

AGENDA
City of Aztec
COMMISSION WORKSHOP
February 10, 2015
201 W Chaco, City Hall
5:15 pm to 5:45 pm

5:15-5:45

- A. Main Street Plaza

ATTENTION PERSONS WITH DISABILITIES: The meeting room and facilities are fully accessible to persons with mobility disabilities. If you plan to attend the meeting and will need an auxiliary aid or service, please contact the City Clerk's Office at 334-7600 prior to the meeting so that arrangements can be made.

Note: A final agenda will be posted 24 hours prior to the meeting. Copies of the agenda may be obtained from City Hall, 201 W. Chaco, Aztec, NM 87410

A G E N D A
CITY OF AZTEC
CITY COMMISSION MEETING
February 10, 2015
201 W. Chaco, City Hall
6:00 p.m.

I. CALL TO ORDER

II. INVOCATION

III. PLEDGE OF ALLEGIANCE

IV. ROLL CALL

V. AGENDA APPROVAL

VI. CITIZEN RECOGNITION

VII. EMPLOYEE RECOGNITION

VIII. CONSENT AGENDA

- A. Commission Workshop Meeting Minutes, January 27, 2015
- B. Commission Meeting Minutes, January, 27, 2015
- C. Travel Requests
- D. Sanitary Sewerline: Geomat Inc. Agreement
- E. Aztec Arterial Phase 1B: Wilson & Company, Inc. Agreement
- F. Sanitary Sewerline: Wilson & Company, Inc. Agreement
- G. Sanitary Sewerline: SME Environmental Inc. Agreement

Items placed on the Consent Agenda will be voted on with one motion. If any item proposed does not meet the approval of all Commissioners, a Commissioner may request that the item be heard under "Items from Consent Agenda"

IX. ITEMS FROM CONSENT AGENDA

X. CITIZENS INPUT (3 Minutes Maximum)

(Citizens who wish to speak will sign up prior to the meeting – this section is for items not otherwise listed on the agenda)

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XI. BUSINESS ITEMS

A. Hidden Valley Golf Course Lease Agreement

XII. LAND USE HEARING

A. Zone Change at 111 Simonds Road, from A-1 Agricultural/Rural District to C-2 General Commercial

XIII. CITY MANAGER/COMMISSIONERS/ATTORNEY REPORTS

XIV. DEPARTMENT REPORTS

(When this item is announced, all Department Heads who wish to give a report will move to the podium)

XV. ADJOURNMENT

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CITY OF AZTEC
COMMISSION WORKSHOP MINUTES
JANUARY 27, 2015

I. CALL TO ORDER

Mayor Burbridge called the meeting in to order at 5:15pm at the Aztec City Commission Room City hall 201 W. Chaco, Aztec NM.

MEMBERS PRESENT: Mayor Sally Burbridge; Commissioner Roberta Locke; Commissioner Katee McClure

MEMBERS ABSENT: Mayor Pro-Tem Sherri Sipe; Commissioner Sherri Rogers

OTHERS PRESENT: City Manager Joshua Ray; General Services Director Steve Mueller; City Clerk Karla Saylor

A. Hidden Valley Golf Course

Josh opened the meeting mentioned that Hidden Valley Golf course is located off of Southside River Rd. and it closed its doors on January 3rd of this year. Josh mentioned that he has been discussing the possibility of the City leasing the course with two of the three owners for the past month. Recently, he made a proposal to the owners to lease the course for 2 years in an effort to keep it alive and functioning within the community so that an asset will not be lost. He feels that this could be very valuable to the City. He mentioned that he has attached a proposed budget for the 2015 calendar year for Commission to review. This budget includes revenues and expenditures for the golf course. As you can see from the attached budget he is confident that the City can make this golf course a true enterprise fund that will support itself. He mentioned that there will be plenty of challenges but there can also be plenty of successes. Josh also mentioned that currently The First Tee program is a youth educational program that actively promotes getting kids involved with the sport of golf. The program currently operates with 80-100 kids at Hidden Valley Golf Course. The PGA Jr. League is an extension of the Professional Golf Association and is currently active at Hidden Valley Golf Course, the PGA Jr. League currently has 20-25 kids in Aztec and the High School golf team operates out of Hidden Valley Golf Course. Josh mentioned that Steve Mueller, General Services Director would oversee the operations of the Golf Course and that the City would hire staff to cover the daily operations.

Commission requested to see the financials for the golf course for 2014. Josh mentioned that he would get those documents and present them to Commission for review. Josh mentioned that after a year of operation if it is not working for the City they will have an option to back out of the lease and they would help promote something else to keep it operating.

II. Adjournment

Mayor Burbridge adjourned the Workshop at 5:52 pm.

Sally Burbridge, Mayor

ATTEST:

Karla Sayler, City Clerk

MINUTES PREPARED BY:

Karla Sayler, City Clerk

DRAFT

CITY OF AZTEC
COMMISSION MEETING MINUTES
January 27, 2015

I. CALL TO ORDER

Mayor Burbridge called the Meeting to order at 6:00pm at the Aztec City Commission Room, City Hall, 201 W. Chaco, Aztec, NM.

II. INVOCATION

The Invocation was led by Judge Carlton Gray

III. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Electric Director, Ken George

IV. ROLL CALL

Members Present: Mayor, Sally Burbridge; Commissioner, Katee McClure; Commissioner, Roberta Locke;

Members Absent: Mayor Pro-Tem Sherri Sipe; Commissioner Sheri Rogers; City Attorney Larry Thrower

Others Present: City Manager, Joshua Ray; City Clerk, Karla Sayler; Project Manager, Ed Kotyk (see attendance sheet)

V. AGENDA APPROVAL

MOVED by Commissioner Locke, SECONDED by Commissioner McClure to Approve the Consent Agenda as Presented

VI. PRESENTATION

A. San Juan College Upcoming Bond

Rhonda Schaefer, Director of Marketing and Public Relations for San Juan College reported on the San Juan College General Obligation Bond which will go before voters on February 3, 2015 in support of \$10,000,000 to San Juan College for much-needed building and facility improvements. She mentioned that this bond will not increase taxes. She introduced Mr. Russ Litke, Vice President of Administrative Services and Mr. Bill Lewis Dean for Trades and Technology. Mr. Litke gave a powerpoint presentation on the bond up for vote. He mentioned that if this bond passes it will allow San Juan College to add more classrooms, double the space for

laboratories, add increased specimen storage space, and modernize more than 43,000 square feet of classroom and laboratory space. He mentioned that funds will allow for the construction of a new fire tower, modernize and renovate the Hutton Street Facility, and the 30th Street Campus Facility.

VI. CITIZEN RECOGNITION

None

VII. EMPLOYEE RECOGNITION

Bil Homka, Community Development Director presented Max McIntosh with a Certificate Of Completion for his internship with the Community Development Department.

VIII. CONSENT AGENDA

MOVED by Commissioner McClure, SECONDED by Commissioner Locke to Approve the Consent Agenda as Listed

- A. Commission Meeting Minutes, January 13, 2015
- B. Travel Requests
- C. Resolution 2015-949 Uncollectible Utility Account Write Off
- D. NMED CWSRF 021 Loan Agreement Amendment 1
- E. Up With People Sponsorship

IX. ITEMS FROM CONSENT AGENDA

NONE

X. CITIZENS INPUT

NONE

XI. BUSINESS ITEMS

- A. Purchase of Real Property From Jaquez San Juan Properties, LLC.

Josh mentioned that this property is part of the Animas River Diversion project. He mentioned that this is the final piece of property in order to complete the project which is for our water treatment system.

MOVED by Commissioner Locke, SECONDED, Commissioner McClure to Approve The Purchase Of Real Property From Jaquez San Juan Properties, LLC, A New Mexico Limited Liability Company In The Amount Of \$24,900

A Roll Call Was Taken: All Voted Aye Motion Passed 3-0

B. Jenkins Ranch Subdivision Memorandum of Understanding

Bil Homka, Community Development Director mentioned that this project is West to our down town. He mentioned that this would remove the subdivision suspension which was imposed on January 14, 2014. He mentioned that this will be split in 2 phases and that Phase 1 is nearly complete. He reviewed the Staff Summary with Commission and Staff and Findings of Facts and recommends that the Memorandum of Understanding be Approved.

MOVED by Commissioner McClure and SECONDED by Commissioner Locke to Approve the Findings of Fact; Sign the Proposed Subdivision Agreement, and Remove the Existing Subdivision Suspension of Jenkins Ranch

XII. LAND USE HEARINGS

A. 2014-069 Variance to Subdivision Regulations Requiring Sidewalks, Curb, Paved Streets, and Street Lights in The Polich Subdivision

Mayor Burbridge opened the Land Use Hearing for Application For 2014-069 Variance to Subdivision Regulations Requiring Sidewalks, Curb, Paved Streets, and Street Lights in The Polich Subdivision and 2014-224 A Request For A Zone Change AT 615, 617 and 619 Blanco Street From A-1 Agricultural-Rural To R-2 Multiple Family Dwelling District. Mayor Burbridge stated that this hearing would be conducted under Procedures mandated by the New Mexico Court of Appeals in Battershell versus the City of Albuquerque, which were intended to protect the due process rights of our parties. Mayor Burbridge subsequently identified the parties and City Staff. Mayor Burbridge then asked Commission if they would accept the parties and they did. She reviewed the procedures and then asked if any members of the Commission had a conflict of interest, bias, or engaged in ex parte communication, there were none. Mayor Burbridge then swore in the parties and reviewed the Order of Presentation.

Bil Homka mentioned that this is a subdivision within the City's 3 mile review. It is out in the county located near the intersection of CR 2685, 2755 & 2590. He mentioned that what is requested to be waived are the sidewalks along the frontages. He mentioned that the county installs street lights as warranted on county roads. His department recommends approval of the Variance.

MOVED by Commissioner Locke, SECONDED by Commissioner McClure to Approve the Variance to Chapter 23 Subdivision Regulations Sec. 23-29-1 Requiring Sidewalks, Curbs, Paved Streets & Street Lights and the Findings of Fact 1 through 5

A Roll Call Was Taken, All Voted Aye, Motion Passed 3-0

B. Request for Zone Change From A-1 Agricultural/Rural to R-2 Residential Multi Family Classification at 615, 617 and 619 E. Blanco Street

Bil reviewed the Staff Summary and Findings of Facts with Commission and Staff and mentioned that this is a request for a zone change for the parcel that formerly had two structures on it until one succumbed to a fire. He mentioned that there was discussion and concern among staff about spot zoning. Bil mentioned that the City could use at least one additional residential zoning classification, possibly two. Community Development is working with Project Management and is beginning an existing land use inventory. The future land use plan, developed with public participation and meeting about the ongoing work, will eventually serve as a guide for future zone change requests. Staff recommends the City Commission to approve this request for Zone Change.

MOVED by Commissioner McClure, SECONDED by Commissioner Locke to Approve Request For A Zone Change From A-1 Agricultural/Rural To R-2 Residential Multi Family Classification At 615, 617, and 619 E. Blanco Street Accepting Findings Of Facts 1 through 5

A Roll Call Was Taken: Motion Passed 3-0

XIII. CITY MANAGER/COMMISSIONERS/ATTORNEY REPORTS

Josh thanked Bil Homka for the work done on the 2 land use hearings on tonight's agenda.

Mayor Burbridge mentioned that we would be sponsoring a table at the Mayor's Ball on March 6, 2015. She also mentioned that she would be attending Municipal Day on February 24-25 in Santa Fe.

Commissioner Locke mentioned that the Library Board has elected a new President for the Library Board and they are reviewing the by-laws. She mentioned that she would be attending Municipal Day on February 24-25.

XIV. DEPARTMENT REPORTS

NONE

XV. ADJOURNMENT

Moved by Mayor Burbridge, SECONDED by Commissioner Locke to adjourn the meeting at 7:06pm.

Mayor, Sally Burbridge

ATTEST:

Karla Saylor, City Clerk

MINUTES PREPARED BY:

Karla Saylor, City Clerk

DRAFT

Staff Summary Report

MEETING DATE:	February 10, 2015
AGENDA ITEM:	VIII. CONSENT AGENDA (C)
AGENDA TITLE:	Travel Requests

ACTION REQUESTED BY:	Police, Administration, MVD, Commission & Courts
ACTION REQUESTED:	Approval of Employee/Public Official Travel Requests
SUMMARY BY:	Cheryl Franklin

PROJECT DESCRIPTION / FACTS (Leading Department)

- Resolution 2003-603 identifies the requirement for employee/public official travel requests to be pre-approved by the commission. All travel requests will be submitted to the commission for approval prior to the travel occurring except in unusual circumstances when the City Manager may approve as provided in resolution 2003-603.
- The attached log is sorted by dates of travel and then by department. One request for travel had already occurred and the Police Department is requesting approval for travel on the date of this meeting; however, the remaining requests are dated for future.
- If travel/training is to be reimbursed or some of the costs will be paid by another entity, those notes have been included on the log.

FISCAL INPUT (Finance Department)

- All departments requesting travel have sufficient funds budgeted within their travel/training budgets

SUPPORT DOCUMENTS:	Travel Log February 10, 2015
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DEPARTMENT'S RECOMMENDED MOTION:	Approve Employee/Public Official Travel Requests
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**EMPLOYEE/PUBLIC OFFICIAL TRAVEL REQUESTS FOR COMMISSION APPROVAL
MEETING DATE: FEBRUARY 10, 2015**

Dates of Travel	Department	Purpose of Travel/Location	Over-night	Out of State	Costs	Explanation of Cost	FY15 Budget Available
02/01-06/15	Police	SFST Instructor Training Albuquerque, NM.	Yes	No	194.40 375.16	Meal & Gratuity Allowance Lodging	Yes
02/11/15	Admin	Visit Round House Santa Fe, NM.	No	No	36.00 235.18	Meal & Gratuity Allowance Estimated cost for Fuel	Yes
02/17/15	MVD	VIN Inspector Certification Albuquerque, NM.	No	No	36.00 55.00	Meal & Gratuity Allowance Estimated cost for Fuel	Yes
02/17/15	MVD	VIN Inspector Certification Albuquerque, NM.	No	No	36.00	Meal & Gratuity Allowance (Riding w/R. Schanno)	Yes
02/24-25/15	Admin	26 th Annual Municipal Day Santa Fe, NM.	Yes	No	60.00 238.56 105.00	Meal & Gratuity Allowance Mileage/Rate Allowance Lodging	Yes
02/24-25/15	Commission	26 th Annual Municipal Day Santa Fe, NM.	Yes	No	50.40 65.00	Meal & Gratuity Allowance Estimated cost for Fuel	Yes
02/24-25/15	Commission	26 th Annual Municipal Day Santa Fe, NM.	Yes	No	50.40 75.00 99.00	Meal & Gratuity Allowance Registration Lodging (Riding w/Mayor)	Yes
02/24-25/15	Commission	26 th Annual Municipal Day Santa Fe, NM.	Yes	No	50.40 75.00 115.00	Meal & Gratuity Allowance Registration Lodging (Riding w/K. McClure)	Yes

**EMPLOYEE/PUBLIC OFFICIAL TRAVEL REQUESTS FOR COMMISSION APPROVAL
MEETING DATE: FEBRUARY 10, 2015**

Dates of Travel	Department	Purpose of Travel/Location	Over-night	Out of State	Costs	Explanation of Cost	FY15 Budget Available
02/24-25/15	Commission	26 th Annual Municipal Day Santa Fe, NM.	Yes	No	50.40 75.00 65.00 115.00	Meal & Gratuity Allowance Registration Estimated cost for Fuel Lodging	Yes
02/24-25/15	Commission	26 th Annual Municipal Day Santa Fe, NM.	Yes	No	50.40 75.00 65.00 115.00	Meal & Gratuity Allowance Registration Estimated cost for Fuel Lodging	Yes
03/21-28/15	Courts	Behind the Wheel: Today's Traffic Offender Reno, NV.	Yes	Yes	414.60 1240.00 300.00 538.10	Meal & Gratuity Allowance Registration Estimated cost for Fuel Estimated cost for Lodging	Yes

Staff Summary Report

MEETING DATE:	February 10, 2015
AGENDA ITEM:	VIII. CONSENT AGENDA (D)
AGENDA TITLE:	Sanitary Sewerline: Geomat Inc. Agreement

ACTION REQUESTED BY:	Public Works, Finance
ACTION REQUESTED:	Approval of Construction Services Agreement with GeomatInc for geotechnical services on Sanitary Sewerline project
SUMMARY BY:	Kathy Lamb

PROJECT DESCRIPTION / FACTS (Leading Department)

- The City issued a RFQP 2015-444 (Request for Qualification Based Proposals) for on-going professional services for construction management, geotechnical engineering, surveying and construction testing services associated with water and sewer line, transportation project construction. GeomatInc was selected for geotechnical services.
- NMED (New Mexico Environment Department) funding may be used for construction services on the sanitary sewerline providing NMED's agreement has been used, the consultant has completed the various certifications required by the federal funding and NMED has approved the agreement and proposed fee schedule. NMED has approved Geomat's certifications and the agreement and proposed fee scheduled has been submitted for NMED approval.
- GeomatInc will be included in pre-bid conference on the project, necessitating an agreement to be in place before the project goes to bid.

PROCUREMENT INPUT (Purchasing)

- The City solicited the RFQP in October 2014.

GEOTECHNICAL ENGINEERING AND CONSTRUCTION TESTING

- Two (2) proposals were received, evaluated and scored for construction testing and geotechnical engineering: Geomat and Terracon
- All consultants submitting proposals were interviewed.
- The committee evaluated Terracon higher in proposal submittal and Geomat higher in the interview process. The committee selected Geomat, the result of the interview, as the team best suited to respond to various project needs for the City.
- Both firms were notified of the results and the committee selection. Terracon has elected not to protest the selection but requested to meet with evaluation committee to discuss process and outcome. This meeting was held on November 20, 2014.

FISCAL INPUT (Finance Department)

- Geomat Inc. cost proposal is \$44,160 plus gross receipts tax. This construction service will be included in the cost of the project and, if sufficient funds exist, may be reimbursed through the loan/grant funds available for the project.
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SUPPORT DOCUMENTS: - GeomatInc Construction Services Agreement (NMED form)

DEPARTMENT'S RECOMMENDED MOTION: Move to Approve Construction Services Agreement with GeomatInc for geotechnical services on Sanitary Sewerline project

AGREEMENTS FOR ENGINEERING SERVICES
Sanitary Sewer Interceptor Improvements, October 1, 2014

THIS Agreement, made this 10th day of February 2015 by and between the City of Aztec, NM hereinafter referred to as the OWNER, and GEOMAT Inc. hereinafter referred to as the ENGINEER. Contract becomes effective on the date of the last signature.

The OWNER intends to construct a Project consisting of Sanitary Sewer Interceptor Improvements dated October 1, 2014. The principal component of the project is the removal of the existing and construction of a new sewer main in Aztec, NM consisting of trenching and backfilling, sewer pipe, manholes, sewer taps and service lines, roadway paving, CMP culverts, concrete box culvert with wingwalls, and other amenities included in the plans, specifications and bid documents for the project.

The project being located in San Juan County, State of New Mexico, which may be paid for in part with financial assistance from the United States of America acting through the United States Department of Agriculture – Rural Development, hereinafter referred to as USDA-RD; and/or through the United States Environmental Protection Agency, hereinafter referred to as EPA; and/or the New Mexico Environment Department, hereinafter referred to as NMED; and/or the New Mexico Finance Authority, hereinafter referred to as NMFA; and/or the New Mexico Department of Finance, hereinafter referred to as DFA; all collectively referred to as the Funding Agency. Neither the United States or the State of New Mexico nor any of its departments, agencies, or employees is or will be a party to this Agreement or any sub-agreement. The ENGINEER agrees to perform the various professional engineering services for the planning, design, and construction of said Project in accordance with the provisions of this Agreement.

CONTENTS

SECTION A - GENERAL PROVISIONS

1. General
2. Approvals
3. Responsibilities of the ENGINEER
4. Responsibilities of the OWNER
5. Changes
6. Termination of Contract
7. Payment
8. Time
9. Project Design
10. Audits and Access to Records
11. Subcontracts
12. Insurance
13. Environmental Conditions of Site
14. Mutual Waiver
15. Independent Contractor
16. Equal Employment Opportunity
17. Gratuities
18. Covenants Against Contingent Fees
19. Cost and Pricing Data on Federally
Funded Projects
20. Remedies
21. Assurance Against Debarment

SECTION B - ENGINEERING SERVICES

- Engineer Services During the Planning Phase
- Engineering Services During the Design Phase
- Engineering Services During the Construction Phase
- Engineering Services During the Operation Phase

SECTION C - ADDITIONAL ENGINEERING SERVICES

SECTION D - SPECIAL PROVISIONS OR MODIFICATIONS

ATTACHMENTS

- Attachment I - Planning Services scope of work, cost proposal and compensation for
Engineering Services during the Planning Phase
- Attachment II - Design Services Scope of Work, cost proposal and compensation for
Engineering Services during the Design Phase
- Attachment III - Construction Services Scope of Work, cost proposal and compensation for
Engineering Services during the Construction Phase
- Attachment IV - Operational Services scope of work, cost proposal and compensation for
Engineering Services during the Operation Phase

SECTION A – GENERAL PROVISIONS

1. General

(a) This Agreement represents the entire and integrated Agreement between the OWNER and the ENGINEER for the Project and supersedes all prior negotiations, representations or agreements, either written or oral. In the event any provisions of this Agreement or any subsequent addendum shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party. The General provisions of this Agreement supersede any conflicting SPECIAL PROVISIONS.

(b) OWNER and ENGINEER each is bound and the partners, successors, executors, administrators and legal representatives of OWNER and ENGINEER are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives of such other party, in respect of all covenants, agreements, and obligations of the Agreement. Neither OWNER nor ENGINEER may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may be become due) in the Agreement without written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent of an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Unless expressly provided otherwise in this Agreement:

(1) Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by OWNER or ENGINEER to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them

(2) All duties and responsibilities undertaken pursuant to this Agreement will be for sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party.

(c) The ENGINEER will work closely with the Funding Agency, as necessary, for funding to be provided.

(d) The ENGINEER will attend conferences and public hearings with the OWNER, representatives of the Funding Agency, or other interested parties and provide assistance in connection with such undertakings as provided for in the scope of work detailed in the Attachments.

2. Approvals

(a) This Agreement shall not become effective until approved by the Funding Agency. Such approval shall be evidenced by the signature of a duly authorized representative of the Funding Agency in the space provided in the Attachments to this Agreement. The approval shall in no way commit the Funding Agency to render financial assistance to the OWNER. The Funding Agency is without liability for any payment hereunder, but in the event such assistance is provided, the approval shall signify that the provisions of this Agreement are consistent with the requirements of the Funding Agency.

(b) Review or approval of documents by or for the Funding Agency under this Agreement is for administrative purposes only and does not relieve the ENGINEER or OWNER of their

responsibilities to design, construct and operate the Project as required under law, regulations, permits and good management practices.

3. Responsibilities of the ENGINEER

(a) The ENGINEER shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all design drawings, specifications, reports, and other services furnished by the ENGINEER under this Agreement. If this Agreement involves environmental measures or data generation, the ENGINEER shall comply with EPA quality assurance requirements that can be found on their website at <http://www.epa.gov/quality/index.html>. The ENGINEER shall keep the OWNER informed of the performance of the ENGINEER'S duties under this Agreement. The ENGINEER shall promptly and without additional compensation, correct or revise any errors, omissions, or other deficiencies in the design drawings, specifications, reports, and other services provided by ENGINEER under terms of this Agreement.

(b) The ENGINEER shall perform the professional services necessary to accomplish the work specified in this Agreement, in accordance with this Agreement and applicable Funding Agency requirements in effect on the date of execution of any assistance agreement for this Project.

(c) The OWNER, or Funding Agency review or approval of design drawings, specifications, reports, and other services furnished hereunder shall not in any way relieve the ENGINEER of responsibility for the technical adequacy of the work. Neither the OWNER, nor Funding Agency review, approval or acceptance of, nor payment for any of the services shall be construed as a waiver of action arising out to the performance of this Agreement.

(d) The ENGINEER shall be and shall remain liable, in accordance with applicable law, for all damages to the OWNER caused by the ENGINEER's negligent performance of any of the services furnished under this Agreement, except for errors, omissions or other deficiencies to the extent attributable to the OWNER or OWNER-furnished data. The ENGINEER shall not be responsible for any time delays in the Project caused by circumstances beyond the ENGINEER'S control.

(e) ENGINEER'S opinions of probable Construction Cost are to be made on the basis of ENGINEER'S experience and qualifications and represent ENGINEER'S best judgment as an experienced and qualified professional generally familiar with the construction industry. However, since ENGINEER has no control over the cost of labor, materials, equipment, or services furnished by others, or over Contractor's methods of determining prices, or over competitive bidding or market conditions, ENGINEER cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by ENGINEER. If OWNER wishes greater assurance as to probable Construction Cost, OWNER shall employ an independent cost estimator.

(f) During the Construction Phase, the ENGINEER shall not at any time supervise, direct, or have control over Contractor's work, nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.

(g) The standard of care of all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of subject profession practicing under similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, expressed or implied, under this Agreement or otherwise, in connection with ENGINEER'S services.

(h) The ENGINEER's obligations under this clause are in addition to the ENGINEER's other express or implied assurances under this Agreement or State law and in no way diminish any other rights that the OWNER may have against the ENGINEER for faulty materials, equipment, or work.

4. Responsibilities of the OWNER

(a) The OWNER shall designate in writing a person authorized to act as the OWNER's representative. The OWNER or its representative shall receive and examine documents submitted by the ENGINEER, interpret and define the OWNER's policies and render decisions and authorizations promptly in writing.

(b) OWNER shall be responsible for, and ENGINEER may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by OWNER to ENGINEER pursuant to this Agreement. ENGINEER may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement without responsibility for verifying accuracy of OWNER furnished data and information.

(c) The OWNER shall provide to the ENGINEER full and free access to enter upon all property required for the performance of the ENGINEER's services under this Agreement.

(d) The OWNER may make and retain copies of Documents for information and reference in connection with use on the Project by OWNER. Such Documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any such reuse or modification without written verification or adaptation by ENGINEER will be at OWNER's sole risk and without liability or legal exposure to ENGINEER. Any verification or adaptation as stated above, will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

5. Changes

(a) The OWNER may, at any time, with prior approval of the Funding Agency, by written order make changes within the general scope of this Agreement in the services or work to be performed. If such changes cause an increase or decrease in the ENGINEER's cost or time required to perform any services under this Agreement, whether or not changed by any order, the OWNER shall make an equitable adjustment and modify this Agreement in writing. The ENGINEER must assert any claim for adjustment under this clause in writing within thirty (30) calendar days from the date it receives the OWNER's notification of change, unless the OWNER grants additional time before the date of final payment.

(b) No services for which the ENGINEER will charge an additional compensation shall be furnished without the written authorization of the OWNER.

6. Termination of Contract

(a) This Agreement may be terminated in whole or in part in writing by either party in the

event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided that no such termination may be effected unless the other party is given (1) not less than fourteen (14) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party before termination.

(b) This Agreement may be terminated in whole or in part in writing by the OWNER for its convenience, provided that the ENGINEER is given (1) not less than fourteen (14) calendar days written notice (delivered by certified, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the OWNER prior to termination.

(c) If termination for default is effected by the OWNER, an equitable adjustment in the price provided for in this agreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the ENGINEER at the time of termination may be adjusted to cover any additional costs to the OWNER because of the ENGINEER's default. If the ENGINEER effects termination for default, or if the OWNER effects termination for convenience, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the ENGINEER for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the ENGINEER relating to commitments which had become firm prior to the termination.

(d) Upon receipt of a termination action under paragraphs (a) or (b) above, the ENGINEER shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make available to the OWNER within fourteen (14) calendar days copies of all data, design drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the ENGINEER in performing this Agreement, whether completed or in process.

(e) Upon termination under paragraphs (a) or (b) above, the OWNER may take over the work and may award another party an Agreement to complete the work under this Agreement.

(f) If, after termination for failure of the ENGINEER to fulfill contractual obligations, it is determined that the ENGINEER had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the OWNER. In such event, adjustment of the Agreement price shall be made as provided in paragraph 6(c) of this clause.

7. Payment

(a) The ENGINEER will submit to the OWNER for services rendered an itemized bill showing charges for such services accompanied by any additional documentation requested by the OWNER. Such invoices are limited to no more than one per month. Compensation will be based on the lump sum or standard hourly rate with a maximum method of payment as detailed in the Attachments.

(b) The OWNER shall notify the ENGINEER of any disputed amounts in the invoices within fourteen (14) calendar days of receipt. If OWNER contests an invoice, OWNER may withhold only that portion so contested, and must pay the undisputed portion.

(c) Final Payment under this Agreement or settlement upon termination of this Agreement shall not constitute a waiver of the OWNER's claims against the ENGINEER under this Agreement.

(d) If OWNER fails to make any payment due ENGINEER within forty-five (45) calendar days after OWNER's receipt of ENGINEER's invoice, the amount due ENGINEER shall be increased at the rate of 1.5% per month from said forty-fifth day. The OWNER is solely responsible for the payment of any interest incurred due to late payments. The FUNDING AGENCY will not reimburse for any interest incurred. In addition, after ten (10) calendar days prior written notice, the ENGINEER may suspend services under this Agreement until ENGINEER is paid in full. OWNER waives any and all claims against ENGINEER for any such suspension.

8. Time

(a) PROGRESS AND COMPLETION

1. Time limits stated in this Agreement are of the essence. By executing the Agreement, ENGINEER confirms that the Contract Time(s) is (are) reasonable periods for performing each phase of the Work.
2. The ENGINEER shall proceed expeditiously, consistent with professional skills, with adequate forces to achieve completion within the Contract Time.
3. The OWNER shall not be liable to the ENGINEER for additional time or money if the ENGINEER submits a progress report expressing an intention to achieve completion of the Work prior to the Contract Time and then is not able to achieve intended accelerated schedule regardless of the reason.
4. If the ENGINEER is delayed at any time in the commencement or progress of the Work by an act or neglect of the OWNER, changes in the Work as directed by the OWNER in writing, or other causes beyond the ENGINEER'S control, then the Contract Time may be extended by OWNER per Section 5 of this Agreement. Extensions of time not associated with modifications or change to the Work shall not be allowed to increase the Contract amount for overhead or for any other reason and shall strictly apply toward liquidated damages.
5. The ENGINEER shall promptly notify OWNER in writing of any conditions that may delay delivery of work beyond the Contract Time.
6. OWNER shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the ENGINEER'S performance of its Services.

(b) CONTRACT TIME AND LIQUIDATED DAMAGES

1. The ENGINEER agrees that the Services being provided under this Agreement will be performed regularly, diligently and without interruption at such rate of progress as will ensure completion within the Contract Time. It is expressly understood and agreed, by and between ENGINEER and the OWNER, that the Contract Time is a reasonable time for completion of the Services, taking into consideration the usual conditions for performing the Services. ENGINEER agrees to promptly notify OWNER of delays in completing the services under this Agreement that are beyond ENGINEER'S control and for which a Contract Time extension will be requested. If the ENGINEER neglects, fails or refuses to complete the Services within the Contract Time, including any time extension granted by the OWNER, then the ENGINEER agrees to pay the OWNER the amount specified in the ATTACHMENT, not as a penalty, but as liquidated damages.

2. The parties agree that the amount of the likely damages to the OWNER for such delay is difficult to ascertain at the time of execution of this Agreement, but that a reasonable estimate of such damages may be deducted from any monthly progress payments due to the ENGINEER or from other monies being withheld from the ENGINEER when a reasonable estimate of the expected date of completion can be determined by the OWNER.
3. Final accounting of Liquidated Damages shall be determined at completion and the ENGINEER shall be liable for any Liquidated Damages over and above unpaid balances held by the OWNER.
4. The OWNER and ENGINEER agree that as mutually agreeable, reasonable Liquidated Damages for delay (but not as a penalty), ENGINEER shall pay OWNER amount specified in the ATTACHMENT (minimum fifty dollars [\$50.00] per day) for each calendar day that expires after the Contract Time specified in the Agreement until the Work is complete and accepted by the OWNER. OWNER shall have no more than ten (10) calendar days to accept or reject the Work.

9. Project Design

Unless otherwise approved by the OWNER and Funding Agency, the ENGINEER shall specify materials, equipment, and processes that are readily available through competitive procurement and consistent with State and Federal regulations.

10. Audits and Access to Records

(a) The ENGINEER shall maintain books, records, documents, and other evidence directly pertinent to performance on work under this Agreement in accordance with generally accepted accounting principles and practices consistently applied, and Funding Agency regulations in effect on the date of execution of this Agreement. The ENGINEER shall also maintain the financial information and data used by the ENGINEER in the preparation of support of the cost submission required under EPA regulations in effect on the date of execution for any negotiated agreement or amendment thereof and a copy of the cost summary submitted to the OWNER. The Funding Agency, the Comptroller General of the United States, the U.S. Department of Labor, OWNER, and the State water pollution control agency or any of their duly authorized representatives shall have access to such books, records, documents, and other evidence for inspection, audit, and copying during normal business hours. The ENGINEER will provide proper facilities for such access and inspection.

(b) The ENGINEER agrees to make paragraphs (a) through (f) applicable to all agreements it awards in excess of \$10,000, at any tier, and to make paragraphs (a) through (f) of this clause applicable to all amendments directly related to Project performance.

(c) Audits conducted under this provision shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agency(ies) and the General Accounting Office.

(d) The ENGINEER agrees to disclose all information and reports resulting from access to records under paragraphs (a) and (b) of this clause to any of the agencies referred to in paragraph (a) upon their request.

(e) Records under paragraphs (a) and (b) above shall be maintained and made available by the ENGINEER during performance of services under this Agreement and for three (3) years

from the date of final Federal/State assistance payment to the OWNER for the Project. In addition, those records which relate to any controversy arising under this Agreement, litigation, the settlement of claims arising out of such performance or to costs or items to which an audit exception has been taken shall be maintained and made available by the ENGINEER until three (3) years after the date of resolution of such appeal, litigation, claim or exception.

(f) This right of access clause applies to financial records pertaining to all agreements (except formally advertised, competitively awarded, fixed price agreements) and all agreement amendments regardless of the type of agreement. In addition, this right of access applies to all records pertaining to all agreements and agreement amendments:

1. To the extent the records pertain directly to Agreement performance; or
2. If there is any indication that fraud, gross abuse or corrupt practices may be involved; or
3. If the Agreement is terminated for default or for convenience.

11. Subcontracts

(a) Any subcontractors and outside associates or consultants required by the ENGINEER in connection with services under this Agreement will be limited to such individuals or firms as were specifically identified and agreed to during negotiations of this Agreement. The OWNER and the FUNDING AGENCY must give prior approval for any substitutions, additions or deletions to such subcontractors, associates, or consultants.

(b) The ENGINEER may not subcontract services to subcontractors or consultants in excess of thirty (30) percent of the total phased compensation due ENGINEER and detailed in the Attachments without the OWNER AND FUNDING AGENCY prior written approval.

12. Insurance

The ENGINEER agrees to obtain and maintain, at the ENGINEER's expense, such insurance as will protect the ENGINEER from claims under the Workman's Compensation Act and such comprehensive general liability and automobile insurance as will protect the OWNER and the ENGINEER from all claims for bodily injury, death, or property damage which may arise from the performance by the ENGINEER, or by the ENGINEER's employees, for the ENGINEER's functions and services required under this Agreement. Such insurance shall be in an amount specified in ATTACHMENT for injury to any one person and amount specified in ATTACHMENT on account of any one accident and in the amount specified in ATTACHMENT for property damage. The ENGINEER further agrees to procure and maintain professional liability (errors and omissions) insurance in an amount specified in ATTACHMENT per claim and in the aggregate. Prior to commencement of any work, the ENGINEER shall furnish to the OWNER a certificate that complies with this paragraph. The certificate shall provide that the policy shall not be canceled until at least ten (10) calendar days prior written notice shall have been given to the OWNER. ENGINEER shall provide annual updates of the certificate to demonstrate the policy remains in effect for the duration of this Agreement.

13. Environmental Condition of Site

(a) Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances,

and other Constituents of Concern located at or near the Site, including type, quantity, and location.

(b) Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.

(c) If Engineer encounters an undisclosed Constituent of Concern, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.

(d) It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

(e) If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 calendar days' notice.

(f) Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

14. Mutual Waiver

To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

15. Independent Contractor

Engineer will, at all times during the performance of this Agreement and in connection with the Services, be deemed to be an Independent Contractor. No relationship of employer-employee or agency or other fiduciary capacity is created by this Agreement or by Engineer's performance of the Services.

16. Equal Employment Opportunity

The ENGINEER shall comply with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented in Department of Labor regulations 41 CFR Part 60.

17. Gratuities

(a) If the OWNER finds after a notice and hearing that the ENGINEER or any of the

ENGINEER's agents or representatives offered or gave gratuities (in the form of entertainment, gifts, or otherwise), to any official, employee, or agent of the OWNER or the FUNDING AGENCY in an attempt to secure this Agreement, or favorable treatment in awarding, amending or making any determinations related to the performance of this Agreement, the OWNER may, by written notice to the ENGINEER, terminate this Agreement. The OWNER may also pursue other rights and remedies that the law or this Agreement provides. However, the existence of the facts on which the OWNER bases such findings shall be in issue and may be reviewed in proceedings under the Remedies clause of this Agreement.

(b) In the event this Agreement is terminated as provided in paragraph (a), the OWNER may pursue the same remedies against the ENGINEER as it could pursue in the event of a breach of the Agreement by the ENGINEER. As a penalty, in addition to any other damages to which it may be entitled by law, the OWNER may pursue exemplary damages in an amount (as determined by the OWNER) which shall be not less than three nor more than ten times the costs the ENGINEER incurs in providing any such gratuities to any such officer or employee.

18. Covenant Against Contingent Fees

The ENGINEER represents that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the ENGINEER for the purpose of securing business. For breach or violation of this assurance the OWNER shall have the right to annul this Agreement without liability or, at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fees.

19. Cost and Pricing Data on Federally-funded Projects (delete section if not applicable)

The ENGINEER and its subcontractor(s) assure that cost and pricing data submitted for evaluation with respect to negotiation of prices for negotiated agreements, lower tier sub-agreements, or amendments are based on current, accurate, and complete data supported by their books and records. If the OWNER, or Funding Agency determines that any price (including profit) negotiated in connection with this Agreement, any lower tier sub-agreement, or any amendment thereunder was increased by any significant sums because the data provided was incomplete, inaccurate, or not current at the time of submission, then such price or cost or profit shall be reduced accordingly; and this Agreement shall be modified in writing to reflect such action. Failure to agree on a reduction shall be subject to the Remedies clause of this Agreement.

20. Remedies

Unless otherwise provided in this Agreement, all claims, counter-claims, disputes, and other matters in question between the OWNER and the ENGINEER arising out of or relating to this Agreement or the breach of it will be decided by non-binding mediation or arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the OWNER is located.

21. Assurance Against Debarment

The ENGINEER assures that neither it nor any of its subcontractors are suspended or debarred by EPA or USDA-RD.

SECTION B – ENGINEERING SERVICES

The ENGINEER shall furnish ENGINEERING SERVICES as follows in accordance with the GENERAL PROVISIONS of the Agreement and as authorized by the appropriate Attachment to this Agreement:

Engineering Services During the Planning Phase

1. The ENGINEER shall complete the ENGINEERING SERVICES described in ATTACHMENT I– Planning Services scope of work and cost proposal within the time specified in Attachment I – Compensation for Engineering Services During the Planning Phase from the date of written authorization to proceed unless otherwise mutually agreed to in writing by both parties. Any supporting documentation or revisions regarding the ENGINEER's services under this Agreement necessary to obtain the approval of the Funding Agency and all State regulatory agencies will be provided promptly.

Engineering Services During the Design Phase

2. The ENGINEER shall complete the ENGINEERING SERVICES described in ATTACHMENT II– Design Services scope of work and cost proposal and section B-2 through B-10 described herein within the time specified in Attachment II – Compensation for Engineering Services During the Design Phase from the date of written authorization to proceed unless otherwise mutually agreed to in writing by both parties. Any supporting documentation or revisions regarding the ENGINEER's services under this Agreement necessary to obtain the approval of the Funding Agency and all State regulatory agencies will be provided promptly.
3. The ENGINEER shall perform the necessary design surveys, accomplish the detailed design of the Project, prepare contract documents including design drawings, specifications and invitations for bids, and prepare a final opinion of probable Project costs based on the final design of the Project. The design drawings prepared shall be in sufficient detail to show the character and extent of the Project and to permit the actual location of the proposed improvements on the Project site. It is also understood that if subsurface explorations such as borings, or soil tests are required to determine amounts of rock excavation or foundation conditions, the ENGINEER will furnish coordination of said explorations as an Additional Engineering Service, and the costs incident to such explorations, no matter whether they are performed by the ENGINEER or by others shall be paid for by the OWNER as indicated in Section C and set out in Attachment II.
4. The ENGINEER shall review the Engineering Report prepared for this Project and, if necessary and upon consultation with and concurrence of the OWNER, Funding Agency or delegated State as appropriate, shall revise design criteria, design standards, treatment process sizing and other appropriate preliminary design information included in the Plan or other preliminary engineering reports in order to complete the final design for the Project in accordance with the performance standards and accepted engineering practices.
5. The ENGINEER shall assist the OWNER in obtaining necessary permits and approvals from appropriate Federal, State, and local regulatory agencies. The cost of obtaining such permits and approvals shall be borne by the OWNER. However, this shall not be construed as a guarantee that the ENGINEER can cause a permit or permit condition to be granted or

further the OWNER's goals.

6. The Contract Documents furnished by the ENGINEER under Section B-4 shall utilize Funding Agency endorsed construction contract documents, as appropriate.
7. Prior to the advertisement for bids, the ENGINEER shall provide for each construction contract to be awarded by the OWNER, the number of copies specified in Attachment II of the detailed design drawings, specifications, and contract documents for use by the OWNER and appropriate Federal, State and local agencies from whom approval of the Project must be obtained. The ENGINEER shall provide additional copies of the above specified documents to the OWNER at the cost of reproduction. Originals of such items as documents, survey notes, and tracings, prepared by the ENGINEER are and shall remain the property of the ENGINEER, but this shall in no way infringe upon the OWNER's rights to such items under Section A-6(e).
8. The ENGINEER shall establish baselines for locating the work together with a suitable number of benchmarks adjacent to the work and show their location in the Contract Documents. This information and the Contract Documents will provide the contractor sufficient reference from which to execute the contract work. The ENGINEER is not obligated to set construction grade stakes for the construction of the Project.
9. The ENGINEER shall prepare and furnish to the OWNER three (3) copies of maps or drawings showing the approximate location of needed construction easements, permanent easements, rights-of-way and land to be acquired. Such maps or drawings shall be furnished promptly to enable the OWNER to initiate property and easement acquisitions.
10. The ENGINEER shall, prior to completion of ninety (90) percent of the Design Phase service, prepare and furnish to the OWNER an estimate for total compensation to be paid to the ENGINEER for providing the services to be performed in the Construction Phase and Operation Phase.
11. Section B-2 through B-10 and those ADDITIONAL ENGINEERING SERVICES designated for the Design Phase in Attachment II will take effect upon execution of Attachment II.

Engineering Services During the Construction Phase

12. ENGINEER shall complete the ENGINEER SERVICES described in ATTACHMENT III – Construction Services scope of work and cost proposal and section B-12 through B-23 described herein, within the time specified in Attachment III – Compensation for Engineering Services During the Construction Phase from the date of written authorization to proceed unless otherwise mutually agreed to by both parties.
13. The ENGINEER shall attend the bid opening and tabulate the bid proposals, analyze the responsiveness of the bidders, check references, and make recommendations for awarding the contract(s) for construction to the lowest responsible, responsive bidder.
14. Upon award of each construction contract, the ENGINEER shall furnish to the OWNER, for each contract, the number specified in Attachment III of the sets of the design drawings, specifications and contract documents for execution by the OWNER and contractor. The ENGINEER shall provide additional copies of such contract documents to the OWNER at the cost of reproduction.

15. The ENGINEER shall review and approve, for conformance with the design concept all shop drawings and other submittals required by the Contract Documents to be furnished by contractors.
16. The ENGINEER shall interpret the general intent of the design drawings and specifications to endeavor to protect the OWNER against defects and deficiencies in construction on the part of the contractors.
17. The ENGINEER shall provide general engineering review of the work of the contractors as construction progresses to ascertain that the contractors are conforming to the general design concept. Engineer shall, in connection with observations of Contractor's Work while it is in progress make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, but at least monthly, to observe as an experienced and qualified design professional the progress and quality of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of Contractor's Work in progress or to involve detailed inspections of Contractor's Work in progress beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.
18. The ENGINEER's undertaking hereunder shall not relieve the contractor of its obligation to perform the work in conformity with the Contract Documents and in a workmanlike manner; nor shall it make the ENGINEER an insurer of the contractor's performance. Engineer shall not at any time supervise, direct, or have control over Contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.
19. The ENGINEER shall review each contractor's applications for progress and final payments and submit sufficient copies of same to the OWNER with the ENGINEER's recommendation for approval or disapproval.
20. The ENGINEER shall prepare necessary contract change orders for approval of the OWNER, the Funding Agency and others as required. The ENGINEER shall make an independent assessment of the Contractor's cost and time proposal and the impacts on the Contract Price and Contract Time as part of the review and recommendation process for each change order.
21. The ENGINEER shall make a site visit prior to issuing the certificate of substantial completion of all construction and submit a written report to the OWNER, the Funding Agency and others as required.
22. Prior to submission of recommendation for final payment on each contract, the ENGINEER shall submit a certificate of substantial completion of work done under that

contract to the OWNER, the Funding Agency and others as required.

23. The ENGINEER shall provide the OWNER with record drawings as specified in the scope of work for Attachment III. Such drawings will be based upon the Resident Project Representative's construction data and the construction records provided by the contractor during construction and reviewed by the Resident Project Representative.

24. Section B-12 through B-23 and those ADDITIONAL ENGINEERING SERVICES designated for the Construction Phase in Attachment III will take effect upon execution of Attachment III.

Engineering Services During the Operation Phase

25. The ENGINEER shall complete the ENGINEERING SERVICES described in ATTACHMENT IV – Operational Services scope of work and cost proposal and section B-25 through B-29 within the time specified in Attachment IV – Compensation for Engineering Services During the Operation Phase from the date of written authorization to proceed unless otherwise mutually agreed to in writing by both parties.

26. The ENGINEER shall review the first year's operation of the Project and revise the operation and maintenance manual for the Project as necessary to accommodate actual operating experience.

27. The ENGINEER shall provide to the OWNER monthly operation reports on the performance of the Project.

28. The ENGINEER shall train operating personnel and prepare curricula and training material for operating personnel.

29. Eleven (11) months after the initiation of the Project operation, the ENGINEER shall advise the OWNER in writing whether the Project meets the project performance standards.

30. Section B-25 through B-29 and those ADDITIONAL ENGINEERING SERVICES designated for the Operation Phase in Attachment IV will take effect upon execution of Attachment IV.

SECTION C – ADDITIONAL ENGINEERING SERVICES

ADDITIONAL ENGINEERING SERVICES as detailed in the Attachments shall be provided by the ENGINEER upon written authorization by the OWNER and concurrence of Funding Agency. Compensation for performing the designated ADDITIONAL ENGINEERING SERVICES will be included on Attachment I, Attachment II, Attachment III, or Attachment IV. ADDITIONAL ENGINEERING SERVICES could include such things as the following.

1. Provide Resident Project Observation. The ENGINEER shall, prior to the preconstruction conference, submit a resume of the Resident Project Representative's qualifications, anticipated duties and responsibilities for approval by the OWNER and the Funding Agency. Resident observation includes checking lines and grades, keeping records of full measurements and the contractor's activities, passing information between the ENGINEER and contractor, reviewing of contractor's request for progress payments, inspection of completed work for compliance with Contract Documents and keeping of a daily diary per Funding Agency requirements. Performance of this service will not guarantee the contractor's performance, but it endeavors to

protect the OWNER against defects and deficiencies in the Project and verify compliance with the contract Documents. Period of service for calculating compensation will be as specified in the Attachments.

2. Prepare site, boundary, and topographic surveys for treatment works, dams, reservoirs, and other similar special surveys as may be required.
3. Conduct laboratory tests, well tests, borings, and specialized geological, soils, hydraulic, or other studies recommended by the ENGINEER.
4. Prepare property surveys, detailed descriptions of sites, maps, drawings, or estimates related thereto; assist in negotiating for land and easement rights.
5. Appear before courts or boards on matters of litigation related to the project.
6. Assist OWNER with developing a user charge system. Design a user charge system to produce adequate revenues required for the operation, maintenance and replacement of the Project that meets applicable EPA or other requirements.
7. Prepare an operation and maintenance manual.
8. Provide construction-staking services.
9. Prepare or review environmental assessments and impact statements; review and evaluate the effects on the design requirements for the Project of any such statements and documents prepared by others; and assist in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
10. Provide services resulting from significant changes in the scope, extent or character of the portions of the Project designed or specified by ENGINEER or its design requirements including, but not limited to, changes in size, complexity, OWNER's schedule, character of construction or method of financing; and revising previously accepted studies, reports, Drawings, Specifications or Contract Documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes, standards or orders enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond ENGINEER's control.
11. Provide services resulting from evaluation by ENGINEER during the Study and Report Phase at OWNER's request of alternative solutions in addition to those specified in Attachment I.
12. Prepare for, coordinate with, participate in and respond to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering and constructability review requested by OWNER; and performing or furnishing services required to revise studies, reports, Drawings, Specifications or other Bidding Documents as a result of such review processes.
13. Provide services in connection with Work Change Directives and Change Orders to reflect OWNER-requested changes to the Drawings and Specifications.
14. Provide services in making revisions to Drawings and Specifications occasioned by the OWNER's acceptance of substitute materials or equipment other than "or-equal" items; and services after the award of the construction contract in evaluating and determining the acceptability of a substitution.

15. Provide additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work, (2) work damaged by fire or other cause during construction, (3) a significant amount of defective, neglected or delayed work by Contractor, (4) acceleration of the progress schedule involving services beyond normal working hours, or (5) default by Contractor.

SECTION D – SPECIAL PROVISIONS OR MODIFICATIONS TO THE STANDARD LANGUAGE IN THIS AGREEMENT

(Describe, attach or indicate “None”)

MODEL CONTRACT CLAUSE FOR ENGINEERING AGREEMENTS

1. PRIVITY OF CONTRACT

This contract is expected to be funded in part with funds from the U.S. Environmental Protection Agency. Neither the United States nor any of its departments, agencies or employees is, or will be, a party to this contract or any lower tier contract. This contract is subject to the applicable EPA procurement regulations in effect on the date of the assistance award for this project.

2. CHANGES

1. The Owner may at any time, by written order make changes within the general scope of this contract in the services to be performed. If such changes cause an increase or decrease in the Engineer's cost or time required to perform any services under this contract, whether or not changed by any order, the Owner shall make an equitable adjustment and modify this contract in writing. The Engineer must assert any claim for adjustment under this clause in writing within 30 days from the date it receives the Owner's notification of change, unless the Owner grants additional time before the date of final payment.

2. No claim by the Engineer for an equitable adjustment shall be allowed if made after final payment under this contract.

3. No services for which the Engineer will charge an additional compensation shall be furnished without the written authorization of the Owner.

3. TERMINATION

a. This contract may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this contract through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

b. This contract may be terminated in whole or in part in writing by the Owner for its convenience, provided that the Engineer is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

c. If termination for default is effected by the Owner, an equitable adjustment in the price provided for in this contract shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the Engineer at the time of termination may be adjusted to cover any additional costs to the Owner because of the Engineer's default. If the Engineer effects termination for default, or if the Owner effects termination for convenience, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for

payment to the Engineer for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the Engineer relating to commitments which had become firm prior to the termination.

d. Upon receipt of a termination action under paragraphs (a) or (b) above, the Engineer shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make available to the Owner all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the Engineer in performing this contract, whether completed or in process.

e. Upon termination under paragraphs (a) or (b) above, the Owner may take over the work and may award another party a contract to complete the work under this contract.

f. If, after termination for failure of the Engineer to fulfill contractual obligations, it is determined that the Engineer had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the Owner. In such event, adjustment of the sub-agreement price shall be made as provided in paragraph (c) of this clause.

4. REMEDIES

Unless otherwise provided in this contract, all claims, counter-claims, disputes and other matters in question between the Owner and the Engineer arising out of, or relating to, this contract or the breach of it will be decided, if the parties mutually agree, by arbitration, mediation, or other alternative dispute resolution mechanism; or in a court of competent jurisdiction within the State in which the Owner is located.

5. AUDIT; ACCESS TO RECORDS

a. The Engineer shall maintain books, records, documents and other evidence directly pertinent to performance on EPA funded work under this contract in accordance with generally accepted accounting principles and practices consistently applied, and the applicable EPA regulations in effect on the date of execution of this contract. The Engineer shall also maintain the financial information and data used in the preparation or support of any cost submission required under applicable regulations for negotiated contracts or change orders and a copy of the cost summary submitted to the Owner. The United States Environmental Protection Agency, the Comptroller General of the United States, the United States Department of Labor, the Owner, and [the State] or any of their authorized representatives shall have access to all such books, records, documents and other evidence for the purpose of inspection, audit and copying during normal business hours. The Engineer will provide proper facilities for such access and inspection.

b. If this is a fixed price contract awarded through sealed bidding or otherwise on the basis of effective price competition, the Engineer agrees to make paragraphs (a) through (f) of this clause applicable to all negotiated change orders and contract amendments affecting the contract price. In the case of all other types of prime contracts, the Engineer agrees to make paragraphs (a) through (f) applicable to all contract awards in excess of \$10,000, at any tier, and to make paragraphs (a) through (f) of this clause applicable to all change orders directly related to project performance.

c. Audits conducted under this provision shall be in accordance with generally accepted auditing standards and with established procedures and guidelines of the reviewing or audit agency(ies).

d. The Engineer agrees to disclose all information and reports resulting from access to records under paragraphs (a) and (b) of this clause to any of the agencies referred to in paragraph (a).

e. Access to records is not limited to the required retention periods. The authorized representatives designated in paragraph (a) of this clause shall have access to records at any reasonable time for as long as the records are maintained.

f. This right of access clause applies to financial records pertaining to all contracts (except for fixed price contracts awarded through sealed bidding or otherwise on the basis of effective price competition) and all contract change orders regardless of the type of contract, and all contract amendments regardless of the type of contract. In addition this right of access applies to all records pertaining to all contracts, contract change orders and contract amendments:

1. To the extent the records pertain directly to contract performance;
2. If there is any indication that fraud, gross abuse or corrupt practices may be involved; or
3. If the sub-agreement is terminated for default or for convenience.

6. COVENANT AGAINST CONTINGENT FEES

The Engineer assures that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Engineer for the purpose of securing business. For breach or violation of this assurance, the Owner shall have the right to annul this agreement without liability or, at its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

7. GRATUITIES

a. If the Owner finds after a notice and hearing that the Engineer or any of the Engineer's agents or representatives offered or gave gratuities (in the form of entertainment, gifts or otherwise) to any official, employee or agent of the Owner, the State or EPA in an attempt to secure a contract or favorable treatment in awarding, amending or making any determinations related to the performance of this contract, the Owner may, by written notice to the Engineer, terminate this contract. The Owner may also pursue other rights and remedies that the law or this contract provides.

b. In the event this contract is terminated as provided in paragraph (a), the Owner may pursue the same remedies against the Engineer as it could pursue in the event of a breach of the contract by the Engineer, and as a penalty, in addition to any other damages to which it may be entitled by law, be entitled to exemplary damages in an amount (as determined by the Owner) which shall be not less than three nor more than ten times the costs the Engineer incurs in providing any such gratuities to any such officer or employee.

8. FINAL PAYMENT

Upon satisfactory completion of the work performed under this contract, as a condition before final payment under this contract or as a termination settlement under this contract the Engineer shall execute and deliver to the Owner a release of all claims against the Owner arising under, or by virtue of, this contract, except claims which are specifically exempted by the Engineer to

be set forth therein. Unless otherwise provided in this contract, by State law or otherwise expressly agreed to by the parties to this contract, final payment under this contract or settlement upon termination of this contract shall not constitute a waiver of the Owner's claims against the Engineer under this contract.

9. ENGINEERING SERVICES

Section B is revised to read as follows:

Engineering Services During the Planning Phase

1. DELETED

Engineering Services During the Design Phase

2. DELETED
3. DELETED
4. DELETED
5. DELETED
6. DELETED
7. DELETED
8. DELETED
9. DELETED
10. DELETED
11. DELETED

Engineering Services During the Construction Phase

12. ENGINEER shall complete the ENGINEER SERVICES described in ATTACHMENT III – Construction Services scope of work and cost proposal and section B-13 through B-23 described herein, within the time specified in Attachment III – Compensation for Engineering Services During the Construction Phase from the date of written authorization to proceed unless otherwise mutually agreed to by both parties.
13. The ENGINEER shall attend the pre-bid and pre-construction meetings to answer questions as appropriate.
14. DELETED
15. DELETED
16. DELETED
17. The ENGINEER shall provide construction testing in accordance with industry standards and the requirements of the Funding Agency. The Engineer shall collaborate with the OWNER and the OWNER'S assigned construction management consultant team to ascertain necessary testing and shall ensure the proper construction testing is being accomplished to satisfy the OWNER and FUNDING AGENCY.
18. DELETED

- 19. DELETED
- 20. DELETED
- 21. DELETED
- 22. DELETED

23. The ENGINEER shall continuously provide the OWNER and the OWNER'S construction management consultant with testing results and summaries to ensure the Work is progressing according to the project specifications and schedule. The ENGINEER shall maintain records of all construction testing and summaries as prescribed by law and industry standards.

24. Section B-12 through B-23 and those ADDITIONAL ENGINEERING SERVICES designated for the Construction Phase in Attachment III will take effect upon execution of Attachment III.

Engineering Services During the Operation Phase

- 25. DELETED
- 26. DELETED
- 27. DELETED
- 28. DELETED
- 29. DELETED
- 30. DELETED

10. ADDITIONAL ENGINEERING SERVICES

Section C is revised to read as follows:

1. The ENGINEER shall, prior to the preconstruction conference, submit a resume of the ENGINEER'S Project Manager's qualifications, anticipated duties and responsibilities for approval by the OWNER and the Funding Agency. ENGINEER'S Project Management includes coordination with OWNER and OWNER'S construction management consultant team in writing and by phone, email and other electronic means and attending weekly coordinating meetings and keeping records of all construction testing and summaries, and passing information between the ENGINEER, OWNER and OWNER'S consultant management consultant team and contractor as directed.

2. DELETED

3. Conduct laboratory tests, well tests, borings, and specialized geological, soils, hydraulic, or other studies recommended by the OWNER or the OWNER'S construction management consultant.

4. DELETED

5. Appear before courts or boards on matters of litigation related to the project, if required.

6. DELETED

7. DELETED

8. DELETED

9. DELETED

10. DELETED

11. DELETED

12. DELETED

13. Provide Geotechnical Engineering services as directed by OWNER that may become necessary on the project to ensure the success of construction.

14. DELETED

15. Provide additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work, (2) work damaged by fire or other cause during construction, (3) a significant amount of defective, neglected or delayed work by Contractor, (4) acceleration of the progress schedule involving services beyond normal working hours, or (5) default by Contractor.

16. Attachments incorporated as part of this agreement:

- (a) Certifications including Equal Employment Opportunity and Nonsegregated Facilities
- (b) EPA XP-215 MBE/WBE/SBRA Engineering Utilization Information Worksheet
- (c) Certification Regarding Debarment, Suspension, and Other Responsibility Matters
- (d) Form 6100-3 DBE Subcontractor Performance Form
- (e) Form 6100-4 DBE Subcontractor Utilization Form

IN WITNESS THEREOF, the parties hereto have executed, or caused to be executed, by their duly authorized officials, this Agreement in triplicate on the respective dates indicated below. **The parties further certify by their signatures below that no modifications have been made to the standard language of this Agreement, other than those detailed in Section D.**

ATTEST: _____

Type Name Karla Saylor, CMC

Title City Clerk

Date February 10, 2015

OWNER: City of Aztec, NM

By _____

Type Name: Sally Burbridge

Title Mayor

Date February 10, 2015

ATTEST: _____

Type Name _____

Title _____

Date _____

ENGINEER: GEOMAT, Inc.

By _____

Type Name George A. Madrid, PE

Title President, Principal Engineer

Address 915 Malta Ave
Farmington, NM 87401

Date _____

REVIEWED: FUNDING AGENCY

NAME: _____

By _____

Type Name David Bishop

Date _____

ATTACHMENTS

Please check the appropriate box and include applicable attachments

1. As set forth in the AGREEMENT FOR ENGINEERING SERVICES dated the 10th day of February, 2015 by and between the City of Aztec, NM, the OWNER, and GEOMAT Inc., the ENGINEER, the OWNER and ENGINEER agree this 10th day of February, 2015 that the OWNER shall compensate the ENGINEER for services described in Section B and Section C and further described in

ATTACHMENT I—Planning Services scope of work, cost proposal and compensation for Engineering Services During the Planning Phase

ATTACHMENT II—Design Services scope of work, cost proposal and compensation for Engineering Services During the Design Phase

ATTACHMENT III - Construction Services scope of work, cost proposal and compensation for Engineering Services During the Construction Phase

ATTACHMENT IV - Operational Services scope of work, cost proposal and compensation for Engineering Services During the Operation Phase

2. Compensation for ENGINEERING SERVICES shall be by the

LUMP SUM method of payment. The total amount of compensation for ENGINEERING SERVICES, as described in the appropriate ATTACHMENTS shall not exceed \$_____, excluding gross receipt tax and reimbursables.

STANDARD BILLABLE RATE WITH MAXIMUM method of payment. The total amount of hourly charges, excluding gross receipt tax and reimbursables, for ENGINEERING SERVICES as described in the appropriate ATTACHMENTS shall not exceed \$44,160 without prior written approval of the OWNER, with Funding Agency concurrence.

3. Compensation for ADDITIONAL ENGINEERING SERVICES (provided by the ENGINEER upon written authorization from the OWNER and concurrence of the Funding Agency), shall be by the

LUMP SUM method of payment. The total amount of compensation for ADDITIONAL ENGINEERING SERVICES, as described in the appropriate ATTACHMENT shall not exceed \$_____, excluding gross receipt tax and reimbursables.

STANDARD BILLABLE / HOURLY RATE WITH MAXIMUM method of payment. The total amount of hourly charges, excluding gross receipt tax and reimbursables, for ADDITIONAL ENGINEERING SERVICES as described in the appropriate ATTACHMENT shall not exceed \$5,000.00 without prior written approval of the OWNER and with Funding Agency concurrence.

4. The amount of compensation shall not change unless the scope of services to be provided by the ENGINEER changes and this Agreement is formally amended according to Section A-5. Contract Time under Section B. and for the purpose of Section A.8 shall be 400 calendar days (or as specified in the Attachments).

5. The OWNER and ENGINEER agree that as mutually agreeable, reasonable Liquidated Damages for delay (but not as a penalty), ENGINEER shall pay OWNER fifty dollars (\$50) for each calendar day that expires after the Contract Time specified in the Agreement (See attached project schedule - Gantt chart, bar chart, etc.) until the Work is complete and accepted by the OWNER. OWNER shall have no more than ten (10)

calendar days to accept or reject the Work.

6. The ENGINEER agrees to obtain and maintain, at the ENGINEER's expense, such insurance as will protect the ENGINEER from claims under the Workman's Compensation Act and such comprehensive general liability and automobile insurance as will protect the OWNER and the ENGINEER from all claims for bodily injury, death, or property damage which may arise from the performance by the ENGINEER, or by the ENGINEER's employees, for the ENGINEER's functions and services required under this Agreement. Such insurance shall be in an amount not less than \$1,000,000 for injury to any one person and \$1,000,000 on account of any one accident and in the amount of not less than \$1,000,000 for property damage. The ENGINEER further agrees to procure and maintain professional liability (errors and omissions) insurance in an amount not less than \$1,000,000 per claim and in the aggregate. Prior to commencement of any work, the ENGINEER shall furnish to the OWNER a certificate that complies with this paragraph. The certificate shall provide that the policy shall not be canceled until at least ten (10) calendar days prior written notice shall have been given to the OWNER. ENGINEER shall provide annual updates of the certificate to demonstrate the policy remains in effect for the duration of this Agreement.

7. OWNER shall pay ENGINEER applicable gross receipt taxes and reimbursable expenses at the rates set forth in the appropriate ATTACHMENTS. The amounts payable to ENGINEER for reimbursable expenses will be the project related internal expenses, such as mileage, per diem and reproduction, actually incurred or allocated by ENGINEER, plus all invoiced external reimbursable expenses, including consultants, allocable to the project, the latter multiplied by a factor of (1.1 MAXIMUM). Mileage will be reimbursed at the current federally approved IRS rate. Reimbursable expenses shall not exceed the estimate in the ATTACHMENT without prior written approval of the OWNER, with Funding Agency concurrence.

8. The method for interim or partial payments, such as milestone or time & materials, shall be: Monthly

The rest of the page is intentionally left blank

9. Signatures

IN WITNESS THEREOF, the parties hereto have executed, or caused to be executed, by their duly authorized officials, this Agreement in triplicate on the respective dates indicated below.

ATTEST: _____

Type Name Karla Sayler, CMC

Title City Clerk

Date February 10, 2015

OWNER: City of Aztec, NM

By _____

Type Name: Sally Burbridge

Title Mayor

Date February 10, 2015

ATTEST: _____

Type Name _____

Title _____

Date _____

ENGINEER: GEOMAT, Inc.

By _____

Type Name George A. Madrid, PE

Title President, Principal Engineer

Address 915 Malta Ave
Farmington, NM 87401

Date _____

REVIEWED: FUNDING AGENCY

NAME: _____

By _____

Type Name David Bishop

Date _____

Attachment I

Agreement for Engineering Services

Planning Services scope of work, cost proposal and compensation for Engineering Services during the Planning Phase

A. Scope

B. Cost Proposal – Include hourly breakdown for each task (see example)

C. Schedule of time to complete work

Attachment II

Agreement for Engineering Services

Design Services scope of work, cost proposal and compensation for Engineering Services during the Design Phase

A. Scope

B. Cost Proposal – Include hourly breakdown for each task (see example)

C. Schedule of time to complete work

Attachment III

Agreement for Engineering Services

Construction Services scope of work, cost proposal and compensation for Engineering Services during the Construction Phase

A. Scope

The ENGINEER shall provide construction testing for the duration of the project in accordance with the FUNDING AGENCY requirements. Construction testing shall include all necessary testing to satisfy OWNER, OWNER'S Construction Management Team and shall be performed in a timely manner so as not to slow progress of construction as determined by the OWNER.

The Engineer shall assign a Project Manager to maintain coordination with the OWNER and the OWNER'S Construction Management Team. The Project Manager shall attend the prebid and pre-construction meetings and all weekly meetings associated with the project.

The Engineer shall perform Geotechnical Engineering services as may become necessary for the project to proceed on schedule.

B. Cost Proposal – Include hourly breakdown for each task (see example)

Please see the following cost proposal.

C. Schedule of time to complete work

400 calendar days

Attachment IV

Agreement for Engineering Services

**Operational Services scope of work, cost proposal and compensation for Engineering Services during the
Operation Phase**

A. Scope

B. Cost Proposal – Include hourly breakdown for each task (see example)

C. Schedule of time to complete work

CERTIFICATIONS

COA: IFB No. 15-0419

Project Name Sanitary Sewer Interceptor Project Number NMED: CWSRF 021

Contract For GEOMAT Inc.

The following certifications must be completed by the bidder for each contract.

A. EQUAL EMPLOYMENT OPPORTUNITY:

- I have developed and have on file at my each establishment affirmative action programs pursuant to 41 CFR Part 60-2.
- I have participated in previous contract(s) or subcontract(s) subject to the equal opportunity clause under **Executive Orders 11246 and 11375**. I have filed all reports due under the requirements contained in 41 CFR 60-1.7.
- I have not participated in previous contract(s) subject to the equal opportunity clause under **Executive Orders 11246 and 11375**.
- I will obtain a similar certification from any proposed subcontractor(s), when appropriate.

B. NONSEGREGATED FACILITIES

- I certify that I do not and will not maintain any facilities provided for my employees in a segregated manner, or permit my employees to perform their services at any location under my control where segregated facilities are maintained; and that I will obtain a similar certification prior to the award of any federally assisted subcontract exceeding \$10,000 which is not exempt from the equal opportunity clause as required by 41 CFR 60-1.8.

I understand that a false statement on this certification may be grounds for rejection of this bid proposal or termination of the contract award.

Thomas F. Madrid / Operations Manager
Typed Name & Title of Bidder's Authorized Representative

T. Madrid 12/09/2014
Signature of Bidder's Authorized Representative Date

GEOMAT Inc.

915 Malta Ave. Farmington, NM 87401
Name & Address of Bidder

XP-215 MBE/WBE/SBRA ENGINEERING UTILIZATION INFORMATION SHEET

NOTE: The offeror shall complete the following Minority/Women's/Small Business in Rural Area (MBE/WBE/SBRA) utilization information whenever they solicit sub-consultant work and/or services for the project in order to provide the fair share of the total dollar amount of the contract for

MBE: Construction N/A, Equipment N/A, Supplies N/A, Services 38.78 %
 WBE: Construction N/A, Equipment N/A, Supplies N/A, Services 40.00 %
 SBRA: Construction _____, Equipment _____, Supplies _____, Services _____

1. Do you maintain and update qualified MBE, WBE, and SBRA on your solicitation lists for supplies, equipment, construction and/or service? Yes ___ No X
 If yes, when did you update your MBE/WBE/SBRA solicitation lists? _____
2. Do you maintain a list of minority, women and rural small business-focused publications that may be utilized to solicit MBEs or WBEs or SBRA's? Yes ___ No X
 If yes, name the publications: _____
3. Do you use the services of outreach programs sponsored by the Minority Business Development Agency and/or the Small Business Administration to recruit bona fide MBE/WBE/SBRA firms for placement on your solicitation lists? Yes X No ___
4. Do you seek out Minority Business Development Centers to assist you in identifying MBEs/WBEs/SBRAs for potential work opportunities on your proposal for this project? Yes ___ No X
5. Do you analyze the request for proposal to identify portions of work that can be divided and performed by qualified MBEs, WBEs, and SBRA's including the bonding range? Yes ___ No X
 If yes, please attach a brief description of portions of work you have identified for sub-consulting.
6. Do you develop realistic delivery schedules which may provide for greater MBE/WBE/SBRA participation? Yes ___ No X
7. Do you send a letter of solicitation to MBE/WBE/SBRA for this proposed project? Yes ___ No X
 If yes, please attach a sample copy of each different solicitation letter and the name and address of each MBE/WBE/SBRA.
8. Do you advertise in general circulation, trade journals, State agency publications of identified MBEs/WBEs/SBRAs, minority or women or rural small business focused media, etc., concerning the sub-consulting opportunities on your proposal for this project? Yes ___ No X
 If yes, please list the name of publication and dates of advertisement and attach a copy of each advertisement from each publication.
9. Do you conduct pre-solicitation, meetings and follow-ups with interested MBE, WBE, and SBRA? Yes ___ No X
 If yes, please list person who attended conference as representative of MBE/WBE/SBRA

Name & Title of Person: _____
 Name of MBE/WBE/SBRA: _____
 Address: _____ Phone: _____
 Date and Place of Conference: _____

Name & Title of Person: _____
 Name of MBE/WBE/SBRA: _____
 Address: _____ Phone: _____
 Date and Place of Conference: _____

Name & Title of Person: _____
 Name of MBE/WBE/SBRA: _____

Address: _____ Phone: _____
 Date and Place of Conference: _____

10. Total dollar amount of the contract:
 \$ _____

11. Total dollar amount and percentage of MBE/WBE/SBRA participation:

MBE:	Construction	0	%	Equipment	0	%	Supplies	0	%	Services	0	%
	(\$)	(\$)	(\$)	(\$)	(\$)	(\$)
WBE:	Construction	0	%	Equipment	0	%	Supplies	0	%	Services	0	%
	(\$)	(\$)	(\$)	(\$)	(\$)	(\$)
SBRA:	Construction	0	%	Equipment	0	%	Supplies	0	%	Services	0	%
	(\$)	(\$)	(\$)	(\$)	(\$)	(\$)

12. Name, address, phone number, contact person, type of construction subcontract, and dollar amount of subcontract.

MBE Sub-consultant: Address: Phone: Contact Person: Type of Work: Amount: \$	WBE Sub-consultant: Address: Phone: Contact Person: Type of Work: Amount: \$	SBRA Sub-consultant: Address: Phone: Contact Person: Type of Work: Amount: \$
MBE Sub-consultant: Address: Phone: Contact Person: Type of Work: Amount: \$	WBE Sub-consultant: Address: Phone: Contact Person: Type of Work: Amount: \$	SBRA Sub-consultant: Address: Phone: Contact Person: Type of Work: Amount: \$
MBE Sub-consultant: Address: Phone: Contact Person: Type of Work: Amount: \$	WBE Sub-consultant: Address: Phone: Contact Person: Type of Work: Amount: \$	SBRA Sub-consultant: Address: Phone: Contact Person: Type of Work: Amount: \$
MBE Sub-consultant: Address: Phone: Contact Person: Type of Work: Amount: \$	WBE Sub-consultant: Address: Phone: Contact Person: Type of Work: Amount: \$	SBRA Sub-consultant: Address: Phone: Contact Person: Type of Work: Amount: \$

I understand that a false statement on the above information may be grounds for rejection of the offeror's proposal or termination of the contract award.

Thomas Madrid / Operations Manager

Typed Name & Title of Authorized Representative

Thomas Madrid

12/09/2014

Signature of Offeror's Authorized Representative

Date

EPA Project Control Number

United States Environmental Protection Agency
Washington, DC 20460

**Certification Regarding
Debarment, Suspension, and Other Responsibility Matters**

The prospective participant certifies to the best of its knowledge and belief that it and the principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction: violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated or cause or default.

I understand that a false statement on this certification may be ground for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Thomas F. Madrid / Operations Manager

Typed Name & Title of Authorized Representative

TF Madrid

Signature of Bidder's Authorized Representative

12/09/2014

Date

I am unable to certify to the above statements. My explanation is attached.
EPA Form 5700-49 (11-88)

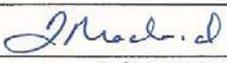
FORM 6100-3
Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Performance Form

This form is intended to capture the DBE¹ subcontractor's² description of work to be performed and the price of the work submitted to the prime contractor. A Financial Assistance Agreement Recipient must require its prime contractor to have its DBE subcontractors complete this form and include all completed forms in the prime contractor's bid or proposal package.

Subcontractor Name N/A		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Prime Contractor Name		Issuing/Funding Entity:	

Contract Item Number	Description of Work Submitted to the Prime Contractor Involving Construction, Services, Equipment or Supplies	Price of Work Submitted to the Prime Contractor
N/A		
DBE Certified By: <input type="checkbox"/> DOT <input type="checkbox"/> SBA <input type="checkbox"/> Other: _____ <input type="checkbox"/> Not certified		Meets/ exceeds EPA certification standards? <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> Unknown

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

Prime Contractor Signature	Title/ date
	Operations Manager / 12/09/2014
Subcontractor Signature	Title/ date

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202. ² Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

FORM 6100-4
Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Utilization Form

This form is intended to capture the prime contractor's actual and/or anticipated use of identified certified DBE¹ subcontractors² and the estimated dollar amount of each subcontract. A Financial Assistance Agreement Recipient must require its prime contractors to complete this form and include it in the bid or proposal package. Prime contractors should also maintain a copy of this form on file.

Subcontractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Prime Contractor Name		Issuing/Funding Entity:	

I have identified potential DBE certified subcontractors	___ YES	___ NO
--	---------	--------

If yes, please complete the table below. If no, please explain:

Company Name	Company Address/ Phone/ Email	Est. Dollar Amt	Currently DBE Certified?

Continue on back if needed

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

Prime Contractor Signature	Title/ date

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202. ² Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

Staff Summary Report

MEETING DATE:	February 10, 2015
AGENDA ITEM:	VIII. CONSENT AGENDA (E)
AGENDA TITLE:	Aztec Arterial Phase 1B: Wilson & Company, Inc. Agreement
ACTION REQUESTED BY:	Public Works, Finance
ACTION REQUESTED:	Approval of Construction Services Agreement with Wilson & Company, Inc. for construction management services on the Aztec Arterial Phase 1B
SUMMARY BY:	Kathy Lamb

PROJECT DESCRIPTION / FACTS (Leading Department)

- The City issued a RFQP 2015-444 (Request for Qualification Based Proposals) for on-going professional services for construction management, geotechnical engineering, surveying and construction testing services associated with water and sewer line, transportation project construction. Wilson & Company, Inc. was one of three firms selected for construction management services. The Public Works Director/City Engineer has tasked Wilson & Company, Inc. with the construction management of the Aztec Arterial Phase 1B.
- The scope of services to be provided under this agreement is page 7 of the agreement.

PROCUREMENT INPUT (Purchasing)

- The City solicited the RFQP in October 2014.

CONSTRUCTION MANAGEMENT SERVICES

- Three (3) proposals were received, evaluated, and scored for construction management services: CHC Engineers, DTF Engineering and Wilson & Co.
- All consultants submitting proposals were interviewed.
- The committee evaluated Wilson & Co. highest in both proposal and interview for construction services.
- The City Engineer/Public Works Director recommends award of construction services to all three firms. On-call agreements will be negotiated with each firm. Wilson & Co., due to their resources, experience and expertise, will be tasked with construction management services for the Aztec Arterial Section 1B and Aztec Sewer Interceptor.

FISCAL INPUT (Finance Department)

- Wilson & Company, Inc.'s cost proposal is \$274,796 plus gross receipts tax. This construction service will be included in the cost of the project and, if sufficient funds exist, may be reimbursed through the federal/state funds available for the project through NMDOT.

SUPPORT DOCUMENTS:

- Wilson & Company, Inc. Construction Services Agreement

DEPARTMENT'S RECOMMENDED MOTION: Move to Approve Construction Services Agreement with Wilson & Company, Inc. construction management services on Aztec Arterial Phase 1B.

OWNER-ENGINEER AGREEMENT

THIS AGREEMENT is made this ____ day of _____, 2015, by and between City of Aztec, NM (hereafter "Owner"), and Wilson & Company, Inc., Engineers & Architects (hereafter "Engineer"), to perform professional engineering services as described herein. Therefore, for valuable consideration as set forth herein, the Owner and Engineer agree as set forth below.

PROJECT: East Aztec Arterial Route, Phase IB; Project Location BOP STA 11+04.88 to EOP STA 37+25.00

ENGINEER'S SCOPE OF SERVICES: (hereafter referred to as "Services") are generally described as follows, as more fully set out in Engineer's Proposal dated January 23, 2015, attached hereto as **Exhibit A** and incorporated herein by reference:

Provide construction management services for East Aztec Arterial Route, Phase IB; City of Aztec Project #2014-406; NMDOT CN F100090

Terms and Conditions

ARTICLE 1 **GENERAL**

1.1 Owner employs Engineer as an independent contractor, to perform the Services described herein. The Engineer agrees to accept responsibility for the proper conduct of Engineer's Services performed under this Agreement, whether performed by Engineer's employees or sub-consultants. Engineer shall not subcontract any portion of its work without prior written approval of Owner. Owner approves of the sub-consultants identified in the attached **Exhibit B**.

1.2 To the extent required by law, all final documents prepared by Engineer or its sub-consultants shall be sealed by a professional licensed in the Project state.

1.3 The Engineer shall designate a representative authorized to act in the Engineer's behalf who is acceptable to the Owner. Engineer reserves the right to change representatives as necessary due to availability.

1.4 The Engineer shall attend necessary meetings with Owner related to the Services.

1.5 The Engineer shall recommend to the Owner the obtaining of such investigations, surveys, tests,

analyses and reports as may be necessary for the proper execution of the Engineer's Services.

1.6 The Engineer represents that it is authorized to practice engineering in the state of New Mexico.

ARTICLE 2 **ENGINEER'S OBLIGATIONS**

2.1 Engineer agrees to perform its Services in accordance with the standard of care set out in Article 5.1. Unless otherwise provided herein, Engineer agrees to furnish all materials, supplies, tools, equipment, supervision, labor, drawings and anything else necessary to fully perform all of the Services described herein.

2.2 The Engineer shall (a) cooperate with the Owner and all other consultants or contractors whose work may relate to the Engineer's Services; and (b) specifically note and promptly advise the Owner of any interference with the Engineer's Services.

2.3 DESIGN PHASE

2.3.1 N/A

2.4 CONSTRUCTION DOCUMENTS PHASE

2.4.1 N/A

2.5 CONSTRUCTION PHASE

2.5.1 The Construction Phase will commence with the advertisement for Project Construction and, together with the Engineer's obligation to provide Basic Services under this Agreement, will terminate when final payment to the Contractor is due or, in the absence of a final Certificate for Payment or of such due date, sixty (60) days after the date Engineer certifies as Substantial Completion of the Work, whichever occurs first.

2.5.2 The Engineer shall assist the Owner in the Administration of the Contract for Construction as set forth in Exhibit A.

2.5.3 The Engineer shall at all times have access to the Work wherever it is in preparation or progress. The Engineer shall visit the site as set out in the Scope of Services, **Exhibit A**, to be absolutely familiar with the progress and quality of the Work and to determine if such Work is proceeding in accordance with the Contract Documents. On the basis of such on-site observations, the Engineer shall keep the Owner informed of the progress and quality of the Work and shall endeavor to guard the Owner against defects and deficiencies in such Work of the Contractor.

2.5.4 The Engineer shall not have control or charge of and shall not be responsible for, construction means, methods, techniques, sequences or procedures, for safety precautions and programs in connection with the Work, for the acts or omissions of the Contractor, Subcontractors or any other persons performing any of the Construction Work, or for the failure of any of them to carry out the Work in accordance with the Contract Documents. Nothing in this Agreement shall be construed as making Engineer a Controlling Employer as defined by OSHA for purposes of site safety.

2.5.5 The Engineer, based on observations at the site and on evaluations of the Contractor's Applications for Payment, shall assist the Owner in determining the amounts owing to the Contractor and shall certify such amounts to the Owner. Such certification shall not expand Engineer's duties and is made for the sole benefit of the Owner and is not intended to be relied upon by others.

2.5.6 Certification by the Engineer to the Owner of an amount owing to the Contractor shall constitute a representation by the Engineer to the Owner that,

based on the Engineer's observations at the site and the data comprising the Contractor's Application for Payment, the Work has progressed to the point indicated; that to the best of the Engineer's knowledge, information and belief, the quality of such Work is in accordance with the Contract Documents (subject to an evaluation of such Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated by the Engineer); and that the Contractor is entitled to payment in the amount certified.

2.5.7 Upon written request of the Owner, the Engineer shall furnish to the Owner, with reasonable promptness, written interpretations of the Contract Documents prepared by the Engineer.

2.5.8 The Engineer shall render written recommendations, within reasonable time, on all claims, disputes and other matters in question between the Owner and the Contractor relating to the execution or progress of the Work or the interpretation of the Contract Documents. The Engineer shall not be liable for decisions made in good faith in this role of neutral.

2.5.9 The Engineer shall assist the Owner in determining whether the Owner shall reject Work which does not conform to the Contract Documents or whether special inspection or testing is required.

2.5.10 The Engineer shall review and approve, or take appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for conformance with the design concept of the Work and with the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay. The Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

2.5.11 The Engineer shall assist the Owner in preparing Change Orders for the Owner's approval and execution in accordance with the Contract Documents. The Engineer shall recommend to the Owner changes in the Work that could be necessary for any reason including cost savings to the Owner.

2.5.12 The Engineer shall assist the Owner in conducting continual inspections to determine the date of Substantial Completion and the date of Final

Completion and shall review and approve, or take other appropriate action on, the Contractor's list of items to be completed or corrected and shall forward the list to the Owner for final disposition.

2.5.13 The Engineer shall assist the Owner in receiving and forwarding to the Owner for the Owner's review written warranties and related documents required by the Contract Documents and assembled by the Contractor. The Engineer shall issue to the Owner a final certificate in writing with respect to final payment.

2.6 TIME

2.6.1 The Engineer shall commence its Services within five (5) working days of written Notice to Proceed from the Owner and if such Services are interrupted for any reason, the Engineer shall resume such Services within five (5) working days from the Owner's notice to do so.

2.6.2 The Engineer shall perform Basic and Additional Services as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. Upon request of the Owner, the Engineer shall submit, for the Owner's approval, a schedule for the performance of the Engineer's services and budgets as the Project proceeds.

2.6.3 The Engineer will exercise due diligence in the performance of its professional services, but due to the nature of the work, the Engineer cannot guarantee a specific timetable for completion of the Contractor's Work. The Owner waives any right to make any claims against the Engineer for any damages or expenses claims as a result of delays in the progress of the Work so long as due diligence has been exercised by the Engineer in accordance with Paragraph 5.1, below.

ARTICLE 3 OWNER'S OBLIGATIONS

3.1 The Owner shall designate a representative authorized to act in the Owner's behalf. Owner reserves the right to change representatives as necessary due to availability.

3.2 The Owner shall provide the Engineer with bid documents to prepare a program outlining the scope of the Project and schedule.

3.3 The Owner shall provide timely input and responses to Engineer with regard to approvals of designs or other inquiries. If the Owner detects any error or omission in Engineer's designs or

documents, Owner shall give prompt notice to Engineer of same so that it may be corrected in a timely manner.

3.4 The Owner shall, at the written request of the Engineer, prior to commencement of Engineer's services and thereafter, furnish to the Engineer reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under this Agreement. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Engineer's services. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without prior notice to the Engineer.

ARTICLE 4 PAYMENT

4.1 TIME AND MATERIALS. Owner agrees to pay to the Engineer for the performance of the Engineer's Work as stated in Exhibit a, Scope of Services, on a time and materials basis the sum of: \$274,796.00 w/o NMGRT. This amount will not be exceeded without written approval of the Owner.

4.2 OTHER. As required, the basis of compensation to Engineer, hourly rates or other method, such terms is set forth in **Exhibit A**, attached hereto.

4.3 REIMBURSABLE EXPENSES. Reimbursable Expenses include expenses incurred by the Engineer in the interest of the Project, and are included in the Scope of Services cost in Exhibit A attached. No additional reimbursement shall be made under this contract.

4.3.1 Expenses of transportation in connection with the Project; expenses in connection with authorized out-of-town travel; long-distance communications; and fees paid for securing approvals of authorities having jurisdiction over the Project.

4.3.2 Expense of reproductions, postage and handling of drawings, specifications, reports and other documents.

4.3.3 Expense of renderings, models and mock-ups requested by the Owner.

4.3.4 Expense of additional insurance coverage or limits, including professional liability insurance, in excess of the requirements of Article 8.

4.3.5 Reimbursable expenses are included in the Scope of Services shown in Exhibit A costs. No additional reimbursements shall be made.

4.4

4.5 Applications for monthly progress payments shall be submitted to Owner in writing and shall state the amount of the Engineer's Services that has been performed and expenses incurred during the applicable pay period. Such Applications for Payment shall be submitted to the Owner on or before the 1st day of each month.

4.6 Payments to the Engineer shall be made within forty-five (45) days after receipt by the Owner of the Application for Payment. Amounts due and not paid shall bear interest at the rate of 1.5% per month or the highest legal rate, whichever is less. Engineer shall be entitled to its attorney's fees and costs in any action to recover amounts due and unpaid.

ARTICLE 5 **STANDARD OF CARE**

5.1 Engineer will exercise reasonable skill, care, and diligence in the performance of its services and will carry out its responsibilities in accordance with customarily accepted professional engineering practices in Engineer's community.

5.2 The Engineer agrees to comply with all federal, state and local laws, ordinances and regulations applicable to the Engineer's Services and the Project, in effect at the time such Services are rendered.

ARTICLE 6 **ADDITIONAL SERVICES**

6.1 If Engineer is requested to perform services not covered by the Scope of Services under this Agreement, then the Contract Amount shall be adjusted and compensation shall be computed in accordance with Engineer's Hourly Rate Schedule, **Exhibit A**, attached; or by lump sum as agreed by the parties.

6.1.2 If authorized in advance by the Owner, expense of overtime work, requiring higher than regular rates, shall be paid as Additional Services. Such compensation for overtime shall be deducted

from the amount due the contractor in the form of a deductive change order.

6.1.3 The following shall constitute Additional Services, which the Owner may assess to Contractor by a deductive Change Order. However, Engineer looks to Owner for payment, not to Contractor for the following:

1. Review of a Contractor's submittal out of sequence from the submittal schedule agreed to by the parties;

2. Responses to the Contractor's requests for information (RFI) where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;

3. Evaluation of substitutions proposed by the Contractor and making subsequent revisions to the Contract Documents resulting therefrom;

4. Repeated shop drawing reviews of the same submittal, after the initial review and one (1) resubmittal (e.g. "Revise and Re-submit");

5. Site visits beyond the number of regularly scheduled site visits that the Engineer has contracted for when such site visits are due to Contractor defects in Work or failure to meet the schedule;

6. Substantial completion inspections beyond one (1) initial inspection;

7. Final completion inspections beyond one (1) initial inspection.

8. Overtime caused by Contractor.

ARTICLE 7 **USE OF ENGINEER'S DOCUMENTS**

7.1 The Engineer shall be deemed the author of all documents and designs created and prepared by the Engineer and shall retain co-ownership with the Owner. As Co-owner of the documents, the Owner shall be permitted to retain copies, including reproducible copies, of the Engineer's drawings, specifications and other documents for information and reference.

7.2 The Owner shall not use, modify or assign to others the Engineer's documents or designs on other projects without the Engineer's express written consent.

**ARTICLE 8
INSURANCE**

8.1 Engineer shall procure and maintain in force, Worker's Compensation Insurance, Comprehensive General Liability Insurance and Professional Liability Insurance. Owner agrees to look to the proceeds of insurance to satisfy claims against the Engineer and Owner will not hold payment due to the Engineer for claims that are covered by Engineer's insurance. The Engineer's insurance shall be written with limits of liability not less than those set forth below:

<u>TYPE</u>	<u>LIMITS</u>
Workers Compensation Comprehensive	Statutory Amount
Professional Liability	\$1,000,000.
Per Claim and Annual Aggregate	
General Liability:	
Bodily Injury (including death)	
Each Occurrence	\$1,000,000.
Aggregate	\$1,000,000.
Property Damage	
Each Occurrence	\$1,000,000.
Comprehensive Automobile Liability:	
Bodily Injury (including death)	
Each Occurrence	\$1,000,000.

8.2 The Engineer shall maintain in effect all insurance coverage required under this Agreement at the Engineer's sole expense. All insurance policies shall contain a provision that the coverages afforded thereunder shall not be cancelled until at least thirty (30) days prior written notice has been given to the Owner.

**ARTICLE 9
INDEMNITY**

9.1 To the fullest extent permitted by law, the Engineer shall indemnify and hold harmless the Owner from and against all damages, losses and expenses, including but not limited to reasonable attorney's fees, but only to the extent caused by any negligent act, error or omission of the Engineer or anyone directly or indirectly employed by the

Engineer or anyone for whose acts the Engineer may be liable. This obligation is limited by Paragraph 12.1, below.

9.2 Under no circumstances shall Engineer be required to defend or indemnify the Owner for claims caused or alleged to be caused in whole or in part by the acts or omissions of the Owner or other third parties for whom the Engineer is not responsible.

9.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Engineer and the its sub-consultants from and against all damages, losses and expenses, including but not limited to reasonable attorney's fees, but only to the extent caused by any negligent act, error or omission of the Owner or anyone directly or indirectly employed by the Owner or anyone for whose acts the Owner may be liable.

**ARTICLE 10
DISPUTE RESOLUTION**

10.1 In the event a dispute shall arise between the parties to this Agreement, then as a condition precedent to any legal action by either party, the parties agree to participate in at least one session of mediation, as needed, in an effort to resolve the dispute. The parties agree to split the mediator's fees equally. The mediation shall be administered by a mutually agreeable mediation service and shall be held in Aztec, NM, unless another location is mutually agreed upon.

**ARTICLE 11
CONTRACT INTERPRETATION**

11.1 This Agreement shall be governed by the law of the state of New Mexico.

11.2 The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision. The invalid provision shall be deemed stricken and the remainder of this Agreement shall remain in full force and effect.

11.3 This Agreement is solely for the benefit of the parties hereto and represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, proposals, bids, or agreements, either written or oral.

11.4 No modification or amendment of any of the terms and conditions of this Agreement shall be

valid unless agreed to in writing and signed by both parties.

**ARTICLE 12
LIMITATION OF LIABILITY**

12.1 To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Engineer, its officers, directors, employees, agents, and sub-consultants, and any of them, to Owner and anyone claiming by, through or under Owner, for any and all claims, losses, liabilities, costs or damages whatsoever arising out of, resulting from or in any way related to the Project or this Agreement from any cause, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, or warranty (express or implied) of Engineer, its officers, directors, employees, agents or sub-consultants or any of them, shall not exceed the total compensation actually received by Engineer from Owner under this Agreement. The Owner agrees that specific consideration has been given by the Engineer for this limitation and that it is deemed adequate.

ARTICLE 13

ADDITIONAL TERMS

Scope of work and fee is based on a 40 hour a week schedule, 210 day construction schedule. Overtime labor effort is not included herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the day and year first above written.

Owner: City of Aztec, NM

By: _____

Sally Burbridge
Mayor
City of Aztec, NM

Engineer: Wilson & Company, Inc., Engineers & Architects

By: _____

Mario Juarez-Infante
Vice President

EXHIBIT A Scope of Services

Wilson & Company will provide daily construction observation and construction management. These services will include:

Project Daily Diary

Source Book Document - (Item installation tracking)

Assist in the preparation of documents for requesting reimbursement from the NMDOT by auditing the following:

- a. Contractor and subcontractor's payrolls
- b. Certificate of compliance files and Verification
- c. Documentation of payment from City to the Contractor
- d. DBE compliance
- e. EEO compliance for all subcontractors and the Contractor

Labor Standards Compliance Verification

Conduct EEO and Labor Compliance interviews

Conduct DBE Compliance interviews (Commercially Useful Function CUF)

Administer monthly progress payments

Material Review and Testing including

- a. Compliance of Test Requirements for both QC and IA
- b. Material Guarantees and Warranties
- c. Required Weekly and Monthly Reports for Material Reviewed/Tested

Review and Maintain NPDES Project File, NOI, NOT and SWPPP Reports

Coordinate with Engineer of Record for project document interpretation

Issue Clarifications Request for Information

Enforce Contractor Compliance with project documents

Perform Density Testing for QC Compliance

Manage Western Tec for IA Compliance

Coordinate with Project Testing Consultant to schedule appropriate materials and construction testing for QC Compliance

Measure project quantities

Review Contractor Pay Applications in accordance with the Approved Schedule of Values and Method of Measurement and Payment

Evaluate and assist with Field Orders Directives, Request for Information, Change Orders, etc.

Assist and Public Relations, including assisting with information dissemination

Enter and /or confirm entry of all required information and payment data into B2Gnow and LCPtracker

Quality Assurance of materials and workmanship

Serve as Liaison between the City and Contractor in an effort to facilitate design intent, and provide quality, budget and schedule control

Make field adjustments with approval of City

Project Final Acceptance and Close Out

Complete Asbuilts

Project Certification

Construction Management Proposal East Aztec Arterial Route						
Prepared for City of Aztec						
Description/Personnel	C Perea	Observer	Admin	R Garcia	CADD	
Rate \$\$/hr	\$124.00	\$82.00	\$54.00	\$124.00	\$86.00	
Project Start-Up						
File Set Up			20			
Testing Requirement Set Up			8	20		
Team Roles and Responsibility	4	1	1	1		
Pre Construction Meeting	4	4	4	4		
Project Observation & Management						
Project Observation: Regular Time at 40 hrs/week for 240 days		1200				
Project Management (Progress Meetings, RFI, Submittals, Change Order Review/Approval, Testing Credits Review/Certification): 20 hrs/week for 240 days	100		140	400		
Documentation Review, File Management 6 hrs/week for 240 days, (These services will be completed by City Certified Pay Roll, LCPT Tracker, B2G Now, Employee Wage Interviews)	20		112	60		
Pay Applications, Change Orders, Requests for Reimbursements 25 hrs/Month for 240 days	40		40	120		
DBE, EEO, Monthly Audits, Paperwork Corrections 20 hrs/Month for 240 days	20		100	40		
Project Close-Out						
Punch List Final Review/Certification	12	8	4	40		
Close Out Package	20	8	20	40		
Certification/Paperwork	20			40		
Final Reimbursement Paperwork/Certifications	20		12	40		
As Builts Certification to Vol 7 Revision	4			4	24	
Quality Assurance Testing						
Concrete Sampling and Testing, Density Testing (Asphalt, Sub base and Base Course) 8 hrs/week for 240 days	0	0		0		
Total Man Hours	264	1221	461	809	24	
Unit Cost	\$32,736.00	\$100,122.00	\$24,894.00	\$100,316.00	\$1,728.00	
Total Labor Cost						\$259,796.00
Geo Technical Support Proctors, Asphalt Gyration and Cores, Breaking Concrete Cylinders						\$15,000.00
Total Expenses						\$15,000.00
Proposed Project Cost w/o NMGR						\$274,796.00

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EXHIBIT B
Sub-Consultants

Owner approves of the use of the following sub-consultants by Engineer:

<u>Name</u>	<u>Discipline</u>
Western Technologies	Geo-Technical Investigation, Material Testing

Staff Summary Report

MEETING DATE:	February 10, 2015
AGENDA ITEM:	VIII. CONSENT AGENDA (F)
AGENDA TITLE:	Sanitary Sewerline: Wilson & Company, Inc. Agreement
ACTION REQUESTED BY:	Public Works, Finance
ACTION REQUESTED:	Approval of Construction Services Agreement with Wilson & Company, Inc. for construction management services on Sanitary Sewerline project
SUMMARY BY:	Kathy Lamb

PROJECT DESCRIPTION / FACTS (Leading Department)

- The City issued a RFQP 2015-444 (Request for Qualification Based Proposals) for on-going professional services for construction management, geotechnical engineering, surveying and construction testing services associated with water and sewer line, transportation project construction. Wilson & Company, Inc. was one of three firms selected for construction management services. The Public Works Director/City Engineer has tasked Wilson & Company, Inc. with the management of the sanitary sewer line.
- NMED (New Mexico Environment Department) funding may be used for construction services on the sanitary sewerline providing NMED's agreement has been used, the consultant has completed the various certifications required by the federal funding and NMED has approved the agreement and proposed fee schedule. NMED has approved Wilson & Company, Inc.'s certifications and the agreement and proposed fee scheduled has been submitted for NMED approval.
- Wilson & Company, Inc. will be included in pre-bid conference on the project, necessitating an agreement to be in place before the project goes to bid.

PROCUREMENT INPUT (Purchasing)

- The City solicited the RFQP in October 2014.

CONSTRUCTION MANAGEMENT SERVICES

- Three (3) proposals were received, evaluated, and scored for construction management services: CHC Engineers, DTF Engineering and Wilson & Co.
- All consultants submitting proposals were interviewed.
- The committee evaluated Wilson & Co. highest in both proposal and interview for construction services.
- The City Engineer/Public Works Director recommends award of construction services to all three firms. On-call agreements will be negotiated with each firm. Wilson & Co., due to their resources, experience and expertise, will be tasked with construction management services for the Aztec Arterial Section 1B and Aztec Sewer Interceptor.

FISCAL INPUT (Finance Department)

- Wilson & Company, Inc.'s cost proposal is \$322,431.40 plus gross receipts tax. This construction service will be included in the cost of the project and, if sufficient funds exist, may be reimbursed through the loan/grant funds available for the project.
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SUPPORT DOCUMENTS: - Wilson & Company, Inc. Construction Services Agreement (NMED form)

DEPARTMENT'S RECOMMENDED MOTION: Move to Approve Construction Services Agreement with Wilson & Company, Inc. construction management services on Sanitary Sewerline project

**AGREEMENTS FOR ENGINEERING SERVICES
(Publicly Funded Project)**

THIS Agreement, made this 10th day of February 2015 by and between the City of Aztec, NM hereinafter referred to as the OWNER, and Wilson & Company, Inc hereinafter referred to as the ENGINEER. Contract becomes effective on the date of the last signature.

The OWNER intends to construct a Project consisting of the Sanitary Sewer Interceptor Improvements dated October 1, 2014. The principal component of the project is the removal of the existing and construction of a new sewer main in Aztec, NM consisting of trenching and backfilling, sewer pipe, manholes, sewer taps and service lines, roadway paving, CMP culverts, concrete box culvert with wingwalls, and other amenities included in the plans, specifications and bid documents for the project.

The project being located in San Juan County, State of New Mexico, which may be paid for in part with financial assistance from the United States of America acting through the United States Department of Agriculture – Rural Development, hereinafter referred to as USDA-RD; and/or through the United States Environmental Protection Agency, hereinafter referred to as EPA; and/or the New Mexico Environment Department, hereinafter referred to as NMED; and/or the New Mexico Finance Authority, hereinafter referred to as NMFA; and/or the New Mexico Department of Finance, hereinafter referred to as DFA; all collectively referred to as the Funding Agency. Neither the United States or the State of New Mexico nor any of its departments, agencies, or employees is or will be a party to this Agreement or any sub-agreement. The ENGINEER agrees to perform the various professional engineering services for the planning, design, and construction of said Project in accordance with the provisions of this Agreement.

CONTENTS

SECTION A - GENERAL PROVISIONS

1. General
2. Approvals
3. Responsibilities of the ENGINEER
4. Responsibilities of the OWNER
5. Changes
6. Termination of Contract
7. Payment
8. Time
9. Project Design
10. Audits and Access to Records
11. Subcontracts
12. Insurance
13. Environmental Conditions of Site
14. Mutual Waiver
15. Independent Contractor
16. Equal Employment Opportunity
17. Gratuities
18. Covenants Against Contingent Fees
19. Cost and Pricing Data on Federally
Funded Projects
20. Remedies
21. Assurance Against Debarment

SECTION B - ENGINEERING SERVICES

- Engineer Services During the Planning Phase
- Engineering Services During the Design Phase
- Engineering Services During the Construction Phase
- Engineering Services During the Operation Phase

SECTION C - ADDITIONAL ENGINEERING SERVICES

SECTION D - SPECIAL PROVISIONS OR MODIFICATIONS

ATTACHMENTS

- Attachment I - Planning Services scope of work, cost proposal and compensation for Engineering Services during the Planning Phase
- Attachment II - Design Services Scope of Work, cost proposal and compensation for Engineering Services during the Design Phase
- Attachment III - Construction Services Scope of Work, cost proposal and compensation for Engineering Services during the Construction Phase
- Attachment IV - Operational Services scope of work, cost proposal and compensation for Engineering Services during the Operation Phase

SECTION A – GENERAL PROVISIONS

1. General

(a) This Agreement represents the entire and integrated Agreement between the OWNER and the ENGINEER for the Project and supersedes all prior negotiations, representations or agreements, either written or oral. In the event any provisions of this Agreement or any subsequent addendum shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party. The General provisions of this Agreement supersede any conflicting SPECIAL PROVISIONS.

(b) OWNER and ENGINEER each is bound and the partners, successors, executors, administrators and legal representatives of OWNER and ENGINEER are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives of such other party, in respect of all covenants, agreements, and obligations of the Agreement. Neither OWNER nor ENGINEER may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may be become due) in the Agreement without written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent of an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Unless expressly provided otherwise in this Agreement:

(1) Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by OWNER or ENGINEER to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them

(2) All duties and responsibilities undertaken pursuant to this Agreement will be for sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party.

(c) The ENGINEER will work closely with the Funding Agency, as necessary, for funding to be provided.

(d) The ENGINEER will attend conferences and public hearings with the OWNER, representatives of the Funding Agency, or other interested parties and provide assistance in connection with such undertakings as provided for in the scope of work detailed in the Attachments.

2. Approvals

(a) This Agreement shall not become effective until approved by the Funding Agency. Such approval shall be evidenced by the signature of a duly authorized representative of the Funding Agency in the space provided in the Attachments to this Agreement. The approval shall in no way commit the Funding Agency to render financial assistance to the OWNER. The Funding Agency is without liability for any payment hereunder, but in the event such assistance is provided, the approval shall signify that the provisions of this Agreement are consistent with the requirements of the Funding Agency.

(b) Review or approval of documents by or for the Funding Agency under this Agreement is for administrative purposes only and does not relieve the ENGINEER or OWNER of their responsibilities to design, construct and operate the Project as required under law, regulations, permits and good management practices.

3. Responsibilities of the ENGINEER

(a) The ENGINEER shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all design drawings, specifications, reports, and other services furnished by the ENGINEER under this Agreement. If this Agreement involves environmental measures or data generation, the ENGINEER shall comply with EPA quality assurance requirements that can be found on their website at <http://www.epa.gov/quality/index.html>. The ENGINEER shall keep the OWNER informed of the performance of the ENGINEER'S duties under this Agreement. The ENGINEER shall promptly and without additional compensation, correct or revise any errors, omissions, or other deficiencies in the design drawings,

specifications, reports, and other services provided by ENGINEER under terms of this Agreement.

(b) The ENGINEER shall perform the professional services necessary to accomplish the work specified in this Agreement, in accordance with this Agreement and applicable Funding Agency requirements in effect on the date of execution of any assistance agreement for this Project.

(c) The OWNER, or Funding Agency review or approval of design drawings, specifications, reports, and other services furnished hereunder shall not in any way relieve the ENGINEER of responsibility for the technical adequacy of the work. Neither the OWNER, nor Funding Agency review, approval or acceptance of, nor payment for any of the services shall be construed as a waiver of action arising out to the performance of this Agreement.

(d) The ENGINEER shall be and shall remain liable, in accordance with applicable law, for all damages to the OWNER caused by the ENGINEER's negligent performance of any of the services furnished under this Agreement, except for errors, omissions or other deficiencies to the extent attributable to the OWNER or OWNER-furnished data. The ENGINEER shall not be responsible for any time delays in the Project caused by circumstances beyond the ENGINEER'S control.

(e) ENGINEER'S opinions of probable Construction Cost are to be made on the basis of ENGINEER'S experience and qualifications and represent ENGINEER'S best judgment as an experienced and qualified professional generally familiar with the construction industry. However, since ENGINEER has no control over the cost of labor, materials, equipment, or services furnished by others, or over Contractor's methods of determining prices, or over competitive bidding or market conditions, ENGINEER cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by ENGINEER. If OWNER wishes greater assurance as to probable Construction Cost, OWNER shall employ an independent cost estimator.

(f) During the Construction Phase, the ENGINEER shall not at any time supervise, direct, or have control over Contractor's work, nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.

(g) The standard of care of all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of subject profession practicing under similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, expressed or implied, under this Agreement or otherwise, in connection with ENGINEER'S services.

(h) The ENGINEER's obligations under this clause are in addition to the ENGINEER's other express or implied assurances under this Agreement or State law and in no way diminish any other rights that the OWNER may have against the ENGINEER for faulty materials, equipment, or work.

4. Responsibilities of the OWNER

(a) The OWNER shall designate in writing a person authorized to act as the OWNER's representative. The OWNER or its representative shall receive and examine documents submitted by the ENGINEER, interpret and define the OWNER's policies and render decisions and authorizations promptly in writing.

(b) OWNER shall be responsible for, and ENGINEER may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by OWNER to ENGINEER pursuant to this Agreement. ENGINEER may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement without responsibility for verifying accuracy of OWNER furnished data and information.

(c) The OWNER shall provide to the ENGINEER full and free access to enter upon all property required for

the performance of the ENGINEER's services under this Agreement.

(d) The OWNER may make and retain copies of Documents for information and reference in connection with use on the Project by OWNER. Such Documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any such reuse or modification without written verification or adaptation by ENGINEER will be at OWNER's sole risk and without liability or legal exposure to ENGINEER. Any verification or adaptation as stated above, will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

5. Changes

(a) The OWNER may, at any time, with prior approval of the Funding Agency, by written order make changes within the general scope of this Agreement in the services or work to be performed. If such changes cause an increase or decrease in the ENGINEER's cost or time required to perform any services under this Agreement, whether or not changed by any order, the OWNER shall make an equitable adjustment and modify this Agreement in writing. The ENGINEER must assert any claim for adjustment under this clause in writing within thirty (30) calendar days from the date it receives the OWNER's notification of change, unless the OWNER grants additional time before the date of final payment.

(b) No services for which the ENGINEER will charge an additional compensation shall be furnished without the written authorization of the OWNER.

6. Termination of Contract

(a) This Agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided that no such termination may be effected unless the other party is given (1) not less than fourteen (14) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party before termination.

(b) This Agreement may be terminated in whole or in part in writing by the OWNER for its convenience, provided that the ENGINEER is given (1) not less than fourteen (14) calendar days written notice (delivered by certified, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the OWNER prior to termination.

(c) If termination for default is effected by the OWNER, an equitable adjustment in the price provided for in this agreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the ENGINEER at the time of termination may be adjusted to cover any additional costs to the OWNER because of the ENGINEER's default. If the ENGINEER effects termination for default, or if the OWNER effects termination for convenience, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the ENGINEER for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the ENGINEER relating to commitments which had become firm prior to the termination.

(d) Upon receipt of a termination action under paragraphs (a) or (b) above, the ENGINEER shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make available to the OWNER within fourteen (14) calendar days copies of all data, design drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the ENGINEER in performing this Agreement, whether completed or in process.

(e) Upon termination under paragraphs (a) or (b) above, the OWNER may take over the work and may award another party an Agreement to complete the work under this Agreement.

(f) If, after termination for failure of the ENGINEER to fulfill contractual obligations, it is determined that the ENGINEER had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the OWNER. In such event, adjustment of the Agreement price shall be made as provided in

paragraph 6(c) of this clause.

7. Payment

(a) The ENGINEER will submit to the OWNER for services rendered an itemized bill showing charges for such services accompanied by any additional documentation requested by the OWNER. Such invoices are limited to no more than one per month. Compensation will be based on the lump sum or standard hourly rate with a maximum method of payment as detailed in the Attachments.

(b) The OWNER shall notify the ENGINEER of any disputed amounts in the invoices within fourteen (14) calendar days of receipt. If OWNER contests an invoice, OWNER may withhold only that portion so contested, and must pay the undisputed portion.

(c) Final Payment under this Agreement or settlement upon termination of this Agreement shall not constitute a waiver of the OWNER's claims against the ENGINEER under this Agreement.

(d) If OWNER fails to make any payment due ENGINEER within forty-five (45) calendar days after OWNER's receipt of ENGINEER's invoice, the amount due ENGINEER shall be increased at the rate of 1.5% per month from said forty-fifth day. The OWNER is solely responsible for the payment of any interest incurred due to late payments. The FUNDING AGENCY will not reimburse for any interest incurred. In addition, after ten (10) calendar days prior written notice, the ENGINEER may suspend services under this Agreement until ENGINEER is paid in full. OWNER waives any and all claims against ENGINEER for any such suspension.

8. Time

(a) PROGRESS AND COMPLETION

1. Time limits stated in this Agreement are of the essence. By executing the Agreement, ENGINEER confirms that the Contract Time(s) is (are) reasonable periods for performing each phase of the Work.
2. The ENGINEER shall proceed expeditiously, consistent with professional skills, with adequate forces to achieve completion within the Contract Time.
3. The OWNER shall not be liable to the ENGINEER for additional time or money if the ENGINEER submits a progress report expressing an intention to achieve completion of the Work prior to the Contract Time and then is not able to achieve intended accelerated schedule regardless of the reason.
4. If the ENGINEER is delayed at any time in the commencement or progress of the Work by an act or neglect of the OWNER, changes in the Work as directed by the OWNER in writing, or other causes beyond the ENGINEER'S control, then the Contract Time may be extended by OWNER per Section 5 of this Agreement. Extensions of time not associated with modifications or change to the Work shall not be allowed to increase the Contract amount for overhead or for any other reason and shall strictly apply toward liquidated damages.
5. The ENGINEER shall promptly notify OWNER in writing of any conditions that may delay delivery of work beyond the Contract Time.
6. OWNER shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the ENGINEER'S performance of its Services.

(b) CONTRACT TIME AND LIQUIDATED DAMAGES

1. The ENGINEER agrees that the Services being provided under this Agreement will be performed regularly, diligently and without interruption at such rate of progress as will ensure completion within the Contract Time. It is expressly understood and agreed, by and between ENGINEER and the OWNER, that the Contract Time is a reasonable time for completion of the Services, taking into consideration the usual conditions for performing the Services. ENGINEER agrees to promptly notify OWNER of delays in completing the services under this Agreement that are beyond ENGINEER's control and for which a Contract Time extension will be requested. If the ENGINEER neglects, fails or refuses to complete the Services within the Contract Time, including any time extension granted by the OWNER, then the

ENGINEER agrees to pay the OWNER the amount specified in the ATTACHMENT, not as a penalty, but as liquidated damages.

2. The parties agree that the amount of the likely damages to the OWNER for such delay is difficult to ascertain at the time of execution of this Agreement, but that a reasonable estimate of such damages may be deducted from any monthly progress payments due to the ENGINEER or from other monies being withheld from the ENGINEER when a reasonable estimate of the expected date of completion can be determined by the OWNER.
3. Final accounting of Liquidated Damages shall be determined at completion and the ENGINEER shall be liable for any Liquidated Damages over and above unpaid balances held by the OWNER.
4. The OWNER and ENGINEER agree that as mutually agreeable, reasonable Liquidated Damages for delay (but not as a penalty), ENGINEER shall pay OWNER amount specified in the ATTACHMENT (minimum fifty dollars [\$50.00] per day) for each calendar day that expires after the Contract Time specified in the Agreement until the Work is complete and accepted by the OWNER. OWNER shall have no more than ten (10) calendar days to accept or reject the Work.

9. Project Design

Unless otherwise approved by the OWNER and Funding Agency, the ENGINEER shall specify materials, equipment, and processes that are readily available through competitive procurement and consistent with State and Federal regulations.

10. Audits and Access to Records

(a) The ENGINEER shall maintain books, records, documents, and other evidence directly pertinent to performance on work under this Agreement in accordance with generally accepted accounting principles and practices consistently applied, and Funding Agency regulations in effect on the date of execution of this Agreement. The ENGINEER shall also maintain the financial information and data used by the ENGINEER in the preparation of support of the cost submission required under EPA regulations in effect on the date of execution for any negotiated agreement or amendment thereof and a copy of the cost summary submitted to the OWNER. The Funding Agency, the Comptroller General of the United States, the U.S. Department of Labor, OWNER, and the State water pollution control agency or any of their duly authorized representatives shall have access to such books, records, documents, and other evidence for inspection, audit, and copying during normal business hours. The ENGINEER will provide proper facilities for such access and inspection.

(b) The ENGINEER agrees to make paragraphs (a) through (f) applicable to all agreements it awards in excess of \$10,000, at any tier, and to make paragraphs (a) through (f) of this clause applicable to all amendments directly related to Project performance.

(c) Audits conducted under this provision shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agency (ies) and the General Accounting Office.

(d) The ENGINEER agrees to disclose all information and reports resulting from access to records under paragraphs (a) and (b) of this clause to any of the agencies referred to in paragraph (a) upon their request.

(e) Records under paragraphs (a) and (b) above shall be maintained and made available by the ENGINEER during performance of services under this Agreement and for three (3) years from the date of final Federal/State assistance payment to the OWNER for the Project. In addition, those records which relate to any controversy arising under this Agreement, litigation, the settlement of claims arising out of such performance or to costs or items to which an audit exception has been taken shall be maintained and made available by the ENGINEER until three (3) years after the date of resolution of such appeal, litigation, claim or exception.

(f) This right of access clause applies to financial records pertaining to all agreements (except formally advertised, competitively awarded, fixed price agreements) and all agreement amendments regardless of the

type of agreement. In addition, this right of access applies to all records pertaining to all agreements and agreement amendments:

1. To the extent the records pertain directly to Agreement performance; or
2. If there is any indication that fraud, gross abuse or corrupt practices may be involved; or
3. If the Agreement is terminated for default or for convenience.

11. Subcontracts

(a) Any subcontractors and outside associates or consultants required by the ENGINEER in connection with services under this Agreement will be limited to such individuals or firms as were specifically identified and agreed to during negotiations of this Agreement. The OWNER and the FUNDING AGENCY must give prior approval for any substitutions, additions or deletions to such subcontractors, associates, or consultants.

(b) The ENGINEER may not subcontract services to subcontractors or consultants in excess of thirty (30) percent of the total phased compensation due ENGINEER and detailed in the Attachments without the OWNER AND FUNDING AGENCY prior written approval.

12. Insurance

The ENGINEER agrees to obtain and maintain, at the ENGINEER's expense, such insurance as will protect the ENGINEER from claims under the Workman's Compensation Act and such comprehensive general liability and automobile insurance as will protect the OWNER and the ENGINEER from all claims for bodily injury, death, or property damage which may arise from the performance by the ENGINEER, or by the ENGINEER's employees, for the ENGINEER's functions and services required under this Agreement. Such insurance shall be in an amount specified in ATTACHMENT for injury to any one person and amount specified in ATTACHMENT on account of any one accident and in the amount specified in ATTACHMENT for property damage. The ENGINEER further agrees to procure and maintain professional liability (errors and omissions) insurance in an amount specified in ATTACHMENT per claim and in the aggregate. Prior to commencement of any work, the ENGINEER shall furnish to the OWNER a certificate that complies with this paragraph. The certificate shall provide that the policy shall not be canceled until at least ten (10) calendar days prior written notice shall have been given to the OWNER. ENGINEER shall provide annual updates of the certificate to demonstrate the policy remains in effect for the duration of this Agreement.

13. Environmental Condition of Site

(a) Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.

(b) Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.

(c) If Engineer encounters an undisclosed Constituent of Concern, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.

(d) It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

(e) If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 calendar days' notice.

(f) Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

14. Mutual Waiver

To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

15. Independent Contractor

Engineer will, at all times during the performance of this Agreement and in connection with the Services, be deemed to be an Independent Contractor. No relationship of employer-employee or agency or other fiduciary capacity is created by this Agreement or by Engineer's performance of the Services.

16. Equal Employment Opportunity

The ENGINEER shall comply with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented in Department of Labor regulations 41 CFR Part 60.

17. Gratuities

(a) If the OWNER finds after a notice and hearing that the ENGINEER or any of the ENGINEER's agents or representatives offered or gave gratuities (in the form of entertainment, gifts, or otherwise), to any official, employee, or agent of the OWNER or the FUNDING AGENCY in an attempt to secure this Agreement, or favorable treatment in awarding, amending or making any determinations related to the performance of this Agreement, the OWNER may, by written notice to the ENGINEER, terminate this Agreement. The OWNER may also pursue other rights and remedies that the law or this Agreement provides. However, the existence of the facts on which the OWNER bases such findings shall be in issue and may be reviewed in proceedings under the Remedies clause of this Agreement.

(b) In the event this Agreement is terminated as provided in paragraph (a), the OWNER may pursue the same remedies against the ENGINEER as it could pursue in the event of a breach of the Agreement by the ENGINEER. As a penalty, in addition to any other damages to which it may be entitled by law, the OWNER may pursue exemplary damages in an amount (as determined by the OWNER) which shall be not less than three nor more than ten times the costs the ENGINEER incurs in providing any such gratuities to any such officer or employee.

18. Covenant Against Contingent Fees

The ENGINEER represents that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the ENGINEER for the purpose of securing business. For breach or violation of this assurance the OWNER shall have the right to annul this Agreement without liability or, at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fees.

19. Cost and Pricing Data on Federally-funded Projects (delete section if not applicable)

The ENGINEER and its subcontractor(s) assure that cost and pricing data submitted for evaluation with respect to negotiation of prices for negotiated agreements, lower tier sub-agreements, or amendments are based on current, accurate, and complete data supported by their books and records. If the OWNER, or Funding Agency determines that any price (including profit) negotiated in connection with this Agreement, any lower tier subagreement, or any amendment thereunder was increased by any significant sums because the data provided was incomplete, inaccurate, or not current at the time of submission, then such price or cost or profit shall be reduced accordingly; and this Agreement shall be modified in writing to reflect such action. Failure to agree on a reduction shall be subject to the Remedies clause of this Agreement.

20. Remedies

Unless otherwise provided in this Agreement, all claims, counter-claims, disputes, and other matters in question between the OWNER and the ENGINEER arising out of or relating to this Agreement or the breach of it will be decided by non-binding mediation or arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the OWNER is located.

21. Assurance Against Debarment

The ENGINEER assures that neither it nor any of its subcontractors are suspended or debarred by EPA or USDA-RD.

SECTION B – ENGINEERING SERVICES

The ENGINEER shall furnish ENGINEERING SERVICES as follows in accordance with the GENERAL PROVISIONS of the Agreement and as authorized by the appropriate Attachment to this Agreement:

Engineering Services During the Planning Phase

1. The ENGINEER shall complete the ENGINEERING SERVICES described in ATTACHMENT I– Planning Services scope of work and cost proposal within the time specified in Attachment I – Compensation for Engineering Services During the Planning Phase from the date of written authorization to proceed unless otherwise mutually agreed to in writing by both parties. Any supporting documentation or revisions regarding the ENGINEER's services under this Agreement necessary to obtain the approval of the Funding Agency and all State regulatory agencies will be provided promptly.

Engineering Services During the Design Phase

2. The ENGINEER shall complete the ENGINEERING SERVICES described in ATTACHMENT II– Design Services scope of work and cost proposal and Section B-2 through B-10 described herein within the time specified in Attachment II – Compensation for Engineering Services During the Design Phase from the date of written authorization to proceed unless otherwise mutually agreed to in writing by both parties. Any supporting documentation or revisions regarding the ENGINEER's services under this Agreement necessary to obtain the approval of the Funding Agency and all State regulatory agencies will be provided promptly.
3. The ENGINEER shall perform the necessary design surveys, accomplish the detailed design of the Project, prepare contract documents including design drawings, specifications and invitations for bids, and prepare a final opinion of probable Project costs based on the final design of the Project. The design drawings prepared shall be in sufficient detail to show the character and extent of the Project and to permit the actual location of the proposed improvements on the Project site. It is also understood that if subsurface explorations such as borings, or soil tests are required to determine amounts of rock excavation or foundation conditions, the ENGINEER will furnish coordination of said explorations as an Additional Engineering Service, and the costs incident to such explorations, no matter whether they are performed by the ENGINEER or by others shall be paid for by the OWNER as indicated in Section C and set out in

Attachment II.

4. The ENGINEER shall review the Engineering Report prepared for this Project and, if necessary and upon consultation with and concurrence of the OWNER, Funding Agency or delegated State as appropriate, shall revise design criteria, design standards, treatment process sizing and other appropriate preliminary design information included in the Plan or other preliminary engineering reports in order to complete the final design for the Project in accordance with the performance standards and accepted engineering practices.
5. The ENGINEER shall assist the OWNER in obtaining necessary permits and approvals from appropriate Federal, State, and local regulatory agencies. The cost of obtaining such permits and approvals shall be borne by the OWNER. However, this shall not be construed as a guarantee that the ENGINEER can cause a permit or permit condition to be granted or further the OWNER's goals.
6. The Contract Documents furnished by the ENGINEER under Section B-4 shall utilize Funding Agency endorsed construction contract documents, as appropriate.
7. Prior to the advertisement for bids, the ENGINEER shall provide for each construction contract to be awarded by the OWNER, the number of copies specified in Attachment II of the detailed design drawings, specifications, and contract documents for use by the OWNER and appropriate Federal, State and local agencies from whom approval of the Project must be obtained. The ENGINEER shall provide additional copies of the above specified documents to the OWNER at the cost of reproduction. Originals of such items as documents, survey notes, and tracings, prepared by the ENGINEER are and shall remain the property of the ENGINEER, but this shall in no way infringe upon the OWNER's rights to such items under Section A-6(e).
8. The ENGINEER shall establish baselines for locating the work together with a suitable number of benchmarks adjacent to the work and show their location in the Contract Documents. This information and the Contract Documents will provide the contractor sufficient reference from which to execute the contract work. The ENGINEER is not obligated to set construction grade stakes for the construction of the Project.
9. The ENGINEER shall prepare and furnish to the OWNER three (3) copies of maps or drawings showing the approximate location of needed construction easements, permanent easements, rights-of-way and land to be acquired. Such maps or drawings shall be furnished promptly to enable the OWNER to initiate property and easement acquisitions.
10. The ENGINEER shall, prior to completion of ninety (90) percent of the Design Phase service, prepare and furnish to the OWNER an estimate for total compensation to be paid to the ENGINEER for providing the services to be performed in the Construction Phase and Operation Phase.
11. Section B-2 through B-10 and those ADDITIONAL ENGINEERING SERVICES designated for the Design Phase in Attachment II will take effect upon execution of Attachment II.

Engineering Services During the Construction Phase

12. ENGINEER shall complete the ENGINEER SERVICES described in ATTACHMENT III – Construction Services scope of work and cost proposal and section B-12 through B-23 described herein, within the time specified in Attachment III – Compensation for Engineering Services During the Construction Phase from the date of written authorization to proceed unless otherwise mutually agreed to by both parties.
13. The ENGINEER shall attend the bid opening and tabulate the bid proposals, analyze the responsiveness of the bidders, check references, and make recommendations for awarding the contract(s) for construction to the lowest responsible, responsive bidder.
14. Upon award of each construction contract, the ENGINEER shall furnish to the OWNER, for each contract, the number specified in Attachment III of the sets of the design drawings, specifications and contract documents for execution by the OWNER and contractor. The ENGINEER shall provide additional copies of such contract documents to the OWNER at the cost of reproduction.

15. The ENGINEER shall review and approve, for conformance with the design concept all shop drawings and other submittals required by the Contract Documents to be furnished by contractors.
16. The ENGINEER shall interpret the general intent of the design drawings and specifications to endeavor to protect the OWNER against defects and deficiencies in construction on the part of the contractors.
17. The ENGINEER shall provide general engineering review of the work of the contractors as construction progresses to ascertain that the contractors are conforming to the general design concept. Engineer shall, in connection with observations of Contractor's Work while it is in progress make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, but at least monthly, to observe as an experienced and qualified design professional the progress and quality of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of Contractor's Work in progress or to involve detailed inspections of Contractor's Work in progress beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.
18. The ENGINEER's undertaking hereunder shall not relieve the contractor of its obligation to perform the work in conformity with the Contract Documents and in a competent manner; nor shall it make the ENGINEER an insurer of the contractor's performance. Engineer shall not at any time supervise, direct, or have control over Contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.
19. The ENGINEER shall review each contractor's applications for progress and final payments and submit sufficient copies of same to the OWNER with the ENGINEER's recommendation for approval or disapproval.
20. The ENGINEER shall prepare necessary contract change orders for approval of the OWNER, the Funding Agency and others as required. The ENGINEER shall make an independent assessment of the Contractor's cost and time proposal and the impacts on the Contract Price and Contract Time as part of the review and recommendation process for each change order.
21. The ENGINEER shall make a site visit prior to issuing the certificate of substantial completion of all construction and submit a written report to the OWNER, the Funding Agency and others as required.
22. Prior to submission of recommendation for final payment on each contract, the ENGINEER shall submit a certificate of substantial completion of work done under that contract to the OWNER, the Funding Agency and others as required.
23. The ENGINEER shall provide the OWNER with record drawings as specified in the scope of work for Attachment III. Such drawings will be based upon the Resident Project Representative's construction data and the construction records provided by the contractor during construction and reviewed by the Resident Project Representative.
24. Section B-12 through B-23 and those ADDITIONAL ENGINEERING SERVICES designated for the Construction Phase in Attachment III will take effect upon execution of Attachment III.

Engineering Services During the Operation Phase

25. The ENGINEER shall complete the ENGINEERING SERVICES described in ATTACHMENT IV –

Operational Services scope of work and cost proposal and section B-25 through B-29 within the time specified in Attachment IV – Compensation for Engineering Services During the Operation Phase from the date of written authorization to proceed unless otherwise mutually agreed to in writing by both parties.

26. The ENGINEER shall review the first year's operation of the Project and revise the operation and maintenance manual for the Project as necessary to accommodate actual operating experience.

27. The ENGINEER shall provide to the OWNER monthly operation reports on the performance of the Project.

28. The ENGINEER shall train operating personnel and prepare curricula and training material for operating personnel.

29. Eleven (11) months after the initiation of the Project operation, the ENGINEER shall advise the OWNER in writing whether the Project meets the project performance standards.

30. Section B-25 through B-29 and those ADDITIONAL ENGINEERING SERVICES designated for the Operation Phase in Attachment IV will take effect upon execution of Attachment IV.

SECTION C –ADDITIONAL ENGINEERING SERVICES

ADDITIONAL ENGINEERING SERVICES as detailed in the Attachments shall be provided by the ENGINEER upon written authorization by the OWNER and concurrence of Funding Agency. Compensation for performing the designated ADDITIONAL ENGINEERING SERVICES will be included on Attachment I, Attachment II, Attachment III, or Attachment IV. ADDITIONAL ENGINEERING SERVICES could include such things as the following.

1. Provide Resident Project Observation. The ENGINEER shall, prior to the preconstruction conference, submit a resume of the Resident Project Representative's qualifications, anticipated duties and responsibilities for approval by the OWNER and the Funding Agency. Resident observation includes checking lines and grades, keeping records of full measurements and the contractor's activities, passing information between the ENGINEER and contractor, reviewing of contractor's request for progress payments, inspection of completed work for compliance with Contract Documents and keeping of a daily diary per Funding Agency requirements. Performance of this service will not guarantee the contractor's performance, but it endeavors to protect the OWNER against defects and deficiencies in the Project and verify compliance with the contract Documents. Period of service for calculating compensation will be as specified in the Attachments.

2. Prepare site, boundary, and topographic surveys for treatment works, dams, reservoirs, and other similar special surveys as may be required.

3. Conduct laboratory tests, well tests, borings, and specialized geological, soils, hydraulic, or other studies recommended by the ENGINEER.

4. Prepare property surveys, detailed descriptions of sites, maps, drawings, or estimates related thereto; assist in negotiating for land and easement rights.

5. Appear before courts or boards on matters of litigation related to the project.

6. Assist OWNER with developing a user charge system. Design a user charge system to produce adequate revenues required for the operation, maintenance and replacement of the Project that meets applicable EPA or other requirements.

7. Prepare an operation and maintenance manual.

8. Provide construction-staking services.

9. Prepare or review environmental assessments and impact statements; review and evaluate the effects on the design requirements for the Project of any such statements and documents prepared by others; and assist

in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

10. Provide services resulting from significant changes in the scope, extent or character of the portions of the Project designed or specified by ENGINEER or its design requirements including, but not limited to, changes in size, complexity, OWNER's schedule, character of construction or method of financing; and revising previously accepted studies, reports, Drawings, Specifications or Contract Documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes, standards or orders enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond ENGINEER's control.

11. Provide services resulting from evaluation by ENGINEER during the Study and Report Phase at OWNER's request of alternative solutions in addition to those specified in Attachment I.

12. Prepare for, coordinate with, participate in and respond to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering and constructability review requested by OWNER; and performing or furnishing services required to revise studies, reports, Drawings, Specifications or other Bidding Documents as a result of such review processes.

13. Provide services in connection with Work Change Directives and Change Orders to reflect OWNER-requested changes to the Drawings and Specifications.

14. Provide services in making revisions to Drawings and Specifications occasioned by the OWNER's acceptance of substitute materials or equipment other than "or-equal" items; and services after the award of the construction contract in evaluating and determining the acceptability of a substitution.

15. Provide additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work, (2) work damaged by fire or other cause during construction, (3) a significant amount of defective, neglected or delayed work by Contractor, (4) acceleration of the progress schedule involving services beyond normal working hours, or (5) default by Contractor.

SECTION D – SPECIAL PROVISIONS OR MODIFICATIONS TO THE STANDARD LANGUAGE IN THIS AGREEMENT

(Describe, attach or indicate "None")

MODEL CONTRACT CLAUSE FOR ENGINEERING AGREEMENTS

1. PRIVITY OF CONTRACT

This contract is expected to be funded in part with funds from the U.S. Environmental Protection Agency. Neither the United States nor any of its departments, agencies or employees is, or will be, a party to this contract or any lower tier contract. This contract is subject to the applicable EPA procurement regulations in effect on the date of the assistance award for this project.

2. CHANGES

1. The Owner may at any time, by written order make changes within the general scope of this contract in the services to be performed. If such changes cause an increase or decrease in the Engineer's cost or time required to perform any services under this contract, whether or not changed by any order, the Owner shall make an equitable adjustment and modify this contract in writing. The Engineer must assert any claim for adjustment under this clause in writing within 30 days from the date it receives the Owner's notification of change, unless the Owner grants additional time before the date of final payment.

2. No claim by the Engineer for an equitable adjustment shall be allowed if made after final payment under this contract.

3. No services for which the Engineer will charge an additional compensation shall be furnished without the written authorization of the Owner.

3. TERMINATION

a. This contract may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this contract through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

b. This contract may be terminated in whole or in part in writing by the Owner for its convenience, provided that the Engineer is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

c. If termination for default is effected by the Owner, an equitable adjustment in the price provided for in this contract shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the Engineer at the time of termination may be adjusted to cover any additional costs to the Owner because of the Engineer's default. If the Engineer effects termination for default, or if the Owner effects termination for convenience, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the Engineer for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the Engineer relating to commitments which had become firm prior to the termination.

d. Upon receipt of a termination action under paragraphs (a) or (b) above, the Engineer shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make available to the Owner all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the Engineer in performing this contract, whether completed or in process.

e. Upon termination under paragraphs (a) or (b) above, the Owner may take over the work and may award another party a contract to complete the work under this contract.

f. If, after termination for failure of the Engineer to fulfill contractual obligations, it is determined that the Engineer had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the Owner. In such event, adjustment of the sub-agreement price shall be made as provided in paragraph (c) of this clause.

4. REMEDIES

Unless otherwise provided in this contract, all claims, counter-claims, disputes and other matters in question between the Owner and the Engineer arising out of, or relating to, this contract or the breach of it will be decided, if the parties mutually agree, by arbitration, mediation, or other alternative dispute resolution mechanism; or in a court of competent jurisdiction within the State in which the Owner is located.

5. AUDIT; ACCESS TO RECORDS

a. The Engineer shall maintain books, records, documents and other evidence directly pertinent to performance on EPA funded work under this contract in accordance with generally accepted accounting principles and practices consistently applied, and the applicable EPA regulations in effect on the date of execution of this contract. The Engineer shall also maintain the financial information and data used in the preparation or support of any cost submission required under applicable regulations for negotiated contracts or change orders and a copy of the cost summary submitted to the Owner. The United States Environmental Protection Agency, the Comptroller General of the United States, the United States Department of Labor, the

Owner, and [the State] or any of their authorized representatives shall have access to all such books, records, documents and other evidence for the purpose of inspection, audit and copying during normal business hours. The Engineer will provide proper facilities for such access and inspection.

b. If this is a fixed price contract awarded through sealed bidding or otherwise on the basis of effective price competition, the Engineer agrees to make paragraphs (a) through (f) of this clause applicable to all negotiated change orders and contract amendments affecting the contract price. In the case of all other types of prime contracts, the Engineer agrees to make paragraphs (a) through (f) applicable to all contract awards in excess of \$10,000, at any tier, and to make paragraphs (a) through (f) of this clause applicable to all change orders directly related to project performance.

c. Audits conducted under this provision shall be in accordance with generally accepted auditing standards and with established procedures and guidelines of the reviewing or audit agency(ies).

d. The Engineer agrees to disclose all information and reports resulting from access to records under paragraphs (a) and (b) of this clause to any of the agencies referred to in paragraph (a).

e. Access to records is not limited to the required retention periods. The authorized representatives designated in paragraph (a) of this clause shall have access to records at any reasonable time for as long as the records are maintained.

f. This right of access clause applies to financial records pertaining to all contracts (except for fixed price contracts awarded through sealed bidding or otherwise on the basis of effective price competition) and all contract change orders regardless of the type of contract, and all contract amendments regardless of the type of contract. In addition this right of access applies to all records pertaining to all contracts, contract change orders and contract amendments:

1. To the extent the records pertain directly to contract performance;
2. If there is any indication that fraud, gross abuse or corrupt practices may be involved; or
3. If the sub-agreement is terminated for default or for convenience.

6. COVENANT AGAINST CONTINGENT FEES

The Engineer assures that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Engineer for the purpose of securing business. For breach or violation of this assurance, the Owner shall have the right to annul this agreement without liability or, at its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

7. GRATUITIES

a. If the Owner finds after a notice and hearing that the Engineer or any of the Engineer's agents or representatives offered or gave gratuities (in the form of entertainment, gifts or otherwise) to any official, employee or agent of the Owner, the State or EPA in an attempt to secure a contract or favorable treatment in awarding, amending or making any determinations related to the performance of this contract, the Owner may, by written notice to the Engineer, terminate this contract. The Owner may also pursue other rights and remedies that the law or this contract provides.

b. In the event this contract is terminated as provided in paragraph (a), the Owner may pursue the same remedies against the Engineer as it could pursue in the event of a breach of the contract by the Engineer, and as a penalty, in addition to any other damages to which it may be entitled by law, be entitled to exemplary damages in an amount (as determined by the Owner) which shall be not less than three nor more than ten times the costs the Engineer incurs in providing any such gratuities to any such officer or employee.

8. FINAL PAYMENT

Upon satisfactory completion of the work performed under this contract, as a condition before final payment under this contract or as a termination settlement under this contract the Engineer shall execute and deliver to the Owner a release of all claims against the Owner arising under, or by virtue of, this contract, except claims which are specifically exempted by the Engineer to be set forth therein. Unless otherwise provided in this contract, by State law or otherwise expressly agreed to by the parties to this contract, final payment under this contract or settlement upon termination of this contract shall not constitute a waiver of the Owner's claims against the Engineer under this contract.

9. ENGINEERING SERVICES

SECTION B, ENGINEERING SERVICES is changed to read as follows:

The ENGINEER shall furnish ENGINEERING SERVICES as follows in accordance with the GENERAL PROVISIONS of the Agreement and as authorized by the appropriate Attachment to this Agreement:

Engineering Services During the Planning Phase

1. DELETED

Engineering Services During the Design Phase

2. DELETED
3. DELETED
4. DELETED
5. DELETED
6. DELETED
7. DELETED
8. DELETED
9. DELETED
10. DELETED
11. DELETED

Engineering Services During the Construction Phase

12. ENGINEER shall complete the ENGINEER SERVICES described in ATTACHMENT III – Construction Services scope of work and cost proposal and section B-12 through B-23 described herein, within the time specified in Attachment III – Compensation for Engineering Services During the Construction Phase from the date of written authorization to proceed unless otherwise mutually agreed to by both parties.
13. The ENGINEER shall attend the pre-bid meeting and bid opening and tabulate the bid proposals, analyze the responsiveness of the bidders, check references, and make recommendations for awarding the contract(s) for construction to the lowest responsible, responsive bidder.
14. The ENGINEER shall also attend the pre-construction meeting and all meetings pertaining to the project including weekly coordination meetings.
15. The ENGINEER shall review and approve, for conformance with the design concept all shop drawings

and other submittals required by the Contract Documents to be furnished by contractors.

16. The ENGINEER shall interpret the general intent of the design drawings and specifications to endeavor to protect the OWNER against defects and deficiencies in construction on the part of the contractors.
17. a The ENGINEER shall provide general daily engineering review of the work of the contractors as construction progresses to ascertain that the contractors are conforming to the general design concept. ENGINEER'S construction observer shall, in connection with daily observations of Contractor's Work while it is in progress make daily visits to the Site. ENGINEER'S Project Manager shall make visits to the Site at intervals appropriate to the various stages of construction, as ENGINEER AND OWNER deem necessary, but at least WEEKLY, to observe as an experienced and qualified design professional the progress and quality of Contractor's executed Work. Such visits and observations by ENGINEER are not intended to be exhaustive but are intended to be adequately thorough enough to ensure the project is being constructed according to industry standard practices according to the intent of the plans and specifications for the project. Based on information obtained during such visits and observations, ENGINEER will determine if the Work is proceeding in accordance with the Contract Documents, and Engineer shall keep Owner informed of the progress of the Work and conformance with the contract documents.
17. b Provide Resident Project Observation. The ENGINEER shall, prior to the preconstruction conference, submit a resumes of the Resident Engineer and Resident Inspector qualifications, anticipated duties and responsibilities for approval by the OWNER and the Funding Agency. Resident observation includes checking lines and grades, keeping records of full measurements and the contractor's activities, performing density tests, passing information between the ENGINEER and contractor, reviewing of contractor's request for progress payments, inspection of completed work for compliance with Contract Documents and keeping of a daily diary per Funding Agency requirements. Performance of this service will not guarantee the contractor's performance, but it endeavors to protect the OWNER against defects and deficiencies in the Project and verify compliance with the contract Documents. Period of service for calculating compensation will be as specified in the Attachments.
18. The ENGINEER's undertaking hereunder shall not relieve the contractor of its obligation to perform the work in conformity with the Contract Documents and in a competent manner; nor shall it make the ENGINEER an insurer of the contractor's performance. Engineer shall not at any time supervise, direct, or have control over Contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. The ENGINEER shall coordinate with the OWNER any deviation from industry standard practice in the ENGINEER'S judgment so that the OWNER may be informed and direct the contractor accordingly.
19. The ENGINEER shall review each contractor's applications for progress and final payments and submit sufficient copies of same to the OWNER with the ENGINEER's recommendation for approval or disapproval.
20. The ENGINEER shall prepare necessary contract change orders for approval of the OWNER, the Funding Agency and others as required. The ENGINEER shall make an independent assessment of the Contractor's cost and time proposal and the impacts on the Contract Price and Contract Time as part of the review and recommendation process for each change order.
21. The ENGINEER shall make a site visit prior to issuing the certificate of substantial completion of all construction and submit a written report to the OWNER, the Funding Agency and others as required.
22. Prior to submission of recommendation for final payment on the contract, the ENGINEER shall submit a certificate of substantial completion of work done under that contract to the OWNER, the Funding Agency and others as required.

23. The ENGINEER shall provide the OWNER with record drawings as specified in the scope of work for Attachment III. Such drawings will be based upon the Resident Engineer's construction data and the construction records provided by the contractor during construction.
24. Section B-12 through B-23 and those ADDITIONAL ENGINEERING SERVICES designated for the Construction Phase in Attachment III will take effect upon execution of Attachment III.

Engineering Services During the Operation Phase

25. DELETED
26. DELETED
27. DELETED
28. DELETED
29. DELETED
30. DELETED

SECTION C, ADDITIONAL ENGINEERING SERVICES is changed to read as follows:

ADDITIONAL ENGINEERING SERVICES as detailed in the Attachments shall be provided by the ENGINEER upon written authorization by the OWNER and concurrence of Funding Agency. Compensation for performing the designated ADDITIONAL ENGINEERING SERVICES will be included on Attachment III. ADDITIONAL ENGINEERING SERVICES for this contract shall include the following.

1. Provide a structured independent review of the bid documents, including, but not limited to, plan and specification review and contract review, construction management, cost estimating, and constructability review as requested by OWNER and coordinate with OWNER recommended changes to the bid documents prior to construction contract award.
2. Provide GPS coordinates for the sewer main and reuse lines each 50 feet to include both horizontal and vertical locations along the alignment. Locations of GPS data shall include all special features of the sewer main including manholes, sewer taps, connecting laterals, etc. as may be required.
3. Coordinate with the OWNER'S Construction Testing and Geotech Engineering consultant to ensure adequate testing is underway and that Funding Agency testing requirements are being achieved.
4. DELETED
5. Appear before courts or boards on matters of litigation related to the project, if required.
6. DELETED
7. DELETED
8. Provide spot construction-staking services to check alignment and elevation of sewer main as negotiated with OWNER.
9. DELETED
10. DELETED
11. DELETED
12. DELETED
13. Provide coordination services with the design consultant (Engineer of Record) in connection with Work Change Directives and Change Orders to reflect OWNER-requested changes to the Drawings and Specifications.

14. Provide coordination services with the design consultant (Engineer of Record) in making revisions to Drawings and Specifications occasioned by the OWNER'S acceptance of substitute materials or equipment other than "or-equal" items; and services after the award of the construction contract in evaluating and determining the acceptability of a substitution.
15. Provide additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work, (2) work damaged by fire or other cause during construction, (3) a significant amount of defective, neglected or delayed work by Contractor, (4) acceleration of the progress schedule involving services beyond normal working hours, or (5) default by Contractor.
16. Attachments incorporated as part of this agreement:
 - (a) Certifications including Equal Employment Opportunity and Nonsegregated Facilities
 - (b) EPA XP-215 MBE/WBE/SBRA Engineering Utilization Information Worksheet
 - (c) Certification Regarding Debarment, Suspension, and Other Responsibility Matters
 - (d) Form 6100-3 DBE Subcontractor Performance Form
 - (e) Form 6100-4 DBE Subcontractor Utilization Form

IN WITNESS THEREOF, the parties hereto have executed, or caused to be executed, by their duly authorized officials, this Agreement in triplicate on the respective dates indicated below. **The parties further certify by their signatures below that no modifications have been made to the standard language of this Agreement, other than those detailed in Section D.**

ATTEST: _____

Type Name Karla Sayler, CMC

Title City Clerk

Date February 10, 2015

OWNER: City of Aztec, NM

By _____

Type Name: Sally Burbridge

Title Mayor

Date February 10, 2015

ATTEST: Kristi Winters

Type Name Kristi Winters

Title Executive Assistant

Date February 3, 2015

ENGINEER: Wilson & Company, Inc.

By Christopher A. Perea

Type Name Christopher A. Perea, PE

Title Operations Manager

Address 4900 Lang Ave NE

Albuquerque, NM 87109

Date 2-3-15

REVIEWED: FUNDING AGENCY

NAME: New Mexico Environmental Department

By _____

Type Name David Bishop

Date _____

ATTACHMENTS

Please check the appropriate box and include applicable attachments

1. As set forth in the AGREEMENT FOR ENGINEERING SERVICES dated the 10th day of February, 2015 by and between the City of Aztec, the OWNER, and Wilson & Company, Inc., the ENGINEER, the OWNER and ENGINEER agree this 10th day of February, 2015 that the OWNER shall compensate the ENGINEER for services described in Section B and Section C and further described in

ATTACHMENT I—Planning Services scope of work, cost proposal and compensation for Engineering Services During the Planning Phase

ATTACHMENT II—Design Services scope of work, cost proposal and compensation for Engineering Services During the Design Phase

ATTACHMENT III - Construction Services scope of work, cost proposal and compensation for Engineering Services During the Construction Phase

ATTACHMENT IV - Operational Services scope of work, cost proposal and compensation for Engineering Services During the Operation Phase

2. Compensation for ENGINEERING SERVICES shall be by the

LUMP SUM method of payment. The total amount of compensation for ENGINEERING SERVICES, as described in the appropriate ATTACHMENTS shall not exceed \$_____, excluding gross receipt tax and reimbursables.

STANDARD HOURLY RATE WITH MAXIMUM method of payment. The total amount of hourly charges, excluding gross receipt tax and reimbursables, for ENGINEERING SERVICES as described in the appropriate ATTACHMENTS shall not exceed \$322,431.40 without prior written approval of the OWNER, with Funding Agency concurrence.

3. Compensation for ADDITIONAL ENGINEERING SERVICES (provided by the ENGINEER upon written authorization from the OWNER and concurrence of the Funding Agency), shall be by the

LUMP SUM method of payment. The total amount of compensation for ADDITIONAL ENGINEERING SERVICES, as described in the appropriate ATTACHMENT shall not exceed \$_____, excluding gross receipt tax and reimbursables.

STANDARD HOURLY RATE WITH MAXIMUM method of payment. The total amount of hourly charges, excluding gross receipt tax and reimbursables, for ADDITIONAL ENGINEERING SERVICES as described in the appropriate ATTACHMENT shall not exceed \$20,000 without prior written approval of the OWNER and with Funding Agency concurrence.

4. The amount of compensation shall not change unless the scope of services to be provided by the ENGINEER changes and this Agreement is formally amended according to Section A-5. Contract Time under Section B. and for the purpose of Section A.8 shall be 400 calendar days (or as specified in the Attachments).

5. The OWNER and ENGINEER agree that as mutually agreeable, reasonable Liquidated Damages for delay (but not as a penalty), ENGINEER shall pay OWNER fifty dollars (\$50) (minimum fifty dollars [\$50.00] per day) for each calendar day that expires after the Contract Time specified in the Agreement (See attached project schedule - Gantt chart, bar chart, etc.) until the Work is complete and accepted by the OWNER. OWNER shall have no more than ten (10) calendar days to accept or reject the Work.

6. The ENGINEER agrees to obtain and maintain, at the ENGINEER's expense, such insurance as will protect the ENGINEER from claims under the Workman's Compensation Act and such comprehensive general liability and automobile insurance as will protect the OWNER and the ENGINEER from all claims for bodily injury, death, or property damage which may arise from the performance by the ENGINEER, or by the ENGINEER's employees, for the ENGINEER's functions and services required under this Agreement. Such insurance shall be in an amount not less than \$1,000,000 for injury to any one person and \$1,000,000 on account of any one accident and in the amount of not less than \$1,000,000 for property damage. The ENGINEER further agrees to procure and maintain professional liability (errors and omissions) insurance in an amount not less than \$1,000,000 per claim and in the aggregate. Prior to commencement of any work, the ENGINEER shall furnish to the OWNER a certificate that complies with this paragraph. The certificate shall provide that the policy shall not be canceled until at least ten (10) calendar days prior written notice shall have been given to the OWNER. ENGINEER shall provide annual updates of the certificate to demonstrate the policy remains in effect for the duration of this Agreement.

7. OWNER shall pay ENGINEER applicable gross receipt taxes and reimbursable expenses at the rates set forth in the appropriate ATTACHMENTS. The amounts payable to ENGINEER for reimbursable expenses will be the project related internal expenses, such as mileage, per diem and reproduction, actually incurred or allocated by ENGINEER, plus all invoiced external reimbursable expenses, including consultants, allocable to the project, the latter multiplied by a factor of 1.1 (1.1 MAXIMUM). Mileage will be reimbursed at the current federally approved IRS rate. Reimbursable expenses shall not exceed the estimate in the ATTACHMENT without prior written approval of the OWNER, with Funding Agency concurrence.

8. The method for interim or partial payments, such as milestone or time & materials, shall be: Monthly

The rest of the page is intentionally left blank

9. Signatures

IN WITNESS THEREOF, the parties hereto have executed, or caused to be executed, by their duly authorized officials, this Agreement in triplicate on the respective dates indicated below.

ATTEST: _____

Type Name Karla Saylor, CMC

Title City Clerk

Date February 10, 2015

OWNER: City of Aztec, NM

By _____

Type Name: Sally Burbridge

Title Mayor

Date February 10, 2015

ATTEST: 

Type Name Kristi Winters

Title Executive Assistant

Date February 3, 2015

ENGINEER: Wilson & Company, Inc.

By 

Type Name Christopher A. Perea, PE

Title Operations Manager

Address 4900 Lang Ave NE

Albuquerque, NM 87109

Date 2-3-15

REVIEWED: FUNDING AGENCY

NAME: New Mexico Environmental Department

By _____

Type Name David Bishop

Date _____

Attachment III

Agreement for Engineering Services

Construction Services scope of work, cost proposal and compensation for Engineering Services during the Construction Phase

A. Scope

Wilson & Company will provide daily construction observation and construction management. These services will include:

Final Plans, Specification, & Estimate Review

- a. Conduct site visit and field reconnaissance.
- b. Review plans.
- c. Review Estimate.
- d. Review specifications.
- e. Prepare a written log of comments and submit to the City for review.

Project Daily Diary - (Item installation tracking)

Labor Standards Compliance Verification

Assist in the preparation of documents for requesting reimbursement from the NMED by auditing the following:

- a. Contractor and subcontractor's payrolls
- b. Certificate of compliance files
- c. Documentation of payment from City to the Contractor
- d. DBE compliance
- e. EEO compliance for all subcontractors and the Contractor

Conduct EEO and Labor Compliance interviews

Administer monthly progress payments

Material Review and Testing including

- a. Certificates of Compliance
- b. Material Guarantees and Warranties
- c. Required Weekly and Monthly Reports for Material Reviewed/Tested

Detailed Progress Payments

Change Order Processing

Project Auditing

Maintain Public Relations

Coordinate between Contractor and City

Coordinate with Engineer of Record for project document interpretation

Enforce Contractor Compliance with project documents

Perform Density Testing

Coordinate with Project Testing Consultant to schedule appropriate materials and construction testing

Measure project quantities

Quality Assurance of materials and workmanship

Make field adjustments with approval of City

Project Final Acceptance and Close Out

B. Cost Proposal

Construction Management Proposal Aztec Sanitary Sewer Interceptor Line Prepared for City of Aztec					
Description/Personnel	C Perea	Observer	Admin	R Garcia	CADD
Rate \$\$/hr	\$125.00	\$82.00	\$62.00	\$125.00	\$86.00
QC Plans	16			40	
Project Start-Up					
File Set Up			20		
Testing Requirement Set Up			8	20	
Team Roles and Responsibility	4	1	1	1	
Pre Construction Meeting	4	4	4	4	
Project Observation & Management					
Project Observation: Regular Time at 40 hrs/week for 420 days (includes density testing)		2240			
Project Management (Progress Meetings, RFI, Submittals, Change Order Review/Approval, Testing Credits Review/Certification)	48		100	160	
Documentation Review, File Management	16		40	40	
Pay Applications, Change Orders, Requests for Reimbursements 25 hrs/Month for 420 days (14 months)	24		50	80	
DBE, EEO, Monthly Audits, Paperwork Corrections 20 hrs/Month for 420 days (14 months)	24		100	60	
Project Close-Out					
Substantial Completion (60 cons. Days)	8	242	66	24	
Punch List Final Review/Certification	8	8	4	20	
Close Out Package	8	16	20	20	
Certification/Paperwork	8			20	
Final Reimbursement Paperwork/Certifications	8		12	20	
As Builts: Certification to Vol 7 Revision	4			8	40
Total Man Hours	180	2511	425	517	40
Unit Cost	\$22,500.00	\$205,902.00	\$26,350.00	\$64,625.00	\$2,880.00
Total Labor Cost					\$322,257.00
Local Mileage 35/day; \$0.56/mile, 264 trips					\$5,174.40
Survey of SAS Line During Construction					\$15,000.00
Total Expenses					\$20,174.40
Proposed Project Cost w/o NMGR					\$342,431.40

C. Schedule of time to complete work

400 calendar days

CERTIFICATIONS

Project Name Aztec Sanitary Sewer Interceptor - Oct 2014 Project Number CWSRF 021

Contract For Construction Management Services

The following certifications must be completed by the bidder for each contract.

A. EQUAL EMPLOYMENT OPPORTUNITY:

- I have developed and have on file at my each establishment affirmative action programs pursuant to 41 CFR Part 60-2.
- I have participated in previous contract(s) or subcontract(s) subject to the equal opportunity clause under **Executive Orders 11246 and 11375**. I have filed all reports due under the requirements contained in 41 CFR 60-1.7.
- I have not participated in previous contract(s) subject to the equal opportunity clause under **Executive Orders 11246 and 11375**.
- I will obtain a similar certification from any proposed subcontractor(s), when appropriate.

B. NONSEGREGATED FACILITIES

- I certify that I do not and will not maintain any facilities provided for my employees in a segregated manner, or permit my employees to perform their services at any location under my control where segregated facilities are maintained; and that I will obtain a similar certification prior to the award of any federally assisted subcontract exceeding \$10,000 which is not exempt from the equal opportunity clause as required by 41 CFR 60-1.8.

I understand that a false statement on this certification may be grounds for rejection of this bid proposal or termination of the contract award.

Karen Lefevre, HR Manager
 Typed Name & Title of Bidder's Authorized Representative

Karen Lefevre 12/1/2014
 Signature of Bidder's Authorized Representative Date

Wilson & Company, Inc., Engineers & Architects
4900 Lang Ave NE, Albuquerque, NM 87109
 Name & Address of Bidder

XP-215 MBE/WBE/SBRA ENGINEERING UTILIZATION INFORMATION SHEET

NOTE: The offeror shall complete the following Minority/Women's/Small Business in Rural Area (MBE/WBE/SBRA) utilization information whenever they solicit sub-consultant work and/or services for the project in order to provide the fair share of the total dollar amount of the contract for

MBE: Construction N/A, Equipment N/A, Supplies N/A, Services 38.78 %
 WBE: Construction N/A, Equipment N/A, Supplies N/A, Services 40.00 %
 SBRA: Construction _____, Equipment _____, Supplies _____, Services _____

1. Do you maintain and update qualified MBE, WBE, and SBRA on your solicitation lists for supplies, equipment, construction and/or service? Yes No
 If yes, when did you update your MBE/WBE/SBRA solicitation lists? January
2. Do you maintain a list of minority, women and rural small business-focused publications that may be utilized to solicit MBEs or WBEs or SBRA's? Yes No
 If yes, name the publications: _____
3. Do you use the services of outreach programs sponsored by the Minority Business Development Agency and/or the Small Business Administration to recruit bona fide MBE/WBE/SBRA firms for placement on your solicitation lists? Yes No
4. Do you seek out Minority Business Development Centers to assist you in identifying MBEs/WBEs/SBRAs for potential work opportunities on your proposal for this project? Yes No
5. Do you analyze the request for proposal to identify portions of work that can be divided and performed by qualified MBEs, WBEs, and SBRA's including the bonding range? Yes No
 If yes, please attach a brief description of portions of work you have identified for sub-consulting.
6. Do you develop realistic delivery schedules which may provide for greater MBE/WBE/SBRA participation? Yes No
7. Do you send a letter of solicitation to MBE/WBE/SBRA for this proposed project? Yes No
 If yes, please attach a sample copy of each different solicitation letter and the name and address of each MBE/WBE/SBRA.
8. Do you advertise in general circulation, trade journals, State agency publications of identified MBEs/WBEs/SBRAs, minority or women or rural small business focused media, etc., concerning the sub-consulting opportunities on your proposal for this project? Yes No
 If yes, please list the name of publication and dates of advertisement and attach a copy of each advertisement from each publication.
9. Do you conduct pre-solicitation, meetings and follow-ups with interested MBE, WBE, and SBRA? Yes No
 If yes, please list person who attended conference as representative of MBE/WBE/SBRA

Name & Title of Person: _____
 Name of MBE/WBE/SBRA: _____
 Address: _____ Phone: _____
 Date and Place of Conference: _____

Name & Title of Person: _____
 Name of MBE/WBE/SBRA: _____
 Address: _____ Phone: _____
 Date and Place of Conference: _____

Name & Title of Person: _____
 Name of MBE/WBE/SBRA: _____

Address: _____ Phone: _____
 Date and Place of Conference: _____

10. Total dollar amount of the contract:
 \$ _____

11. Total dollar amount and percentage of MBE/WBE/SBRA participation:

MBE:	Construction	_____ %	Equipment	_____ %	Supplies	_____ %	Services	_____ %
	(\$ _____)		(\$ _____)		(\$ _____)		(\$ _____)	
WBE:	Construction	_____ %	Equipment	_____ %	Supplies	_____ %	Services	_____ %
	(\$ _____)		(\$ _____)		(\$ _____)		(\$ _____)	
SBRA:	Construction	_____ %	Equipment	_____ %	Supplies	_____ %	Services	_____ %
	(\$ _____)		(\$ _____)		(\$ _____)		(\$ _____)	

12. Name, address, phone number, contact person, type of construction subcontract, and dollar amount of subcontract.

MBE Sub-consultant: Address: Phone: Contact Person: Type of Work: Amount: \$ _____	WBE Sub-consultant: Address: Phone: Contact Person: Type of Work: Amount: \$ _____	SBRA Sub-consultant: Address: Phone: Contact Person: Type of Work: Amount: \$ _____
MBE Sub-consultant: Address: Phone: Contact Person: Type of Work: Amount: \$ _____	WBE Sub-consultant: Address: Phone: Contact Person: Type of Work: Amount: \$ _____	SBRA Sub-consultant: Address: Phone: Contact Person: Type of Work: Amount: \$ _____
MBE Sub-consultant: Address: Phone: Contact Person: Type of Work: Amount: \$ _____	WBE Sub-consultant: Address: Phone: Contact Person: Type of Work: Amount: \$ _____	SBRA Sub-consultant: Address: Phone: Contact Person: Type of Work: Amount: \$ _____
MBE Sub-consultant: Address: Phone: Contact Person: Type of Work: Amount: \$ _____	WBE Sub-consultant: Address: Phone: Contact Person: Type of Work: Amount: \$ _____	SBRA Sub-consultant: Address: Phone: Contact Person: Type of Work: Amount: \$ _____

I understand that a false statement on the above information may be grounds for rejection of the offeror's proposal or termination of the contract award.

 Typed Name & Title of Authorized Representative

 Signature of Offeror's Authorized Representative

 Date

EPA Project Control Number

United States Environmental Protection Agency
Washington, DC 20460

**Certification Regarding
Debarment, Suspension, and Other Responsibility Matters**

The prospective participant certifies to the best of its knowledge and belief that it and the principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated or cause or default.

I understand that a false statement on this certification may be ground for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Karen Lefevre, HR Manager

Typed Name & Title of Authorized Representative

Karen K Lefevre

Signature of Bidder's Authorized Representative

12/1/2014

Date

I am unable to certify to the above statements. My explanation is attached.
EPA Form 5700-49 (11-88)

FORM 6100-3
 Disadvantaged Business Enterprise (DBE) Program
 DBE Subcontractor Performance Form

This form is intended to capture the DBE¹ subcontractor's² description of work to be performed and the price of the work submitted to the prime contractor. A Financial Assistance Agreement Recipient must require its prime contractor to have its DBE subcontractors complete this form and include all completed forms in the prime contractor's bid or proposal package.

Subcontractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Prime Contractor Name		Issuing/Funding Entity:	

Contract Item Number	Description of Work Submitted to the Prime Contractor Involving Construction, Services, Equipment or Supplies	Price of Work Submitted to the Prime Contractor
DBE Certified By: <input type="checkbox"/> DOT <input type="checkbox"/> SBA <input type="checkbox"/> Other: _____ <input type="checkbox"/> Not certified		Meets/ exceeds EPA certification standards? <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> Unknown

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

Prime Contractor Signature	Title/ date
Subcontractor Signature	Title/ date

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202. ² Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

FORM 6100-4
 Disadvantaged Business Enterprise (DBE) Program
 DBE Subcontractor Utilization Form

This form is intended to capture the prime contractor's actual and/or anticipated use of identified certified DBE¹ subcontractors² and the estimated dollar amount of each subcontract. A Financial Assistance Agreement Recipient must require its prime contractors to complete this form and include it in the bid or proposal package. Prime contractors should also maintain a copy of this form on file.

Subcontractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Prime Contractor Name		Issuing/Funding Entity:	

I have identified potential DBE certified subcontractors	__ YES	__ NO	
If yes, please complete the table below. If no, please explain:			
Company Name	Company Address/ Phone/ Email	Est. Dollar Amt	Currently DBE Certified?
Continue on back if needed			

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

Prime Contractor Signature	Title/ date

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202. ² Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

Staff Summary Report

MEETING DATE:	February 10, 2015
AGENDA ITEM:	VIII. CONSENT AGENDA(G)
AGENDA TITLE:	Sanitary Sewerline: SME Environmental Inc. Agreement
ACTION REQUESTED BY:	Public Works, Finance
ACTION REQUESTED:	Approval of Construction Services Agreement with SME Environmental, Inc. for environmental services on Sanitary Sewerline project
SUMMARY BY:	Kathy Lamb

PROJECT DESCRIPTION / FACTS (Leading Department)

- SME Environmental, Inc., as a professional service, has been contacted to perform environmental monitoring services during the construction phase of the Sanitary Sewerline project.
- NMED (New Mexico Environment Department) funding may be used for construction services on the sanitary sewerline providing NMED's agreement has been used, the consultant has completed the various certifications required by the federal funding and NMED has approved the agreement and proposed fee schedule. NMED has approved SME Environmental, Inc.'s certifications and the agreement and proposed fee scheduled has been submitted for NMED approval.

PROCUREMENT INPUT (Purchasing)

- This is considered a professional service and is under \$60,000 not requiring a formal procurement process.

FISCAL INPUT (Finance Department)

- SME Environmental, Inc.'s cost proposal is \$25,000 plus gross receipts tax. This construction service will be included in the cost of the project and, if sufficient funds exist, may be reimbursed through the loan/grant funds available for the project.

SUPPORT DOCUMENTS: - SME Environmental, Inc. Construction Services Agreement (NMED form)

DEPARTMENT'S RECOMMENDED MOTION: Move to Approve Construction Services Agreement with SME Environmental, Inc. environmental services on Sanitary Sewerline project.

AGREEMENTS FOR ENGINEERING SERVICES
Sanitary Sewer Interceptor Improvements, October 1, 2014

THIS Agreement, made this _____ day of _____ 20____ by and between the City of Aztec, NM hereinafter referred to as the OWNER, and SME Environmental Inc. hereinafter referred to as the ENGINEER. Contract becomes effective on the date of the last signature.

The OWNER intends to construct a Project consisting of Sanitary Sewer Interceptor Improvements dated October 1, 2014. The principal component of the project is the removal of the existing and construction of a new sewer main in Aztec, NM consisting of trenching and backfilling, sewer pipe, manholes, sewer taps and service lines, roadway paving, CMP culverts, concrete box culvert with wingwalls, and other amenities included in the plans, specifications and bid documents for the project. The project being located

in San Juan County, State of New Mexico, which may be paid for in part with financial assistance from the United States of America acting through the United States Department of Agriculture – Rural Development, hereinafter referred to as USDA-RD; and/or through the United States Environmental Protection Agency, hereinafter referred to as EPA; and/or the New Mexico Environment Department, hereinafter referred to as NMED; and/or the New Mexico Finance Authority, hereinafter referred to as NMFA; and/or the New Mexico Department of Finance, hereinafter referred to as DFA; all collectively referred to as the Funding Agency. Neither the United States or the State of New Mexico nor any of its departments, agencies, or employees is or will be a party to this Agreement or any subagreement. The ENGINEER agrees to perform the various professional engineering services for the planning, design, and construction of said Project in accordance with the provisions of this Agreement.

CONTENTS

SECTION A - GENERAL PROVISIONS

1. General
2. Approvals
3. Responsibilities of the ENGINEER
4. Responsibilities of the OWNER
5. Changes
6. Termination of Contract
7. Payment
8. Time
9. Project Design
10. Audits and Access to Records
11. Subcontracts
12. Insurance
13. Environmental Conditions of Site
14. Mutual Waiver
15. Independent Contractor
16. Equal Employment Opportunity
17. Gratuities
18. Covenants Against Contingent Fees
19. Cost and Pricing Data on Federally
Funded Projects
20. Remedies
21. Assurance Against Debarment

SECTION B - ENGINEERING SERVICES

- Engineer Services During the Planning Phase
- Engineering Services During the Design Phase
- Engineering Services During the Construction Phase
- Engineering Services During the Operation Phase

SECTION C - ADDITIONAL ENGINEERING SERVICES

SECTION D - SPECIAL PROVISIONS OR MODIFICATIONS

ATTACHMENTS

- Attachment I - Planning Services scope of work, cost proposal and compensation for Engineering Services during the Planning Phase
- Attachment II - Design Services Scope of Work, cost proposal and compensation for Engineering Services during the Design Phase
- Attachment III - Construction Services Scope of Work, cost proposal and compensation for Engineering Services during the Construction Phase
- Attachment IV - Operational Services scope of work, cost proposal and compensation for Engineering Services during the Operation Phase

SECTION A – GENERAL PROVISIONS

1. General

(a) This Agreement represents the entire and integrated Agreement between the OWNER and the ENGINEER for the Project and supersedes all prior negotiations, representations or agreements, either written or oral. In the event any provisions of this Agreement or any subsequent addendum shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party. The General provisions of this Agreement supersede any conflicting SPECIAL PROVISIONS.

(b) OWNER and ENGINEER each is bound and the partners, successors, executors, administrators and legal representatives of OWNER and ENGINEER are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives of such other party, in respect of all covenants, agreements, and obligations of the Agreement. Neither OWNER nor ENGINEER may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in the Agreement without written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent of an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Unless expressly provided otherwise in this Agreement:

(1) Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by OWNER or ENGINEER to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them

(2) All duties and responsibilities undertaken pursuant to this Agreement will be for sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party.

(c) The ENGINEER will work closely with the Funding Agency, as necessary, for funding to be provided.

(d) The ENGINEER will attend conferences and public hearings with the OWNER, representatives of the Funding Agency, or other interested parties and provide assistance in connection with such undertakings as provided for in the scope of work detailed in the Attachments.

2. Approvals

(a) This Agreement shall not become effective until approved by the Funding Agency. Such approval shall be evidenced by the signature of a duly authorized representative of the Funding Agency in the space provided in the Attachments to this Agreement. The approval shall in no way commit the Funding Agency to render financial assistance to the OWNER. The Funding Agency is without liability for any payment hereunder, but in the event such assistance is provided, the approval shall signify that the provisions of this Agreement are consistent with the requirements of the Funding Agency.

(b) Review or approval of documents by or for the Funding Agency under this Agreement is for administrative purposes only and does not relieve the ENGINEER or OWNER of their responsibilities to design, construct and operate the Project as required under law, regulations, permits and good management practices.

3. Responsibilities of the ENGINEER

(a) The ENGINEER shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all design drawings, specifications, reports, and other services furnished by the ENGINEER under this Agreement. If this Agreement involves environmental measures or data generation, the ENGINEER shall comply with EPA quality assurance requirements that can be found on their website at <http://www.epa.gov/quality/index.html>. The ENGINEER shall keep the OWNER informed of the performance of the ENGINEER'S duties under this Agreement. The ENGINEER shall promptly and without additional compensation, correct or revise any errors, omissions, or other deficiencies in the design drawings, specifications, reports, and other services provided by ENGINEER under terms of this Agreement.

(b) The ENGINEER shall perform the professional services necessary to accomplish the work specified in this Agreement, in accordance with this Agreement and applicable Funding Agency requirements in effect on the date of execution of any assistance agreement for this Project.

(c) The OWNER, or Funding Agency review or approval of design drawings, specifications, reports, and other services furnished hereunder shall not in any way relieve the ENGINEER of responsibility for the technical adequacy of the work. Neither the OWNER, nor Funding Agency review, approval or acceptance of, nor payment for any of the services shall be construed as a waiver of action arising out to the performance of this Agreement.

(d) The ENGINEER shall be and shall remain liable, in accordance with applicable law, for all damages to the OWNER caused by the ENGINEER's negligent performance of any of the services furnished under this Agreement, except for errors, omissions or other deficiencies to the extent attributable to the OWNER or OWNER-furnished data. The ENGINEER shall not be responsible for any time delays in the Project caused by circumstances beyond the ENGINEER'S control.

(e) ENGINEER'S opinions of probable Construction Cost are to be made on the basis of ENGINEER'S experience and qualifications and represent ENGINEER'S best judgment as an experienced and qualified professional generally familiar with the construction industry. However, since ENGINEER has no control over the cost of labor, materials, equipment, or services furnished by others, or over Contractor's methods of determining prices, or over competitive bidding or market conditions, ENGINEER cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by ENGINEER. If OWNER wishes greater assurance as to probable Construction Cost, OWNER shall employ an independent cost estimator.

(f) During the Construction Phase, the ENGINEER shall not at any time supervise, direct, or have control over Contractor's work, nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.

(g) The standard of care of all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of subject profession practicing under similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, expressed or implied, under this Agreement or otherwise, in connection with ENGINEER'S services.

(h) The ENGINEER's obligations under this clause are in addition to the ENGINEER's other express or implied assurances under this Agreement or State law and in no way diminish any other rights that the OWNER may have against the ENGINEER for faulty materials, equipment, or work.

4. Responsibilities of the OWNER

(a) The OWNER shall designate in writing a person authorized to act as the OWNER's representative. The OWNER or its representative shall receive and examine documents submitted by the ENGINEER, interpret and define the OWNER's policies and render decisions and authorizations promptly in writing.

(b) OWNER shall be responsible for, and ENGINEER may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by OWNER to ENGINEER pursuant to this Agreement. ENGINEER may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement without responsibility for verifying accuracy of OWNER furnished data and information.

(c) The OWNER shall provide to the ENGINEER full and free access to enter upon all property required for the performance of the ENGINEER's services under this Agreement.

(d) The OWNER may make and retain copies of Documents for information and reference in connection with use on the Project by OWNER. Such Documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any such reuse or modification without written verification or adaptation by ENGINEER will be at OWNER's sole risk and without liability or legal exposure to ENGINEER. Any verification or adaptation as stated above, will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

5. Changes

(a) The OWNER may, at any time, with prior approval of the Funding Agency, by written order make changes within the general scope of this Agreement in the services or work to be performed. If such changes cause an increase or decrease in the ENGINEER's cost or time required to perform any services under this Agreement, whether or not changed by any order, the OWNER shall make an equitable adjustment and modify this Agreement in writing. The ENGINEER must assert any claim for adjustment under this clause in writing within thirty (30) calendar days from the date it receives the OWNER's notification of change, unless the OWNER grants additional time before the date of final payment.

(b) No services for which the ENGINEER will charge an additional compensation shall be furnished without the written authorization of the OWNER.

6. Termination of Contract

(a) This Agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided that no such termination may be effected unless the other party is given (1) not less than fourteen (14) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party before termination.

(b) This Agreement may be terminated in whole or in part in writing by the OWNER for its

convenience, provided that the ENGINEER is given (1) not less than fourteen (14) calendar days written notice (delivered by certified, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the OWNER prior to termination.

(c) If termination for default is effected by the OWNER, an equitable adjustment in the price provided for in this agreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the ENGINEER at the time of termination may be adjusted to cover any additional costs to the OWNER because of the ENGINEER's default. If the ENGINEER effects termination for default, or if the OWNER effects termination for convenience, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the ENGINEER for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the ENGINEER relating to commitments which had become firm prior to the termination.

(d) Upon receipt of a termination action under paragraphs (a) or (b) above, the ENGINEER shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make available to the OWNER within fourteen (14) calendar days copies of all data, design drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the ENGINEER in performing this Agreement, whether completed or in process.

(e) Upon termination under paragraphs (a) or (b) above, the OWNER may take over the work and may award another party an Agreement to complete the work under this Agreement.

(f) If, after termination for failure of the ENGINEER to fulfill contractual obligations, it is determined that the ENGINEER had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the OWNER. In such event, adjustment of the Agreement price shall be made as provided in paragraph 6(c) of this clause.

7. Payment

(a) The ENGINEER will submit to the OWNER for services rendered an itemized bill showing charges for such services accompanied by any additional documentation requested by the OWNER. Such invoices are limited to no more than one per month. Compensation will be based on the lump sum or standard hourly rate with a maximum method of payment as detailed in the Attachments.

(b) The OWNER shall notify the ENGINEER of any disputed amounts in the invoices within fourteen (14) calendar days of receipt. If OWNER contests an invoice, OWNER may withhold only that portion so contested, and must pay the undisputed portion.

(c) Final Payment under this Agreement or settlement upon termination of this Agreement shall not constitute a waiver of the OWNER's claims against the ENGINEER under this Agreement.

(d) If OWNER fails to make any payment due ENGINEER within forty-five (45) calendar days after OWNER's receipt of ENGINEER's invoice, the amount due ENGINEER shall be increased at the rate of 1.5% per month from said forty-fifth day. The OWNER is solely responsible for the payment of any interest incurred due to late payments. The FUNDING AGENCY will not reimburse for any interest incurred. In addition, after ten (10) calendar days prior written notice, the ENGINEER may suspend services under this Agreement until ENGINEER is paid in full. OWNER waives any and all claims against ENGINEER for any such suspension.

8. Time

(a) PROGRESS AND COMPLETION

1. Time limits stated in this Agreement are of the essence. By executing the Agreement, ENGINEER confirms that the Contract Time(s) is (are) reasonable periods for performing each phase of the Work.
2. The ENGINEER shall proceed expeditiously, consistent with professional skills, with adequate forces to achieve completion within the Contract Time.
3. The OWNER shall not be liable to the ENGINEER for additional time or money if the ENGINEER submits a progress report expressing an intention to achieve completion of the Work prior to the Contract Time and then is not able to achieve intended accelerated schedule regardless of the reason.
4. If the ENGINEER is delayed at any time in the commencement or progress of the Work by an act or neglect of the OWNER, changes in the Work as directed by the OWNER in writing, or other causes beyond the ENGINEER'S control, then the Contract Time may be extended by OWNER per Section 5 of this Agreement. Extensions of time not associated with modifications or change to the Work shall not be allowed to increase the Contract amount for overhead or for any other reason and shall strictly apply toward liquidated damages.
5. The ENGINEER shall promptly notify OWNER in writing of any conditions that may delay delivery of work beyond the Contract Time.
6. OWNER shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the ENGINEER'S performance of its Services.

(b) CONTRACT TIME AND LIQUIDATED DAMAGES

1. The ENGINEER agrees that the Services being provided under this Agreement will be performed regularly, diligently and without interruption at such rate of progress as will ensure completion within the Contract Time. It is expressly understood and agreed, by and between ENGINEER and the OWNER, that the Contract Time is a reasonable time for completion of the Services, taking into consideration the usual conditions for performing the Services. ENGINEER agrees to promptly notify OWNER of delays in completing the services under this Agreement that are beyond ENGINEER's control and for which a Contract Time extension will be requested. If the ENGINEER neglects, fails or refuses to complete the Services within the Contract Time, including any time extension granted by the OWNER, then the ENGINEER agrees to pay the OWNER the amount specified in the ATTACHMENT, not as a penalty, but as liquidated damages.
2. The parties agree that the amount of the likely damages to the OWNER for such delay is difficult to ascertain at the time of execution of this Agreement, but that a reasonable estimate of such damages may be deducted from any monthly progress payments due to the ENGINEER or from other monies being withheld from the ENGINEER when a reasonable estimate of the expected date of completion can be determined by the OWNER.
3. Final accounting of Liquidated Damages shall be determined at completion and the ENGINEER shall be liable for any Liquidated Damages over and above unpaid balances held by the OWNER.
4. The OWNER and ENGINEER agree that as mutually agreeable, reasonable Liquidated

Damages for delay (but not as a penalty), ENGINEER shall pay OWNER amount specified in the ATTACHMENT(minimum fifty dollars [\$50.00] per day) for each calendar day that expires after the Contract Time specified in the Agreement until the Work is complete and accepted by the OWNER. OWNER shall have no more than ten (10) calendar days to accept or reject the Work.

9. Project Design

Unless otherwise approved by the OWNER and Funding Agency, the ENGINEER shall specify materials, equipment, and processes that are readily available through competitive procurement and consistent with State and Federal regulations.

10. Audits and Access to Records

(a) The ENGINEER shall maintain books, records, documents, and other evidence directly pertinent to performance on work under this Agreement in accordance with generally accepted accounting principles and practices consistently applied, and Funding Agency regulations in effect on the date of execution of this Agreement. The ENGINEER shall also maintain the financial information and data used by the ENGINEER in the preparation of support of the cost submission required under EPA regulations in effect on the date of execution for any negotiated agreement or amendment thereof and a copy of the cost summary submitted to the OWNER. The Funding Agency, the Comptroller General of the United States, the U.S. Department of Labor, OWNER, and the State water pollution control agency or any of their duly authorized representatives shall have access to such books, records, documents, and other evidence for inspection, audit, and copying during normal business hours. The ENGINEER will provide proper facilities for such access and inspection.

(b) The ENGINEER agrees to make paragraphs (a) through (f) applicable to all agreements it awards in excess of \$10,000, at any tier, and to make paragraphs (a) through (f) of this clause applicable to all amendments directly related to Project performance.

(c) Audits conducted under this provision shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agency (ies) and the General Accounting Office.

(d) The ENGINEER agrees to disclose all information and reports resulting from access to records under paragraphs (a) and (b) of this clause to any of the agencies referred to in paragraph (a) upon their request.

(e) Records under paragraphs (a) and (b) above shall be maintained and made available by the ENGINEER during performance of services under this Agreement and for three (3) years from the date of final Federal/State assistance payment to the OWNER for the Project. In addition, those records which relate to any controversy arising under this Agreement, litigation, the settlement of claims arising out of such performance or to costs or items to which an audit exception has been taken shall be maintained and made available by the ENGINEER until three (3) years after the date of resolution of such appeal, litigation, claim or exception.

(f) This right of access clause applies to financial records pertaining to all agreements (except formally advertised, competitively awarded, fixed price agreements) and all agreement amendments regardless of the type of agreement. In addition, this right of access applies to all records pertaining to all agreements and agreement amendments:

1. To the extent the records pertain directly to Agreement performance; or

2. If there is any indication that fraud, gross abuse or corrupt practices may be involved; or
3. If the Agreement is terminated for default or for convenience.

11. Subcontracts

(a) Any subcontractors and outside associates or consultants required by the ENGINEER in connection with services under this Agreement will be limited to such individuals or firms as were specifically identified and agreed to during negotiations of this Agreement. The OWNER and the FUNDING AGENCY must give prior approval for any substitutions, additions or deletions to such subcontractors, associates, or consultants.

(b) The ENGINEER may not subcontract services to subcontractors or consultants in excess of thirty (30) percent of the total phased compensation due ENGINEER and detailed in the Attachments without the OWNER AND FUNDING AGENCY prior written approval.

12. Insurance

The ENGINEER agrees to obtain and maintain, at the ENGINEER's expense, such insurance as will protect the ENGINEER from claims under the Workman's Compensation Act and such comprehensive general liability and automobile insurance as will protect the OWNER and the ENGINEER from all claims for bodily injury, death, or property damage which may arise from the performance by the ENGINEER, or by the ENGINEER's employees, for the ENGINEER's functions and services required under this Agreement. Such insurance shall be in an amount specified in ATTACHMENT for injury to any one person and amount specified in ATTACHMENT on account of any one accident and in the amount specified in ATTACHMENT for property damage. The ENGINEER further agrees to procure and maintain professional liability (errors and omissions) insurance in an amount specified in ATTACHMENT per claim and in the aggregate. Prior to commencement of any work, the ENGINEER shall furnish to the OWNER a certificate that complies with this paragraph. The certificate shall provide that the policy shall not be canceled until at least ten (10) calendar days prior written notice shall have been given to the OWNER. ENGINEER shall provide annual updates of the certificate to demonstrate the policy remains in effect for the duration of this Agreement.

13. Environmental Condition of Site

(a) Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.

(b) Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.

(c) If Engineer encounters an undisclosed Constituent of Concern, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.

(d) It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend

performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

(e) If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 calendar days' notice.

(f) Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

14. Mutual Waiver

To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

15. Independent Contractor

Engineer will, at all times during the performance of this Agreement and in connection with the Services, be deemed to be an Independent Contractor. No relationship of employer-employee or agency or other fiduciary capacity is created by this Agreement or by Engineer's performance of the Services.

16. Equal Employment Opportunity

The ENGINEER shall comply with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented in Department of Labor regulations 41 CFR Part 60.

17. Gratuities

(a) If the OWNER finds after a notice and hearing that the ENGINEER or any of the ENGINEER's agents or representatives offered or gave gratuities (in the form of entertainment, gifts, or otherwise), to any official, employee, or agent of the OWNER or the FUNDING AGENCY in an attempt to secure this Agreement, or favorable treatment in awarding, amending or making any determinations related to the performance of this Agreement, the OWNER may, by written notice to the ENGINEER, terminate this Agreement. The OWNER may also pursue other rights and remedies that the law or this Agreement provides. However, the existence of the facts on which the OWNER bases such findings shall be in issue and may be reviewed in proceedings under the Remedies clause of this Agreement.

(b) In the event this Agreement is terminated as provided in paragraph (a), the OWNER may pursue the same remedies against the ENGINEER as it could pursue in the event of a breach of the Agreement by the ENGINEER. As a penalty, in addition to any other damages to which it may be entitled by law, the OWNER may pursue exemplary damages in an amount (as determined by the OWNER) which shall be not less than three nor more than ten times the costs the ENGINEER

incurs in providing any such gratuities to any such officer or employee.

18. Covenant Against Contingent Fees

The ENGINEER represents that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the ENGINEER for the purpose of securing business. For breach or violation of this assurance the OWNER shall have the right to annul this Agreement without liability or, at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fees.

19. Cost and Pricing Data on Federally-funded Projects (delete section if not applicable)

The ENGINEER and its subcontractor(s) assure that cost and pricing data submitted for evaluation with respect to negotiation of prices for negotiated agreements, lower tier subagreements, or amendments are based on current, accurate, and complete data supported by their books and records. If the OWNER, or Funding Agency determines that any price (including profit) negotiated in connection with this Agreement, any lower tier subagreement, or any amendment thereunder was increased by any significant sums because the data provided was incomplete, inaccurate, or not current at the time of submission, then such price or cost or profit shall be reduced accordingly; and this Agreement shall be modified in writing to reflect such action. Failure to agree on a reduction shall be subject to the Remedies clause of this Agreement.

20. Remedies

Unless otherwise provided in this Agreement, all claims, counter-claims, disputes, and other matters in question between the OWNER and the ENGINEER arising out of or relating to this Agreement or the breach of it will be decided by non-binding mediation or arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the OWNER is located.

21. Assurance Against Debarment

The ENGINEER assures that neither it nor any of its subcontractors are suspended or debarred by EPA or USDA-RD.

SECTION B – ENGINEERING SERVICES

The ENGINEER shall furnish ENGINEERING SERVICES as follows in accordance with the GENERAL PROVISIONS of the Agreement and as authorized by the appropriate Attachment to this Agreement:

Engineering Services During the Planning Phase

1. The ENGINEER shall complete the ENGINEERING SERVICES described in ATTACHMENT I – Planning Services scope of work and cost proposal within the time specified in Attachment I – Compensation for Engineering Services During the Planning Phase from the date of written authorization to proceed unless otherwise mutually agreed to in writing by both parties. Any supporting documentation or revisions regarding the ENGINEER's services under this Agreement necessary to obtain the approval of the Funding Agency and all State regulatory agencies will be provided promptly.

Engineering Services During the Design Phase

2. The ENGINEER shall complete the ENGINEERING SERVICES described in ATTACHMENT II– Design Services scope of work and cost proposal and section B-2 through B-10 described herein within the time specified in Attachment II – Compensation for Engineering Services During the Design Phase from the date of written authorization to proceed unless otherwise mutually agreed to in writing by both parties. Any supporting documentation or revisions regarding the ENGINEER's services under this Agreement necessary to obtain the approval of the Funding Agency and all State regulatory agencies will be provided promptly.
3. The ENGINEER shall perform the necessary design surveys, accomplish the detailed design of the Project, prepare contract documents including design drawings, specifications and invitations for bids, and prepare a final opinion of probable Project costs based on the final design of the Project. The design drawings prepared shall be in sufficient detail to show the character and extent of the Project and to permit the actual location of the proposed improvements on the Project site. It is also understood that if subsurface explorations such as borings, or soil tests are required to determine amounts of rock excavation or foundation conditions, the ENGINEER will furnish coordination of said explorations as an Additional Engineering Service, and the costs incident to such explorations, no matter whether they are performed by the ENGINEER or by others shall be paid for by the OWNER as indicated in Section C and set out in Attachment II.
4. The ENGINEER shall review the Engineering Report prepared for this Project and, if necessary and upon consultation with and concurrence of the OWNER, Funding Agency or delegated State as appropriate, shall revise design criteria, design standards, treatment process sizing and other appropriate preliminary design information included in the Plan or other preliminary engineering reports in order to complete the final design for the Project in accordance with the performance standards and accepted engineering practices.
5. The ENGINEER shall assist the OWNER in obtaining necessary permits and approvals from appropriate Federal, State, and local regulatory agencies. The cost of obtaining such permits and approvals shall be borne by the OWNER. However, this shall not be construed as a guarantee that the ENGINEER can cause a permit or permit condition to be granted or further the OWNER's goals.
6. The Contract Documents furnished by the ENGINEER under Section B-4 shall utilize Funding Agency endorsed construction contract documents, as appropriate.
7. Prior to the advertisement for bids, the ENGINEER shall provide for each construction contract to be awarded by the OWNER, the number of copies specified in Attachment II of the detailed design drawings, specifications, and contract documents for use by the OWNER and appropriate Federal, State and local agencies from whom approval of the Project must be obtained. The ENGINEER shall provide additional copies of the above specified documents to the OWNER at the cost of reproduction. Originals of such items as documents, survey notes, and tracings, prepared by the ENGINEER are and shall remain the property of the ENGINEER, but this shall in no way infringe upon the OWNER's rights to such items under Section A-6(e).
8. The ENGINEER shall establish baselines for locating the work together with a suitable number of benchmarks adjacent to the work and show their location in the Contract Documents. This information and the Contract Documents will provide the contractor sufficient reference from which to execute the contract work. The ENGINEER is not obligated to set construction

grade stakes for the construction of the Project.

9. The ENGINEER shall prepare and furnish to the OWNER three (3) copies of maps or drawings showing the approximate location of needed construction easements, permanent easements, rights-of-way and land to be acquired. Such maps or drawings shall be furnished promptly to enable the OWNER to initiate property and easement acquisitions.
10. The ENGINEER shall, prior to completion of ninety (90) percent of the Design Phase service, prepare and furnish to the OWNER an estimate for total compensation to be paid to the ENGINEER for providing the services to be performed in the Construction Phase and Operation Phase.
11. Section B-2 through B-10 and those ADDITIONAL ENGINEERING SERVICES designated for the Design Phase in Attachment II will take effect upon execution of Attachment II.

Engineering Services During the Construction Phase

12. ENGINEER shall complete the ENGINEER SERVICES described in ATTACHMENT III – Construction Services scope of work and cost proposal and section B-12 through B-23 described herein, within the time specified in Attachment III – Compensation for Engineering Services During the Construction Phase from the date of written authorization to proceed unless otherwise mutually agreed to by both parties.
13. The ENGINEER shall attend the bid opening and tabulate the bid proposals, analyze the responsiveness of the bidders, check references, and make recommendations for awarding the contract(s) for construction to the lowest responsible, responsive bidder.
14. Upon award of each construction contract, the ENGINEER shall furnish to the OWNER, for each contract, the number specified in Attachment III of the sets of the design drawings, specifications and contract documents for execution by the OWNER and contractor. The ENGINEER shall provide additional copies of such contract documents to the OWNER at the cost of reproduction.
15. The ENGINEER shall review and approve, for conformance with the design concept all shop drawings and other submittals required by the Contract Documents to be furnished by contractors.
16. The ENGINEER shall interpret the general intent of the design drawings and specifications to endeavor to protect the OWNER against defects and deficiencies in construction on the part of the contractors.
17. The ENGINEER shall provide general engineering review of the work of the contractors as construction progresses to ascertain that the contractors are conforming to the general design concept. Engineer shall, in connection with observations of Contractor's Work while it is in progress make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, but at least monthly, to observe as an experienced and qualified design professional the progress and quality of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of Contractor's Work in progress or to involve detailed inspections of Contractor's Work in progress beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment as assisted by the Resident

Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.

18. The ENGINEER's undertaking hereunder shall not relieve the contractor of its obligation to perform the work in conformity with the Contract Documents and in a workmanlike manner; nor shall it make the ENGINEER an insurer of the contractor's performance. Engineer shall not at any time supervise, direct, or have control over Contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.
19. The ENGINEER shall review each contractor's applications for progress and final payments and submit sufficient copies of same to the OWNER with the ENGINEER's recommendation for approval or disapproval.
20. The ENGINEER shall prepare necessary contract change orders for approval of the OWNER, the Funding Agency and others as required. The ENGINEER shall make an independent assessment of the Contractor's cost and time proposal and the impacts on the Contract Price and Contract Time as part of the review and recommendation process for each change order.
21. The ENGINEER shall make a site visit prior to issuing the certificate of substantial completion of all construction and submit a written report to the OWNER, the Funding Agency and others as required.
22. Prior to submission of recommendation for final payment on each contract, the ENGINEER shall submit a certificate of substantial completion of work done under that contract to the OWNER, the Funding Agency and others as required.
23. The ENGINEER shall provide the OWNER with record drawings as specified in the scope of work for Attachment III. Such drawings will be based upon the Resident Project Representative's construction data and the construction records provided by the contractor during construction and reviewed by the Resident Project Representative.
24. Section B-12 through B-23 and those ADDITIONAL ENGINEERING SERVICES designated for the Construction Phase in Attachment III will take effect upon execution of Attachment III.

Engineering Services During the Operation Phase

25. The ENGINEER shall complete the ENGINEERING SERVICES described in ATTACHMENT IV – Operational Services scope of work and cost proposal and section B-25 through B-29 within the time specified in Attachment IV – Compensation for Engineering Services During the Operation Phase from the date of written authorization to proceed unless otherwise mutually agreed to in writing by both parties.
26. The ENGINEER shall review the first year's operation of the Project and revise the operation and maintenance manual for the Project as necessary to accommodate actual operating experience.
27. The ENGINEER shall provide to the OWNER monthly operation reports on the performance

of the Project.

28. The ENGINEER shall train operating personnel and prepare curricula and training material for operating personnel.

29. Eleven (11) months after the initiation of the Project operation, the ENGINEER shall advise the OWNER in writing whether the Project meets the project performance standards.

30. Section B-25 through B-29 and those ADDITIONAL ENGINEERING SERVICES designated for the Operation Phase in Attachment IV will take effect upon execution of Attachment IV.

SECTION C –ADDITIONAL ENGINEERING SERVICES

ADDITIONAL ENGINEERING SERVICES as detailed in the Attachments shall be provided by the ENGINEER upon written authorization by the OWNER and concurrence of Funding Agency. Compensation for performing the designated ADDITIONAL ENGINEERING SERVICES will be included on Attachment I, Attachment II, Attachment III, or Attachment IV. ADDITIONAL ENGINEERING SERVICES could include such things as the following.

1. Provide Resident Project Observation. The ENGINEER shall, prior to the preconstruction conference, submit a resume of the Resident Project Representative's qualifications, anticipated duties and responsibilities for approval by the OWNER and the Funding Agency. Resident observation includes checking lines and grades, keeping records of full measurements and the contractor's activities, passing information between the ENGINEER and contractor, reviewing of contractor's request for progress payments, inspection of completed work for compliance with Contract Documents and keeping of a daily diary per Funding Agency requirements. Performance of this service will not guarantee the contractor's performance, but it endeavors to protect the OWNER against defects and deficiencies in the Project and verify compliance with the contract Documents. Period of service for calculating compensation will be as specified in the Attachments.
2. Prepare site, boundary, and topographic surveys for treatment works, dams, reservoirs, and other similar special surveys as may be required.
3. Conduct laboratory tests, well tests, borings, and specialized geological, soils, hydraulic, or other studies recommended by the ENGINEER.
4. Prepare property surveys, detailed descriptions of sites, maps, drawings, or estimates related thereto; assist in negotiating for land and easement rights.
5. Appear before courts or boards on matters of litigation related to the project.
6. Assist OWNER with developing a user charge system. Design a user charge system to produce adequate revenues required for the operation, maintenance and replacement of the Project that meets applicable EPA or other requirements.
7. Prepare an operation and maintenance manual.
8. Provide construction-staking services.
9. Prepare or review environmental assessments and impact statements; review and evaluate the effects on the design requirements for the Project of any such statements and documents prepared by others; and assist in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

10. Provide services resulting from significant changes in the scope, extent or character of the portions of the Project designed or specified by ENGINEER or its design requirements including, but not limited to, changes in size, complexity, OWNER's schedule, character of construction or method of financing; and revising previously accepted studies, reports, Drawings, Specifications or Contract Documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes, standards or orders enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond ENGINEER's control.
11. Provide services resulting from evaluation by ENGINEER during the Study and Report Phase at OWNER's request of alternative solutions in addition to those specified in Attachment I.
12. Prepare for, coordinate with, participate in and respond to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering and constructability review requested by OWNER; and performing or furnishing services required to revise studies, reports, Drawings, Specifications or other Bidding Documents as a result of such review processes.
13. Provide services in connection with Work Change Directives and Change Orders to reflect OWNER-requested changes to the Drawings and Specifications.
14. Provide services in making revisions to Drawings and Specifications occasioned by the OWNER's acceptance of substitute materials or equipment other than "or-equal" items; and services after the award of the construction contract in evaluating and determining the acceptability of a substitution.
15. Provide additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work, (2) work damaged by fire or other cause during construction, (3) a significant amount of defective, neglected or delayed work by Contractor, (4) acceleration of the progress schedule involving services beyond normal working hours, or (5) default by Contractor.

SECTION D – SPECIAL PROVISIONS OR MODIFICATIONS TO THE STANDARD LANGUAGE IN THIS AGREEMENT

(Describe, attach or indicate “None”)

MODEL CONTRACT CLAUSE FOR ENGINEERING AGREEMENTS

1. PRIVACY OF CONTRACT

This contract is expected to be funded in part with funds from the U.S. Environmental Protection Agency. Neither the United States nor any of its departments, agencies or employees is, or will be, a party to this contract or any lower tier contract. This contract is subject to the applicable EPA procurement regulations in effect on the date of the assistance award for this project.

2. CHANGES

1. The Owner may at any time, by written order make changes within the general scope of this contract in the services to be performed. If such changes cause an increase or decrease in the Engineer's cost or time required to perform any services under this contract, whether or not changed by any order, the Owner shall make an equitable adjustment and modify this contract in writing. The Engineer must assert any claim for adjustment under this clause in writing within 30 days from the date it receives the Owner's notification of change, unless the Owner grants additional time before the date of final payment.

2. No claim by the Engineer for an equitable adjustment shall be allowed if made after final payment under this contract.

3. No services for which the Engineer will charge an additional compensation shall be furnished without the written authorization of the Owner.

3. TERMINATION

a. This contract may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this contract through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

b. This contract may be terminated in whole or in part in writing by the Owner for its convenience, provided that the Engineer is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

c. If termination for default is effected by the Owner, an equitable adjustment in the price provided for in this contract shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the Engineer at the time of termination may be adjusted to cover any additional costs to the Owner because of the Engineer's default. If the Engineer effects termination for default, or if the Owner effects termination for convenience, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the Engineer

for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the Engineer relating to commitments which had become firm prior to the termination.

d. Upon receipt of a termination action under paragraphs (a) or (b) above, the Engineer shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make available to the Owner all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the Engineer in performing this contract, whether completed or in process.

e. Upon termination under paragraphs (a) or (b) above, the Owner may take over the work and may award another party a contract to complete the work under this contract.

f. If, after termination for failure of the Engineer to fulfill contractual obligations, it is determined that the Engineer had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the Owner. In such event, adjustment of the sub-agreement price shall be made as provided in paragraph (c) of this clause.

4. REMEDIES

Unless otherwise provided in this contract, all claims, counter-claims, disputes and other matters in question between the Owner and the Engineer arising out of, or relating to, this contract or the breach of it will be decided, if the parties mutually agree, by arbitration, mediation, or other alternative dispute resolution mechanism; or in a court of competent jurisdiction within the State in which the Owner is located.

5. AUDIT: ACCESS TO RECORDS

a. The Engineer shall maintain books, records, documents and other evidence directly pertinent to performance on EPA funded work under this contract in accordance with generally accepted accounting principles and practices consistently applied, and the applicable EPA regulations in effect on the date of execution of this contract. The Engineer shall also maintain the financial information and data used in the preparation or support of any cost submission required under applicable regulations for negotiated contracts or change orders and a copy of the cost summary submitted to the Owner. The United States Environmental Protection Agency, the Comptroller General of the United States, the United States Department of Labor, the Owner, and [the State] or any of their authorized representatives shall have access to all such books, records, documents and other evidence for the purpose of inspection, audit and copying during normal business hours. The Engineer will provide proper facilities for such access and inspection.

b. If this is a fixed price contract awarded through sealed bidding or otherwise on the basis of effective price competition, the Engineer agrees to make paragraphs (a) through (f) of this clause applicable to all negotiated change orders and contract amendments affecting the contract price. In the case of all other types of prime contracts, the Engineer agrees to make paragraphs (a) through (f) applicable to all contract awards in excess of \$10,000, at any tier, and to make paragraphs (a) through (f) of this clause applicable to all change orders directly related to project performance.

c. Audits conducted under this provision shall be in accordance with generally accepted auditing standards and with established procedures and guidelines of the reviewing or audit agency(ies).

d. The Engineer agrees to disclose all information and reports resulting from access to records under paragraphs (a) and (b) of this clause to any of the agencies referred to in paragraph (a).

e. Access to records is not limited to the required retention periods. The authorized representatives designated in paragraph (a) of this clause shall have access to records at any reasonable time for as long as the records are maintained.

f. This right of access clause applies to financial records pertaining to all contracts (except for fixed price contracts awarded through sealed bidding or otherwise on the basis of effective price competition) and all contract change orders regardless of the type of contract, and all contract amendments regardless of the type of contract. In addition this right of access applies to all records pertaining to all contracts, contract change orders and contract amendments:

1. To the extent the records pertain directly to contract performance;
2. If there is any indication that fraud, gross abuse or corrupt practices may be involved; or
3. If the sub-agreement is terminated for default or for convenience.

6. COVENANT AGAINST CONTINGENT FEES

The Engineer assures that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Engineer for the purpose of securing business. For breach or violation of this assurance, the Owner shall have the right to annul this agreement without liability or, at its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

7. GRATUITIES

a. If the Owner finds after a notice and hearing that the Engineer or any of the Engineer's agents or representatives offered or gave gratuities (in the form of entertainment, gifts or otherwise) to any official, employee or agent of the Owner, the State or EPA in an attempt to secure a contract or favorable treatment in awarding, amending or making any determinations related to the performance of this contract, the Owner may, by written notice to the Engineer, terminate this contract. The Owner may also pursue other rights and remedies that the law or this contract provides.

b. In the event this contract is terminated as provided in paragraph (a), the Owner may pursue the same remedies against the Engineer as it could pursue in the event of a breach of the contract by the Engineer, and as a penalty, in addition to any other damages to which it may be entitled by law, be entitled to exemplary damages in an amount (as determined by the Owner) which shall be not less than three nor more than ten times the costs the Engineer incurs in providing any such gratuities to any such officer or employee.

8. FINAL PAYMENT

Upon satisfactory completion of the work performed under this contract, as a condition before final payment under this contract or as a termination settlement under this contract the Engineer shall execute and deliver to the Owner a release of all claims against the Owner arising under, or by virtue of, this contract, except claims which are specifically exempted by the Engineer to be set forth therein. Unless otherwise provided in this contract, by State law or otherwise expressly agreed to by the parties to this contract, final payment under this contract or settlement upon termination of this contract shall not constitute a waiver of the Owner's claims against the Engineer under this contract.

9. ENGINEERING SERVICES

Section B is revised to read as follows:

Engineering Services During the Planning Phase

1. DELETED

Engineering Services During the Design Phase

2. DELETED
3. DELETED
4. DELETED
5. DELETED
6. DELETED
7. DELETED
8. DELETED
9. DELETED
10. DELETED
11. DELETED

Engineering Services During the Construction Phase

12. ENGINEER shall complete the ENGINEER SERVICES described in ATTACHMENT III – Construction Services scope of work and cost proposal and section B-13 through B-23 described herein, within the time specified in Attachment III – Compensation for Engineering Services During the Construction Phase from the date of written authorization to proceed unless otherwise mutually agreed to by both parties.
13. The ENGINEER shall attend the prebid and pre-construction meetings to answer questions as appropriate.
14. The ENGINEER's representative on this project shall be Nathan Kirker, Biologist, SME Environmental Inc.
15. DELETED
16. DELETED
17. The ENGINEER shall provide environmental monitoring as necessary throughout construction to ensure project success. The Engineer shall collaborate with the OWNER and the OWNER'S assigned construction management consultant team as required to ensure protection of wildlife (i.e. migratory birds), cultural resources, and wetlands.
18. DELETED
19. DELETED
20. DELETED
21. DELETED

22. DELETED

23. DELETED

24. Section B-12 through B-23 and those ADDITIONAL ENGINEERING SERVICES designated for the Construction Phase in Attachment III will take effect upon execution of Attachment III.

Engineering Services During the Operation Phase

25. DELETED

26. DELETED

27. DELETED

28. DELETED

29. DELETED

30. DELETED

10. ADDITIONAL ENGINEERING SERVICES

Section C is revised to read as follows:

1. The ENGINEER's representative on this project shall be Nathan Kirker.

2. DELETED

3. DELETED

4. DELETED

5. Appear before courts or boards on matters of litigation related to the project, if required.

6. DELETED

7. DELETED

8. DELETED

9. DELETED

10. DELETED

11. DELETED

12. DELETED

13. DELETED

14. DELETED

15. Provide additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work, (2) work damaged by fire or other cause during construction, (3) a significant amount of defective, neglected or delayed work by Contractor, (4) acceleration of the progress schedule involving services beyond normal working hours, or (5) default by Contractor.

16. Attachments incorporated as part of this agreement:

(a) Certifications including Equal Employment Opportunity and Nonsegregated Facilities

(b) EPA XP-215 MBE/WBE/SBRA Engineering Utilization Information Worksheet

(c) Certification Regarding Debarment, Suspension, and Other Responsibility Matters

(d) Form 6100-3 DBE Subcontractor Performance Form

REY 08/13 Form 6100-4 DBE Subcontractor Utilization Form

IN WITNESS THEREOF, the parties hereto have executed, or caused to be executed, by their duly authorized officials, this Agreement in triplicate on the respective dates indicated below. **The parties further certify by their signatures below that no modifications have been made to the standard language of this Agreement, other than those detailed in Section D.**

ATTEST: _____

Type Name Karla Saylor, CMC

Title City Clerk

Date February 10, 2015

OWNER: City of Aztec, NM

By _____

Sally Burbridge

Mayor

Date February 10, 2015

ATTEST: _____

Type Name _____

Title _____

Date _____

ENGINEER: SME Environmental Inc..

By _____

Sean Moore

President

679 East 2nd Ave Unit E2
Durango, CO 81301

Date _____

REVIEWED: FUNDING AGENCY

NAME: _____

By _____

Type Name David Bishop

Date _____

ATTACHMENTS

Please check the appropriate box and include applicable attachments

1. As set forth in the AGREEMENT FOR ENGINEERING SERVICES dated the ____ day of ____, 20____ by and between the City of Aztec, NM, the OWNER, and SME Environmental, Inc., the ENGINEER, the OWNER and ENGINEER agree this ____ day of ____, 20____ that the OWNER shall compensate the ENGINEER for services described in Section B and Section C and further described in

ATTACHMENT I—Planning Services scope of work, cost proposal and compensation for Engineering Services During the Planning Phase

ATTACHMENT II—Design Services scope of work, cost proposal and compensation for Engineering Services During the Design Phase

ATTACHMENT III - Construction Services scope of work, cost proposal and compensation for Engineering Services During the Construction Phase

ATTACHMENT IV - Operational Services scope of work, cost proposal and compensation for Engineering Services During the Operation Phase

2. Compensation for ENGINEERING SERVICES shall be by the

LUMP SUM method of payment. The total amount of compensation for ENGINEERING SERVICES, as described in the appropriate ATTACHMENTS shall not exceed \$____, excluding gross receipt tax and reimbursables.

STANDARD BILLABLE RATE WITH MAXIMUM method of payment. The total amount of hourly charges, excluding gross receipt tax and reimbursables, for ENGINEERING SERVICES as described in the appropriate ATTACHMENTS shall not exceed \$25,000 without prior written approval of the OWNER, with Funding Agency concurrence.

3. Compensation for ADDITIONAL ENGINEERING SERVICES (provided by the ENGINEER upon written authorization from the OWNER and concurrence of the Funding Agency), shall be by the

LUMP SUM method of payment. The total amount of compensation for ADDITIONAL ENGINEERING SERVICES, as described in the appropriate ATTACHMENT shall not exceed \$____, excluding gross receipt tax and reimbursables.

STANDARD BILLABLE / HOURLY RATE WITH MAXIMUM method of payment. The total amount of hourly charges, excluding gross receipt tax and reimbursables, for ADDITIONAL ENGINEERING SERVICES as described in the appropriate ATTACHMENT shall not exceed \$5,000 without prior written approval of the OWNER and with Funding Agency concurrence.

4. The amount of compensation shall not change unless the scope of services to be provided by the ENGINEER changes and this Agreement is formally amended according to Section A-5. Contract Time under Section B. and for the purpose of Section A.8 shall be 400 calendar days (or as specified in the Attachments).

5. The OWNER and ENGINEER agree that as mutually agreeable, reasonable Liquidated Damages for delay (but not as a penalty), ENGINEER shall pay OWNER fifty dollars (\$50) for each calendar day that expires after the Contract Time specified in the Agreement (See attached project schedule - Gantt chart, bar chart, etc.) until the Work is complete and accepted by the OWNER. OWNER shall have no more than ten (10)

calendar days to accept or reject the Work.

6. The ENGINEER agrees to obtain and maintain, at the ENGINEER's expense, such insurance as will protect the ENGINEER from claims under the Workman's Compensation Act and such comprehensive general liability and automobile insurance as will protect the OWNER and the ENGINEER from all claims for bodily injury, death, or property damage which may arise from the performance by the ENGINEER, or by the ENGINEER's employees, for the ENGINEER's functions and services required under this Agreement. Such insurance shall be in an amount not less than \$1,000,000 for injury to any one person and \$1,000,000 on account of any one accident and in the amount of not less than \$1,000,000 for property damage. The ENGINEER further agrees to procure and maintain professional liability (errors and omissions) insurance in an amount not less than \$1,000,000 per claim and in the aggregate. Prior to commencement of any work, the ENGINEER shall furnish to the OWNER a certificate that complies with this paragraph. The certificate shall provide that the policy shall not be canceled until at least ten (10) calendar days prior written notice shall have been given to the OWNER. ENGINEER shall provide annual updates of the certificate to demonstrate the policy remains in effect for the duration of this Agreement.

7. OWNER shall pay ENGINEER applicable gross receipt taxes and reimbursable expenses at the rates set forth in the appropriate ATTACHMENTS. The amounts payable to ENGINEER for reimbursable expenses will be the project related internal expenses, such as mileage, per diem and reproduction, actually incurred or allocated by ENGINEER, plus all invoiced external reimbursable expenses, including consultants, allocable to the project, the latter multiplied by a factor of (1.1 MAXIMUM). Mileage will be reimbursed at the current federally approved IRS rate. Reimbursable expenses shall not exceed the estimate in the ATTACHMENT without prior written approval of the OWNER, with Funding Agency concurrence.

8. The method for interim or partial payments, such as milestone or time & materials, shall be: Monthly

The rest of the page is intentionally left blank

9. Signatures

IN WITNESS THEREOF, the parties hereto have executed, or caused to be executed, by their duly authorized officials, this Agreement in triplicate on the respective dates indicated below.

ATTEST: _____

OWNER: City of Aztec, NM

Type Name Karla Saylor, CMC

By _____

Title City Clerk

Type Name: Sally Burbridge

Date February 10, 2015

Title Mayor

Date February 10, 2015

ATTEST: _____

ENGINEER: SME Environmental Inc.

Type Name _____

By _____

Title _____

Sean Moore

Date _____

President

679 East 2nd Ave Unit E2
Durango, CO 81301

Date _____

REVIEWED: FUNDING AGENCY

NAME: _____

By _____

Type Name David Bishop

Date _____

Attachment III

Agreement for Engineering Services

Construction Services scope of work, cost proposal and compensation for Engineering Services during the Construction Phase

A. Scope

The ENGINEER shall provide on-going environmental support during construction including monitoring wetlands, cultural and wildlife to ensure success of the project. Any archaeological/cultural discoveries would require additional services/scope.

The Project Manager shall attend the prebid and pre-construction meetings.

The Engineer shall attend coordination meetings as requested by the OWNER.

B. Cost Proposal – Include hourly breakdown for each task (see example)

See attached cost proposal.

C. Schedule of time to complete work

400 calendar days



January 16, 2015

Scope and Cost Estimate for: Aztec Sewer Outfall Construction Monitoring

Migratory Bird Treaty Act (MBTA) Compliance

Field survey and reporting for MBTA nesting in or adjacent to project area prior to any vegetation removal between April 15 and August 15 (March 1 and September 30 in NMDOT ROW):

Field Work

Wildlife Biologist: \$61/hr.
Mileage: \$0.53/mi.

Reporting

MBTA survey summary report: \$425

Assumptions:

-Survey work would only to be conducted prior to removal of vegetation between April 15 and August 15 (March 1 and September 30 in NMDOT ROW).

-Assumes no nests identified; additional budget/scope would be required in the event nests found.

-Nest survey is only good for three days; should vegetation be removed from any area of the project more than three days after the nest survey, such work could be found in non-compliance with the MBTA by the US Fish & Wildlife Service.

Wetland Construction and Long-term Monitoring

Wetland Construction Monitoring

Construction monitoring associated with sewer outfall installation in authorized wetland impact areas:

Field Work

Wetlands Specialist: \$72/hr.
Mileage: \$0.53/mi.
GPS: \$98/hd., \$185/d.
Camera: \$10/d.
Flagging: at cost

Assumptions:

-No wetland mitigation areas to be created as a requirement of CWA Section 404 compliance; mitigation will be limited to restoration of temporarily impacted wetlands.



-SME to flag all existing wetlands prior to construction activities.

Long-term Wetland Mitigation Monitoring

Year 1 and Final Year

Initial and final year of mitigation monitoring – data collection, report, reimbursables (includes as-built in initial monitoring year and delineation in final monitoring year) \$3,200 per monitoring year: **\$6,400**

Years 2, 3 and 4

Years 2, 3 and 4 of mitigation monitoring – data collection, report, reimbursables (\$2,500 per monitoring year): **\$7,500**

Assumptions:

-The USACE may terminate monitoring prior to the end of the five (5) year period if mitigation areas have met the performance standards; USACE approval may be granted when monitoring demonstrates that the site has achieved its performance standards for two growing seasons without conducting maintenance activities.

Reimbursables included in costs:

-Mileage, report materials, GPS

Archaeological Monitoring

Monitoring of construction activities within proximity of three known archaeological sites along the sewer outfall alignment (additional rates and fees may apply, see attached sub-consultant rate sheets):

Field Work

Monitor:	\$55/hr.
Permitted Archaeologist:	\$60/hr.
Mileage:	\$1.15/mi.
NM Gross Receipts Tax:	7.1875%

Reporting

Monitoring report:	\$1,625
--------------------	----------------

Assumptions:

-Archaeological monitoring to be performed by Dykeman Roebuck Archaeology of Farmington. SME includes a 15% markup on sub-consultant estimated costs.

-Assumes no discoveries are made during monitoring; any work regarding discoveries would require additional costs not described here).

CERTIFICATIONS

Project Name Aztec Sewer Line Project Number 120027

Contract For SME Environmental, Inc.

The following certifications must be completed by the bidder for each contract.

A. EQUAL EMPLOYMENT OPPORTUNITY:

- I have developed and have on file at my each establishment affirmative action programs pursuant to 41 CFR Part 60-2.
- I have participated in previous contract(s) or subcontract(s) subject to the equal opportunity clause under Executive Orders 11246 and 11375. I have filed all reports due under the requirements contained in 41 CFR 60-1.7.
- I have not participated in previous contract(s) subject to the equal opportunity clause under Executive Orders 11246 and 11375.
- I will obtain a similar certification from any proposed subcontractor(s), when appropriate.

B. NONSEGREGATED FACILITIES

- I certify that I do not and will not maintain any facilities provided for my employees in a segregated manner, or permit my employees to perform their services at any location under my control where segregated facilities are maintained; and that I will obtain a similar certification prior to the award of any federally assisted subcontract exceeding \$10,000 which is not exempt from the equal opportunity clause as required by 41 CFR 60-1.8.

I understand that a false statement on this certification may be grounds for rejection of this bid proposal or termination of the contract award.

Sean Moore, President, SME Environmental, Inc.

Typed Name & Title of Bidder's Authorized Representative

[Signature]
Signature of Bidder's Authorized Representative

11/12/15
Date

SME Environmental, Inc.

679 E 2nd Ave Unit E2 Durango, CO 81301

Name & Address of Bidder

XP-215 MBE/WBE/SBRA ENGINEERING UTILIZATION INFORMATION SHEET

NOTE: The offeror shall complete the following Minority/Women's/Small Business in Rural Area (MBE/WBE/SBRA) utilization information whenever they solicit sub-consultant work and/or services for the project in order to provide the fair share of the total dollar amount of the contract for

MBE: Construction N/A, Equipment N/A, Supplies N/A, Services 38.78 %
 WBE: Construction N/A, Equipment N/A, Supplies N/A, Services 40.00 %
 SBRA: Construction _____, Equipment _____, Supplies _____, Services _____

1. Do you maintain and update qualified MBE, WBE, and SBRA on your solicitation lists for supplies, equipment, construction and/or service? Yes No
 If yes, when did you update your MBE/WBE/SBRA solicitation lists? Check on-line lists regularly.
2. Do you maintain a list of minority, women and rural small business-focused publications that may be utilized to solicit MBEs or WBEs or SBRA's? Yes No
 If yes, name the publications: CDOT DPE website, check regularly
3. Do you use the services of outreach programs sponsored by the Minority Business Development Agency and/or the Small Business Administration to recruit bona fide MBE/WBE/SBRA firms for placement on your solicitation lists? Yes No
4. Do you seek out Minority Business Development Centers to assist you in identifying MBEs/WBEs/SBRAs for potential work opportunities on your proposal for this project? Yes No
via CDOT
5. Do you analyze the request for proposal to identify portions of work that can be divided and performed by qualified MBEs, WBEs, and SBRA's including the bonding range? Yes No
 If yes, please attach a brief description of portions of work you have identified for sub-consulting.
6. Do you develop realistic delivery schedules which may provide for greater MBE/WBE/SBRA participation? Yes No
when possible.
7. Do you send a letter of solicitation to MBE/WBE/SBRA for this proposed project? Yes No
 If yes, please attach a sample copy of each different solicitation letter and the name and address of each MBE/WBE/SBRA. usually contact by email or phone
8. Do you advertise in general circulation, trade journals, State agency publications of identified MBEs/WBEs/SBRAs, minority or women or rural small business focused media, etc., concerning the sub-consulting opportunities on your proposal for this project? Yes No
 If yes, please list the name of publication and dates of advertisement and attach a copy of each advertisement from each publication.
9. Do you conduct pre-solicitation, meetings and follow-ups with interested MBE, WBE, and SBRA? Yes No
 If yes, please list person who attended conference as representative of MBE/WBE/SBRA

Name & Title of Person: _____
 Name of MBE/WBE/SBRA: _____
 Address: _____ Phone: _____
 Date and Place of Conference: _____

Name & Title of Person: _____
 Name of MBE/WBE/SBRA: _____
 Address: _____ Phone: _____
 Date and Place of Conference: _____

Name & Title of Person: _____
 Name of MBE/WBE/SBRA: _____

Address: _____ Phone: _____
 Date and Place of Conference: _____

10. Total dollar amount of the contract:

\$ *unknown now - subcontract is for TAM on an hourly basis.*

11. Total dollar amount and percentage of MBE/WBE/SBRA participation:

MBE:	Construction	_____ %	Equipment	_____ %	Supplies	_____ %	Services	0 %
	(\$)	(\$)	(\$)	(\$)
WBE:	Construction	_____ %	Equipment	_____ %	Supplies	_____ %	Services	0 %
	(\$)	(\$)	(\$)	(\$)
SBRA:	Construction	_____ %	Equipment	_____ %	Supplies	_____ %	Services	0 %
	(\$)	(\$)	(\$)	(\$)

12. Name, address, phone number, contact person, type of construction subcontract, and dollar amount of subcontract.

MBE Sub-consultant:	WBE Sub-consultant:	SBRA Sub-consultant:
Address:	Address:	Address:
Phone:	Phone:	Phone:
Contact Person:	Contact Person:	Contact Person:
Type of Work:	Type of Work:	Type of Work:
Amount: \$	Amount: \$	Amount: \$
MBE Sub-consultant:	WBE Sub-consultant:	SBRA Sub-consultant:
Address:	Address:	Address:
Phone:	Phone:	Phone:
Contact Person:	Contact Person:	Contact Person:
Type of Work:	Type of Work:	Type of Work:
Amount: \$	Amount: \$	Amount: \$
MBE Sub-consultant:	WBE Sub-consultant:	SBRA Sub-consultant:
Address:	Address:	Address:
Phone:	Phone:	Phone:
Contact Person:	Contact Person:	Contact Person:
Type of Work:	Type of Work:	Type of Work:
Amount: \$	Amount: \$	Amount: \$
MBE Sub-consultant:	WBE Sub-consultant:	SBRA Sub-consultant:
Address:	Address:	Address:
Phone:	Phone:	Phone:
Contact Person:	Contact Person:	Contact Person:
Type of Work:	Type of Work:	Type of Work:
Amount: \$	Amount: \$	Amount: \$

NA

I understand that a false statement on the above information may be grounds for rejection of the offeror's proposal or termination of the contract award.

Sean Moore, President

Typed Name & Title of Authorized Representative

SM

1/20/15

Signature of Offeror's Authorized Representative

Date

EPA Project Control Number

United States Environmental Protection Agency
Washington, DC 20460

**Certification Regarding
Debarment, Suspension, and Other Responsibility Matters**

The prospective participant certifies to the best of its knowledge and belief that it and the principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction: violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated or cause or default.

I understand that a false statement on this certification may be ground for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Sean Moore, President

Typed Name & Title of Authorized Representative

[Signature]

Signature of Bidder's Authorized Representative

Date

11/15/15

I am unable to certify to the above statements. My explanation is attached.

FORM 6100-3
Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Performance Form

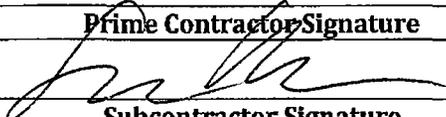
This form is intended to capture the DBE¹ subcontractor's² description of work to be performed and the price of the work submitted to the prime contractor. A Financial Assistance Agreement Recipient must require its prime contractor to have its DBE subcontractors complete this form and include all completed forms in the prime contractor's bid or proposal package.

N/A - subcontractor is not a DBE

Subcontractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Prime Contractor Name		Issuing/Funding Entity:	

Contract Item Number	Description of Work Submitted to the Prime Contractor Involving Construction, Services, Equipment or Supplies	Price of Work Submitted to the Prime Contractor
DBE Certified By: <input type="checkbox"/> DOT <input type="checkbox"/> SBA <input type="checkbox"/> Other: _____ <input type="checkbox"/> Not certified		Meets/ exceeds EPA certification standards? <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> Unknown

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

Prime Contractor Signature	Title/ date
	<i>1/20/15</i>
Subcontractor Signature	Title/ date
<i>N/A</i>	

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202. ² Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

FORM 6100-4
Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Utilization Form

This form is intended to capture the prime contractor's actual and/or anticipated use of identified certified DBE¹ subcontractors² and the estimated dollar amount of each subcontract. A Financial Assistance Agreement Recipient must require its prime contractors to complete this form and include it in the bid or proposal package. Prime contractors should also maintain a copy of this form on file.

Subcontractor Name		Project Name <i>N/A Subcontractor is not a DBE</i>	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Prime Contractor Name		Issuing/Funding Entity:	

I have identified potential DBE certified subcontractors	_ YES	<input checked="" type="checkbox"/> NO
--	-------	--

If yes, please complete the table below. If no, please explain: *we contacted all cultural resources companies in the Aztec, NM area. The only firm interested in the work is not a DBE.*

Company Name	Company Address/ Phone/ Email	Est. Dollar Amt	Currently DBE Certified?

Continue on back if needed

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

Prime Contractor Signature 	Title/ date <i>1/20/15</i>
---------------------------------------	--------------------------------------

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202. ² Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

Staff Summary Report

MEETING DATE:	10 February 2015
AGENDA ITEM:	XI. BUSINESS ITEM (A)
AGENDA TITLE:	Hidden Valley Golf Course Lease Agreement

ACTION REQUESTED BY:	Joshua W. Ray, City Manager
ACTION REQUESTED:	Approval of Hidden Valley Golf Course Lease Agreement
SUMMARY BY:	Joshua W. Ray, City Manager

PROJECT DESCRIPTION / FACTS (Leading Department)

Hidden Valley Golf course, located off of Southside River Rd, closed its doors on January 3rd of this New Year.

Approximately one month before, when word began to spread around the community that the course was closing, people began to contact the City asking what we could do to keep the course open.

I have been discussing the possibility of the City leasing the course with two of the three owners for the past month. Recently, we made a proposal to the owners to lease the course for 2 years in an effort to keep it alive and functioning within the community.

Steve, Watson and I have all walked the course and Steve has inspected their equipment inventory.

I have attached a proposed budget for the 2015 calendar year. This budget includes revenues and expenditures for the golf course. As you can see from the attached budget we are confident we can make this golf course a true enterprise fund that will support itself. There will be plenty of challenges but there can also be plenty of successes.

Golf courses are by no means easy to manage or operate, but they can be a vital resource within a community. We have a lot of marketing ideas that we are excited about and would like to try.

The First Tee program is youth educational program that actively promotes getting kids involved with the sport of golf. The program currently operates with 80-100 kids at Hidden Valley Golf Course.

The PGA Jr. League is an extension of the Professional Golf Association and is currently active at Hidden Valley Golf Course. The PGA Jr. League currently has 20-25 kids in Aztec.

The High School golf team operates out of Hidden Valley Golf Course.

I have emailed you their 2012 and 2013 operating reports but have yet to receive the 2014 numbers. As soon as those numbers come in this weekend I will send them directly to you via email.

SUPPORT DOCUMENTS:	Proposed 2015 Golf Course Budget, Lease Agreement
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DEPARTMENT'S RECOMMENDED MOTION:	Move To Approve The Lease Agreement With Hidden Valley Country Club, LLC.
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HIDDEN VALLEY GOLF COURSE 2015 OPERATING BUDGET

REVENUES

Golf		\$255,500
Cart Rental		\$75,000
Memberships		\$85,000
Advertising		\$7,500
Pro Shop		\$15,000
Snack Bar Lease		\$10,000
Total		\$448,000

35 rounds/day

170 members

18 holes

Contracted out

EXPENDITURES

PERSONNEL		
Superintendent	1	\$45,000
Course maintenance (Seasonal)	6	\$80,650
Administrative Assistant (1/2)	1	\$16,000
Clubhouse staff	3	\$33,500
SUPPLIES		
Equipment		\$60,000
Fertilizer		\$10,000
Fuel		\$15,000
Irrigation maintenance		\$10,000
Equipment maintenance		\$5,000
Office supplies		\$2,000
computers		\$4,500
cash register		\$1,500
Electric		\$47,500
Water/Sewer		\$6,500
Telephone/Internet		\$5,000
Pro Shop Inventory		\$7,500
Insurance		\$15,000
Water Rights		\$15,000
Cart Lease		\$27,000
Lease payment		\$24,000
CAPITAL		
Driving Range Construction		\$10,000
Drainage		
Total		\$440,650

Staff Summary Report

MEETING DATE: February 10, 2015
AGENDA ITEM: XII. LAND USE HEARING (A)
AGENDA TITLE: Request for a Zone Change at 111 Simonds Road, from A-1 Agricultural/Rural District to C-2 General Commercial

ACTION REQUESTED BY: Nick Foss
6017 Castlegate Drive West F21
Castle Rock, CO 80104

ACTION REQUESTED: Approve Request for Zone Change at 111 Simonds Road, from A-1 Agricultural /Rural to C-2 General Commercial District

SUMMARY BY: William M. Homka AICP CFM

PROJECT DESCRIPTION / FACTS

This request seeks to change the zoning of a parcel of land located at 111 Simonds Road. The parcel is presently zoned A-1 Agricultural/Rural District, contains 0.1783 acres of land, and is separated by C-2 General Commercial zoned land to the north by one parcel. The land across Simonds Road is presently used as residential (mobile homes) but is zoned C-2 General Commercial. Any parcels seeking A-1 Agricultural/Rural zoning must have a minimum of five (5) acres to qualify for the zoning district. The parcel subject to this review is over 4.8 acres smaller than would be presently required for new A-1 zoning.

The parcel is presently vacant. The owner has been cited in the past for nuisance code violations pertaining to overgrown weeds. Mr. Bob Carmen, Code Compliance officer, states the property owner/applicant has always been quick to comply with the notices. The applicant's permanent residence is in Castle Rock, Colorado. He first purchased this land as an investment. However he spends a significant amount of his time here in Aztec, New Mexico and at Navajo Lake in the warmer months.

Mr. Foss is requesting the zone change so that he can build a two story structure on the parcel in conformance with Aztecs zoning code. The structure will provide for the storage of his recreational vehicles on the first floor as well as an area to work on his mechanical "toys." The second floor will serve as living quarters during his visits to Aztec.

In discussing this request with the staff it came to our attention that the Teen Center is on the parcel to the north, 107 Simonds Road. The Teen Center is also zoned A-1 Agricultural/Rural. The staff concurred that this property should also be considered for C-2 General Commercial zoning. The uses and activities at the Teen Center coincide with C-2 General Commercial more so than they do presently in the A-1 Agricultural/Rural zoning district. This report will recommend the commission initiate the zoning change on behalf of the Teen Center after staff meets with the Teen Center program director.

Notices were sent out to adjoining property owners on January 28, 2015. No calls about this

request have been received as of preparing this report (February 4, 2015). Adjoining property owner notices were sent to seven (7) adjacent property owner addresses. The property owner mailing list is attached to this report.

Staff does not object to this request, 2014-223 a Zone Change request from A-1 Agricultural to C-2 General Commercial because the proposed zoning, C-2 General Commercial, is already directly across Simonds Road. Staff also finds the subject parcel sits adjacent to a commercial use, Aztec's Teen Center, although it is also zoned A-1 Agricultural/Rural. Staff recommends the City Commission consider implementing a similar zone change for the Teen Center. Should the Teen Center desire to be rezoned to C-2 General Commercial then the west side of Simonds Road will be zoned entirely C-2 General Commercial, from the subject parcel at 111 Simonds Road north to the parcel at the southwest intersection of Simonds Road and Aztec Boulevard. This would make for contiguous zoning as well as the proper zoning designation of the parcels.

FINDINGS OF FACT

1. The C-2 General Commercial district is already present directly across Simonds Road;
2. The present A-1 Agricultural/Rural district is not appropriate for the small lot, measuring 0.1783 acres;
3. The parcel situated immediately north and used as the Teen Center, address being 107 Simonds Road, is commercial in use;
4. The Teen Center should also be considered for a zoning change to C-2 General Commercial;
5. Staff recommends 111 and 107 Simonds Road both be zoned C-2 General Commercial, thus the entire west side of Simonds Road from 111 Simonds Road north to Aztec Boulevard would be contiguously zoned C-2 General Commercial.
6. No objections have been raised from abutting parcel owners about the request at the time of writing this report.

FISCAL INPUT / FINANCE DEPARTMENT (if applicable)
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SUPPORT DOCUMENTS:

1. Application
2. Zoning Map
3. Parcel/Aerial
4. Public Notice
5. Applicant Notice
6. Name List
7. Pictures of site & surrounding area

DEPARTMENT'S RECOMMENDED MOTION: Move To Approve Request To Rezone 111 Simonds Road From A-1 Agriculture/Rural To C-2 General Commercial For The Reasons Indicated In The Findings Of Fact 1 Through 6.



CITY OF AZTEC ZONE CHANGE APPLICATION

Application Year: 2014 Application No. 223 Application Date: 12-29-2014

Applicant Name: NICK FOSS

Applicant Address: 6017 CASTLEBLAKE DR WEST P 21 CASTLE ROCK CO 80104
(Street Name) (City) (State) (Zip Code)

Applicant Phone: 970-769-0056 ^{PH} NJFOSSBO@GMAIL.COM ^{EMAIL}

Is Applicant: Owner / Lessee / Other of Property to be Rezoned? YES

Legal Description of the Property: SIMONS SUBDIV. LOT 6 BLOCK 1

Subdivision Name: SIMONS SUBDIV.

Block: 111 SIMONS RD AZTEC

Lot: _____

Total Area of Property (acres): 0.1783

Legal Zoning District: Current: M1 Desired: C-2

Present Use of Property: VACANT

Desired Use of Property: SHOP - WORKSHOP FOR AERIAL USE

Reason for requesting change of zoning:

PURCHASED PROPERTY IN 2004 W/ UNDERLYING E PERMITS TO VARIOUS TYPES OF
RETAIL. NOW WANT TO COME WITH NEW ZONING WOULD CONSIDER ALTERNATIVE.

Nick Foss
Applicant's Signature

12-29-2014
Date

City Commission Meeting Date:	<u>2-10-15</u>	ACTION:	
		APPROVED	DENIED
City Planner	<u>[Signature]</u>	Date	



1522

C-2

C-2

C-2

C-2

107

MH

C-2

100

102

C-2

104

C-2

C-2

112

C-2

114

C-2

C-2

213 MH

211 MH

111

MH

113

MH

115

MH

SUMNER PL

203

MH

MH

207

1509

MH

MH

1507

MH

1505

MH

1503

MH

120

MH

MH

1415

MH

1413

SIMONDS RD

MARTIN AVE

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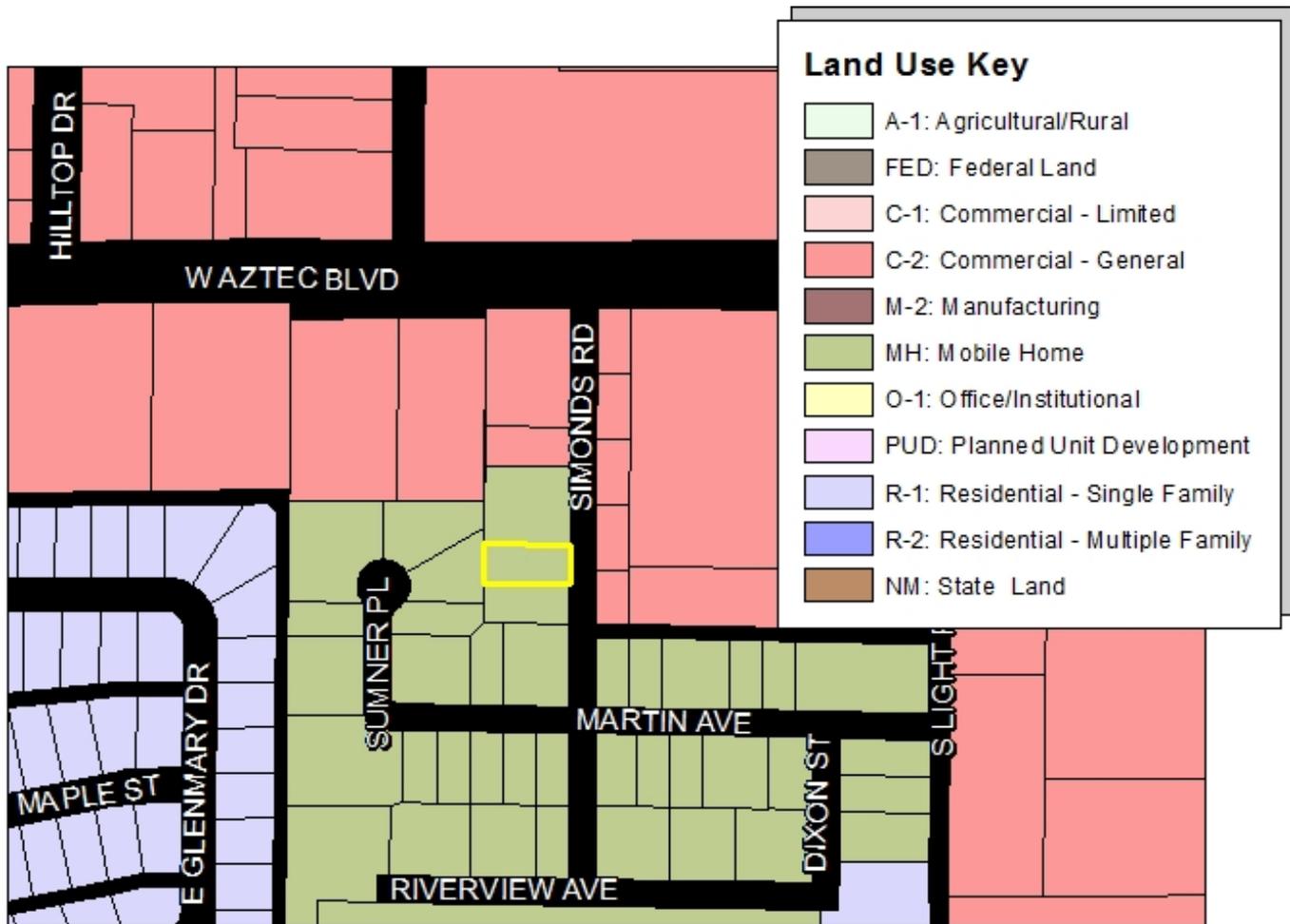
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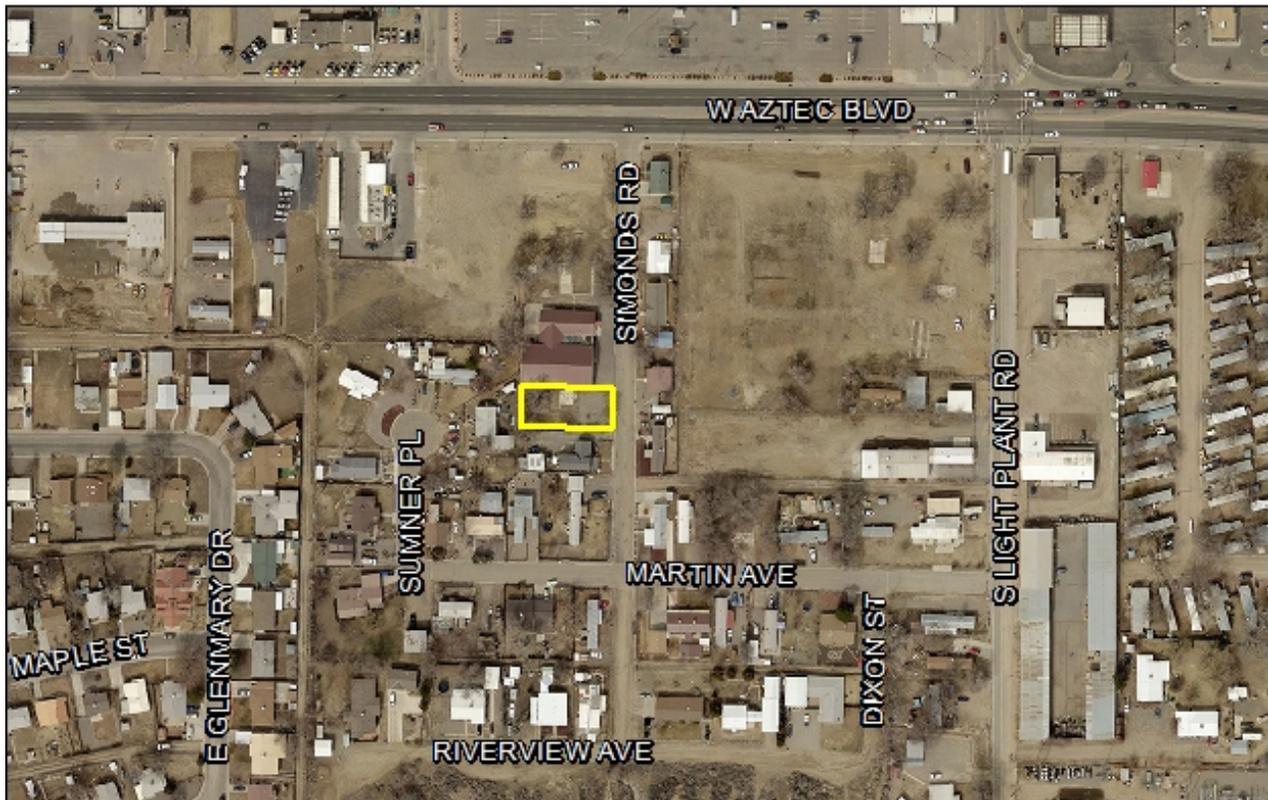
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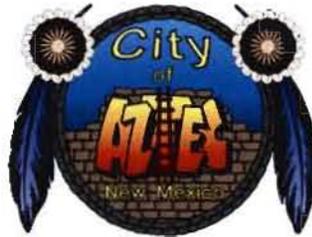
Current Zoning Map.



Location Map.

Mayor
Sally Burbridge

Mayor Pro-Tem
Sherri A. Sipe



Commissioners

Roberta Locke
Katee McClure
Sheri Rogers

A desirable place to live, work and play; rich in history and small town values!

January 28, 2015

Nick Foss
6017 Castlegate Dr. West F 21
Castle Rock, CO 80104

Dear Mr. Foss:

As the property owner of the parcel located at 111 Simonds Road in Aztec, NM, you have made a request to the City of Aztec Community Development Department for a Zone Change from A-1 Agricultural or Rural District to C-2 General Commercial and Wholesale District.

The City Commission will hear this request during a public meeting to be held on **Tuesday, February 10, 2015 at 6:00 PM located at City Hall, 201 W. Chaco, Aztec, NM.**

As the property owner, you are required to attend the scheduled Commission meeting regarding this matter. In order to be heard you will need to attend the Commission meeting 10 minutes prior to the start of the meeting at 6:00 pm where you will be directed to sign in at the Clerk's table for the appropriate hearing.

The public is requested to contact Community Development via phone at 505-334-7605 or email at whomka@aztecnm.gov to provide support or concerns regarding this request. The public is also invited to attend the scheduled Commission meeting regarding this matter.

Community Development will be creating a staff summary for Commission giving them more information on this property and the zone change request being made. **Please look over the summary prior to the meeting so you are aware of Community Development's stand on this matter. This summary will be available to the public on the City of Aztec website at this location: http://www.aztecnm.gov/agendas/ccm_agenda.pdf the Thursday prior to the meeting.** On the table of contents, locate the Land Use Hearing you are interested in and click on it to be taken to the staff summary for that Land Use Hearing. **(Notice of meeting cancellation/rescheduling will also be at this website, so please check the Thursday prior and day of meeting for confirmation. Thank you.)**

If you have any further questions, please don't hesitate to call me at 505-334-7604, Monday through Thursday from 7:00 a.m. to 6:00 p.m. Thank you.

Sincerely,

A handwritten signature in blue ink that reads 'William Homka'. The signature is written in a cursive style and ends with a long horizontal line.

William Homka
Community Development Director

Mayor
Sally Burbridge

Mayor Pro-Tem
Sherri A. Sipe



Commissioners

Roberta Locke
Katee McClure
Sheri Rogers

A desirable place to live, work and play; rich in history and small town values!

January 28, 2015

PUBLIC NOTICE

Dear Property Owner:

The property owner of the parcel located at 111 Simonds Road in Aztec, NM, has made a request to the City of Aztec Community Development Department for a Zone Change from A-1 Agricultural or Rural District to C-2 General Commercial and Wholesale District.

The City Commission will hear this request during a public meeting to be held on **Tuesday, February 10, 2015 at 6:00 PM located at City Hall, 201 W. Chaco, Aztec, NM.**

The public is requested to contact Community Development via phone at 505-334-7605 or email at whomka@aztecnm.gov to provide support or concerns regarding this request.

As a surrounding property owner, you are designated as a party to this Land Use hearing, and invited to attend the scheduled Commission meeting regarding this matter and give your statements or ask questions of the property owner as well. In order to be heard, in which you will be given 10 minutes to do this in, you will need to attend the Commission meeting 10 minutes prior to the start of the meeting at 6:00 pm where you will be directed to sign in at the Clerk's table for the appropriate hearing.

Community Development will be creating a staff summary for Commission giving them more information on this property and the Variance request being made. **Please look over the summary prior to the meeting so you are aware of Community Developments stand on this matter. This summary will be available to the public on the City of Aztec website at this location: http://www.aztecnm.gov/agendas/ccm_agenda.pdf the Thursday prior to the meeting.**

On the table of contents, locate the Land Use Hearing you are interested in and click on it to be taken to the staff summary for that Land Use Hearing. **(Notice of meeting cancellation/rescheduling will also be at this website, so please check the Thursday prior and day of meeting for confirmation. Thank you.)**

If you have any further questions, please don't hesitate to call me at 505-334-7605, Monday through Thursday from 7:00 a.m. to 6:00 p.m. Thank you.

Sincerely,

William Homka
Community Development Director

111 Simonds Rd
Nicholas Foss
6017 Castlegate Dr. West F 21
Castle Rock, Co 80104

113 Simonds Rd
William & Ramona New
113 Simonds Rd
Aztec, NM 87410

207 Sumner Place
Ronald & Debora Malone
207 Sumner Pl
Aztec, NM 87410

203 Sumner Place
Ronald & Debora Malone
207 Sumner Place
Aztec, NM 87410

211 Sumner Place
Michael Schropp
211 Sumner Place
Aztec, NM 87410

107 Simonds Rd
City of Aztec
201 W. Chaco
Aztec, NM 87410

112 Simonds Rd
Venus Properties LLC
419 E Main Street
Farmington, NM 87401

114 Simonds Rd
Martha Scogin
114 Simonds Rd
Aztec, NM 87401



2014-224 616 E. Blanco Street

Picture of Site



Residential Uses in C-2

Across Street from 111 Simonds Rd.



Teen Center Located at 107 Simonds Rd.

Adjacent & North of Subject Parcel



Residential Uses in C-2 Zoning

Across Simonds Rd. and South of Subject Parcel



Vacant Land at SW Intersection of Simonds Rd. & Aztec Blvd.

Zoned C-2 General Commercial, Located Same Side of Street as Subject Parcel