, and ongoing water litigation counsel paid for by the Utilities Department.

2. Increase in Total Amount Payable for Legal Services

Introduction. The City continues to require a significant amount and variety of legal services. The decision to send a matter to outside counsel is determined by considering the nature of the matter, the current workload of the City Attorney's office, and whether or not the matter involves a specialized area of law. Once a matter is assigned to outside counsel, bills are sent to the City Attorney's office on a monthly basis. The City Attorney's office routinely reviews legal fees charged by outside counsel and finds that the fees bear an appropriate relationship to the work involved.

(Continue on additional sheets as required)

Explanation of Need for Additional Funds. Certain lawsuits and other matters against the City assigned to outside counsel have been or continue to be complex, requiring extensive and time consuming work. A sampling of the some of the matters that fall into this category include *Bravo, et al. v. City, County, et al.*; the El Paso Electric franchise negotiations; *Estrada (Estate of Molina) v. City*; *Lohman Properties v. City*; *Vondrak v. City*; *Z1SP, et al. v. City* ("the Sitel case"), various employment matters and other litigation.

There remains substantial outside counsel work to be performed on behalf of the City through the end of the fiscal year. Based on current and anticipated invoice activity, it is estimated that an additional \$200,000.00 is needed through Fiscal Year 2009/2010 to continue meeting the City's obligations for outside counsel fees.

SUPPORT INFORMATION:

Fund Name / Account Number	Amount of Expenditure	Budget Amount
6360-63101030-710130 General Liability Fund Other Contracted Legal Services	\$200,000.00	\$350,000.00

1. Purchasing Manager's Request to Contract, Exhibit "A".
2. Budget Adjustment, Exhibit "B".
3. Selection Advisory Committee evaluation sheet, Exhibit "C".
4. Proposed Professional Services Agreement for Legal Services, Attachment "1".

OPTIONS / ALTERNATIVES:

1. Approve the Resolution. Approval means that the legal services contracts will be awarded to the 5 top rated law firms. Approval will also authorize the increase in the total amount payable for outside legal services.
2. Not approve the Resolution. This means that the legal services contracts will not be awarded and the current law firms with month-to-month contracts will continue on the same basis. It also means that the increase in the total amount payable for legal services will not be authorized, which may result in outside counsel fee payments being delayed.

In addition, new matters against the City, which are received by the City Attorney and determined necessary to be assigned to outside counsel, may have to be assigned under other provisions of the Procurement Code so that court-ordered and other deadlines are met in a timely manner.

3. Modify the Resolution and provide further direction to staff.

(Continue on additional sheets as required)

RESOLUTION NO. 09-10-375

A RESOLUTION APPROVING MULTIPLE INDEFINITE COST, INDEFINITE QUANTITY PROFESSIONAL SERVICES CONTRACTS FOR LEGAL SERVICES TO HOLT BABINGTON MYNATT PC, MARTIN, LUTZ, ROGGOW & EUBANKS, P.C. AND REEVES & REEVES, P.A. OF LAS CRUCES, NEW MEXICO; AND KELEHER & McLEOD, P.A. AND ROBLES, RAEL & ANAYA, P.C. OF ALBUQUERQUE, NEW MEXICO, FOR UP TO FOUR YEARS CONDITIONED UPON ANNUAL RENEWALS AND APPROVED BUDGETS; AND AUTHORIZING AN INCREASE IN THE TOTAL AMOUNT PAYABLE FOR LEGAL SERVICES CONTRACTS WITH THE LAW FIRMS IN AN AMOUNT NOT TO EXCEED \$200,000.00, AND TO ADJUST THE FISCAL YEAR 2009/2010 BUDGET.

The City Council is informed that:

WHEREAS, the City Attorney manages claims and litigation against the City and made on behalf of the City; and

WHEREAS, the City Attorney assigns certain matters to contracted outside counsel due to the complexity of an issue and/or time constraints of in-house attorneys; and

WHEREAS, a Request for Proposals for legal services was issued and the Purchasing Department received 14 proposals; and

WHEREAS, the Selection Advisory Committee and the City Attorney's designees reviewed and rated the 14 proposals and recommends awarding contracts to the five top scoring law firms, provided that the law firm furnish proof of professional liability insurance; and

WHEREAS, there remains substantial outside counsel work to be performed on behalf of the City during Fiscal Year 2009/2010; and

WHEREAS, as a result of the complex and problematical lawsuits and other various matters, the \$350,000.00 budgeted for the total legal services contracts will be exhausted prior to the end of Fiscal Year 2009/2010; and

WHEREAS, based on current and anticipated invoice activity \$200,000.00 is required in order to continue to pay outside counsel for legal work performed on behalf of the City through Fiscal Year 2009/2010.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF LAS CRUCES:

(I)

THAT City staff is authorized to enter into Professional Services Contracts for Legal Services with the five top scoring law firms (Holt Babington Mynatt PC, Martin, Lutz, Roggow & Eubanks, P.C. and Reeves & Reeves, P.A. of Las Cruces, New Mexico; and Keleher & McLeod, P.A. and Robles, Rael & Anaya, P.C. of Albuquerque, New Mexico), provided that the law firm furnish proof of professional liability insurance in an amount not less than \$1,000,000.00 per occurrence with a deductible no greater than \$5,000.00 or, in the alternative, a letter of credit covering the established deductible.

(II)

THAT an increase in the amount of \$200,000.00 for Fiscal Year 2009/2010 is authorized for payment of outside counsel fees generated by work performed on behalf of the City pursuant to the legal services contracts and the Fiscal Year 2009/2010 budget is hereby adjusted as shown in Exhibit "B" attached hereto and made a part hereof.

(III)

THAT City staff is authorized to do all deeds necessary to accomplish the intent of this Resolution.

DONE AND APPROVED on this _____ day of _____, 2010.

Mayor

ATTEST:

City Clerk

{SEAL}

Moved by: _____

Seconded by: _____

Mayor Miyagishima:	_____
Councillor Silva:	_____
Councillor Connor:	_____
Councillor Pedroza:	_____
Councillor Small:	_____
Councillor Sorg:	_____
Councillor Thomas:	_____

APPROVED AS TO FORM:

W. J. (Mike) Lemmly
City Attorney 03/01/10.

CITY OF LAS CRUCES

PURCHASING MANAGER'S REQUEST TO CONTRACT

For Meeting of: March 1, 2010

Resolution No.: 09-10-375

**Contract Purchase For
Professional Legal Services Price Agreement**

The Las Cruces City Council is provided the following information concerning this request:

RFP SOLICITATION INFORMATION:

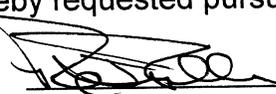
- 1. RFP No./ Due Date: **RFP No. 09-10-375/October 13, 2009**
- 2. Description: **Professional Legal Services**
- 3. Using Department: **Legal Department**
- 4. Number of Responses Accepted: **Fourteen (14)**
- 5. Award Recommendation To: **Holt, Babington, and Mynatt P.C.;**
Martin, Lutz, Roggow & Eubanks, P.C.; Reeves & Reeves, P.C. of Las Cruces, NM;
Keleher & McLeod, P.A.; Robles, Rael & Anaya, P.C. of Albuquerque, NM
- 6. Total Award Amount (including any tax and contingency): **Indefinite Quantity/
Indefinite Cost**
- 7. Contract Duration: **Four (4) Years Pending Approved Budget and Annual Renewals**

LOCAL PREFERENCE FACTOR

Local Preference Factor Applied Per LCMC §24-100	No		LCMC §24-100 not applicable to this solicitation
	Yes	X	Made A Difference To Awards(s)
		X	Made No Difference To Bid Award(s)

PROCUREMENT CODE COMPLIANCE:

The City of Las Cruces Procurement Code was administered in the conduct of this procurement and approval to purchase is hereby requested pursuant to **Section 24-92.**


 Purchasing Manager 1/2/10
Date

CONFIRMATION OF FUND ENCUMBRANCE:

REQUISITION or PURCHASE ORDER NUMBER:	As Per Approved Budget
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Resolution No. 09-10-375

**CITY OF LAS CRUCES
ADOPTED BUDGET FY 2009/2010**

FUND	DIVISION		FUND TYPE	
Judgments/Liabilities Fund 6360	Legal		Internal Service	
	FY 2008/09 Actual	FY 2009/10 Adopted	Adjustment	FY 2009/10 Adjusted
RESOURCES				
Beginning Balance	\$ 383,330	308,998		308,998
REVENUES				
570010 Interest on Investment	\$ 7,678	6,000		6,000
590015 Net Incr (Decr) Fair Value Investment	2,803	0		0
Total Revenues	\$ 10,481	6,000	0	6,000
Total Resources	\$ 393,811	314,998	0	314,998
EXPENDITURES				
Legal Services	\$ 484,813	350,000	200,000	550,000
Depositions	0	5,000		5,000
Liability Claims	0	80,000		80,000
Total Expenditures	\$ 484,813	435,000	200,000	635,000
OTHER FINANCING SOURCES (USES)				
Transfer from Fund 6340 - Liability Claims	\$ 400,000	400,000		400,000
Total Other Financing Sources (Uses)	\$ 400,000	400,000	0	400,000
ENDING BALANCE	\$ 308,998	279,998	(200,000)	79,998

CITY OF LAS CRUCES	
RFP No.: 09-10-375	
Legal Services General Council FY 2010-2013 Re-Bid	
Due Date/Time: October 13, 2009 @ 4:00 p.m.	

PHASE I EVALUATION		Conklin, Woodcock & Ziegler	Cuddy & McCarthy	The Graeser Law Firm	Holt Babington Myratt
PROPOSAL SCORES					
1	RATER #1	370	270	335	385
2	RATER #2	345	315	305	400
3	RATER #3	400	290	305	390
4	RATER #4	310	260	345	325
5	RATER #5	320	270	270	365
6	RATER #6	240	330	220	500
7	RATER #7	285	285	270	500
8	RATER #8	240	215	225	475
Rating Sheets Raw Score:		2510	2336	2275	3440
(Less high score)		400	330	345	500
(Less low score)		240	215	220	275
Proposal Rating Sheets Net Scores		1870	1690	1710	2455
TOP TEN PERCENT DETERMINATION		2455	2455	2455	2455
Top ranked score		2209.5	2209.5	2209.5	2209.5
Top ranked score -10%					

PHASE II EVALUATION		Conklin, Woodcock & Ziegler	Cuddy & McCarthy	The Graeser Law Firm	Holt Babington Myratt
DEDUCTION FOR JOBS IN PROGRESS					
Enter Number of Raters		8	8	8	8
Jobs in Progress		0	0	0	0
Total Deduction for Job in Progress		0	0	0	0
LOCAL/STATE PREFERENCE					
Local ? (Yes or No)		No	No	No	No
Total Preference Points		0.0	0.0	0.0	0.0
TOTAL PH. I & II SCORE WITHOUT COST FACTOR		1870.0	1690.0	1710.0	2455.0

CITY OF LAS CRUCES	
RFP No.: 09-10-375	
Legal Services General Council FY 2010-2013 Re	
Due Date/Time: October 13, 2009 @ 4:00 p.m.	

PHASE I EVALUATION

PROPOSAL SCORES	Jarmie & Associates	Kelcher & McLeod	Martin, Guitz, Roggov & Eubanks	Modrall Sperling Law Firm	Morgan Lyman
1 RATER #1	330	370	392	346	370
2 RATER #2	365	400	345	375	310
3 RATER #3	290	380	390	395	305
4 RATER #4	285	325	325	315	325
5 RATER #5	335	335	355	320	325
6 RATER #6	330	460	460	296	325
7 RATER #7	435	500	490	385	430
8 RATER #8	300	350	375	250	320
Rating Sheets Raw Score:	2660	3120	3155	2680	2710
(Less high score)	435	500	490	395	430
(Less low score)	285	325	325	250	305
Proposal Rating Sheets Net Scores	1940	2295	2350	2035	1975
TOP TEN PERCENT DETERMINATION	2455	2455	2455	2455	2455
Top ranked score	2209.5	2209.5	2209.5	2209.5	2209.5
Top ranked score -10%					

PHASE II EVALUATION

DEDUCTION FOR JOBS IN PROGRESS	Jarmie & Associates	Kelcher & McLeod	Martin, Guitz, Roggov & Eubanks	Modrall Sperling Law Firm	Morgan Lyman
Enter Number of Raters	8	8	8	8	8
Jobs in Progress	0	0	0	0	0
Total Deduction for Job in Progress	0	0	0	0	0
LOCAL/STATE PREFERENCE	Local ? (Yes or No)	Local ? (Yes or No)	Local ? (Yes or No)	Local ? (Yes or No)	Local ? (Yes or No)
	Yes	Yes	Yes	Yes	Yes
Total Preference Points	97.0	114.8	117.5	101.8	98.8
TOTAL PH. I & II SCORE WITHOUT COST FACTOR	2037.0	2409.8	2467.5	2136.8	2073.8

CITY OF LAS CRUCES	
RFP No.: 09-10-375	
Legal Services General Council FY 2010-2013 Re	
Due Date/Time: October 13, 2009 @ 4:00 p.m.	

PHASE I EVALUATION

PROPOSAL SCORES	Reeves & Reeves	Robles, Rael & Anaya	Rodey, Dickason, Sloan, Akin & Robb	Sandenaw law Firm	Silva Saucedo & Gonzales
1 RATER #1	385	385	345	330	360
2 RATER #2	335	350	360	315	300
3 RATER #3	350	370	300	270	350
4 RATER #4	275	340	295	280	275
5 RATER #5	270	400	320	295	285
6 RATER #6	430	325	385	295	330
7 RATER #7	485	375	410	410	435
8 RATER #8	365	380	315	325	300
Rating Sheets Raw Score:	2375	3145	2720	2520	2635
(Less high score)	465	475	410	410	435
(Less low score)	270	330	295	270	275
Proposal Rating Sheets Net Scores	2130	2320	2015	1840	1925
TOP TEN PERCENT DETERMINATION					
Top ranked score	2455	2455	2455	2455	2455
Top ranked score -10%	2209.5	2209.5	2209.5	2209.5	2209.5

PHASE II EVALUATION

DEDUCTION FOR JOBS IN PROGRESS	Reeves & Reeves	Robles, Rael & Anaya	Rodey, Dickason, Sloan, Akin & Robb	Sandenaw law Firm	Silva Saucedo & Gonzales
Enter Number of Raters	8	8	8	8	8
Jobs in Progress	0	0	0	0	0
Total Deduction for Job in Progress	0	0	0	0	0
LOCAL/STATE PREFERENCE					
Local ? (Yes or No)	Yes	Yes	Yes	Yes	Yes
Local ? (Yes or No)	109.0	116.0	100.8	90.8	96.3
Total Preference Points	2289.0	2436.0	2115.8	1905.8	2021.3
TOTAL PH. I & II SCORE WITHOUT COST FACTOR					
	2289.0	2436.0	2115.8	1905.8	2021.3



PROFESSIONAL SERVICES CONTRACT FOR LEGAL SERVICES

THIS Contract is made and entered into as of the 1st day of March 2010 between _____ (“Contractor”) and the **City of Las Cruces**, a New Mexico municipal corporation (“City”).

The parties agree as follows:

1. Scope of Work

The Contractor shall provide legal representation to the City and its public employees as set forth in its Proposal submitted to the City on October 13, 2009. The City has the right to designate which attorney shall principally handle any specific matter. The Proposal is hereby incorporated in this Contract to the extent its provisions are consistent with the Contract.

The Contractor shall not undertake any representation of the City or perform any legal services for the City at the request of any City official or employee without first obtaining specific written authorization to do so from the City Attorney. Contractor shall not file any action or enter any litigation on behalf of the City without first obtaining permission to do so from the City Attorney. Before releasing any written legal opinion addressed to or affecting the City or any of its officers or employees, Contractor shall obtain the City Attorney’s concurrence.

2. Referral of Work to Contractor

Referral of legal matters to Contractor under this Contract will only be through the City Attorney. Referral of legal matters to Contractor will be through a “Letter of Engagement” signed by the City Attorney. The “Letter of Engagement” will contain the name and description of the matter for which legal services are sought and an explanation of the scope of work.

3. Staffing

Only one professional shall attend meetings, depositions, and arguments unless the attendance of more is required to accomplish the purpose of the meeting and such attendance is discussed with and approved by the City Attorney in each instance where multiple attendance is requested.

Prior approval shall be obtained by the Contractor if City is to be billed for more than ten hours of professional’s time in any one day (except during days requiring court appearances). Prior approval shall be obtained from the City Attorney by Contractor for

any research project that will take in excess of ten hours. Intra office conferences are billable by only one of the participants.

Contractor shall investigate whether it would be more cost efficient for City personnel (employees, temporary employees, or contractors) to perform certain tasks such as collecting and reviewing information in files, interviewing witnesses, managing documents, preparing summaries, etc. Contractor shall give consideration to whether some of the work can be performed efficiently by lawyers, paralegals or clerks employed by the City and whether there are other ways in which the time required of Contractor can be minimized without compromising the quality of representation. The City expects that the Contractor will explore cost saving opportunities such as communicating with the City through e-mail and electronically transmitting documents.

4. Compensation

In consideration for the services provided pursuant to Paragraph 1, "Scope of Work," the Contractor shall charge on a monthly billing basis and the City shall pay only the following charges:

a. Attorney's services shall be billed according to the hourly rates set forth in the Proposal which shall remain unchanged and shall not increase during the term of this Contract. Attorney time must be shown in increments of six minutes (0.1 hour) or less. Travel time is to be at no greater than one-half of the attorney's hourly rate. The Contractor affirms that rates are equivalent to the lowest rates given most-favored regular clients;

b. For all other fees, costs and expenses, the rates specified in the Proposal. If the Proposal failed to specify the rate at which any cost or expense shall be charged, actual cost shall be charged and paid; and

c. For New Mexico gross receipts tax on amounts which such tax actually has been or will be paid, the applicable rate.

5. Expenditures

Specifically, no charges shall be billed to the City for any of the following services or items unless authorized by the City Attorney:

a. Secretarial, word processing, proofreading, filing, office machine attendants, file organization or other clerical services;

b. Photocopy expenses at more than 10 cents a page;

c. Computer time;

d. Local telephone expenses;

- e. Charges related to computer usage, online or internet related investigation or research, including legal research through, e.g., Lexis-Nexis, Westlaw;
- f. Local taxes (incoming or outgoing);
- g. Audit Letters (incoming or outgoing); and
- h. Any other expense properly chargeable to overhead or as a capital expense.

6. Total Amounts Payable

The total of all amounts payable under this Contract shall not exceed the amount appropriated by City Council. The total amounts payable under this Contract are a device to allow the City to monitor its costs. It is not intended that the Contractor continue to provide legal services without compensation after the limits are reached. Upon notification by the Contractor that the limits are being approached, the parties shall either amend this Contract in writing, or the City shall employ substitute counsel to provide legal representation for any or all matters that had been referred to the Contractor for further responsibility. The City shall remain obligated to pay the Contractor pursuant to Paragraph 4, "Compensation," until such time as this paragraph has been amended in writing or the City has retained substitute counsel and relieved the Contractor of further responsibility.

7. Term

This Contract covers services rendered between March 1, 2010 and February 28, 2011. This Contract terminates the last moment of February 28, 2011, unless sooner terminated pursuant to Paragraph 8, "Termination," or Paragraph 20, "Appropriations," or unless renewed pursuant to Paragraph 9, "Renewal."

8. Termination

This Contract may be terminated by either party upon written notice delivered to the other party at least ninety (90) days prior to the intended date of termination. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination.

9. Renewal

This Contract may be renewed for three additional one-year periods at the sole option and discretion of the City. Any renewal of this Contract shall be in writing and shall be the subject of further negotiations between the parties. If this Contract is not renewed or is terminated, the City may require the Contractor to continue to handle to completion any and all matters referred during the contract period at the rates set forth

in Paragraph 4, "Compensation." Alternatively, the City may require the Contractor to return files, including but not limited to the Contractor's work product, to the City.

10. Assignment of Cases

This Contract does not constitute a grant to the Contractor of any right to handle any specific case or any specific number of cases. The City may, in its sole discretion, assign or reassign cases as it deems expedient including designation of a lead attorney on any given case.

11. Copies of Pleadings

The Contractor shall provide the City with a copy of all pleadings, briefs and other documents filed by the Contractor in any matter handled pursuant to this Contract.

12. Procedures

The Contractor shall follow any procedures which may from time to time be established by the City for the efficient and cost effective processing of cases.

13. Status Reports

The Contractor shall provide the City with quarterly status reports for each active case. The status reports shall contain a narrative description of the status of the case and the procedures used or proposed to resolve the litigation on a cost effective basis.

14. Status of Contractor

The Contractor, and its agents and employees, are independent contractors performing services for the City and are not employees of the City of Las Cruces. The Contractor, and its agents and employees, shall not as a result of this Contract accrue any leave, retirement, insurance, bonding, use of City vehicles or any other benefit afforded to employees of the City.

15. Assignment

The Contractor shall not assign or transfer any interest in this Contract or assign any claims for money due or to become due under this Contract without the City's prior written approval.

16. Subcontracting

The Contractor shall not subcontract any portion of the service to be performed under this Contract without the City's prior written approval.

17. Insurance

At the time of the execution of the Contract, the Contractor shall provide certificates of insurance or copies of insurance policies evidencing coverage for all professional liability of the Contractor and its personnel which may arise out of services provided under this Contract. Such coverage shall be in an amount not less than \$1,000,000 per occurrence with no greater than a \$5,000 deductible. The amount of any deductible shall be stated. Such insurance shall remain in full force and effect during the term of this Contract. The Contractor shall notify the City within ten (10) days of any change or cancellation of such insurance.

18. Records and Audit

The Contractor shall maintain detailed time records which set forth each service rendered in each matter, the person rendering such service, his/her hourly rate, the time expended in rendering such service and the date such service was rendered. The Contractor shall submit these records along with its billings to the City monthly. The records shall be subject to inspection by the City. The City has the right to audit billings both before and after payment, and to contest any billing or portion thereof. Payment under this Contract does not foreclose the City's right to recover excessive or illegal payments.

19. Billing Cycle

The City's fiscal year begins July 1 and ends June 30 of each calendar year. The City may only make payment for services rendered or costs encumbered during a fiscal year and for a period of sixty (60) days following the close of the fiscal year. Billings for services performed or costs incurred prior to the close of a fiscal year must be submitted within ample time to allow for payment within this sixty (60) day period.

20. Appropriations

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

21. Release

The Contractor, upon final payment of all amounts due under this Contract, releases the City and its officers and employees from all liabilities, claims and obligations whatsoever arising from or under this Contract.

22. Indemnification

The Contractor shall defend, indemnify and hold the City harmless from all actions, proceedings, claims, demands, costs, damages, attorney's fees and all other liabilities and expenses of any kind from any source which may arise out of performance of this Contract, if caused by the tortious acts or omissions of the Contractor, or its agents or employees.

23. 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 under this Contract. The Contractor shall not, during the term of this Contract, represent any claimant or plaintiff making a claim against the City of Las Cruces or any of its employees acting within the scope of their duties without the express written consent of the City Manager or his designee.

24. Amendment

This Contract shall not be altered, changed or amended except by written instrument executed by the parties.

25. Scope of Contract

This Contract incorporates all the contracts, covenants and understandings between the parties concerning the subject matter hereof, and all such covenants, contracts and understandings have been merged into this written Contract. No prior contract or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this written Contract.

26. Notice

The City's Procurement Code imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

27. Records Retention/Return

Upon completion of the specific matter for which services were being provided, Contractor will deliver to the City the complete file and all corresponding records, including books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics. Should Contractor wish to retain copies of this material for Contractor's own use, the Contractor shall bear the cost of their reproduction.

28. Media Relations

Contractor is not authorized by City to comment publicly on City matters. All media inquiries should be directed to the City Attorney.

29. Applicable Law

This Contract shall be governed by the laws of the State of New Mexico.

IN WITNESS WHEREOF, the parties have executed this Contract as of the date set forth above.

CITY OF LAS CRUCES

By: _____
Robert Telles, Purchasing Manager

APPROVED AS TO FORM:

Fermin A. Rubio, City Attorney

(Contractor)

By: _____