



City of Aztec

REQUEST FOR PROPOSALS (RFP)

Utility Cost of Service and Rate Study

RFP# 2016-540

PROPOSAL OPENING DATE/TIME/PLACE:

Thursday, April 28, 2016, 3:00 P.M.
City of Aztec Finance Conference Room
201 W Chaco
Aztec, NM 87410

FINAL DATE FOR QUESTIONS

April 18, 2016 10:00 AM

Tentative Commission Approval Date

June 14, 2016

For further information contact:

Kathy Lamb
Finance Director
City of Aztec
Phone: 505-334-7653
Fax: 505-334-7649
email: klamb@aztecnm.gov

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RFP 2016-540 Utility Cost of Service and Rate Study
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 D.

The acknowledgement of receipt should be signed and returned to the Procurement Specialist no later than April 15, 2016 5:00 PM. Only potential Respondents who elect to return this form completed with the indicated intention of submitting a proposal will receive copies of all Respondent 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
RFP 2016-540 Utility Cost of Service and Rate Study
City of Aztec
Purchasing Office
201 W Chaco, Aztec NM 87410
Phone: 505-334-7653
Fax: 505-334-7649
E-mail: klamb@aztecnm.gov

QUALIFICATIONS BASED PROPOSALS SUBMITTAL FORM
RFP 2016-540 Utility Cost of Service and Rate Study

REQUIRED INFORMATION

COMPANY NAME/ADDRESS/CITY/STATE/ZIP

CONTACT PERSON

TELEPHONE NUMBER

TITLE

EMAIL ADDRESS

If a corporation, state of incorporation: _____

In-State Preference will be applied only to those in-state certified businesses that have completed the following:

Bidder has received certification from the State of New Mexico for Resident Business Certification. Bidder has been issued Certification # _____ and is therefore eligible for the 5% preference. In-state certification approval is required at the time of the proposal opening to be eligible for in-state preference.

Resident Veterans Preference will be applied only to those bidders who have completed the following along with the Resident Veterans Preference Certification form included in this RFP:

Bidder has received certification from the State of New Mexico for Resident Veterans Preference. Offeror has been issued Certification # _____. Bidder must include their State of New Mexico certificate with their proposal. Resident veterans preference certification approval is required at the time of the proposal opening to be eligible for resident veterans preference.

IMPORTANT - PROPOSALS MUST BE SUBMITTED IN A SEALED ENVELOPE WITH THE RFP NUMBER AND OPENING DATE CLEARLY INDICATED ON THE FRONT OF THE ENVELOPE. EMAILED OR FAXED BIDS WILL NOT BE ACCEPTED.

As required by 13-1-111 NMSA 1978 the City of Aztec (City) is requesting qualifications-based proposals for professional services pursuant to Sections 13-1-120 to 13-1-124, NMSA 1978.

Sealed proposals will be received until **April 28, 2016, 3:00 P.M. MDT** and then opened at the **City of Aztec Finance Conference Room**. 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.

Proposals deposited with the City may be withdrawn or modified prior to the time set for opening of proposals by delivering written notice on company letterhead.

Respondents submitting proposals may be afforded an opportunity for discussion and revision of proposals. Revisions may be permitted after submission of proposals and prior to award. The City will open all proposals, assign an evaluation committee and evaluate all proposals; determine the need for, conduct any negotiations; and make a final recommendation to the City Commission for award of the agreement or contract.

The agreement or contract award shall be made to the responsible Respondent or Respondents whose proposal is most advantageous to the City of Aztec, taking into consideration the evaluation factors set forth in the RFP. The award of an agreement or contract for professional services shall be made based upon the criteria which does not include price.

The City reserves the right to reject any or all proposals, cancel the RFP in its entirety or to waive irregularities at its option when it is in the best interest of the City of Aztec

Award of an agreement or contract is contingent upon the budgeting and appropriation of funds for continuation of the professional services contemplated by this RFP.

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 proposal, and that the undersigned Respondent has read and understands the scope and conditions of the proposal.

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.

If applicable, RESPONDENT ACKNOWLEDGES RECEIPT OF THE FOLLOWING AMENDMENT(S):

Addendum No. _____	Dated _____	Addendum No. _____	Dated _____
Addendum No. _____	Dated _____	Addendum No. _____	Dated _____

To be a valid proposal, Bidder must sign here:

Title

RETURN THIS FORM WITH YOUR PROPOSAL

NOTICE TO OFFERORS
City of Aztec, NM
RFP 2016-540 Utility Cost of Service and Rate Study
Closing Date: Thursday, April 28, 2016 3:00 P.M.

The City of Aztec, NM is requesting qualification based proposals for a Utility Cost of Service and Rate Study. RFP documents may be obtained online by accessing the City's purchasing webpage through www.aztecnm.gov or by contacting Kathy Lamb at (505) 334-7653 or klamb@aztecnm.gov. Sealed proposals will be received by the Purchasing Office at 201 W. Chaco, Aztec, New Mexico 87410, until the hour of 3:00 p.m. on April 28, 2016.

Publication Date: April 3, 2016, Farmington Daily Times
April 8, 2016, TALON

I. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The purpose of the Request for Proposal (RFP) is to request respondents to present their qualifications, capabilities and approach to provide multi-phase utility rate study services to the Aztec City Commission (City), including but not limited to: a review of current financial position, policies, and recommendations associated therewith; development of a financial model capable of being utilized to determine the City’s revenue requirement over a 5-year planning period; and a comprehensive rate study, including cost of service analysis and retail rate design.

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 owns and operates its Electric, Water, and Wastewater and Solid Waste Utilities, serving approximately 3,200 customers. The City Manager oversees day to day operations of the utilities while broad policies and rates are established by the City Commission. The City of Aztec operates under a July through June fiscal year.

POPULATION TRENDS AND PROJECTIONS – CITY OF AZTEC

YEAR	POPULATION
2000	6,435
2010	6,763
2015	6,727
2025 est	7,071

Electric Utility

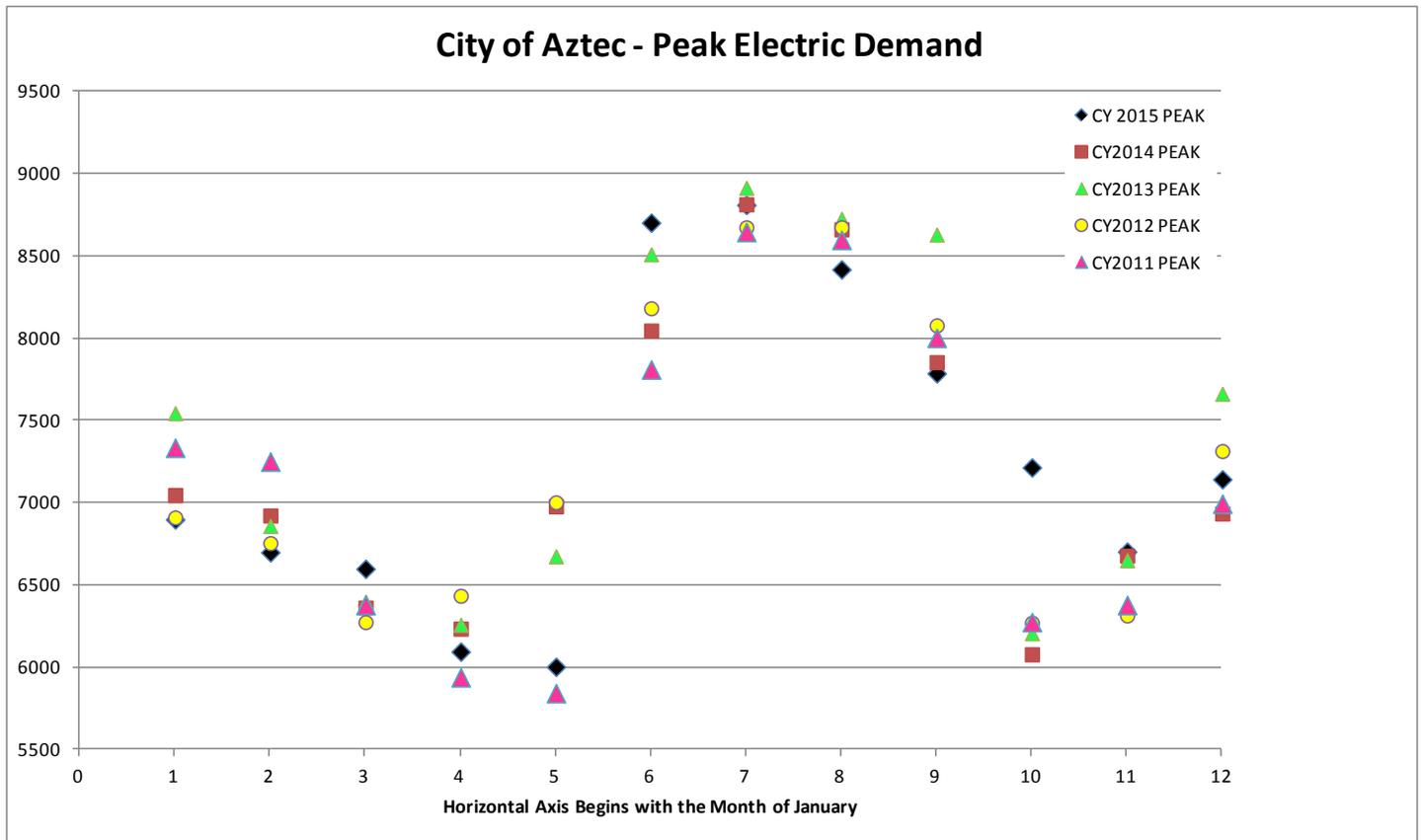
The City currently purchases its wholesale electricity from Public Service Company of New Mexico and the Western Area Power Administration (WAPA). The City has negotiated a new purchase power agreement (PPA) and effective July 1, 2016, will purchase wholesale electricity from Guzman Energy LLC and WAPA.

The City provides electric service within the city limits. City of Farmington Electric Utility Service (FEUS) serves the remainder of San Juan County. The City has the right to provide service up to five miles from the municipal boundary upon the negotiated purchase of the FEUS distribution system.

Customer Classification	% of Total Customer	% of Total kwh	% of Total Sales
Residential – In City Limits	61%	28%	30%
Residential – Multi Unit	24%	8%	9%
Residential – Out of City Limits	<1%	<1%	<1%
Commercial	12%	37%	38%
Public Entity – School District	<1%	10%	10%
Public Entity – County	<1%	7%	7%
Public Entity – City	<1%	9%	5%

Solar Generation

Included in the PPA, is the construction of a .9 MW solar project which will be completed June 30, 2016 and is anticipated to reduce the City's purchased power requirements. The City currently has one commercial solar customer and is currently working with the Aztec Municipal School District (AMSD) on their first solar installation at the district's bus barn. It is anticipated AMSD will expand solar power to each of their schools (5) in Aztec within the next five years either through installations at each of the facilities or an arrangement through the City to transport energy generated at one facility to another facility.

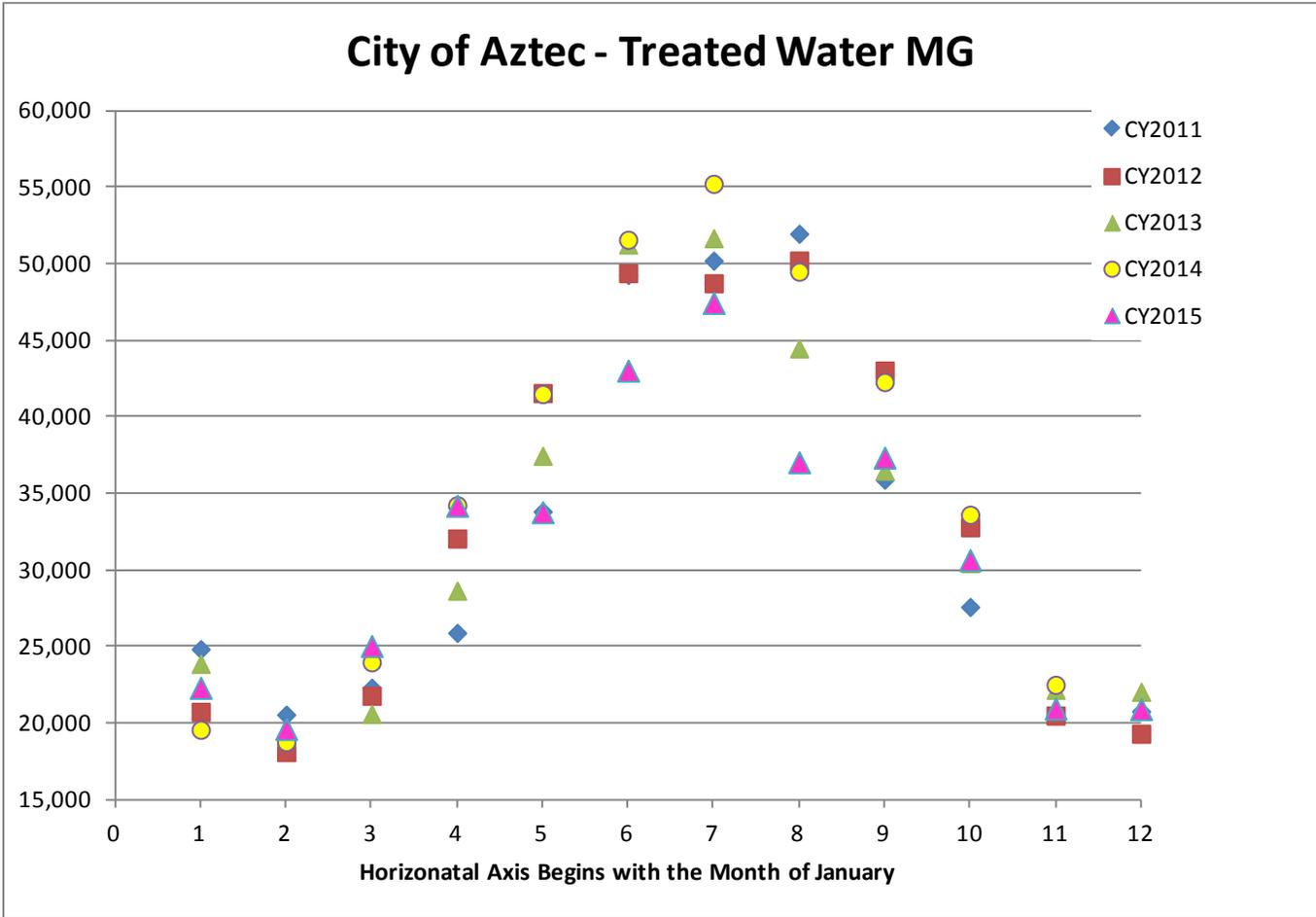


Water Utility

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.

Customer Classification	% of Total Customer	% of Total Gallons Sold	% of Total Sales
Residential – In City Limits	56%	43%	46%

Customer Classification	% of Total Customer	% of Total Gallons Sold	% of Total Sales
Residential – Multi Unit	21%	13%	15%
Residential – Out of City Limits	8%	5%	9%
Commercial	8%	15%	14%
Bulk Water - Commercial	11%	2%	3%
Bulk Water - Residential	<1%	7%	5%
Public Entity – School District	<1%	3%	2%
Public Entity – County	<1%	2%	1%
Public Entity – City	1%	10%	5%



Waste Water Utility

The City maintains its own sewer system which feeds into the City’s waste water treatment plant, an Aero-Mod activated sludge treatment system designed to enhance nitrogen and phosphorus removal. The treatment plant has a capacity of 1.5 MGD and underwent major upgrades completed in 2010. The City uses a five month water use average (Nov-Mar) to calculate sewer charges for residential customers. Commercial customers are billed based on their monthly water usage. Customers have the option of installing a separate meter for outside watering which does not include a sewer charge.

Customer Classification	% of Total Customer	% of Total Sales
Residential – In City Limits	64%	55%
Residential – Multi Unit	26%	26%

Customer Classification	% of Total Customer	% of Total Sales
Residential – Out of City Limits	<1%	<1%
Commercial	9%	16%
Public Entity – School District	<1%	2%
Public Entity – County	<1%	1%
Public Entity – City	<1%	<1%

Solid Waste Utility

The City contracts solid waste services (collection and disposal) to Transit Waste whose agreement expires this year. A RFP for solid waste services will be issued in April 2016. The City currently provides a drop off recycling center which accepts specific types of recyclable items which are separated by those using the facility. The City then hauls the items to various sites for processing.

Meter Reading

The majority of electric and water meters are currently AMR with one employee responsible for the reading. The City will begin converting electric meters to AMI in FY17, the first year of a seven year project.

Utility Debt

The City of Aztec currently has \$3,470,147 in outstanding debt service for the 2010 wastewater plant improvements. An additional \$5,000,000 in debt will be added in 2017 for the replacement of the sanitary sewer interceptor line.

Utility Reserves

The City’s annual budget includes transfers for electric, water and wastewater to reserve funds for the purpose of repair, replacement and expansion. These reserve amounts are in addition to those which are mandated with current debt requirements.

C. PURPOSE

As stated above, the purpose of this RFP is to request proponents to present their qualifications, capabilities and approach to provide multi-phase utility cost of service and rate study services to the City of Aztec. Phase I will include review of current financial policies and recommendations associated therewith and development of a financial model capable of being utilized to determine Aztec’s revenue requirement over a five-year planning period. Phase II, should Aztec choose to move forward, will include a comprehensive rate study, including cost of service analysis and retail rate design.

Key issues to address within the financial model include but are not limited to:

- Meeting and/or exceeding current debt service coverage requirements
- Ensuring required reserves are maintained
- Ensuring adequate system maintenance
- Ensuring capital needs are funded

D. SCOPE OF WORK

Phase I

1. Review Aztec’s historical revenue, expenditures, and debt and provide a brief summary of historical

- trends.
2. Starting with Fiscal Year 17/18, identify revenue requirements over a five-year planning period. This analysis shall include a projection of revenue, expenditures (including both operating and capital), and any future bonding requirements as it relates to future capital improvement projects.
 3. Analysis should include a recommendation for ensuring that all of the City's utilities move in the direction of becoming financially self-sufficient over time, and based on feedback from the City Commission.
 4. The revenue requirement analysis shall include detailed assumptions with respect to forecasted or estimated cost increases (i.e., employee costs, supplies/materials, wholesale power, etc.).
 5. The revenue requirement analysis shall include a detailed projection of each utility's sales and/or load information by rate class over the planning period where applicable, including assumptions used to calculate said information.
 6. The revenue requirement analysis shall calculate debt service coverage ratios and any deficiencies associated therewith based on projected net revenues during the planning period.
 7. The revenue requirement analysis shall identify minimum cash reserve requirements and determine any deficiencies associated therewith.
 8. The revenue requirement analysis shall be prepared in Microsoft Excel and be made available to the City of Aztec for future internal use. Proponents shall train Aztec staff on the use of the revenue requirement model.
 9. The revenue requirement, its assumptions and final conclusions will be compiled into a draft report for presentation to Aztec staff. A final report will then be prepared and presented to the City Commission.

Phase II

Following acceptance of the Revenue Requirement Report and authorization to proceed with Phase II, the proponent shall:

1. Review current customer classes and recommend any alterations to existing customer class definitions and/or expansion/reduction/combination of the number of customer classes.
2. Conduct a comprehensive cost of service study to determine the cost of serving each customer class including determining cost allocators and allocating functionalized costs by customer class. Proponent will use industry accepted methodologies for allocating costs to various classes of customers.
3. Identify the cost of each rate component for each customer class as applicable (i.e., system access, energy/commodity, demand, bulk needs).
4. Proponent shall structure a proposed rate schedule for each utility on the basic premise that each customer should be classified and served under a schedule that will cover all the costs of his/her service plus a reasonable margin for proper operating reserves and capital needs.
5. Assess the sensitivity of the interaction between the conservation elements of the recommended tiered rate structures and their impacts on the ability to fund utility operations as well as their impact on the economic well-being of the community.
6. The benefits of any proposed modifications shall be weighed against the financial impacts on rate payers.
7. Proposed rate schedules must classify each customer into the fewest possible reasonable classifications.
8. For proposed rate schedules, proponent shall provide a sampling of a minimum of five (5) customers per classification showing the difference of charges between existing and proposed rates by fiscal year

- for the proposed period(s) of adjustment.
9. The final rate study model shall be prepared in Microsoft Excel and be made available to Aztec for future internal use. Proponents shall train Aztec staff on the use of the model which should be designed in such a way as to take into account alternative scenarios.
 10. Provide a recommended public education/outreach/communication plan. Assist City staff with public education documents (e.g. consultant to provide graphics for website and other communication mediums and assist with development of FAQs).
 11. In cooperation with Aztec staff, provide information and assistance as it pertains to any statutes/legislation which could have a potential impact on the proposed rate structure.
 12. Meet or confer with staff and/or other consultants as needed and attend all public meetings, and/or hearings with the City Commission to present interim recommendations in an effort to obtain input and seek final approval for any needed rate adjustments.

Time Line

Proposal must indicate estimated timeline for completion. The City of Aztec desires to implement rate changes January 1, 2017. Notification requirements should be taken into account.

Study Requirements

The recommended rate structure shall be consistent with industry practice for municipal utilities and comply with all government codes and regulations. In addition, the recommended rate structure shall adhere to industry accepted principles of retail rate design.

The recommended rate structure shall be based on actual cost of service and shall be sufficient to meet the revenue requirements of for Aztec's utilities over the five-year planning.

The recommended rate structure shall provide a comparison of current revenues received by utility and customer class to the actual cost of service to each customer class.

The recommended rate structure shall result in no decrease in stability of the revenue stream to the existing utilities, as compared to the current structure.

The recommended rate structure shall be easy to administer and understand and take into consideration the City of Aztec's current and future anticipated billing system capabilities.

The recommended rate structure shall take into consideration the City Commission's desired financial policies.

Monthly progress reports shall be submitted with each invoice describing completion of tasks as they relate to the project schedule. Any substantial deviation from the project schedule shall include an explanation and a strategy for completing all remaining tasks in a timely manner.

Before final payment is made, proponents will furnish the City of Aztec with copies of all documents and files (including research and other supporting data).

Deliverables

Draft Reports, five (5) hardcopies, complete with Summary, Background, Methodology, Findings and Recommendations, and Proposed Rate Schedule with Phase II draft.

Final Reports, five (5) hardcopies, which reflects City's comments and input from draft reports.

Presentation in MS Power Point summarizing Final Report.

Excel spreadsheets with instruction.

Electronic files of all hardcopies and presentations.

Qualifications of Proposers

The City requires information that demonstrates the technical capabilities and experience of proposers to undertake this study. Qualifications may include, but not be limited to, prior relevant experience in conducting cost-of-service studies for municipal utilities, and educational degrees and certificates in finance, accounting, or engineering.

E. PROCUREMENT SPECIALIST

1. The City of Aztec Procurement Specialist responsible for the conduct of this procurement whose name, address, telephone number and e-mail address are listed below:

Name: Kathy Lamb, Finance Director
Address: City of Aztec Purchasing Office
201 W Chaco
Aztec NM 87410

Telephone: (505) 334-7653
Fax: (505) 334-7649
Email: klamb@aztecnm.gov

2. All deliveries of responses via express carrier, regular mail, or hand delivery must be addressed as follows (City of Aztec is NOT located in a guaranteed delivery area):

Name: Kathy Lamb
Reference RFP Name: RFP 2016-540 Cost of Service and Rate Study
Address: City of Aztec Purchasing Office
201 W Chaco
Aztec NM 87410

3. **Any inquiries or requests** regarding this procurement should be submitted, in writing, to the Procurement Specialist. Respondents may contact **ONLY** the Procurement Specialist regarding this procurement. Other City employees or Evaluation Committee members do not have the authority to respond on behalf of the Purchasing Office.
4. **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 Specialist be considered properly submitted.

F. DEFINITION OF TERMINOLOGY

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

“Addendum” means a written or graphic instrument issued prior to the opening of Proposals, which clarifies, correct, or changes the Request for Proposals. Plural: addenda

“Agency” means the City of Aztec.

“Authorized Purchaser” means an individual authorized by the City to place orders against this contract.

“Award” means the final execution of the contract document.

“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 Daylight Time, whichever is in use at that time.

“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 any business having a contract with the City.

“Determination” means the written documentation of a decision of a procurement officer including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.

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

“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 Respondents’ proposals.

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

“Finalist” means a Respondent 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.

“IT” means Information Technology.

“Mandatory” – the terms "must", "shall", "will", "is required", or "are required", identify a mandatory item or factor. Failure to meet a mandatory item or factor will result in the rejection of the Respondent’s proposal.

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

“Multiple Source Award” means an award of an indefinite quantity contract for one or more similar services, items of tangible personal property or construction to more than one Respondent.

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

“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 Specialist” means any person or designee authorized by the City of Aztec to enter into or administer contracts and make written determinations with respect thereto.

“Purchasing Office” means the City of Aztec allowed by law to entertain procurements.

“Project” means a temporary process undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The project terminates once the project scope is achieved and project acceptance is given by the project executive sponsor.

“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 Respondent” means an Respondent 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 means an offer which conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals 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 State 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 Specialist. By submitting a proposal, the Respondent agrees to and concurs with this process and accepts the determination of the Procurement Specialist in such cases.

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

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

“Statement of Concurrence” means an affirmative statement from the Respondent to the required specification agreeing to comply and concur with the stated requirement(s). This statement shall be included in Respondents 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 Respondent 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.

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 Specialist will make every effort to adhere to the following schedule:

Action	Responsible Party	Due Dates
1. Issue RFP	City	April 3, 2016
2. Acknowledgement of Receipt Form	Potential Respondents	April 15, 2016
3. Deadline to submit Questions	Potential Respondents	April 18, 2016
4. Response to Written Questions	Procurement Specialist	April 21, 2016
5. Submission of Proposal	Potential Respondents	April 28, 2016
6. Proposal Evaluation	Evaluation Committee	May 1 to May 12, 2016
7. Selection of Finalists	Evaluation Committee	May 12, 2016
8. Oral Presentation(s)	Finalist Respondents	May 17, 2016
9. Finalize Contractual Agreements	City/Finalist Respondents	June 8, 2016
10. Contract Awards	City/ Finalist Respondents	June 14, 2016
11. Protest Deadline	City	+15 days

B. EXPLANATION OF EVENTS

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

Issuance of RFP

This RFP is being issued on behalf of the City of Aztec on April 3, 2016.

Acknowledgement of Receipt

Potential Respondents should email, hand deliver, return by facsimile or 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 Specialist by 3:00 pm MST or MDT on **April 15, 2016**.

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

Deadline to Submit Written Questions

Potential Respondents may submit written questions to the Procurement Specialist as to the intent or clarity of this RFP until **April 18, 2016 10:00 AM** Mountain Standard Time/Daylight Time as indicated in the sequence of

events. All written questions must be addressed to the Procurement Specialist as declared in Section I, Paragraph D. Questions shall be clearly labeled and shall cite the Section(s) in the RFP or other document which form the basis of the question.

Response to Written Questions

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

Submission of Proposal

ALL RESPONDENT PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT SPECIALIST OR DESIGNEE NO LATER THAN 3:00 PM MOUNTAIN STANDARD TIME/DAYLIGHT TIME ON April 28, 2016. 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 Specialist 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 2016-540 Aztec COS & Rate Study. Proposals submitted by facsimile, or other electronic means, will not be accepted.

A public log will be kept of the names of all Respondent organizations that submitted proposals. Pursuant to NMSA 1978, § 13-1-116, the contents of proposals shall not be disclosed to competing potential Respondents during the negotiation process. The negotiation process is deemed to be in effect until the contract is awarded pursuant to this Request for Proposals. Awarded in this context means the final required state agency signature on the contract(s) resulting from the procurement has been obtained.

Proposal Evaluation

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

Selection of Finalists

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

Oral Presentations

Finalist Respondents 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 and SPD.

Finalize Contractual Agreements

Any Contractual agreement(s) resulting from this RFP will be finalized with the most advantageous Respondent(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 Purchasing Office. In the event mutually agreeable terms cannot be reached with the apparent most advantageous Respondent in the time specified, the City reserves the right to finalize a contractual agreement with the next most advantageous Respondent(s) without undertaking a new procurement process.

Contract Awards

After review of the Evaluation Committee Report and the signed contractual agreement, the City Purchasing Office will recommend 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 Purchasing Office.

The contract shall be awarded to the Respondent (or Respondents) 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 City approval.

Protest Deadline

Any protest by a Respondent must be timely and in conformance with NMSA 1978, § 13-1-172 and applicable procurement regulations. 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. The 15 calendar day protest period shall begin on the day following the award of contracts and will end at 5:00 pm Mountain Standard Time/Daylight Time on the 15th day. Protests must be written and must include the name and address of the protestor and the request for proposal number. It must also contain a statement of the grounds for protest including appropriate supporting exhibits and it must specify the ruling requested from the party listed below. The protest must be delivered to:

Kris Farmer
Protest Manager
201 W Chaco
Aztec NM 87410

Protests received after the deadline will not be accepted.

C. GENERAL REQUIREMENTS

Acceptance of Conditions Governing the Procurement

Potential Respondents must indicate their acceptance of the Conditions Governing the Procurement section in Submittal Form. Submission of a proposal constitutes acceptance of the Evaluation Factors contained in Section IV of this RFP.

Incurring Cost

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

Respondent for set up and demonstration of the proposed equipment and/or system shall be borne solely by the Respondent.

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 which may derive from this RFP. The City entering into a contractual agreement with a vendor will make payments to only the prime contractor.

Subcontractors/Consent

The use of subcontractors is allowed. The prime contractor shall be wholly responsible for the entire performance of the contractual agreement whether or not subcontractors are used. Additionally, the prime contractor must receive approval, in writing, from the agency awarding any resultant contract, before any subcontractor is used during the term of this agreement.

Amended Proposals

A Respondent 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. City personnel will not merge, collate, or assemble proposal materials.

Respondent's Rights to Withdraw Proposal

Respondents will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The Respondent must submit a written withdrawal request addressed to the Procurement Specialist and signed by the Respondent'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.

Proposal Offer Firm

Responses to this RFP, including proposal prices for services, will be considered firm for one hundred twenty (120) 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 Respondent is invited or required to submit one.

Disclosure of Proposal Contents

- A. Proposals will be kept confidential until negotiations and the award are completed by the City. 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 Specialist will not disclose or make public any pages of a proposal on which the potential Respondent has stamped or imprinted "proprietary" or "confidential" subject to the following requirements:
 - a. 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.
 - b. Confidential data is restricted to:
 1. confidential financial information concerning the Respondent'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 a Respondent has made a written request for confidentiality, the City Purchasing Office shall examine the Respondent's request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the Respondent 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.

No Obligation

This RFP in no manner obligates the City of Aztec to the use of any Respondent's services until a valid written contract is awarded and approved by appropriate authorities.

Termination

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

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

Legal Review

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

Governing Law

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

Basis for Proposal

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

Contract Terms and Conditions

The contract between the City and a contractor will follow the format specified by the City and contain the terms and conditions set forth in the Sample Contract Appendix C. However, the City reserves the right to negotiate provisions in addition to those contained in this RFP (Sample Contract) with any Respondent. The

contents of this RFP, as revised and/or supplemented, and the successful Respondent's proposal will be incorporated into and become part of any resultant contract.

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

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

If a Respondent fails to propose any alternate terms and conditions during the procurement process (the RFP process prior to selection as successful Respondent), 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 Respondent) is an **explicit agreement** by the Respondent that the contractual terms and conditions contained herein are **accepted** by the Respondent.

Respondent's Terms and Conditions

Respondents 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. Please see Section II.C.15 for requirements.

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 Respondent), will be discussed only between the City and the Respondent selected and shall not be deemed an opportunity to amend the Respondent's proposal.

Respondent Qualifications

The Evaluation Committee may make such investigations as necessary to determine the ability of the potential Respondent to adhere to the requirements specified within this RFP. The Evaluation Committee will reject the proposal of any potential Respondent who is not a Responsible Respondent or fails to submit a responsive offer as defined in NMSA 1978, § 13-1-83 and 13-1-85.

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.

Change in Contractor Representatives

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

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.

City Rights

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

Right to Publish

Throughout the duration of this procurement process and contract term, Respondents and contractors must secure from the City written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement and/or City contracts deriving from this procurement. Failure to adhere to this requirement may result in disqualification of the Respondent's proposal or removal from the contract.

Ownership of Proposals

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

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.

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 Purchasing Office's written permission.

Electronic mail address required

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

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 Respondent's possession and the version maintained by the City, the Respondent acknowledges that the version maintained by the City shall govern. Please refer to: <http://www.aztecnm.gov/purchasing/office.html>

Campaign Contribution Disclosure Form

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

Submittal Form

Respondent's proposal must be accompanied by the Submittal Form located on Page 2 which must be completed and signed by an individual person authorized to obligate the company.

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 Purchasing Office 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 Respondent 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 Purchasing Office. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the City of Aztec may terminate the involved contract for cause. Still further the City Purchasing Office 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 Purchasing Office.

New Mexico Preferences

To ensure adequate consideration and application of NMSA 1978, § 13-1-21 (as amended), Respondents 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 Respondent should sign and complete the Resident Veterans Preference Certificate form, as provided in this RFP, APPENDIX B.

An agency 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.

III. RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF RESPONSES

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

B. NUMBER OF COPIES

One (1) ORIGINAL, four (4) identical HARD COPIES, and one (1) electronic copy of the proposal. **The electronic copy can NOT be emailed.**

C. PROPOSAL FORMAT

All proposals must be submitted as outlined below. The original copy shall be clearly marked as such on the front of the document. Envelopes, packages or boxes containing the original and the copies must be clearly labeled and submitted in a sealed envelope, package or box bearing:

RFP 2016-540 Utility Cost of Service and Rate Study

Original proposal, hard copies and electronic copy must be received no later than the time and date indicated in Section II.B.5.

Proposals shall contain concise written material and illustrations that enable a clear understanding and evaluation of the capabilities of the Respondent. Legibility, clarity, and completeness are essential. An 8-1/2" x 11" format is required for typed submissions and an 11" x 17" format may be used for illustrations. Submittals may utilize either single-sided or double-sided copying and be bound in a three-ring binder with numbered tab dividers corresponding to the requirements contained in the balance of this section. If double-sided pages are used, each side shall be numbered and counted as separate pages. Any 17" x 11" pages shall be numbered as two pages. Drawings on 24" x 36" sheets shall be numbered as four pages. The page limitation will only be increased by addendum.

D. PROPOSAL OUTLINE

Respondents to RFPs must adhere to the following outline. Failure to adhere to this outline format or failure to provide all items listed under each topic may result in low evaluation scores by Evaluation Committee members. Maximum page limitation: 30 (single sided).

1. Signed Submittal Form, Page 2 of RFP *
2. Table of Contents *
3. Cover Letter
4. Company and Staff/Qualifications
5. Work Plan
6. Data Request
7. Scope exclusions/addenda
8. Deliverables
9. Study schedule

10. Lump sum not to exceed fee by phase
11. Hourly Rate Schedule
12. Other consultant commitments
13. Contractual Considerations
14. Other
15. Signed Campaign Contribution Form, APPENDIX A of RFP *
16. New Mexico Preferences (if applicable) APPENDIX B of RFP *
17. Certification Regarding Debarment, APPENDIX C of RFP *

* items do not count towards maximum page limitation

Within each section of the proposal, Respondents should address the items in the order indicated above. All forms provided in this RFP must be thoroughly completed and included in the appropriate section of the proposal.

E. GUIDELINES

Cover Letter

The cover letter should introduce the proposal, include not-to-exceed costs by phase and indicate to who all proposal communications should be addressed, including an email address.

Company and Staff/Qualifications

This section should contain the following:

- a. Name of firm and mailing address, phone and fax number of the proposer's principal place of business.
- b. Mailing address, phone and fax number of the office in which the project team will work.
- c. Mailing address, staffing and degree of participation and description of work to be performed in study by any other firm or subcontractor.
- d. Overall company experience with utility cost of service studies and rate design studies.
- e. List of recent studies conducted by consultant that are of a similar nature to this RFP.
- f. References from at least four recent clients, including project managers' names, addresses and phone numbers, for which similar services have been provided in the last three years, preferably to municipal utilities, by consultant staff to be assigned to this project.
- g. Organization chart showing the names and positions of project manager and personnel to be assigned to this study.
- h. Estimate of man-hours to be expended on the study, totaled for each staff member participating in this study, including staff from other firm(s) subcontracting with the Consultant.
- i. General resumes, and relevant experience of the project manager and key staff. These should clearly demonstrate Consultant's qualifications to perform project required tasks.

Work Plan

This section should give an introduction and overview of the study approach, list general objectives, develop a work plan by breaking down the study into specific tasks or work elements clearly associated with the scope of work included in this RFP, and explain the methodology to be used to complete each task.

The plan must clearly show how the consultant will assess the various costs to be factored into this study and how they will be allocated to the different customer classes. Also, the work plan shall include elements that

show how the consultant will approach cost/revenue forecast, sensitivity analysis and rate design, including pricing strategies to encourage conservation.

Work plan shall indicate all meetings to held at the City, who will be participating from the proposer's side, and what information proposer expects the City to provide (see data request).

Data Request

This section of the proposal shall itemize all the data the Proposer expects the City to provide in conducting this cost of service study. This section shall provide a summary of all data required by the consultant and options for data in the event the City is not able to provide the requested materials.

Scope Exclusions/Addenda

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

Deliverables

Deliverables are material products such as progress reports, draft reports, final reports, including proposed rate schedule changes. This section shall contain a list of all proposed deliverables as required by this RFP, and list any changes to the deliverables as the Consultant my recommend.

Study Schedule

The City prefers this study be completed within three months following issuance of a notice to proceed, subject to extension based on mutual agreement. Consultant shall provide a study schedule the Consultant believes is most appropriate to complete the scope of work for this study within this timeframe. The schedule for each task and timing of each deliverable should be based upon the number of calendar days or weeks needed to complete the study.

Lump Sum Not-To-Exceed Fee

Consultant shall provide in a table format, the cost for each task, including a listing of the personnel assigned to each task, hourly rates, and the number of hours each position is budgeted for each task. This table shall include a lump-sum, not-to-exceed total cost for this study.

Fee Schedule/Hourly Rates

A schedule of hourly rates shall be included for all personnel classifications that will be utilized in this study by Consultant.

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 the needs of this study 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.

Other

This section should contain any additional information the consultant may feel will strengthen the proposal or be of interest to the City.

IV. EVALUATION

A. PROPOSAL EVALUATION

All Respondent 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. The Procurement Specialist may contact the Respondent for clarification of the response as specified in Section II. B.7.

The Selection Committee will review each Offerors proposal. Points will be allocated, by each member, as outlined in below (Evaluation Criteria). Each member's point totals will be translated into a numeric ranking of all proposals. The individual member rankings will be totaled together to determine the overall ranking of proposals.

The Selection Committee may hold interviews with the highest-ranked proposals if deemed necessary. The Selection Committee may award the selection based on the results of the interviews. If fewer than three proposals are received the Selection Committee may recommend an award to the City Commission for approval or direct that the RFP be reissued.

B. EVALUATION CRITERIA

Selection of a consultant will be based on evaluation of consultants' qualifications, work plan, and references. The follow criteria may be considered by the City in evaluating proposals:

- a) Organizational and technical skills necessary to prepare the study as demonstrated by the completion of previous similar studies for public utilities.
- b) Current and past experience in providing cost-of-service studies for utilities, including recommendations that resulted in actual changes to rate schedules.
- c) Knowledge of city government organization and the services cities provide.
- d) Creativity and experience in conducting cost-of-service studies using industry standard practices that have resulted in changes and incentives to consumers to conserve energy.
- e) Clear and concise work plan that is comprehensive and details the methodology to be used in fulfilling the needs of this study.
- f) Reasonable and well-benchmarked fee compensation schedule.
- g) Carefully proposed study schedule that factors in all necessary tasks and deliverables.
- h) Adequate staffing to meet the study schedule milestones and deadlines for deliverables of City, and workload of other clients.

While “low cost proposals” will be considered, the City will favor firms whose proposals appear to offer complete “scopes of work,” which will not require change orders or scope changes later.

The evaluation criteria to be used by the Selection Committee for the proposal shortlist and the corresponding point values for each criterion are as follows:

5 Points **Completeness**, originality and creativity of the proposed approach to the project.

45 Points **Company Qualifications**

- 10 points Overall capabilities of firm
- 10 points Experience with electric rate studies
- 10 points Experience with water rate studies
- 10 points Experience with sewer rate studies
- 5 points Experience with solid waste rate studies

30 Points **Management and Staffing**

- 10 points Project Schedule
- 20 points Experience of Proposed Manager and Staff

20 Points **Cost**

- 15 points Reasonableness of Lump Sum Proposal Fee
- 5 points Reasonableness of Professional Rates and Fees

Up to 10 Points In-State Preference OR Veterans Preference

110 Points Proposals will be evaluated based on the above 110 points. If oral presentations are held, the oral presentations will be scored based on responses to the questions presented at the interview meeting.

Application of In-State/Veterans Preference

Offeror shall include in-state preference certificates for themselves and for any sub-contractors listed in the proposal.

Pursuant to Section 13-1-21(C)(2), NMSA 1978, When a public body makes a purchase using a formal request for proposals process:

1. If the contract is awarded based on a point-based system, a resident business shall be awarded the equivalent of five percent of the total possible points to be awarded based on the resident business possessing a valid resident business certificate.
2. The City’s RFP award process is based on a point system, with 100 points possible. With the in-state preference applied, 105 points will be possible.

Pursuant to Section 13-1-21(D), NMSA 1978, When a joint bid or joint proposal is submitted by both resident and nonresident businesses, the resident business preference provided pursuant to Subsection B or C of this section shall be reduced in proportion to the percentage of the contract, based on the dollar amount of the goods or services provided under the contract, that will be performed by a nonresident business as specified in the joint bid or proposal.

Offeror will complete the following table if submitting a joint proposal:

Firm Name, Location Of Resident Businesses
Firm Name, Location Of Non-Resident Businesses
Work to be Performed
% of Work Performed Compared to Total Scope

Points shall be distributed by the percent of work identified above calculated as follows:

Example: 35% of work will be performed by the certified resident business: 35% of 5 points = 1.75 points

In accordance with Sections 13-1-21 and 13-1-22 NMSA 1978 and effective July 1, 2012, a resident veteran's business preference has been implemented. The Taxation and Revenue Department (TRD) will be issuing a three (3) year certificate to each qualified business. Businesses are required to reapply to TRD every three (3) years with the proper documentation to renew their certificate.

Attached is one form to be completed and returned with your bid if your firm will qualify for this preference. The veteran's preference will not be extended without the certificate from TRD and the attached Resident Veterans Preference Certification.

This preference is separate from the in-state preference and is not cumulative with that preference.

C. EVALUATION PROCESS

1. All Respondent 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 Specialist may contact the Respondent for clarification of the response as specified in Section II. B.7.
3. The Evaluation Committee may use other sources of to perform the evaluation as specified in Section II. C.18.
4. Responsive proposals will be evaluated on the factors in Section IV, which have been assigned a point value. The responsible Respondents with the highest scores will be selected as finalist Respondents, based upon the proposals submitted. The responsible Respondents whose proposals are most advantageous to the City taking into consideration the evaluation factors in Section IV 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.

D. ORAL PRESENTATION

If selected as a finalist, Respondents agree to provide the Evaluation Committee the opportunity to interview proposed staff members identified by the Evaluation Committee, at the option of the City. The Evaluation Committee may request a finalist to provide an oral presentation of the proposal as an opportunity for the Evaluation Committee to ask questions and seek clarifications.

APPENDIX A: 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 Sally Burbridge, Mayor-ProTem Sherri A. Sipe, Commissioner Katee McClure, Commissioner Austin R. Randall, or Commissioner Sheri L. Rogers.

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 B: 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.

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

An agency 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.

APPENDIX C: DEBARMENT/SUSPENSION CERTIFICATION FORM

CITY OF AZTEC

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 D: SAMPLE AGREEMENT

CITY OF AZTEC

PROFESSIONAL SERVICES CONTRACT # _____

THIS AGREEMENT is made and entered into by and between the **CITY OF AZTEC**, hereinafter referred to as the "City," and **NAME OF CONTRACTOR**, 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 2016-540 AZTEC COS & RATE STUDY, 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 (AMOUNT). 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 **DATE** unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

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.

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: [insert name, address and email].

To the Contractor: [insert name, address and email].

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: _____
Sally Burbridge, Mayor

Date: _____

(SEAL)

ATTEST:

By: _____
Karla Sayler, City Clerk

Date: _____

APPROVED AS TO FORM:

By: _____
Larry T. Thrower, City Attorney

Date: _____

By: _____

Date: _____

Contractor

Title

Phone: _____

Federal Taxpayer Identification or
Social Security Number

NM Taxpayer Identification
Number

Exhibit 1

Scope of Work

Exhibit 2

Compensation