

Project Manual
Contract Documents and Specifications



City of Raton
Municipal Solid Waste
Rolloff Transportation
Contract

November 2018

Contracting Agency
THE CITY OF RATON
224 SAVAGE AVENUE
POST OFFICE BOX 910
RATON, NEW MEXICO 87740

City of Raton

Request for Sealed Bids

Transportation Services for Municipal Solid Waste in Rolloff Containers

BID OPENING DATE: November 20, 2018

BID OPENING TIME: 2:00 PM

INSTRUCTIONS TO THE BIDDER

1. Notice is hereby given that sealed bids will be received at the City of Raton Chambers of the City Commission, 224 Savage Avenue, Raton, NM 87740 prior to November 20, 2018 at **2:00 PM** (local time), at which time the said bids to transfer Municipal Solid Waste (as defined in the New Mexico Solid Waste Act) from the City's solid waste collection center to a permitted transfer station or landfill will be opened and recorded as received.

2. One copy of the bid must be returned and the outside bottom left hand corner marked "Sealed Bid for Solid Waste Hauling" and presented to:

Michael Anne Antonucci
Procurement Manager
P.O. Box 910
224 Savage Avenue
Raton, NM 87740

Bids received later than the time and date specified will not be considered.

3. The Purchaser as used in these specifications shall refer to the City of Raton (City) and the Solid Waste Department.
4. Sealed bids are required from licensed hauling contractors in accordance with the specifications as attached.
5. All prices shall be F.O.B. destination and exclude city, state, and federal taxes (unless applicable). Deliveries will be made as needed or scheduled.
6. Any bidder wishing to be given consideration as a New Mexico Resident Contractor or New Mexico Veteran Resident Contractor shall provide his certification in the space provided for that purpose, on the attached bid form.
7. The Purchaser has the right to refuse any or all bids and is the sole interpreter of the intent of any clause of these specifications and the sole judge as to whether the item bid or any part of fitting thereof complies with these specifications. This bid may be awarded individually or in aggregate, whichever is most advantageous to the City.

8. Pursuant to Section 13-1-131 NMSA, 1987 Comp., as amended, the City reserves the right to reject any and all bids, whole or in part, submitted hereunder, provided that such rejections shall be accompanied by a written statement declaring the reason for the rejection.
9. Any exceptions to the bid shall be listed separately and specifications attached are minimum requirements. The specifications submitted herein are all that were available at the time of the bid. Minor deviations to the specifications as listed may be considered.
10. This award/bid is contingent upon available funding. This bid may be awarded all, part, or none; whichever is deemed to be in the best interest of the City. This bid may be multi-awarded contingent upon the needs of the City.
11. Your signature on the completed bid form will serve as a warranty that your bid is genuine and compliant with all applicable and current standards and that this proposal is made without any understanding, agreement or connection with the same purpose and this proposal is in all respects fair and without collusion or fraud, and you agree with all contract provisions.
12. The award is subject to the City's Terms and Conditions. **This bid/award is contingent upon available funding.**
13. All bids will remain valid for sixty (60) days after bid opening.
14. The New Mexico Procurement Code, Sections 13-1-28 through 13-1-199, NMSA, 1978 imposes civil and criminal penalties for code violations. In addition, the New Mexico criminal statutes impose felony/penalties for illegal, bribes, gratuities, and kickbacks.
15. The initial contract prices will be firm fixed for three (3) months upon award. The Contract may be renewed for additional monthly terms upon mutual consent of the parties, but in no event may this Contract be extended beyond a total of one (1) year.
16. The New Mexico Procurement code, Sections 13-1-28 through 13-1-199 NMSA, 1978 imposes civil and criminal penalties for code violations. In addition, the New Mexico criminal statutes impose felon/penalties for illegal, bribes, gratuities, and kickbacks.
17. The New Mexico Department of Finance Campaign Contribution Disclosure Form must be completed and returned with your bid.
18. A sample contract is enclosed that the City would expect your organization to sign upon legal review.

Attachments: TERMS & CONDITIONS SAMPLE
CONTRACT CAMPAIGN
CONTRIBUTION FORM

(Haul)

Technical specifications
The City of Raton Municipal Solid Waste Transportation
Contract

Part 1 General

Scope of Work:

1. The City of Raton (City) is seeking bids to transfer Municipal Solid Waste (as defined in the New Mexico Solid Waste Act) from the City's solid waste collection center which is located at:

City of Raton Transfer Station
1901 Armstrong Lane
Raton, New Mexico 87901

2. Transfer the collected Municipal Solid Waste in City Provided and / or Contractor Provided Roll Off Containers to a permitted landfill/transfer station. The City reserves the right to remove all recyclable material from the tipping floor before depositing into the transfer trailer for hauling.
3. May perform hauling up to 10 tons per day Monday through Friday. The City estimated waste generation is 1000 tons total for the twelve month contract time. Such hauls shall be performed Monday thru Friday, between the hours of 7:30 a.m. and 3:00 p.m.

The landfill or transfer station to be transported to is not under the jurisdiction of the city and therefore the hours of operation, policy and procedure are not known to the City. It will be the responsibility of the awarded contractor to become familiar and abide by the facility's operations, hours, policy and procedures.

4. The awarded contractor must provide a contingency plan to transfer Municipal Solid Waste in the event the primary awarded contractor cannot meet the needs on a daily basis to the City. The awarded contractor cannot allow Municipal Solid Waste on the trailers/containers for more than 72 hours. The Contractor must have at his disposal a Minimum of Three Roll Off Containers that are 30 Cubic Yards or Larger to use in the event the roll-offs provided by the City are filled to capacity. No additional payment shall be made for the use of contractors roll offs. Contractor shall attempt to provide sufficient transport ability so that the 4 City of Raton roll off containers are sufficient and emptied routinely.
5. The awarded contractor must abide by all Federal, State, and local laws, ordinances, statues, etc. that affect this hauling contract.
6. The awarded contractor will bear all costs for license, fees, permits, etc. that affect this contract. A copy of the current **NMED Hauling Registration/Certificate** must be submitted with the bid. This registration is required of all commercial haulers of solid waste and non-commercial haulers of special waste in accordance with the Solid Waste Act, NMSA 1978, § 74-9-8 (H), and the New Mexico Solid Waste Rules (SWR), 20.9.3.31.A NMAC.

7. It is the responsibility of the contractor to insure that the designated landfill is open prior to shipment. The contractor should consider himself at risk once he has removed the load from the transfer location. The City will not compensate the transporter for costs incurred in the event that the landfill closes prior to his arrival. Under no circumstance will the city pay for the transportation of the same load more than once. The contractor should satisfy himself that the road is passable and the landfill open prior to removing the transport vessel from the transfer site.
8. Commingling of waste prohibited. The contractor is notified that only waste generated by the City of Raton and loaded at the transfer facility is to be transported in any vessel. The contractor shall not pick up any other entities' waste in route to the designated landfill.
9. For the purpose of this bid letting the contractor is informed that the waste must be delivered to a Subtitle D Landfill that abides by all applicable state and federal regulations within their permitted jurisdiction. The Contractor shall supply, in writing the landfill that they intend to use and have it approved in writing by the City of Raton.
10. The contractor is solely responsible for the waste from the time it leaves the transfer facility until it reaches the designated landfill. It is the contractor responsibility to ensure that all waste is handled and transported in accordance with applicable laws and regulations. The contractor is solely responsible for any debris that may exit the vehicle during transport. The contractor shall be liable for cleaning up any debris that are dislodged during transport including an accident or inadvertent dumping.
11. The contractor should make himself familiar with the transfer facility. The standard process will include using a backhoe or similar equipment operated but the owner (City), to load and obtain compaction of municipal solid waste in the transport trailer/container. The contractor is responsible for providing trailers/containers that can withstand this operation. The city will not be responsible for damages that may occur as a result of these routine operations. In the event that damage occurs to the contractors' equipment as a result of gross negligence on the part of the City, the contractor shall maintain the right to file a tort claim against the city. Please note the filing of a claim does not guarantee that the contractor will be compensated for said claim. It is also implied that damages caused against the city for negligent acts by the contractor would result in a claim being filed with the contractors insurance provider.
12. **Please note the insurance required in the contract. Proof of insurance must be provided to the City upon contract award.** The Contractor shall maintain coverage's for not less than the following amounts or greater as required by law or regulations:

a. Workman's Compensation:	Statutory
b. Comprehensive General Liability:	
Bodily Injury – Each Occurrence	\$1,000,000
Property Damage – Each Occurrence	\$500,000
Combined Single Limit	\$1,000,000
c. Comprehensive Automobile Liability:	
Bodily Injury – Each Occurrence	\$1,000,000
Property Damage – Each Occurrence	\$500,000
Combined Single Limit	\$1,000,000

Technical specifications
The City of Raton Municipal Solid Waste Transportation
Contract

Part 2 Contractor Requirements, Conditions,
Measurement and Payment

The Contractor is expected to provide the following equipment and adhere to the following provisions.

The Contractor shall provide a minimum of one suitable vehicle for transportation, and a may at his discretion uses pup trailers or similar devices to allow transport of two rolloff containers at a time. The contractor shall make all necessary provisions to insure that at least one container is available onsite at all times for use while the other containers are in transport. The contractor shall be responsible for all maintenance and repairs necessary to insure that his containers remain in good working condition. He will report repairs that are needed to city owned rolloffs as needed. The awarded contractor shall be registered with the New Mexico Environment Department, Solid Waste Bureau and must provide registration information at time of bid. Contractor shall be responsible for providing all, material, equipment, labor, fuel and appurtenances necessary to complete the hauling. This includes tarps, tie down straps, wet kit, etc. that may be required to remain in compliance with all applicable rules and regulations relating to the transportation of municipal solid waste. Waste will be loaded at the transfer facility located on Armstrong Lane east of Raton and Transported to the North Eastern New Mexico Regional Landfill near Levi, New Mexico.

Measurement and Payment

The Contractor shall be paid for each rolloff container of solid waste delivered to the landfill. Each load shall be weighed at the scales provided by the City of Raton and recorded by transfer station operators. In addition the contractor should provide the City with any tipping tickets provided at the landfill. Contractor may submit up to two applications for payment each month. Contractor shall provide and invoice and all supporting documentation for each payment application. No fuel escalation clause or surcharges will be allowed during the duration of this contract

Solid Waste Disposal Fees

The Contractor will be responsible for paying tipping fees that are incurred for the disposal of Municipal Solid Waste Generated by the City of Raton. The city shall reimburse the contractor for tipping fees in the amount billed by the landfill per ton plus tax. Contractor shall pass through expenses for incidental items including mattresses, white goods, tires, etc at the actual cost billed to contractor.

Contract Period The Initial contract shall be for a period of one calendar year. The contract may renewed annually for up to three additional years upon mutual agreement of owner and contractor. Each renewal shall be for a period of one calendar year. The total of the original contract plus any renewals shall not exceed 4 calendar years.

CITY OF RATON
PURCHASING TERMS & CONDITIONS
UNLESS OTHERWISE SPECIFIED.

1. Bids are to comply with all instructions and provide the information requested. Failure to do so may disqualify your bid.
2. Samples of items, when required, must be furnished free of expense prior to the opening of bids and if not destroyed will upon request, be returned at the bidders expense.
3. Time or proposed delivery must be stated in definite terms. If time varies for different items, the bidder should so state.
4. Time of delivery shall be stated as the number of calendar days following receipt of the order either verbally or in writing, whichever is received first by the vendor, to receipt of the goods or services by the City of Raton.
5. Time of delivery may be a consideration in the award.
6. Envelopes containing bids must be sealed and marked with name, address of the bidder, due date, and bid number.
7. **IMPORTANT:** Bids not received in the office of the City Manger at the time of opening are disqualified and may be returned unopened.
8. Corrections and/or modifications received after the opening time specified will not be accepted.
9. Where an item is specified by brand name and numbers these are used in these specifications as a matter of convenience to indicate quality, type, and features desired. Accordingly demonstrably equal merchandise will be given full consideration and the bidder is invited to offer such, except where it is clearly stated that such brand names and/or models are specified for the purpose of standardization. Any "or equal" items offered must be substantially equal to the appearance, design, dimensions, approximate cost of the item specified, and must be of equivalent materials, function, and sturdiness of construction of the item specified. Any deviation from specifications must be clearly itemized by the bidder.
10. If your bid is accepted, you will receive notification either verbally or in writing by an issuance of a Purchase Order Number.
11. All purchases made by the City of Raton are subject to the New Mexico Public Procurement Act (§13-1-29 through §13-1-199) and the City of Raton applicable ordinance rules, and/or regulations.

**THE CITY OF RATON PURCHASING
TERMS & CONDITIONS
UNLESS OTHERWISE SPECIFIED**

CONDITIONS

1. The City of Raton reserves the right to reject any and all bids, to waive any informality in bids, and unless otherwise specified to the bidder, to accept any item on the bid.
2. In case of error in the extension of prices in the bid, the unit price will govern.
3. Prompt payment discounts will not be considered in computing the low bid. The City of Raton will take advantage of cash discounts offered wherever possible.
4. Time in connection with discount offered will be computed from date of delivery or from date correct invoice is received, whichever is later.
5. Final inspection and acceptance will be made at the destination. Supplies rejected at the destination for non-conformance with specifications shall be removed at the vendor's risk and expense, promptly after notice of rejection.
6. The City of Raton requires vendor certification by the New Mexico State Purchasing Agent before the 5% in-state bidding preference can be extended. Bidders claiming this preference must show certification number on bid and must be prepared to show evidence of certification for the commodity being bid. In-state vendors: failure to secure above will result in non-considerations of any preference for in-state bidders.
7. The City of Raton reserves the right to award by item, group of items, or total bids; to reject any and all bids in whole or in part if in the judgment of the Purchasing Agent, the best interests of the City of Raton will be served.
8. The City of Raton Purchase Order Number or Contract Number shall be shown on all packing, delivery tickets, and other correspondence in connection with the shipment. The user's count will be accepted by the Vendor as final and conclusive on all shipments not accompanied by a packing ticket or when there is a discrepancy with the packing ticket.

The Vendor's invoice shall be submitted and contain the following information: order number, description of supplies or services, quantities, unit prices, and extended totals. Separate invoices shall be rendered for each and every complete shipment
9. The City of Raton reserves the right to cancel all or any part of this order without cost to the City, if the Vendor fails to meet the provisions of this order and, except as otherwise provided herein, to hold the Vendor liable for any excess cost occasioned by the City due to the Vendor's default. The Vendor shall not be liable for any excess costs if failure to perform the order arises out of cause beyond the control and without the fault or negligence of the Vendor, such causes include, but are not restricted to, acts of God or of the public enemy, acts of the State or of the Federal Government, fires, goods, epidemics, quarantine restrictions, strikes, freight embargos, unusually severe weather, and defaults of subcontractors due to any of the above.

- 10. In signing this bid or accepting Purchase Order, the Vendor certifies he/she has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this proposal submitted to the City of Raton.**
- 11. Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. The New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks.**
- 12. THIS BID/AWARD IS CONTINGENT UPON AVAILABLE FUNDING.**

BID PROPOSAL FORMS

BID PROPOSAL FORM

Project: City of Raton Municipal Solid Waste Transportation Project
Tuesday November 20, 2018 at 2:00PM

Bid submitted to: The City of Raton
224 Savage Avenue
Post Office Box 910
Raton, New Mexico 87740
(575) 445-9451

Bidder is instructed to complete Bid Schedule, inclusive of all items.

Gentlemen:

The undersigned bidder, having examined the requirements of the project, documents relating to the project (including Invitation to Bid, Form of Contract, and Addenda, if applicable) and conditions and characteristics of the work, and having familiarized himself/ themselves with project locations, hereby proposes to furnish all materials, tools, equipment and to perform all labor, supervision, work and appurtenances necessary for the complete construction of the work described and in accordance with attached project documents, applicable specifications, standards and codes and to contract for the unit prices itemized as follows:

Bid Schedule:

Item No.	Description	Units	Estimated Quantity	Unit Bid Price	Amount Bid
1.	Transportation of Municipal Solid Waste	Each Rolloff Contrainer	150	_____	_____

New Mexico Gross Receipts Tax @ 8.5208%
Of Subtotal Above _____

Total Bid Amount – Bid Items 1 plus NMGRT _____

Note – The basis for award of the Bid shall be the lowest responsive Base Bid amount without New Mexico Gross Receipts Tax.

As further consideration for the award of the contract, the undersigned agrees to the following terms, conditions and acknowledgements:

- A. City of Raton reserves the right to reject any or all bids, to waive any informalities, or to accept any portion of the bid as is in the best interest of City of Raton.
- B. To execute the standard form of contract and to Certificates of Insurance within fifteen (15) days following receipt of notification of acceptance of this proposal. Failing to do so will allow the City of Raton to award the contract to others.
- C. City of Raton reserves the right to increase or decrease any or all quantities as in the best interest of City of Raton.
- D. To commence work within 5 calendar days following execution of the contract, or such additional time as may be allowed in writing by City of Raton, and to complete the contract as awarded.
- E. The Bidder has examined the site, the project documents, drawings, details, bid quantities, terms and conditions of the proposed Agreement and is satisfied to conditions, regulations and requirements that may affect cost, progress and performance of the Work. The Contractor does not consider additional examination, investigation, tests, studies or data necessary for performance of the Work at contract unit prices, in accordance with terms and conditions of the Contract Documents, and within stated contract times. Contractor agrees that Contract Documents are generally sufficient to indicate and convey understanding of all terms, conditions and requirements for performance and furnishing of the Work.
- F. City of Raton shall consider and apply provisions of NMSA 13-4-2 regarding Certified New Mexico Resident Contractor and NMSA 13-1-21/ 13-1-22 regarding Certified Veterans Preference in this procurement.

Bidder acknowledges receipt of the addenda: _____

Dated this _____ Day of _____, 2013

Respectfully Submitted:

Firm Name: _____

By (Signature and Print Name): _____

Title: _____

Business Address: _____

Business Telephone: _____

New Mexico Resident Contractor
Certification Number
(If Applicable; NMSA 13-4-2) _____

New Mexico Veterans Preference
Certification Number
(If Applicable; NMSA 13-1-21/ 13-1-22) _____

Contractor's Federal I.D. Number: _____

ATTEST: _____

Secretary
(If Applicable)

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, § 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, any prospective contractor 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 may cancel a solicitation or proposed award for a proposed contract pursuant to Section 13-1-181 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section 13-1-182 NMSA 1978 of the Procurement Code 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.

The state agency or local public body that procures the services or items of tangible personal property shall indicate on the form the name or names of every applicable public official, if any, for which disclosure is required by a prospective contractor.

THIS FORM MUST BE INCLUDED IN THE REQUEST FOR PROPOSALS AND 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 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 of (a) a prospective contractor, if the prospective contractor is a natural person; or (b) an owner of a prospective contractor.

“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.

“Prospective contractor” means a person or business that 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 or business 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.

Name(s) of Applicable Public Official(s) if any:

Mayor – James Neil Segotta
Mayor Pro Tem – Linde’ Schuster
Commissioner - Ronald Chavez
Commissioner – Donald Giacomo
Commissioner – Lori Chatterley
Municipal Judge – Roy Manfredi

DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:

Contribution Made By: _____

Relation to Prospective Contractor: _____

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)

EXAMPLE CONTRACT BETWEEN THE CITY OF RATON AND _____

This Contract entered into by and between the City of Raton, hereinafter referred as the "City," and _____ hereinafter referred to as the "Contractor," to transfer Municipal Solid Waste (as defined in the New Mexico Solid Waste Act) for the City of Raton. The City is authorized to enter into this Contract pursuant to Section 13-1-97 et seq. NMSA 1978 and has let this Contract pursuant to state and local purchasing procedures for Contracts of this type and amount. The City Commission approved the Contract during its regularly scheduled meeting on _____. In consideration of the mutual promises and agreements contained in this Contract, the parties agree as follows:

ARTICLE 1. MATERIAL TO BE PROVIDED: When requested, Contractor shall provide solid waste/transfer station hauling services as specified in the bid and response documents for the City of Raton. The Contractor shall have available the service required on an as ordered basis.

The Contractor shall provide the services in accordance with the provisions of this Contract and with the terms and conditions of both Invitation for Bid _____ and Contractor's response to the Invitation incorporated herein by reference and made a part of this contract.

ARTICLE 2. PERIOD OF PERFORMANCE: The period of performance of this Contract shall begin from _____, 2016 through _____, 2017. The Contract may be renewed and up to three additional one year terms upon mutual consent of the parties, but in no event may this Contract be extended beyond a total of four years.

ARTICLE 3. PLACE OF PERFORMANCE: Contractor shall have available the item(s) and provide the service as per contract.

ARTICLE 4. ESTIMATED COST: The amount of the contract during the period specified above is as related in the bid documents. Funds are obligated by this Contract on an as needed basis. The unit cost for the item(s) is based per the Contractor's unit bid response. (See attached)

ARTICLE 5. NOTICES AND INVOICES: Invoices shall be mailed to Accounts Payable Office, 224 Savage Avenue, Post Office Box 910 Street, Raton, New Mexico, 87740. All other correspondence shall be submitted jointly to:

CITY OF Raton
City Manager
224 Savage Avenue
Post Office Box 910
Raton, NM 87740
575-445-9451
e-mail:

ARTICLE 6. ASSIGNMENT OF CLAIMS: The Contractor shall not assign or delegate any interest in this Contract or transfer any interest or assign any claims for money due or to become due under this Contract, without the written consent of the City.

ARTICLE 7. HOLD HARMLESS, INDEMNIFY AND DEFEND: The contractor shall indemnify, defend and save harmless the City, their officers, agents and employees from and against any liability, claims, damages, losses, expenses, actions and suits whatsoever, including injury or death of others or any employees of the contractor, or sub-contractor caused by or arising out of the performance, act or omission by contractor of any term of this contract.

ARTICLE 8. INSURANCE: For the duration of the contract and until all work specified in the contract is completed the Contractor shall maintain in effect all insurance as required below and comply with all limits, terms and conditions stipulated therein.

Work under this contract shall not commence until evidence of all required insurance and bonding is provided to the Finance Department.

Evidence of such insurance shall consist of a completed copy of the certificate of insurance, signed by the insurance agent for the Contractor and returned to the City. If for any reason, any material change occurs in the coverage during the course of the contract such change will not become effective until thirty (30) days after the City has received written notice of such change.

A. The policy shall be written and the certificate shall reflect that:

1. All insurance required is in *effect*.
2. The City is an additional insured on the Contractor's general liability policy with respect to activities under the contract.
3. The insurance afforded applies separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability.
4. The insurance afforded therein shall be primary insurance and any insurance or self-insurance of the City shall be excess and not contributory insurance.

Contractor shall hold harmless, indemnify and defend the City and its "public employees" as defined in the New Mexico Tort Claims Act, Sections 41-4-1 to 41-4-29, NMSA 1978, as amended, against and from any and all claims, losses, demands, judgments, damages, liabilities, lawsuits, expenses, fees of attorneys, costs and/or actions of any kind and nature whether from death, bodily injury or damage to property resulting from or related to the Contractor's negligence or intentional acts, errors or omissions in the Contractor's performance under this Contract. The Contractor's agreement to hold harmless, indemnify and defend shall not be affected or terminated by the cancellation, expiration of the term or any renewal or any other modification of the Contract for any reason and shall survive the cancellation, expiration of the term or any renewal or any other modification of this Contract, for negligence, acts, errors or omissions to act occurring during the term of this Contract.

ARTICLE 9. TERMINATION: Either party may terminate this Contract with or without cause by providing written notice to the other party sixty (60) days in advance of the termination. In the event of Contract termination, the Contractor shall be reimbursed for completed work that is approved by the City.

ARTICLE 10. RELEASE: The Contractor, upon final payment of the amount due under this Contract for work completed and approved by the City, releases the City, its officers and employees from all liabilities, claims, and obligations whatsoever arising from or under this Contract. The

Contractor agrees not to purport to bind the City to any obligation not assumed herein by the City, unless the Contractor has express written authority from an authorized City employee to do so, and then only within the limits of the expressed written authority.

ARTICLE 11. CONFLICT OF INTEREST: The Contractor warrants that he presently has no interest, and shall not acquire any interest during the term of this Contract, which would have the potential to conflict with the performance of the services required under this Contract. In the event such a conflict arises, it shall be brought to the attention of the City and appropriate action acceptable to the City shall be taken. The Contractor's failure to inform the City of the existence of a potential conflict of interest constitutes default and shall be grounds for immediate termination of Contract by the City.

ARTICLE 12. INDEPENDENT CONTRACTOR: Nothing in this Contract is intended, or should be construed in any way, to create or establish a partnership relationship between the parties or to establish the Contractor as an agent, representative or employee of the City for any purpose or any manner whatsoever. Contractor and its employees shall not accrue leave, retirement, insurance, or any other benefits afforded to employees of the City. Contractor is an independent Contractor of the City. The Contractor, its officers, directors, employees, servants, agents, or representatives are not and shall not be deemed employees of the City and shall not bind the City in any respect.

ARTICLE 13. PROCUREMENT CODE: The Procurement Code Sections 13-1-28 through 13-1-199, NMSA 1978 as amended, imposes civil and criminal penalties for its violation. In addition, New Mexico Criminal Statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

ARTICLE 14. AMENDMENT: This Contract shall not be altered, changed or amended except by a written instrument signed by both parties.

ARTICLE 15. SOVEREIGN IMMUNITY: By entering into this Contract, the City and its "public employees" as defined in the New Mexico Tort Claims Act, supra, do not waive sovereign immunity, do not waive any defense, and do not waive any limitations of liability pursuant to law. No provision in this Contract modifies or waives any provision of the New Mexico Tort Claims Act, supra.

ARTICLE 16. WAIVER: Any waiver of any breach of any covenant, term, condition or agreement in this Contract to be kept and performed by Contractor shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the City from declaring a default for any succeeding breach either of the same covenant, term, condition or agreement or another. All remedies afforded in this Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided herein or by law.

ARTICLE 17. MERGER OF PRIOR AGREEMENTS: This Contract incorporates all the conditions, agreements and understandings of the parties concerning the subject matter of the Contract. All such conditions, understandings and agreements have been merged into this written Contract. No prior condition, agreement or understanding, verbal or otherwise, shall be valid or enforceable unless embodied in this Contract.

ARTICLE 18. PARAGRAPH HEADINGS: Paragraph headings are for convenience and reference and are not intended to limit the scope of any provision of this Contract.

ARTICLE 19. THIRD PARTY BENEFICIARY: It is agreed between the parties executing this Contract that it is not intended by any of the provisions of the Contract to create on behalf of the public or any member thereof the status of third party beneficiary or to authorize anyone not a party to the Agreement to maintain a suit based upon this Contract.

ARTICLE 20. PERSONAL LIABILITY: No elected or appointed official, employee, servant, agent or law enforcement officer of the City shall be held personally liable under this Contract or any extension or renewal thereof because of its enforcement or attempted enforcement, provided they are acting within the course and scope of their employment or governmental duty and responsibility.

ARTICLE 21. GOVERNING LAW: This contract shall be construed in agreement with the Laws of the State of New Mexico. The Contractor shall also comply with all applicable Federal and local laws, ordinances, and the rules and regulations of the City.

ARTICLE 22. BINDING EFFECT OF AGREEMENT: Both parties agree that the terms of this Contract and any extension or renewal thereof shall extend to and be binding the administrators, assigns, and successors of the Contracting Parties.

ARTICLE 23. SEVERABILITY: If any clause or provision of the Contract is held to be illegal, invalid or unenforceable, the remainder of the Contract shall remain in full force and effect. However, in the event that neither party can reasonably perform pursuant to the remaining Contract terms, or if the purpose of the Contract can no longer be carried out by either party, the Contract is void and no damages shall accrue to either party.

ARTICLE 24. ARBITRATION: In the event that a dispute arises with respect to any of the provisions contained in this Contract or any other matter affecting this contractual relationship between the City and the Contractor, it shall be resolved by arbitration in New Mexico in accordance with the rules and procedures of the American Arbitration Association, and judgment upon the award rendered may be entered into any court having jurisdiction. All attorneys' fees and associated expenses shall be awarded as decided by the Arbitrator.

ARTICLE 25. NOTICE TO PROCEED: It is expressly understood that this Contract is not binding upon the City until approved and signed by the City and, further, that the Contractor is not to proceed with its obligations under the Contract until the Contractor has received a fully-signed copy of the Contract.

ARTICLE 26. NON-APPROPRIATION: The City's obligation to make payment under the terms of this Agreement are contingent upon its appropriation of sufficient funds to make those payments. If the City does not appropriate funds for the continuation of this Contract, this Contract will terminate upon written notice of that effect to the Principal. The City's determination that sufficient funds have not been appropriated is firm, binding and not subject to review.

ARTICLE 27. DUPLICATE ORIGINALS: This document shall be executed in no less than three (3) counterparts, each of which shall be deemed an original.

ARTICLE 28. SUB-CONTRACT: The Contractor shall not subcontract any portion of the services to be performed under this Agreement without prior written approval of the City or as negotiated an made part of this Agreement.

CITY OF RATON

CONTRACTOR

Mayor or designee _____

Date _____

As to Legal Sufficiency:

Legal Counsel

City Clerk

Date: _____

Address: _____

Federal Tax ID #or SS#:

Telephone*: _____

Date: _____