

**CITY OF SANTA FE
AMENDMENT No. 2 TO
LEGAL SERVICES AGREEMENT (HIPAA)
ITEM# 21-0341**

This AMENDMENT No. 2 (the "Amendment") amends the CITY OF SANTA FE LEGAL SERVICES CONTRACT, dated July 12, 2021 (the "Contract"), between the City of Santa Fe (the "City") and Modrall Sperling, Roehl, Harris & Sisk, P.A. (the "Contractor"). The date of this Amendment shall be the date when it is executed by the City and the Contractor whichever occurs last.

RECITALS:

A. Under the terms of the Contract, Contractor has agreed to provide the legal counsel in the area of health law, including implementation of, and adherence to HIPAA and HITECH policies.

B. Pursuant to Article 14 of the Contract, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the City and the Contractor agree as follows:

1. COMPENSATION.

Article 3, paragraph A of the Contract is amended to increase the amount of compensation by a total of \$10,000 so that Article 3, paragraph A reads in its entirety as follows:

A. The City shall pay to Contractor the following hourly rates: \$285/hour billed in 1/10th of an hour increments plus GRT/hour for all legal work provided by Kevin Pierce and or Karen Kahn. In addition, the City shall pay the Contractor for expenses incurred in the performance of services in the Agreement such as copying, telephone and computer research charges at the normal rate for such expenses charged by the Contractor to its other clients. Per diem and mileage expenses shall not exceed the amounts provided in the Per Diem and Mileage Act. Said services

shall not exceed twenty thousand dollars (\$25,000), plus gross receipts tax, in total for the term of this Agreement.

3. CONTRACT IN FULL FORCE.

Except as specifically provided in this Amendment, the Contract remains and shall remain in full force and effect, in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this Amendment No. 2 to the Contract as of the dates set forth below.

CITY OF SANTA FE:

CONTRACTOR:

John Blair
John Blair (May 31, 2024 14:34 MDT)

Karen L Kahn
Karen L Kahn (May 14, 2024 11:19 MDT)

JOHN BLAIR, CITY MANAGER

KAREN KAHN, ATTORNEY

DATE: May 31, 2024

DATE: May 14, 2024

CRS# 01-132230-000-6

Registration # 224786

ATTEST:

msxx

GERALYN CARDENAS, INTERIM CITY CLERK

.xiv

CITY ATTORNEY'S OFFICE:

Christopher W. Ryan
Christopher W. Ryan (May 14, 2024 11:31 MDT)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Emily K. Oster

EMILY OSTER, FINANCE DIRECTOR

City of Santa Fe, New Mexico

memo

DATE: May 22, 2024

TO: John W. Blair, City Manager JB
Emily Oster, Finance Director EO
Travis Leyda-Dutton, Chief Procurement Officer JL

FROM: Erin K. McSherry, City Attorney EM
Amy Cawthon, Administrative Manager AC

ITEM AND ISSUE:

Request for the approval of Amendment No. 2 to Legal Services Agreement Item #21-0341 to increase the amount of compensation by \$10,000, excluding GRT, for Legal Services to be provided by Modrall Sperling, Roehl, Harris & Sisk, P.A., total amount payable not to exceed \$25,000.

BACKGROUND AND SUMMARY:

Contractor provides legal counsel in the area of health law, including implementation of, and adherence to federal law, in particular the HIPAA and HITECH statutes and regulations.

ACTION REQUESTED:

The City Attorney's Office respectfully requests your review and approval of Amendment #2. General Fund: 100/ORG: 1002550 / OBJ: 510200. *AJH*

Thank you in advance for your assistance.

CITY OF SANTA FE PROCUREMENT CHECKLIST



Contractor Name: Modrall Sperling Roehl Harris & Sisk, P.A.

Procurement/contract Title: Amendment #2 – Legal Services Agreement HIPAA

Procurement Method/Vehicle: Sole Source State Price Agreement/Existing
 Cooperative Request For Proposals(RFP) Invitation To Bid (ITB) Exempt: 13-1-98
 Small Purchase (Contract Under \$60,000) Other: _____

Requesting Department: City Attorney's Office Staff Name: Amy Cawthon

Procurement Requirements:

Procurement files shall be maintained for all purchases and contracts, regardless of the method of procurement. The procurement files shall contain the basis on which the awards are made, all submitted bids/proposals, all evaluation materials (bid tabs or Evaluation Committee Reports), scoresheets, quotations, and all other documentation related to or prepared in conjunction with evaluations, negotiations, and the award processes. The procurements shall contain written determinations from the Requesting Departments, signed by the Chief Procurement Officers (this document), setting forth the reasoning for the contract award decisions before submitting them to the Committees.

REQUIRED DOCUMENTS FOR APPROVAL BY PURCHASING (CPD)

YES	N/A		YES	N/A	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Written Determination (srvs)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Quote(s) (3 Valid & Current for Over 20k)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	RFP - Confidential info to be provided to GB by CPD Buyer	<input type="checkbox"/>	<input checked="" type="checkbox"/>	BAR
<input type="checkbox"/>	<input checked="" type="checkbox"/>	ITB (include bid tab)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	FIR
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Other: _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Certificate of Insurance (srvs)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Cooperative Agreements and GSAs and Statewide Price Agreements (include the cover page to show valid date, s			
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Horizon Declination or Screenshot of horizonsofnewmexico.org/services.html (srvs)			
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Summary of Contract (only on contracts)			
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Current Santa Fe Business Registration (or Exemption if no tax)			
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Executed Contract or Price Agreement (legal and contractor must sign before purchasing approves)			
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Chief Procurement Officer (or designee) Approval for Exempt from Procurement (use memo on our site)			
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Evaluation Committee Report (RFPs only)			
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Signed Sole Source Determination, Vendor Written Quote, SS Letter from Contractors, and 30 Days Email			
<input checked="" type="checkbox"/>	<input type="checkbox"/>	>20k = Memo addressed to City Manager (Under 150K) Committees/City Council (Over 150K)			

Amy Cawthon Amy Cawthon
 Department Point of Contact

Erin McSherry Erin McSherry
Erin McSherry (May 24, 2024 16:52 MDT)
 Department Director

JoAnn Lovato Montano
 Chief Procurement Officer

Admin Manager 5/23/2024
 Title Date
May 24, 2024
 Date
May 29, 2024
 Date

ITT Representative _____

Title _____ Date _____



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/8/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER License # 0757776 HUB International Insurance Services (SOW) 6565 Americas Parkway Suite 720 Albuquerque, NM 87110	CONTACT NAME: Carrie Butler PHONE (A/C, No, Ext): (505) 262-9412 9412 FAX (A/C, No): (866) 487-3972 E-MAIL ADDRESS: Carrie.Butler@hubinternational.com
	INSURER(S) AFFORDING COVERAGE
INSURED Modrall, Sperling, Roehl, Harris & Sisk P.A. 500 4th Street NW Ste 1000 Albuquerque, NM 87102	INSURER A : Vigilant Insurance Company NAIC # 20397
	INSURER B : Federal Insurance Company 20281
	INSURER C : New Mexico Premier Insurance Company 13675
	INSURER D :
	INSURER E :
	INSURER F :

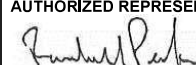
COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:			35309489	11/1/2023	11/1/2024	EACH OCCURRENCE \$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000
							MED EXP (Any one person) \$ 10,000
							PERSONAL & ADV INJURY \$ 1,000,000
							GENERAL AGGREGATE \$ 2,000,000
							PRODUCTS - COMP/OP AGG \$ Included
							\$
B	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			73206842	11/1/2023	11/1/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
							BODILY INJURY (Per person) \$
							BODILY INJURY (Per accident) \$
							PROPERTY DAMAGE (Per accident) \$
							\$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 0			79738718	11/1/2023	11/1/2024	EACH OCCURRENCE \$ 10,000,000
							AGGREGATE \$
							Aggregate \$ 10,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input checked="" type="checkbox"/> Y / N <input checked="" type="checkbox"/> N If yes, describe under DESCRIPTION OF OPERATIONS below			0109079.101	11/1/2023	11/1/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER
							E.L. EACH ACCIDENT \$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
							E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER **CANCELLATION**

City of Santa Fe 200 Lincoln Ave, Suite 201 Santa Fe, NM 87501	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 



City of Santa Fe

Treasury Department
200 Lincoln Ave.
Santa Fe, New Mexico 87504-0909
505-955-6551

BUSINESS REGISTRATION

Business Name: MODRALL SPERLING
DBA: MODRALL SPERLING

Business Location: 123 E MARCY ST 201
SANTA FE , NM 87501

Owner:

License Number: 224786

Issued Date: January 11, 2024

Expiration Date: January 11, 2025

CRS Number: 01132230006

License Type: Business License - Renewable

Classification: Business Registration - Standard

Fees Paid: \$35.00

MODRALL SPERLING
PO BOX 9318
SANTA FE , NM 87504

THIS IS NOT A CONSTRUCTION PERMIT OR SIGN PERMIT.
APPROPRIATE PERMITS MUST BE OBTAINED FROM THE CITY
OF SANTA FE BUILDING PERMIT DIVISION PRIOR TO
COMMENCEMENT OF ANY CONSTRUCTION OR THE
INSTALLATION OF ANY EXTERIOR SIGN.

THIS REGISTRATION/LICENSE IS NOT TRANSFERABLE TO
OTHER BUSINESSES OR PREMISES.

TO BE POSTED IN A CONSPICUOUS PLACE

CONTRACT#3202639
ITEM# 23-0197

**CITY OF SANTA FE
AMENDMENT No. 1 TO
LEGAL SERVICES AGREEMENT
(HIPAA)
Item #21-0341**

AMENDMENT No. 1 (the "Amendment") to the CITY OF SANTA FE LEGAL SERVICES AGREEMENT, dated July 12, 2021 (the "Agreement"), between the City of Santa Fe (the "City") and Modrall Sperling, Roehl, Harris & Sisk, P.A. (the "Contractor"). The date of this Amendment shall be the date when it is executed by the City and the Contractor, whichever occurs last.

RECITALS:

A. Under the terms of the Agreement, Contractor has agreed to provide legal services (HIPAA).

B. Pursuant to Article 14 of the Agreement, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the City and the Contractor agree as follows:

1. Article 4 of the Agreement is hereby deleted in its entirety and the following Article 4 shall be substituted in its place:

This Agreement shall terminate on May 1, 2025, unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

2. AGREEMENT IN FULL FORCE.

Except as specifically provided in this Amendment, the Agreement remains and shall remain in full force and effect, in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 to the City of

Santa Fe Legal Services Agreement as of the dates set forth below.

CITY OF SANTA FE:

CONTRACTOR:

Modrall Sperling, Roehl, Harris & Sisk, P.A.'s

John Blair
John Blair (May 9, 2023 10:41 MDT)

JOHN BLAIR, CITY MANAGER

Kevin Pierce

NAME
shareholder

TITLE

Date: May 9, 2023

Date: 4/20/23

ATTEST:

Kristine Mihelcic

KRISTINE BUSTOS MIHELICIC, CITY CLERK XIV

CITY ATTORNEY'S OFFICE:

Erin McSherry

ERIN K. MCSHERRY, CITY ATTORNEY

APPROVED FOR FINANCES:

Emily K. Oster
Emily K. Oster (May 4, 2023 21:56 MDT)

EMILY OSTER, FINANCE DIRECTOR

1002550.510200^{Att}
MUNIS ORG/OBJ

CITY OF SANTA FE

LEGAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into by and between the City of Santa Fe (the "City") and Modrall Sperling, Roehl, Harris & Sisk, P.A.'s ("Modrall Sperling") (the "Contractor"). The date of this Agreement shall be the date when it is executed by the City.

1. Scope of Services

Legal counsel in the area of health law, including implementation of, and adherence to, HIPAA and HITECH, and including, but not limited to, as-needed advice and counsel and reviewing, drafting, and revising documents, policies, and procedures related to health law matters affecting the City of Santa Fe.

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 Agreement.

B. The Contractor agrees to obtain and maintain throughout the term of this Agreement, all applicable professional and business licenses required by law, for itself, its employees, agents, representatives and subcontractors.

3. Compensation.

A. The City shall pay to Contractor the following hourly rates: \$285/hour billed in 1/10th of an hour increments plus GRT/hour for all legal work provided by Kevin Pierce and or Karen Kahn. In addition, the City shall pay the Contractor for expenses incurred in the performance of services in the Agreement such as copying, telephone and computer research charges at the normal rate for such expenses charged by the Contractor to its other clients. Per diem and mileage expenses shall not exceed the amounts provided in the Per Diem and Mileage Act. Said services shall not exceed fifteen thousand dollars (\$15,000), plus gross receipts tax, in total for the term of this Agreement.

B. The Contractor shall be responsible for payment of gross receipts taxes levied by the State of New Mexico on the sums payable under this Agreement.

C. Payment shall be made upon receipt and approval by the City of detailed statements containing a report of services completed. Compensation shall be paid only for services actually performed.

4. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY. This Agreement shall terminate on May 1, 2023, with an annual option to renew for up to four years, which must be requested by December 1, one month prior to the termination date, unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

5. Termination.

A. Termination. This Agreement 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 Agreement, 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 Agreement. 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 Agreement 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 Agreement, 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 AGREEMENT.*

B Termination Management. Immediately upon receipt by either the City or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement 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 Agreement; 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 Agreement. 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 Agreement are contingent upon sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City Council, this Agreement shall terminate 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 Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement 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 Agreement. 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 Agreement or assign any claims for money due or to become due under this Agreement 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 Agreement without the prior written approval of the City. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the City.

10. Release.

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

11. 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 City.

12. Product of Service -- Copyright.

All materials developed or acquired by the Contractor under this Agreement shall become the property of the City and shall be delivered to the City no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement 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.

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

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978.

C. 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 Agreement was entered into by the parties. Contractor shall provide immediate written notice to the City if, at any time during the term of this Agreement, 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 Agreement 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 Agreement 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 Agreement to the contrary, the City may immediately terminate the Agreement.

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

E. The City and Contractor recognize that Contractor's representation of the City under this Agreement and in public finance-related matters in which Contractor represents the City on an ongoing basis, will not disqualify Contractor from requesting a waiver to permit it to represent clients in other matters, including litigation and other situations where that representation is adverse to the City. Any such requests shall be unrelated to the subject matter of this Agreement and to public finance matters and would only be requested if they would not conflict with the performance of Contractor's obligations under this Agreement. Contractor agrees not to use any proprietary or other confidential information of a nonpublic nature concerning the City acquired by Contractor as a result of its representation of the City to its material disadvantage in connection with any litigation or other situation. Contractor acknowledges that the City would evaluate each waiver request on a case-by-case basis.

14. Amendment.

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

B. If the City proposes an amendment to the Agreement 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 Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

15. Merger.

This Agreement 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 Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

16. Penalties for violation of law.

The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, 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 Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

18. Applicable Law.

The laws of the State of New Mexico shall govern this Agreement, 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 Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, 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 Agreement.

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 Agreement 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 Agreement.

B. Contractor shall obtain and maintain Workers' Compensation insurance required by law to provide coverage for Contractor's employees throughout the term of this Agreement. 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 Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. 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 Agreement 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 Agreement 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 Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. 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 Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

24. Invalid Term or Condition.

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

25. Notices.

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

CITY OF SANTA FE:
CITY ATTORNEY'S OFFICE
P.O. BOX 909
SANTA FE, NM 87504

CONTRACTOR:
MODRALL SPERLING
BANK OF AMERICA CENTRE
500 FOURTH ST. NW, STE. 1000
ALBUQUERQUE, NM 87102
P.O. BOX 2168
ALBUQUERQUE, NM 87103-2168
505-848-1800

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.

CITY OF SANTA FE:

Jarel LaPan Hill

Jarel LaPan Hill (Jul 12, 2021 08:10 MDT)

JAREL LAPAN HILL, CITY MANAGER

Date: Jul 12, 2021

CONTRACTOR:
MODRALL SPERLING



Tim L. Fields, President

Date: May 13, 2021

N.M. Taxation & Revenue
CRS #01-132230-00-6
City of Santa Fe Business
Registration #224786

ATTEST:

Kristine Mihelcic

Kristine Mihelcic (Jul 13, 2021 09:17 MDT)

KRISTINE BUSTOS MIHELICIC, CITY CLERK

XIV
xiv

CITY ATTORNEY'S OFFICE:

Marcos Martinez

Marcos Martinez (May 17, 2021 09:09 MDT)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Alexis Lotero, Assistant Finance Director

Alexis Lotero, Assistant Finance Director (May 21, 2021 17:18 MDT)

MARY McCOY, FINANCE DIRECTOR

1002550.510200

Org. Name/Org.# AJH

AJH

Signature: 
XAVIER VIGIL (Jun 18, 2024 08:38 MDT)

Email: xivigil@santafenm.gov

24-0398 Modrall, Sperling, Roehl, Harris and Sisk PA's

Final Audit Report

2024-06-18

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