

**STATE OF NEW MEXICO
AUDIT CONTRACT
(Agencies and Local Public Bodies with December 15 deadline)**

Middle Rio Grande Conservancy District

hereinafter referred to as the "Agency," and

Ricci & Company LLC

hereinafter referred to as the "Contractor," agree:

As required by the Audit Rule, NMAC Section 2.2.2.1 et seq., Contractor agrees to, and shall, inform the Agency of any restriction placed on Contractor by the Office of the State Auditor pursuant to NMAC Section 2.2.2.8.E, and whether the Contractor is eligible to enter into this Contract despite the restriction.

1. SCOPE OF WORK (Include in Paragraph 25 any expansion of scope)

A. The Contractor shall conduct a financial and compliance audit of the following applicable statements and schedules of the Agency for the period from **July 1, 2014 through June 30, 2015**:

- (1) Basic Financial Statements consisting of the government-wide financial statements, fund financial statements, budgetary comparison statements for the general fund and major special revenue funds (GASB 34, footnote 53), and the notes to the financial statements;
- (2) Required supplemental information (RSI), if applicable, consisting of budgetary comparison schedules for the general fund and major special revenue fund data presented on a fund, organization, or program structure basis because the budgetary information is not available on the GAAP fund structure basis for those funds (*GASB Statement No. 41, Budgetary Comparison Schedules—Perspective Differences an amendment of GASB Statement No. 34*) must be audited and included in the auditor's opinion (AAG-SLV 14.52);
- (3) Supplemental Information (SI) that must be audited and included in the auditor's opinion (AAG-SLV 14.52), if applicable, consisting of:
 - (a) Component unit fund financial statements and related combining statements (if there are no separately issued financial statements on the component unit per AAG-SLV 3.20);

- (b) Combining financial statements;
 - (c) Individual fund budget comparison statements for remaining funds that have an adopted budget, including proprietary funds, that did not appear as basic financial statement budget comparisons for the general fund, major special revenue funds or as RSI as described above; and
 - (d) Remaining supplemental information on schedules as required by NMAC Section 2.2.2.10.A(2)(f).
- B. The contractor shall apply certain limited procedures to the following required supplemental information (RSI), if applicable, and report deficiencies in or the omission of required information in accordance with the requirements of AU-C 730.05 to 730.09:
- (1) The Management Discussion and Analysis (MD&A);
 - (2) RSI data required by Statements 25, 27, 43 and 45 regarding pension plans and post-employment healthcare plans administered by defined benefit pension plans; and
 - (3) Schedules derived from asset management systems (GASB 34, paragraphs 132 to 133).
- C. The audit shall be conducted in accordance with auditing standards generally accepted in the United States of America, *Government Auditing Standards*, OMB Circular A-133, and *Requirements for Contracting and Conducting Governmental Audits* (NMAC Section 2.2.2.1, et seq.).

2. **DELIVERY AND REPRODUCTION**

- A. In order to meet the delivery terms of this Contract, the Contractor shall deliver the following documents to the State Auditor on or before **December 15, 2015** and in accordance with NMAC Section 2.2.2.9:
- (1) an organized, bound and paginated hard copy of the Agency's audit report for review;
 - (2) a copy of the signed management representation letter provided to the IPA by the Agency as required by AU-C580;
 - (3) a Summary of Findings Form available at www.osanm.org; and
 - (4) a copy of the completed State Auditor Report Review Guide available at www.osanm.org;

- B. Reports postmarked by the Agency's due date will be considered received by the due date for purposes of NMAC Section 2.2.2.9. Unfinished or excessively deficient reports will not satisfy this requirement; such reports will be rejected and returned to the Contractor and the State Auditor may take action in accordance with NMAC Section 2.2.2.13.C. If the State Auditor does not receive copies of the engagement letter, management representation letter, summary of findings form and the completed Report Review Guide with the audit report or prior to submittal of the audit report, the State Auditor will not consider the report submitted to the State Auditor.
- C. As soon as the Contractor becomes aware that circumstances exist that will make the Agency's audit report late, the Contractor shall immediately provide written notification of the situation to the State Auditor. The notification shall include an explanation regarding why the audit report will be late, when the IPA expects to submit the report and a concurring signature by the Agency. The State Auditor shall also notify the Agency's oversight agency, but confidential information shall be omitted from that notification.
- D. Pursuant to NMAC Section 2.2.2.8.Q, the Contractor shall prepare a written and dated engagement letter that identifies the specific responsibilities of the Contractor and the Agency. The Contractor shall submit to the State Auditor an electronic copy of the signed and dated engagement letter and a list of client prepared documents with expected delivery dates within ten (10) days of the entrance conference.
- E. After its review of the audit report pursuant to NMAC Section 2.2.2.13, the State Auditor shall authorize the Contractor to print and submit the final audit report. Within five business days from the date of the authorization to print and submit the final audit report, the Contractor shall provide the State Auditor with **TWO** copies of the report and an electronic version of the audit report, in PDF format. After the State Auditor officially releases the audit report by issuance of a release letter, the Contractor shall deliver 25 copies of the audit report to the Agency. The Agency or IPA shall ensure that every member of the Agency's governing authority shall receive a copy of the report.
- F. The Agency, upon delivery of its audit report, shall submit the required copies of the data collection form, audit report and corrective action plan to the federal clearinghouse designated by the Office of Management and Budget and each federal awarding agency if the schedule of findings and questioned costs disclose audit findings directly related to federal awards.

3. COMPENSATION

- A. The total amount payable by the Agency to the Contractor under this Contract, including New Mexico gross receipts tax and expenses, shall not exceed \$ 34,240.00.
- B. Contractor agrees not to, and shall not, perform any services in furtherance of this Contract prior to approval by the State Auditor. In accordance with Section 12-6-14(A), NMSA 1978, and NMAC Section 2.2.2.8.N(1), Contractor acknowledges and agrees that it will not be entitled to payment or compensation for any services performed by Contractor pursuant to this Contract prior to approval by the State Auditor.

C. Total Compensation will consist of the following:

SERVICES	AMOUNTS
(1) Financial statement audit	\$ 28,000.00
(2) Federal single audit	\$ 0.00
(3) Financial statement preparation	\$ 4,000.00
(4) Other nonaudit services, such as depreciation schedule updates	\$ 0.00
(5) Other (i.e., component units, specifically identified)	\$ 0.00

Gross Receipts Tax = \$ 2,240.00

Total Compensation = \$ 34,240.00

D. The Agency shall pay the Contractor the New Mexico gross receipts tax levied on the amounts payable under this Contract and invoiced by the Contractor. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below.

E. Pursuant to Section 12-6-14, NMSA 1978 and NMAC Section 2.2.2.8.N, the State Auditor may authorize progress payments to the Contractor by the Agency; provided that the authorization is based upon evidence of the percentage of audit work completed as of the date of the request for partial payment. Progress payments up to 69% do not require State Auditor approval, provided that the Agency certifies receipt of services. The Agency must monitor audit progress and make progress payments only up to the percentage that the audit is completed prior to making the 69% payment. Progress payments from 70% to 90% require State Auditor approval after being approved by the Agency. If requested by the State Auditor, the Agency shall provide a copy of the approved progress billings. The State Auditor may allow only the first 50% of progress payments to be made without State Auditor approval if the Contractor's previous audits were submitted after the due date. Final payment for services rendered by the Contractor shall not be made until a determination and written finding is made by the State Auditor in the release letter that the audit has been made in a competent manner in accordance with the provisions of this Contract and applicable rules of the State Auditor.

4. **TERM**

A. THIS CONTRACT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE STATE AUDITOR. Unless terminated pursuant to Paragraphs 5 or 19, this Contract shall terminate one calendar year after the date on which it is signed by the State Auditor.

B. If awarded based on a multi-year proposal, each permitted annual extension of the Contract shall be executed by mutual agreement of the parties and approval of the State Auditor pursuant to NMAC Section 2.2.2.8.G(4).

5. **TERMINATION, BREACH AND REMEDIES**

A. This Contract may be terminated:

- (1) By either party without cause, upon written notice delivered to the other party and the State Auditor at least ten (10) days prior to the intended date of termination.
- (2) By either party, immediately upon written notice delivered to the other party and the State Auditor, if a material breach of any of the terms of this Contract occurs. Unjustified failure to deliver the report in accordance with Paragraph 2 shall constitute a material breach of this Contract.
- (3) By the Agency pursuant to Paragraph 19, immediately upon written notice to the Contractor and the State Auditor.
- (4) By the State Auditor, immediately upon written notice to the Contractor and the Agency after determining that the audit has been unduly delayed, or for any other reason.

B. By termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. If the Agency or the State Auditor terminates this Contract, the Contractor shall be entitled to compensation for work performed prior to termination in the amount of earned, but not yet paid, progress payments, if any, that the State Auditor has authorized to the extent required by Paragraph 3(E). If the Contractor terminates this Contract for any reason other than Agency's breach of this Contract, the Contractor shall repay to the Agency the full amount of any progress payments for work performed under the terms of this Contract.

C. Pursuant to NMAC Section 2.2.2.8.D, the State Auditor may disqualify the Contractor from eligibility to contract for audit services with the State of New Mexico if the Contractor knowingly makes false statements, false assurances or false disclosures under this Contract. The State Auditor on behalf of the Agency or the Agency may bring a civil action for damages or any other relief against a Contractor for a material breach of this Contract.

D. THE REMEDIES HEREIN ARE NOT EXCLUSIVE, AND NOTHING IN THIS SECTION 5 WAIVES OTHER LEGAL RIGHTS AND REMEDIES OF THE PARTIES.

6. **STATUS OF CONTRACTOR**

The Contractor and its agents and employees are independent contractors performing professional services for the Agency and are not employees of the Agency. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles or any other benefits afforded to employees of the Agency as a result of this Contract. The Contractor agrees not to purport to bind the State of New Mexico to any obligation not assumed under this Contract 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 Contract or assign any claims for money due or to become due under this Contract.

8. **SUBCONTRACTING**

The Contractor shall not subcontract any portion of the services to be performed under this Contract without the prior written approval of the Agency and the State Auditor. An agreement between the Contractor and a subcontractor to subcontract any portion of the services under this Contract shall be completed on a form prescribed by the State Auditor. The agreement shall be an amendment to this Contract and shall specify the portion of the audit services to be performed by the subcontractor, how the responsibility for the audit will be shared between the Contractor and the subcontractor, the party responsible for signing the audit report and the method by which the subcontractor will be paid. Pursuant to NMAC Section 2.2.2.8.L, the Contractor may subcontract only with independent public accounting firms that are on the State Auditor's List of Approved Firms pursuant to NMAC Section 2.2.2.8.B, and that are not otherwise restricted by the Office from entering into such a contract pursuant to NMAC Section 2.2.2.8.E.

9. **RECORDS**

The Contractor shall maintain detailed time records that indicate the date, time, and nature of services rendered during the term of this Contract. The Contractor shall retain the records for a period of at least five (5) years after the date of final payment under this contract. The records shall be subject to inspection by the Agency and the State Auditor. The Agency and the State Auditor shall have the right to audit billings both before and after payment. Payment under this Contract shall not foreclose the right of the Agency or the State Auditor on behalf of the Agency to recover excessive or illegal payments.

10. **RELEASE**

The Contractor, upon receiving final payment of the amounts due under the Contract, releases the State Auditor, the Agency, their respective officers and employees and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Contract. This paragraph does not release the Contractor from any liabilities, claims or obligations whatsoever arising from or under this Contract.

11. **CONFIDENTIALITY**

All information provided to or developed by the Contractor from any source whatsoever in the performance of this Contract shall be kept confidential and shall not be made available to any individual or organization by the Contractor, except in accordance with this Contract or applicable standards, without the prior written approval of the Agency and the State Auditor.

12. **PRODUCT OF SERVICES; COPYRIGHT AND REPORT USE**

Nothing developed or produced, in whole or in part, by the Contractor under this Contract shall be the subject of an application for copyright by or on behalf of the Contractor. The Agency and the State Auditor may post an audited financial statement on their respective websites once it is publicly released by the State Auditor.

13. **CONFLICT OF INTEREST**

The Contractor represents and 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 of services required under this Contract. Each of the Contractor and the Agency certifies that it has followed the requirements of the Governmental Conduct Act, Section 10-16-1, et seq., NMSA 1978, regarding contracting with a public officer, state employee or former state employee, as required by the applicable professional standards.

14. **INDEPENDENCE**

The Contractor represents and warrants its personal, external and organizational independence from the Agency in accordance with the *Government Auditing Standards 2011 Revision*, issued by the Comptroller General of the United States, and NMAC Section 2.2.2.8.M. The Contractor shall immediately notify the State Auditor and the Agency in writing if any impairment to the Contractor's independence occurs or may occur during the period of this Contract.

15. **AMENDMENT**

This Contract shall not be altered, changed or amended except by prior written agreement of the parties and with the prior written approval of the State Auditor. Any amendments to this Contract shall comply with the Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978.

16. **MERGER**

This Contract supersedes all of the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Contract. Contractor and Agency shall enter into and execute an engagement letter pursuant to NMAC Section 2.2.2.8.Q, consistent with Generally Accepted Auditing Standards (GAGAS). **The engagement letter and any associated documentation included with or referenced in the engagement letter shall not be interpreted to amend this Contract. Conflicts between the engagement letter and this Contract are governed by this Contract, and shall be resolved accordingly.**

17. **APPLICABLE LAW**

The laws of the State of New Mexico shall govern this Contract. By execution of this Contract, Contractor irrevocably consents to the exclusive personal jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising from or related to this Contract.

18. AGENCY BOOKS AND RECORDS

The Agency is responsible for maintaining control of all books and records at all times and the Contractor shall not remove any books and records from the Agency's possession for any reason.

19. APPROPRIATIONS

The terms of this Contract are contingent upon sufficient appropriations and authorization being made by the legislature or the Agency's governing body for the performance of this Contract. If sufficient appropriations and authorization are not made by the legislature or the Agency's governing body, this Contract shall terminate upon written notice being given by the Agency to the Contractor. The Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. This section of the Contract does not supersede the Agency's requirement to have an annual audit pursuant to Section 12-6-3(A) NMSA 1978.

20. 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 bribes, gratuities and kickbacks.

21. EQUAL OPPORTUNITY COMPLIANCE

The Contractor shall abide by all federal and state laws, 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, rules, regulations and orders, the Contractor assures that no person in the United States shall, on the grounds of race, age, religion, color, national origin, ancestry, sex, 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 Contract. If the Contractor is found not to be in compliance with these requirements during the life of this Contract, the Contractor shall take appropriate steps to correct these deficiencies.

22. WORKING PAPERS

- A. The Contractor shall retain its working papers of the Agency's audit conducted pursuant to this Contract for a period of at least five (5) years after the date shown on the opinion letter of the audit report, or longer if requested by the federal cognizant agency for audit,

oversight agency for audit, pass through-entity or the State Auditor. The State Auditor shall have access to the working papers at the State Auditor's discretion. When requested by the State Auditor or the Agency, the Contractor shall deliver the original or clear, legible copies of all working papers to the requesting entity.

- B. If the Contractor wishes to review the working papers of a predecessor, Contractor shall request that the Agency seek delivery of the working papers from a predecessor contractor.

23. DESIGNATED ON-SITE STAFF

The Contractor's on-site individual auditor responsible for supervision of work and completion of the audit is WAYNE BROWN. The Contractor shall notify the Agency and the State Auditor in writing of any changes in staff assigned to perform the audit.

24. INVALID TERM OR CONDITION

If any term or condition of this Contract shall be held invalid or unenforceable, the remainder of this Contract shall not be affected.

25. OTHER PROVISIONS

If no other provisions are listed in this section, the remainder below is intentionally left blank.

SIGNATURE PAGE

This Contract is made effective as of the date of the signature of the Office of the State Auditor.

AGENCY

NAME: Adrian C. Lortz
BY: [Signature]
TITLE: Vice-President
DATE: 5/11/15

CONTRACTOR

NAME: Ricci & Company
BY: Wayne Brown
TITLE: Director
DATE: 5/12/15

This Contract has been approved by:

OFFICE OF THE STATE AUDITOR

BY: [Signature]
TITLE: DEPUTY STATE AUDITOR
DATE: 6/11/15

RECEIVED
MAY 12 2015
STATE AUDITOR

State Auditor Contract No. 15-4027