

The Purchasing Memo

Date: July 24, 2025

To: Governing Body and Finance Committee

From: Erminia M. Tapia, Business Operations Manager

Via: Emily K. Oster, Finance Director *Emily K. Oster*

Subject: Legal Services Contract for Financial Advisory Services

Vendor Name: Modrall Sperling

Munis Vendor Number: 8391

ITEM AND ISSUE:

Finance Department respectfully requests your review and approval of a Legal Services Contract in the total amount of \$289,266.33 for Financial Advisory Services for a term of four years with Modrall Sperling.

CONTRACT NUMBER:

The FY26 Munis contract number is 3260082

BACKGROUND AND SUMMARY:

If this contract is approved, Modrall Sperling will provide legal services and financial advisory services to the City to support planned debt financing transactions. This includes coordinating and managing the pre-closing of a bond sale in August 2025 to issue \$25,000,000 of new general obligation bonds and delivery of funds to the City.

Other services expected to be provided in FY2026 include legal support for the execution of loan and grant agreements for several important Public Utilities Department projects. Planned utility projects include execution of three loan agreements for the Clean Water State Revolving Fund (\$114,000,000 Wastewater Utility System Loan, \$17,000,000 Water Utility System Loan, and \$20,000,000 Environmental Services Division Loan), execution of loan and grant agreements for three Water Projects Fund transactions totaling \$15,250,000, and a Drinking Water State Revolving Fund loan agreement for \$25,000.

Professional and experienced legal support is essential to ensuring that new debt financing agreements are executed in a manner that is advantageous to the City. Peter Franklin of Modrall Sperling has served as the City's Bond Counsel for many years and has valuable institutional knowledge relating to the City's outstanding debt and past practices relating to debt issuance and management.

The Finance Department respectfully requests approval of a legal services contract with Modrall Sperling for financial advisory services in the total amount of \$289,266.33 for a four-year term.

PRIOR APPROVALS AND SUPPORTING INFORMATION:

FUNDING SOURCE:

Fund Name/Number: GENFUND/100

Munis Org Name/Number: TRS Admin/ 1000151

Munis Object Name/Number: Legal Contracts/510200

Amount: \$82,000.00

Fund Name/Number: GENFUND/100

Munis Org Name/Number: TRS Admin/ 1000151

Munis Object Name/Number: Professional Contracts/510300

Amount: \$26,836.62

Fund Name/Number: WTRMGMNT/505

Munis Org Name/Number: WTR Ops Admin/ 5050381

Munis Object Name/Number: Other Consulting/510340

Amount: \$108,305

Fund Name/Number: ENVSVCS/510

Munis Org Name/Number: ESD Ops Admin/ 5000361

Munis Object Name/Number: Other Consulting/510300

Amount: \$36,062

Fund Name/Number: WSTWTRMGMNT/500

Munis Org Name/Number: WTR Ops Admin/ 5000361

Munis Object Name/Number: Professional Contracts/510300

Amount: \$36,062

Budget Officer / Designee: Andy Hopkins **Date:** 07/25/2025

Budget Officer Comment/Exceptions: _____

PROCUREMENT METHOD:

The procurement method used was NMSA 1978, Section 13-1-98, Exempt

Chief Procurement Officer (CPO)/Designee: JoAnn Levato Montaño **Date:** 07/25/2025

CPO Comment/Exceptions: _____

ATTACHMENTS:

CPO Service Determination Email

Procurement document: Exemption Determination/Email

Vendor's Quote

Certificate of Liability Insurance (COI) (add City as an additional insured, project specifics, contact person, and primary project location)

Legal Services Contract

OSTER, EMILY K.

From: DUTTON-LEYDA, TRAVIS K.
Sent: Tuesday, July 22, 2025 8:58 AM
To: OSTER, EMILY K.
Cc: TAPIA, ERMINIA M.; Purchasing DET
Subject: RE: Request for determination for legal services - Urgent

Hi Emily,

Here are the service and exempt determinations.

Legal services involving advice, consultation, or representation of the City are exempt under SFCC 1987, Section 11-13(B)(3).

This determination classifies the scope of work as *Professional Services*. It pertains solely to this classification and does not assess whether the scope of work or procurement method complies with all applicable legal standards. I reserve the right to revise this determination should there be any changes to the scope of work from what was originally submitted. The procurement process must adhere to the policies and procedures outlined by the City of Santa Fe, Central Purchasing, the Procurement Manual, and all relevant state statutes.

Please note:

- Save this email as a PDF and upload it into the corresponding Munis records.
- Check with WorkQuest dba Horizons of New Mexico (vendor # 8673) (mloehman@horizonsofnewmexico.org) **if** this service appears on their approved list.
- If your request includes anything that needs to be reviewed and preapproved by another City Department/Division, please send the same SOW to the corresponding email address and include their response in your packet/Munis.
 - Treasury (Point of Sale Systems) – questions: drsenas@santafenm.gov; clromero@santafenm.gov. Request signature from: clromero@santafenm.gov
 - IT components (everything IT) – questions: ereview@santafenm.gov. Request signature from: edcandelaria@santafenm.gov;
 - Copy: zxdushdurova@santafenm.gov; lenobes@santafenm.gov; lfworstell@santafenm.gov
 - Vehicles – questions: fleet@santafenm.gov. Request signature from: dmjaramillo@santafenm.gov
 - Grants – questions: grants@santafenm.gov. Request signature from: evlujan@santafenm.gov
 - Construction, Facilities, Furniture, Fixtures, Equipment, etc. – questions: fmdreview@santafenm.gov. Request signature from: jsburnett@santafenm.gov
 - Emergency Related Purchases – questions oem@santafenm.govand. Request signature from: klmorgan@santafenm.gov
 - Asset over \$5k – questions: accountspayable@santafenm.gov. Request signature from: jxbolden@santafenm.gov
- Ensure that the current and appropriate templates and forms are used https://intranet.santafenm.gov/finance_1 and documented [procedures/laws/rules](#) are followed.
- When processing this procurement, please ensure the procurement number issued by Munis and the procurement name are used in the appropriate documents and the subject of emails.
- If you are processing a procurement where the forecasted amount is => \$60k, per NMSA 1978, Section 13-1-117.1, if you aren't using a cooperative or existing contract, you must process an RFP.
- < \$20k per year, one quote is acceptable.
- From \$20k to \$60k per year, if you aren't using a cooperative or existing contract, you must provide 3 quotes in your req. Must use the Munis Bid Module, OpenGov, or Pavilion.

- **Identify your funding source and notify Purchasing.**
It's essential to determine the funding source early, as it impacts the required documentation and contract language. For example, if federal funds are being used, specific federal provisions must be included in both the procurement request and the resulting contract. Notifying Purchasing of the funding source upfront ensures compliance and avoids delays.
- Follow the link below to review existing price agreements, contracts, or cooperative agreements that might be applicable to this request. You might be able to use an existing price agreement/contract to save time and money.
 - [Pavilion: Free Cooperative Contract Search for Governments](#) (please work with Purchasing if you think you found an existing or cooperative contract that might work)
- Submit via [Submit Purchase Requests](#) or the appropriate email address:
 - Determination requests to purchasing_det@santafenm.gov
 - All other requests to purchasing@santafenm.gov

Thank you for submitting this scope of work for my review.

 [Book time to meet with me](#)

Regards,

Travis Dutton-Leyda, City of Santa Fe Chief Procurement Officer
200 Lincoln Avenue
Santa Fe, NM 87501
505-629-8351
tkduttonleyda@santafenm.gov

Vendor Registration Sites and Current Procurement Opportunities:

[Current] <https://santafenm.munisselfservice.com/vss/>

[Transitioning] <https://procurement.opengov.com/portal/santafenm>

[Current] <https://www.withpavilion.com/>

Internal Link: https://intranet.santafenm.gov/central_purchasing_division_cpd



“A journey of a thousand miles begins with a single step” ~ Lao Tzu

From: OSTER, EMILY K. <ekoster@santafenm.gov>

Sent: Monday, July 21, 2025 5:06 PM

To: Purchasing DET <purchasing_det@santafenm.gov>

Cc: TAPIA, ERMINIA M. <emtapia@santafenm.gov>; DUTTON-LEYDA, TRAVIS K. <tkduttonleyda@santafenm.gov>

Subject: Request for determination for legal services - Urgent

Hi Purchasing team,

I am requesting a determination for the following scope of work for legal services. This request is urgent as I am trying to get a contract prepared to go to Finance Committee and Governing Body next week.

Thank you in advance for your help!

1. **Scope of Work.** The Contractor shall perform the following work:

- A. Prepare and deliver to the City the financing timetable, all bond resolutions and bond sale resolutions necessary to the issuance of the bonds, as well as all proceedings, transcripts and minutes that are required to be adopted by the City.
- B. Prepare information for and participate in presentations to rating agencies and prospective bond purchasers as required by the City and attend all meetings of the City Council at the time of the sale and closings, and additional meetings as required by the City.
- C. Collaborate with the City staff, the Financial Advisor, the Investment Committee and Underwriters to structure issues that minimize the City's transactions costs and its credit risk and prepare all ordinances, agreements, preliminary offering statements, official statements, other securities laws disclosure documents and any other documents pursuant to which bonds will be authorized, secured and delivered.
- D. Upon request, assist the City with legal documentation and legislation in connection with obtaining loans through the New Mexico Finance Authority.
- E. Coordinate the delivery of the documents and other activities, and plan, coordinate and manage the pre-closing of bond sales in a manner to assure the timely closing of bond sales and the delivery of funds to the City; prepare and file final transcripts of the proceedings to the issuance of the bonds.
- F. Upon request, provide to the City continuing information concerning federal, state and local statutory and regulatory changes, including but not necessarily limited to arbitrage, and other current developments relating to the City's bond issues.
- G. Upon request, participate in discussions with the City and its financial advisors regarding the evaluation of options and alternatives for issuing additional bonds, refunding or calling of outstanding bonds and new financing techniques, including the delivery of oral and written legal advice on particular projects.

- H. Brief the City officials, employees, counsel and consultants on matters, which impact the issuance of the City bond financing. This includes rendering of an opinion and availability for phone consultation on questions of federal and state law, nature and priority of the security of bonds and legality of the issuance of the bonds under applicable securities laws, and the tax-exempt status of the bonds.
- I. Review and advise the City regarding drawdowns of bond proceeds,, procedures, and other matters regarding bond project disbursement regulations.
- J. Assist the City Attorney, if requested, in any litigation relating to or in any way affecting the issuance, sale, execution and delivery of the City bonds, notes, certificates, loan transactions or other debt transactions..
- K. Draft state legislation and provide testimony before legislative committees when requested by the City; provide other special advice or opinions requested by the City, relating to the City bond financing.
- L. Upon request, advise City staff on application of the provisions of its adopted bond ordinances, in compliance with state and federal laws and regulations.
- M. Upon request, provide legal advice regarding bond matters.

Thank you very much for your help!

Emily K. Oster, CPA, CGMA, CPO
Finance Director
City of Santa Fe
200 Lincoln Avenue
Santa Fe, NM 87501
C: 505-629-3411
ekoster@santafenm.gov
santafenm.gov



Here is a breakdown of the fees I anticipate for FY 2026. The fees are based on the fee schedule attached to the most recent contract, which has not changed in the last 20 years, and are discounted from the contract fee where noted.

- Clean Water State Revolving Fund loan agreements (\$114,000,000 Wastewater Utility System Loan, \$17,000,000 Water Utility System Loan, and \$20,000,000 Environmental Services Division loan): \$100,000*
- \$25,000,000 General Obligation Improvement Bonds (bond and disclosure counsel): \$106,000
- \$5,500,000 Water Project Fund loan/grant, \$2,000,000 WPF loan/grant, and \$7,750,000 Agreement: \$41,775**
- Drinking Water State Revolving Fund loan agreement: \$25,000.

Total Fees: \$289,266.33

* This fee amount reflects a discount from fees of (1) \$293,900, if the fee for each loan is computed separately, and (2) \$258,975, if the 3 loans are treated as a single \$151,000,000 loan.

** This fee amount reflects a discount from fees of \$80,500, if the fee for each transaction is computed separately; the fee is instead computed by treating all 3 transactions as a single \$15,250,000 loan/grant.

*** This fee is based on the minimum fee charged for a revenue bond transaction.

Costs (primarily FedEx and publications) and GRT will be charged in addition to the fees described above. Additional work requested by the City that is not related to a pending transaction will be billed separately at the blended hourly rate of \$285, for a total of \$289,266.33 including GRT.

Thank you,



Peter Franklin

Attorney/Shareholder

Modrall Sperling | www.modrall.com

P.O. Box 9318 | Santa Fe, NM 87504-9318

123 East Marcy Suite 201 | Santa Fe, NM 87501

D: 505.984-2856 | O: 505.983.2020 | F: 505.988.8996

**ADDITIONAL REMARKS SCHEDULE**

AGENCY HUB International Insurance Services (SOW)		License # 0757776	NAMED INSURED Modrall, Sperling, Roehl, Harris & Sisk P.A. 500 4th Street NW Ste 1000 Albuquerque, NM 87102
POLICY NUMBER SEE PAGE 1			
CARRIER SEE PAGE 1	NAIC CODE SEE P 1	EFFECTIVE DATE: SEE PAGE 1	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance

Description of Operations/Locations/Vehicles:

Umbrella is form following. Additional Insured, Waiver of Subrogation and Primary Non-Contributory apply

Conditions
(continued)

Transfer Or Waiver Of Rights Of Recovery Against Others

We will waive the right of recovery we would otherwise have had against another person or organization, for loss to which this insurance applies, provided the **insured** has waived their rights of recovery against such person or organization in a contract or agreement that is executed before such loss.

To the extent that the **insured's** rights to recover all or part of any payment made under this insurance have not been waived, those rights are transferred to us. The **insured** must do nothing after loss to impair them. At our request, the **insured** will bring **suit** or transfer those rights to us and help us enforce them.

This condition does not apply to **medical expenses**.



General Liability

Supplementary Payments
(continued)

h. release attachments;

but only for bond amounts within the available Limit Of Insurance. We do not have to furnish these bonds.

C. reasonable expenses incurred by the **insured** at our request to assist us in the investigation or defense of such claim or **suit**, including actual loss of earnings up to \$1000 a day because of time off from work.

D. costs taxed against the **insured** in the **suit**, except any:

1. attorney fees or litigation expenses; or
2. other loss, cost or expense;

in connection with any injunction or other equitable relief.

E. prejudgment interest awarded against the **insured** on that part of a judgment we pay. If we make an offer to pay the applicable Limit Of Insurance, we will not pay any prejudgment interest based on that period of time after the offer.

F. interest on the full amount of a judgment that accrues after entry of the judgment and before we have paid, offered to pay or deposited in court the part of the judgment that is within the applicable Limit Of Insurance.

Supplementary Payments does not include any fine or other penalty.

These payments will not reduce the Limits Of Insurance.

Our obligation to make these payments ends when we have used up the applicable Limit Of Insurance.

Coverage Territory

This insurance applies anywhere, provided the **insured's** responsibility to pay damages, to which this insurance applies, is determined in a **suit** on the merits brought in the United States of America (including its possessions and territories), Canada or Puerto Rico, or in a settlement to which we agree.

Who Is An Insured

Sole Proprietorships

If you are an individual, you and your spouse are **insureds**; but you and your spouse are **insureds** only with respect to the conduct of a business of which you are the sole owner.

If you die:

- persons or organizations having proper temporary custody of your property are **insureds**; but they are **insureds** only with respect to the maintenance or use of such property and only for acts until your legal representative has been appointed; and
- your legal representatives are **insureds**; but they are **insureds** only with respect to their duties as your legal representatives. Such legal representatives will assume your rights and duties under this insurance.

Who Is An Insured
(continued)

Partnerships Or Joint Ventures

If you are a partnership (including a limited liability partnership) or a joint venture, you are an **insured**. Your members, your partners and their spouses are **insureds**; but they are **insureds** only with respect to the conduct of your business.

Limited Liability Companies

If you are a limited liability company, you are an **insured**. Your members and their spouses are **insureds**; but they are **insureds** only with respect to the conduct of your business. Your managers are **insureds**; but they are **insureds** only with respect to their duties as your managers.

Other Organizations

If you are an organization (including a professional corporation) other than a partnership, joint venture or limited liability company, you are an **insured**. Your directors and **officers** are **insureds**; but they are **insureds** only with respect to their duties as your directors or **officers**. Your stockholders and their spouses are **insureds**; but they are **insureds** only with respect to their liability as your stockholders.

Employees

Your **employees** are **insureds**; but they are **insureds** only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

However, no **employee** is an **insured** for:

A. **bodily injury, advertising injury or personal injury:**

1. to you, to any of your directors, managers, members, **officers** or partners (whether or not an **employee**) or to any co-**employee** while such injured person is either in the course of his or her employment or while performing duties related to the conduct of your business;
2. to the brother, child, parent, sister or spouse of such injured person as a consequence of any injury described in subparagraph A.1. above; or
3. for which there is any obligation to share damages with or repay someone else who must pay damages because of any injury described in subparagraphs A.1. or A.2. above.

With respect to **bodily injury** only, this limitation does not apply to:

- you or to your directors, managers, members, **officers**, partners or supervisors as **insureds**; or
- your **employees**, as **insureds**, with respect to such damages caused by cardio-pulmonary resuscitation or first aid services administered by such an **employee**; or

B. **property damage** to any property owned, occupied or used by you or by any of your directors, managers, members, **officers** or partners (whether or not an **employee**) or by any of your **employees**.

This limitation does not apply to **property damage** to premises while rented to you or temporarily occupied by you with permission of the owner.



General Liability

Who Is An Insured
(continued)

Volunteers

Persons who are volunteer workers for you are **insureds**; but they are **insureds** only for acts within the scope of their activities for you and at your direction.

Real Estate Managers

Persons (other than your **employees**) or organizations acting as your real estate managers are **insureds**; but they are **insureds** only with respect to their duties as your real estate managers.

Permissive Users Of Mobile Equipment

With respect to **mobile equipment** registered in your name under a motor vehicle registration law:

- A. persons driving such equipment on a public road with your permission are **insureds**; and
- B. persons or organizations responsible for the conduct of such persons described in subparagraph A. above are **insureds**; but they are **insureds** only with respect to the operation of the equipment and only if no other insurance of any kind is available to them.

However, no person or organization is an **insured** with respect to:

- **bodily injury** to any co-**employee** of the person driving the equipment; or
- **property damage** to any property owned or occupied by or loaned or rented to you, or in your charge or the charge of the employer of any person who is an **insured** under this provision.

Vendors

Persons or organizations who are vendors of your **products** are **insureds**; but they are **insureds** only with respect to their liability for damages for **bodily injury** or **property damage** resulting from the distribution or sale of your **products** in the regular course of their business and only if this insurance applies to the **products-completed operations hazard**.

However, no such person or organization is an **insured** with respect to any:

- assumption of liability by them in a contract or agreement. This limitation does not apply to the liability for damages for **bodily injury** or **property damage** that such vendor would have in the absence of such contract or agreement;
- representation or warranty unauthorized by you;
- physical or chemical change in your **products** made intentionally by the vendor;
- repackaging, unless unpacked solely for the purpose of inspection, demonstration or testing, or the substitution of parts under instruction from the manufacturer and then repacked in the original container;
- failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business in connection with the distribution or sale of your **products**;
- demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of your **products**; or
- of your **products** which, after distribution or sale by you, have been labeled or relabeled or used as a container, ingredient or part of any other thing or substance by or for the vendor.

Who Is An Insured

Vendors (continued)

Further, no person or organization from whom you have acquired your products, or any container, ingredient or part entering into, accompanying or containing your products, is an insured under this provision.

Lessors Of Equipment

Persons or organizations from whom you lease equipment are insureds; but they are insureds only with respect to the maintenance or use by you of such equipment and only if you are contractually obligated to provide them with such insurance as is afforded by this contract.

However, no such person or organization is an insured with respect to any:

- damages arising out of their sole negligence; or
- occurrence that occurs, or offense that is committed, after the equipment lease ends.

Lessors Of Premises

Persons or organizations from whom you lease premises are insureds; but they are insureds only with respect to the ownership, maintenance or use of that particular part of such premises leased to you and only if you are contractually obligated to provide them with such insurance as is afforded by this contract.

However, no such person or organization is an insured with respect to any:

- damages arising out of their sole negligence;
- occurrence that occurs, or offense that is committed, after you cease to be a tenant in the premises; or
- structural alteration, new construction or demolition operations performed by or on behalf of them.

Subsidiary Or Newly Acquired Or Formed Organizations

If there is no other insurance available, the following organizations will qualify as named insureds:

- a subsidiary organization of the first named insured shown in the Declarations of which, at the beginning of the policy period and at the time of loss, such first named insured controls, either directly or indirectly, more than fifty (50) percent of the interests entitled to vote generally in the election of the governing body of such organization; or
- a subsidiary organization of the first named insured shown in the Declarations that such first named insured acquires or forms during the policy period, if at the time of loss such first named insured controls, either directly or indirectly, more than fifty (50) percent of the interests entitled to vote generally in the election of the governing body of such organization.

Limitations On Who Is An Insured

- A. Except to the extent provided under the Subsidiary Or Newly Acquired Or Formed Organizations provision above, no person or organization is an insured with respect to the conduct of any person or organization that is not shown as a named insured in the Declarations.
- B. No person or organization is an insured with respect to the:
1. ownership, maintenance or use of any assets; or
 2. conduct of any person or organization whose assets, business or organization;

Liability Insurance

Form 80-02-2000 (Rev. 4-01)

Contract

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General Liability

Who Is An Insured

Limitations On Who Is An Insured (continued)

you acquire, either directly or indirectly, for any:

- **bodily injury or property damage** that occurred; or
- **advertising injury or personal injury** arising out of an offense first committed; in whole or in part, before you, directly or indirectly, acquired such assets, business or organization.

Limits Of Insurance

The Limits Of Insurance shown in the Declarations and the rules below fix the most we will pay, regardless of the number of:

- insureds;
- claims made or suits brought; or
- persons or organizations making claims or bringing suits.

The Limits Of Insurance apply separately to each consecutive annual period and to any remaining period of less than twelve (12) months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than twelve (12) months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits Of Insurance.

General Aggregate Limit

Subject to the Each Occurrence Limit, the General Aggregate Limit is the most we will pay for the sum of:

- damages for **bodily injury and property damage**, except damages included in the **products-completed operations hazard**; and
- **medical expenses**.

Products-Completed Operations Aggregate Limit

Subject to the Each Occurrence Limit, the Products-Completed Operations Aggregate Limit is the most we will pay for the sum of damages for **bodily injury and property damage** included in the **products-completed operations hazard**.

Advertising Injury And Personal Injury Aggregate Limit

The Advertising Injury And Personal Injury Aggregate Limit is the most we will pay for the sum of damages for **advertising injury and personal injury**.

Each Occurrence Limit

The Each Occurrence Limit is the most we will pay for the sum of:

- damages for **bodily injury and property damage**; and
- **medical expenses**;

arising out of any one occurrence.

Any amount paid for damages or **medical expenses** will reduce the amount of the applicable aggregate limit available for any other payment.

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Limits Of Insurance

Each Occurrence Limit (continued)

If the applicable aggregate limit has been reduced to an amount that is less than the Each Occurrence Limit, the remaining amount of such aggregate limit is the most that will be available for any other payment.

Damage To Premises Rented To You Limit

Subject to the Each Occurrence Limit, the Damage To Premises Rented To You Limit is the most we will pay for the sum of damages for **property damage** to any one premises while rented to you or temporarily occupied by you with permission of the owner.

Medical Expenses Limit

Subject to the Each Occurrence Limit, the Medical Expenses Limit is the most we will pay for the sum of **medical expenses**, under Medical Expenses coverage, for **bodily injury** sustained by any one person.

Bodily Injury/Property Damage Exclusions

Aircraft, Autos Or Watercraft

This insurance does not apply to **bodily injury or property damage** arising out of the ownership, maintenance, use (use includes operation and **loading or unloading**) or entrustment to others of any:

- aircraft;
- auto; or
- watercraft;

owned or operated by or loaned or rented to any insured.

This exclusion does not apply to:

- A. a watercraft while ashore on premises owned by or rented to you;
- B. a watercraft you do not own, provided that it:
 1. is less than fifty-five (55) feet long; and
 2. does not transport persons or cargo for a charge;
- C. the parking of an auto on premises owned by or rented to you, provided the auto is not owned by or loaned or rented to you or the insured;
- D. the liability for damages assumed in an insured contract resulting from the ownership, maintenance or use, by others, of an aircraft or watercraft;
- E. the operation of the equipment described in subparagraphs F.2. or F.3. of the definition of **mobile equipment**; or
- F. an aircraft you do not own, provided that:
 1. the pilot in command holds a currently effective certificate, issued by the duly constituted authority of the United States of America or Canada, designating that person as a commercial or airline transport pilot;

Liability Insurance

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General Liability

Bodily Injury/Property Damage Exclusions

Aircraft, Autos Or Watercraft (continued)

2. it is rented with a trained, paid crew; and
3. it does not transport persons or cargo for a charge

Alcoholic Beverage Type Businesses

This insurance does not apply to **bodily injury or property damage** for which any insured may be held liable by reason of:

- causing or contributing to the intoxication of any person;
- furnishing alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

Contracts

This insurance does not apply to **bodily injury or property damage** for which the insured is obligated to pay damages by reason of assumption of liability in a contract or agreement.

This exclusion does not apply to the liability for damages:

- that such insured would have in the absence of such contract or agreement; or
- assumed in an oral or written contract or agreement that is an insured contract, provided the **bodily injury or property damage**, to which this insurance applies, occurs after the execution of such contract or agreement.

Damage To Alienated Premises

This insurance does not apply to **property damage** to any premises you sell, give away or abandon, if the **property damage** arises out of any part of those premises.

This exclusion does not apply if the premises are your work and were never occupied, rented or held for rental by you.

Damage To Impaired Property Or Property Not Physically Injured

This insurance does not apply to **property damage** to:

- **impaired property**; or
- property that has not been physically injured;

arising out of any:

- defect, deficiency, inadequacy or dangerous condition in your product or your work; or

Liability Insurance

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Bodily Injured/Property Damage Exclusions

Damage To Impaired Property Or Property Not Physically Injured (continued)

• delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms and conditions.
This exclusion does not apply to the loss of use of other tangible property resulting from sudden and accidental physical injury to your product or your work after it has been put to its intended use.

Damage To Owned Property

This insurance does not apply to property damage to any property owned by you.

Damage To Various Property Of Others (Care, Control Or Custody)

This insurance does not apply to property damage to any:
• personal property loaned or rented to you;
• property held by you or on your behalf for sale or entrusted to you for safekeeping or storage;
• property on your premises for purposes of performing operations on such property by you or on your behalf;
• tools or equipment used by you or on your behalf in performing operations; or
• property in your care, control or custody that will be erected, installed or used in construction operations by you or on your behalf.
This exclusion does not apply to the liability for damages assumed in a sidetrack agreement.

Damage To Your Product

This insurance does not apply to property damage to your product arising out of it or any part of it.

Damage To Your Work

This insurance does not apply to property damage to your work arising out of it or any part of it and included in the products-completed operations hazard.
This exclusion does not apply if the damaged work or the work causing the damage was performed on your behalf by a subcontractor.

Employer's Liability

A. This insurance does not apply to bodily injury to an employee of the insured arising out of and in the course of:
1. employment by the insured; or
2. performing duties related to the conduct of the insured's business.
B. This insurance does not apply to bodily injury to the brother, child, parent, sister or spouse of such employee as a consequence of any injury described in paragraph A. above.
This exclusion applies:
• whether the insured may be liable as an employer or in any other capacity; and
• to any obligation to share damages with or repay someone else who must pay damages because of any injury described in paragraphs A. or B. above.



General Liability

Bodily Injured/Property Damage Exclusions

Employer's Liability (continued)

This exclusion does not apply to the liability for damages assumed by the insured in an insured contract.

Expected Or Intended Injury

This insurance does not apply to bodily injury or property damage arising out of an act that:
• is intended by the insured; or
• would be expected from the standpoint of a reasonable person in the circumstances of the insured.
to cause bodily injury or property damage, even if the actual bodily injury or property damage is of a different degree or type than intended or expected.
This exclusion does not apply to bodily injury or property damage resulting from the use of reasonable force to protect persons or tangible property.

Loss In Progress

This insurance does not apply to bodily injury or property damage that is a change, continuation or resumption of any bodily injury or property damage known by you, prior to the beginning of the policy period, to have occurred.

Bodily injury or property damage will be deemed to be known by you:

- A. if such injury or damage is known by, or should have been known from the standpoint of a reasonable person in the circumstances of:
1. you;
 2. any of your directors, managers, members, officers (or their designees) or partners (whether or not an employee); and
- B. when any person described in paragraph A. above:
1. reports all, or any part, of any such injury or damage to us or any other insurer;
 2. receives a claim or a demand for damages because of any such injury or damage; or
 3. becomes aware that any such injury or damage has occurred or has begun to occur.

Mobile Equipment Transportation

This insurance does not apply to bodily injury or property damage arising out of the transportation of mobile equipment by an auto owned or operated by or loaned or rented to any insured.

Advertising Injury/Personal Injury Exclusions

Breach Of Contract

This insurance does not apply to advertising injury or personal injury arising out of breach of contract.

Continuing Offenses

This insurance does not apply to advertising injury or personal injury that arises out of that part of an offense that continues or resumes after the later of the end of the policy period of:

- A. this insurance; or
B. a subsequent, continuous renewal or replacement of this insurance, that:
1. is issued to you by us or by an affiliate of ours;
 2. remains in force while the offense continues; and
 3. would otherwise apply to advertising injury and personal injury.

Contracts

This insurance does not apply to advertising injury or personal injury for which the insured is obligated to pay damages by reason of assumption of liability in a contract or agreement.

This exclusion does not apply to the liability for damages:

- that such insured would have in the absence of such contract or agreement; or
- assumed in a written contract or agreement that is an insured contract, provided the advertising injury or personal injury, to which this insurance applies, is caused by an offense first committed after the execution of such contract or agreement.

Crime Or Fraud

This insurance does not apply to advertising injury or personal injury arising out of any criminal or fraudulent conduct committed by or with the consent or knowledge of the insured.

Expected Or Intended Injury

This insurance does not apply to advertising injury or personal injury arising out of an offense, committed by or on behalf of the insured, that:

- is intended by such insured; or
 - would be expected from the standpoint of a reasonable person in the circumstances of such insured;
- to cause injury.

Failure To Conform To Representations Or Warranties

This insurance does not apply to advertising injury or personal injury arising out of the failure of goods, products or services to conform with any electronic, oral, written or other representation or warranty of durability, fitness, performance, quality or use.

Internet Activities

This insurance does not apply to advertising injury or personal injury arising out of:

- controlling, creating, designing or developing of another's Internet site;



General Liability

Advertising Injury/Personal Injury Exclusions

Internet Activities (continued)

- controlling, creating, designing, developing, determining or providing the content or material of another's Internet site;
- controlling, facilitating or providing, or failing to control, facilitate or provide, access to the Internet or another's Internet site; or
- publication of content or material on or from the Internet, other than material developed by you or at your direction.

Media Type Businesses

This insurance does not apply to advertising injury or personal injury arising out of an offense committed by or on behalf of an insured whose business is advertising, broadcasting, cablecasting, publishing, telecasting or telemarketing.

This exclusion does not apply to personal injury caused by an offense described in subparagraphs A., B. or C. of the definition of personal injury.

Prior Offenses

This insurance does not apply to advertising injury or personal injury arising out of any offense first committed before the beginning of the policy period.

Publications With Knowledge Of Falsity

This insurance does not apply to advertising injury or personal injury arising out of any electronic, oral, written or other publication of content or material by or with the consent of the insured:

- with knowledge of its falsity; or
- if a reasonable person in the circumstances of such insured would have known such content or material to be false.

Wrong Description Of Prices

This insurance does not apply to advertising injury or personal injury arising out of any wrong description of the price of goods, products or services.

Medical Expenses Exclusions

Athletic Activities

This insurance does not apply to medical expenses arising out of bodily injury to any person injured while taking part in athletics.

Injury To Insureds

This insurance does not apply to medical expenses arising out of a bodily injury to any insured, except a volunteer worker.

Medical Expenses Exclusions
(continued)

Nuclear Energy

This insurance does not apply to **medical expenses** arising out of **bodily injury** in any way related to the:

- **nuclear hazardous properties of nuclear material**; and
- operation of a **nuclear facility** by any person or organization.

Products-Completed Operations Hazard

This insurance does not apply to **medical expenses** arising out of **bodily injury** included in the **products-completed operations hazard**.

Workers' Compensation Or Similar Laws

This insurance does not apply to **medical expenses** arising out of **bodily injury** to any person, whether or not an **employee of any insured**, if benefits for such **bodily injury** are payable or must be provided under any workers' compensation, disability benefits or unemployment compensation law or any similar law.

Policy Exclusions

Asbestos

- A. This insurance does not apply to **bodily injury, property damage, advertising injury or personal injury** arising out of the actual, alleged or threatened contaminative, pathogenic, toxic or other hazardous properties of **asbestos**.
- B. This insurance does not apply to any loss, cost or expense arising out of any:
1. request, demand, order or regulatory or statutory requirement that any **insured** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **asbestos**; or
 2. claim or proceeding by or on behalf of a governmental authority or others for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of **asbestos**.

Employment-Related Practices

- A. This insurance does not apply to any damages sustained at any time by any person, whether or not sustained in the course of employment by any **insured**, arising out of any employment-related act, omission, policy, practice or representation directed at such person, occurring in whole or in part at any time, including any:
1. arrest, detention or imprisonment;
 2. breach of any express or implied covenant;
 3. coercion, criticism, humiliation, prosecution or retaliation;
 4. defamation or disparagement;
 5. demotion, discipline, evaluation or reassignment;
 6. discrimination, harassment or segregation;



General Liability

Policy Exclusions

Employment-Related Practices
(continued)

7. a. eviction; or
b. invasion or other violation of any right of occupancy;
 8. failure or refusal to advance, compensate, employ or promote;
 9. invasion or other violation of any right of privacy or publicity;
 10. termination of employment; or
 11. other employment-related act, omission, policy, practice, representation or relationship in connection with any **insured** at any time.
- B. This insurance does not apply to any damages sustained at any time by the brother, child, parent, sister or spouse of such person at whom any employment-related act, omission, policy, practice or representation is directed, as described in paragraph A. above, as a consequence thereof.

This exclusion applies:

- whether the **insured** may be liable as an employer or in any other capacity; and
- to any obligation to share damages with or repay someone else who must pay damages because of any of the foregoing.

Enhancement, Maintenance Or Prevention Expenses

This insurance does not apply to any loss, cost or expense incurred by you or others for any:

- A. enhancement or maintenance of any property; or
- B. prevention of any injury or damage to any:
1. person or organization; or
 2. property you own, rent or occupy.

Intellectual Property Laws Or Rights

This insurance does not apply to any actual or alleged **bodily injury, property damage, advertising injury or personal injury** arising out of, giving rise to or in any way related to any actual or alleged:

- assertion; or
- infringement or violation;

by any person or organization (including any **insured**) of any **intellectual property law or right**, regardless of whether this insurance would otherwise apply to all or part of any such actual or alleged injury or damage in the absence of any such actual or alleged assertion, infringement or violation.

This exclusion applies, unless such injury:

- is caused by an offense described in the definition of **advertising injury**; and
- does not arise out of, give rise to or in any way relate to any actual or alleged assertion, infringement or violation of any **intellectual property law or right**, other than one described in the definition of **advertising injury**.

Policy Exclusions
(continued)

Nuclear Energy

- A. This insurance does not apply to **bodily injury, nuclear property damage, advertising injury or personal injury**:
1. with respect to which any **insured** under this policy also has status as an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would have had status as an insured under any such policy but for its termination upon exhaustion of its limit of insurance; or
 2. arising out of the **nuclear hazardous properties of nuclear material** and with respect to which:
 - a. any person or organization is required to maintain financial protection pursuant to the United States of America Atomic Energy Act of 1954, or any law amendatory thereof; or
 - b. the **insured** is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
- B. This insurance does not apply to **bodily injury, nuclear property damage, advertising injury or personal injury** arising out of the **nuclear hazardous properties of nuclear material**:
1. if the **nuclear material**:
 - a. is at any **nuclear facility** owned by, or operated by or on behalf of, any **insured**;
 - b. has been discharged or dispersed therefrom; or
 - c. is contained in **nuclear spent fuel or nuclear waste** at any time transported, handled, stored, disposed of, processed, treated, possessed or used by or on behalf of any **insured**; or
 2. in any way related to the furnishing by any **insured** of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any **nuclear facility**. But if such facility is located within the United States of America (including its possessions or territories) or Canada, this subparagraph 2. applies only to **nuclear property damage** to such **nuclear facility** and any property thereat.

Pollution

- A. This insurance does not apply to **bodily injury, property damage, advertising injury or personal injury** arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **pollutants**:
1. at or from any premises, site or location which is or was at any time owned or occupied by, or loaned or rented to, any **insured**;
 2. at or from any premises, site or location which is or was at any time used by or for any **insured** or others for the handling, storage, disposal, processing or treatment of waste;

CITY OF SANTA FE

LEGAL SERVICES CONTRACT

THIS CONTRACT is made and entered into by and between the City of Santa Fe (the "City") and Modrall Sperlring (the "Contractor"). The date of this Contract shall be the date when it is executed by the City.

1. **Scope of Services**

The Contractor shall perform the following work:

- A. Prepare and deliver to the City the financing timetable, all bond resolutions and bond sale resolutions necessary to the issuance of the bonds, as well as all proceedings, transcripts and minutes that are required to be adopted by the City.
- B. Prepare information for and participate in presentations to rating agencies and prospective bond purchasers as required by the City and attend all meetings of the City Council at the time of the sale and closings, and additional meetings as required by the City.
- C. Collaborate with the City staff, the Financial Advisor, the Investment Committee and Underwriters to structure issues that minimize the City's transactions costs and its credit risk and prepare all ordinances, agreements, preliminary offering statements, official statements, other securities laws disclosure documents and any other documents pursuant to which bonds will be authorized, secured and delivered.
- D. Upon request, assist the City with legal documentation and legislation in connection with obtaining loans through the New Mexico Finance Authority.
- E. Coordinate the delivery of the documents and other activities, and plan, coordinate and manage the pre-closing of bond sales in a manner to assure the timely closing of bond sales and the delivery of funds to the City; prepare and file final transcripts of the proceedings to the issuance of the bonds.
- F. Upon request, provide to the City continuing information concerning federal, state and local statutory and regulatory changes, including but not necessarily limited to arbitrage, and other current developments relating to the City's bond issues.
- G. Upon request, participate in discussions with the City and its financial advisors regarding the evaluation of options and alternatives for issuing additional bonds, refunding or calling of

- outstanding bonds and new financing techniques, including the delivery of oral and written legal advice on particular projects.
- H. Brief the City officials, employees, counsel and consultants on matters, which impact the issuance of the City bond financing. This includes rendering of an opinion and availability for phone consultation on questions of federal and state law, nature and priority of the security of bonds and legality of the issuance of the bonds under applicable securities laws, and the tax-exempt status of the bonds.
 - I. Review and advise the City regarding drawdowns of bond proceeds, procedures, and other matters regarding bond project disbursement regulations.
 - J. Assist the City Attorney, if requested, in any litigation relating to or in any way affecting the issuance, sale, execution and delivery of the City bonds, notes, certificates, loan transactions or other debt transactions.
 - K. Draft state legislation and provide testimony before legislative committees when requested by the City; provide other special advice or opinions requested by the City, relating to the City bond financing.
 - L. Upon request, advise City staff on application of the provisions of its adopted bond ordinances, in compliance with state and federal laws and regulations.
 - M. Upon request, provide legal advice regarding bond matters.

2. **Standard of Performance; Licenses**

- A. The Contractor represents that Contractor possesses the personnel, experience and knowledge necessary to perform the services described under this Contract.
- B. The Contractor agrees to obtain and maintain throughout the term of this Contract, all applicable professional and business licenses required by law, for itself, its employees, agents, representatives, and subcontractors.

3. **Compensation**

- A. The Contractor shall be compensated for the services performed hereunder in accordance with the Fee Schedule attached hereto as Exhibit A and made a part hereof by reference; provided, that compensation for the projects described in Exhibit B and made a part hereof by reference shall be as described therein.
- B. The Contractor shall submit a written request for payment to the City whenever payment is due under this Agreement. Within fifteen (15) days of the City's receipt of the written request, the City shall issue a written certification of complete or partial acceptance or rejection of the contractual items or services for which payment is sought. The Contractor acknowledges and agrees that the City may not make any payment hereunder unless and until it has issued a written certification accepting the contractual items or services. Within thirty (30) days of the issuance of a written certification accepting the contractual items or services, the City shall tender payment for the accepted items or services. In the event the City fails to

tender payment within thirty (30) days of the written certification accepting the items or services, the City shall pay late payment charges of one and one-half percent (1.5%) per month, until the amount due is paid in full.

C. In the event the Contractor breaches this Agreement, the City may, without penalty, withhold any payments due the Contractor for the purpose of set-off until such time as the City determines the exact amount of damages it suffered as a result of the breach.

D. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payment.

E. In addition to the fees payable hereunder, Contractor shall include applicable gross receipts taxes and costs associated with the work performed hereunder.

4. **Term**

THIS CONTRACT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY. This Contract shall terminate **four (4) years from date of final signature** unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with NMSA 1978, Section 13-1-150, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in NMSA 1978, Section 13-1-150.

5. **Termination**

Termination. This Contract may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Contract, the City's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the City is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Contract. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Contract may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the City or if, during the term of this Contract, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of City funds or due to the Appropriations paragraph herein. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE City's OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS CONTRACT.

Termination Management. Immediately upon receipt by either the City or the Contractor of notice of termination of this Contract, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Contract without written approval of the City; 2) comply with all directives issued by the City in the notice of termination as to the performance of work under this Contract; and 3) take such action as the City shall direct for the protection, preservation, retention or transfer of all property titled to the City and records generated under this Contract. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the City upon termination and shall be submitted to the City as soon as practicable.

6. **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 Governing Body, this Contract shall terminate immediately upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the City proposes an amendment to the Contract to unilaterally reduce funding, the Contractor shall have the option to terminate the Contract or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

7. **Status of Contractor**

The Contractor and its agents and employees are independent contractors performing professional services for the City and are not employees of the City. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City as a result of this Contract. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the City unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

8. **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 prior written approval of the City.

9. **Subcontracting**

The Contractor shall not subcontract any portion of the services to be performed under this Contract without the prior written approval of the City. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Contract, nor shall any subcontract obligate direct payment from the City.

10. **Release**

Final payment of the amounts due under this Contract shall operate as a release of the City, its officers and employees from all liabilities, claims and obligations whatsoever arising from or under this Contract.

11. **Confidentiality**

Any confidential information provided to or developed by the Contractor in the performance of this Contract shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the City.

12. **Product of Service -- Copyright**

All materials developed or acquired by the Contractor under this Contract shall become the property of the City and shall be delivered to the City no later than the termination date of this Contract. Nothing developed or produced, in whole or in part, by the Contractor under this Contract shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

13. **Conflict of Interest; Governmental Conduct Act**

C. The Contractor represents and warrants that it presently has no interest and, during the term of this Contract, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Contract.

D. The Contractor further represents and warrants that it has complied with, and, during the term of this Contract, will continue to comply with, and that this Contract complies with all applicable provisions of the Governmental Conduct Act, NMSA 1978, Section 10-16-1 et seq.

E. Contractor's representations and warranties in Paragraphs A and B of this Article 13 are material representations of fact upon which the City relied when this Contract was entered into by the parties. Contractor shall provide immediate written notice to the City if, at any time during the term of this Contract, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 13 were erroneous on the effective date of this Contract or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 13 were erroneous on the effective date of this Contract or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the City and notwithstanding anything in the Contract to the contrary, the City may immediately terminate the Contract.

F. All terms defined in the Governmental Conduct Act have the same meaning in this section.

14. **Amendment**

G. This Contract shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

H. If the City proposes an amendment to the Contract to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Contract, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

15. **Merger**

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

16. **Penalties for violation of law**

NMSA 1978, Sections 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

17. **Equal Opportunity Compliance**

The Contractor agrees to abide by all federal and state laws and rules and regulations, and Santa Fe City Code, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Contract. If Contractor is found not to be in compliance with these requirements during the life of this Contract, Contractor agrees to take appropriate steps to correct these deficiencies.

18. **Applicable Law**

The laws of the State of New Mexico shall govern this Contract, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, Section 38-3-1 (G). By execution of this Contract, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Contract.

19. **Workers Compensation**

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Contract may be terminated by the City.

20. **Insurance**

A. The Contractor shall maintain adequate legal malpractice insurance. It is the sole responsibility of the Contractor to be in compliance with the law. Such insurance shall provide that the City is named as an additional insured and that the City is notified no less than 30 days in advance of cancellation for any reason. The Contractor shall furnish the City with a copy of a Certificate of Insurance as a condition prior to performing services under this Contract.

B. Contractor shall obtain and maintain Workers' Compensation insurance required by law to provide coverage for Contractor's employees throughout the term of this Contract. Upon request, Contractor shall provide the City with evidence of its compliance with such requirement.

21. **Records and Financial Audit**

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Contract's term and effect and retain them for a period of three (3) years from the date of final payment under this Contract. The records shall be subject to inspection by the City. The City shall have the right to audit billings both before and after payment. Payment under this Contract shall not foreclose the right of the City to recover excessive or illegal payments.

22. **INDEMNIFICATION**

The Contractor shall indemnify, hold harmless and defend the City from all losses, damages, claims or judgments on account of any suit, judgment, execution, claim, action or demand whatsoever arising from Contractor's performance under this Contract as well as the performance of Contractor's employees, agents, representatives and subcontractors, including payments of all attorneys' fees and costs.

23. **NEW MEXICO TORT CLAIMS ACT**

Any liability incurred by the City of Santa Fe in connection with this Contract is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Contract modifies or waives any provision of the New Mexico Tort Claims Act.

24. **Invalid Term or Condition**

If any term or condition of this Contract shall be held invalid or unenforceable, the remainder of this Contract shall not be affected and shall be valid and enforceable.

25. **Notices**

Any notices required to be given under this Contract shall be in writing and served by personal delivery or by mail, postage prepaid, to the parties at the following addresses:

To the City: Chief Procurement Officer purchasing@santafenm.gov PO Box 909 Santa Fe, NM 87504-0909	Finance Department Finance Director Emily K. Oster PO Box 909 Santa Fe NM 87504-0909 ekoster@santafenm.gov 505-629-3411	To the Contractor: Modrall Sperling Peter Franklin PO Box 9318 Santa Fe, NM 87504-9318 pfranklin@modrall.com 505-984-2856
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IN WITNESS WHEREOF, the Parties have executed this Contract as of the date of the signature by the required approval authorities below.

CITY OF SANTA FE:

MAYOR ALAN WEBBER

Date: _____

CONTRACTOR:

Peter Franklin

Peter Franklin (Jul 23, 2025 13:42:31 MDT)

PETER FRANKLIN,
ATTORNEY/SHAREHOLDER

Date: Jul 23, 2025

NMBTIN: _____

ATTEST:

CITY CLERK

Approved to form and legal sufficiency by:

Marcos Martinez

Marcos Martinez (Jul 23, 2025 13:43:41 MDT)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Emily K. Oster

FINANCE DIRECTOR

EXHIBIT A
FEE SCHEDULE

1. Fixed Fees Relating to Securities Issued by the City. For tasks related to the issuance of a specific series of securities for the City, Modrall, Sperling proposes the following fixed fees, based on the par amount of the bonds plus original issue premium:

Fixed Term-Fixed Rate New Money and Current Refunding General Obligation Bond Issues	
Size of Issue	Fee
\$5,000,000 or less	\$22,500
Between \$5,000,000 and \$7,500,000	\$22,500 plus \$1.50 per \$1,000 principal amount between \$5,000,000 and \$7,500,000
Over \$7,500,000	\$26,250 plus \$ 1.40 per \$1,000 principal amount over \$7,500,000

Fixed Term-Fixed Rate New Money and Current Refunding Revenue Bond Issues	
Size of Issue	Fee
\$5,000,000 or less	\$25,000
Between \$5,000,000 and \$7,500,000	\$25,000 plus \$1.75 per \$1,000 principal amount between \$5,000,000 and \$7,500,000
Over \$7,500,000	\$29,375 plus \$1.60 per \$1,000 principal amount over \$7,500,000

Our fee will *be* increased by ten percent (10%) for advance refundings based on the additional required to establish the defeasance escrow and related agreement.

Fixed Rate Special Assessment District Bonds	
Size of Issue	Fee
\$2,000,000 or less	\$40,000
Between \$2,000,000 and \$5,000,000	\$40,000 plus \$5.00 per \$1,000 principal amount between \$2,000,000 and \$5,000,000
Over \$5,000,000	\$55,000 plus \$4.00 per \$1,000 principal amount over \$5,000,000

Industrial Revenue Bonds

\$0.30 per \$1,000 face amount of the bonds with a minimum fee of \$25,000 per issue.
(The cost of FRB review counsel services as bond counsel to the City will be passed through to the developer of the IRB project).

Fixed Rate Public Improvement District Bonds	
Size of Issue	Fee
\$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
Over \$5,000,000	\$55,000 plus \$4.00 per \$1,000 principal amount over \$5,000,000

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

Fixed Rate Tax Increment Development District Bonds	
Size of Issue	Fee
\$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
Over \$5,000,000	\$55,000 plus \$4.00 per \$1,000 principal amount over \$5,000,000

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 above. 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.

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.

2. Hourly Rates Not Relating to Securities to be Issued by the City. For tasks not related to issuance of a specific series of securities or substantial post-issuance tax or securities compliance matters, Modrall, Sperling agrees to bill the City at a blended rate of \$285 per hour for the services of Peter Franklin, Ian Bearden, Chris Muirhead; and/or Katherine McKinney, in an amount not to exceed \$100,000, unless otherwise negotiated and agreed by the City and Modrall Sperling based on the scope and complexity of a particular task.

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.

3. New Mexico Finance Authority and New Mexico Environment Department Loans. Our fee for New Mexico Finance Authority or New Mexico Environment Department loans will be the same as the bond counsel fee-based on the principal amount of the loan. There is no disclosure and/or underwriter's counsel fee for New Mexico Finance Authority loans or New Mexico Environment Department loans.

4. Fees Relating to Work as Disclosure and/or Underwriter Counsel. The fee for disclosure and/or underwriter counsel service such as the preparation of the preliminary official statement, the official statement and the 10b-5 opinion shall be 75% of the bond counsel fee outlined above. We recognize that some bond underwriters currently require independent counsel for preparation of the disclosure documents and the related due diligence investigation.

5. Fees Relating to 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.

6. Advice Against Issuance. Modrall, Sperling has provided and will continue to provide objective legal advice with respect to a proposed securities issue, without regard to fees, including advice against issuing of securities, 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,

EXHIBIT B

Current Projects and Compensation

The City shall compensate the Contractor for the projects listed below according to the following rates:

- C. Clean Water State Revolving Fund loan agreements (\$114,000,000 Wastewater Utility System Loan, \$17,000,000 Water Utility System Loan, and \$20,000,000 Environmental Services Division Loan): \$100,000
- D. \$25,000,000 General Obligation Improvement Bonds (bond and disclosure counsel): \$100,600
- E. \$5,500,000 Water Project Fund loan/grant, \$2,000,000 Water Project Fund loan/grant, and \$7,750,000 Agreement: \$41,775
- F. \$25,000 Drinking Water State Revolving Fund loan agreement: \$25,000

For the services described in this Exhibit B, the City agrees pay the Contractor fees equal to \$267,375.00, applicable gross receipts taxes (at 8.1875%) equal to \$21,891.33, and applicable costs (Federal Express delivery of bonds and IRS Form 8038G) and publication costs, if any. The total compensation for the contract including GRT but excluding costs is \$289,266.33.











URGENT_Modrall Sperling Packet

Final Audit Report

2025-07-25

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