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**City of Las Cruces**<sup>®</sup>  
 PEOPLE HELPING PEOPLE

**Council Action and Executive Summary**

Item # 6      Ordinance/Resolution# 10-11-492

For Meeting of \_\_\_\_\_  
 (Ordinance First Reading Date)

For Meeting of May 16, 2011  
 (Adoption Date)

**TITLE:** A RESOLUTION AWARDING AN INDEFINITE COST, INDEFINITE QUANTITY PRICE AGREEMENT FOR FINANCIAL ADVISOR SERVICES TO RBC CAPITAL MARKETS, LLC OF ALBUQUERQUE, NM., FOR A TERM OF UP TO FIVE (5) 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 for Financial Advisor services.

<b>COUNCIL DISTRICT:</b> N/A		
<b><u>Drafter/Staff Contact:</u></b> Robert Scaling	<b><u>Department/Section:</u></b> Finance Department	<b><u>Phone:</u></b> 541-2035
<b><u>City Manager Signature:</u></b>		

**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 Financial Advisor will ensure compliance with all statutory and constitutional requirements necessary for the valid issuance of bonds and other debt. Additionally, the Financial Advisor 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. 10-11-492 from nine known firms resulting in four responses. The proposals were evaluated by the City Selection Advisory Committee who recommends the highest ranking firm, RBC Capital Markets, LLC of Albuquerque, NM for contract award.

**SUPPORT INFORMATION:**

1. Resolution 10-11-492
2. Exhibit "A" - Purchasing Manager Request to Contract (PMRC)
3. Exhibit "B" - Contract

(Continue on additional sheets as required)

**SOURCE OF FUNDING:**

<b>Is this action already budgeted?</b>  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: _____
		<input type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)
		<input type="checkbox"/>	Proposed funding is from fund balance in the _____ Fund.
<b>Does this action create any revenue?</b>  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 \$_____ for FY
	No	<input checked="" type="checkbox"/>	There is no new revenue generated by this action.

**BUDGET NARRATIVE**

N/A

**FUND EXPENDITURE SUMMARY:**

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

**OPTIONS / ALTERNATIVES:**

1. Vote "Yes"; this will approve the contract award to RBC Capital Markets, LLC as Financial Advisor for the City of Las Cruces for the specified term.
2. Vote "No"; this will reject the contract with RBC Capital Markets, LLC and require staff to seek alternate Financial Advisor.
3. Vote to "Amend"; this would be conditioned upon compliance to City Procurement Code.
4. Vote to "Table"; this could cause the current Financial Advisor contract to expire and require staff to suspend any current activities that might require Financial Advisor services.

**REFERENCE INFORMATION:**

N/A

(Continue on additional sheets as required)

**RESOLUTION NO. 10-11-492**

**A RESOLUTION AWARDED AN INDEFINITE COST, INDEFINITE QUANTITY PRICE AGREEMENT FOR FINANCIAL ADVISOR SERVICES TO RBC CAPITAL MARKETS, LLC OF ALBUQUERQUE, NM., FOR A TERM OF UP TO FIVE (5) 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 Financial Advisor 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**, Financial Advisor will cooperate with City staff in any events required for the successful sale, issuance, and delivery of bonds; and

**WHEREAS**, Financial Advisor will also perform such other activities and services as may be required; and

**WHEREAS**, the City solicited formal competitive proposals for required Financial Advisor services via RFP No. 10-11-492 resulting in evaluation of four 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 RBC Capital Markets, LLC of Albuquerque, NM; and

**WHEREAS**, the SAC recommends award to RBC Capital Markets, LLC 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 RBC Capital Markets, LLC of Albuquerque, NM for Financial Advisor services is hereby approved.

(II)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST

\_\_\_\_\_  
City Clerk

(SEAL)

VOTE:

- Mayor Miyagishima: \_\_\_\_\_
- Councillor Silva: \_\_\_\_\_
- Councillor Connor: \_\_\_\_\_
- 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: May 16, 2011**

**Resolution No.: 10-11-492**

**Contract Purchase For  
Financial Advisor Services**

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

**RFP SOLICITATION INFORMATION:**

- 1. RFP No./ Due Date: **RFP No. 10-11-492/March 29, 2011**
- 2. Description: **Financial Advisor Services**
- 3. Using Department: **Finance Department**
- 4. Number of Responses Accepted: **Four (4)**
- 5. Award Recommendation To: **RBC Capital Markets, LLC of Albuquerque, NM**
- 6. Total Award Amount: **Indefinite pending sales of bonds**
- 7. Contract Duration: **Four years pending approved budget**

**LOCAL PREFERENCE FACTOR**

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

1/4/22/11  
Date

**CONFIRMATION OF FUND ENCUMBRANCE:**

REQUISITION or PURCHASE ORDER NUMBER:	<b>Various</b>
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## PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made and entered into on this date, \_\_\_\_\_ 2011, by and between the City of Las Cruces, New Mexico, hereinafter called "CITY" and "RBC CAPITAL MARKETS, LLC" (Contractor) of 6301 Uptown Blvd. NE, Suite 110, Albuquerque, New Mexico 87110, hereinafter called "CONTRACTOR".

### 1. PROJECT DESCRIPTION

Contractor to provide financial advisory services to the City of Las Cruces

### 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. 10-11-492 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 (per Cost Proposal 10-11-492). 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 projects that 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 (date of award) for a term of twelve months through month/day/year and, pending mutual written agreement, may be extended annually thereafter for up to four (4) more years through month/day/year.

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: Robert Scaling, Treasurer

With Copies to: City Attorney  
Purchasing Manager

TO CONTRACTOR: RBC Capital Markets, LLC  
6301 Uptown Blvd. NE, Suite 110  
Albuquerque, New Mexico 87110  
ATTENTION: Kevin Powers

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.

RBC CAPITAL MARKETS, LLC

THE CITY OF LAS CRUCES

BY: \_\_\_\_\_  
PRINCIPAL

BY: \_\_\_\_\_  
PURCHASING MANAGER

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

APPROVED AS TO FORM:

THE CITY OF LAS CRUCES

\_\_\_\_\_  
CITY ATTORNEY

\_\_\_\_\_  
CITY CLERK

# EXHIBIT A

## SERVICES

The professional services to be provided under and to be incorporated into the contract to be awarded pursuant to the RFP include, but are not limited to, the following:

- A. Assessment of Financial Resources and Recommended Plan of Financing.  
Review the City's financial option for long term financing and review financial resources in context of economic conditions as well as explicit justification and benefit of the projected financing. Recommend one or more financing plans, based on resources available, to meet and address the financing need.
- B. 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. Financial Advisor 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.
- C. Official Statement and Related Documents. With assistance from Bond Counsel for the City, prepare for review and approval by the City a preliminary and final official statement relating to any bonds to be offered for sale to prospective buyers of bonds. Arrange for the distribution of documents to a comprehensive list of prospective brokers, underwriters, banks and financial institutions.

Prepare bid forms, which conform to the municipal securities standards for all securities upon which bids will be solicited.

At times reasonably in advance of the proposed sale, consult with and advise the City concerning advertising information to prospective brokers, underwriters, purchasers and buyers, the provision of information to broaden the interest in the bonds to be sold. Recommend meetings with proposed purchasers of bonds, if needed.

Recommend structuring and timing of any bond campaign. Recommend groups to be involved in various meetings.

Furnish City with a reasonable supply of documents and to prospective buyers of the bonds.

Assist City in complying with reporting requirements under Securities and Exchange Commission Rule 15c2-12.

- D. Cooperation with Legal Counsel. Cooperate with legal counsel 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.
- E. Sale; Award of Bond; Issuance. Be represented at the sale by experienced personnel whose services will be available to the City in the tabulation and comparison of bids. Upon acceptance of a bid, coordinate the efforts of all parties toward payment and delivery of bonds as expeditiously as possible.
- F. Meetings of the City; Other Services. Attend meetings of the City and be available to City staff and legal counsel 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.
- G. Continuing Disclosure Requirement. Be prepared and able to assist the City in fulfilling its continuing disclosure obligations for annual financial information by coordinating the collection of financial information and assisting in preparation and filing of the continuing disclosure documents with all required agencies and information depositories.
- H. Additional Related Services. In the event the City determines it appropriate for the selected Financial Advisor 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.
- I. Extension to Other Governments. The contract resulting from this RFP solicitation will be conditioned upon the selected financial advisor being authorized to extend the same terms/conditions of the agreement to other governmental entities pursuant to the procurement rules of those entities. The City, however, will not be liable as a result of those extensions.

**EXHIBIT B**

**SCHEDULE**