

**REQUEST FOR PROPOSALS
RFP No. 2018-001**

**FINANCIAL SERVICES
FOR THE CITY OF ALAMOGORDO, NEW MEXICO**

I. Introduction

A. Purpose of this Request for Proposal

The City of Alamogordo is soliciting proposals from qualified firms to serve the City as Financial Advisor to advise and assist the City in the issuance of various forms of debt including public offerings of bonds, negotiated sales, and private placements. Advisory services shall include the structure, timing, terms, and similar matters concerning the debt issuance. Financial planning of resources to repay the debt will be included as some of the advisory services that will be needed. Expertise in federal, state, home rule, and local financing laws will be required as well as a board base of knowledge of various types of financial issues. The agreement will be for a base period of one (1) year with the option to renew at the discretion of both parties for an additional three (3) one (1) year terms. It is the City's intent to enter into a contract with one agency as a result of this RFP.

B. Project Description/Scope of Work

Scope of work is to provide Financial Services in accordance with "Attachment No. 1".

C. CHIEF PROCUREMENT OFFICER

1. Chief Procurement Officer is responsible for the conduct of this procurement whose name, address, telephone number and e-mail address are listed below:

Name: Barbara Pyeatt, Chief Procurement Officer
Address: Purchasing Department
2600 N. Florida Ave.
Alamogordo, NM 88310
Telephone: (575) 439-4116
Fax: (575) 439-4117
Email: bpyeatt@ci.alamogordo.nm.us

2. All deliveries of responses via express carrier must be addressed as follows:

Name: Purchasing Department
Attn: Barbara Pyeatt, CPO
Reference: RFP 2018-001 Financial Services
Address: 2600 N Florida Ave.
Alamogordo, New Mexico 85310

3. Any inquiries or requests regarding this procurement should be submitted, in writing, to the Chief Procurement Officer. Offerors may contact ONLY the Chief Procurement Officer regarding this procurement.

NOTE: DIRECT CONTACT WITH CITY ELECTED OFFICIALS OR CITY STAFF OTHER THAN PURCHASING STAFF REGARDING THIS RFP WILL RENDER THE PROPOSAL NON-COMPLIANT.

II. Conditions Governing the Procurement

This section of the RFP contains the schedule, description and conditions governing the procurement

A. SEQUENCE OF EVENTS

The Chief Procurement Officer will make every effort to adhere to the following schedule. However, if the Selection Committee makes a selection at the proposal Short Listing, oral presentation will not apply. :

Action	Responsible Party	Due Dates
Issue RFP	City of Alamogordo	March 25, 2018
Deadline to submit Written Questions	Potential Offerors	April 18, 2018
Addenda if necessary	City of Alamogordo	April 23, 2018
Submission Proposals	Potential Offerors	May 9th, 2018
Proposal Evaluation	Evaluation Committee	May 14th, 2017
Oral Presentation if requested	City of Alamogordo	TBA
Authorization of Award	City Commission	May 22, 2017

B. EXPLANATION OF EVENTS

The following paragraphs describe the activities listed in the sequence of events shown in Section II, Paragraph A, above.

1. Issuance of RFP

This RFP is being issued on behalf of the Finance Department, City of Alamogordo.

2. Distribution List Response Due

Potential Offerors can hand deliver, return by facsimile, email or registered or certified mail the "Acknowledgement of Receipt of Request for Proposals Form" that accompanies this document, ATTACHMENT 4, to have their organization placed on the procurement distribution list. The form should be signed by an authorized representative of the organization, dated and returned to the Chief Procurement Officer.

The procurement distribution list will be used for the distribution of written responses to questions. Failure to return the Acknowledgement of Receipt form shall constitute a presumption of receipt and rejection of the RFP, and the potential organization name shall not appear on the distribution list.

3. Pre-Proposal Conference

A pre-proposal conference will not be held for this project.

4. Deadline to Submit Written Questions

Potential Offerors may submit written questions to the Chief Procurement Officer as to the intent or clarity of this RFP until 3:00 PM Mountain Standard Time/Daylight Time as indicated in the sequence of events. All written questions must be addressed to the Chief Procurement Officer as declared in Section II, Paragraph C.

5. Response to Written Questions

An Addendum will be issued in response to all written questions and will be distributed as indicated in the sequence of events to all potential Offerors whose organization name appears on the procurement distribution list and on the City's website. An e-mail copy will be sent to all Offerors that provide Acknowledgement of Receipt Forms described in II.B.2.

All offerors will be required to acknowledge receipt of RFP amendment(s) in writing as part of their proposal transmittal. A failure to acknowledge receipt of RFP amendment(s) may be cause for rejection of the proposal.

6. Submission of Proposal

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE CHIEF PROCUREMENT OFFICER OR DESIGNEE NO

LATER THAN 3:00 PM MOUNTAIN STANDARD TIME/DAYLIGHT TIME ON see Section II A. Sequence of Events. Proposals received after this deadline will not be accepted. The date and time of receipt will be recorded on each proposal.

Proposals must be addressed and delivered to the Chief Procurement Officer at the address listed in Section I, Paragraph C2. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the RFP 2018-001 FINANCIAL SERVICES. Proposals submitted by facsimile, or other electronic means, will not be accepted.

At all times, it shall be the responsibility of the offeror to ensure its proposal is delivered to the City of Alamogordo by the proposal due date and time. If the mail or delivery of said proposal is delayed beyond the deadline set for the proposal opening, proposals thus delayed will not be considered.

A public log will be kept of the names of all Offer organizations that submitted proposals. The contents of proposals shall not be disclosed to competing potential Offerors during the negotiation process. The negotiation process is deemed to be in effect until the contract is awarded pursuant to this Request for Proposal has been awarded.

Proposals accepted by the City shall be valid for a period of ninety (90) days following the deadline for the proposal submittal.

8. Proposal Evaluation

A Selection Committee will perform the evaluation of proposals. This process will take place as indicated in the sequence of events, depending upon the number of proposals received. During this time, the Chief Procurement Officer may initiate discussions with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals. However, proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by the Offerors.

9. Oral Presentations

Finalist Offerors may be required to conduct an oral presentation at a location to be determined as per schedule Section II, A Sequence of Events or as soon as possible. Whether or not oral presentations will be held is at the discretion of the Issuing Department and Chief Procurement Officer.

10. Contract Awards

The Contract will be finalized with the most advantageous Offeror. In the event that mutually agreeable terms cannot be reached within the time specified, the City of Alamogordo reserves the right to finalize a contract with the next most advantageous Offeror without undertaking a new procurement process or reserves the right to cancel the award.

11. Protest Deadline

Any protest by an Offeror must be in conformance with Section 2-13-300 and applicable procurement regulations. The fifteen (15) day protest period for responsive Offerors shall begin on the day following the commission's approval to negotiate and will end at 5:00 pm MDT on the fifteenth (15) calendar day following that approval. Protests must be written and must include the name and address of the Protester and the solicitation number(s). It must also contain a statement of grounds for protest including appropriate supporting exhibits, and it must specify the ruling requested from the Purchasing Manager. The protest must be delivered to the following address:

Name: Barbara Pyeatt
Title: Chief Procurement Officer
Address 2600 N. Florida Ave.
Alamogordo, NM 88310
Fax Number: 575-439-4117
E-mail: bpyeatt@ci.alamogordo.nm.us

Protests received after the deadline will not be accepted.

C. GENERAL REQUIREMENTS

1. Acceptance of Conditions Governing the Procurement

This procurement will be conducted in accordance with the City of Alamogordo's procurement regulations.

2. Incurring Cost

Any cost incurred by the potential Offeror in preparation, transmittal, and/or presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror.

Any cost incurred by the Offeror for set up and demonstration of the proposed equipment and/or system shall be borne solely by the Offeror.

3. Subcontractors

The selected firm shall not assign, sublet, or transfer their interest in this agreement without prior written consent from the City. If such an assignment is allowed, the firm entering into this contract shall be ultimately responsible to ensure that the work is performed satisfactorily.

4. Offerors

Since the award is made on a quality-based evaluation process, replacement of offerors after award of and prior to the contract execution may cause the Offeror to be disqualified.

5. Amended Proposals

An Offeror may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals must be complete replacements for a previously submitted proposal and must be clearly identified as such in the transmittal letter. The Agency personnel will not merge, collate, or assemble proposal materials.

6. Offerors Rights to Withdraw Proposal

Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The Offeror must submit a written withdrawal request addressed to the Chief Procurement Officer and signed by the Offerors duly authorized representative.

The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations.

7. Disclosure of Proposal Contents

The proposals will be kept confidential until negotiations are completed by City of Alamogordo. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for material that is clearly marked proprietary or confidential. The Chief Procurement Officer will not disclose or make public any pages of a proposal on which the potential Offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements.

Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. Confidential data is normally restricted to confidential financial information concerning the Offerors organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, Sections 57-3A-1 to 57-3A-7 NMSA 1978. The price of products offered or the cost of services proposed shall not be designated as proprietary or confidential information.

If a request is received for disclosure of data for which an Offeror has made a written request for confidentiality, City of Alamogordo shall examine the Offerors request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

8. No Obligation

This procurement in no manner obligates the City of Alamogordo or any of its Departments to the use of Offeror services until a valid written contract is awarded and approved by appropriate authorities.

9. Termination

This RFP may be canceled at any time and any and all proposals may be rejected in whole or in part when Procurement Department determines such action to be in the best interest of the City of Alamogordo.

10. Sufficient Appropriation

Any agreement or contract awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations do not exist. Such terminations will be effected by sending written notice to the offeror. The City's decision as to whether sufficient appropriations and authorizations are available will be accepted by the offeror as final.

11. Legal Review

The City requires that all Offerors agree to be bound by the General Requirements contained in this RFP. Any Offeror concerns must be promptly brought in writing to the attention of the Chief Procurement Officer.

12. Governing Law

This procurement and any agreement with an Offeror which may result from this procurement shall be governed by the laws of the State of New Mexico.

13. Basis for Proposal

Only information supplied, in writing, by the City of Alamogordo through the Chief Procurement Officer or in this RFP should be used as the basis for the preparation of Offeror proposals.

14. Contract Terms and Conditions

The City of Alamogordo reserves the right to negotiate with a successful Offeror provisions in addition to those contained in this solicitation. The contents of this solicitation, as revised

and/or supplemented, and the successful Offerors proposal will be incorporated into and become part of the contract.

Should an Offeror object to any of the City of Alamogordo's terms and conditions, as contained in this Section, that Offeror must propose specific alternative language. The City of Alamogordo may or may not accept the alternative language. General references to the Offerors terms and conditions or attempts at complete substitutions are not acceptable to the City of Alamogordo and will result in disqualification of the Offerors proposal.

15. Offerors Terms and Conditions

Offerors must submit with the proposal a complete set of any additional terms and conditions they expect to have included in a contract negotiated with the City of Alamogordo. Not to be included in page count.

16. Contract Deviations

Any additional terms and conditions, which may be the subject of negotiation, will be discussed only between the City of Alamogordo and the Offeror and shall not be deemed an opportunity to amend the Offerors proposal.

17. Offeror Qualifications

The Selection Committee may make such investigations as necessary to determine the ability of the potential Offeror to adhere to the requirements specified within this RFP. The Selection Committee will reject the proposal of any potential Offeror who is not a responsible Offeror or fails to submit a responsive offer as defined in Section 2-13-110 of the City of Alamogordo Procurement Ordinance.

18. Right to Waive Minor Irregularities

The Chief Procurement Officer reserves the right to waive minor irregularities. The Chief Procurement Officer also reserves the right to waive mandatory requirements provided that all of the otherwise responsive proposals failed to meet the same mandatory requirements and the failure to do so does not otherwise materially affect the procurement. This right is at the sole discretion of the Chief Procurement Officer.

19. Change in Representatives

The City of Alamogordo reserve the right to require a change in offeror representatives if the assigned representatives is not, in the opinion of the City of Alamogordo, meeting its needs adequately.

20. Notice - Bribery and Kickbacks

New Mexico criminal statutes imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

21. City of Alamogordo Rights

The City of Alamogordo in agreement with the Chief Procurement Officer reserves the right to accept all or a portion of a potential Offerors proposal.

This procurement in no manner obligates the City of Alamogordo or any of its agencies to the use of any proposed professional services until a valid written contract is awarded and approved by the appropriate authorities.

22. Right to Publish

Throughout the duration of this procurement process and contract term, Offerors must secure from the Chief Procurement Officer and the Owner written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement and/or agency contracts deriving from this procurement. Failure to adhere to this requirement may result in disqualification of the Offerors proposal.

23. Ownership of Proposals

All documents submitted in response to the RFP shall become property of the City of Alamogordo.

24. Confidentiality

Any confidential information provided to, or developed by, the firm in the performance of services under this contract shall be kept confidential and shall not be made available to any individual or organization by the firm without the prior written approval of the City Commission.

The Offeror agrees to protect the confidentiality of all confidential information and not to publish or disclose such information to any third party without the City Commission's written permission. By confidential information, we mean the software and related materials, including enhancements, which are designated as proprietary and confidential trade secrets of the licensor and licensee of the software. Firm(s) will not remove any copyright, trademark, and other proprietary rights notice from the licensed software or related materials.

25. Electronic mail address required

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). Offeror must have a valid e-mail address to receive this correspondence. (See also Section II.B.5, Response to Written Questions).

26. Use of Electronic Versions of this RFP

This solicitation is being made available by electronic means. If accepted by such means, the Offeror acknowledges and accepts full responsibility to ensure that no changes are made to the solicitation. In the event of conflict between a version of the solicitation in the Offerors possession and the version maintained by the City of Alamogordo, the version maintained by the City of Alamogordo shall govern.

27. Campaign Contribution Disclosure Form

Offeror must complete, sign, and return the Campaign Contribution Disclosure Form (See Attachment 3) as a part of their proposal. This requirement applies regardless whether a covered contribution was made or not made. **Failure to complete and return the signed unaltered form will result in disqualification.**

28. Conflict of Interest; Governmental Conduct Act.

The Offeror warrants that it presently has no interest and 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. The Offeror certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer or state employee or former state employee have been followed.

29. Utilization of Proposal

The City of Alamogordo may enter into cooperative purchasing agreements with other political subdivisions or other governmental entities of the State of New Mexico in order to conserve resources, reduce procurement costs, and improve the timely acquisition of supplies, equipment and services. The Respondent to whom a contract is awarded under this solicitation may be requested by other parties to such a cooperative purchasing agreement to extend to those parties the right to purchase supplies, equipment and services provided by the Respondent(s) under its contract with the City of Alamogordo, pursuant to terms and conditions stated therein.

30. Award of Contract

The award shall be made to the responsible Offeror whose proposal is most advantageous to the City of Alamogordo taking into consideration the evaluation factors set forth in this solicitation. After initial ranking of the proposals, at the City's sole option, the City may decide to interview the top three ranked firms to develop final rankings or may consider the rankings based on the proposals as final.

The contents of any proposal shall not be disclosed so as to be available to competing offerors during the negotiation process.

31. Registration

All work shall be under the direction of a Licensed Professional registered by the State of New Mexico.

32. Insurance

Public Liability and Automobile Liability Insurance

General Liability: Bodily Injury Liability and Property Damage Liability insurance applicable in full to the subject project shall be provided in the following minimum amounts:

Bodily Injury Liability:

\$500,000 each occurrence

\$1,000,000 aggregate

Property Damage Liability:

\$500,000 each occurrence

\$1,000,000 aggregate

1. The policy to provide this insurance is to be written on a Comprehensive General Liability form which must include the following:

a. Coverage for liability arising out of the operation of independent Contractors.

b. Completed Operations Coverage.

c. Attachment of the Broad Form Comprehensive General Liability Endorsement.

2. In the event that any use of explosives is a required part of the Contract, the CONTRACTOR's insurance must include coverage for injury to or destruction of property arising out of blasting or explosion.

3. In the event that any form of work next to an existing building or structure is a required part of the Contract, the CONTRACTOR's insurance must include coverage for injury to or destruction of property arising out of:

The collapse of or structural injury to any building or structure due to excavation, including borrowing, filling or backfilling in connection therewith, or to tunneling, cofferdam work or caisson work or to moving, shoring, underpinning, raising or demolition of any building or structure or removal or rebuilding of any structural support thereof.

4. Coverage must be included for injury to or destruction of any property arising out of injury to or destruction of wires, conduits, pipes, mains, sewers or other similar

property or any apparatus in connection therewith below the surface of the ground, if such injury or destruction is caused by or occurs during the use of mechanical equipment for the purpose of excavating, digging or drilling, or to injury to or destruction of property at any time resulting there from.

Automobile Liability Insurance coverage for the CONTRACTOR (whether included in the policy providing General Liability insurance or in a separate policy) must provide liability for the ownership, operation and maintenance of owned, non-owned and hired cars. The limits of liability for Automobile Liability insurance shall be provided in the following amounts:

Bodily Injury Liability:
\$500,000 each person
\$1,000,000 each occurrence

Property Damage Liability:
\$1,000,000 each occurrence

Workers' Compensation Insurance

The CONTRACTOR shall also carry Workers' Compensation Insurance or otherwise fully comply with the provisions of the New Mexico Workmen's Compensation Act and Occupational Disease Disablement Law.

Owners' Protective Liability Insurance

The CONTRACTOR shall purchase Standard Form Owners' Protective Liability insurance naming the OWNER as the name insured, with limits of liability applicable in full to the subject project as follows:

Bodily Injury Liability:
\$500,000 each occurrence

Property Damage Liability:
\$100,000 each occurrence

Property Damage and Bodily Injury Combined:
\$1,000,000 aggregate

III RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF RESPONSES

Offerors shall submit only one proposal in response to this RFP.

B. PROPOSAL FORMAT

PROPOSAL FORMAT

The proposal shall include sufficient information to permit the City to evaluate relevant qualifications. The proposal shall relate directly to the duties outlined in this RFP. Proposals shall be limited to a maximum of thirty (30) pages, excluding cover sheets, section divider tabs, Campaign Contribution Disclosure Form and Veteran Preference certificate, if applicable. Proposals shall be bound on the left-hand margin using single-sided 8.5" X 11" paper. Proposals must be signed by the offeror. Offerors shall submit proposals in one (1) original and five (5) copies, and one (1) electronic copy. **Failure to comply with this requirement may result in rejection of the proposal.**

Proposals shall provide a straightforward and concise delineation of the offeror's qualifications and commitment to satisfy the requirement of this RFP to include:

1. Letter of Introduction

Identify offeror including name, address, and telephone number. Provide a statement that the offeror will comply with all requirements and terms of the RFP, or identify any exceptions. Include name and address of principal member/officer of the firm responsible for administration of the contract.

2. Resumes

Identify the name and title of personnel who will provide the services. Provide a resume for each person and describe his/her experience in rendering services of the nature sought by the City. Indicate the role that each individual will play and percent of time assigned to the project or service in assisting the City Administration.

3. Knowledge and Experience

Provide a detailed description of the offeror's technical capabilities for the issuance and sale of taxable or tax exempt bonds. Provide examples of the ability to prepare voluminous documents in a timely manner, expertise, and administrative support. Include descriptions of past contracts completed by the firm.

4. References

Provide five (5) references; none can be from the City of Alamogordo, for the offeror's work as Financial Advisor in the issuance of public debt since 2008. A point of contact must be included along with a telephone number.

5. Services to be provided

List the Financial Advisor services proposed to be provided to the City of Alamogordo to assist in meeting the objectives outlined in this RFP. Be specific as to how the offeror's experience and expertise will add value to the City's efforts.

6. Sub-consultants.

List of sub-consultants including addresses, qualifications and areas of responsibilities

7. Regulatory Investigations/Litigation.

Provide details of any criminal investigation or pertinent litigation pending against your firm

8. Conflicts

Describe any existing potential conflicts of interest your firm might have, or which reasonably might arise, due to your involvement in the City's issuance of various forms of debt.

9. Disclosure Representation

Provide a statement disclosing any political contribution or gift in excess of \$250 (singularly or in aggregate) made by you or any elected official of the city in the last two (2) years.

IV. EVALUATION

A. CRITERIA

Proposals must address each of the following criteria. Each proposal may be awarded points up to the amount listed.

1. **Technical Competence** **(25 points)**

Firm and personnel's experience in providing similar information and services relative to the requirements described in Attachment No. 1.
2. **Capacity and Capability** **(20 points)**

Firm's capacity and capability to provide the information and services in a timely manner.
3. **Past Record of Performance** **(10 points)**

Firm's past performance on similar project assignments. As part of their response, firms should provide a list of four references with names and phone numbers.
4. **Approach to Providing the Services** **(10 points)**

Firm should describe their approach to providing and managing the anticipated services.
5. **Personnel Qualifications** **(10 points)**

The key personnel who will be assigned to the project should be identified and summaries of their experience given.
6. **Pricing** **(25 points)**

Provide Cost Schedule per Attachment #1 Scope of Work. "**Additional Proposal Requirements c 1-5.**"

The evaluation of each Offeror's Cost Proposal will be conducted using the following formula:

$$\frac{\text{Lowest Responsive All-In Cost}}{\text{This Offeror's All-In Cost}} \times 25 = \text{Awarded Points}$$

TOTAL AVAILABLE POINTS = 100

Additional Preference Award Points Available per #8, #9 or #10 below

An Offeror must specify which preference below they would claim if qualifying for more than one. The preference values are not cumulative.

1. Resident Veterans Preference Certification, Attachment 5 (Certificate Required)

Available Points = 7, 8 or 10 Percent of total Points

Complete the Resident Veterans Preference Certification Form in Attachment 5, if applicable.

2. New Mexico Business Preference, (Certificate Required)

Available Points = 5 Percent of total Points

Points will be awarded based upon offerors ability to provide a copy of a current Resident Business Certificate.

10. Local Business Preference

Points will be awarded based upon offerors ability to provide proof of Local Business Residence.

Available Points = 10 Percent of total Points

B. EVALUATION PROCESS:

1. All offeror proposals will be reviewed for compliance with the mandatory requirements as stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Chief Procurement Officer may contact the offeror for clarification of the response.
3. The Evaluation Committee may use other sources of information to perform the evaluation.
4. Responsive proposals will be evaluated on the factors in Section IV that have been assigned a point value. The responsible Offerors with the highest scores will be selected as finalist Offerors based upon the proposals submitted. Finalist Offerors may be asked to present oral presentation. Points awarded from oral presentations will be added to the previously assigned points to attain final scores.

5. The responsible Offeror (s) whose proposals is most advantageous to the City, taking into consideration the evaluation factors in Section IV, will be recommended for Contract award. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

BID EVALUATION CRITERION FOR AREA BUSINESSES – LOCAL BUSINESS PREFERENCE

Effective March 20, 2015, the Alamogordo City Commission adopted Ordinance No. 1490 establishing Bid evaluation criterion for area businesses. Any business licensed in New Mexico, with a current business registration from the City of Alamogordo, with fixed offices or distribution points within fifteen (15) miles of the city limits of Alamogordo and able to furnish evidence of payment of New Mexico Gross Receipts tax shall qualify. If a non-Area Business is the highest ranking Prequalified Candidate, the evaluation score of the proposal submitted by an Area Business shall be multiplied by a Local Preference Factor of 1.10. If the resulting score of the Area Business receiving the Local Preference is higher than or equal to the highest score of all proposals received, the contract shall be recommended to be awarded the Area Business receiving the preference. If no proposals are received from an Area Business, or if the proposal received from an Area Business does not qualify for an award after multiplication by the Local Preference Factor, the contract shall be recommended to be awarded the highest ranking proposer.

View the following link for the complete Ordinance No. 1490 Local Preference:

<http://ci.alamogordo.nm.us/AssetsOrdinance+1490.pdf>

This procurement will be conducted in accordance with the City of Alamogordo Purchasing Ordinance No. 1304.

RESIDENT VETERANS PREFERENCE CERTIFICATION

To receive a Veterans Preference pursuant to Section 13-1-21 and 13-1-22 NMSA 1978, a resident veteran's business shall submit with its proposal a copy of a valid "Resident Veterans Preference Certification" issued by the Taxation and Revenue Department. For the purpose of scoring points, the State of New Mexico General Services Department Purchasing Division Policy Memo FY13-001 shall apply to a proposal submitted by a resident veterans business. For information on obtaining a Resident Veterans Preference Certificate, the offeror should contact the State of New Mexico Taxation and Revenue Department, P.O. Box 5373, Santa Fe, NM 87502-5374, telephone (505) 827-0951.

IN-STATE PREFERENCE (RESIDENT BUSINESS)

To receive a resident business preference pursuant to Section 13-4-2 NMSA 1978, an offeror shall submit with its proposal a copy of a valid resident business certificate issued by the taxation and revenue department. For a proposal submitted by a resident business with the required Resident Business Certificate, in addition to the total points on an RFP, 5% must be added for preference points.

For information on obtaining a resident business certificate, the offeror should contact the State of New Mexico Taxation and Revenue Department, P.O. Box 5373, Santa Fe, New Mexico 87502-5374, telephone (505) 827-0951 or on the web at <http://www.tax.newmexico.gov/forms-and-publications/pages/recently-updated.aspx>

An offeror must specify which preference they would claim if qualifying for more than one. The preference values are not cumulative.

ATTACHMENT 1

SCOPE OF WORK

The professional services to be provided under and to be incorporated into the contract to be awarded pursuant to this RFP include, but are not limited to, the following:

BACKGROUND

The City of Alamogordo is a municipal government entity which serves as the county seat of Otero County. The City was incorporated in 1912, exists under City charter, and operates under a Commission – City Manager form of government. The City of Alamogordo encompasses approximately 21 square miles and has a population of 30,687 (2010 Census).

A. Assessment of Financial Resources and Recommended Plan of Financing

Review the City's financial need for long term financing, and review financial resources in context of economic conditions. Recommend one or more financing plans, based on resources available, to meet and address the financing need.

B. Ratings and Credit Enhancement

Work with appropriate City officials to provide rating and credit enhancement companies with information regarding the bond issue. Assist in preparation of materials as may be required. Financial Advisor may be requested to accompany appropriate officials to meetings with rating agencies and credit enhancement companies. Make every effort and take appropriate action to assist the City in maintaining or improving the credit rating of the City.

C. Official Statement and Related Documents

With assistance from Bond Counsel for the City, prepare for review and approval by the City a preliminary and final official statement relating to any bonds to be offered for sale to prospective buyers of bonds. Arrange for the distribution of documents to a comprehensive list of prospective brokers, underwriters, banks and financial institutes.

Prepare bid forms, which conform to the municipal securities standards for all securities upon which bids will be solicited.

At times reasonably in advance of the proposed sale, consult with and advise the City concerning advertising information to prospective brokers, underwriters, purchasers, and buyers, the provision of information to broaden the interest in the bonds to be sold. Recommend meetings with proposed purchasers of bonds, if needed.

Recommend structuring and timing of any bond campaign. Recommend groups to be involved in various meetings.

Furnish City with a reasonable supply of documents and to prospective buyers of the bonds.

Assist City in complying with reporting requirements under Securities and Exchange Commission Rule 15c2-12.

D. Cooperation with Legal Counsel

Cooperate with legal counsel for the City in the preparation and adoption of all necessary ordinances, resolutions, notices, certificates, and the publishing of all legal notices and the happening of any other events required for the successful sale, issuance, and delivery of bonds.

E. Sale; Award of Bond or Loan; Issuance

Be represented at the sale by experienced personnel whose services will be available to the City in the tabulation and comparison of bids. Upon acceptance of a bid, coordinate the efforts of all parties toward payment and delivery of bonds as expeditiously as possible.

F. Meetings of the City; Other Services

Attend meetings of the City and be available to City staff and legal counsel whenever requested. Be available to assist in the preparation and review of possible legislation affecting the City and project financing and to testify, if required, at legislative committee meetings regarding proposed legislation.

G. Additional Related Services

In the event the City determines it appropriate for the selected Financial Advisor to perform duties in addition to duties related to the issuance of securities for the City, those duties will be set forth in a written amendment to the contract. While the City will consider whether separate compensation may be provided for the services, the compensation under such amendment is contingent upon sufficient appropriations and authorization by the City Commission.

ADDITIONAL PROPOSAL REQUIREMENTS

- a. Licensing and Registration – It shall be the responsibility of the Financial Advisor to obtain and maintain all necessary licenses and registrations required under this agreement, laws of the City of Alamogordo, and the State of New Mexico.
- b. Conflict of Interest – The Financial Advisor shall warrant that they have no interest and will not acquire any interest, whether direct or indirect, which would conflict with the performance of the required services under the scope of services of this proposal. Any conflict of interest is grounds for proposal rejection. Any conflict developed is grounds for termination of the Agreement.
- c. Fees –

1. Fees charged for services rendered

Identify all fees charged for (1) services rendered under the contract for revenue or general obligation bonds, refunding bonds, New Mexico Finance Authority loans, including bonds and any other type of security to be paid only when the securities are issued; (2) services rendered under the contract for revenue or general obligation bonds, refunding bonds, New Mexico Finance Authority loans and any other type of security to be paid only when the securities are not issued; and (3) any approved use of subcontractors.

Fees shall be set forth in the graduated schedule showing dollars per thousand for revenue, general obligation, refunding bonds, New Mexico Finance Authority loans, or other securities.

Specifically identify what fees would be payable in the event the proposed issue was not

successfully completed.

Identify the hourly rates for services relating to advice or services performed that are not related to the issuance of a specific obligation as described under scope of Services.

Identify any item that would be charged on a flat rate fee basis. Provide applicable rate schedules.

2. Reimbursement of costs

Identify all reimbursable items, in addition to the fees set forth above, chargeable for cost incurred incident to the issuance of the bonds, including feasibility studies, the preparation, printing, and mailing of the preliminary and final official statements, presentation to rating agencies, any special audit cost, travel costs to attend meetings and closings. Reimbursement for the expenses of transportation, lodging, and meals incurred while on travel related to ratings or closings will be made only for amounts on itemized statements satisfactory to the City. If requested by the Finance Director, a detailed estimate of all items for the Financial Advisor services will be provided to the City in advance of actual expenditures.

Provide a schedule of standard expenses such as per page copying charges, facsimile transmissions, overnight mail charges, and word processing charges, as well as a description of all other charges that would be billed to the City under the contract such as mileage and travel expenses, and a statement as to when miscellaneous charges would be imposed.

3. Cost evaluation criteria

Using the costs from items 1 and 2 above, provide a complete list of estimated billing expenses including reimbursable expenses for a four-bond issue scenario assuming 3 trips to Alamogordo, including one presentation and bond rating obtained from Moody's Investors Services or Standards & Poor's Rating Service for each issue.

- a. \$9,000,000 General Obligation Bond issue
- b. \$4,000,000 Joint Utility Revenue Bond issue
- c. \$6,000,000 Gross Receipts Tax bond issue
- d. \$3,000,000 New Mexico Finance Authority Public Revolving Fund Loan (Gross Receipts Tax pledge for capital equipment purchase)
- e. Private placement of any of the amounts.

4. Payment for services rendered

All services provided by the successful offeror under this RFP will be paid by the City (1) upon the issuance of bonds or other securities, or (2) at the discretion of the City in the event a financing does not occur at a rate agreed upon by the offeror, provided substantial work was performed and only from the funds authorized by the City Commission for the payment of fees incidental to the issuance of securities. No additional fees will be paid by the City except as provided under Additional Related Services.

5. Other Information

In preparing the proposed cost fee structure, the following should be noted:

- a. The selected Financial Advisor must attend closings and must attend meetings of the City as requested by the City. Fees, transportation, and other cost associated with attending such meetings and closings must be included in the cost proposal.
- b. The selected Financial Advisor must give the City a four (4) year commitment on the rate schedule offered.

c. No payment of fees or reimbursements will be made by the City except upon receipt of a detailed statement of account.

ATTACHMENT NO. 2

Cost Schedule per Attachment #1 Scope of Work "Additional Proposal Requirements c 1-5."

ATTACHMENT 3

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to Chapter 81, Laws of 2006, any prospective contractor seeking to enter into a Contract with any state agency or local public body must file this form with that state agency or local public body. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or local public body during the two (2) years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two (2) years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two (2) year period.

THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

“Applicable Public Official” means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

“Campaign Contribution” means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official’s behalf for the purpose of electing the official to either statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or un-reimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

“Contract” means any agreement for the procurement of items of tangible personal property, services, professional services, or construction.

“Family Member” means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

“Pendency of the Procurement Process” means the time period commencing with the public notice of the Request for Proposals and ending with the award of the Contract or the cancellation of the Request for Proposals.

“Person” means any corporation, partnership, individual, joint venture, association or any other private legal entity.

“Prospective Contractor” means a person who is subject to the competitive sealed proposal process set forth in the Procurement Codes or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract. **“Representative of a Prospective Contractor”** means an officer or director of a corporation, a member or

manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s): _____

Nature of Contribution(s): _____

Purpose of Contributions(s): _____

Signature

Date

Title

--OR--

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE to an applicable public official by me, a family member or representative.

Signature

Date

ATTACHMENT 4

RFP 2018-001 Financial Service

ACKNOWLEDGMENT OF RECEIPT FORM

REQUEST FOR PROPOSALS

Proposal Based

In acknowledgement of receipt of this Request for Proposal the undersigned agrees that he/she has received a complete copy of acknowledged RFP.

The acknowledgement of receipt should be signed and returned to the Chief Procurement Officer. Only potential Offerors who elect to return this form completed with the intention of submitting a proposal will receive copies of all Offeror written questions and the City's written responses to those questions in the form of an addenda.

COMPANY: _____

REPRESENTED BY: _____

TITLE: _____ **PHONE NO.:** _____

E-MAIL: _____ **FAX NO.:** _____

ADDRESS: _____

CITY: _____ **STATE:** _____ **ZIP CODE:** _____

SIGNATURE: _____ **DATE:** _____

This name and address will be used for all correspondence related to the Request for Proposals.

Company does/does not (circle one) intend to respond to this Request for Proposals.

Acknowledgements must be delivered to the Chief Procurement Officer at the following address:

Barbara Pyeatt
Chief Procurement Officer
Purchasing Department
2600 N Florida Ave
Alamogordo, New Mexico 88310
bpyeatt@ci.alamogordo.nm.us
Fax Number: (575) 439-4117

ATTACHMENT 5

RESIDENT VETERANS PREFERENCE CERTIFICATION

_____ (NAME OF CONTRACTOR) hereby certifies the following in regard to application of the resident veterans preference to this procurement:

Please check one box only

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is less than \$1M allowing me the 10% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$1M but less than \$5M allowing me the 8% preference discount on this bid or proposal. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$5M allowing me the 7% preference discount on this bid or proposal. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

"I agree to submit a report, or reports, to the State Purchasing Division of the General Services Department declaring under penalty of perjury that during the last calendar year starting January 1 and ending on December 31, the following to be true and accurate:

"In conjunction with this procurement and the requirements of this business application for a Resident Veteran Business Preference/Resident Veteran Contractor Preference under Sections 13-1-21 or 13-1-22 NMSA 1978, when awarded a contract which was on the basis of having such veterans preference, I agree to report to the State Purchasing Division of the General Services Department the awarded amount involved. I will indicate in the report the award amount as a purchase from a public body or as a public works contract from a public body as the case may be.

"I understand that knowingly giving false or misleading information on this report constitutes a crime."

I declare under penalty of perjury that this statement is true to the best of my knowledge. I understand that giving false or misleading statements about material fact regarding this matter constitutes a crime.

(Signature of Business Representative)*

(Date)

*Must be an authorized signatory for the Business.

The representations made in checking the boxes constitutes a material representation by the business that is subject to protest and may result in denial of an award or un-award of the procurement involved if the statements are proven to be incorrect.

ATTACHMENT 6

"DRAFT COPY"

FINANCIAL ADVISOR SERVICES AGREEMENT

THIS AGREEMENT is made on the _____ day of April, 2018, by and between the CITY OF ALAMOGORDO, NEW MEXICO, a New Mexico municipal corporation ("City"), and _____, a _____ limited liability company, whose address is _____ ("Financial Advisor").

1. PROJECT DESCRIPTION

The professional services to be provided under and to be incorporated into the contract to be awarded pursuant to RFP 2018-001 include, but are not limited to, the following:

- A. Assessment of Financial Resources and Recommended Plan of Financing
Review the City's financial need for long term financing, and review financial resources in context of economic conditions. Recommend one or more financing plans, based on resources available, to meet and address the financing need.

- B. Ratings and Credit Enhancement
Work with appropriate City officials to provide rating and credit enhancement companies with information regarding the bond issue. Assist in preparation of materials as may be required. Financial Advisor may be requested to accompany appropriate officials to meetings with rating agencies and credit enhancement companies. Make every effort and take appropriate action to assist the City in maintaining or improving the credit rating of the City.

- C. Official Statement and Related Documents
With assistance from Bond Counsel for the City, prepare for review and approval by the City a preliminary and final official statement relating to any bonds to be offered for sale to prospective buyers of bonds. Arrange for the distribution of documents to a comprehensive list of prospective brokers, underwriters, banks and financial institutes.

Prepare bid forms, which conform to the municipal securities standards for all securities upon which bids will be solicited.

At times reasonably in advance of the proposed sale, consult with and advise the City concerning advertising information to prospective brokers, underwriters, purchasers, and buyers, the provision of information to broaden the interest in the bonds to be sold. Recommend meetings with proposed purchasers of bonds, if needed.

Recommend structuring and timing of any bond campaign. Recommend groups to be involved in various meetings.

Furnish City with a reasonable supply of documents and to prospective buyers of the bonds.

Assist City in complying with reporting requirements under Securities and Exchange Commission Rule 15c2-12.

D. Cooperation with Legal Counsel

Cooperate with legal counsel for the City in the preparation and adoption of all necessary ordinances, resolutions, notices, certificates, and the publishing of all legal notices and the happening of any other events required for the successful sale, issuance, and delivery of bonds.

E. Sale; Award of Bond or Loan; Issuance

Be represented at the sale by experienced personnel whose services will be available to the City in the tabulation and comparison of bids. Upon acceptance of a bid, coordinate the efforts of all parties toward payment and delivery of bonds as expeditiously as possible.

F. Meetings of the City; Other Services

Attend meetings of the City and be available to City staff and legal counsel whenever requested. Be available to assist in the preparation and review of possible legislation affecting the City and project financing and to testify, if required, at legislative committee meetings regarding proposed legislation.

G. Additional Related Services

In the event the City determines it appropriate for the selected Financial Advisor to perform duties in addition to duties related to the issuance of securities for the City, those duties will be set forth in a written amendment to the contract. While the City will consider whether separate compensation may be provided for the services, the compensation under such amendment is contingent upon sufficient appropriations and authorization by the City Commission.

2. SCOPE OF SERVICES

In a satisfactory and proper manner, the FINANCIAL ADVISOR shall perform SERVICES as proposed in response to the CITY'S RFP No. 2018-001 incorporated herein by reference and as set forth in Exhibit A, attached hereto and made a part of this Agreement.

3. APPROPRIATIONS

The terms of this Agreement are contingent on sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement shall terminate upon written notice given by the CITY to FINANCIAL ADVISOR. The CITY'S decision as to whether sufficient appropriations and authorizations exist shall be accepted by FINANCIAL ADVISOR and shall be final.

4. COMPENSATION

The CITY shall compensate FINANCIAL ADVISOR for the performance of SERVICES under this Agreement an amount agreed to for each assigned project, plus applicable taxes. FINANCIAL ADVISOR shall perform the SERVICES upon receipt of a written Notice to Proceed for each

assigned project from the CITY. The CITY cannot authorize costs to be incurred prior to such written Notice to Proceed.

FINANCIAL ADVISOR is responsible for payment of State of New Mexico Gross Receipts Tax levied on the amounts payable under this Agreement. FINANCIAL ADVISOR agrees to comply with all federal and state tax payments and report all items of gross receipts as income from the operations of its business.

5. DEVOTION OF ADEQUATE TIME

FINANCIAL ADVISOR will devote the necessary hours each week to the performance of projects that are required by the CITY and it will serve the CITY diligently and faithfully, and according to its best ability in all respects and will promote the best interests of the CITY.

6. TERM AND SCHEDULE

This Agreement shall become effective on June 15, 2018 for a term of twelve months through June 14, 2019 and, pending mutual written agreement, may be extended annually thereafter for up to four (4) years through June 14, 2023.

FINANCIAL ADVISOR shall perform the SERVICES in accordance with the time set forth as agreed upon by the CITY and FINANCIAL ADVISOR in Exhibit B and as agreed to for each project assigned under the terms of this Agreement.

7. EXTENSIONS, CHANGES, AND AMENDMENTS

This Agreement shall not be extended, changed, or amended except by instrument in writing executed by the parties. The CITY shall not be liable for payment of any extra services nor shall FINANCIAL ADVISOR be obligated to perform any extra services except upon such written agreement. Such written approval shall indicate the date said extension, change, or amendment is effective and shall be signed by the parties to this Agreement. In the event that the parties cannot reach agreement as to a particular change, the issue shall be resolved pursuant to Article 21.

8. CHANGES AND EXTRA SERVICES BY THE CITY

The CITY may make changes within the general scope of the SERVICES plus may also request FINANCIAL ADVISOR to perform other extra services not incorporated within the Services set forth in this Agreement. If the FINANCIAL ADVISOR is of the opinion that such change causes an increase or decrease in the cost and/or the time required for performing the changes or other services required by the City, FINANCIAL ADVISOR shall so notify the CITY of that fact within five (5) business work days from the date of receipt of change by the CITY. The CITY shall provide written response to the FINANCIAL ADVISOR within five (5) business work days from the date of receipt of FINANCIAL ADVISOR'S written notification.

9. CHANGES AND EXTRA SERVICES BY THE FINANCIAL ADVISOR

In the event a condition is identified by the FINANCIAL ADVISOR which, in the opinion of the FINANCIAL ADVISOR, changes the services, costs, and/or time required for performance under this Agreement, the FINANCIAL ADVISOR shall provide written notification to the CITY within five (5) business work days of such identification. The CITY shall respond in writing to such notification within five (5) business work days from the date of receipt of FINANCIAL ADVISOR'S notification.

10. DELAYS

In the event that performance of SERVICES is delayed by causes beyond reasonable control of FINANCIAL ADVISOR, and without the fault or negligence of FINANCIAL ADVISOR, the time and total compensation for the performance of the SERVICES may be equitably adjusted by written agreement to reflect the extent of such delay. FINANCIAL ADVISOR shall provide the CITY with written notice of delay pursuant to Article 9 including therein a description of the delay and the steps contemplated or actually taken by FINANCIAL ADVISOR to mitigate the effect of such delay. The CITY will make the final determination as to reasonableness of delays.

11. TERMINATION

This Agreement may be terminated by either party hereto upon fifteen (15) calendar days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party. This Agreement may also be terminated by the CITY for its convenience or because the PROJECT has been permanently abandoned, but only upon fifteen (15) calendar days written notice to FINANCIAL ADVISOR.

In the event of termination, FINANCIAL ADVISOR shall be compensated for all services performed and costs incurred up to the effective date of termination for which FINANCIAL ADVISOR has not been previously compensated.

Upon receipt of notice of termination from the CITY, FINANCIAL ADVISOR shall discontinue the SERVICES unless otherwise directed and upon final payment from the CITY deliver to the CITY the required number of copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by FINANCIAL ADVISOR in the performance of this Agreement, whether completed or in process.

12. RECORDS AND AUDITS

FINANCIAL ADVISOR will maintain records indicating dates, length of time, and services rendered. The CITY has the right to audit billings both before and after payment, and contest any billing or portion thereof. Payment under this Agreement does not foreclose the CITY'S right to recover excessive or illegal payments.

13. DISCLOSURE AND OWNERSHIP OF DOCUMENTS, PRODUCTS, DESIGN, ELECTRONIC FILES

All technical data, electronic files, and other written and oral information not in the public domain or not previously known, and all information, electronic files, and data obtained, developed, or supplied by the CITY will be kept confidential and FINANCIAL ADVISOR will not disclose to any other party, directly or indirectly, without the CITY'S prior written consent unless required by lawful order.

All technical data, electronic files, products developed, operational parameters, blueprints, and other information and work of the FINANCIAL ADVISOR shall be the sole property of the CITY and shall be delivered to the CITY when requested and at the end of the Agreement.

14. INDEPENDENT CONTRACTOR

FINANCIAL ADVISOR represents that it has, or will secure, at its own expense, all personnel required in performing the SERVICES under this Agreement. Such personnel shall not be employees of, nor have any contractual relationship with the CITY. FINANCIAL ADVISOR, consistent with its status as an independent contractor, further agrees that its personnel will not

hold themselves out as, nor claim to be officers or employees of the CITY by reason of this Agreement.

To the extent that FINANCIAL ADVISOR employs any employees, FINANCIAL ADVISOR shall be solely responsible for providing its own form of insurance for its employees and in no event shall FINANCIAL ADVISOR's employees be covered under any policy of the CITY.

FINANCIAL ADVISOR'S retention hereunder is not exclusive. Subject to the terms and provisions of this Agreement: (i) FINANCIAL ADVISOR is able, during the Term hereof, to perform services for other parties; and (ii) FINANCIAL ADVISOR may perform for its own account other professional services outside the scope of this Agreement.

FINANCIAL ADVISOR is and shall be an Independent Contractor and shall be responsible for the management of its business affairs. In the performance of the work under this Agreement, FINANCIAL ADVISOR will at all times be acting and performing as an Independent Contractor, as that term is understood for federal and state law purposes, and not as an employee of the CITY. Without limitation upon the foregoing, FINANCIAL ADVISOR shall not accrue sick leave, jury duty pay, retirement, insurance, bonding, welfare benefits, or any other benefits, which may or may not be afforded employees of the CITY. FINANCIAL ADVISOR will not be treated as an employee for purposes of: Workers' Compensation benefits; the Federal Unemployment Tax Act; Social Security; other payroll taxes, federal or any state income tax withholding; or the employee benefit provisions described in the Internal Revenue Code of 1986, as amended. Neither the CITY, nor its agents or representatives, shall have the right to control or direct the manner, details or means by which FINANCIAL ADVISOR accomplishes and performs its services. Nevertheless, FINANCIAL ADVISOR shall be bound to fulfill the duties and responsibilities contained in the Agreement.

15. NO JOINT VENTURE OR PARTNERSHIP

Nothing contained in this Agreement shall create any partnership, association, joint venture, fiduciary or agency relationship between FINANCIAL ADVISOR and CITY. Except as otherwise specifically set forth herein, neither FINANCIAL ADVISOR nor CITY shall be authorized or empowered to make any representation or commitment or to perform any act which shall be binding on the other unless expressly authorized or empowered in writing.

16. ASSIGNMENT.

FINANCIAL ADVISOR shall perform all the services under this Agreement and shall not assign any interest in this Agreement or transfer any interest in same or assign any claims for money due or to become due under this Agreement without the prior written consent of the CITY.

17. INSURANCE

FINANCIAL ADVISOR shall obtain and maintain insurance at its own cost and expense during the life of this Agreement, and shall require Subcontractors, if any, to maintain during the life of his subcontract:

- a. Professional Liability: \$1,000,000 per claim

FINANCIAL ADVISOR shall furnish the CITY with a certificate(s) of insurance showing FINANCIAL ADVISOR and Subcontractors, if any, have complied with this Article. The FINANCIAL ADVISOR shall provide insurance certificates before work is to start on the project and shall provide the CITY thirty (30) days written notification of cancellation of such policies.

18. INDEMNITY AND LIMITATION

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act. Provided, however, to the extent that, at law or in equity, FINANCIAL ADVISOR has duties (including fiduciary duties) to the CITY in the performance of municipal advisory services contemplated by this Agreement, nothing contained herein shall be deemed to limit or otherwise restrict the duty of care or liability required and imposed at law or in equity (including fiduciary duties).

19. APPLICABLE LAW

This Agreement and the rights and obligations of the parties shall be governed by and construed by the laws of the State of New Mexico applicable to Agreements between New Mexico parties made and performed in that state, without regard to conflicts of law principles. Venue shall be in Otero County, State of New Mexico.

FINANCIAL ADVISOR shall abide and be governed by all applicable state law, CITY ordinances, and laws regarding the FINANCIAL ADVISOR'S services or any work done pursuant to this Agreement.

20. BREACH

In the event FINANCIAL ADVISOR breaches any obligation contained in this Agreement, prior to instituting any action or dispute resolution procedure, the CITY shall give FINANCIAL ADVISOR written notice of such breach. In the event FINANCIAL ADVISOR fails to remedy the breach within five (5) working days of receiving such written notice, the CITY, at its sole discretion, without any obligation to do so and in addition to other remedies available under applicable law, may remedy FINANCIAL ADVISOR'S breach and recover any and all costs and expenses in so doing from FINANCIAL ADVISOR.

21. DISPUTE RESOLUTION

In the event that a dispute arises between CITY and FINANCIAL ADVISOR under this Agreement or as a result of breach of this Agreement, the parties agree to act in good faith to attempt to resolve the dispute.

In the event of termination, FINANCIAL ADVISOR shall be compensated for all services performed and costs incurred up to the effective date of termination for which FINANCIAL ADVISOR has not been previously compensated.

Upon receipt of notice of termination from the CITY, FINANCIAL ADVISOR shall discontinue the SERVICES unless otherwise directed and upon final payment from the CITY deliver to the CITY the required number of copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by FINANCIAL ADVISOR in the performance of this Agreement, whether completed or in process.

22. NOTIFICATION.

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if served by Registered Mail addressed as follows:

TO CITY: City Manager
City of Alamogordo
1376 E 9th Street
Alamogordo, NM 88310
(575) 439-4203 (phone)
(575) 439-4396 (fax)

With Copies to: City Attorney
Purchasing Manager

TO FINANCIAL ADVISOR:

23. SCOPE OF AGREEMENT.

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

24. CONFLICT OF INTEREST; GOVERNMENTAL CONDUCT ACT.

FINANCIAL ADVISOR warrants that it presently has no interest and 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. FINANCIAL ADVISOR certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer or state employee or former state employee have been followed.

FINANCIAL ADVISOR

Date: _____

By: _____

NM Taxpayer ID Number: _____

Federal Taxpayer ID Number: _____

CITY OF ALAMOGORDO, NEW MEXICO,
a New Mexico municipal corporation

Date: _____

By: _____
Maggie Paluch, City Manager

ATTEST:

Rachel Hughs, City Clerk

APPROVED AS TO FORM:

Petria Schreiber, City Attorney