

City of Las Cruces®

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 8 Ordinance/Resolution #10-11-307 Council District: N/A

For Meeting of November 1, 2010
(Adoption Date)

TITLE:

A RESOLUTION AWARDING AN INDEFINITE COST, INDEFINITE QUANTITY PRICE AGREEMENT FOR BOND COUNSEL SERVICES TO MODRALL, SPERLING, ROEHL, HARRIS & SISK, P.A. OF ALBUQUERQUE, NM., FOR A TERM OF UP TO FOUR (4) YEARS CONDITIONED UPON ANNUAL RENEWALS, THE SALE OF BONDS, THE AVAILABILITY OF BOND PROCEEDS AND APPROVED BUDGETS.

PURPOSE(S) OF ACTION: To approve an award of a price agreement to Modrall, Sperling, Roehl, Harris & Sisk, P.A. of Albuquerque, NM for on-call bond counsel services.

Drafter and Staff Contact: Robert Scaling <i>[Signature]</i>		Department: Finance		Phone: 575-541-2035	
Department	Signature	Phone	Department	Signature	Phone
Department Director (interim)	<i>[Signature]</i>	541-2080	Budget	<i>[Signature]</i>	541-2107
Other			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:

The City of Las Cruces periodically issues bonds and assumes other liabilities in order to finance capital structures and other projects. Services from a bond counsel will ensure compliance with all statutory and constitutional requirements necessary for the valid issuance of bonds and other debt. Additionally, the bond counsel can assist the City in maintaining and improving its credit rating which will enable the City to reduce the cost of acquiring capital.

The City solicited formal competitive proposals via RFP No. 10-11-307 from nine known firms resulting in three responses. The proposals were evaluated by the City Selection Advisory Committee who recommends the highest ranking firm, Modrall, Sperling, Roehl, Harris & Sisk, P.A. of Albuquerque, NM for contract award.

SUPPORT INFORMATION:

1. Resolution 10-11-307
2. Exhibit "A" Purchasing Manager Request to Contract (PMRC)

(Continue on additional sheets as required)

3. Attachment "A" Contract

SOURCE OF FUNDING:

Is this action already budgeted? BUDGET IS PENDING SALE OF FUTURE BONDS APPROVED BY CITY COUNCIL OR OTHER AUTHORIZED SERVICES	Yes	<input type="checkbox"/>	See fund summary below
	No	<input type="checkbox"/>	If No, then check one below:
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/>	Expense reallocated from: <u>Proceeds from future bond sales</u>
		<input type="checkbox"/>	Proposed funding is from a new revenue source
	<input type="checkbox"/>	Proposed funding is from fund balance in the _____ Fund.	
Does this action create any revenue? REVENUE IS PENDING SALE OF FUTURE BONDS APPROVED BY CITY COUNCIL	Yes	<input type="checkbox"/>	Funds will be deposited into this fund: _____ in the amount of \$_____.
	No	XX	There is no new revenue generated by this action.

FUND EXPENDITURE SUMMARY: (Please make sure to change the gray font to black for scanning purposes.)

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds

OPTIONS / ALTERNATIVES:

- Vote "Yes"; this will approve the contract award to Modrall, Sperling, Roehl, Harris & Sisk as Bond Counsel for the City of Las Cruces for the specified term.
- Vote "No"; this will reject the contract with Modrall, Sperling, Roehl, Harris & Sisk and require staff to seek alternate Bond Counsel.
- Vote to "Table"; this could cause the current Bond Counsel contract to expire and require staff to suspend any current activities that might require Bond Counsel services.

REFERENCE INFORMATION

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

- Resolution No. 05-06-454

(Continue on additional sheets as required)

RESOLUTION NO. 10-11-307

A RESOLUTION AWARDING AN INDEFINITE COST, INDEFINITE QUANTITY PRICE AGREEMENT FOR BOND COUNSEL SERVICES TO MODRALL, SPERLING, ROEHL, HARRIS & SISK, P.A. OF ALBUQUERQUE, NM., FOR A TERM OF UP TO FOUR (4) YEARS CONDITIONED UPON ANNUAL RENEWALS, THE SALE OF BONDS, THE AVAILABILITY OF BOND PROCEEDS AND APPROVED BUDGETS.

The City Council is informed that:

WHEREAS, the services from a bond counsel are needed by the City to ensure compliance with all statutory and constitutional requirements necessary for the valid issuance of bonds by the City and to make every effort and take appropriate action to assist the City in maintaining or improving the credit rating of the City; and

WHEREAS, Bond Counsel will cooperate with City staff in any events required for the successful sale, issuance, and delivery of bonds; and

WHEREAS, Bond Counsel will also perform such other activities and services as may be required; and

WHEREAS, the City solicited formal competitive proposals for required bond counsel services via RFP No. 10-11-307 resulting in evaluation of three responses by the City's Selection Advisory Committee (SAC); and

WHEREAS, based upon the RFP criteria, the highest ranking firm as determined by the SAC was the firm of Modrall, Sperling, Roehl, Harris & Sisk, P.A. of Albuquerque, NM; and

WHEREAS, the SAC recommends award to Modrall, Sperling, Roehl, Harris & Sisk, P.A. of Albuquerque, NM.

NOW, THEREFORE, Be it resolved by the governing body of the City of Las Cruces:

(I)

THAT the contract between the City of Las Cruces and Modrall, Sperling, Roehl, Harris & Sisk, P.A. of Albuquerque, NM for bond counsel services is hereby approved.

(II)

THAT City staff and officials are authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this _____ day of _____, 2010.

APPROVED:

Mayor

ATTEST

City Clerk

(SEAL)

VOTE:

Mayor Miyagishima: _____

Councillor Silva: _____

Councillor Conner: _____

Councillor Pedroza: _____

Councillor Small: _____

Councillor Sorg: _____

Councillor Thomas: _____

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:



City Attorney

CITY OF LAS CRUCES

PURCHASING MANAGER'S REQUEST TO CONTRACT

For Meeting of: November 1, 2010

Resolution No.: 10-11-307

Contract Purchase For Bond Council Services

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

RFP SOLICITATION INFORMATION:

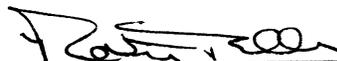
1. RFP No./ Due Date: RFP No. 10-11-307/August 2, 2010
2. Description: Bond Council Services
3. Using Department: Finance Department
4. Number of Responses Accepted: Three (3)
5. Award Recommendation To: Modrall, Sperling, Roehl, Harris & Sisk, P.A.,
Of Albuquerque, NM
6. Total Award Amount (including any tax and contingency): Indefinite Cost/Quantity
7. Contract Duration: One (1) Year With Option to Renew
Three (3) Additional One (1) Year Terms
Conditioned Upon Annual Renewals, The Sale of Bonds,
The Availability of Bond Proceeds, and Approved Budgets

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 11/01/2010
Date

CONFIRMATION OF FUND ENCUMBRANCE:

REQUISITION or PURCHASE ORDER NUMBER:	VARIOUS
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PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made and entered into on this _____ 2010, by and between the City of Las Cruces, New Mexico, hereinafter called "CITY" and _____, of _____ hereinafter called "CONTRACTOR".

1. PROJECT DESCRIPTION

To provide legal services to the City in connection with the issuance of bonds.

2. SCOPE OF SERVICES

In a satisfactory and proper manner, the CONTRACTOR shall perform SERVICES as proposed in response to the CITY'S RFP No. 10-11-307 incorporated herein by reference and as set forth in Exhibit A, attached hereto and made a part of this Agreement.

3. APPROPRIATIONS

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

4. COMPENSATION

The CITY shall compensate CONTRACTOR for the performance of SERVICES under this Agreement an amount agreed to for each assigned project, plus applicable taxes. CONTRACTOR shall perform the SERVICES upon receipt of a written Notice to Proceed for each assigned project from the CITY. The CITY cannot authorize costs to be incurred prior to such written Notice to Proceed.

CONTRACTOR is responsible for payment of State of New Mexico Gross Receipts Tax levied on the amounts payable under this Agreement. CONTRACTOR agrees to comply with all federal and state tax payments and report all items of gross receipts as income from the operations of its business.

5. DEVOTION OF ADEQUATE TIME

CONTRACTOR will devote the necessary hours each week to the performance of project(s) that is/are required by the CITY and it will serve the CITY diligently and faithfully, and according to its best ability in all respects and will promote the best interests of the CITY.

6. TERM AND SCHEDULE

This Agreement shall become effective on the date of award for a term of 365 days through _____ and, pending mutual written agreement, may be extended annually thereafter for up to 3 more years through _____.

CONTRACTOR shall perform the SERVICES in accordance with the time set forth as agreed upon by the CITY and CONTRACTOR in Exhibit B and as agreed to for each project assigned under the terms of this Agreement.

7. EXTENSIONS, CHANGES, AND AMENDMENTS

This Agreement shall not be extended, changed, or amended except by instrument in writing executed by the parties. The CITY shall not be liable for payment of any extra services nor shall CONTRACTOR be obligated to perform any extra services except upon such written agreement. Such written approval shall indicate the date said extension, change, or amendment is effective and shall be signed by the parties to this Agreement. In the event that the parties cannot reach agreement as to a particular change, the issue shall be resolved pursuant to Article 21.

8. CHANGES AND EXTRA SERVICES BY THE CITY

The CITY may make changes within the general scope of the SERVICES plus may also request CONTRACTOR to perform other extra services not incorporated within the Services set forth in this Agreement. If the CONTRACTOR is of the opinion that such change causes an increase or decrease in the cost and/or the time required for performing the changes or other services required by the City, CONTRACTOR shall so notify the CITY of that fact within five (5) business work days from the date of receipt of change by the CITY. The CITY shall provide written response to the CONTRACTOR within five (5) business work days from the date of receipt of CONTRACTOR'S written notification.

9. CHANGES AND EXTRA SERVICES BY THE CONTRACTOR

In the event a condition is identified by the CONTRACTOR which, in the opinion of the CONTRACTOR, changes the services, costs, and/or time required for performance under this Agreement, the CONTRACTOR shall provide written notification to the CITY within five (5) business work days of such identification. The CITY shall respond in writing to such notification within five (5) business work days from the date of receipt of CONTRACTOR'S notification.

10. DELAYS

In the event that performance of SERVICES is delayed by causes beyond reasonable control of CONTRACTOR, and without the fault or negligence of CONTRACTOR, the time and total compensation for the performance of the SERVICES may be equitably adjusted by written agreement to reflect the extent of such delay. CONTRACTOR shall provide the CITY with written notice of delay pursuant to Article 9 including therein a description of the delay and the steps contemplated or actually taken by CONTRACTOR to mitigate the effect of such delay. The CITY will make the final determination as to reasonableness of delays.

11. TERMINATION

This Agreement may be terminated by either party hereto upon fifteen (15) calendar days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party. This Agreement may also be terminated by the CITY for its convenience or because the PROJECT has been permanently abandoned, but only upon fifteen (15) calendar days written notice to CONTRACTOR.

In the event of termination, CONTRACTOR shall be compensated for all services performed and costs incurred up to the effective date of termination for which CONTRACTOR has not been previously compensated.

Upon receipt of notice of termination from the CITY, CONTRACTOR shall discontinue the SERVICES unless otherwise directed and upon final payment from the CITY deliver to the CITY the required number of copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by CONTRACTOR in the performance of this Agreement, whether completed or in process.

12. RECORDS AND AUDITS

CONTRACTOR will maintain records indicating dates, length of time, and services rendered. The CITY has the right to audit billings both before and after payment, and contest any billing or portion thereof. Payment under this Agreement does not foreclose the CITY'S right to recover excessive or illegal payments.

13. DISCLOSURE AND OWNERSHIP OF DOCUMENTS, PRODUCTS, DESIGN, ELECTRONIC FILES

All technical data, electronic files, and other written and oral information not in the public domain or not previously known, and all information, electronic files, and data obtained, developed, or supplied by the CITY will be kept confidential and CONTRACTOR will not disclose to any other party, directly or indirectly, without the CITY'S prior written consent unless required by lawful order.

All technical data, electronic files, products developed, operational parameters, blueprints, and other information and work of the CONTRACTOR shall be the sole property of the CITY and shall be delivered to the CITY when requested and at the end of the Agreement.

14. INDEPENDENT CONTRACTOR

CONTRACTOR represents that it has, or will secure, at its own expense, all personnel required in performing the SERVICES under this Agreement. Such personnel shall not be employees of, nor have any contractual relationship with the CITY. CONTRACTOR, consistent with its status as an independent contractor, further agrees that its personnel will not hold themselves out as, nor claim to be officers or employees of the CITY by reason of this Agreement.

To the extent that CONTRACTOR employs any employees, CONTRACTOR shall be solely responsible for providing its own form of insurance for its employees and in no event shall CONTRACTOR's employees be covered under any policy of the CITY.

CONTRACTOR'S retention hereunder is not exclusive. Subject to the terms and provisions of this Agreement: (i) CONTRACTOR is able, during the Term hereof, to perform services for other parties; and (ii) CONTRACTOR may perform for its own account other professional services outside the scope of this Agreement.

CONTRACTOR is and shall be an Independent Contractor and shall be responsible for the management of its business affairs. In the performance of the work under this Agreement, CONTRACTOR will at all times be acting and performing as an Independent Contractor, as that term is understood for federal and state law purposes, and not as an employee of the CITY. Without limitation upon the foregoing, CONTRACTOR shall not accrue sick leave, jury duty pay, retirement, insurance, bonding, welfare benefits, or any other benefits, which may or may not be afforded employees of the CITY. CONTRACTOR will not be treated as an employee for purposes of: Workers' Compensation benefits; the Federal Unemployment Tax Act; Social Security; other payroll taxes, federal or any state income tax withholding; or the employee benefit provisions described in the Internal Revenue Code of 1986, as amended. Neither the CITY, nor its agents or representatives, shall have the right to control or direct the manner, details or means by which CONTRACTOR accomplishes and performs its services. Nevertheless, CONTRACTOR shall be bound to fulfill the duties and responsibilities contained in the Agreement.

15. NO JOINT VENTURE OR PARTNERSHIP

Nothing contained in this Agreement shall create any partnership, association, joint venture, fiduciary or agency relationship between CONTRACTOR and CITY. Except as otherwise specifically set forth herein, neither CONTRACTOR nor CITY shall be authorized or empowered to make any representation or commitment or to perform any act which shall be binding on the other unless expressly authorized or empowered in writing.

16. ASSIGNMENT

CONTRACTOR shall perform all the services under this Agreement and shall not assign any interest in this Agreement or transfer any interest in same or assign any claims for money due or to become due under this Agreement without the prior written consent of the CITY.

17. INSURANCE

CONTRACTOR shall obtain and maintain insurance at its own cost and expense during the life of this Agreement, and shall require Subcontractors, if any, to maintain during the life of his subcontract:

- a. Professional Liability: \$1,000,000 per claim

CONTRACTOR shall furnish the CITY with a certificate(s) of insurance showing CONTRACTOR and Subcontractors, if any, have complied with this Article. The CONTRACTOR shall provide insurance certificates before work is to start on the project and shall provide the CITY thirty (30) days written notification of cancellation of such policies.

18. INDEMNITY AND LIMITATION

CONTRACTOR shall indemnify, defend, and hold harmless the CITY from and against any and all claims, suits, actions, judgments, demands, losses, costs, expenses, damages, and liability caused solely by, resulting solely from, or arising solely out of the negligent acts, errors, or omissions of CONTRACTOR, its officers, employees, agents, or representatives in the performance of SERVICES under this agreement.

19. APPLICABLE LAW

This Agreement and the rights and obligations of the parties shall be governed by and construed by the laws of the State of New Mexico applicable to Agreements between New Mexico parties made and performed in that state, without regard to conflicts of law principles. Venue shall be in the Third Judicial District, State of New Mexico.

CONTRACTOR shall abide and be governed by all applicable state law, CITY ordinances, and laws regarding the CONTRACTOR'S services or any work done pursuant to this Agreement.

20. BREACH

In the event CONTRACTOR breaches any obligation contained in this Agreement, prior to instituting any action or dispute resolution procedure, the CITY shall give CONTRACTOR written notice of such breach. In the event CONTRACTOR fails to remedy the breach within five (5) working days of receiving such written notice, the CITY, at its sole discretion, without any obligation to do so and in addition to other remedies available under applicable law, may remedy CONTRACTOR'S breach and recover any and all costs and expenses in so doing from CONTRACTOR.

21. DISPUTE RESOLUTION

In the event that a dispute arises between CITY and CONTRACTOR under this Agreement or as a result of breach of this Agreement, the parties agree to act in good faith to attempt to resolve the dispute.

In the event of termination, CONTRACTOR shall be compensated for all services performed and costs incurred up to the effective date of termination for which CONTRACTOR has not been previously compensated.

Upon receipt of notice of termination from the CITY, CONTRACTOR shall discontinue the SERVICES unless otherwise directed and upon final payment from the CITY deliver to the CITY the required number of copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated

by CONTRACTOR in the performance of this Agreement, whether completed or in process.

22. NOTIFICATION

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if served by Registered Mail addressed as follows:

TO CITY: City of Las Cruces
PO Box 20000
Las Cruces, NM 88004
ATTENTION: Finance Director,

With Copies to: City Attorney
Purchasing Manager

TO CONTRACTOR: Modrall, Sperling, Roehl, Harris & Sisk, P.A.
PO Box 2168
Albuquerque, NM 87103-2168
Duane Brown

23. SCOPE OF AGREEMENT

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

MODRALL, SPERLING, ROEHL,
HARRIS & SISK, P.A.

THE CITY OF LAS CRUCES

BY: _____
PRINCIPAL

BY: _____
PURCHASING MANAGER

DATE: _____

DATE: _____

APPROVED AS TO FORM:

CITY ATTORNEY

EXHIBIT A

SCOPE OF SERVICES

Professional Services. Assist with the wording of the question calling for the election, prepare bond election ordinances to be considered by City Council, and prepare all legal documents required in connection with sale of the bonds. Ensure compliance with all statutory and constitutional requirements necessary for the valid issuance of bonds by the City. Issue an unqualified opinion as to the validity of the issue and the tax-exempt status of the issue. Prepare and file the transcripts of the proceedings. Perform such other activities as may be required for the valid issuance of the bonds.

Ratings and Credit Enhancement. Work with appropriate City officials to provide rating and credit enhancement companies with information regarding the bond issue. Assist in preparation of materials as may be required. Bond Council may be requested to accompany appropriate officials to meetings with rating agencies and credit enhancement companies. Make every effort and take appropriate action to assist the City in maintaining or improving the credit rating of the City.

Cooperation with Legal Council. Cooperate with legal council for the City in the preparation and adoption of all necessary ordinances, resolutions, notices, certificates and the publishing of all legal notices and the happening of any other events required for the successful sale, issuance and delivery of bonds.

Meetings of the City; Other Services. Attend meetings of the City Council as necessary and be available to City staff whenever requested. Be available to assist in the preparation and review of possible legislation affecting the City and project financing and to testify, if required, at legislative committee meetings regarding proposed legislation.

Payment for Services Rendered. All services provided by Bond Council will be paid by the City (1) upon the issuance of bonds or other securities, or (2) at the discretion of the City in the event a financing does not occur at a rate agreed upon by the Applicant provided substantial work was performed and only from the funds authorized by the City Council for the payment of fees incidental to the issuance of securities. No additional fees will be paid by the City except as provided in Exhibit B.

Additional Related Services. In the event the City determines it appropriate for Bond Council to perform duties in addition to duties related to the issuance of securities for the City, those duties will be set forth in a written amendment to the contract. While the City will consider whether separate compensation may be provided for the services, the compensation under such amendment is contingent upon sufficient appropriations and authorization by the City Council.

EXHIBIT B

SCHEDULE

SEE ATTACHED

COST PROPOSAL TO PROVIDE
BOND COUNSEL SERVICES
FOR
CITY OF LAS CRUCES, NEW MEXICO

RFP 10-11-307

Proposal Date: August 2, 2010
Closing Time: 4:00 p.m.

MODRALL, SPERLING,
ROEHL, HARRIS & SISK, P.A.

Bank of America Centre, Suite 1000
500 Fourth Street, N.W.
Post Office Box 2168 (87103-2168)
Albuquerque, New Mexico 87102
Telephone: (505) 848-1800
Facsimile: (505) 848-9710

123 East Marcy, Suite 201
Post Office Box 9318
Santa Fe, New Mexico 87504-9318
Telephone: (505) 983-2020

**COST PROPOSAL FOR BOND COUNSEL SERVICES
LAS CRUCES, NEW MEXICO**

Approach to Fees. Modrall Spering understands that the needs, on a deal-by-deal basis, of a public issuer of bonds determine the appropriate fee structure for that particular deal. Consequently, while we have set forth fees for various legal services in this Cost Proposal, we maintain a flexible approach and recognize that fees may need to be negotiated as bond issues are considered by the City. We are willing to adjust fees from the stated fees when appropriate to facilitate completion of the issue.

Compensation for Bond Counsel Services. We propose bond counsel fees for bond issues based upon the following fee schedules:

Fixed Term-Fixed Rate New Money and Refunding General Obligation Bond Issues	
<u>Size of Issue</u>	<u>Fee</u>
\$5,000,000 or less	\$17,500
Between \$5,000,000 and \$7,500,000	\$17,500 plus \$1.50 per \$1,000 principal amount between \$5,000,000 and \$7,500,000
Between \$7,500,000 and \$10,000,000	\$21,250 plus \$1.40 per \$1,000 principal amount between \$7,500,000 and \$10,000,000
Between \$10,000,000 and \$15,000,000	\$24,750 plus \$1.25 per \$1,000 principal amount between \$10,000,000 and \$15,000,000
Over \$15,000,000	\$31,000 plus \$1.00 per \$1,000 principal amount over \$15,000,000

Fixed Term-Fixed Rate New Money and Refunding Revenue Bond Issues	
<u>Size of Issue</u>	<u>Fee</u>
\$5,000,000 or less	\$20,000
Between \$5,000,000 and \$7,500,000	\$20,000 plus \$1.75 per \$1,000 principal amount between \$5,000,000 and \$7,500,000
Between \$7,500,000 and \$10,000,000	\$24,375 plus \$1.60 per \$1,000 principal amount between \$7,500,000 and \$10,000,000
Between \$10,000,000 and \$15,000,000	\$28,375 plus \$1.50 per \$1,000 principal amount between \$10,000,000 and \$15,000,000
Over \$15,000,000	\$35,875 plus \$1.25 per \$1,000 principal amount over \$15,000,000

<u>Fixed Rate Special Assessment District</u>	
<u>Size of Issue</u>	<u>Fee</u>
\$2,000,000 or less	\$30,000
Between \$2,000,000 and \$5,000,000	\$30,000 plus \$5.00 per \$1,000 principal amount between \$2,000,000 and \$5,000,000
Between \$5,000,000 and \$7,500,000	\$45,000 plus \$4.00 per \$1,000 principal amount between \$5,000,000 and \$7,500,000
Between \$7,500,000 and \$10,000,000	\$55,000 plus \$3.00 per \$1,000 principal amount between \$7,500,000 and \$10,000,000
Over \$10,000,000	\$62,500 plus \$2.00 per \$1,000 principal amount over \$10,000,000

<u>Industrial Revenue Bonds</u>
<p>\$0.30 per \$1,000 face amount of the bonds with a minimum fee of \$20,000 per issue. (The cost of IRB review counsel services as bond counsel to the City will be passed through to the developer of the IRB project).</p>

<u>Fixed Rate Public Improvement District Bonds</u>	
<u>Size of Issue</u>	<u>Fee</u>
\$3,000,000 or less	\$45,000
Between \$3,000,000 and \$5,000,000	\$45,000 plus \$5.00 per \$1,000 principal amount between \$3,000,000 and \$5,000,000
Between \$5,000,000 and \$7,500,000	\$55,000 plus \$4.00 per \$1,000 principal amount between \$5,000,000 and \$7,500,000
Between \$7,500,000 and \$10,000,000	\$65,000 plus \$3.00 per \$1,000 principal amount between \$7,500,000 and \$10,000,000
Over \$10,000,000	\$72,500 plus \$2.00 per \$1,000 principal amount over \$10,000,000

Modrall Sperling's bond counsel review of an application for a public improvement district ("PID") and issuance of PID bonds will be billed to the City separately, at the hourly rates described below. Pursuant to the City's Public Improvement District Ordinance, those fees are recovered by the City from the application fee required from the applicant. The application fee paid by the developer of the PID project is generally recoverable from bond proceeds.

<u>Fixed Rate Tax Increment Development District Bonds</u>	
<u>Size of Issue</u>	<u>Fee</u>
\$3,000,000 or less	\$45,000
Between \$3,000,000 and \$5,000,000	\$45,000 plus \$5.00 per \$1,000 principal amount between \$3,000,000 and \$5,000,000
Between \$5,000,000 and \$7,500,000	\$55,000 plus \$4.00 per \$1,000 principal amount between \$5,000,000 and \$7,500,000
Between \$7,500,000 and \$10,000,000	\$65,000 plus \$3.00 per \$1,000 principal amount between \$7,500,000 and \$10,000,000
Over \$10,000,000	\$72,500 plus \$2.00 per \$1,000 principal amount over \$10,000,000

Modrall Sperling's bond counsel review of an application for a tax increment development district ("TIDD") and issuance of TIDD bonds will be billed to the City separately, at the hourly rates described below. Those fees are recovered by the City from the application fee required from the applicant. The application fee paid by the developer of the TIDD project is generally recoverable from bond proceeds.

The fee for any additional disclosure counsel service such as the preparation of the preliminary official statement, the official statement and the 10b-5 opinion shall be at approximately 75% of the bond counsel fee. We recognize that some bond underwriters currently require independent counsel for preparation of the disclosure documents and the related due diligence investigation and in that circumstance would not expect to charge any additional fees for disclosure matters.

As required by the RFP, in the event that the securities are not issued, Modrall Sperling will charge the City for professional fees at hourly rates for services provided up to the time the decision was made by the City to stop efforts to issue securities. We would also seek reimbursement of reasonable out-of-pocket expenses. We understand that payment in that situation would be dependent on the availability of funds and appropriations by Council in the discretion of the City.

The rates quoted above and the hourly rates discussed below are comparable with the rates that Modrall Sperling charges other clients for bond counsel services under recent bond counsel proposals. Somewhat lower rates are provided under older contracts (awarded before 2009).

Hourly Rate. For tasks not related to issuance of a specific series of bonds (including loans from the New Mexico Finance Authority), Modrall Sperling proposes to bill the City at \$255 per hour for the services of Duane Brown, \$265 per hour for the services of Art Melendres; \$255 per hour for the services of Peter Franklin; \$240 per hour for the services of Chris Muirhead, \$185 per hour for Sam Gill; and \$90 per hour for the services of our paralegals, Julie Rael, Jon Helm and Jennifer DeVore. The above-referenced attorneys will be responsible for performing bond counsel services for the City consistent with the scope of services discussed in

the related Technical Proposal. Services for other attorneys would be equivalent to those rates based upon their experience. Modrall Sperling utilizes specialized computer software for compiling and maintaining client bills and routinely provides its clients with detailed monthly billings summarizing the work performed. We will maintain the proposed billing rates for the initial and all contract option periods (total of 4 years).

Complex Issues. In unusual circumstances, where the complexity of the issue warrants an adjustment in the fees, we propose that Modrall Sperling and the City negotiate a mutually acceptable fee prior to the date of the adoption of the final bond ordinance by the City. We believe that the rates we are quoting in this proposal are fair and at the "market rate." We do not follow the practice of bidding low on a proposal and then requesting an adjustment in the fee after issuance of the bonds, hoping to convince the public officials overseeing the contract that the work was more complex than normal. No request for upper adjustment will be made by us unless it is clear to both the City and us that the issue was so out of the ordinary that the documents essentially had to be recreated. In such case, the City will be consulted as the issue progresses.

The fees quoted above do not contemplate issues involving multi-mode issues, credits swaps, interest rate swaps or other similar types of complex or nontraditional techniques, including those which may develop over the period of time covered by this proposal. With respect to such financing techniques, we would propose to negotiate a mutually acceptable fee, based upon the complexity of the transaction.

Advice Against Issuance. The Modrall Firm has provided and will continue to provide objective legal advice with respect to a proposed bond issue, without regard to fees, including advice against issuing of bonds if warranted.

It is our philosophy, if there are legal problems with respect to a proposed structure, to find a different structure or procedure to accomplish the goals of the client. Before advising against issuance, we will exhaust our resources to find a manner in which the issue can be restructured to accomplish the financing.

Costs and Taxes. We propose to bill gross receipts taxes and out-of-pocket expenses (such as photocopying, printing, long distance telephone and facsimile calls, express mailings, travel expenses, government filing fees, printing expenses and other similar expenses incurred by the Firm in performing bond counsel services to the City) in addition to the amount billed for our services. We will not bill the City for overhead expenses.

The following list is our current charges for most expenses:

Other Expenses

Rate of Compensation

Photocopies	\$.15/page
Mileage	\$.55/mile
Facsimile	\$.18/page (local)
	\$.64/page (long distance)
Long Distance Telephone	No Charge
Postage under \$1.00 per item	No Charge
Postage over \$1.00 per item	Actual Cost
Courier Service	Actual Cost
Airfare	Actual Cost
Lodging	Actual Cost
Publications	Actual Cost

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