

**PROFESSIONAL SERVICES AGREEMENT
WITH MODRALL, SPERLING, ROEHL, HARRIS & SISK, P.A.
TO PROVIDE LEGAL BOND COUNSEL SERVICES**

THIS AGREEMENT is made and entered into on this 30th day of June, 2015, by and between **SANTA FE COUNTY**, hereinafter referred to as the "County", and **Modrall, Sperling, Roehl, Harris, & Sisk, P.A.** a New Mexico corporation with its principal place of business located at 500 Fourth Street NW, Suite 1000, Albuquerque, NM 87102 hereinafter referred to as the "Contractor".

WHEREAS, the County requires professional legal Bond Counsel Services for General Obligation Bonds, Revenue Bonds, Special Assessment Bonds or other bond financing transactions; and

WHEREAS, pursuant to NMSA 1978, Sections 13-1-112 and 13-1-117, competitive, sealed proposals were solicited via a formal request for proposals, RFP No. 2015-0308-FY/MY for the provision of these services; and

WHEREAS, based upon the evaluation criteria established within the request for proposals for the purposes of selecting the most qualified Offeror, the County has determined the Contractor as the most responsive and highly rated Offeror; and

WHEREAS, the County requires the services of the Contractor and the Contractor is willing to provide these services and both parties wish to enter into this Agreement.

NOW THEREFORE, in consideration of the premises and mutual obligations herein, the parties hereto do mutually agree as follows:

1. SCOPE OF WORK

The Contractor shall provide to the County all necessary bond counsel services with reference to the authorization, sales and delivery including, but not limited to, the following:

1. Prepare and deliver to the County 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 County.
2. Prepare information for and participate in presentations to rating agencies and prospective bond purchasers as required by the County and attend all meetings of the Board of the County Commissioners at the time of the sales and closings, and additional meetings as required by the County.
3. Collaborate with County staff, the financial advisor, the investment committee and underwriters to structure issues that minimize the County's transactions costs

and its credit risk and prepare all ordinances, agreements, preliminary offerings statements, official statements, other securities laws disclosure documents pursuant to which bonds will be authorized, secured and delivered.

4. 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 County; prepare and file final transcripts of the proceedings to the issuance of bonds.
5. Provide to the County 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 County's bond issues.
6. Assist the County in 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.
7. Brief County officials, employees, counsel and consultants on matters that impact the issuance of the County 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.
8. Review and advise the County regarding bond proceed draw downs, procedures, and other matters regarding bond project disbursement regulations.
9. Assist the County Attorney, if requested, in any litigation relating to or in any way affecting the issuance, sale, execution and delivery of County bonds, notes or certificates.
10. Draft state legislation and provide testimony before legislative committees when requested by the County; provide other special advice or opinions requested by the County, relating to the County bond financing.

2. COMPENSATION, INVOICING, AND SET-OFF

A. The services provided by the Contractor shall be compensated in accordance with the Fee Schedule, attached hereto as Exhibit A and made a part hereof by reference.

B. The Contractor shall submit a written request for payment to the County when payment is due under this Agreement. Upon the County's receipt of the written request, the County 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 County 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 County shall tender payment for the accepted items or services. In the event the County fails to tender payment within thirty (30) days of the written certification accepting the items or services, the County 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 County may, without penalty, withhold any payments due the Contractor for the purpose of set-off until such time as the County 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 County to recover excessive or illegal payment.

3. EFFECTIVE DATE AND TERM

This Agreement shall, upon due execution by all parties, become effective as of the date first written above and shall terminate one (1) year later, unless earlier terminated pursuant to Section 5 (Termination) or Section 6 (Appropriations and Authorizations). The County has the option to extend the contract at the same price, terms and conditions for a period of three (3) additional years, on a year-to-year basis, upon the approval of the County. The County may exercise this option by submitting a written notice to Contractor that the Agreement will be extended an additional year. The notice must be submitted to Contractor at least sixty days prior to expiration of the term of the Agreement.

4. ADDITIONAL SERVICES

A. The parties agree that all tasks set forth in Paragraph 1, SCOPE OF WORK of this Agreement, shall be completed in full, to the satisfaction of the County, for the amount set forth in Section 2, COMPENSATION, INVOICING, AND SET-OFF, of this Agreement, and for not other cost, amount, fee, or expense.

B. The County may from time-to-time request changes in the Scope of Work to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the County and the Contractor, shall be incorporated in written amendments to this Agreement.

5. TERMINATION

A. Termination of Agreement for Cause. Either party may terminate the Agreement based upon any material breach of this Agreement by the other party. The non-breaching party shall give the breaching party written notice of termination specifying the grounds for the termination. The termination shall be effective thirty (30) days from the breaching party's receipt of the notice of termination, during which time the breaching party shall have the right to cure the breach. If, however, the breach cannot with due diligence be cured within thirty (30) days, the breaching party shall have a reasonable time to cure the breach, provided that, within thirty (30) days of its receipt of the written notice of termination, the breaching party began to

cure the breach and advised the non-breaching party in writing that it intended to cure.

B. Termination for Convenience of the County. The County may, in its discretion, terminate this Agreement at any time for any reason by giving the Contractor written notice of termination. The notice shall specify the effective date of termination, which shall not be less than fifteen (15) days from the Contractor's receipt of the notice. The County shall pay the Contractor for acceptable work, determined in accordance with the specifications and standards set forth in this Agreement, performed before the effective date of termination but shall not be liable for any work performed after the effective date of termination.

6. APPROPRIATIONS AND AUTHORIZATIONS

This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Board of County Commissioners of the County and/or, if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Agreement shall terminate upon written notice by the County to the Contractor. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse the Contractor for expenditures made in the performance of this Agreement. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. The County's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by the Contractor in any way or forum, including a lawsuit.

7. INDEPENDENT CONTRACTOR

The Contractor and its agents and employees are independent contractors and are not employees or agents of the County. Accordingly, the Contractor and its agents and employees shall not accrue leave, participate in retirement plans, insurance plans, or liability bonding, use County vehicles, or participate in any other benefits afforded to employees of the County. Except as may be expressly authorized elsewhere in this Agreement, the Contractor has no authority to bind, represent, or otherwise act on behalf of the County and agrees not to purport to do so.

8. ASSIGNMENT

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the advance written approval of the County. Any attempted assignment or transfer without the County's advance written approval shall be null and void and without any legal effect.

9. SUBCONTRACTING

The Contractor shall not subcontract or delegate any portion of the services to be performed under this Agreement without the advance written approval of the County. Any attempted subcontracting or delegating without the County's advance written approval shall be null and void and without any legal effect.

10. PERSONNEL

A. All work performed under this Agreement shall be performed by the Contractor or under its supervision.

B. The Contractor represents that it has, or will secure at its own expense, all personnel required to discharge its obligations under this Agreement. Such personnel (i) shall not be employees of or have any contractual relationships with the County and (ii) shall be fully qualified and licensed or otherwise authorized or permitted under federal, state, and local law to perform such work.

11. RELEASE

Upon its receipt of all payments due under this Agreement, the Contractor releases the County, its elected officials, officers, agents and employees from all liabilities, claims, and obligations whatsoever arising from or under or relating to this Agreement.

12. CONFIDENTIALITY

Any confidential information provided to or developed by the Contractor in the performance of this Agreement 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 County.

13. PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT

A. The County has the unrestricted right to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other material prepared under or pursuant to this Agreement.

B. The Contractor acknowledges and agrees that any material produced in whole or in part under or pursuant to this Agreement is a work made for hire. Accordingly, to the extent that any such material is copyrightable in the United States or in any other country, the County shall own any such copyright.

14. CONFLICT OF INTEREST

The Contractor represents that it has no and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of its obligations under this Agreement.

15. NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED

This Agreement may not be modified, altered, changed, or amended orally but, rather, only by an instrument in writing executed by the parties hereto. The Contractor specifically acknowledges and agrees that the County shall not be responsible for any changes to Section 1, "SCOPE OF

WORK”, of this Agreement unless such changes are set forth in a duly executed written amendment to this Agreement.

16. ENTIRE AGREEMENT; INTEGRATION

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

17. NOTICE OF PENALTIES

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

18. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

A. The Contractor agrees to abide by all federal, state, and local laws, ordinances, and rules and regulations pertaining to equal employment opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, the Contractor specifically agrees not to discriminate against any person with regard to employment with the Contractor or participation in any program or activity offered pursuant to this Agreement on the grounds of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation, or gender identity.

B. The Contractor acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Agreement.

19. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW

A. In performing its obligations hereunder, the Contractor shall comply with all applicable laws, ordinances, and regulations.

B. Contractor shall comply with the requirements of Santa Fe County Ordinance 2014-1 (Establishing a Living Wage).

C. This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules. Contractor and the County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be federal and state district courts of New Mexico, located in Santa Fe County.

20. RECORDS AND INSPECTIONS

A. To the extent its books and records relate to (i) its performance of this Agreement

or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to the County as part of the procurement process, the Contractor agrees to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under this Agreement; (ii) allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with generally accepted accounting principles (GAAP).

B. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to County as part of the procurement process, the Contractor also agrees to require any subcontractor it may hire to perform its obligations under this Agreement to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under the subcontract; (ii) to allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with GAAP.

21. INDEMNIFICATION

A. The Contractor shall defend, indemnify, and hold harmless the County and its elected officials, agents, and employees from any losses, liabilities, damages, demands, suits, causes of action, judgments, costs or expenses (including but not limited to court costs and attorneys' fees) resulting from or directly or indirectly arising out of the Contractor's performance or non-performance of its obligations under this Agreement, including but not limited to the Contractor's breach of any representation or warranty made herein.

B. The Contractor agrees that the County shall have the right to control and participate in the defense of any such demand, suit, or cause of action concerning matters that relate to the County and that such suit will not be settled without the County's consent, such consent not to be unreasonably withheld. If a conflict exists between the interests of the County and the Contractor in such demand, suit, or cause of action, the County may retain its own counsel to represent the County's interest.

C. The Contractor's obligations under this section shall not be limited by the provisions of any insurance policy the Contractor is required to maintain under this Agreement.

22. SEVERABILITY

If any term or condition of this Agreement shall be held invalid or non-enforceable by any court of competent jurisdiction, the remainder of this Agreement shall not be affected and shall be valid and enforceable to the fullest extent of the law.

23. NOTICES

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return

receipt requested, postage prepaid, as follows:

To the County: Santa Fe County
Office of the County Attorney
102 Grant Avenue
Santa Fe, New Mexico 87501

To the Contractor: Modrall, Sperling, Roehl, Harris & Sisk, P.A.
500 Fourth Street NW, Suite 1000
Albuquerque, NM 87102

24. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

The Contractor hereby represents and warrants that:

A. This Agreement has been duly authorized by the Contractor, the person executing this Agreement has authority to do so, and, once executed by the Contractor, this Agreement shall constitute a binding obligation of the Contractor.

B. This Agreement and Contractor's obligations hereunder do not conflict with Contractor's corporate agreement or any statement filed with the Public Regulation Commission on Contractor's behalf.

C. Contractor is legally registered and properly licensed by New Mexico State to do the work anticipated by this Agreement and shall maintain such registration and licensure in good standing throughout the duration of the Agreement.

25. FACSIMILE SIGNATURES

The parties hereto agree that a facsimile signature has the same force and effect as an original for all purposes.

26. NO THIRD-PARTY BENEFICIARIES

This Agreement was not intended to and does not create any rights in any persons not a party hereto.

27. INSURANCE

A. General Conditions. The Contractor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.

B. General Liability Insurance, Including Automobile. The Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,000,000.00 combined single

limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the County by the Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Agreement is an insured contract. The County of Santa Fe shall be a named additional insured on the policy.

C. Workers' Compensation Insurance. The Contractor shall comply with the provisions of the Workers' Compensation Act.

D. Increased Limits. If, during the life of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended), the Contractor shall increase the maximum limits of any insurance required herein.

E. Professional Liability [Malpractice/Errors and Omissions Insurance]. The Contractor shall procure and maintain during the life of this agreement professional liability (errors and omissions) insurance, with policy limits of not less than \$1,500,000.00 per occurrence, \$2,500,000.00 per aggregate.

28. PERMITS, FEES, AND LICENSES

Contractor shall procure all permits and licenses, pay all charges, fees, and royalties, and give all notices necessary and incidental to the due and lawful performance of its obligations hereunder.

29. NEW MEXICO TORT CLAIMS ACT

No provision of this Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by County or its "public employees" at common law or under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

30. CAMPAIGN CONTRIBUTION DISCLOSURE FORM

The Contractor agrees to compute and submit simultaneous with execution of this Agreement a Campaign Contribution Disclosure Form approved by the County.

31. APPOINTMENT OF AGENT FOR SERVICE OF PROCESS, if applicable

The Contractor hereby irrevocably appoints, Peter Franklin, a New Mexico resident located at 123 East Marcy St., Suite 201, Santa Fe, NM 87501, as its agent upon whom process and writs in any action or proceeding arising out of or related to this Agreement may be served. The Contractor acknowledges and agrees that service upon its designated agent shall have the same effect as though the Contractor were actually and personally served within the state of New Mexico.

32. SURVIVAL

The provisions of following paragraphs shall survive termination of this Agreement; INDEMNIFICATION; RECORDS AND INSPECTION; RELEASE, CONFIDENTIALITY, PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT; COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW; NO THIRD-PARTY BENEFICIARIES; SURVIVAL.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first written above.

SANTA FE COUNTY:

Miguel M. Chang
Robert A. Anaya, Chair
Santa Fe County Board of Commissioners

6/30/15
Date

ATTESTATION:

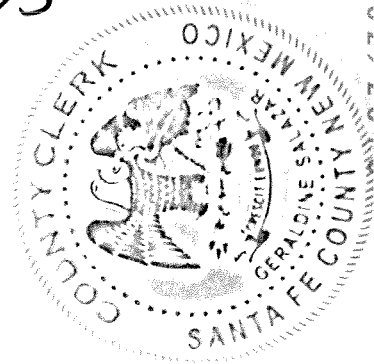
Geraldine Salazar
Geraldine Salazar
Santa Fe County Clerk

6-30-2015
Date

APPROVED AS TO FORM:

Gregory S. Shaffer
Gregory S. Shaffer
Santa Fe County Attorney

6-9-15
Date



FINANCE DEPARTMENT APPROVAL:

Carole H. Jaramillo
Carole H. Jaramillo
Santa Fe County Finance Director

6/10/15
Date

CONTRACTOR:

Peter Franklin
Signature

6/11/15
Date

Peter Franklin
Print Name

Managing Shareholder
Print Title
Santa Fe Office
Modrall, Spurling

EXHIBIT A

MODRALL, SPERLING, ROEHL, HARRIS & SISK, P.A.'s
PROPOSED FEE SCHEDULE
SANTA FE COUNTY RFP 2015-0308-FI/MY

A. General Obligation Bonds:

1. \$2.00 per \$1,000.00 face amount of the bonds.
2. Any minimum fee or other costs, please indicate and describe: Minimum fee of \$20,000 per issue, plus costs and gross receipts tax.

B. Revenue Bonds:

1. \$2.25 per \$1,000.00 face amount of the bonds.
2. Any minimum fee or other costs, please indicate and describe: Minimum fee of \$20,000 per issue, plus costs and gross receipts tax.

C. Special Assessment District:

1. \$9.50 per \$1,000.00 face amount of the bonds.
2. Any minimum fee or other costs, please indicate and describe: Minimum fee of \$30,000 per issue, plus costs and gross receipts tax.

D. Lease-Purchase Financing:

1. \$2.00 per \$1,000.00 face amount of the certificates of participation.
2. Any minimum fee or other costs, please indicate and describe: A minimum fee of \$10,000 per issue, plus costs and gross receipts taxes.

E. Conduit Financing:

1. \$0.30 per \$1,000.00 face amount of the bonds.
2. Any minimum fee or other costs, please indicate and describe: A minimum fee of \$20,000 per issue, plus costs and gross receipts taxes.

(Such costs will be passed through to the conduit borrower.)

F. Requests for Information:

Requests for information or opinions regarding prior and present bond issues as well as other requests for supplemental services or advice not related to the issuance of bonds or notes at \$285 per hour.

G. Arbitrage Rebate Determination:

The fee for arbitrage rebate determination will be charged at \$3,000 per bond issue per year that the services are required.

H. Disclosure Counsel Services:

The fee for any additional service such as the preparation of the preliminary official statement, the official statement and the 10b-5 opinion shall be at the following:

1. General Obligation Bonds: \$20,000

2. Revenue Bonds: \$25,000

I. Reimbursable Expenses:

Out-of-pocket expenses that may include photocopies, long-distance telephone calls, mailings, travel and other similar expenses with prior written approval by the County shall be reimbursed at actual costs upon actual certified receipts provided. The payment shall be made at the receipt amount with no additional mark up.

PLEASE INDICATE ANY FEES, RATES, COSTS, OR EXPENSES NOT LISTED ABOVE THAT MAY BE CHARGED TO THE COUNTY IN PROVIDING THE REQUESTED SCOPE OF WORK.

Fixed Term - Fixed Rate
Refunding Bond Issues

\$2.50 per \$1,000 face amount of the bonds
with a minimum fee of \$20,000 per issue, plus costs and gross receipts tax.

Industrial Revenue Bonds

\$0.30 per \$1,000 face amount of the bonds
with a minimum fee of \$20,000 per issue, plus costs and gross receipts tax.

New Mexico Finance Authority Loan Transactions

\$2.00 per \$1,000 face amount of the loan
with a minimum fee of \$7,500 per transaction.

It is difficult to anticipate the complexity of County bond issues during the term of the contract. Therefore, in unusual circumstances, where the complexity of the issue warrants an adjustment in the fees, we propose that Modrall Sperling and the County negotiate a mutually acceptable fee prior to the date of the adoption of the final bond ordinance or resolution by the County Commission setting the terms of the bonds expressed in dollars and cents per thousand dollars face amount of bonds.

Hourly Rate. For tasks not related to issuance of a specific series of bonds, Modrall Sperling proposes a blended hourly rate for its time acting as bond counsel to the County of \$285 per hour.

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

Complex Issues. The fees quoted above do not contemplate issues involving credit or liquidity enhancement, adjustable, flexible or variable rates, complex advance refundings, multi-mode issues, credits swaps, interest rate swaps, tax-exempt lease financings, 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.

