



**Request for Proposals  
RFP # 2018-642**

**WATER RIGHTS CONSULTANT**

**PROPOSAL DUE DATE/TIME/PLACE:**

Thursday, May 24, 2018, 3:00 P.M.  
City of Aztec  
201 W Chaco  
Aztec, NM 87410

**FINAL DATE FOR QUESTIONS**

Friday, May 11, 2018, 5:00 PM

**Tentative Commission Approval Date**

June 26, 2018

For further information contact:

Kathy Lamb  
Procurement Manager, RFP 2018-642  
City of Aztec  
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# **I. INTRODUCTION**

## **A. PURPOSE OF THIS REQUEST FOR PROPOSALS**

This Request for Proposals (“RFP”) is not a competitive bid based on price only. The RFP allows the City to select the consultant which best meets the needs of the City, taking into consideration qualifications, price, and service capabilities and other factors relevant to the City’s policies, programs, administrative resources and budget. The purpose of the RFP is to solicit sealed proposals to establish a contract for water rights consulting services.

## **B. BACKGROUND INFORMATION**

The City of Aztec is located in the northwest corner of New Mexico, 15 miles northeast of Farmington, New Mexico and 36 miles south of Durango, Colorado.

The City uses treated surface water from the Animas River to supply potable water to its customers. Supply comes from the Aztec Ditch, Lower Animas Ditch or diversion from the river. Water may be directed to the raw water reservoirs (3) or the water treatment plant. The water treatment plant consists of four (4) treatment plants, each capable of operating independently, total design treatment capability is 6.5 MGD. The City has agreements with Southside Water Users Association and Flora Vista Water Users Association to provide water to their association members through single metered points. The City also has connection with City of Bloomfield and Northstar Water Users Association to provide water if the need occurs. A bulk water station is available for residential and commercial users and its customers use the water for oil and gas operations, rural potable water needs, and agricultural requirements.

The consultant who has provided service to the City for several years retired three years ago and the City desires to continue contracting for these services.

## **C. SCOPE OF PROCUREMENT**

1. It is the City’s intent to enter into a single agreement with a selected Provider to provide water rights consulting services, as is determined to be in the best interests of the City.
2. The fee proposal, as negotiated prior to contract execution (if required), shall become the final unit price under the terms of this contract, for the initial term of the contract.
3. The maximum proposed term of the Contract for Water Rights Consulting Services, including contract renewals, is for a total of four (4) years. The original term of this contract will be for one (1) year. The parties may renew the initial contract on an annual basis for three (3) additional years or any portion thereof for the purpose of continuity of contractual services. In no case will the contract(s), including all renewals, exceed a total of four (4) years in duration. Subsequent contracts for water

consulting services may be subject to a new RFP process and to Commission or Management approval as called for by law and City ordinances and policies.

4. The contract resulting from this Proposal shall commence upon the date of contract execution by both parties and extend for an initial period of one year. The City shall have the option of renewing this contract for three additional one-year terms, renewable one term at a time. The decision to renew shall be solely the City's. Notice of intent to renew shall be made at least two-months prior to normal contract expiration. The City and the selected Provider shall reconfirm or renegotiate the fee proposal prior to the contract renewal. If renewal results in changes in the terms or conditions, such changes shall be reduced to writing, as an amendment to this contract and such amendment shall not become effective until fully executed by both parties.
5. In the event the City does not opt to renew the contract as stated under Sec C (4) above; or the City and Provider are unable to reconfirm or renegotiate unit rates for another term, the City shall have the option of extending this contract at the current rates for a period of six months total for the purpose of completion of services started prior to current contract expiration or until a new contact can be established.

#### **D. PROCUREMENT MANAGER**

1. The City of Aztec has assigned a Procurement Manager who is responsible for the conduct of this procurement whose name, address, telephone number and e-mail address are listed below:

Name: Kathy Lamb, Procurement Manager  
Address: 201 W Chaco, Aztec NM 87410  
  
Telephone: (505) 334-7653  
Fax: (505) 334-7649  
Email: [klamb@aztecnm.gov](mailto:klamb@aztecnm.gov)

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

Name: Kathy Lamb  
Reference RFP Name: WATER RIGHTS CONSULTANT – RFP# 2018-642  
Address: City of Aztec  
Purchasing Office  
201 W Chaco  
Aztec, New Mexico 87410

Please note, Aztec, New Mexico is not a guaranteed delivery area by express carriers. Responses must be received by the due date and time to be considered, not the date when delivered to carrier. The City is closed on Fridays (4-10 work schedule, Monday through

Thursday); documented attempted deliveries by the carrier may be considered as timely responses IF provided by the date and time proposals are due.

3. **Any inquiries or requests** regarding this procurement should be submitted, in writing, to the Procurement Manager. Offerors may contact ONLY the Procurement Manager regarding this procurement. Other city employees or Selection Committee members do not have the authority to respond on behalf of the Purchasing Office. **Protests of the solicitation or award must be delivered by mail to the Protest Manager.** As A Protest Manager has been named in this Request for Proposals, pursuant to NMSA 1978, § 13-1-172, ONLY protests delivered directly to the Protest Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule and this Request for Proposals. Emailed protests will not be considered as properly submitted nor will protests delivered to the Procurement Manager be considered properly submitted.

## E. DEFINITION OF TERMINOLOGY

This section contains definitions of terms used throughout this procurement document, including appropriate abbreviations:

“**Agency**” means the City of Aztec

“**Amendment**” means a written or graphic instrument issued prior to the opening of Proposal, which clarifies, corrects, or changes the Request for Proposal.

“**Award of Contract**” shall mean a formal written notice by the City that a firm has been selected to enter into a contract for services. Any Award of Contract that has not resulted in a written contract offer to the Offeror, within 6 months or written notice, shall not be considered an award for the purposes of the Project Listing Form.

“**Business Hours**” means 8:00 am thru 5:00 PM Mountain Standard or Mountain Daylight Time, whichever is in effect on the date given.

“**City**” means the City of Aztec

“**Close of Business**” means 5:00 PM Mountain Standard or Mountain Daylight Time, whichever is in effect on the date given.

“**Confidential**” means confidential financial information concerning respondent’s organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act NMSA 1978 57-3-A-1 to 57-3A-7. See NMAC 1.4.1.45. As one example, no information that could be obtained from a source outside this request for proposals can be considered confidential information

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

“**Contractor**” means the offeror selected by the City pursuant to this Request for Proposals..

“**Desirable**” the terms "may", "can", "should", "preferably", or "prefers" identify a desirable or discretionary item or factor.

“**Determination**” means the written documentation of a decision of a procurement manager and the Selection Committee including findings of fact supporting a decision. A determination becomes part of the procurement file to which it pertains.

“**Electronic Version/Copy**” means a digital form consisting of text, images or both readable on computers or other electronic devices that includes all content that the Original and Hard Copy proposals contain. The digital form may be submitted using a compact disc (cd) or USB flash drive. The electronic version/copy can NOT be emailed.

“**Evaluation Committee**” means a body appointed to perform the evaluation of Offerors’ proposals.

“**Evaluation Committee Report**” means a report prepared by The Procurement Manager and Evaluation Committee for contract award. It will contain written determinations resulting from the procurement.

“**Finalist**” means an Offeror who meets all the mandatory specifications of this Request for Proposals and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.

“**Hourly Rate**” means the proposed fully loaded maximum hourly rates that include travel, per diem, fringe benefits and any overhead costs for contractor personnel, as well as subcontractor personnel if appropriate.

“**Mandatory**” – the terms "must", "shall", "will", "is required", or "are required", identify a mandatory item or factor (as opposed to “desirable”). Failure to meet a mandatory item or factor will result in the rejection of the Offeror’s proposal.

“**Minor Technical Irregularities**” means anything in the proposal that does not affect the price quality and quantity or any other mandatory requirement.

“**Offeror**” is any person, corporation, or partnership who chooses to submit a proposal.

“**Owner**” is the City of Aztec (COA).

“**Price Agreement**” means a definite quantity contract or indefinite quantity contract which requires the contractor to furnish items of tangible personal property, services or construction to a state agency or a local public body which issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any.

**“Procurement Manager”** means any person or designee authorized by a state agency or local public body to enter into or administer contracts and make written determinations with respect thereto.

**“Procuring Agency”** means all State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law to entertain procurements.

**“Proposal”** is the offeror’s response to this RFP

**“Redacted”** means a version/copy of the proposal with the information considered confidential as defined by NMAC 1.4.1.45 and defined herein and outlined in Section II.C.8 of this RFP blacked out BUT NOT omitted or removed.

**“Request for Proposals (RFP)”** means all documents, including those attached or incorporated by reference, used for soliciting proposals.

**“Responsible Offeror”** means an Offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services, or items of tangible personal property described in the proposal.

**“Responsive Offer”** or **“Responsive Proposal”** means an offer or proposal, which conforms in all material aspects to the requirements set forth in the Request for Proposals (RFP). Material aspects of responses to the Request for Proposals (RFP) include, but are not limited to price, quality, quantity or delivery requirements.

**“Sealed”** means, in terms of a non-electronic submission, that the proposal is enclosed in a package which is completely fastened in such a way that nothing can be added or removed. Open packages submitted will not be accepted except for packages that may have been damaged by the delivery service itself. The City reserves the right, however, to accept or reject packages where there may have been damage done by the delivery service itself. Whether a package has been damaged by the delivery service or left unfastened and should or should not be accepted is a determination to be made by the Procurement Manager. By submitting a proposal, the Offeror agrees to and concurs with this process and accepts the determination of the Procurement Manager in such cases.

**“Selection Committee”** means a body appointed by the Procurement Manager to perform the evaluation of Offeror proposals.

**“Selection Committee Report”** means a report prepared by the Procurement Manager and the Selection Committee for submission to the Commission for contract award that contains all written determinations resulting from the conduct of a procurement requiring the of competitive sealed proposals.

**“Staff”** means any individual who is a full-time, part-time, or an independently contracted employee with the Offerors’ company.



“**State (the State)**” means the State of New Mexico.

“**Statement of Concurrence**” means an affirmative statement from the Offeror to the required specification agreeing to comply and concur with the stated requirement(s). This statement shall be included in Offerors proposal. (E.g. “We concur”, “Understands and Complies”, “Comply”, “Will Comply if Applicable” etc.)

“**Unredacted**” means a version/copy of the proposal containing all complete information including any that the Offeror would otherwise consider confidential, such copy for use only for the purposes of evaluation.

“**Written**” means typewritten on standard 8 ½ x 11 inch paper. Larger paper is permissible for charts, spreadsheets, etc.

## **F. PROCUREMENT LIBRARY**

A procurement library has been established. Offerors are encouraged to review the material contained in the Procurement Library by selecting the link provided in the electronic version of this document through your own internet connection or by contacting the Procurement Manager.

Procurement Information: <http://www.aztecnm.gov/purchasing/office.html>

## II. CONDITIONS GOVERNING THE PROCUREMENT

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

### A. SEQUENCE OF EVENTS

The Procurement Manager will make every effort to adhere to the following schedule:

<b>Action</b>	<b>Responsible Party</b>	<b>Due Dates</b>
1. Issue RFP	City	April 29, 2018
2. Acknowledgement of Receipt Form	Potential Offerors	May 11, 2018, 5:00 PM
3. Pre-Proposal Conference	City	None
4. Deadline to submit Questions	Potential Offerors	May 11, 2018, 5:00 PM
5. Response to Written Questions	Procurement Manager	May 15, 2018
<b>6. Submission of Proposal</b>	<b>Potential Offerors</b>	<b>May 24, 2018, 3:00 PM</b>
7. Proposal Evaluation	Evaluation Committee	May 29, 2018
8. Selection of Finalists	Evaluation Committee	June 11, 2018
9. Best and Final Offers	Finalist Offerors	June 2018
10. Oral Presentation(s)	Finalist Offerors	June 2018
11. Finalize Contractual Agreements	City/Finalist Offerors	June 2018
12. Contract Awards	City/ Finalist Offerors	June 2018
13. Protest Deadline	City	July 2018

### B. EXPLANATION OF EVENTS

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

#### 1. Issuance of RFP

This RFP is being issued on behalf of the City of Aztec for Water Rights Consultant on April 29, 2018.

#### 2. Acknowledgement of Receipt

Potential Offerors should email, hand deliver, return by facsimile, or by certified mail the "Acknowledgement of Receipt of Request for Proposals Form" that accompanies this document, APPENDIX A, 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 Procurement Manager by 5:00 pm MDT on May 11, 2018.

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

### **3. Pre-Proposal Conference**

A pre-proposal conference will NOT be held as indicated in the sequence of events.

### **4. Deadline to Submit Written Questions**

Questions and/or clarifications concerning this RFP will be accepted in writing through May 11, 2018, 5:00 pm. Requests may be transmitted via facsimile (505-334-7649) or email ([klamb@aztecnm.gov](mailto:klamb@aztecnm.gov)). Written responses to all written inquired will be provided and distributed to all recipients of this RFP. Responses and addenda to this RFP, if necessary, are scheduled to be issued by May 15, 2018, 5:00 PM. No Offeror may rely upon oral responses made by any City employee or any representative of the City.

### **5. Response to Written Questions**

Written responses to written questions will be distributed as indicated in the sequence of events to all potential Offerors whose organization name appears on the procurement distribution list. An e-mail copy will be sent to all Offeror's that provide Acknowledgement of Receipt Forms described in II.B.2 before the deadline. Additional copies will be posted to: <http://www.aztecnm.gov/purchasing/office.html>.

### **6. Submission of Proposal**

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 3:00 PM MOUNTAIN STANDARD TIME/DAYLIGHT TIME ON May 24, 2018. 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 Procurement Manager at the address listed in Section I, Paragraph D2. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the RFP# 2018-642 Water Rights Consultant. Proposals submitted by facsimile or email will not be accepted.

A public log will be kept of the names of all Offeror organizations that submitted proposals. Pursuant to NMSA 1978, § 13-1-116, the contents of proposals shall not be disclosed to competing potential Offerors during the negotiation process.

Proposals will be reviewed for completeness and compliance with requirements by the Procurement Manager. If any proposal submitted is deemed non-responsive by the Procurement Manager, the Offeror will be notified in writing of such determination and the method of protesting that determination (see Section II.C.1.).

## **7. Proposal Evaluation**

The Evaluation Committee will review each Offerors proposal. Points will be allocated, by each member, as outlined in Section V of this RFP. Each member's point totals will be translated into a numeric ranking of all proposals. The evaluation committee may hold interviews with the three highest-ranked proposals if deemed necessary. The Evaluation Committee may award the selection based on the results of the interviews. If fewer than three proposals are received the Evaluation Committee may recommend an award to the City Commission for approval or direct that the RFP be reissued.

The City reserves the right to request additional information from the Offeror at any time during the selection process.

## **8. Selection of Finalists**

The Evaluation Committee will select and the Procurement Manager will notify the finalist Offerors as per schedule Section II. A Sequence of Events or as soon as possible. At the discretion of the Evaluation Committee, a schedule for the oral presentation and demonstration will be determined at this time.

## **9. Best and Final Offers**

Finalist Offerors may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers as per schedule Section II. A. Sequence of Events or as soon as possible. Best and final offers may also be clarified and amended at finalist Offeror's oral presentation and demonstration.

## **10. 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 Evaluation Committee.

## **11. Finalize Contractual Agreements**

Any Contractual agreement(s) resulting from this RFP will be finalized with the most advantageous Offeror(s) as per schedule Section II. A., Sequence of Events or as soon thereafter as possible. This date is subject to change at the discretion of the City of Aztec Procurement office. In the event mutually agreeable terms cannot be reached with the apparent most advantageous Offeror in the time specified, the City of Aztec reserves the

right to finalize a contractual agreement with the next most advantageous Offeror(s) without undertaking a new procurement process.

## **12. Contract Awards**

After review of the Evaluation Committee Report and the signed contractual agreement, the City of Aztec Procurement Manager will award as per the schedule in Section II. A. Sequence of Events or as soon as possible thereafter. This date is subject to change at the discretion of the City of Aztec Procurement Manager.

The contract shall be awarded to the Offeror (or Offerors) whose proposals are most advantageous to the City of Aztec, taking into consideration the evaluation factors set forth in this RFP. The most advantageous proposal may or may not have received the most points. The award is subject to appropriate Department and Commission approval.

## **13. Protest Deadline**

In accordance with NMSA 1978, § 13-1-172, any Offeror who is aggrieved in connection with the award of a contract may protest to the City of Aztec Finance Department. The protest must be submitted in writing within fifteen (15) calendar days after knowledge of the facts or occurrences giving rise to the protest to:

Kris Farmer  
Acct III  
City of Aztec  
201 W Chaco  
Aztec, NM 87410

The 15-day protest period shall begin on the day following the date of written notice of action from the Finance Department. Protests must include the name and address of the protestant, the solicitation number, and a statement of ground for protest, including appropriate supporting exhibits. Protests received after the deadline will not be accepted.

## **C. GENERAL REQUIREMENTS**

### **1. Acceptance of Conditions Governing the Procurement**

Potential Offerors must indicate their acceptance of the Conditions Governing the Procurement section in the letter of transmittal. Submission of a proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP.

### **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. Prime Contractor Responsibility**

Any contractual agreement that may result from this RFP shall specify that the prime contractor is solely responsible for fulfillment of all requirements of the contractual agreement with the City of Aztec which may derive from this RFP. The City of Aztec entering into a contractual agreement with a vendor will make payments to only the prime contractor.

### **4. 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 City of Aztec's personnel will not merge, collate, or assemble proposal materials.

### **5. Offeror's 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 Procurement Manager and signed by the Offeror's 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.

### **6. Proposal Offer Firm**

Responses to this RFP, including proposal prices for services, will be considered firm for ninety (90) days after the due date for receipt of proposals or ninety (90) days after the due date for the receipt of a best and final offer, if the Offeror is invited or required to submit one.

### **7. Disclosure of Proposal Contents**

- A. Proposals will be kept confidential until negotiations and the award are completed by the City of Aztec. 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 Procurement Manager 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:
- B. 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.
- C. Confidential data is restricted to:

1. confidential financial information concerning the Offeror's organization;
2. and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, NMSA 1978 § 57-3A-1 to 57-3A-7.
3. PLEASE NOTE: 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, the City of Aztec shall examine the Offeror's 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 RFP in no manner obligates the City of Aztec to the use of any Offeror's 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 the City of Aztec determines such action to be in the best interest of the City of Aztec.

## **10. Sufficient Appropriation**

Any 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 contractor. The City of Aztec's decision as to whether sufficient appropriations and authorizations are available will be accepted by the contractor as final.

## **11. Legal Review**

The City of Aztec requires that all Offerors agree to be bound by the General Requirements contained in this RFP. Any Offeror's concerns must be promptly submitted in writing to the attention of the Procurement Manager.

## **12. Governing Law**

This RFP 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 Aztec through the Procurement Manager or in this RFP should be used as the basis for the preparation of Offeror proposals.

#### **14. Contract Terms and Conditions**

The contract between the City of Aztec and a contractor will follow the format specified by the City of Aztec and contain the terms and conditions set forth in the Sample Contract Appendix H. However, the City of Aztec reserves the right to negotiate provisions in addition to those contained in this RFP (Sample Contract) with any Offeror. The contents of this RFP, as revised and/or supplemented, and the successful Offeror's proposal will be incorporated into and become part of any resultant contract.

The City of Aztec discourages exceptions from the contract terms and conditions as set forth in the RFP Sample Contract. Such exceptions may cause a proposal to be rejected as nonresponsive when, in the sole judgment of the City of Aztec (and its evaluation team), the proposal appears to be conditioned on the exception, or correction of what is deemed to be a deficiency, or an unacceptable exception is proposed which would require a substantial proposal rewrite to correct.

Should an Offeror object to any of the terms and conditions as set forth in the RFP Sample Contract (APPENDIX H) strongly enough to propose alternate terms and conditions in spite of the above, the Offeror must propose **specific** alternative language. The City of Aztec may or may not accept the alternative language. General references to the Offeror's terms and conditions or attempts at complete substitutions of the Sample Contract are not acceptable to the City of Aztec and will result in disqualification of the Offeror's proposal.

Offerors must provide a brief description of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording.

Describe any work, whether by subject area or nature of work, which would not be covered by your compensation proposal.

If an Offeror fails to propose any alternate terms and conditions during the procurement process (the RFP process prior to selection as successful Offeror), no proposed alternate terms and conditions will be considered later during the negotiation process. Failure to propose alternate terms and conditions during the procurement process (the RFP process prior to selection as successful Offeror) is an **explicit agreement** by the Offeror that the contractual terms and conditions contained herein are **accepted** by the Offeror.

#### **15. Offeror's 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 Aztec. Please see Section II.C.16 for requirements.



## **16. Contract Deviations**

Any additional terms and conditions, which may be the subject of negotiation (such terms and conditions having been proposed during the procurement process, that is, the RFP process prior to selection as successful Offeror), will be discussed only between the City of Aztec and the Offeror selected and shall not be deemed an opportunity to amend the Offeror's proposal.

## **17. Offeror Qualifications**

The Evaluation 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 Evaluation 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 NMSA 1978, § 13-1-83 and 13-1-85.

## **18. Right to Waive Minor Irregularities**

The Evaluation Committee reserves the right to waive minor irregularities. The Evaluation Committee 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 Evaluation Committee.

## **19. Change in Contractor Representatives**

The City of Aztec reserves the right to require a change in contractor representatives if the assigned representative(s) is (are) not, in the opinion of the City of Aztec, adequately meeting the needs of the City of Aztec.

## **20. Notice of Penalties**

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

## **21. City Rights**

The City of Aztec in agreement with the Evaluation Committee reserves the right to accept all or a portion of a potential Offeror's proposal.

## **22. Right to Publish**

Throughout the duration of this procurement process and contract term, Offerors and contractors must secure from the City of Aztec written approval prior to the release of any

information that pertains to the potential work or activities covered by this procurement and/or the City of Aztec's contracts deriving from this procurement. Failure to adhere to this requirement may result in disqualification of the Offeror's proposal or removal from the contract.

### **23. Ownership of Proposals**

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

### **24. Confidentiality**

Any confidential information provided to, or developed by, the contractor in the performance of the contract resulting from this RFP shall be kept confidential and shall not be made available to any individual or organization by the contractor without the prior written approval of the City of Aztec.

The Contractor(s) agrees to protect the confidentiality of all confidential information and not to publish or disclose such information to any third party without the procuring the City of Aztec's written permission.

### **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 RFP is being made available by electronic means. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by the City of Aztec, the Offeror acknowledges that the version maintained by the City of Aztec shall govern. Please refer to:

<http://www.aztecnm.gov/purchasing/office.html> or City's electronic e-procurement system through vendor registry.

### **27. Campaign Contribution Disclosure Form**

Offeror must complete, sign, and return the Campaign Contribution Disclosure Form, APPENDIX C, as a part of their proposal. This requirement applies regardless whether a covered contribution was made or not made for the identified official. Failure to complete and return the signed unaltered form will result in disqualification.

## 28. Submittal Form

Offeror's proposal must be accompanied by the Submittal Form located in APPENDIX B which must be completed and signed by an individual person authorized to obligate the company. The Submittal Form MUST:

1. Identify the submitting business entity.
2. Identify the name, title, telephone, and e-mail address of the person authorized by the Offeror organization to contractually obligate the business entity providing the Offer.
3. Identify the name, title, telephone, and e-mail address of the person authorized to negotiate the contract on behalf of the organization (if different than (2) above).
4. Identify the names, titles, telephone, and e-mail addresses of persons to be contacted for clarification/questions regarding proposal content.
5. Signature on Submittal Form confirms:
  - a. Acceptance of the Conditions Governing the Procurement stated in Section II. C.1;
  - b. Acceptance of Section V of RFP; and
  - c. Acknowledge receipt of any and all amendments to this RFP.
6. Be signed by the person identified in paragraph 2 above.

## 29. Disclosure Regarding Responsibility

- A. Any prospective Contractor and any of its Principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with The City of Aztec for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor's company:
1. is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body;
  2. has within a three-year period preceding this offer, been convicted in a criminal matter or had a civil judgment rendered against them for:
    - a. the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract or subcontract;
    - b. violation of Federal or state antitrust statutes related to the submission of offers; or
    - c. the commission in any federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violation of Federal criminal tax law, or receiving stolen property;
  3. is presently indicted for, or otherwise criminally or civilly charged by any (federal state or local) government entity with the commission of any of the offenses enumerated in paragraph A of this disclosure;

4. has, preceding this offer, been notified of any delinquent Federal or state taxes in an amount that exceeds \$3,000.00 of which the liability remains unsatisfied. Taxes are considered delinquent if the following criteria apply.
  - a. The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge of the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
  - b. The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
  - c. Have within a three year period preceding this offer, had one or more contracts terminated for default by any federal or state agency or local public body.)
  
- B. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.
  
- C. The Contractor shall provide immediate written notice to the City of Aztec Procurement Manager or other party to this Agreement if, at any time during the term of this Agreement, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.
  
- D. A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Agreement. However, the disclosure will be considered in the determination of the Contractor's responsibility and ability to perform under this Agreement. Failure of the Contractor to furnish a disclosure or provide additional information as requested will render the Offeror nonresponsive.
  
- E. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.
  
- F. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of this Agreement. If during the performance of the contract, the Contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses named in this document the Contractor must provide immediate written notice to the City of Aztec Procurement Manager. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the City of Aztec may terminate the involved contract for cause. Still further the City of Aztec may suspend or debar the Contractor from eligibility for future solicitations until such

time as the matter is resolved to the satisfaction of the City of Aztec.

### **30. New Mexico Preferences**

To ensure adequate consideration and application of NMSA 1978, § 13-1-21 (as amended), Offerors **must** include a copy of their preference certificate with their proposal. Certificates for preferences must be obtained through the New Mexico Department of Taxation & Revenue <http://www.tax.newmexico.gov/Businesses/in-state-veteran-preference-certification.aspx>.

#### **A. New Mexico Business Preference**

#### **B. New Mexico Resident Veterans Business Preference**

In addition to a copy of the certification, the Offeror should sign and complete the Resident Veterans Preference Certificate form, as provided in this RFP.

**The City of Aztec shall not award a business both a resident business preference and a resident veteran business preference.**

**The New Mexico Preferences shall not apply when the expenditures for this RFP includes federal funds.**

### **31. Bribery and Kickbacks**

By law (Section 13-1-191, NMSA, 1978) the City is required to inform Offerors of the following: (1) it is a third-degree felony under New Mexico law to commit the offense of bribery of a public officer or public employee (Section 30-24-1, NMSA, 1978); (2) it is a third-degree felony to commit the offense of demanding or receiving a bribe by a public officer or public employee (Section 30-24-2, NMSA, 1978); (3) it is a fourth-degree felony to commit the offense of soliciting or receiving illegal kickbacks (Section 30-41-1, NMSA, 1978); (4) it is a fourth-degree felony to commit the offense of offering or paying illegal kickbacks (Section 30-41-2, NMSA, 1978).

### **32. Conflict of Interest**

a. Offeror warrants that it presently has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of service under this contract.

b. Offeror must notify the City's Chief Procurement Officer if any employee(s) of the requesting department or the Finance Department have a financial interest in the Offeror. If yes, the Offeror must specify the employee(s) name in their proposal.

### **III. RESPONSE FORMAT AND ORGANIZATION**

#### **A. NUMBER OF RESPONSES**

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

#### **B. NUMBER OF COPIES**

##### **1. Hard Copy Responses**

Offeror's proposal must be clearly labeled and numbered and indexed as outlined in **Section III.C. Proposal Format**. Proposals must be submitted as outlined below. The original copy shall be clearly marked as such on the front. Envelopes, packages or boxes containing the original and the copies must be clearly labeled and submitted in a sealed envelope, package, or box bearing the following information:

Offerors should deliver:

The Offeror shall provide four (4) identical copies of their proposal and one electronic version formatted as a single PDF document provided on a CD or flash drive, in sealed envelopes, plainly marked:

##### **RFP 2018-642 Water Rights Consultant**

The proposal shall contain any information or supplements which will assist the City in selecting an Offeror. All expenses associated with this submittal will be borne solely by the Offeror.

The original, hard copy and electronic copy information **must** be identical. In the event of a conflict between versions of the submitted proposal, the Original hard copy shall govern.

Any proposal that does not adhere to the requirements of this Section may be deemed non-responsive and rejected on that basis.

#### **OR IN THE ALTERNATIVE TO THE SUBMISSION FORMAT AND REQUIREMENTS OF SECTION III.B.1:**

##### **2. Electronic Responses (City's E-procurement System through Vendor Registry)**

If the proposal is submitted through City's electronic procurement system, the Offeror need only submit a single electronic copy of each portion of the proposal, outlined below. Electronic document should include table of contents and/or bookmarks to allow easy navigation throughout the document.

For technical support issues contact (505) 334-7653 or (505) 334-7651  
[procurement@aztecm.gov](mailto:procurement@aztecm.gov)

Any proposal that does not adhere to the requirements of this Section may be deemed non-responsive and rejected on that basis.

### C. PROPOSAL FORMAT

To facilitate comparison and evaluation, Offerors must follow the format outlined in this section. Failure of an Offeror to follow the required format, may, at the sole discretion of the City, result in the rejection of the submittal. Proposals shall contain concise written material and illustrations that enable a clear understanding and evaluation of the capabilities of the Offeror. Legibility, clarity, and completeness are essential. The City, at its sole discretion, may reject any proposal which is unclear in any way.

The proposal shall be limited in format and length. Format will be 8-1/2" x 11" with foldout sheets allowed up to 11" x 17" in size. All foldout sheets, up to a maximum of 11" x 17" sheets will be counted as two pages and shall be labeled as such. Length of the proposal shall be limited to a maximum of **twenty-five (25)** numbered pages (printed sheet faces) of text no smaller than 10 point, and/or graphics except for material excluded from the page count. If there is any question as to format requirements contact the Purchasing Department for clarification, prior to submittal of the proposal.

Material **excluded** from the **twenty-five (25) page** maximum count is limited to:

- Front cover (photos with captions on inside cover allowed)
- Divider pages (blank except for title information)
- Back cover (photos with captions on inside of back cover allowed)
- Tables of Contents page (two page maximum)
- Submittal Form
- Campaign Contribution Disclosure Form
- Drug Free Workplace Certification
- Debarment and Suspension Form
- Resumes
- Certificate(s) of insurance (coverage requirements defined in sample agreement)
- Current I.R.S. W-9 Form
- Copy of New Mexico Resident Bidder or Resident Veteran Business Certificate (if applicable)
- Resident Veterans Preference Certification Form (if applicable)

Proposal Organization - All pages should be numbered except for those specifically excluded as noted above. All foldout pages shall be counted as two (2) pages and should be numbered as such.

Proposals should be organized in the same order as the evaluation criteria.

## **IV. SPECIFICATIONS**

Offerors should respond in the form of a thorough narrative to each specification, unless otherwise instructed. The narratives, including required supporting materials will be evaluated and awarded points accordingly.

### **A. SCOPE OF SERVICES**

Offeror will provide Water Rights Consulting Services in the following areas:

1. Knowledge of New Mexico Water law and water rights administration.
2. Knowledge of issues regarding water rights and their administration on the Animas River including Aztec's Animas-La Plata Project water supplies.
3. Knowledge of New Mexico State Engineer water management regulations.
4. Perform Water Rights Accounting and advise City personnel on proper daily diversion and water management.
5. Assist and advise the City on potential water rights purchases and leases including the drafting of applications to transfer the point of diversion, place and purpose of use of water rights.
6. General Water Resource Planning and Management.
7. Serve as Technical Expert in Water Rights Hearings.
8. Knowledge of 40 year water development planning.
9. Preparation and presentation of Annual Water Rights Report. Report may be submitted electronically and City will print and distribute prior to presentation to City Commission (submission is required 7 days prior to presentation).
10. Animas River Forecasting and Diversion Modeling.
11. Assist and advise the City on water rights including those permitted, adjudicated or contracted.
12. Provide other water rights consulting services as needed.

### **B. TECHNICAL SPECIFICATIONS**

Proposals should contain a table of contents with responses to the following

#### Introduction

A cover letter introducing the company and the individual who will assume the primary responsibility for the services and be the contact with City.

#### Understanding of Proposal

Statement of your firm's understanding of the services to be performed and your commitment to provide the services as indicated in the RFP.



### Provider's Experience

The proposal must include a demonstration of the Provider's knowledge and experience relative to the items identified under the Scope of Work. This will include a list of similar projects and a description of the Provider's general organization and names of key personnel, indicating the depth and quality of experience.

Provider shall demonstrate a minimum of five (5) years experience in water rights services and five (5) years of proven performance working as a Water Rights Consultant. Experience should demonstrate knowledge of, but not limited to, New Mexico water law, water rights, surface water diversion, and familiarity with the Animas River and Aztec area.

Proposal shall include a summary of three projects which are similar to services requested in this RFP which included the key personnel identified in this proposal.

Provider shall list all sub-providers that may be used for this contract. The information above shall also be provided for all sub-providers.

### Project Team

The Proposal shall include the identification and organization of the team proposed to be assigned to this project, with individual resumes and the specific areas of responsibility of key personnel concentrating on both breadth of experience and experience on similar projects. The same information for any sub-providers proposed to be involved in any work under this proposal shall also be included.

Offeror shall provide list of education, certifications and qualifications of project team (and sub-providers) and be prepared to submit documentation upon request.

### Approach

Provider shall indicate proposed methods of proceeding with the scope of work. Proposal shall include control of costs, quality of work and meeting deadlines. Proposal should include methods of communication, information acquisition, report delivery, etc.

### Scope Exclusions/Addenda

In reviewing this RFP, the Provider may encounter tasks, which, in the opinion of the Provider, may be unnecessary, or, may have been omitted. At the Provider's discretion, Provider may identify these tasks, and include any tasks that deemed necessary by the Provider, but are not required by this RFP.

### Conflict of Interest Information

Information on possible conflicts of interest should be provided in the proposal. Such information will be taken into account in making a decision on the selection of the Provider to perform the services.

Should a conflict arise during preparations for or while undertaking these services, the Provider shall immediately advise the City of such conflict.

#### Other Client Commitments

Consultant shall list other clients currently being served by consultant, including pending or anticipated clients that will be served, with staff that Consultant anticipates using to fulfill its obligation to the City under this RFP. Consultant shall further attest to the availability of key staff to fulfill consulting services in a professional and timely manner.

#### Contractual Considerations

All commercial, technical, legal or other conditions or exceptions relating to the provisions of the RFP and the draft Agreement must be clearly stated in this section of the proposal. Respondents should be aware that any conditions or exceptions are made solely at the risk of the Respondent and the City reserves the right to reject proposals containing any unacceptable conditions or exceptions. Respondents shall use this section to discuss guarantees and warranties that the Respondent will offer the City and the risks it is willing to take.

#### Cost

Provide an hourly rate sheet for project team members and lump sum estimate of preparation of annual water report including presentation to City Commission. Cost proposal should identify minimum time increments for billing purposes.

#### References

Include in the proposal a minimum of References (three minimum) shall be provided identifying each client, a contact person including mailing address and telephone number, and scope of work for similar projects done by the personnel to be involved in these projects. One of the clients shall be a government agency.

The Organizational Reference Form included in the Proposal Forms should be completed and submitted directly to the Procurement Manager by the company completing the reference.

## **C. BUSINESS SPECIFICATIONS**

#### Submittal Form

The Offeror's proposal **must** be accompanied by the Submittal Form located in APPENDIX B. The form **must** be completed and **must** be signed by the person authorized to obligate the company.

#### Campaign Contribution Disclosure Form

The Offeror **must** complete an unaltered Campaign Contribution Disclosure Form and submit a signed copy with the Offeror's proposal. This must be accomplished whether or not an applicable contribution has been made. (APPENDIX C)

#### Drug Free Workplace Form

The drug free workplace form must be completed, signed and incorporated into the submitted proposal. Failure to do so may result in disqualification. (APPENDIX D)

#### Debarment/Suspension Form

The Offeror must complete the Debarment/Suspension Form and submit a signed copy with the Offeror's proposal. (APPENDIX E)

#### Current IRS W-9 Form

#### Current Insurance Certificate

Certificate identifying required coverages in the amounts indicated in the sample agreement. If not submitted with proposal, certificate will be required prior to execution of contract.

#### Resident Business or Resident Veterans Preference

To ensure adequate consideration and application of NMSA 1978, § 13-1-21 (as amended), Offerors must include a copy of their preference certificate in this section. In addition, for resident Veterans Preference, the attached certification Form (APPENDIX F) must accompany any Offer and any business wishing to receive the preference must complete and sign the form.

## V. EVALUATION

### A. EVALUATION POINT SUMMARY

The following is a summary of evaluation factors with point values assigned to each. These weighted factors will be used in the evaluation of individual potential Offeror proposals by sub-category.

<b>Factors – correspond to section IV.B and IV C</b>	<b>Points Available</b>
<b>B. Technical Specifications</b>	Points must be assigned and defined for all factors (must total 100% of available points)
B.1. Proposal Completeness and Clarity	50
B. 2. Demonstrated Understanding of Services Requested	100
B. 2. Qualifications, Experience and Expertise	200
B. 3. Capacity and Capability – ability to perform services including approach to providing services, control of costs, meeting deadlines, contractual considerations, other commitments	100
B.4. Past Record of Performance and Water Rights Experience including summary of three related projects	100
B.5. Familiarity with Animas River and Aztec area	200
B.6. Proximity to Aztec New Mexico	100
B.6. Cost	50
B.7. References (includes listing in proposal and completed references submitted to Finance Department)	100
<b>C. Business Specifications</b>	
C.1. Submittal Form	Pass/Fail
C.2. Signed Campaign Contribution Disclosure Form	Pass/Fail
C.3. Drug Free Workplace Form	Pass/Fail
C.4. Debarment/Suspension Form	Pass/Fail
C.5. Current W-9 Form	Pass/Fail
C.6. Current Insurance Certificate	Included/Not Included
C.7.A New Mexico Preference - Resident Vendor Points per Section IV C. 6 <i>Certification must be included to be considered</i>	
C.7.B New Mexico Preference - Resident Veterans Points per Section IV C.6 <i>Certification must be included to be considered</i>	
<b>TOTAL</b>	<b>1,000 points</b>

Table 1: Evaluation Point Summary

## B. EVALUATION FACTORS

Proposals will be evaluated on the criteria identified in Table 1.

### B.6 Cost (See Table 1)

The evaluation of each Offeror's cost proposal will be conducted using the following formula:

$$\frac{\text{Lowest Responsive Offer – Annual Report}}{\text{This Offeror's – Annual Report}} \times 100$$

### C.5. New Mexico Preferences

Percentages will be determined based upon the point based system outlined in NMSA 1978, § 13-1-21 (as amended).

#### A. New Mexico Business Preference

If the Offeror has provided their Preference Certificate the Preference Points for a New Mexico Business is 5%.

#### B. New Mexico Resident Veterans Business Preference

If the Offeror has provided their Preference Certificate **and** the Resident Veterans Certification Form the Preference Point are one of the following:

- 10% for less than \$1M (prior year revenue)
- 8% for more than \$1M but less than \$5M (prior year revenue)
- 7% for more than \$5M(prior year revenue)

## C. EVALUATION PROCESS

1. All Offeror proposals will be reviewed for compliance with the requirements and specifications stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Procurement Manager may contact the Offeror for clarification of the response as specified in Section II. B.7.
3. The Evaluation Committee may use other sources to perform the evaluation as specified in Section II. C.17.

4. Responsive proposals will be evaluated on the factors in Section V, which have been assigned a point value. The responsible Offerors with the highest scores will be selected as finalist Offerors, based upon the proposals submitted. The responsible Offerors whose proposals are most advantageous to the City of Aztec taking into consideration the evaluation factors in Section V will be recommended for award (as specified in Section II. B.8). Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

## **APPENDIX A: ACKNOWLEDGEMENT OF RECEIPT FORM**

**REQUEST FOR PROPOSAL**  
WATER RIGHTS CONSULTANT  
RFP# 2018-642  
**ACKNOWLEDGEMENT OF RECEIPT FORM**

In acknowledgement of receipt of this Request for Proposal the undersigned agrees that s/he has received a complete copy, beginning with the title page and table of contents, and ending with APPENDIX H.

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than 5:00 PM MST/MDT on May 11, 2018. Only potential Offerors who elect to return this form completed with the indicated intention of submitting a proposal will receive copies of all Offeror written questions and the written responses to those questions as well as RFP amendments, if any are issued.

FIRM: \_\_\_\_\_

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 Proposal.

Firm does/does not (circle one) intend to respond to this Request for Proposal.

Kathy Lamb  
Procurement Manager, RFP 2018-642  
City of Aztec  
Phone: 505-334-7653  
Fax: 505-334-7649  
email: [klamb@aztecnm.gov](mailto:klamb@aztecnm.gov)  
Faxed Copies of this form will be accepted.  
Faxed or email RFP responses **will not be accepted.**



## **APPENDIX B: SUBMITTAL FORM**

**REQUEST FOR PROPOSALS SUBMITTAL FORM**  
**RFP 2018-642 WATER RIGHTS CONSULTANT**  
Sealed proposals due by **May 24, 2018, 3:00 P.M. MST**

**1. OFFEROR INFORMATION**

\_\_\_\_\_

COMPANY NAME

\_\_\_\_\_

ADDRESS/CITY/STATE/ZIP

If a corporation, state of incorporation: \_\_\_\_\_

New Mexico Tax ID No: \_\_\_\_\_ Federal Tax Id No: \_\_\_\_\_

**2. CONTACT PERSON TO CLARIFY/RESPOND TO INQUIRIES**

\_\_\_\_\_

NAME TELEPHONE NUMBER

\_\_\_\_\_

TITLE EMAIL ADDRESS

**3. PERSON AUTHORIZED TO CONTRACTUALLY OBLIGATE ON BEHALF OF THIS OFFER**

\_\_\_\_\_

NAME TELEPHONE NUMBER

\_\_\_\_\_

TITLE EMAIL ADDRESS

**4. PERSON AUTHORIZED TO NEGOTIATE ON BEHALF OF THIS OFFER**

\_\_\_\_\_

NAME TELEPHONE NUMBER

\_\_\_\_\_

TITLE EMAIL ADDRESS

**WITH THE RFP NUMBER AND OPENING DATE CLEARLY INDICATED ON THE FRONT OF THE ENVELOPE. EMAILED OR FAXED PROPOSALS WILL NOT BE ACCEPTED.**

Sealed proposals will be received until **May 24, 2018, 3:00 P.M. MST** and then opened at the **City of Aztec Finance Department**. The opening of proposals shall be conducted in private in order to maintain the confidentiality of the contents of all proposals during the negotiation process.

The undersigned declares that the amount and nature of the service to be furnished is understood and that the nature of this proposal is in strict accordance with the conditions set forth and is a part of this

Request for Proposal (“RFP”), and that the undersigned Offeror has read and understands the scope and conditions of the RFP.

The undersigned accepts the Conditions Governing the Procurement, as required in Section II.C.1.

The undersigned concurs that submission of our proposal constitutes acceptance of Section V of this RFP.

The undersigned acknowledges receipt of any and all amendments.

The undersigned hereby proposes to perform necessary professional services for the amount and upon the conditions stated in this proposal after notice of the contract.

The Respondent further 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 Respondent 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 City employee or former City employee have been followed.

The undersigned, in submitting this proposal, represents that Respondent is an equal opportunity employer, and will not discriminate with regard to race, age, religion, color, national origin, ancestry, sex, or physical or mental handicap as specified in Sec. 28-1-7 NMSA 1978 in the performance of this contract.

***To be a valid proposal, person authorized to contractually obligate organization must sign:***

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## **APPENDIX C: CAMPAIGN CONTRIBUTION DISCLOSURE FORM**

## Campaign Contribution Disclosure Form

Pursuant to NMSA 1978, § 13-1-191.1 (2006), any person seeking to enter into a contract with any state agency or local public body for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. 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 a local public body during the two 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 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 year period.

Furthermore, the state agency or local public body shall void an executed contract or cancel a solicitation or proposed award for a proposed contract if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

**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 unreimbursed 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.

“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 Code 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 MADE TO: Mayor Victor Snover, Mayor Pro-Tem Roslyn Fry, Commissioner Sheri Sipe, Commissioner Austin Randall, or Commissioner Mark Lewis.

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 Contribution(s) \_\_\_\_\_

(Attach extra pages if necessary)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title (position)  
—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

\_\_\_\_\_  
Title (Position)

**APPENDIX D: DRUG-FREE WORKPLACE FORM**

**DRUG-FREE WORKPLACE CERTIFICATION**

Project Name: RFP 2018-642 Water Rights Consultant

The Contractor named below hereby certifies to be in compliance with 49 CFR parts 40 and 382 by establishing a program designed to help prevent accidents and injuries resulting from the misuse of alcohol or use of controlled substances by drivers of commercial motor vehicles and to provide a workplace free of drug use and alcohol misuse. The below Contractor will:

1. Have in place a policy in compliance with 49 CFR Parts 40 and 382 that provides for pre-employment, post-accident, random, reasonable suspicion, return-to-duty, and follow-up testing for controlled substances and alcohol.
2. 49 CFR Part 382, section 382.603 requires that persons designated to supervise drivers receive at least 60 minutes of training on alcohol misuse and receive an additional 60 minutes of training on controlled substances use.
3. Have in place a drug free and alcohol free workplace policy that applies to everyone that works on the project described in the contract. The drug free and alcohol free workplace policy shall include an education and training program that informs employees about the following:
  - a. The dangers of drug use and alcohol misuse in the workplace;
  - b. The person's or organization's policy in maintaining a workplace free of drug use and alcohol misuse;
  - c. Any available counseling, rehabilitation and employee assistance programs;
  - d. Penalties that may be imposed upon employees for violations; and,
  - e. Provisions for pre-employment and reasonable suspicion testing.
4. All of the contractor's employees who perform work on this project must be provided with a copy of the above referenced policies as those policies apply to them, i.e. not all employees are commercial drivers, but all employees would be subject to the drug-free and alcohol-free workplace policies.
5. That everyone who works on the contract agrees to abide by the terms of the Contractor's Statement as a condition of continued employment on the contract.
6. That no one who has tested positive within the past year will be allowed to perform work on this project.

**CERTIFICATION**

I, the official named below, hereby swear that I am duly authorized to legally bind the prospective contractor to the above described certification. I am fully aware that this certification, executed on the date and in the county below, is made under penalty of perjury under the laws of the State of New Mexico

COMPANY NAME:	FEDERAL ID NUMBER:
OFFICIAL'S NAME:	OFFICIAL'S SIGNATURE:
OFFICIAL'S TITLE:	DATE EXECUTED:
	EXECUTED IN THE COUNTY OF:



## APPENDIX E: DEBARMENT/SUSPENSION CERTIFICATION FORM

**DEBARMENT/SUSPENSION CERTIFICATION FORM**

THE FOLLOWING MUST BE CERTIFIED IF THIS PROCUREMENT IS \$60,000 OR GREATER

CONFLICT OF INTEREST

No elected official or employee of the City of Aztec (COA) has a direct or indirect financial interest in the Vendor or in the proposed transaction. Vendor neither employs, nor is negotiating to employ, any COA elected official or employee, with the exception of the person(s) identified below. Vendor did not participate, directly or indirectly, in the preparation of specifications upon which the quote or offer is made.

DEBARMENT/SUSPENSION STATUS

The Vendor certifies that it is not suspended, debarred or ineligible from entering into contracts with any federal entity, state agency or local public body. The Vendor agrees to provide immediate notice to the COA Purchasing Office in the event of being suspended, debarred or declared ineligible by any entity (federal , state or local), or upon receipt of a notice of proposed debarment that is received after the submission of the quote or offer but prior to the award of the purchase order or contract.

CERTIFICATION

The undersigned hereby certifies that he/she has read the above CONFLICT OF INTEREST AND DEBARMENT/SUSPENSION STATUS requirements RFP SEC II Conditions Governing The Procurement: C General Requirements: Disclosure Regarding Responsibility and that he/she understands and will comply with these requirements. The undersigned further certifies that they have the authority to certify compliance for the vendor named and that the information contained in this document is true and accurate to the best of their knowledge.

Signature: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

Names Typed: \_\_\_\_\_ Company Name: \_\_\_\_\_

Address: \_\_\_\_\_ City/State/Zip: \_\_\_\_\_

**APPENDIX F: NEW MEXICO PREFERENCE RESIDENT VETERANS  
CERTIFICATION**

New Mexico Preference Resident Veterans Certification

**Reminder, a copy of Resident Veterans Preference Certificate must be submitted with the proposal in order to ensure adequate consideration and application of NMSA 1978, § 13-1-21 (as amended).**

\_\_\_\_\_ (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 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 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 \$5M allowing me the 7% preference on this solicitation. 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 NMSA 1978, § 13-1-21 or 13-1-22, 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 termination of award of the procurement involved if the statements are proven to be incorrect.

## APPENDIX G: ORGANIZATIONAL REFERENCE QUESTIONNAIRE

The City of Aztec, as a part of the RFP process, requires Offerors to submit a minimum of three (3) business references as required within this document. The purpose of these references is to document Offeror's experience relevant to the scope of work in an effort to establish Offeror's responsibility.

Offeror is required to send the following reference form to each business reference listed. The business reference, in turn, is requested to submit the Reference Form directly to:

Kathy Lamb  
Procurement Manager RFP 2018-642  
[klamb@aztecnm.gov](mailto:klamb@aztecnm.gov)  
Fax: 505-334-7649  
Ofc: 505-334-7653

by May 24, 2018, for inclusion in the evaluation process. The form and information provided will become a part of the submitted proposal. Business references provided may be contacted for validation of content provided therein.

**RFP # 2018-642 Water Rights Consultant  
ORGANIZATIONAL REFERENCE QUESTIONNAIRE  
FOR: \_\_\_\_\_**

(Name of Offeror)

This form is being submitted to your company for completion as a business reference for the company listed above. This form is to be returned to the City of Aztec via facsimile or e-mail at:

Name: Kathy Lamb, Procurement Manager  
 Address: 201 W Chaco, Aztec NM 87410  
 Telephone: 505-334-7653  
 Fax: 505-334-7649  
 Email: klamb@aztecnm.gov

no later than May 24, 2018, and **must not** be returned to the company requesting the reference.

For questions or concerns regarding this form, please contact the City of Aztec Procurement Manager listed above. When contacting us, please be sure to include the Request for Proposal number listed at the top of this page.

<b>Company providing reference:</b>	
<b>Contact name and title/position</b>	
<b>Contact telephone number</b>	
<b>Contact fax number</b>	
<b>Contact e-mail address</b>	
<b>Project description;</b>	
<b>Project dates (starting and ending);</b>	

QUESTIONS:

1. In what capacity have you worked with this vendor in the past?

2. How would you rate this firm's knowledge and expertise?  
\_\_\_\_\_ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

3. What is your level of satisfaction with materials produced by the vendor?  
\_\_\_\_\_ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

4. How would you rate the dynamics/interaction between the vendor and your staff?  
\_\_\_\_\_ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

5. Who were the vendor's principal representatives involved in the project and how would you rate them individually? Comments should be based on the skills, knowledge, behaviors or other factors which influence the rating.  
(3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

Name: _____	Rating: _____
Name: _____	Rating: _____
Name: _____	Rating: _____
Name: _____	Rating: _____
Comments:	



6. How satisfied are you with the services provided by the vendor?  
\_\_\_\_\_ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

7. With which aspect(s) of this vendor's services are you most satisfied?

8. With which aspect(s) of this vendor's services are you least satisfied?

9. Would you recommend this vendor's services to your organization again?

## **APPENDIX H: SAMPLE CONTRACT**

CITY OF AZTEC

PROFESSIONAL SERVICES CONTRACT #2018-642 WATER RIGHTS CONSULTANT

THIS AGREEMENT is made and entered into by and between the **CITY OF AZTEC**, hereinafter referred to as the "City," and \_\_\_\_\_, hereinafter referred to as the "Contractor," and is effective as of \_\_\_\_\_, "Effective Date".

IT IS AGREED BETWEEN THE PARTIES:

**1. Scope of Work.**

Contractor agrees to perform the services as set forth in Scope of Services RFP 2018-642 WATER RIGHTS CONSULTANT, Exhibit 1, attached hereto, "Services", in a timely manner and in accordance with the terms and conditions of this Agreement and applicable laws. Contractor shall furnish, at its own expense, all labor, transportation, materials, consumables, qualified supervisory personnel, tools, equipment and facilities, to properly perform the Services, except as otherwise provided in the Services.

**2. Compensation.**

A. For performance and completion of the Services, the City shall pay the Contractor based on Compensation Schedule, Exhibit 2, attached hereto, "Compensation", excluding gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement shall be paid by the City to the Contractor. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed \$ \_\_\_\_\_, for the period through \_\_\_\_\_, 20\_\_\_\_. This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the City when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.**

B. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the City. All invoices MUST BE received by the City no later than fifteen (15) days after the termination of the Fiscal Year (June 30) in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

C. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the City finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the City that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the City shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

**3. Term.**

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

**4. Termination.**

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

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

**5. Appropriations.**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City of Aztec for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City, this Agreement shall terminate immediately upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the City proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

**6. Status of Contractor.**

The Contractor and its agents and employees are independent contractors performing professional services for the City and are not employees of the City. The Contractor and its agents and

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

**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 prior written approval of the City.

**8. Subcontracting.**

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

**9. Release.**

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

**10. Confidentiality.**

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

**11. Product of Service -- Copyright.**

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

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

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

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

1) in accordance with Section 10-16-4.3 NMSA 1978, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any City employee while such employee was or is employed by the City and participating directly or indirectly in the City's contracting process;

2) this Agreement complies with Section 10-16-7(A) NMSA 1978 because (i) the Contractor is not a public officer or employee of the City; (ii) the Contractor is not a member of the family of a public officer or employee of the City; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the City, a member of the family of a public officer or employee of the City, or a business in which a public officer or employee of the City or the family of a public officer or employee of the City has a substantial interest, public notice was given as required by Section 10-16-7(A) NMSA 1978 and this Agreement was awarded pursuant to a competitive process;

3) in accordance with Section 10-16-8(A) NMSA 1978, (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the City within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the City whose official act, while in City employment, directly resulted in the City's making this Agreement;

4) in accordance with Section 10-16-13 NMSA 1978, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

5) in accordance with Section 10-16-3 and Section 10-16-13.3 NMSA 1978, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the City.

C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the City relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the City if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the City and notwithstanding anything in the Agreement to the contrary, the City may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Article 12(B).

### **13. Amendment.**

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

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

### **14. Merger.**

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

**15. Penalties for violation of law.**

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

**16. Equal Opportunity Compliance.**

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

**17. Applicable Law.**

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

**18. Insurance**

Prior to commencement of the Services, Contractor shall obtain the insurance required by this Agreement and all insurance that may be required under the applicable laws, ordinances and regulations of any governmental authority. Each insurance policy of the Contractor shall provide, either in its printed text or by endorsement, that it shall be primary with respect to the interest of the City, and any insurance maintained by the City is in excess and not contributory to Contractor's insurance policies regardless of any like insurance coverage that the City may have. Contractor shall furnish to City a completed certificate of insurance coverage which references City's project number and project title for the Services and which specifically requires thirty (30) days prior notice to City of cancellation, termination or any material change of any such insurance policy. Review of the Contractor's insurance by City shall not relieve or increase the liability of Contractor. Where applicable, all insurance policies shall provide for waiver of subrogation in favor of the City, include cross liability provisions, and all policies, except Workers' Compensation and professional liability (a/k/a errors and omissions insurance), shall name the City as additional insured.

Without limiting any of the liabilities or other obligations of Contractor under this Agreement, Contractor shall obtain and maintain in effect, at its sole cost and expense, with forms and insurers acceptable to City, until all the obligations under this Agreement are satisfied, insurance policies providing coverage protecting against claims for personal and bodily injury or death, as well as claims for property damage which may arise from operations in connection with the Services whether such operations are by Contractor or any subcontractor for at least the following minimum coverage:

(a) Worker's Compensation Insurance. The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the

Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the City.

(b) Commercial General Liability Insurance, or the equivalent, with a minimum limit of One Million Dollars (\$1,000,000) per occurrence. The policy shall include coverage for bodily injury liability, broad form property damage liability, blanket contractual, Engineer's protective, products liability and completed operations. Where applicable, the policy shall include coverage for the hazards commonly referred to as "XCU." The policy shall be endorsed to include City as an additional insured only to the extent the City is vicariously liable for the negligence, acts or omissions of Contractor.

(c) Business Automobile Liability Insurance, or the equivalent, with limit of not less than One Million Dollars (\$1,000,000) per accident with respect to Contractor's vehicles whether owned, hired, or non-owned, assigned to or used in the performance of any Services required to be performed by Contractor pursuant to the Agreement.

(c) Errors and Omissions Insurance, or the equivalent, with limit of not less than One Million Dollars (\$1,000,000).

**19. Records and Financial Audit.**

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

**20. Indemnification.**

The Contractor shall defend, indemnify and hold harmless the City from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the City by certified mail.

**21. Invalid Term or Condition.**

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

**22. Enforcement of Agreement.**

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.



**23. Notices.**

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

To the City: CITY OF AZTEC  
Attn: Purchasing Office  
201 W Chaco  
Aztec NM 87410

Project Contact: CITY MANAGER  
201 W Chaco  
Aztec NM 87410

To the Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**24. Authority.**

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

**IN WITNESS WHEREOF, the Contractor and City have executed this Agreement on their behalves by their duly authorized representatives as of the Effective Date set forth above.**

By: \_\_\_\_\_  
Victor C. Snover, Mayor

Date: \_\_\_\_\_

(SEAL)

ATTEST:

By: \_\_\_\_\_  
Karla Sayler, City Clerk

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Larry T. Thrower, City Attorney

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Contractor

Date: \_\_\_\_\_

\_\_\_\_\_  
Title

Phone: \_\_\_\_\_

\_\_\_\_\_  
Federal Taxpayer Identification or  
Social Security Number

\_\_\_\_\_  
NM Taxpayer Identification  
Number