

**SANTA FE COUNTY
PROFESSIONAL SERVICES AGREEMENT
WITH RBC CAPITAL MARKETS, LLC
FOR FINANCIAL ADVISOR SERVICES**

THIS AGREEMENT is made and entered into as of this 10th day of December, 2013, by and between Santa Fe County, hereinafter referred to as "County", a political subdivision of the State of New Mexico and RBC Capital Markets, a Foreign Limited Liability Company, a with a principal address located at One Liberty Plaza, 165 Broadway, New York, NY 10006, hereinafter referred to as "Contractor".

RECITALS

WHEREAS, Santa Fe County's Finance Department, requires the services of a professional financial advisor licensed as a Certified Public Accountant (CPA) to work with County officials and Bond Counsel and provide information appropriate to bond rating agencies, conduct a survey of the financial resources of the County to determine the extent of its capacity to authorize and issue debt service;

WHEREAS, pursuant to NMSA 1978, Section 13-1-12 and 13-1-153 of the Procurement Code competitive sealed proposals were solicited for financial advisor services via a formal request for proposals (RFP), RFP No. 2014-0011-FI/IC;

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

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:

AGREEMENT

1. SCOPE OF WORK

The Contractor shall provide the following services:

A. Objectives:

- 1) To provide timely information to bond rating agencies necessary to obtain bond ratings.
- 2) To maintain or improve the credit rating of the County.
- 3) To obtain the most advantageous timing for the sale of bonds.
- 4) To broaden the interest in bonds to be sold and ensure the proper structuring of bond sales.

- 5) To release official statements relating to any bonds to be offered for sale to prospective buyers of bonds.
- 6) To assist the County in complying with reporting requirements under the Securities and Exchange Commission Rule 17 CFR 240.15c2-12 as amended.

B. Deliverables:

- 1) Conduct an assessment of Financial Resources and Recommended Plan of Financing.
- 2) The Contractor shall conduct a survey of the financial resources of the County to determine the extent of its capacity to authorize issue and service debt. The survey will include an analysis of existing debt structure as compared with the existing and projected sources of revenues that may be pledged to secure payment of debt service and, where appropriate, will include a study of the trend of the assessed valuation, taxing power (including both property taxes and sales/excise taxes) and present and future taxing requirements of the County. The survey will include:
 - a) Analysis of specific outstanding bond transactions identified by the County (e.g., adult detention center debt, special taxing district debt) and recommendations for addressing disadvantaged features of such outstanding transactions.
- 3) Based on the information of the survey, the Contractor shall submit to the County recommendations on current and future debt instruments under consideration including such elements as current bond market conditions, forthcoming bond issues and other general information and economic data that might normally be expected to influence interest rates or bidding conditions so that the date of sale of the debt instruments may be set at a time which will be favorable.
- 4) The Contractor shall recommend the method or methods of sale of debt instruments that are most advantageous of the County and shall proceed with such as directed by the County.
- 5) The Contractor shall cooperate with legal counsel and bond counsel for the County in the preparation and adoption of all necessary ordinances, resolutions, notices, certificates and the publishing of all legal notices and the occurrence of any other events required for the successful sale, issuance, and delivery of bonds.
- 6) Cooperation with External Agencies - Coordinate with state authorized agencies in obtaining any necessary agency approval(s) for the issuance of the bonds.
- 7) Ratings and Credit Enhancement. - Work with County officials and bond counsel to provide information to bond rating agencies necessary or requested to obtain bond ratings. Assist in preparation of materials as may be required. The Contractor may be requested to accompany appropriate officials to meetings with rating agencies and credit enhancement companies. Take appropriate actions to assist the County in maintaining or improving the credit rating of the County.
- 8) Preparation of Sale of Bonds.
 - a) In a *competitive sale* situation, the Contractor will work closely with the County in preparation for bidding revenue bonds, advising on the most

- advantageous timing of bidding and evaluating bids, and the award of the winning bid to the underwriter(s).
- b) In a *negotiated sale* situation, the Contractor shall assist the County in planning for the optimal timing of the purchase transaction and subsequent marketing of the bonds. The Contractor shall assist the County as required in identification of potential underwriters from those identified as proposers under point (1) above, or as otherwise selected by the County for consideration.
- 9) At the sale of the bonds, provide experienced personnel whose services will be available to the County in the tabulation and compensation of bids. The Contractor shall be knowledgeable about electronic bidding formats for competitive bond sales. The Contractor shall coordinate the activities of the successful bidder and all parties toward payment and delivery of bonds.
 - 10) If requested, the Contractor shall advise the County in the selection of a paying agent/registrar for the debt instruments and shall assist in the preparation of agreements pertinent to these services and fees incident thereto.
 - 11) After the closing of the sale and delivery of the debt instruments, the Contractor shall deliver a schedule of annual debt service requirements on the debt instruments. In coordination with bond counsel, the Contractor shall assure that the paying agent/registrar has been provided with a copy of the authorizing ordinance, order or resolution.
 - 12) Official Statement and Related Documents – with assistance from the County’s Bond Counsel, the Contractor shall prepare for review and approval by the County, a preliminary and final official statement relating to any bonds to be offered for sale to prospective buyers of bonds. The Contractor shall arrange for the distribution of documents to a comprehensive list of prospective brokers, underwriters, banks and financial institutions. The Contractor shall prepare bid forms that conform to the municipal securities standards for all securities upon which bids will be solicited. In advance of the of the proposed sale, the Contractor shall consult with and advise the County concerning advertising information to prospective brokers, underwriters, purchasers and buyers, the provision of information to broaden the interest of the bonds to be sold. The Contractor will recommend meetings with proposed purchasers of bonds as necessary.
 - 13) The Contractor shall recommend the structuring of any bond campaigns and persons to be involved in the various meetings.
 - 14) The Contractor shall furnish the County with a reasonable supply of disclosure materials and provide sets of same to prospective buyers of the bonds.
 - 15) The Contractor shall, on an on-going basis, assist the County in complying with reporting requirements under the Securities and Exchange Commission Rule 17 CFR 240.15c2-12 as amended.
 - 16) Meetings with the County – The Contractor shall attend meetings of the County and be available to County staff and legal counsel whenever requested; be available to assist in the preparation and review of possible legislation affecting the County and project financing; and, testify, if required, at legislative committee meetings regarding proposed legislation.
 - 17) During the term of the contract the Contractor shall not propose to underwrite negotiated transactions for, or on behalf of the County.

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.
- B. Contractor shall submit a written request for payment to County whenever payment is due under this Agreement. Within fifteen (15) days of County's receipt of the written request, County shall issue a written certification of complete or partial acceptance or rejection of the contractual items or services for which payment is sought. Contractor acknowledges and agrees that 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, County shall tender payment for the accepted items or services. In the event County fails to render payment within thirty (30) days of the written certification accepting the items or services, 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 Contractor breaches this Agreement, County may, without penalty, withhold any payments due Contractor for the purpose of set-off until such time as 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 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 4. **TERMINATION** or 5. **APPROPRIATIONS AND AUTHORIZATIONS** of this Agreement. The County has the option to extend this Agreement for one (1) year. Any extension is dependent on the Contractor's performance of services. In no case will the term of this Agreement exceed a total of two (2) years in duration from the date of the initial Agreement. The County will exercise this option by amending this Agreement in no less than thirty (30) days prior to the expiration of the initial term.

4. 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 with 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 County, County may, in its discretion terminate this Agreement at any time for any reason by giving Contractor written notice of termination. The notice shall specify the effective date of termination, which shall not be less than fifteen (15) days from Contractor's receipt of the notice. County shall pay Contractor for acceptable work, determined in accordance with the requirements set forth in this Agreement, performed before the effective date of the termination but shall not be liable for any work performed after the effective date of termination. Such termination shall be without penalty to County, and County shall have no duty to reimburse Contractor for expenditures made in the performance of this Agreement.

5. 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.

6. INDEPENDENT CONTRACTOR

Contractor and its agents and employees are independent contractors and are not employees or agents of County. Accordingly, 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 County. Except as may be expressly authorized elsewhere in this Agreement, Contractor has no authority to bind, represent, or otherwise act on behalf of County and agrees not to purport to do so.

7. 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 County's advance written approval shall be null and void and without any legal effect.

8. SUBCONTRACTING

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

9. PERSONNEL

- A. All work performed under this Agreement shall be performed by the Contractor or under its supervision.
- B. 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 County and (ii) shall be fully qualified and licensed or otherwise authorized or permitted under federal, state, and local law to perform such work.

10. RELEASE

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

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

- A. 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. 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.

13. CONFLICT OF INTEREST

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

14. 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. Contractor specifically acknowledges and agrees that 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.

15. 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.

16. NOTICE OF PENALTIES

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

17. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

- A. Contractor agrees to abide by all Federal, State, and local laws, ordinances, and rules and regulations pertaining to equal opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, Contractor specifically agrees not to discriminate against any person with regard to employment with 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. Contractor acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Agreement.

18. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW

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

19. RECORDS AND INSPECTIONS

- A. To the extent their books and records relate to (i) their 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, Contractor agrees to (i) maintain such books and records during the term of this Agreement for a period of six (6) years from the date of final payment under this Agreement; (ii) allow 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 their books and records relate to (i) their 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, 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 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 with GAAP.

20. INDEMNIFICATION

- A. Contractor shall defend, indemnify, and hold harmless 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 Contractor’s performance or non-performance of its obligations of its obligations under this Agreement, including but not limited to Contractor’s breach of any representation or warranty made herein.
- B. County shall have the right to approve any counsel retained by Contractor to defend any demand, suit, or cause of action in which County is named, such approval not to be unreasonably withheld. Contractor agrees (i) that 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 (ii) that such suit will not be settled without County’s consent, such consent not to be unreasonably withheld. If in County’s judgment, a conflict exists between the interests of County and Contractor such demand, suit, or cause of action, County may retain its own counsel, whose fees shall be paid by Contractor.
- C. Contractor’s obligations under this section shall not be limited by the provisions of any insurance policy Contractor is required to maintain under this Agreement.

21. 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.

22. 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: RBC Capital Markets, LLC
6301 Uptown Blvd. NE, Suite 110
Albuquerque, New Mexico 87110

23. CONTRACTOR’S REPRESENTATIONS AND WARRANTIES

- A. It is corporation duly organized and in good standing under the laws of the state of New Mexico.
- B. This Agreement has been duly authorized by Contractor, the person executing this Agreement has authority to do so, and once executed by Contractor, this Agreement shall constitute a binding obligation of Contractor.
- C. This Agreement and Contractor’s obligations hereunder do not conflict with Contractor’s articles of incorporation or by-laws or any corporate resolution adopted by Contractor.

24. LIMITATION OF LIABILITY

County’s liability to Contractor for any breach of this Agreement by County shall be limited to direct damages and shall not exceed the maximum amount of potential compensation specified in Section 2, “**COMPENSATION AND INVOICING**”, of this Agreement. In no event shall County be liable to Contractor for special or consequential damages, even if County was advised of the possibility of such damages prior to entering into this Agreement.

25. NO THIRD-PARTY BENEFICIARIES

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

26. INSURANCE

- A. General Conditions. 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. Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy and liability limits in amounts not less than \$1,000,000 combined single limits of bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for County by 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. County of Santa Fe shall be named additional insured on the policy.
- C. Workers' Compensation Insurance. 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), Contractor shall increase the maximum limits of any insurance required herein.
- E. Malpractice/Errors and Omissions Insurance. The Contractor shall procure and maintain during the life of this Agreement professional liability or errors and omissions insurance in amounts not less than \$1,500,000.00 per occurrence, \$2,500,000.00 per aggregate.

27. 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.

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

The Contractor hereby irrevocably appoints Corporation Service Company, a New Mexico resident company located at 125 Lincoln Avenue Suite 223, Santa Fe, New Mexico, 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 services upon its designated agent shall have the same effect as though the Contractor were personally served within the state of New Mexico.

29. FACSIMILE SIGNATURES

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

30. 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.

31. CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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

32. SURVIVAL

The provisions of following paragraphs shall survive termination of this Contract: 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 executed this Agreement as of the date first written above.

SANTA FE COUNTY

Kathy Holian 12/10/2013
Kathy Holian, Chair Date
Santa Fe Board of County Commissioners

Attest:
Geraldine Salazar, County Clerk

Geraldine Salazar 12/10/2013
Date



APPROVED AS TO FORM

Stephen C. Ross 11/25/13
Stephen C. Ross Date
Santa Fe County Attorney

FINANCE DEPARTMENT APPROVAL

Teresa C. Martinez 11/26/2013
Teresa C. Martinez Date
Santa Fe County Finance Director

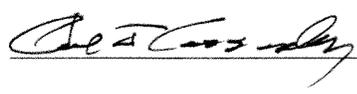
CONTRACTOR

Date

FEDERAL IDENTIFICATION NO. 411416330



CONTRACTOR

 12/10/13
Date

FEDERAL IDENTIFICATION NO. 411416330

EXHIBIT A - FEE SCHEDULE

1. **Hourly Rates.** Hourly rates would be charged for advice and services performed that are *not related to the issuance of a specific bond* based on the following schedule:

| | |
|-----------------------|---------------|
| Managing Director | \$200.00/hour |
| Director | \$185.00/hour |
| Associate and Analyst | \$125.00/hour |
| Support | \$95.00/hour |

2. **Financial Advisory Services.** As consideration for the services rendered by the Contractor and as a reimbursement for the expenses incurred, it is agreed that the County will pay, and the Contractor accepts, a fee based upon the following schedule, depending upon the amount of the bond issue involved.

*If the amount of a bond issued is:

| <u>More Than</u> | <u>And Not More Than</u> | <u>Financial Advisory Fee</u> |
|------------------|--------------------------|---|
| \$ -0- | \$ 1,999,999 | \$13,500 |
| 2,000,000 | 4,999,999 | \$23,500 |
| 5,000,000 | 9,999,999 | \$26,500 |
| 10,000,000 | 19,999,999 | \$28,500 |
| 20,000,000 | No Limit | \$35,000 + \$1.00 per \$1,000 over \$20,000,000 |

A refunding issue combined with a new money issue will be billed as a separate issue.

Fees for advance refunding issued bonds involving Escrow Agreements, will be the fee schedule set out above plus 10 percent. In addition to our Financial Advisory fee, the Contractor will charge a structuring fee to be negotiated on a case-by-case basis due to special circumstances such as litigation, delivery in financing or escrow agreements. The additional fees will not exceed 25% of the fee set out in the schedule above.

The Contractor will bill the County at Closing for each issue of bonds a net amount which will include a fee calculated on the above schedule as well as any out-of-pocket expenses incurred on behalf of the County plus gross receipts tax.

3. **Reimbursable Expenses.** In addition to the Financial Advisory fees above, out-of-pocket travel expenses and mileage expenses will be reimbursed by the County at cost plus gross receipts tax. Due to corporate policy, reimbursable expenses cannot be paid by the Contractor. However, all expenses incurred during the issuance of bonds will be reviewed by the Contractor for accuracy and forwarded to the County for payment from bond proceeds when the bonds are issued to provide additional savings in Gross Receipts Tax to the County.

