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City of Las Cruces[®]
 PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 3 Ordinance/Resolution# 13-14-365

For Meeting of _____
 (Ordinance First Reading Date)

For Meeting of February 18, 2014
 (Adoption Date)

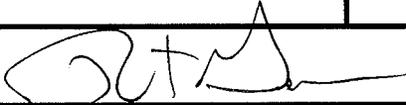
Please check box that applies to this item:

QUASI JUDICIAL LEGISLATIVE ADMINISTRATIVE

TITLE: A RESOLUTION APPROVING MULTIPLE INDEFINITE COST, INDEFINITE QUANTITY PROFESSIONAL SERVICES CONTRACTS FOR LEGAL SERVICES TO HOLT MYNATT MARTINEZ P.C.; JARMIE & ASSOCIATES; KELEHER & McLEOD, P.A.; MARTIN, LUTZ, ROGGOW & EUBANKS, P.C.; AND MILLER STRATVERT, P.A.; FOR UP TO FIVE YEARS CONDITIONED UPON ANNUAL RENEWALS AND APPROVED BUDGETS.

PURPOSE(S) OF ACTION:

To approve legal services contracts.

COUNCIL DISTRICT: N/A		
<u>Drafter/Staff Contact:</u> Monica Campbell	<u>Department/Section:</u> Legal/City Attorney	<u>Phone:</u> 541-2128
<u>City Manager Signature:</u>		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

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 specialized complexity of an issue and/or the time constraints of staff attorneys. Matters are assigned by the City Attorney to an attorney in a law firm which is under contract with the City to provide legal services.

Legal services contracts were last awarded in fiscal year 2009/2010. The current contracts have a term that ends on February 28, 2014.

The Purchasing Manager solicited proposals for legal services and seven law firms submitted proposals. On January 28, 2014 the Selection Advisory Committee and the City Attorney's designees evaluated the seven proposals and rated the law firms on a point system as follows:

Holt Mynatt Martinez, P.C.	2370*
Jarmie & Associates	2245*
Keleher & McLeod, P.A.	2475*

(Continue on additional sheets as required)

Littler Mendelson, P.C.	1670
Martin, Lutz, Roggow & Eubanks, P.C.	2280*
Miller Stratvert, P.A.	2475*
Robles Rael & Anaya P.C.	2035

*= five (5) top-rated law firms

The Selection Advisory Committee recommends awarding contracts to the five top-rated law firms: Holt Mynatt Martinez, P.C. (Las Cruces); Jarmie & Associates (Las Cruces and Albuquerque); Keleher & McLeod, P.A. (Albuquerque); Martin, Lutz, Roggow & Eubanks, P.C. (Las Cruces); and Miller Stratvert, P.A. (Las Cruces and Albuquerque).

SUPPORT INFORMATION:

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

SOURCE OF FUNDING:

Is this action already budgeted?	Yes	<input checked="" 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.
Does this action create any revenue?	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

The amount is undetermined. The multiple indefinite cost, indefinite quantity professional services contracts for legal services will be utilized with various approved budgets on an as-needed basis as legal issues are identified. In general, funds will come from 6340 (Liability Claims), 63000170-710130 (Other Contracted Legal Services). Other departmental accounts may be used as needed.

(Continue on additional sheets as required)

FUND EXPENDITURE SUMMARY

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

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will mean that legal services contracts will be awarded to the five top-rated law firms.
2. Vote "No"; this will mean that the legal services contracts will not be awarded. The City Attorney may have to explore alternate means of procuring legal services to assure effective advocacy on behalf of the City of Las Cruces, should new matters against the City be received.
3. Vote to "Amend"; this could change the number of law firms who are awarded contracts.
4. Vote to "Table"; this could deny the proposed legal services contracts. The City Attorney may have to explore alternate means of procuring legal services to assure effective advocacy on behalf of the City of Las Cruces, should new matters against the City be received.

REFERENCE INFORMATION:

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

N/A

(Continue on additional sheets as required)

RESOLUTION NO. 13-14-365

A RESOLUTION APPROVING MULTIPLE INDEFINITE COST, INDEFINITE QUANTITY PROFESSIONAL SERVICES CONTRACTS FOR LEGAL SERVICES TO HOLT MYNATT MARTINEZ P.C.; JARMIE & ASSOCIATES; KELEHER & McLEOD, P.A.; MARTIN, LUTZ, ROGGOW & EUBANKS, P.C.; AND MILLER STRATVERT, P.A.; FOR UP TO FIVE YEARS CONDITIONED UPON ANNUAL RENEWALS AND APPROVED BUDGETS.

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 outside counsel due to the specialized complexity of an issue and/or the time constraints of staff attorneys; and

WHEREAS, a request for proposals for legal services was issued by the Purchasing Manager and seven proposals were received; and

WHEREAS, the Selection Advisory Committee and the City Attorney's designees met on January 28, 2014, evaluated the seven proposals and recommends awarding contracts to the five (5) top-rated law firms.

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

(I)

THAT multiple indefinite cost, indefinite quantity legal services contracts are hereby awarded to the following law firms: Holt Mynatt Martinez, P.C.; Jarmie & Associates; Keleher & McLeod, P.A.; Martin, Lutz, Roggow & Eubanks, P.C.; and Miller Stratvert, P.A., for up to five years conditioned upon approved budgets and annual renewals.

(II)

THAT the Purchasing Manager is authorized to contract with each of the top five (5) law firms to provide legal services on an as-needed basis, as outlined in Exhibit "A", Purchasing Manager's Request to Contract, attached hereto and made a part of this resolution.

(II)

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

DONE AND APPROVED on this _____ day of _____, 20_____.

APPROVED:

ATTEST:

Mayor

City Clerk

(SEAL)

VOTE:

Mayor Miyagishima: _____
Councillor Silva: _____
Councillor Smith: _____
Councillor Pedroza: _____
Councillor Small: _____
Councillor Sorg: _____
Councillor Levatino: _____

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:



City Attorney

CITY OF LAS CRUCES

PURCHASING MANAGER'S REQUEST TO CONTRACT

For Meeting of: February 18, 2014

Resolution No.: 13-14-365

Contract Purchase For Legal Services

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

RFP SOLICITATION INFORMATION:

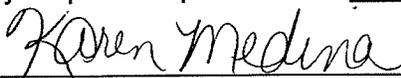
1. RFP No./ Due Date: RFP No. 13-14-365 / January 9, 2014
2. Description: Legal Services
3. Using Department: Legal
4. Number of Reponses Solicited: Nineteen (19)
5. Number of Responses Accepted: Seven (7)
6. Award Recommendation To: Holt Mynatt Martinez P.C.; Jarmie & Associates;
Martin, Lutz, Roggow, & Eubanks, P.C.;
And Miller Stratvert, P.A. all of Las Cruces, NM and
Keleher & McLeod P.A. of Albuquerque, NM
7. Total Award Amount: Indefinite cost/quantity
8. Contract Duration: Up to five years subject to annual renewals
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.**

 1/30/14
 Purchasing Manager Date

CONFIRMATION OF FUND ENCUMBRANCE:

REQUISITION or PURCHASE ORDER NUMBER:	TBD
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PROPOSAL EVALUATION		POINTS DISTRIBUTION									
TITLE: Legal Services		TOTAL POINTS POSSIBLE	Holt Mynatt Martinez P.C.	Jarmie & Associates	Kelehar & McLeod, P.A.	Littler Mendelson, PC	Martin, Lutz, Roggow & Subbanks,	Miller Stratvert PA	Robles, Rael & Anaya PC		
RFP NO.: 13-14-365			no	no	Yes	no	Yes	Yes	no		
NM RESIDENCE PREFERENCE (YES or NO)			0.0	0.0	200.0	0.0	200.0	200.0	0.0		
If "YES", Add (TOTAL POINTS POSSIBLE) X .05											
CRITERIA											
Ability to provide cost effective defense		1000	725	750	775	500	650	750	675		
General litigation experience of attorneys who will be responsible for City matters.		1200	900	840	990	720	840	870	840		
Litigation experience in the specific area of law		800	580	500	620	480	560	560	520		
Performance of the firm with previous clients, based upon quality of the work, control of costs, ability to meet schedules or deadlines, and responsiveness to the client		600	450	465	405	375	465	420	405		
Clarity of proposal		400	310	280	300	250	270	300	280		
			0	0	0	0	0	0	0		
Rating Sheets Raw Scores		4000	2965	2835	3090	2325	2805	2900	2720		
Subtract Highest Scorer			500	480	500	430	500	485	465		
Subtract Lowest Scorer			255	270	315	225	225	300	220		
Rating Sheet Net Score			2210	2085	2275	1670	2080	2115	2035		
NET SCORE WITH RESIDENT PREFERENCE			2210.0	2085.0	2475.0	1670.0	2280.0	2315.0	2035.0		
TOTAL PHASE I SCORES			2210	2085	2475	1670	2280	2315	2035		
LOCAL PREFERENCE			160.0	160.0	0.0	0.0	0.0	160.0	0.0		
TOTAL PHASE I & II SCORES			2370.0	2245.0	2475.0	1670.0	2280.0	2475.0	2035.0		



PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made and entered into as of the _____ day of _____ 201__ by and between the City of Las Cruces, a New Mexico municipal corporation, ("City") and _____ ("Contractor").

The parties agree as follows:

1. PROJECT DESCRIPTION

Legal matters requiring outside counsel are assigned as needed by the City to law firms who have contracted with the City.

2. SCOPE OF SERVICES

The Contractor shall provide legal representation to the City and its public employees as set forth in its response to the City's RFP No. 13-14-365 submitted to the City on _____. The City has the right to designate which attorney shall principally handle any specific matter. The Proposal is hereby incorporated in this Agreement to the extent its provisions are consistent with the Agreement.

The Contractor shall not undertake any representation of the City to 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.

3. CASE ASSIGNMENTS

This Agreement 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.

4. STAFFING

Only one legal 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 the City is to be billed for more than ten (10) hours of a legal professional's time in any one (1) 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 (10) hours. Intra office conferences are to be billed by only one (1) of the participants.

Contractor shall investigate whether it would be more cost effective 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, clerks, paralegals or legal assistants 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.

5. COMPENSATION AND EXPENDITURES

In consideration for the services provided pursuant to Paragraph 2, "Scope of Services," 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 Agreement. Attorney time must be shown in increments of six minutes (0.1 hour). 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 as 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.

c. The applicable New Mexico gross receipts tax rate on amounts for which such tax has been or will be paid.

d. No charges shall be billed to the City for any of the following services or items unless authorized by the City Attorney.

(1) Secretarial, word processing, proofreading, filing, office machine attendants, file organization or other clerical services.

(2) Photocopy expenses at more than \$.20 a page.

(3) Local telephone expenses.

(4) Charges related to computer usage, online or internet related investigation or research, including legal research through subscription services such as Lexis-Nexis and Westlaw.

(5) Local faxes, incoming or outgoing.

- (6) Audit letters, incoming or outgoing.
- (7) Any other expense properly chargeable to overhead or as a capital expense.

6. TOTAL AMOUNTS PAYABLE

The total of all amounts payable under this Agreement shall not exceed the amount appropriated by City Council. The total amounts payable under this Agreement 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 Agreement 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 5, "Compensation and Expenditures" 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 OF AGREEMENT

This Agreement covers services rendered between _____, 20__ and _____, 20__. This Agreement terminates the last moment of _____, 20__, unless sooner terminated pursuant to Paragraph 12, "Termination," or Paragraph 15, "Appropriations," or unless renewed pursuant to Paragraph 13, "Renewal."

8. COPIES OF PLEADINGS AND DOCUMENTS

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 Agreement.

9. 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.

10. 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.

11. MEDIA RELATIONS

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

12. TERMINATION

This Agreement 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.

13. RENEWAL

This Agreement may be renewed for four (4) additional one-year periods at the sole option and discretion of the City. Any renewal of this Agreement shall be in writing and shall be the subject of further negotiations between the parties. If this Agreement 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 Agreement period at the rates set forth in Paragraph 5, "Compensation and Expenditures." Alternatively, the City may require the Contractor to return files, including but not limited to the Contractor's work product, to the City.

14. INDEPENDENT CONTRACTOR

The Contractor, and its agents and employees, are independent contractors performing services for the City and are not employees of the City. 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. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City Council, this Agreement 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.

16. ASSIGNMENT

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

17. SUBCONTRACTING

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

18. INSURANCE

At the time of the execution of the Agreement, 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 Agreement. Such coverage shall be in an amount not less than \$1,000,000.00 per occurrence with no greater than a \$5,000.00 deductible. The amount of any deductible shall be stated. Such insurance shall remain in full force and effect during the term of this Agreement. The Contractor shall notify the City within ten (10) days of any change or cancellation of such insurance.

19. RECORDS AND AUDIT

The Contractor shall maintain detailed time records which set forth each service rendered in each matter, the person rendering such service, the hourly rate, the time expended in rendering such service and the date such service was rendered. The Contractor shall submit these records monthly along with its billings to the City. 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 Agreement does not foreclose the City's right to recover excessive or illegal payments.

20. 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.

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 Agreement.

22. 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.

28. APPLICABLE LAW

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

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

CITY OF LAS CRUCES

Purchasing Manager

Approved as to form:

Harry S. (Pete) Connelly
City Attorney

[Contractor Name]

BY: _____