

A G E N D A
CITY OF AZTEC
CITY COMMISSION MEETING
NOVEMBER 14, 2017
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. NM Aging Long Term Services Department Grant Agreements A16A5061 and A16A5062
- B. State Grants in Aid Agreement
- C. RFP 2018-624 General Airport Engineering Services
- D. Resolution 2017-1066 Surplus

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 is for items not otherwise listed on the agenda)

XI. BUSINESS ITEMS

- A. RFP 2018-630 Interim City Manager Recruitment Services (Kathy)

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 72 hours prior to the meeting. Copies of the agenda may be obtained from City Hall, 201 W. Chaco, Aztec, NM 87410.

XII. CITY MANAGER/COMMISSIONERS/ATTORNEY REPORTS

XIII. DEPARTMENT REPORTS

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

XIV. ADJOURNMENT

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.

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Staff Summary Report

MEETING DATE: November 14, 2017
AGENDA ITEM: VIII. CONSENT (A)
AGENDA TITLE: NM ALSTD Grant Agreements A16A5061 and A16A5062

ACTION REQUESTED BY: Senior/Community Center, Finance Department
ACTION REQUESTED: Approval
SUMMARY BY: Kathy Lamb

PROJECT DESCRIPTION / FACTS

- The New Mexico Laws of 2016 included legislative funding through the sale of general obligations bonds to the New Mexico Aging and Long-Term Services Department (NMALTSB) for various improvements to senior centers throughout the state including the Aztec Senior Center.
- Funding was approved in the categories of renovations (\$53,100) and vehicles (\$133,000) resulting in two agreements. The third item, meals equipment, is pending identification of equipment to be purchased. Funding must be expended in full by June 30, 2021. There is no required match on the funding.
 - Renovations include the final phase of roof replacement for building.
 - Vehicles include one passenger van and two meal delivery vans.

PROCUREMENT / PURCHASING (if applicable)

- After specifications are developed for each of items to be purchased, the Purchasing Office will seek quotes or prepare bids for the purchase of equipment and services in compliance with NMSA 1978 Procurement Code, City of Aztec Purchasing Policy and Procedures and NMALTSB Grant Agreements.

FISCAL INPUT / FINANCE DEPARTMENT (if applicable)

- The FY18 Adopted Annual Budget includes this funding and equipment/service purchases.

SUPPORT DOCUMENTS: NMALTSB Agreements A16A5061 and A16A5062

DEPARTMENT'S RECOMMENDED MOTION: Move to Approve NMALTSB Agreements A16A5061 and A16A5062

**STATE OF NEW MEXICO
AGING AND LONG-TERM SERVICES DEPARTMENT
FUND 89200 CAPITAL APPROPRIATION PROJECT**

THIS AGREEMENT is made and entered into as of this ___ day of _____, 20 __, by and between the Aging and Long-Term Services Department, P.O. Box 27118, Santa Fe, NM 87502-7118, hereinafter called the "Department" or abbreviation such as "ALTSD", and the City of Aztec, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the Laws of 2016, Chp. 82, Section 10, Subsection A, Paragraph 61, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

WHEREAS, State Agency on Aging (28-4-1 to 28-4-9 NMSA 1978: successor agency, Aging and Long-Term Services Department (9-23-1 to 9-23-12 NMSA 1978) may enter into grants and contracts as appropriated by law.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

A16A5061 \$53,100 APPROPRIATION REVERSION DATE: 30-JUN-2021

Laws of 2016, Chp. 82, Section 10, Subsection A, Paragraph 61, fifty-three thousand one hundred dollars (\$53,100) for renovations to the Aztec senior community center in Aztec in San Juan county.

The Grantee's total reimbursements shall not exceed the appropriation amount fifty-three thousand one hundred dollars, (\$53,100), (the "Appropriation Amount") minus the allocation for Art in Public Places (\$0)¹, if applicable, which equals fifty-three thousand one hundred dollars (\$53,100), (the "Adjusted Appropriation Amount").

¹ The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars (\$200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars (\$100,000)." Section 13-4A-4 NMSA 1978.

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." Exhibit 4 sets forth additional or more stringent requirements and conditions, which are incorporated by this reference as if set forth fully herein. If Attachment A imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of Exhibit 4 shall prevail, in the event of irreconcilable conflict. The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse² Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

- (i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and
- (ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and
- (iii) The Grantee's expenditures were made pursuant to the Grantee's legal procurement and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and
- (iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement ;
- (v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:
 - a. must be approved by the applicable oversight entity (if any) in accordance with law; or
 - b. if no oversight entity is required to approve of the transaction, the Department must approve of the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to subparagraph (a) or (b) above, the Department may, in its discretion and unless inconsistent with New Mexico State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures

² "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

(vi) The Grantee's submittal of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement as follows:

- a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party but prior to execution by the Grantee.
- b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such expenditures.
- c. The Department may, in its absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 3.
- d. The date the Department sends, by mail or email, the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party begin work.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee and the Department hereby designate the persons listed below as their official representative concerning all matters related to this Agreement:

Grantee: City of Aztec
Name: Sally Burbridge
Title: Mayor
Address: 201 W Chaco St., Aztec, NM 87410
Email: sburbridge@aztecnm.gov
Telephone: 505-334-7600

Grantee: City of Aztec
Name: Joshua Ray
Title: City Manager
Address: 201 W Chaco St., Aztec, NM 87410
Email: jray@aztecnm.gov
Telephone: 505-334-7606

Department: Aging and Long-Term Services Department
Name: Rebecca Martinez
Title: Capital Projects Bureau Chief
Address: P.O. Box 27118, Santa Fe, NM 87502-7118
Email: rebeccas.martinez@state.nm.us
Telephone: 505-476-4678

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by facsimile, email, or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of facsimile transmissions, the notice shall be deemed to have been given and received on the date reflected on the facsimile confirmation indicating a successful transmission of all pages included in the writing. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, EARLY TERMINATION

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on June 30, 2021 the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

B. The Project's funds must be "expended" on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to "encumber" the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are "expended" and an "expenditure" has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are *not* "expended" and an "expenditure" has *not* occurred as of the date they are "encumbered" by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement

Early Termination includes:

- (i) Termination due to completion of the Project before the Reversion Date; or
- (ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
- (iii) Termination for violation of the terms of this Agreement; or
- (iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

B. Early Termination Before Reversion Date Due to Non-appropriation

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination

In the event of Early Termination of this Agreement by either party, the Department's sole obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may choose, in its absolute discretion, to direct the Grantee to suspend entering into new and further obligations.

- (i) The Grantee shall immediately suspend entering into new or further written obligations with third parties upon the date the Grantee receives written notice given by the Department; and
- (ii) The Department is, upon the date the Grantee receives written notice given by the Department, suspending issuance of any new or further Notice of Obligation under this Agreement; and
- (iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the Department chooses, in its absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Paper Periodic Reports

In order that the Department may adequately monitor Project activity, the Grantee shall submit to the Department Paper Periodic Reports for the Project. Paper Periodic Reports shall be submitted on a form prescribed by the Department. The Paper Periodic and Paper Final Report form are attached hereto as Exhibit 1. The Department shall provide the Grantee with a minimum of thirty (30) days' advance written notice of any change to the Periodic Report format or content.

The Paper Periodic Report shall be due monthly on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of a Paper Final Report for the Project. The Department may, in its discretion, change the reporting period

from time to time by giving Grantee a minimum of thirty (30) days' advance, written notice of any change to the reporting period; provided, however, that in no event shall the reporting period be less than one month.

B. Paper Final Report

The Grantee shall submit to the Department and the Department of Finance and Administration a Final Report for the Project. The Final Report shall be submitted on a form provided by the Department and contain such information as the Department may require. The Periodic and Final Report form is attached hereto as Exhibit 1. The Department shall provide Grantee with a minimum of thirty (30) days' advance, written notice of any change to the Final Report format or content. The Paper Final Report must be submitted within twenty (20) days after the Project's Reversion Date or within twenty (20) days of the date of Early Termination, which ever first occurs.

C. Paperless Reporting

In addition to the paper reports described in subparagraphs A and B of this Article, the Grantee shall report periodic and final Project activity by entering such Project information as the Department and the Department of Finance and Administration may require directly into a database maintained by the Department of Finance and Administration. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report on a paperless basis. The Paperless Report shall be due monthly on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of a Final Report for the Project. The Paperless Final Report along with a Paper Final Report must be submitted within twenty (20) days after the Project's Reversion Date or within twenty (20) days of the date of Early Termination, which ever first occurs.

D. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may (i) request such additional information regarding the Project as it deems necessary and (ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project. Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department. Requests made pursuant to this subparagraph D are in addition to and not in lieu of the periodic and final reporting described in subparagraphs A through C of this Article VIII.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 2. Payment requests are subject to the following procedures:

- (i) The Grantee must submit one original and one copy of each Request for Payment; and
- (ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee in the form of a notarized certification by Grantee's designated representative in Article III herein, that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee of services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its discretion, agrees to do so and in accordance with any special conditions imposed by the Department.

- (iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing.

B. Deadlines

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

- (i) Immediately as they are received by the Grantee but at a minimum twenty (20) days from the end of the calendar quarter in which the expenditure was incurred or liability of the Grantee was incurred as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor, if total unreimbursed expenditures or liabilities at calendar quarter end exceed \$25,000; or
- (ii) July 15 of each year for all unreimbursed expenditures incurred during the previous fiscal year; or
- (iii) Twenty (20) days from date of Early Termination; or
- (iv) Twenty (20) days from the Reversion Date.

C. The Grantee's failure to abide by the requirements set forth in Article II herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

A. The following general conditions and restrictions are applicable to the Project:

- (i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the Procurement Code (or local procurement ordinance, where applicable).
- (ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Works Act, Section 13-4-10 through 13-4-17 NMSA 1978, if applicable. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor,

subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 B. NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

- (iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the so-called "Anti-Donation Clause."
- (iv) The Grantee shall not at any time convert any property acquired or developed with the Project's funds to uses other than those specified in the Project Description without the Department's express, advance, and written approval.
- (v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

- (i) The Grantee has the legal authority to receive and expend the Project's funds.
- (ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
- (iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which it is subject.
- (iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.
- (v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.
- (vi) The Grantee shall abide by New Mexico laws regarding Conflict of Interest and Governmental Conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

- (vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

**ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS;
PROJECT RECORDS**

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee acknowledges and agrees that Grantee shall include a “non-appropriations” clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

“The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the City of Aztec may immediately terminate this Agreement by giving Contractor written notice of such termination. The City of Aztec’s decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the City of Aztec or the Aging and Long-Term Services Department or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the City of Aztec or the Department”.

ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee acknowledges and agrees that Grantee shall include the following or a termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

“This contract is funded in whole or in part by funds made available under Aging and Long-Term Services Department’s Grant Agreement. Should the Aging and Long-Term Services Department early terminate the grant agreement, the City of Aztec may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the City of Aztec’s only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date.”

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

- A. Throughout the term of this Agreement, Grantee shall:
1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
 2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
 3. timely submit all required financial reports to its budgetary oversight agency (if any); and
 4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

- B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:
1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
 2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
 3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
 4. terminate this Agreement pursuant to Article V(A) of this Agreement.

ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, which is administered by the New Mexico State Board of Finance (BOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole responsibility to determine through BOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a BOF imposed condition does not affect the validity or enforceability of the condition; (iii) the BOF may in the future impose further or different conditions upon the Project; (iv) all BOF conditions are effective without amendment of this Agreement; (v) all applicable BOF conditions must be satisfied before the BOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current BOF conditions being satisfied.

B. Grantee acknowledges and agrees that this Agreement is subject to the BOF's Bond Project Disbursements rule, 2.61.6 NMAC, as such may be amended or re-codified.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

ATTEST:

Signature of Official with Authority to Bind Grantee

Karla Sayler, City Clerk

By: Sally Burbridge
(Type or Print Name)

APPROVED AS TO FORM:

Its: Mayor
(Type or Print Title)

Larry T. Thrower, City Attorney

November 14, 2017
Date

AGING AND LONG-TERM SERVICES DEPARTMENT

By: _____
ALTSD Cabinet Secretary

Date: _____

By: _____
ALTSD Legal Counsel—Certifying Legal Sufficiency

Date: _____

By: _____
ALTSD Chief Financial Officer

Date: _____

EXHIBIT 2
STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
NOTICE OF OBLIGATION TO REIMBURSE GRANTEE

DATE: _____
TO: **Grantee Representative:** _____
FROM: **Department Representative:** _____
SUBJECT: **Notice of Obligation to Reimburse Grantee**

 Project Number: _____

As the designated representative of the Department for Grant Agreement number _____ entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Third Party Obligation (includes purchase orders and contract) #: _____
Vendor or Contractor: _____
Third Party Obligation Amount: _____
Termination Date: _____

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount adjusted for AIPP if applicable: _____
The Amount of this Notice of Obligation to Reimburse: _____
The Total Amount of all Previously Issued Notices of Obligation: _____
The Total Amount of all Notices of Obligation to Reimburse as of this Date: _____

Department Representative: _____
Title: _____
Signature: _____
Date: _____

EXHIBIT 3
ALTSO CAPITAL OUTLAY
SPECIAL GRANT CONDITIONS

No special conditions are required for this grant.

EXHIBIT 4
ALTSD CAPITAL OUTLAY
PROJECT DESCRIPTION
SCOPE OF WORK (SOW)

Laws of 2016, Chp. 82, Section 10, Subsection A, Paragraph 61, fifty-three thousand one hundred dollars (\$53,100) for renovations to the Aztec senior community center in Aztec in San Juan county.

1. **Name of Grantee/ Fiscal Agent:** City of Aztec
2. **Project Title:** Aztec Senior Community Center-Renovation
3. **Grant Agreement Number:** A16A5061
4. **Background Narrative:** The building is 35 years old. To maintain the structural integrity of the facility, a roof replacement has been completed on the majority of the facility. There are remaining sections to be replaced including the office roof, south porch, the East and West roof and the four 5' X 10' roof areas.
5. **Work Plan:** Once a fully executed grant agreement has been received, the City of Aztec will follow procurement per state regulations; issue notice to proceed to the most competitive bid contractor; and submit the Notice of Obligation to ALTSD for approval. Aztec will submit requests for reimbursement in a timely manner and close out the project according to the agreement. The City Public Works manager and the Senior Center Program manager will oversee the project and schedule the appropriate inspections and licenses required.

6. **Budget Detail:**

Project Cost Activities	Other Funds	State Funds
Renovation		\$53,100
Total		\$53,100

7. **Performance Measures:** The project will be completed and closed out within nine months of receiving the fully executed grant agreement (dependent on existing weather conditions and when funding becomes available). The building roof renovations will preserve the structure of the building make it safer for the seniors to enter and exit the senior center.
8. **Results Expected:** The renovation will ensure that the growing population of seniors will continue to receive the highest level of service. Other deliverables of this project include an enhanced environment for the clients, more efficient production of and delivery of meals, and an increase in senior participation for social, educational, and physical activities. Providing a safe building to congregate and socialize in will be beneficial to the health and welfare of all participants at the senior center.

9.

Time Frame/ Milestones: <i>Upon full execution of the Grant Agreement the following tasks will commence to meet the time frame/milestones.</i>	
RFP/Quotes Secured	Month 1-2
Bid Closing	Month 3-4
Bid Award to Contractor/Vendor	Month 5-6
Project Completion & Review; Project Close Out	Month 6-11
Submit <u>Exhibit 1-Monthly/Final Report Form & Request for Payment Form</u> and required supporting documents to ALTSD/Capital Projects Bureau	Months 1-12

4. **Responsible Staff:**

Name: Steve Mueller, General Services Director (Project Manager)
 Address: 201 W Chaco, Aztec NM 87410
 Email: smueller@aztecnm.gov
 Phone: 505-334-7664

Name: Kathy Lamb
 Title: Finance Director
 Address: 201 W Chaco, Aztec NM 87410
 Email: klamb@aztecnm.gov
 Phone: 505-334-7653

NOTICE: The Grant Application, if approved for funding by ALTSD and any attachments to the Grant Application are incorporated by reference into the scope of work. In the event of a conflict between any of the documents that are part of the Agreement, the ALTSD Cabinet Secretary, at the sole discretion of ALTSD, shall resolve that conflict.

**STATE OF NEW MEXICO
AGING AND LONG-TERM SERVICES DEPARTMENT
FUND 89200 CAPITAL APPROPRIATION PROJECT**

THIS AGREEMENT is made and entered into as of this ___ day of _____, 20__, by and between the Aging and Long-Term Services Department, P.O. Box 27118, Santa Fe, NM 87502-7118, hereinafter called the "Department" or abbreviation such as "ALTSD", and the City of Aztec, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the Laws of 2016, Chp. 82, Section 10, Subsection A, Paragraph 62, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

WHEREAS, State Agency on Aging (28-4-1 to 28-4-9 NMSA 1978: successor agency, Aging and Long-Term Services Department (9-23-1 to 9-23-12 NMSA 1978) may enter into grants and contracts as appropriated by law.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

A16A5062 \$133,000 APPROPRIATION REVERSION DATE: 30-JUN-2021

Laws of 2016, Chp. 82, Section 10, Subsection A, Paragraph 62, one hundred thirty-three thousand dollars (\$133,000) to purchase and equip vehicles, including meal delivery vehicles, for the Aztec senior community center in Aztec in San Juan county.

The Grantee's total reimbursements shall not exceed the appropriation amount one hundred thirty-three thousand dollars, (\$133,000), (the "Appropriation Amount") minus the allocation for Art in Public Places (\$0)¹, if applicable, which equals one hundred thirty-three thousand dollars (\$133,000), (the "Adjusted Appropriation Amount").

¹ The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars (\$200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars (\$100,000)." Section 13-4A-4 NMSA 1978.

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." Exhibit 4 sets forth additional or more stringent requirements and conditions, which are incorporated by this reference as if set forth fully herein. If Attachment A imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of Exhibit 4 shall prevail, in the event of irreconcilable conflict. The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse² Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

- (i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and
- (ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and
- (iii) The Grantee's expenditures were made pursuant to the Grantee's legal procurement and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and
- (iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement ;
- (v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:
 - a. must be approved by the applicable oversight entity (if any) in accordance with law; or
 - b. if no oversight entity is required to approve of the transaction, the Department must approve of the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to subparagraph (a) or (b) above, the Department may, in its discretion and unless inconsistent with New Mexico State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures

² "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

(vi) The Grantee's submittal of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement as follows:

- a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party but prior to execution by the Grantee.
- b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such expenditures.
- c. The Department may, in its absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 3.
- d. The date the Department sends, by mail or email, the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party begin work.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee and the Department hereby designate the persons listed below as their official representative concerning all matters related to this Agreement:

Grantee: City of Aztec
Name: Sally Burbridge
Title: Mayor
Address: 201 W Chaco St., Aztec, NM 87410
Email: sburbridge@aztecnm.gov
Telephone: 505-334-7600

Grantee: City of Aztec,
Name: Joshua Ray
Title: City Manager
Address: 201 W Chaco St., Aztec, NM 87410
Email: jray@aztecnm.gov
Telephone: 505-334-7606

Department: Aging and Long-Term Services Department
Name: Rebecca Martinez
Title: Capital Projects Bureau Chief
Address: P.O. Box 27118, Santa Fe, NM 87502-7118
Email: rebeccas.martinez@state.nm.us
Telephone: 505-476-4678

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by facsimile, email, or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of facsimile transmissions, the notice shall be deemed to have been given and received on the date reflected on the facsimile confirmation indicating a successful transmission of all pages included in the writing. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, EARLY TERMINATION

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on June 30, 2021 the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

B. The Project's funds must be "expended" on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to "encumber" the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are "expended" and an "expenditure" has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are *not* "expended" and an "expenditure" has *not* occurred as of the date they are "encumbered" by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement

Early Termination includes:

- (i) Termination due to completion of the Project before the Reversion Date; or
- (ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
- (iii) Termination for violation of the terms of this Agreement; or
- (iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

B. Early Termination Before Reversion Date Due to Non-appropriation

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination

In the event of Early Termination of this Agreement by either party, the Department's sole obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may choose, in its absolute discretion, to direct the Grantee to suspend entering into new and further obligations.

- (i) The Grantee shall immediately suspend entering into new or further written obligations with third parties upon the date the Grantee receives written notice given by the Department; and
- (ii) The Department is, upon the date the Grantee receives written notice given by the Department, suspending issuance of any new or further Notice of Obligation under this Agreement; and
- (iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the Department chooses, in its absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Paper Periodic Reports

In order that the Department may adequately monitor Project activity, the Grantee shall submit to the Department Paper Periodic Reports for the Project. Paper Periodic Reports shall be submitted on a form prescribed by the Department. The Paper Periodic and Paper Final Report form are attached hereto as Exhibit 1. The Department shall provide the Grantee with a minimum of thirty (30) days' advance written notice of any change to the Periodic Report format or content.

The Paper Periodic Report shall be due monthly on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of a Paper Final Report for the Project. The Department may, in its discretion, change the reporting period

from time to time by giving Grantee a minimum of thirty (30) days' advance, written notice of any change to the reporting period; provided, however, that in no event shall the reporting period be less than one month.

B. Paper Final Report

The Grantee shall submit to the Department and the Department of Finance and Administration a Final Report for the Project. The Final Report shall be submitted on a form provided by the Department and contain such information as the Department may require. The Periodic and Final Report form is attached hereto as Exhibit 1. The Department shall provide Grantee with a minimum of thirty (30) days' advance, written notice of any change to the Final Report format or content. The Paper Final Report must be submitted within twenty (20) days after the Project's Reversion Date or within twenty (20) days of the date of Early Termination, whichever ever first occurs.

C. Paperless Reporting

In addition to the paper reports described in subparagraphs A and B of this Article, the Grantee shall report periodic and final Project activity by entering such Project information as the Department and the Department of Finance and Administration may require directly into a database maintained by the Department of Finance and Administration. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report on a paperless basis. The Paperless Report shall be due monthly on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of a Final Report for the Project. The Paperless Final Report along with a Paper Final Report must be submitted within twenty (20) days after the Project's Reversion Date or within twenty (20) days of the date of Early Termination, which ever first occurs.

D. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may (i) request such additional information regarding the Project as it deems necessary and (ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project. Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department. Requests made pursuant to this subparagraph D are in addition to and not in lieu of the periodic and final reporting described in subparagraphs A through C of this Article VIII.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 2. Payment requests are subject to the following procedures:

- (i) The Grantee must submit one original and one copy of each Request for Payment; and
- (ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee in the form of a notarized certification by Grantee's designated representative in Article III herein, that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee of services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its discretion, agrees to do so and in accordance with any special conditions imposed by the Department.

- (iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing.

B. Deadlines

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

- (i) Immediately as they are received by the Grantee but at a minimum twenty (20) days from the end of the calendar quarter in which the expenditure was incurred or liability of the Grantee was incurred as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor, if total unreimbursed expenditures or liabilities at calendar quarter end exceed \$25,000; or
- (ii) July 15 of each year for all unreimbursed expenditures incurred during the previous fiscal year; or
- (iii) Twenty (20) days from date of Early Termination; or
- (iv) Twenty (20) days from the Reversion Date.

C. The Grantee's failure to abide by the requirements set forth in Article II herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

- A. The following general conditions and restrictions are applicable to the Project:
 - (i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the Procurement Code (or local procurement ordinance, where applicable).
 - (ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Works Act, Section 13-4-10 through 13-4-17 NMSA 1978, if applicable. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor,

- subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 B. NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.
- (iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the so-called "Anti-Donation Clause."
 - (iv) The Grantee shall not at any time convert any property acquired or developed with the Project's funds to uses other than those specified in the Project Description without the Department's express, advance, and written approval.
 - (v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.
- B. The Grantee hereby represents and warrants the following:
- (i) The Grantee has the legal authority to receive and expend the Project's funds.
 - (ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
 - (iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which it is subject.
 - (iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.
 - (v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.
 - (vi) The Grantee shall abide by New Mexico laws regarding Conflict of Interest and Governmental Conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

- (vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee acknowledges and agrees that Grantee shall include a “non-appropriations” clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

“The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the City of Aztec may immediately terminate this Agreement by giving Contractor written notice of such termination. The City of Aztec’s decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the City of Aztec or the Aging and Long-Term Services Department or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the City of Aztec or the Department”.

ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee acknowledges and agrees that Grantee shall include the following or a termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

“This contract is funded in whole or in part by funds made available under Aging and Long-Term Services Department’s Grant Agreement. Should the Aging and Long-Term Services Department early terminate the grant agreement, the City of Aztec may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the City of Aztec’s only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date.”

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

- A. Throughout the term of this Agreement, Grantee shall:
1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
 2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
 3. timely submit all required financial reports to its budgetary oversight agency (if any); and
 4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

- B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:
1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
 2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
 3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
 4. terminate this Agreement pursuant to Article V(A) of this Agreement.

ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, which is administered by the New Mexico State Board of Finance (BOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole responsibility to determine through BOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a BOF imposed condition does not affect the validity or enforceability of the condition; (iii) the BOF may in the future impose further or different conditions upon the Project; (iv) all BOF conditions are effective without amendment of this Agreement; (v) all applicable BOF conditions must be satisfied before the BOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current BOF conditions being satisfied.

B. Grantee acknowledges and agrees that this Agreement is subject to the BOF's Bond Project Disbursements rule, 2.61.6 NMAC, as such may be amended or re-codified.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

ATTEST:

Signature of Official with Authority to Bind Grantee

Karla Sayler, City Clerk

By: _____
(Type or Print Name)

APPROVED AS TO FORM:

Its: Mayor
(Type or Print Title)

Larry T. Thrower, City Attorney

Date

AGING AND LONG-TERM SERVICES DEPARTMENT

By: _____
ALTSD Cabinet Secretary

Date: _____

By: _____
ALTSD Legal Counsel—Certifying Legal Sufficiency

Date: _____

By: _____
ALTSD Chief Financial Officer

Date: _____

EXHIBIT 2
STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
NOTICE OF OBLIGATION TO REIMBURSE GRANTEE

DATE: _____

TO: Grantee Representative: _____

FROM: Department Representative: _____

SUBJECT: Notice of Obligation to Reimburse Grantee

Project Number: _____

As the designated representative of the Department for Grant Agreement number _____ entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Third Party Obligation (includes purchase orders and contract) #: _____

Vendor or Contractor: _____

Third Party Obligation Amount: _____

Termination Date: _____

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount adjusted for AIPP if applicable: _____

The Amount of this Notice of Obligation to Reimburse: _____

The Total Amount of all Previously Issued Notices of Obligation: _____

The Total Amount of all Notices of Obligation to Reimburse as of this Date: _____

Department Representative: _____

Title: _____

Signature: _____

Date: _____

EXHIBIT 3
ALTSO CAPITAL OUTLAY
SPECIAL GRANT CONDITIONS

No special conditions are required for this grant.

EXHIBIT 4
ALTSD CAPITAL OUTLAY
PROJECT DESCRIPTION
SCOPE OF WORK (SOW)

Laws of 2016, Chp. 82, Section 10, Subsection A, Paragraph 62, one hundred thirty-three thousand dollars (\$133,000) to purchase and equip vehicles, including meal delivery vehicles, for the Aztec senior community center in Aztec in San Juan county.

1. **Name of Grantee/ Fiscal Agent:** CITY OF AZTEC
2. **Project Title:** Aztec Senior Community Center-Purchase & Equip Vehicles
3. **Grant Agreement Number:** A16A5062
4. **Background Narrative:** City of Aztec must replace the existing fleet vehicles to provide safe efficient transportation for clients and home delivered meals. Aztec plans to purchase a 12 passenger van to transport seniors and two hot meals delivery vehicles to be able to deliver home delivered meals. The current fleet of 4 vehicles have high mileage and there are frequent break downs experienced. As we continue to use these vehicles, we incur substantial costs in maintenance and tire replacement. New vehicles will help with fuel efficiency and keep down the maintenance costs.
5. **Work Plan:** Upon full execution of funding agreement, we will seek quotes, award the contract to the best qualified vendor; submit the Notice of Obligation to ALTSD for approval; issue notice to proceed to vendor; receipt, payment and licensing of vehicles; finalize paperwork for submission for reimbursement and close out of project. The time frame may be impacted by purchase agreements negotiated by the State's GSD State wide purchasing agreement. The City will make a determination if those agreements are applicable to vehicles to be purchased or whether the City will issue a request for bids for the vehicles.

6. **Budget Detail:**

Project Cost Activities	Other Funds	State Funds
Purchase & Equip Vehicles		133,000
Total		133,000

7. **Performance Measures:** Within 6 months a van will be purchased and equipped for the transport of seniors; and 2 hot meals delivery vehicles will be purchased for home delivered meals. The van will ensure the safe transportation of clients to the senior center for meals and socialization; transport to medical appointments and to pick up medication; and for other transport requirements such as shopping paying bills and other necessary senior activities. The outcome of this project can be measured through the maintenance of a daily transportation log, number of rides given to senior participants, and the number of meals delivered to home bound participants. The staff will conduct regular inspections and maintenance of the new vehicles so they last at least 100,000 miles or 10 years.
8. **Results Expected:** The results expected are to reach the seniors living in remote, isolated, and rural areas. These are seniors with the greatest social and economic needs, some have limited English proficiency, and some are at risk of being institutionalized. The senior services provided with the new vehicles will mean that the elders will be at less risk of illness, malnutrition, or institutionalization, and can remain in the comfort and privacy of their own homes, living with dignity. The purchase of vehicle will result in the safe transportation and delivery of services to all clientele.

9.

Time Frame/ Milestones: <i>Upon full execution of the Grant Agreement the following tasks will commence to meet the time frames.</i>	
RFP/Quotes Secured	Month 1-2
Bid Closing; Bid Award to Vendor	Month 2-4
Vehicles – Purchase and Equip	Month 4-8
Project Completion & Review; Project close out;	Month 9
Submit Exhibit 1 – Monthly/Final Report Form & Request for Payment according to contractual requirements as set forth in Articles VIII & IX of the Grant Agreement	Months 1-9

10. **Responsible Staff:**

Name: Cindy Iacovetto, Senior Center Director (Project Manager)
 Email & Phone: ciacovetto@aztecnm.gov 505-334-7617
 Name: Kathy Lamb, Finance Director
 Email & Phone: klamb@aztecnm.gov 505-334-7653
 Address: 201 W Chaco, Aztec NM 87410

NOTICE: The Grant Application, if approved for funding by ALTSD and any attachments to the Grant Application are incorporated by reference into the scope of work. In the event of a conflict between any of the documents that are part of the Agreement, the ALTSD Cabinet Secretary, at the sole discretion of ALTSD, shall resolve that conflict.

Staff Summary Report

MEETING DATE: November 14, 2017
AGENDA ITEM: VIII. Consent Agenda (B)
AGENDA TITLE: State Grants in Aid FY18

ACTION REQUESTED BY: Kate Skinner, Library Director, Aztec Public Library
ACTION REQUESTED: Approve FY 18 State Grants in Aid Agreement for library
SUMMARY BY: Emily Huckins

PROJECT DESCRIPTION / FACTS

- The FY 18 State Grants-in-Aid to Public Libraries agreement was received October 25, 2017. The library grants award program helps support the delivery of local library services. Funds may be used for
 - Library collections;
 - Library staff salaries;
 - Library staff training;
 - Library equipment;
 - Other operational expenditures associated with delivery of library services as defined in Section 4.5.2 NMAC
- Libraries must report on how funds were spent in the 2017/18 Annual Report Library's local budget.
- Award notification and agreement was received on October 25, 2017 with the award amount of \$7,598.04 with the award period July 1, 2017 – June 2018. All funds must be spent by June 30, 2018.
- Two (2) copies, signed in blue ink must go to Development Bureau, State Aid, NM State Library, 1209 Camino Carlos Rey, Santa Fe, NM 87507

PROCUREMENT / PURCHASING (if applicable)

- Both city and state procurement requirements will be followed for purchases. In addition, this funding will only be utilized on those items which meet the requirements of the funding agreement.

FISCAL INPUT / FINANCE DEPARTMENT (if applicable)

- The FY18 Adopted Budget includes revenue and expense budget specific to the State Grants-in-Aid funding. Budget adjustment (award greater than budget) will be included on a mid-year Special Budget Resolution.

SUPPORT DOCUMENTS: FY17-18 State Grants-in-Aid to Public Libraries Agreement

DEPARTMENT'S RECOMMENDED MOTION: Move to APPROVE FY17-18 State Grants-in-Aid to Public Library Agreement

State Grants-in-Aid to Public Libraries
Agreement
For FY2017/18

This Agreement is entered into on the date of last signature, below, by and between the **New Mexico State Library**, hereinafter called **NMSL**, and **Aztec Public Library**, located in Aztec, NM, hereinafter called the Recipient.

WHEREAS, the State Librarian, the division director of NMSL, is required to administer grants-in-aid and encourage local library service and generally promote an effective statewide library system under NMSA 1978, Section 18-2-4;

WHEREAS, Section 18-2-4 also requires the State Librarian to make rules and regulations necessary to administer NMSL and the State Librarian adopted such rules for distributing state grants-in-aid to public libraries, codified as 4.5.2 NMAC; and

WHEREAS, NMSL has determined that Recipient qualifies for a state grant-in-aid under 4.5.2 NMAC.

THEREFORE, the Parties agree to the following terms and conditions:

I. NMSL agrees to pay the Recipient a grant in an amount not to exceed **Seven Thousand Five Hundred Ninety Eight Dollars and Four Cents (\$7,598.04)** to support Recipient's library collections; library staff salaries; library staff training; library equipment; or other operational expenditures associated with delivery of *library services* as defined in Section 4.5.2.6 NMAC.

II. The Recipient agrees to:

1. Use the grant only for library collections; library staff salaries; library staff training; library equipment; or other operational expenditures associated with delivery of *library services*, as those services are defined in 4.5.2 NMAC;
2. Continue to comply with 4.5.2 NMAC and other statutes and rules applicable to developing libraries or public libraries;
3. Engage in good communication and the exchange of information with NMSL regarding library activities and the grant's use;
4. Expend the grant according to the rules outlined in 4.5.2 NMAC, attached hereto as Attachment A;
5. Provide NMSL with a report on how the grant was spent as part of the Recipient's annual report for the fiscal year; and
6. Return any funds from the grant not spent in the 2018 fiscal year to NMSL by July 15, 2018; and
7. Sign and return this Agreement to NMSL within 60 days from receipt of the Agreement, which shall be calculated from the date of postmark or electronic postmark. If Recipient does not submit this Agreement within the required time period, Recipient forfeits the grant award.

III. The Laws of New Mexico shall govern this Agreement.

The Recipient by its signature certifies that the Recipient will use the grant money only for the uses specified in this Agreement and will comply with all other applicable requirements of this Agreement.

Signed: _____ **Date:** _____

By: _____ Chairman or Authorized Agent of Recipient (print name)

Signed: _____ **Date:** _____

By: Ryanne Cooper, Co-Acting New Mexico State Librarian

Staff Summary Report

MEETING DATE:	November 14, 2017
AGENDA ITEM:	VIII. CONSENT AGENDA (C)
AGENDA TITLE:	RFP 2018-624 General Airport Engineering Services Award and Master Agreement

ACTION REQUESTED BY:	Finance Department
ACTION REQUESTED:	Approval of RFP 2018-624 General Airport Engineering Services Award and Master Agreement
SUMMARY BY:	Kathy Lamb

PROJECT DESCRIPTION / FACTS

- The City is the recipient of federal funding in the amount \$150,000 annually for the Aztec Municipal Airport. The funding may accumulate for a maximum of four years. The NM Aviation Division provides 5% matching funds on the federally funded projects and may provide funding for other projects which may not be eligible for federal funds. A local match is required on funding provided through NM Aviation Division.
- A requirement of the federal funding is that the RFP document identifies the projects for which the consultant may be retained. Federal funding may not be used for a consultant on projects which were not included in the RFP. The consultant selected to provide services will have a master contract with task orders negotiated for the specific projects. Fees for consulting services require an independent evaluation to be considered for federal funding. If the independent evaluation is not submitted, services may not be eligible for federal reimbursement. The state does not have this requirement.
- Projects identified in the RFP included:
 - Airport Action Plan Updates;
 - Airport Layout Plan Updates;
 - Capital Improvement Plan (CIP) Updates;
 - DBE Program Updates;
 - Electrical, Lighting and Signage upgrades and expansions;
 - Storm water management plan updates and revisions;
 - Land Acquisition including environmental assessments, appraisals and purchase;
 - South Aircraft Parking Apron Reconstruction, Design; and Construct
 - Runway 8-26 Lighting and Visual Aids, Design and Construct;
 - Runway 8-26 Pavement Maintenance, Design and Construct;
 - Crosswind Runway, Design and Construct;
 - Wildlife Hazard Assessment;
 - Wildlife, security and perimeter fencing, Design and Construct
 - T Hanger Site Development, Design and Construct;
 - Airport Hanger Development, Design and Construct;
 - Automated weather observation system, Design and Construct

Airport Equipment (specification development)
Planning and consulting services
Other projects that may be approved over the 4 year period of this contract for services

PROCUREMENT / PURCHASING (if applicable)

- Request for Proposals (RFP) was published on the city website and advertised in the Daily Times on Sunday, August 13, 2017. One addendum was issued on the RFP. The proposal closing date was Tuesday, September 12, 2017.
- Two proposals were received. An evaluation committee reviewed and scored the evaluations (summary of evaluation is included as support document). The committee selected Bohannon Huston, Albuquerque, NM.
- There is no dollar amount associated with this agreement. The contract only secures the engineering firm as the selected firm to perform the professional services as funding is secured. Task orders will be submitted for Commission approval for each project for which Bohannon Huston would provide engineering/consulting services.
- Due to FAA requirements, the master agreement may require amendment during the four year term to reflect current federal requirements.

FISCAL INPUT / FINANCE DEPARTMENT (if applicable)

- None

SUPPORT DOCUMENTS: RFP 2018-624 Evaluation Tabulation
Master Agreement with Rate Sheet

DEPARTMENT'S RECOMMENDED MOTION: Approve award of RFP 2018-624 General Airport Engineering Services to Bohannon Huston and approve Master Agreement between Bohannon Huston and the City of Aztec.



**City of Aztec
RFP 2018-624
General Airport Engineering Services
Scored Evaluation Tabulation**

Evaluation Criteria >

**Familiarity with FAA &
NMDOT procedures
Max Points: 20**

**Specialized Design &
Technical Competence
Max Points: 20**

**Capability & Capacity to
Perform
Max Points: 20**

**Understanding of Rural
Airport & Sponsor Issues
Max Points: 5**

Evaluator # >

	1	2	3
Armstrong	20	17	13
Bohannan Huston	20	17	17

	1	2	3
Armstrong	12	18	15
Bohannan Huston	20	16	18

	1	2	3
Armstrong	15	15	17
Bohannan Huston	18	18	18

	1	2	3
Armstrong	5	5	5
Bohannan Huston	5	5	5

Evaluation Criteria >

**Familiarity with Area
Max Points: 5**

**Qualifications Key Personnel
Max Points: 15**

**Qualifications Sub
Consultants
Max Points: 7**

**Completeness & Originality
of Proposal
Max Points: 5**

Evaluator # >

	1	2	3
Armstrong	5	4	4
Bohannan Huston	5	3	5

	1	2	3
Armstrong	10	15	12
Bohannan Huston	12	15	12

	1	2	3
Armstrong	7	5	6
Bohannan Huston	8	7	7

	1	2	3
Armstrong	5	3	4
Bohannan Huston	5	4	4

**Qualifications Key Personnel
Max Points: 15**

**Proposal Evaluation
Score Average**

Rank

Armstrong
Bohannan Huston

	1	2	3
Armstrong	79	82	76
Bohannan Huston	93	85	86

79.00	2
88.00	1

**ENGINEERING SERVICES FOR AZTEC MUNICIPAL AIRPORT
AGREEMENT 2018-624**

THIS ENGINEERING SERVICES AGREEMENT, hereinafter "Agreement", effective as of November 15, 2017, "Effective Date", is entered into by and between the **City of Aztec**, hereinafter referred to as "City", and **Bohannon Huston, Inc.**, a New Mexico Corporation, hereinafter referred to as the "Engineer".

RECITALS

WHEREAS, Engineer has represented to City that it is specifically qualified to perform services of the nature contemplated by this Agreement; and

WHEREAS, City desires to engage the services of Engineer and Engineer desires to perform such services for City.

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions set forth in this Agreement, Engineer and City agree as follows:

1. **Services.** Engineer agrees to perform the services agreed to in individual Task Orders Exhibit 1, as set forth in Scope of Services RFP #2018-624, Exhibit 2, attached hereto ("Services") in a timely manner and in accordance with the terms and conditions of this Agreement and applicable laws. Engineer shall furnish, at its own expense, all labor, transportation, materials, consumables, qualified supervisory personnel, tools, equipment and facilities, to properly perform the Services, except as otherwise provided in the Services.

2. **Compensation.** For performance and completion of the Services, City shall pay Engineer at the Task Order fee, based on the hourly rates set forth in the "Rate Schedule," attached hereto as Exhibit 3, Rates Schedule which rate(s) shall include all overhead, administrative and profit margins whatsoever, plus applicable gross receipts taxes which are payable by Engineer to the relevant taxing authority and reimbursable by City pursuant to **Section 12 "Taxes"** of the Agreement.

3. **Changes to Services.** City may, at any time, revise the Services by providing written notice to Engineer of the required changes. Engineer may propose changes to the Services to City, but such proposed changes will only become effective upon obtaining the written approval of a City contracting agent or City officer/official. The rate of compensation set forth in **Section 2 "Compensation"** may only be changed by a written agreement of the Parties signed and dated

by a City contracting agent or City officer/official and Engineer.

4. **Term.** This Agreement shall remain in full force and effect from the Effective Date until November 14, 2018, unless terminated earlier as provided herein. This agreement shall be renewed automatically, subject to the appropriation of funds by the City Commission and Federal Aviation Administration (FAA), if applicable, from year to year for three (3) additional consecutive one year periods, unless terminated as herein provided.

5. **Federal Contract Provisions for Professional Services.** The Federal Contract provisions applicable to professional services contracts funded in part by Federal Aviation Administration funding, is included as Exhibit 4. Table 1 summarizes the applicable provisions. These provisions will be updated with each contract renewal.

Table 1 – Applicability of Provisions

Provision	Dollar Threshold	Professional Services	Paragraph	Source
a. Access to Records and Reports	\$ 0	REQD	A1.3	2 CFR § 200.333 2 CFR § 200.336 FAA Order 5100.38
b. Buy American Preferences	\$ 0	Limited	A4	Title 49 USC § 50101
(1) Buy American Statement	\$ 0	Limited	A4.3.1	
(2) Buy American – Total Facility	\$ 0	Limited	A4.3.2	
(3) Buy American – Manufactured Product	\$ 0	Limited	A4.3.3	
c. Civil Rights – General	\$ 0	REQD	A.5.3.1 A5.3.2	49 USC § 47123
d. Civil Rights - Title VI Assurances	\$ 0	REQD	A6.3.1	49 USC § 47123 FAA Order 1400.11
(1) Notice - Solicitation	\$ 0	REQD	A6.3.1	
(2) Clause - Contracts	\$ 0	REQD	A6.3.2	
(3) Clause – Transfer of U.S. Property	\$ 0	n/a		
(4) Clause – Transfer of Real Property	\$ 0	n/a		
(5) Clause - Construct/Use/Access to Real Property	\$ 0	n/a		
(6) List – Pertinent Authorities	\$0	REQD	A6.3.3	

Provision	Dollar Threshold	Professional Services	Paragraph	Source
e. Disadvantaged Business Enterprise	\$ 0	REQD	A12.3	49 CFR part 26
f. Energy Conservation Requirements	\$ 0	REQD	A14.3	2 CFR § 200, Appendix II(H)
g. Federal Fair Labor Standards Act	\$ 0	REQD	A16.3	29 U.S.C. § 201, et seq
h. Occupational Safety and Health Act	\$ 0	REQD	A19.3	20 CFR part 1910
i. Rights to Inventions	\$ 0	Limited	A21.3	2 CFR § 200, Appendix II(F) 37 CFR §401
j. Trade Restriction Certification	\$ 0	REQD	A24.3	49 USC § 50104 49 CFR part 30
k. Veteran's Preference	\$ 0	REQD	A25.3	49 USC § 47112(c)
l. Seismic Safety	\$ 0	Limited	A22.3	49 CFR part 41
m. Copeland Anti-Kickback	\$ 2,000	Limited	A9.3	2 CFR § 200, Appendix II(D) 29 CFR Parts 3 & 5
n. Davis Bacon Requirements	\$ 2,000	Limited	A10.3	2 CFR § 200, Appendix II(D) 29 CFR Part 5
o. Distracted Driving	\$3,500	REQD	A13.3	Executive Order 13513 DOT Order 3902.10
p. Affirmative Action Requirement	\$10,000	Limited	A2	2 CFR § 200.333 2 CFR § 200.336 FAA Order 5100.38
q. Equal Employment Opportunity	\$10,000	Limited	A15	2 CFR 200, Appendix II(C) 41 CFR § 60-1.4 41 CFR § 60-4.3 Executive Order 11246
(1) EEO Contract Clause	\$10,000	Limited	A15.3.1	
(2) EEO Specification	\$10,000	Limited	A15.3.2	
r. Prohibition of Segregated Facilities	\$10,000	Limited	A18.3	41 CFR § 60
s. Recovered Materials	\$10,000	Limited	A20.3	2 CFR § 200.322 40 CFR part 247

Provision	Dollar Threshold	Professional Services	Paragraph	Source
t. Termination of Contract	\$10,000	REQD	A23.3	2 CFR § 200 Appendix II(B) FAA Advisory Circular 150/5370-10, Section 80-09
u. Debarment and Suspension	\$25,000	REQD	A11.3	2 CFR part 180 (Subpart C) 2 CFR part 1200 DOT Order 4200.5
v. Contract Work Hours and Safety Standards	\$100,000	Limited	A8.3	2 CFR § 200, Appendix II(E)
w. Lobbying Federal Employees	\$ 100,000	REQD	A17.3	31 U.S.C. § 1352 – Byrd Anti-Lobbying Amendment 2 CFR part 200, Appendix II(J) 49 CFR part 20, Appendix A
x. Breach of Contract	\$150,000	REQD	A3	2 CFR § 200 Appendix II(A)
y. Clean Air/Water Pollution Control	\$150,000	REQD	A7.3	2 CFR § 200, Appendix II(G)

Provisions as of 6/10/2016

6. Termination. (REFERENCE 2 CFR § 200 APPENDIX II(B))

6.1 Stopping Services. When City terminates the Services in accordance with **Section 5.**

“Federal Contract Provisions for Professional Services, Item t. Termination of Contract”

Engineer shall take the actions set forth herein. Unless City directs otherwise, after receipt of a written notice of termination for either cause or convenience, Engineer shall promptly (a) stop performing Services on the date and as specified in the notice of termination; (b) place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Services that is not terminated; (c) cancel orders and subcontracts, upon terms acceptable to City, to the extent that they relate to the performance of Services terminated; (d) assign to City all of the right, title, and interest of Engineer in all orders and subcontracts related to Services which shall continue; (e) deliver completed work to City and take such action as may be necessary or as directed by City to preserve and protect the work, work site, and any other property related to the Services in the

possession of Engineer in which City has an interest; and (f) continue performance only to the extent not terminated

6.2 Suspension of the Services. City may, for any reason, at any time and from time-to-time, by written notice to Engineer, suspend the carrying out of the Services or any part thereof, whereupon Engineer shall suspend the carrying out of the Services or any part thereof for such time or times and in such manner as City may require. During any such suspension, Engineer shall properly protect and secure the results of the Services in such manner as City may reasonably require. Unless otherwise instructed by City, Engineer shall, during any such suspension, maintain its staff and labor on or near the work site and otherwise be ready to proceed with the Services upon receipt of City's further instructions. City and Engineer shall negotiate a change order to address the impact of such suspension on Engineer's compensation and the term of this Agreement in accordance with **Section 3 "Changes to Services"** of this Agreement.

6.3 Termination by Engineer for City Default. If City fails to pay Engineer any undisputed amount due hereunder, and such failure continues for thirty (30) days following receipt of written notice thereof from Engineer, then Engineer shall be entitled to suspend further performance of the Services and be paid its costs during the period of suspension in the same manner as provided in **Sub-Section 6.2 "Suspension of the Services"** until the undisputed amount due, plus applicable interest, has been paid. If (a) such failure continues for an additional period of thirty (30) days or (b) Engineer's Services under this Agreement are delayed by an event of Uncontrollable Forces (as defined in **Section 15 "Uncontrollable Forces"** herein), and/or suspended by City, for one hundred eighty (180) days or more, then Engineer shall be entitled to terminate this Agreement by written notice to City and be paid its costs in the same manner as provided in **Sub-Section 6.2 "Suspension of the Services"**.

6.4 Ownership of Documents: The City acknowledges the Engineer's documents as the expressions of the Engineer's intellectual property and, as such instruments of professional service. Any plans, drawings, and specifications applicable to this Agreement shall become the property of the City upon completion of the Services or early termination of this Agreement as per **Section 5. "Federal Contract Provisions for Professional Services, Item t. Termination of Contract"** and provided that payment in full has been made with respect to all undisputed monies due and owing to the Engineer. The City shall not reuse or make any modifications to the documents without the prior written authorization of the Engineer. The City agrees, to the fullest extent permitted by law, to indemnify and hold the Engineer harmless from any claim, liability or cost (including reasonable attorneys' fees and costs of defense) arising or allegedly arising out of any unauthorized reuse or modification of the documents by the City or any

person or entity that acquires or obtains the documents from or through the City without the written authorization of the Engineer.

7. Engineer Representations and Corrective Action. (REFERENCE 2 CFR § 200 APPENDIX II(A))

7.1 In addition to other representations and warranties contained in this Agreement, Engineer represents and warrants to City that:

a) Engineer has performed similar Services and possesses the specific training, skills, knowledge, necessary personnel, and legal right to perform the Services. Engineer shall provide in connection with the Services the standard of care, skill, and diligence normally provided by a professional engineer in the performance of similar services and Engineer warrants that all such Services shall be performed in accordance with sound and accepted industry standards and professional practices, and in accordance with all applicable federal, state and local laws, statutes, regulations, rules and ordinances, as amended from time to time (including but not limited to all applicable environmental, health and safety, cultural preservation and natural resources management laws, statutes, regulations, rules, and ordinances, as amended from time to time) in effect during the performance of this Agreement.

(b) The compensation described in **Section 2 “Compensation”** is reasonable compensation for the performance of the Services, as represented by this Agreement, including all exhibits, and Engineer’s independent evaluation of the Services to be performed and investigation of site conditions.

(c) Engineer is financially solvent, able to pay its debts as they mature, and possesses sufficient working capital to complete the Services and perform Engineer’s obligations required by this Agreement.

(d) Engineer is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Services and perform the obligations required by this Agreement and has sufficient experience and competence to do so and is properly insured and licensed to perform the Services.

e) Engineer is the holder of or will take the necessary action to obtain all consents, licenses, permits, or other authorizations required to allow it to operate or conduct its business now and as contemplated by this Agreement and to perform the Services under this Agreement.

7.2 Upon written notice to the Engineer, Engineer will remedy, correct, and/or re-perform, without additional compensation, those Services not meeting the standard of care set out in this Agreement. If Engineer does not take the necessary corrective action within a reasonable time after receipt of City's written notice of the problem, defect(s), and/or damage(s), City may take such corrective action as it deems necessary through itself or through contract with others, and shall charge Engineer for all such costs incurred by City. The rights and remedies of City provided for in this **Section 7 "Engineer Representations and Corrective Action"** are in addition to and do not limit any other rights and remedies available to City at law or in equity.

8. Regulatory Proceedings. Engineer shall testify, when required by City, on City's behalf in any court or governmental or regulatory agency hearings or proceedings relative to the Services performed under this Agreement. Engineer's testimony shall be limited to the scope of services performed by Engineer per the Services, subject to compensation at negotiated rates.

9. Independent Contractor. In performing the Services, Engineer is acting and shall be deemed for all purposes to be an independent contractor. City and Engineer are not partners, agents or joint venturers with each other, and this Agreement is not intended to nor shall it be construed to create a partnership, joint venture, or agency relationship between City and Engineer. Engineer shall complete the Services according to Engineer's own means and methods of work, which shall be in the exclusive charge and control of Engineer, and which shall not be subject to the control and supervision of City, except as to the results of the Services. Engineer shall be entirely and solely responsible for its acts and the acts of its employees and agents while engaged in the performance of the Services. Engineer, its employees and agents shall not hold themselves out as employees or agents of City. Engineer and its employees are hereby expressly precluded from and not entitled to any employee benefits from City. For the purpose of clarifying the ineligibility of the Engineer under City's employee benefits plans or programs, Engineer and its employees are hereby specifically excluded from any eligibility and/or are deemed a "temporary employee" when such term is used to define ineligibility in benefits in any City employee benefit plan or program.

10. Invoicing and Payment. Engineer shall submit invoices to City, referencing this Agreement number and Purchase Order number, together with such documentation as City may require, at the following address:

Address: City of Aztec Finance Department
201 W Chaco
Aztec, NM 87410

If City has no objections to an invoice, it shall pay the invoice in full within thirty (30) days after receipt of such invoice. If City objects to an invoice or any portion thereof, it shall notify the Engineer of its objections within thirty (30) days after receipt and may withhold payment of the disputed amount. Any objections or disputes concerning invoices shall be resolved in accordance with **Section 20 “Dispute Resolution.”**

10.1 Late Payments If undisputed payment(s) are not received by the Engineer within thirty (30) calendar days from the date such invoice is received by the City, the City agrees to pay as interest an additional charge of one percent (1%) per month of the PAST DUE amount. Payment thereafter shall first be applied to accrued interest and then to the unpaid principal. Without exception, the City shall have no obligation to pay the Engineer for Services not rendered and for Services not authorized by this Agreement.

In the event legal action is necessary to enforce the payment provisions of this Agreement, the dispute shall be resolved in accordance with **Section 20 “Dispute Resolution”**.

11. Audit. Engineer shall maintain complete and accurate records concerning the Services and all related transactions for at least three (3) years from the date of final payment for the Services. At any time but not later than three (3) years after final payment under this Agreement, City may make such audit of the invoices and substantiating material (including time records) as deemed necessary by City. Each payment made shall be subject to reduction and refund to City, or offset on future payments due Engineer, to the extent of amounts which are found by City not to have been properly payable or to have been overpaid, and shall also be subject to increase and payment to Engineer for underpayments to the extent of any amounts which are found by City to have been underpaid. Upon request by City, Engineer shall insert a clause containing all the provisions of this Section 10 “Audit” in all subcontracts to permit City to make identical audits and inspections of the records of all subcontractors involved in performance of the Services.

12. Taxes. Engineer shall pay all taxes and contributions for unemployment insurance, old age retirement benefits, pensions, annuities, and similar benefits, which may now or hereafter be imposed on Engineer by law or collective bargaining agreements with respect to persons employed by Engineer for performance of the Services. Engineer shall be liable for and shall pay and shall indemnify, defend, and hold City harmless from, all such taxes and contributions or any interest accrued and penalties imposed, and reasonable attorney fees and all taxes (including but not limited to, income, withholding, gross receipts, compensating, use and all

other taxes of whatsoever kind and whatsoever nature), excises, assessments, and other charges levied by any governmental agency or authority on or because of the Services, or on any materials, equipment, services, or supplies furnished in the performance of the Services. On all invoices, Engineer shall separately show all New Mexico gross receipts, compensating, sales, and other similar taxes which are reimbursable by City to Engineer, provided that in no event will interest or penalties on such taxes be reimbursable by City. Engineer shall utilize appropriate New Mexico Nontaxable Transaction Certificates, or similar certificates from other states, where applicable, to minimize such gross receipts, compensating, sales, and other similar taxes.

13. Liability.

13.1 Engineer General Indemnity. To the fullest extent permitted by law, Engineer shall indemnify and hold harmless City, including its affiliates, directors, officers, officials, employees, and agents from and against liability, claims, damages, losses or expenses, including attorney fees, arising out of, or resulting from performance of the Services under this Agreement, but only to the extent that the liability, damages, losses, or costs are caused by, or arise out of, the acts, errors, omissions, and/or willful misconduct of Engineer, any subcontractor of Engineer, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable. This indemnification provision shall apply equally to injuries to Engineer's employees. Nothing contained herein shall obligate the Engineer to indemnify the City, its affiliates, directors, officers, officials, employees, or agents against their own negligence or willfully wrongful conduct.

13.2 Compliance with Laws. Engineer shall indemnify, defend, and hold harmless City from and against any claims, damage and expense (including reasonable attorney fees) arising out of the violation by Engineer of any applicable law, rule regulation, or ordinance relating to Engineer's operations and performance of the Services under this Agreement.

13.3 Intellectual Property Rights Infringement Indemnity. Engineer warrants that none of the Services, or the results thereof, performed by Engineer, or the documents, goods or equipment produced, designed, fabricated, or assembled by Engineer pursuant to this Agreement infringe upon or violate any patent, copyright, trade secret, or any other intellectual or property rights of any third party. If any third party makes a claim or commences a proceeding against City alleging such an infringement or violation, Engineer shall indemnify, defend and save harmless City, its directors, officers, officials, employees, agents and affiliates from and against all damages and costs incurred by or awarded against City (including court costs and reasonable attorney fees). City will notify Engineer if any such claim is made or proceeding is commenced.

City may, at its option, be represented by separate legal counsel in any such claim or proceeding. Engineer shall reimburse City the costs and expenses incurred by City in being so represented, including reasonable attorney fees. If the use of any of the Services, or the results of such Services, or documents, goods, or equipment, or any part thereof, furnished under this Agreement is held in any such claim or proceeding to constitute an infringement and/or is enjoined, whether temporarily or permanently, Engineer shall, at its sole cost and expense, either:

- (a) procure for City the right to use the results of such Services or such documents, goods and equipment; or
- (b) replace the results of such Services or such documents, goods, or equipment with non-infringing results, documents, goods or equipment having the equivalent functionality as the infringing or allegedly infringing results, documents, goods or equipment; or
- (c) modify the results of such Services or such documents, goods, or equipment so as to make them non-infringing, but equivalent in functionality.

13.3.1 Best Efforts. Engineer shall use its best efforts to obtain for the benefit of City identical intellectual property rights indemnification protection in all subcontracts, purchase orders, and other agreements entered into under this Agreement.

13.4 Limitation. NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, INDIRECT, NOR CONSEQUENTIAL DAMAGES RESULTING FROM OR ARISING OUT OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS OR BUSINESS INTERRUPTION, HOWEVER SAME MAY BE CAUSED. THIS LIMITATION ON CONSEQUENTIAL DAMAGES DOES NOT APPLY TO CLAIMS FOR PERSONAL INJURY, WRONGFUL DEATH OR DIRECT DAMAGES TO PROPERTY. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR PUNITIVE DAMAGES.

13.5 Bribes and Gratuities. By law (Section 13-1-191, NMSA, 1978) the City is required to inform Offerors, Bidders, Contractors, Consultants, Sellers, Suppliers, or Engineers of the following:

- (a) it is a third-degree felony under New Mexico law to commit the offense of bribery of a public officer or public employee (Section 30-24-1, NMSA, 1978);
- (b) it is a third-degree felony to commit the offense of demanding or receiving a bribe buy a public officer or public employee (Section 30-24-2, NMSA, 1978);
- (c) it is a fourth-degree felony to commit the offense of soliciting or receiving illegal

kickbacks (Section 30-41-1, NMSA, 1978); and
(d) it is a fourth-degree felony to commit the offense of offering or paying illegal kickbacks (Section 30-41-2, NMSA, 1978).

14. Insurance.

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

14.2 Minimum Coverage. Without limiting any of the liabilities or other obligations of Engineer under this Agreement, including but not limited to **Section 13 "Liability,"** Engineer shall obtain and maintain in effect, at its sole cost and expense, with forms and insurers acceptable to City, until all the obligations under this Agreement are satisfied, insurance policies providing coverage protecting against claims for personal and bodily injury or death, as well as claims for property damage which may arise from operations in connection with the Services whether such operations are by Engineer or any subcontractor for at least the following minimum coverage:

- (a) Worker's Compensation Insurance. To cover obligations imposed by federal and state statutes pertaining to Engineer's employees engaged in the performance of any services, and Employer's Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000).
- (b) Commercial General Liability Insurance, or the equivalent, with a minimum limit of One Million Dollars (\$1,000,000) per occurrence. The policy shall include coverage for bodily injury liability, broad form property damage liability, blanket contractual,

Engineer's protective, products liability and completed operations. Where applicable, the policy shall include coverage for the hazards commonly referred to as "XCU." The policy shall be endorsed to include City as an additional insured only to the extent the City is vicariously liable for the negligence, acts or omissions of Engineer.

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

(d) Errors and Omissions. Engineer shall provide Errors and Omissions insurance with a minimum limit of One Million Dollars (\$1,000,000).

14.3 Subcontractors. Engineer shall require that each subcontractor comply with the insurance requirements set forth in **Sub-Section 14.2 "Minimum Coverage."**

14.4 Additional Bonds and Insurance - Prior to delivery of the executed Agreement by City to Engineer, City may require Engineer to furnish such other Bonds and such additional insurance, in such form and with such sureties or insurers, as City may require. If such other Bonds or such other insurance are specified by written instructions given prior to opening of Bids/Proposals, the premiums shall be paid by Contractor; if subsequent thereto, they shall be paid by City (except as otherwise provided).

15. Uncontrollable Forces. Neither Party shall be considered to be in default in respect to any obligation hereunder, if delays in or failure of performance shall be due to Uncontrollable Forces. The term "Uncontrollable Forces" shall mean any cause beyond the control of the Party affected and not due to its fault or negligence, including, but not limited to, acts of God, flood, earthquake, storm, fire, lightning, epidemic, war, terrorist activity, riot, civil disturbance, sabotage, inability to obtain permits, licenses, and authorizations from any local, state, tribal, or federal agency or person for any of the materials, supplies, equipment, or services required to be provided hereunder, fuel shortages, breakdown or damage to generation and transmission facilities belonging to City, failure of facilities, strikes or other labor disputes, or restraint by court or public authority, any of which by exercise of due foresight such Party could not reasonably have been expected to avoid, and which by the exercise of due diligence it is unable to overcome. Neither Party shall, however, be relieved of liability for failure of performance if such failure is due to removable or remediable causes which it fails to remove or remedy with reasonable dispatch. Nothing contained herein, however, shall be construed to require either Party to prevent or settle a strike or other labor disputes against its will. The Party whose

performance hereunder is so affected shall immediately notify the other Party of all pertinent facts and take all reasonable steps to promptly and diligently prevent such causes if feasible to do so, or to minimize or eliminate the effect thereof without delay. Engineer shall make no claim for additional compensation or damages by reason of any delay due to an Uncontrollable Force; however, Engineer shall be entitled to a reasonable extension to the time schedule for delays resulting from an Uncontrollable Force.

16. Confidentiality. Any information or data of City provided to Engineer or to which Engineer is given access during the term of this Agreement, whether such information is in written, verbal, electronic or any other form, is proprietary to City and shall be treated as confidential and not disclosed by Engineer to any third party, without City's prior written consent. Engineer may disclose such information and data to its employees and Engineers, but only on a "need to know" basis. Such information and data may only be used for the purpose of performing the Services that are required of Engineer pursuant to this Agreement, and for no other purpose. Such information and data may not be copied except as required to perform the Services, and upon completion of the Services, Engineer shall destroy all copies in its possession. Further, Engineer acknowledges and agrees that all data and information collected, produced or generated, and all reports, test results, plans, models, documents and other written materials produced pursuant to this Agreement or in connection with any services to be performed hereunder shall be and remain the sole property of City, shall be confidential, shall not be copied or reproduced in any way, except for the use of the Engineer and City personnel assigned to this project, and shall not be disclosed or communicated, verbally or in writing, by Engineer to any third party, or used in any way except as required by law or for the purposes required or intended by the Agreement. If required by City, Engineer and any of its employees or agents performing services under or in connection with this Agreement shall execute confidentiality and nondisclosure agreements in the form required by City. If Engineer is served with process of law, including but not limited to subpoenas requiring Engineer to produce, release or disclose information of a confidential nature received, collected, produced or generated by Engineer pursuant to this Agreement, Engineer shall immediately notify City and allow City, at its sole expense and cost, to challenge the process of law, including any subpoena. The duties of this **Section 16 "Confidentiality"** will survive the expiration or early termination of this Agreement following such expiration or early termination.

It is understood by the Engineer and the City that the City is a New Mexico municipal corporation and, as such, is subject to the provisions of the New Mexico Inspection of Public Records Act, Section 14-2-1 through 14-2-12 NMSA 1978. In the event Engineer has responded to a City Request For Bid (RFB) or a City Request For Proposal (RFP) and marked all or any part of the information submitted as "CONFIDENTIAL INFORMATION" or as "PROPRIETARY

INFORMATION,” City agrees to notify Engineer of any third party request for any rates, terms, compensation amounts, or other information documented in the Purchase Order, the Agreement, or Contract. To the extent Engineer provides City with written direction to withhold such requested Confidential Information or Proprietary Information and litigation results, Engineer agrees that the action would be brought in a New Mexico court of competent jurisdiction under New Mexico law. Engineer, being aware of said facts, agrees to provide legal counsel on behalf of the City in any such litigation and shall bear the complete cost of litigation, including attorney fees and court costs. If Engineer fails or refuses to provide legal counsel at its expense within ten (10) calendar days after written notification, as aforesaid, such failure may result in the City agreeing to release the Purchase Order, Agreement, or Contract or any portion thereof which is relevant to the denied request.

17. Conflict of Interest.

17.1 Engineer shall exercise reasonable care and diligence to prevent any actions or conditions which would result in a conflict with City’s interest. Engineer shall immediately notify the person specified in **Section 23, “Notices”** of this Agreement in the event a conflict with the City’s interest is recognized.

17.2 Engineer warrants that it has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Services under this Agreement.

17.3 Engineer shall notify the City’s Purchasing Officer if any employee(s) of the requesting department or the Purchasing Division have a financial interest in the Engineer’s business operations.

18. Intellectual Property.

18.1 **Intellectual Property Rights.** The City acknowledges the Engineer’s documents as the expressions of the Engineer’s intellectual property and, as such, instruments of professional service. Nevertheless, the final plans, drawings, specifications, inventions made, works created, and trade secrets learned that result pursuant to this Agreement shall become the property of the City upon completion of the Services (or upon early termination of this Agreement) and upon payment in full of all undisputed monies due and owing to the Engineer. The City shall not reuse or make any modifications to any such documents without the prior written authorization of the Engineer. The City agrees, to the fullest extent permitted by law, to indemnify and hold the Engineer harmless from any claim, liability or cost (including reasonable attorneys’ fees and

costs of defense) arising or allegedly arising out of any unauthorized reuse or modification of any such documents by the City or any person or entity that acquires or obtains any such documents from or through the City without the written authorization of the Engineer.

18.2 License. Subject to the restrictions set out in **Sub-Section 18.1 “Intellectual Property Rights”** above, Engineer hereby grants to City a fully paid, royalty free, non-exclusive, non-terminable, perpetual license to use, copy, and create derivative works of any pre-existing copyrighted, patented and/or proprietary work that is incorporated into the Services or the results of the Services, or into the documents, goods and equipment produced, designed, fabricated and assembled by Engineer pursuant to this Agreement. If so requested by City, Engineer shall cooperate with City in executing all such assignments, oaths, declarations and other documents as may be prepared by City to effect and evidence the foregoing.

18.3 Reasonable and Professional Best Efforts. Engineer shall put forth its reasonable and professional best efforts to obtain for the benefit of City identical intellectual property indemnification protection in all subcontracts, purchase orders, and other agreements entered into under this Agreement.

19. Drug and Alcohol Policy. During the term of the Agreement, Engineer is required to have in place, and to comply with a Drug and Alcohol Policy that meets or exceeds the requirements of the New Mexico Department of Transportation. Engineer will provide the City with an electronic or written copy of any such policy and related procedure upon request by the City’s Designated Representative. Engineer’s policy, at a minimum, must provide for: “a work environment that is free from the use, consumption, possession, sale or distribution of illegal drugs or alcohol and from the misuse of legal drugs on the Engineer’s premises or on the premises of its clients. This requirement must include Engineer’s vehicles (owned or leased) used for the purpose of performing Engineer’s Services or the management thereof. Accordingly, the Engineer requires that employees and subcontractors alike will be subject to testing to determine the presence of illegal drugs, alcohol or inappropriately used legal drugs while performing Services. Consumption of alcohol or ingestion/injection of drugs during employee breaks or lunch is strictly prohibited. Engineer’s or any tier subcontractor’s employees must be fit for duty and not be under the influence of alcohol or controlled substances (without a valid prescription for the controlled substances) when employees present for duty and at all times while at work or on duty.” Engineer’s policy shall include: reasonable testing procedures, full compliance with all New Mexico Department of Transportation requirements for covered functions.” Engineer is responsible for testing and other related costs, for providing all required reports to any government agency, and, at the City’s request, Engineer shall make its drug/alcohol testing statistics available to the City’s

Designated Representative upon request.

20. Dispute Resolution. If the Parties are unable to resolve any dispute within 30 (thirty) days of the occurrence of the event or circumstances giving rise to the dispute, the dispute may be submitted to mediation upon the mutual agreement of the Parties. In the event the Parties do not agree to mediate the dispute or are unable to resolve the dispute through mediation and the aggregate amount of the claim (including counterclaims) is less than \$250,000, then the dispute shall be resolved by binding arbitration. Such arbitration shall be governed by the New Mexico Uniform Arbitration Act, § 44-7A-8, et seq. (2001), as amended from time to time. A Party demanding arbitration shall give the other Party timely notice of such election pursuant to **Section 23 “Notices”** and such notice shall describe the nature of the dispute and the amount in controversy. The Parties shall then jointly select an arbitrator and failing such mutual agreement, the arbitrator shall be appointed by a District Court Judge from San Juan County, New Mexico. The arbitration shall be held in Aztec, New Mexico. Discovery shall be by agreement of the Parties or as ordered by the arbitrator, provided that the Parties shall comply with the following minimum discovery requirements: at least ten (10) calendar days prior to the arbitration, the Parties shall exchange copies of all exhibits to be used at the arbitration and a list of witnesses and a summary of the matters as to which each witness is expected to testify.

In the event the Parties do not agree to mediate the dispute or are unable to resolve the dispute through mediation, and the aggregate amount of the claim in dispute equals or exceeds \$250,000, then the Parties may agree to submit the matter to binding arbitration under the New Mexico Uniform Arbitration Act, § 44-7A-8, et seq. (2001), as amended from time to time, and failing such agreement, either Party may bring an action in the federal or state courts of New Mexico.

All costs of mediation or arbitration, including the fees of the mediator or arbitrator, shall be split equally by the Parties, except that the Parties shall be responsible for payment of their own attorney fees, expert fees, preparation fees, travel, and similar costs. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law of the State of New Mexico. Indemnity claims are not subject to mandatory arbitration. Nothing in this **Section 20 “Dispute Resolution”** shall affect, restrict, condition, or otherwise limit a Party’s right to terminate this Agreement pursuant to **Section 6 “Termination.”**

In the event of a conflict between the terms and provisions of any Purchase Order (that is incorporated herein by reference) and the terms and provisions contained in the main body or any other part of this Agreement, the terms and provisions of the Purchase Order shall govern and control. In the event of a conflict between or among the terms and provisions of any of the

other documents forming a part of the Agreement (incorporated by reference), the following order of priority shall apply (with higher-listed documents governing and controlling over lower-listed documents):

- First: Changes to Services
- Second: Exhibits and Attachments
- Third: Scope and Drawings
- Fourth: City's RFB/RFP
- Fifth: Specifications
- Sixth: Engineer's proposal

21. Non-Exclusive Relationship. Engineer expressly acknowledges and agrees that City may enter into similar contractual arrangements with other parties and that City may assign similar services to such other parties. Further, City acknowledges and agrees that Engineer may enter into contractual arrangements with other parties during the term of this Agreement provided that the obligations of Engineer pursuant to such contractual arrangements do not in any manner interfere with Engineer's performance of its obligations to City pursuant to this Agreement.

22. Prohibition Against Assignment and Subcontracting. It is understood and agreed that City has chosen Engineer based on Engineer's qualifications to perform services of the nature contemplated by this Agreement. Accordingly, Engineer shall not assign, transfer, subcontract or otherwise dispose of any of its obligations pursuant to this Agreement without first obtaining the written consent of City, which consent may be withheld if City, in its sole opinion, considers that it is not in its best interests, economic or otherwise, to do so. City may, at its option and at any time, assign this Agreement, in whole or in part. City shall promptly notify Engineer in writing of any such assignment, unless such assignment is to an affiliate of City. In the event City assigns this Agreement, it shall be relieved of all financial responsibility related to the portion of this Agreement so assigned.

23. Notices. Except as expressly provided otherwise herein, any formal notice, demand, or request provided for in this Agreement shall be in writing and shall be deemed properly made if personally delivered, delivered by courier, or sent by first-class mail, postage prepaid, or by facsimile transmission to the facsimile number to the person specified below and shall be deemed received, if personally delivered, or delivered by courier, upon delivery, and if mailed, on the third day following deposit in the U.S. mail, and if sent by facsimile, upon transmission as evidenced by a confirmation report generated by the facsimile device.

To Engineer: Bohannan Huston, Inc.
Attention: Albert M. Thomas, PE
Phone: 800-877-5332
Fax: 505-798-7988
Email: athomas@bhinc.com

To City: City of Aztec
City Manager
201 W Chaco
Aztec NM 87410

Invoices to City: City of Aztec
Finance Department
201 W Chaco
Aztec NM 87410
acctspayable@aztecnm.gov

The Parties may change their addresses, contact persons, or facsimile numbers to which notices are to be sent by providing the other Party with notice of such changes in the manner provided in this **Section 23 “Notices”**. Nothing contained herein shall preclude the transmission of routine invoices or correspondence, messages and information between the Parties by a representative of a Party in the ordinary course of performing their respective obligations under this Agreement.

24. Designated Representative and Project Manager.

24.1 **City’s Designated Representative.** City appoints the following individual as its “Designated Representative”:

Bill Watson, PE, City Engineer/Public Works Director
201 W Chaco
Aztec NM 87410
wwatson@aztecnm.gov
Office: 505-334-7661
Cell: 702-250-5353
Fax: 505-334-7669

The Designated Representative’s authority shall encompass but not be limited to (1) issuance of

instructions, (2) interpretation of plans, (3) review and inspection of Engineer's Services, (4) rejection of nonconforming Work, (5) determination of when Services is complete, (6) approval of progress payments and final payment, and (7) first point of contact for certain Change Orders as set forth in **Section 3 "Changes to Services"**. All field communications from Engineer to City shall be directed to the Designated Representative. City may appoint another Designated Representative at any time by written notice to Engineer.

24.2 Engineer's Project Manager. Engineer appoints the following individual as its "Project Manager" in charge of Engineer's performance and execution of the Services:

Dumas Slade
Bohannon Huston, Inc.
7500 Jefferson NE
Albuquerque NM 87109
dslade@bhinc.com
Office: 505-932-3312
Cell: 505-350-2107
Fax: 505-798-7988

All instructions, requests for Change to Services and other communications from the City to the Engineer shall be directed to the Project Manager. Engineer may appoint another Project Manager upon ten (10) calendar days' prior written notice to City. If City objects to the new appointee, Engineer shall appoint a Project Manager acceptable to City.

25. No Waiver. No term, covenant or condition of this Agreement or any breach thereof shall be deemed waived, unless such waiver shall be in writing and executed by the Party claimed to have waived the same. The waiver of any breach by a Party, whether express or implied, shall not constitute a waiver of any subsequent breach.

26. Severability. If a court or regulatory agency having jurisdiction over the Parties determines that a condition of this Agreement, or any part thereof, is void, illegal or unenforceable, said condition or part shall be deemed to have been severed from this Agreement, and the remaining conditions, or parts, shall be unaffected and shall be enforced to the fullest extent allowed by law.

27. Binding Effect. This Agreement and all provisions hereof shall inure to the benefit of and be binding upon the Parties, their successors, and permitted assigns.

28. **Governing Law and Venue.** This Agreement shall be governed and interpreted in accordance with the laws of the State of New Mexico, without regard to the conflicts of law rules of that State. Any action at law or in equity or judicial proceedings instituted by a Party for the enforcement of this Agreement shall be instituted only in state or federal courts of the State of New Mexico.

29. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument. City and Engineer may retain a duplicate copy (e.g. electronic image, photocopy, facsimile) of this Agreement, which shall be considered an equivalent to this original.

30. **Survival of Obligations.** In addition to the continuation of confidentiality obligations as specified in **Section 16 “Confidentiality,”** Engineer’s representations and warranties under **Section 7 “Engineer Representations and Corrective Action,”** indemnity obligations, including those under **Section 13 “Liability,”** and **Section 19 “Drug and Alcohol”** of this Agreement, shall survive the expiration or any termination of the Agreement, it being agreed that said obligations are and shall be of a continuing nature.

31. **Agreement Authors.** The Parties have agreed to this Agreement and no ambiguity shall be construed against any Party based on the identity of the author or authors of this Agreement.

32. **Subcontracts.** Engineer may, after notice of its intent to do so and unless objected to by the City, enter into subcontracts for the performance of parts of the work and/or Services. The issuance of subcontracts shall not relieve Engineer of any of its obligations under this Agreement and/or the Contract Documents, including, among other things, the obligation to properly supervise and coordinate the work of subcontractors. Said subcontracts shall be in such form and contain such provisions as are required by the Agreement, the Contract Documents, or as the City may prescribe. In addition to compliance with the provisions of **Section 14.2 “Minimum Coverage,”** Contractor shall ensure that all Contractors and/or subcontractors comply with the provisions of **Section 19 “Drug and Alcohol Policy”**. However, nothing contained in any subcontract shall create a contractual relationship between any subcontractor (including a Contractor) and the City.

33. **Distracted Driving** (REFERENCES: EXECUTIVE ORDER 13513, AND DOT ORDER 3902.10) In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving" (10/1/2009) and DOT Order 3902.10 "Text Messaging While Driving" (12/30/2009), the FAA encourages recipients of Federal grant funds to adopt and enforce safety

policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

In support of this initiative, the Owner encourages the Engineer to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Engineer must include the substance of this clause in all sub-tier contracts exceeding \$3,500 and involve driving a motor vehicle in performance of work activities associated with the project.

NMSA 1978 66-7-374. Texting while driving prohibits this activity and the Engineer shall have policies for its employees and other work personnel while performing work activities associated with the project to be in accordance with state law.

34. Entire Agreement. This Agreement represents the entire agreement and understanding between City and Engineer with respect to the subject matter hereof and performance of the Services, and supersede any prior understandings, representations or agreements, whether verbal or written, prior to execution of this Agreement. If any Services were performed by Engineer under verbal agreement or under a limited notice to proceed prior to the execution of this Agreement, then this Agreement shall apply thereto in the same manner as if made before such Services were performed.

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

By: _____
 Sherri A. Sipe
 Mayor Pro Tem City of Aztec

Date: _____

(SEAL)

ATTEST:

Karla Sayler City Clerk CMC

Date: _____

APPROVED TO FORM:

Larry T. Thrower, City Attorney

Date: _____

By: _____
Bohannon Huston, Inc. (Engineer)
Albert Thomas
Senior Vice President

Date: _____

800-877-5332
Telephone

01-503914-005
NM Taxpayer Identification Number

85-0202170
Federal Taxpayer Identification

EXHIBIT 1
TASK ORDER AGREEMENT
“Services”

Introduction

Engineer shall provide for City professional Engineering services in all phases of the Project to which this Agreement applies as hereinafter provided. These services will include serving the City with professional Engineering consultation and advice and furnishing Engineering consultation and advice and furnishing customary civil, structural, mechanical and electrical Engineering services and customary architectural services incidental thereto.

I. Scope of Services

(To be negotiated/taken from RFP).

II. Task Orders

1. Services for the Project will be provided pursuant to task orders issued during the Contract Term. The City reserves the right, at its sole discretion, to issue an RFP for similar work, for other types of work, and for other projects as the need may occur.

2. Prior to beginning work on any improvement, the Awarded Offeror shall meet with the City Designated Representative to obtain the proposed work scope, schedule, and other parameters for the improvement. The Awarded Offeror shall evaluate existing conditions, including making site visits and any other activities necessary to properly assess the improvement.

3. The Awarded Offeror shall prepare a written scope of services, estimate of fees to perform that work and of total cost related to the improvement. If requested, the Awarded Offeror will submit an estimate, projecting the man-hours by employee classification and estimated reimbursable expenses to the City Designated Representative. Fixed or not-to-exceed fees for each project shall be established based upon hourly fees for work actually performed and /or fees for reimbursable contract. Any agreed upon fee for the improvement shall include all professional fees, subcontracted work, estimates of reimbursable expenses, and profit and overhead.

4. Approval to begin work on each project shall be evidenced by issuance of a task order. Task orders under \$20,000 will be approved by the City Manager; task orders greater than \$20,000 will be approved by the Aztec City Commission. No work shall be performed prior to the approval of a task order and purchase order and no changes in the work shall be made without a written change order.

EXHIBIT 2
SCOPE OF SERVICES

The Engineering firm will be primarily responsible for, but not limited to the following on site and/or all other means of communication:

Basic engineering services are utilized in four distinct and sequential phases. Proposers are required to set out their qualifications and to propose on the following scope of work.

- A. Preliminary Phase: This phase involves those activities required for defining the scope of a project and establishing preliminary requirements including, but not limited to, the following:
 - 1. Conferring with the Sponsor on project requirements, programming, finances, schedules, early phases of the project, and other pertinent matters and meeting with FAA and other concerned agencies and parties on matters affecting the project.
 - 2. Assisting the Sponsor in the preparation of necessary pre-applications, applications, and required documents for federal grants, including Disadvantaged Business Enterprise (DBE) plan and goals, and exhibits.
 - 3. Planning, procuring, and/or preparing necessary surveys, field investigations, and architectural and engineering studies required for preliminary design considerations.
 - 4. Develop design schematics, sketches, environmental and aesthetic considerations, project recommendations, and preliminary layouts and cost.

- B. Design Phase: This phase includes all activities required to undertake and accomplish a full and complete project design including, but not limited to, the following:
 - 1. Meetings and design conferences to obtain information and to coordinate or resolve design matters.
 - 2. Collecting engineering data and undertaking field investigations and surveys and engineering and environmental studies.
 - 3. Preparing necessary engineering reports and recommendations.
 - 4. Preparing detailed plans, specifications, and cost estimates.
 - 5. Conducting a detailed value engineering analysis, if applicable and requested.

- C. Bidding or Negotiation Phase: This phase, at a minimum, involves providing plans, specifications, and all bid documents. The phase also includes assisting the Sponsor in advertising and securing bids, negotiating for services, analyzing bid results, furnishing recommendations on the award of contracts, and preparing contract documents.

- D. Construction Phase: This phase includes all basic services rendered after the award of a construction contract including, but not limited to, the following:

1. Providing consultation and advice to the Sponsor during all phases of construction.
2. Representing the Sponsor at pre-construction conferences.
3. Providing on site construction inspection and management involving the services of a full-time resident engineer, inspector, or manager during the construction or installation phase of a project, and providing appropriate reports to the Sponsor.
4. Reviewing and approving shop and erection drawings submitted by contractors for compliance with design concept.
5. Reviewing, analyzing, and approving laboratory and mill test reports of materials and equipment.
6. Preparing and negotiating change orders and supplemental agreements.
7. Observing or reviewing performance tests required by specifications.
8. Determining payment amounts to contractors, and assisting Sponsor in the preparation of payment requests for amounts reimbursable from grant projects.
9. Conducting wage rate reviews of certified payrolls.
10. Making final inspection and submitting a report of the completed project to the Sponsor, including "as built" drawings.

E. Proposers may be required to provide other incidental services, or subcontract with third party individuals or companies for such services. Incidental services include, but are not limited to, the following:

1. Soils investigation, including core sampling, laboratory tests, related analyses, and reports.
2. Detailed mill, shop, and/or laboratory inspections of materials and equipment.
3. Land surveys and topographic maps.
4. Field and/or construction surveys.
5. Expert witness testimony in litigation involving specific projects.
6. Miscellaneous plans, studies, and assessment reports including environmental, noise, etc.
7. Assist Sponsor in preparing equipment (i.e. snow removal, sweeper, mower, etc.) specifications for procurement purposes.

For each project, the City will provided the awarded Offeror a detailed project description, including scope of work and any other special instructions needed by the awarded Offeror to prepare items such as preliminary and final cost estimates, complete project plans and specifications, construction inspection project reports and other related engineering services.

The awarded Offeror will be expected to communicate with the FAA and State DOT Aviation Division to ensure engineering requirements are met.

EXHIBIT 3 - Bohannon-Huston, Inc.

**RATE SCHEDULES
City of Aztec, NM
Aviation Rate Schedule
November 2017**

BHI Direct Labor

	Fixed Fee Direct Labor Rate	Cost Plus Fixed Fee (CPFF) Direct labor Rate
Engineer 7	\$245.48	\$70.67
Engineer 6	\$183.86	\$52.93
Engineer 5	\$152.98	\$44.04
Engineer 4	\$133.11	\$38.32
Engineer 3	\$115.11	\$33.14
Engineer 2	\$99.34	\$28.60
Engineer 1	\$90.03	\$25.92
Technical Manager 6	\$197.85	\$56.96
Planner 7	\$192.16	\$55.32
Planner 6	\$153.81	\$44.28
Planner 5	\$138.94	\$40.00
Planner 4	\$125.33	\$36.08
Planner 3	\$104.21	\$30.00
Planner 2	\$82.50	\$23.75
Planner 1	\$72.94	\$21.00
Engineering Tech 7	\$111.29	\$32.04
Engineering Tech 6	\$101.29	\$29.16
Engineering Tech 5	\$90.94	\$26.18
Engineering Tech 4	\$76.14	\$21.92
Surveyor 6	\$206.30	\$59.39
Surveyor 3	\$108.55	\$31.25
Survey Tech 5	\$89.93	\$25.89
Survey Tech 4	\$76.42	\$22.00
Survey Tech 3	\$67.94	\$19.56
Survey Tech 2	\$52.38	\$15.08
Spatial Data Systems Manager 7	\$245.48	\$70.67
Geospatial Analyst 7	\$115.04	\$33.12
Geospatial Analyst 6	\$94.90	\$27.32
Geospatial Analyst 4	\$75.45	\$21.72
Graphic Specialist 6	\$116.16	\$33.44
Construction Observer 7	\$139.12	\$40.05
Construction Observer 6	\$105.25	\$30.30
Construction Observer 5	\$89.97	\$25.90
Construction Observer 4	\$83.37	\$24.00
Construction Observer 3	\$68.08	\$19.60
Administrative Assistant 5	\$81.80	\$23.55
Administrative Assistant 4	\$77.25	\$22.24
Administrative Assistant 3	\$63.11	\$18.17
Administrative Assistant 2	\$58.32	\$16.79
Administrative Assistant 1	\$49.01	\$14.11

CPFF fee will include:
194.37% Audited Overhead (NMDOT Audit)
Fixed Fee on total labor negotiated per assignment

Subconsultants

sub-consultant management expense (AC 150/5100-14E, paragraph 4.12)

Direct Expenses

Travel at IRS Rate
Per Diem at US GSA rates
Reproduction at cost
Survey Equipment \$25/hour
Other at cost

ement

Exhibit 4

Required Contract Provisions for Airport Improvement Program and for Obligated Sponsors

APPENDIX A – CONTRACT PROVISIONS

A1 ACCESS TO RECORDS AND REPORTS

A1.1 SOURCE

2 CFR § 200.333

2 CFR § 200.336

FAA Order 5100.38

A1.2 APPLICABILITY

2 CFR § 200.333 requires a sponsor to retain records pertinent to a Federal award for a period of three years from submission of final closure documents. 2 CFR § 200.336 establishes that sponsors must provide Federal entities the right to access records pertinent to the Federal award. FAA policy extends these requirements to the sponsor's contracts and subcontracts of AIP funded projects.

Contract Types – The sponsor must include this provision in all contracts and subcontracts of AIP funded projects.

Use of Provision – The regulation does not prescribe mandatory language, the following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor's language must fully satisfy the requirements of part 200.

A1.3 CONTRACT CLAUSE

ACCESS TO RECORDS AND REPORTS

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the sponsor, the Federal Aviation Administration, and the Comptroller General of the United States or any of their duly authorized representatives, access to any books, documents, papers, and records of the contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

A2 AFFIRMATIVE ACTION REQUIREMENT

A2.1 SOURCE

41 CFR part 60-4

Executive Order 11246

A2.2 APPLICABILITY

Minority Participation. Sponsors are required to set goals for minority participation in AIP funded projects. The goals for minority participation depend on Economic Area (EA) and Standard Metropolitan Statistical Area (SMSA) as established in Volume 45 of the Federal Register dated 10/3/80. Page 65984 contains a table of all EAs and SMSAs and the associated minority participation goals.

To find the goals for minority participation, a sponsor must either refer to the Federal Register Notice or to the Department of Labor online document, "[Participation Goals for Minorities and Females](#)". EA's and SMSA's cross state boundaries so a sponsor may have to refer to entries for adjacent states to find their project location.

A sponsor must insert the applicable percentage minority goal. Sponsor must not simply insert a reference to the Federal Register Notice.

Female Participation. Executive Order 11246 has set a goal of 6.9% nationally for female participation for all construction contractors. This value does not change per county or state.

Contract Types –

Construction: The sponsor must incorporate this notice in all solicitations for bids or requests for proposals for AIP funded construction work contracts and subcontracts that exceed \$10,000. Construction work means construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

Equipment: The sponsor must incorporate this notice in any equipment project exceeding \$10,000 that involves installation of equipment onsite (e.g. electrical vault equipment). This provision does not apply to equipment acquisition projects where the manufacture of the equipment takes place offsite at the vendor plant (e.g. firefighting and snow removal vehicles)

Professional Services: The sponsor must incorporate this notice in any professional service agreement if the professional service agreement includes construction work (as defined above) that exceed \$10,000. Examples include installation of noise monitoring systems.

Property/Land: The sponsor must incorporate this notice in any agreement associated with land acquisition if the agreement includes construction work (defined above) that exceeds \$10,000. Examples include demolition of structures or installation of boundary fencing.

Use of Provision – The sponsor must incorporate the text of this provision without modification. The sponsor must incorporate the established minority participation goal and the covered area by geographic name within the provision text.

A2.3 CONTRACT CLAUSE

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION to ENSURE EQUAL EMPLOYMENT OPPORTUNITY

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Timetables

Goals for minority participation for each trade: ***[sponsor must insert established goal]***

Goals for female participation in each trade: 6.9%

These goals are applicable to all of the contractor's construction work (whether or not it is Federal or federally-assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs (OFCCP) within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

4. As used in this notice and in the contract resulting from this solicitation, the "covered area" is ***[sponsor must insert state, county, and city]***.

A3 BREACH OF CONTRACT TERMS

A3.1 SOURCE

2 CFR § 200 Appendix II(A)

A3.2 APPLICABILITY

This provision requires sponsors to incorporate administrative, contractual or legal remedies if contractors violate or breach contract terms. The sponsor must also include appropriate sanctions and penalties.

Contract Types – This provision is required for all contracts that exceed the simplified acquisition threshold as stated in 2 CFR Part 200, Appendix II (A). This threshold is occasionally adjusted for inflation, and is now equal to \$150,000.

Use of Provision – The regulation does not prescribe mandatory language. The following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor’s language must fully satisfy the requirements of part 200. Select either “contractor” or “consultant” as applicable.

A3.3 CONTRACT CLAUSE

BREACH OF CONTRACT TERMS

Any violation or breach of terms of this contract on the part of the contractor or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement.

Owner will provide [*Contractor / Consultant*] written notice that describes the nature of the breach and corrective actions the [*Contractor / Consultant*] must undertake in order to avoid termination of the contract. Owner reserves the right to withhold payments to Contractor until such time the Contractor corrects the breach or the Owner elects to terminate the contract. The Owner’s notice will identify a specific date by which the [*Contractor / Consultant*] must correct the breach. Owner may proceed with termination of the contract if the [*Contractor / Consultant*] fails to correct the breach by deadline indicated in the Owner’s notice.

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

A4 BUY AMERICAN PREFERENCE

A4.1 SOURCE

Title 49 USC § 50101

A4.2 APPLICABILITY

The Buy-American Preference requirement in 49 USC § 50101 requires that all steel and manufactured goods used on AIP projects be produced in the United States. The statute gives the FAA the ability to issue a waiver to a sponsor to use non-domestic material on the AIP funded project. The sponsor may request that the FAA issue a waiver from the Buy American Preference requirements if the FAA finds that:

- 1) Applying the provision is not in the public interest;
- 2) The steel or manufactured goods are not available in sufficient quantity or quality in the United States;
- 3) The cost of components and subcomponents produced in the United States is more than 60 percent of the total components of a facility or equipment, and final assembly has taken place in the United States. Items that have an FAA standard specification item number (such as specific airport lighting equipment) are considered the equipment.
- 4) Applying this provision would increase the cost of the overall project by more than 25 percent.

Timing of Waiver Requests. The sponsor must submit Type 1 or Type 2 waiver requests *before* issuing a solicitation for bids or a request for proposal for a project.

The sponsor must submit Type 3 or Type 4 waiver requests *prior* to executing the contract. The FAA will generally not consider waiver requests after execution of the contract except where extraordinary only if extenuating circumstances exist. The FAA cannot review incomplete waiver requests or requests that the Sponsor has not reviewed for adequacy. Sponsor must assess the adequacy of the waiver request before forwarding the request to the FAA.

Buy American Conformance List. The FAA Office of Airports maintains a listing of equipment that has received National waivers from the Buy American Preference requirements or that fully meet the Buy American requirements. This Buy American Conformance List is available online at www.faa.gov/airports/aip/buy_american/. Products listed on the Buy American Conformance list do not require a project specific Buy American Preference requirement waiver from the FAA.

Facility Waiver Requests. For construction of a facility, the sponsor may submit the waiver request after bid opening, but prior to contract execution. Examples of facility construction include terminal buildings, terminal renovation, and snow removal equipment buildings.

Contract Types –

Construction and Equipment - The sponsor must meet the Buy American Preference requirements of 49 USC § 50101 for all AIP funded projects that require steel or manufactured goods. The Buy America requirements flow down from the sponsor to first tier contractors, who

are responsible for ensuring that lower tier contractors and subcontractors are also in compliance.

Note: the Buy American Preference does not apply to equipment a contractor uses as a tool of their trade and does not remain as part of the project.

Professional Services – Professional service agreements (PSA) do not normally result in a deliverable that meets the definition of a manufactured product. However, the emergence of different project delivery methods has created situations where task deliverables may include a manufactured product. If a PSA includes providing a manufactured good as part of the contract, the sponsor must include the Buy American Preference provision in the agreement.

Property – Most land transactions do not involve acquiring a manufactured product. However, under certain circumstances, a property acquisition project could result in the installation of a manufactured product. For example, the installation of property fencing, gates, doors and locks, etc. represent manufactured products acquired under the AIP funded project that must meet the Buy American Preference.

Use of Provision – The regulation does not prescribe mandatory language, the following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor’s revised language must fully comply with 49 USC § 50101.

There are two types of Buy American certifications. The sponsor must incorporate the appropriate “Certificate of Buy America Compliance” in the solicitation:

- Projects for a facility (Buildings such as Terminal, SRE, ARFF, etc.) – Insert the Certificate of Compliance Based on Total Facility
- Projects for non-facility development (non-building construction projects such as runway or roadway construction; or equipment acquisition projects) – Insert the Certificate of Compliance Based on Equipment and Materials Used on the Project.

A4.3 CONTRACT CLAUSE

A4.3.1 Buy American Preference Statement

BUY AMERICAN PREFERENCE

The contractor agrees to comply with 49 USC § 50101, which provides that Federal funds may not be obligated unless all steel and manufactured goods used in AIP funded projects are produced in the United States, unless the FAA has issued a waiver for the product; the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list.

A bidder or offeror must complete and submit the Buy America certification included herein with their bid or offer. The Owner will reject as nonresponsive any bid or offer that does not include a completed Certificate of Buy American Compliance.

A4.3.2 Certificate of Buy American Compliance – Total Facility

CERTIFICATE OF BUY AMERICAN COMPLIANCE FOR TOTAL FACILITY

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC § 50101 by selecting one of the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (i.e. not both) by inserting a checkmark (✓) or the letter “X”.

- Bidder or offeror hereby certifies that it will comply with 49 USC. 50101 by:
- a) Only installing steel and manufactured products produced in the United States; or
 - b) Installing manufactured products for which the FAA has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
 - c) Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

1. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
 2. To faithfully comply with providing US domestic products.
 3. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
- The bidder or offeror hereby certifies it cannot comply with the 100% Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
1. To the submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that support the type of waiver being requested.
 2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination that may result in rejection of the proposal.
 3. To faithfully comply with providing US domestic products at or above the approved US domestic content percentage as approved by the FAA.
 4. To furnish US domestic product for any waiver request that the FAA rejects.
 5. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

Required Documentation

Type 3 Waiver - The cost of components and subcomponents produced in the United States is more than 60% of the cost of all components and subcomponents of the “facility”. The required documentation for a type 3 waiver is:

- a) Listing of all manufactured products that are not comprised of 100% US domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and

products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety)

- b) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly and installation at project location.
- c) Percentage of non-domestic component and subcomponent cost as compared to total “facility” component and subcomponent costs, excluding labor costs associated with final assembly and installation at project location.

Type 4 Waiver – Total cost of project using US domestic source product exceeds the total project cost using non-domestic product by 25%. The required documentation for a type 4 of waiver is:

- a) Detailed cost information for total project using US domestic product
- b) Detailed cost information for total project using non-domestic product

False Statements: Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

Date

Signature

Company Name

Title

A4.3.3 Certificate of Buy American Compliance – Manufactured Product

Certificate of Buy American Compliance for Manufactured Products

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC § 50101 by selecting one on the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (not both) by inserting a checkmark (✓) or the letter “X”.

- Bidder or offeror hereby certifies that it will comply with 49 USC § 50101 by:
- a) Only installing steel and manufactured products produced in the United States, or;
 - b) Installing manufactured products for which the FAA has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing, or;
 - c) Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

1. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
2. To faithfully comply with providing US domestic product
3. To furnish US domestic product for any waiver request that the FAA rejects
4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

- The bidder or offeror hereby certifies it cannot comply with the 100% Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:

1. To submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that support the type of waiver being requested.
2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination may result in rejection of the proposal.
3. To faithfully comply with providing US domestic products at or above the approved US domestic content percentage as approved by the FAA.
4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

Required Documentation

Type 3 Waiver - The cost of the item components and subcomponents produced in the United States is more than 60% of the cost of all components and subcomponents of the “item”. The required documentation for a type 3 waiver is:

- a) Listing of all product components and subcomponents that are not comprised of 100% US domestic content (Excludes products listed on the FAA Nationwide Buy American

Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety).

- b) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly at place of manufacture.
- c) Percentage of non-domestic component and subcomponent cost as compared to total “item” component and subcomponent costs, excluding labor costs associated with final assembly at place of manufacture.

Type 4 Waiver – Total cost of project using US domestic source product exceeds the total project cost using non-domestic product by 25%. The required documentation for a type 4 of waiver is:

- a) Detailed cost information for total project using US domestic product
- b) Detailed cost information for total project using non-domestic product

False Statements: Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

Date

Signature

Company Name

Title

A5 CIVIL RIGHTS - GENERAL

A5.1 SOURCE

49 USC § 47123

A5.2 APPLICABILITY

Note: This provision is in addition to the Civil Rights – Title VI provisions.

Contract Types – The General Civil Rights Provisions found in 49 USC § 47123, derived from the Airport and Airway Improvement Act of 1982, Section 520, apply to all sponsor contracts regardless of funding source.

Use of Provision – There are two versions of this provision. One applies to sponsor contracts and the other applies to sponsor lease agreements and transfer agreements. The sponsor must incorporate the text of the appropriate provision without modification.

A5.3 CONTRACT CLAUSE

A5.3.1 Sponsor Contracts

GENERAL CIVIL RIGHTS PROVISIONS

The contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the contractor and subtier contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

A5.3.2 Sponsor Lease Agreements and Transfer Agreements

GENERAL CIVIL RIGHTS PROVISIONS

The tenant/concessionaire/lessee and its transferee agree to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport through the Airport Improvement Program.

In cases where Federal assistance provides, or is in the form of personal property; real property or interest therein; structures or improvements thereon, this provision obligates the party or any transferee for the longer of the following periods:

- (a) The period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or
- (b) The period during which the airport sponsor or any transferee retains ownership or possession of the property.

A6 CIVIL RIGHTS – TITLE VI ASSURANCE

A6.1 SOURCE

49 USC § 47123

FAA Order 1400.11

A6.2 APPLICABILITY

Title VI of the Civil Rights Act of 1964, as amended, (Title VI) prohibits discrimination on the grounds of race, color, or national origin under any program or activity receiving Federal financial assistance. Sponsors must include appropriate clauses from the Standard DOT Title VI Assurances in all contracts and solicitations.

The clauses are as follows:

A6.2.1 Applicability of Title VI Solicitation Notice

Contract Clause	The Sponsor must include the contract clause in:	Clause Text is Included in Paragraph
Title VI Solicitation Notice	1) All solicitations for bids, requests for proposals work, or material subject to the nondiscrimination acts and regulations made in connection with Airport Improvement Program grants; and 2) All proposals for negotiated agreements regardless of funding source.	A6.3.1
Title VI Clauses for Compliance with Nondiscrimination Requirements	Every contract or agreement, unless the sponsor has determined and the FAA concurs, that the contract or agreement is not subject to the Nondiscrimination Acts and Authorities	A6.3.2
Title VI Required Clause for Property Interests Transferred from the United States	As a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.	A6.3.3
Title VI Required Clause for Transfer of Real Property Acquired or Improved Under the Activity, Facility or Program	As a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the sponsor with other parties for all transfers of real property acquired or improved under the activity, facility, or program	A6.3.4

Contract Clause	The Sponsor must include the contract clause in:	Clause Text is Included in Paragraph
Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program	As a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the sponsor with other parties for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program	A6.3.5
Title VI List Of Pertinent Nondiscrimination Acts And Authorities	Insert this list in every contract or agreement, unless the sponsor has determined and the FAA concurs, that the contract or agreement is not subject to the Nondiscrimination Acts and Authorities	A6.3.6

A6.3 CONTRACT CLAUSE

A6.3.1 Title VI Solicitation Notice

Title VI Solicitation Notice:

The **(Name of Sponsor)**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

A6.3.2 Title VI Clauses for Compliance with Nondiscrimination Requirements

Compliance with Nondiscrimination Requirements

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor’s obligations under this contract and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor’s noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment,

unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

A6.3.3 Title VI Clauses for Deeds Transferring United States Property

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of the Airport Improvement Program grant assurances.

NOW, THEREFORE, the Federal Aviation Administration as authorized by law and upon the condition that the (*Title of Sponsor*) will accept title to the lands and maintain the project constructed thereon in accordance with (*Name of Appropriate Legislative Authority*), for the (**Airport Improvement Program or other program for which land is transferred**), and the policies and procedures prescribed by the Federal Aviation Administration of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the (*Title of Sponsor*) all the right, title and interest of the U.S. Department of Transportation/Federal Aviation Administration in and to said lands described in (*Exhibit A attached hereto or other exhibit describing the transferred property*) and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto (*Title of Sponsor*) and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the (*Title of Sponsor*), its successors and assigns.

The (*Title of Sponsor*), in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the (*Title of Sponsor*) will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of

Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the Federal Aviation Administration and its assigns as such interest existed prior to this instruction].*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

**A6.3.4 Title VI Clauses for Transfer of Real Property
Acquired or Improved Under the Activity, Facility, or
Program**

**CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE
ACTIVITY, FACILITY, OR PROGRAM**

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the (*Title of Sponsor*) pursuant to the provisions of the Airport Improvement Program grant assurances.

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:
 - 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, (*Title of Sponsor*) will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*
- C. With respect to a deed, in the event of breach of any of the above Nondiscrimination covenants, the (*Title of Sponsor*) will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the (*Title of Sponsor*) and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

A6.3.5 Title VI Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by (*Title of Sponsor*) pursuant to the provisions of the Airport Improvement Program grant assurances.

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, “as a covenant running with the land”) that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above nondiscrimination covenants, (*Title of Sponsor*) will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*
- C. With respect to deeds, in the event of breach of any of the above nondiscrimination covenants, (*Title of Sponsor*) will there upon revert to and vest in and become the absolute property of (*Title of Sponsor*) and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

A6.3.6 Title VI List of Pertinent Nondiscrimination Acts and Authorities

Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

A7 CLEAN AIR AND WATER POLLUTION CONTROL

A7.1 SOURCE

2 CFR § 200, Appendix II(G)

A7.2 APPLICABILITY

Contract Types – This provision is required for all contracts and lower tier contracts that exceed \$150,000.

Use of Provision – The regulation does not prescribe mandatory language. The following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor’s language must fully satisfy the requirements of Appendix II to 2 CFR §200.

A7.3 CONTRACT CLAUSE

CLEAN AIR AND WATER POLLUTION CONTROL

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 U.S.C. § 740-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). The Contractor agrees to report any violation to the Owner immediately upon discovery. The Owner assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

Contractor must include this requirement in all subcontracts that exceeds \$150,000.

A8 CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS

A8.1 SOURCE

2 CFR § 200, Appendix II(E)

A8.2 APPLICABILITY

Contract Workhours and Safety Standards Act Requirements, (CWHSSA) requires contractors and subcontractors on covered contracts to pay laborers and mechanics employed in the performance of the contracts one and one-half times their basic rate of pay for all hours worked over 40 in a workweek. CWHSSA prohibits unsanitary, hazardous, or dangerous working conditions on federally assisted projects. The Wage and Hour Division (WHD) within the U.S. Department of Labor (DOL) enforces the compensation requirements of this Act, while DOL's Occupational Safety and Health Administration (OSHA) enforces the safety and health requirements

Contract Types –

Construction - This provision applies to all contracts and lower tier contracts that exceed \$100,000, and employ laborers, mechanics, watchmen and guards.

Equipment - This provision applies to any equipment project exceeding \$100,000 that involves installation of equipment onsite (e.g. electrical vault equipment). This provision does not apply to equipment acquisition projects where the manufacture of the equipment takes place offsite at the vendor plant (e.g. ARFF and SRE vehicles)

Professional Services - This provision applies to professional service agreements that exceed \$100,000 and employs laborers, mechanics, watchmen and guards. This includes members of survey crews and exploratory drilling operations.

Property – While most land transactions do not involve employment of laborers, mechanics, watchmen and guards, under certain circumstances, a property acquisition project could require such employment. Examples include the installation of property fencing or testing for environmental contamination

Use of Provision – Sponsors must incorporate this text without modification.

A8.3 CONTRACT CLAUSE

CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS

1. Overtime Requirements.

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a

rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; Liability for Unpaid Wages; Liquidated Damages.

In the event of any violation of the clause set forth in paragraph (1) of this clause, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this clause.

3. Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration (FAA) or the Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 of this clause.

4. Subcontractors.

The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this clause.

A9 COPELAND “ANTI-KICKBACK” ACT

A9.1 SOURCE

2 CFR § 200, Appendix II(D)

29 CFR Parts 3 & 5

A9.2 APPLICABILITY and PURPOSE

The Copeland (Anti-Kickback) Act (18 U.S.C. 874 and 40 U.S.C. 3145) makes it unlawful to induce by force, intimidation, threat of dismissal from employment, or by any other manner, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment. The Copeland Act also requires each contractor and subcontractor to furnish weekly a statement of compliance with respect to the wages paid each employee during the preceding week.

Contract Types –

Construction – This provision applies to all construction contracts and subcontracts financed under the AIP program that exceeds \$2,000.

Equipment – This provision applies to all equipment installation projects (e.g. electrical vault improvements) financed under the AIP program that exceeds \$ 2, 000. This provision does not apply to equipment acquisitions where the equipment is manufactured at the vendor’s plant (e.g. SRE and ARFF vehicles)

Professional Services - The emergence of different project delivery methods has created situations where Professional Service Agreements (PSA) includes tasks that meet the definition of construction, alteration or repair as defined in 29 CFR Part 5. If such tasks result in work that qualifies as construction, alteration or repair and it exceeds \$2,000, the PSA must incorporate the Copeland Anti-kickback provision.

Property - Ordinarily, land acquisition projects would not involve employment of laborers or mechanics and thus the Copeland Anti-Kickback provision would not apply. However, land projects that involve installation of boundary fencing and demolition of structures would involve laborers and mechanics. The sponsor must include this provision if the land acquisition project involves employment of laborers or mechanics for a contract exceeding \$2,000.

Use of Provision – 29 CFR Part 5 establishes specific language a sponsor must use in construction contracts. The sponsor may not make any modification to the standard language. A/E firms that employ laborers and mechanics on a task that meets the definition of construction, alteration or repair are acting as a contractor. The sponsor may not substitute the term “contractor” for “consultant” in such instances.

A9.3 CONTRACT CLAUSE

COPELAND “ANTI-KICKBACK” ACT

Contractor must comply with the requirements of the Copeland “Anti-Kickback” Act (18 U.S.C. 874 and 40 U.S.C. 3145), as supplemented by Department of Labor regulation 29 CFR part 3. Contractor and subcontractors are prohibited from inducing, by any means, any person employed on the project to give up any part of the compensation to which the employee is entitled. The Contractor and each Subcontractor must submit to the Owner, a weekly statement on the wages paid to each employee performing on covered work during the prior week. Owner must report any violations of the Act to the Federal Aviation Administration.

A10 DAVIS-BACON REQUIREMENTS

A10.1 SOURCE

2 CFR § 200, Appendix II(D)

29 CFR Part 5

A10.2 APPLICABILITY

The Davis-Bacon Act ensures that laborers and mechanics employed under the contract receive pay no less than the locally prevailing wages and fringe benefits as determined by the Department of Labor.

Contract Types –

Construction - Incorporate into all construction contracts and subcontracts that exceed \$2,000 and include funding from the AIP program.

Equipment – This provision applies to all equipment installation projects (e.g. electrical vault improvements) financed under the AIP program that exceeds \$ 2, 000. This provision does not apply to equipment acquisitions where the equipment is manufactured at the vendor’s plant (e.g. SRE and ARFF vehicles)

Professional Services - The emergence of different project delivery methods has created situations where Professional Service Agreements (PSA) includes tasks that meet the definition of construction, alteration or repair as defined in 29 CFR Part 5. If such tasks result in work that qualifies as construction, alteration or repair and it exceeds \$2,000, the PSA must incorporate this clause.

Property - Ordinarily, land acquisition projects would not involve employment of laborers or mechanics and thus the provision would not apply. However, land projects that involve installation of boundary fencing and demolition of structures would involve laborers and mechanics. The sponsor must include this provision if the land acquisition project involves employment of laborers or mechanics for a contract exceeding \$2,000.

Fencing Projects - Fencing projects that exceed \$2,000 must include this provision.

Use of Provision – 29 CFR Part 5 establishes specific language a sponsor must use. The sponsor may not make any modification to the standard language. A/E firms that employ laborers and mechanics on a task that meets the definition of construction, alteration or repair are acting as a contractor. The sponsor may not substitute the term “contractor” for “consultant” in such instances.

A10.3 CONTRACT CLAUSE

DAVIS-BACON REQUIREMENTS

1. Minimum Wages

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any

account (except such payroll deductions as are permitted by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalent thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can easily be seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits where appropriate), the contracting officer shall

refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii) (B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2 Withholding.

The Federal Aviation Administration or the sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of work, all or part of the wages required by the contract, the Federal Aviation Administration may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is

enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the Federal Aviation Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (*e.g.*, the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the Federal Aviation Administration, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- (1) That the payroll for the payroll period contains the information required to be provided under 29 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 5.5 (a)(3)(i) and that such information is correct and complete;
- (2) That each laborer and mechanic (including each helper, apprentice and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations 29 CFR Part 3;
- (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying or transcription by authorized representatives of the sponsor, the Federal Aviation Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an

apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal Employment Opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act Requirements.

The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

6. Subcontracts.

The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR Part 5.5(a)(1) through (10) and such other clauses as the Federal Aviation Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.

7. Contract Termination: Debarment.

A breach of the contract clauses in paragraph 1 through 10 of this section may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance With Davis-Bacon and Related Act Requirements.

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes Concerning Labor Standards.

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of Eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

A11 DEBARMENT AND SUSPENSION

A11.1 SOURCE

2 CFR part 180 (Subpart C)

2 CFR part 1200

DOT Order 4200.5

A11.2 APPLICABILITY

The sponsor must verify that the firm or individual that it is entering into a contract with are not presently suspended, excluded or debarred by any Federal department or agency from participating in federally-assisted projects. The sponsor accomplishes this by: (1) checking the System for Award Management (SAM.gov) to verify that the firm or individual is not listed in SAM.gov as being suspended, debarred or excluded, (2) collecting a certification from the firm or individual that they are not suspended, debarred or excluded, and (3) incorporating a clause in the contract that requires lower tier contracts to verify that no suspended, debarred or excluded firm or individual are included in the project.

Contract Types – This requirement applies to *covered transactions*, which are defined in 2 CFR part 180. AIP funded contracts are non-procurement transactions, as defined by §180.970. Covered transactions include any AIP-funded contract, regardless of tier, that is awarded by a contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the amount of the contract is expected to equal or exceed \$25,000. This includes contracts associated with land acquisition projects.

Use of Provision – The regulation does not prescribe mandatory language, the following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor’s language must fully satisfy the requirements of 2 CFR part 180. For professional service agreements, sponsor may substitute bidder/offeror with consultant.

A11.3 CONTRACT CLAUSE

A11.3.1 Bidder or Offeror Certification

CERTIFICATION OF OFFERER/BIDDER REGARDING DEBARMENT

By submitting a bid/proposal under this solicitation, the bidder or offeror certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

A11.3.2 Lower Tier Contract Certification

CERTIFICATION OF LOWER TIER CONTRACTORS REGARDING DEBARMENT

The successful bidder, by administering each lower tier subcontract that exceeds \$25,000 as a “covered transaction”, must verify each lower tier participant of a “covered transaction” under the project is not

presently debarred or otherwise disqualified from participation in this federally assisted project. The successful bidder will accomplish this by:

1. Checking the System for Award Management at website: <http://www.sam.gov>
2. Collecting a certification statement similar to the Certificate Regarding Debarment and Suspension (Bidder or Offeror), above.
3. Inserting a clause or condition in the covered transaction with the lower tier contract

If the FAA later determines that a lower tier participant failed to disclose to a higher tier participant that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedies, including suspension and debarment of the non-compliant participant.

A12 DISADVANTAGED BUSINESS ENTERPRISE

A12.1 SOURCE

49 CFR part 26

A12.2 APPLICABILITY and PURPOSE

A sponsor that anticipates awarding \$250,000 or more in AIP funded prime contracts in a federal fiscal year must have an approved Disadvantaged Business Enterprise (DBE) program on file with the FAA Office of Civil Rights (§26.21). The approved DBE program will identify a 3-year overall program goal that the sponsor bases on the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on the project (§26.45).

Contract Types – Sponsors with a DBE program on file with the FAA must include the three following provisions, if applicable:

Clause in all solicitations for proposals for which a contract goal has been established.

Clause in each prime contract

Clause in solicitations that are obtaining DBE participation through race/gender neutral means.

Use of Provision –

1. Solicitations with a DBE Project Goal - 49 CFR §26.53 requires a sponsor's solicitation to address what a contractor must submit on proposed DBE participation. This language is not required for projects where DBE participation is by race-gender neutral means.

The regulation does not prescribe mandatory language, the following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor's revised language must fully these requirements.

The sponsor may require the contractor's submittal on proposed DBE participation either with the bid or within a specified timeframe after bidding.

2. Contracts Covered by DBE Program - Sponsors must incorporate this language if they have a DBE program on file with the FAA. This includes projects where DBE participation is obtained through race-gender neutral means (i.e. no project goal). Sections §26.13 and §26.29 establish mandatory language for contractor assurance and prompt payment. The sponsor must not modify the language.
3. The regulation does not prescribe mandatory language. The following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor's revised language must fully these requirements for a sponsor that is not applying a project specific contract goal but is covered by a DBE program on file with the FAA.
4. Sponsors that do not have a DBE program on file with the FAA are not required to include DBE provisions and clauses.

A12.3 REQUIRED PROVISIONS

A12.3.1 Solicitation Language (Solicitations that include a Project Goal)

The Owner's award of this contract is conditioned upon Bidder or Offeror satisfying the good faith effort requirements of 49 CFR §26.53.

As a condition of bid responsiveness, the Bidder or Offeror must submit the following information with their proposal on the forms provided herein:

- (1) The names and addresses of Disadvantaged Business Enterprise (DBE) firms that will participate in the contract;
- (2) A description of the work that each DBE firm will perform;
- (3) The dollar amount of the participation of each DBE firm listed under (1)
- (4) Written statement from Bidder or Offeror that attests their commitment to use the DBE firm(s) listed under (1) to meet the Owner's project goal;
- (5) If Bidder or Offeror cannot meet the advertised project DBE goal; evidence of good faith efforts undertaken by the Bidder or Offeror as described in appendix A to 49 CFR Part 26.

[Note: Contract bid dates on or prior to December 31, 2016, use the following language]

The successful Bidder or Offeror must provide written confirmation of participation from each of the DBE firms the Bidder or Offeror lists in their commitment. This Bidder or Offeror must submit the DBE's written confirmation of participation ["within 7 days after bid opening or "with the proposal documents as a condition of bid responsiveness"]

[Note: Contract bid dates after December 31, 2016, use the following language]

The successful Bidder or Offeror must provide written confirmation of participation from each of the DBE firms the Bidder(s) Offeror lists in their commitment. This Bidder or Offeror must submit the DBE's written confirmation of participation ["within 5 days after bid opening or "with the proposal documents as a condition of bid responsiveness"]

A12.3.2 Solicitation Language (Race/Gender Neutral Means)

The requirements of 49 CFR part 26 apply to this contract. It is the policy of the [Insert Name of Owner] to practice nondiscrimination based on race, color, sex or national origin in the award or performance of this contract. The Owner encourages participation by all firms qualifying under this solicitation regardless of business size or ownership.

A12.3.3 Prime Contracts (Projects covered by DBE Program)

DISADVANTAGED BUSINESS ENTERPRISES

Contract Assurance (§ 26.13) - The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

Prompt Payment (§26.29) - The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than {specify number} days from the receipt of each payment the prime contractor receives from {Name of recipient}. The prime contractor agrees further to return retainage payments to each subcontractor within {specify the same number as above} days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the {Name of Recipient}. This clause applies to both DBE and non-DBE subcontractors.

A13 DISTRACTED DRIVING

A13.1 SOURCE

Executive Order 13513

DOT Order 3902.10

A13.2 APPLICABILITY

The FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

Contract Types – Sponsors must insert this provision in all AIP funded contracts that exceed the micro-purchase threshold of 2 CFR §200.67 (currently set at \$3,500).

Use of Provision – The regulation does not prescribe mandatory language, the following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor’s revised language must fully these requirements. .

A13.3 CONTRACT CLAUSE

TEXTING WHEN DRIVING

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving" (10/1/2009) and DOT Order 3902.10 "Text Messaging While Driving" (12/30/2009), the FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

In support of this initiative, the Owner encourages the Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Contractor must include the substance of this clause in all sub-tier contracts exceeding \$3,500 and involve driving a motor vehicle in performance of work activities associated with the project.

A14 ENERGY CONSERVATION REQUIREMENTS

A14.1 SOURCE

2 CFR § 200, Appendix II(H)

A14.2 APPLICABILITY

The Energy Conservation Requirements found in 2 CFR § 200 Appendix II(H) requires this provision on energy efficiency.

Contract Types – The sponsor must include this provision in all AIP funded contracts and lower-tier contracts.

Use of Provision – The regulation does not prescribe mandatory language, the following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor’s revised language must fully these requirements. Sponsor may substitute “contractor and subcontractor” with “consultant and sub-consultant” for professional service agreements.

A14.3 CONTRACT CLAUSE

ENERGY CONSERVATION REQUIREMENTS

Contractor and Subcontractor agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201*et seq*).

A15 EQUAL EMPLOYEMENT OPPORTUNITY (E.E.O.)

A15.1 SOURCE

2 CFR 200, Appendix II(C)

41 CFR § 60-1.4

41 CFR § 60-4.3

Executive Order 11246

A15.2 APPLICABILITY

The purpose of this provision is to provide equal opportunity for all persons, without regard to race, color, religion, sex, or national origin who are employed or seeking employment with contractors performing under a federally assisted construction contract. There are two provisions – a construction clause and a specification clause.

The equal opportunity contract clause must be included in any contract or subcontract when the amount exceeds \$10,000. Once the equal opportunity clause is determined to be applicable, the contract or subcontract must include the clause for the remainder of the year, regardless of the amount or the contract.

Contract Types –

Construction – The sponsor must incorporate contract and specification language in all construction contracts and subcontracts as required above.

Equipment - The sponsor must incorporate contract and specification language into all equipment contracts as required above that involves installation of equipment onsite (e.g. electrical vault equipment). This provision does not apply to equipment acquisition projects where the manufacture of the equipment takes place offsite at the vendor plant (e.g. ARFF and SRE vehicles)

Professional Services - The sponsor must include contract and specification language into all professional service agreements as required above. *Property* – The sponsor must include contract and specification language into all land acquisition projects that include work that qualifies as construction work as defined by 41 CFR part 60 as required above. An example is installation of boundary fencing.

Use of Provision – 41 CFR § 60-1.4 provides the mandatory contract language. 41 CFR § 60-4.3 provides the mandatory specification language. The sponsor must incorporate these clauses without modification.

A15.3 MANDATORY CONTRACT CLAUSE

A15.3.1 E.E.O. Contract Clause

EQUAL OPPORTUNITY CLAUSE

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identify or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the

administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however*, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

A15.3.2 EEO Specification

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS

1. As used in these specifications:

- a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
- b. "Director" means Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, or any person to whom the Director delegates authority;
- c. "Employer identification number" means the Federal social security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;
- d. "Minority" includes:
 - (1) Black (all) persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race);
 - (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (4) American Indian or Alaskan native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors shall be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved plan is individually required to comply with its obligations under the EEO clause and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The contractor shall implement the specific affirmative action standards provided in paragraphs 7a through 7p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in a geographical area where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement nor the failure by a union with whom the contractor has a collective bargaining agreement to refer either minorities or women shall excuse the contractor's obligations under these specifications, Executive Order 11246 or the regulations promulgated pursuant thereto.

6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees shall be employed by the contractor during the training period and the contractor shall have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees shall be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefore along with whatever additional actions the contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or female sent by the contractor, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students; and to minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notification to organizations, such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel, for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations (7a through 7p). The efforts of a contractor association, joint contractor union, contractor community, or other similar groups of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through 7p of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, if the particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women generally,) the contractor may be in violation of the Executive Order if a specific minority group of women is underutilized.

10. The contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who

fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee, the name, address, telephone number, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

A16 FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

A16.1 SOURCE

29 U.S.C. § 201, et seq

A16.2 APPLICABILITY

The United States Department of Labor (DOL) Wage and Hour Division administers the Fair Labor Standards Act (FLSA). This act prescribes federal standards for basic minimum wage, overtime pay, record keeping and child labor standards.

Contract Types – Per the Department of Labor, all employees of certain enterprises having workers engaged in interstate commerce, producing goods for interstate commerce, or handling, selling, or otherwise working on goods or materials that have been moved in or produced for such commerce by any person, are covered by the FLSA.

All consultants, sub-consultants, contractors and subcontractors employed under this federally assisted project must comply with the FLSA.

Professional Services – 29 CFR § 213 exempts employees in a bona fide executive, administrative or professional capacity. Because professional firms employ individuals that are not covered by this exemption, the sponsor's agreement with a professional services firm must include the FLSA provision.

Use of Provision – The regulation does not prescribe mandatory language, the following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor's language must fully satisfy the requirements of 29 U.S.C. § 201. The sponsor must select *contractor* or *consultant*, as appropriate for the contract.

A16.3 CONTRACT CLAUSE

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

The [*contractor / consultant*] has full responsibility to monitor compliance to the referenced statute or regulation. The [*contractor / consultant*] must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division

A17 LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

A17.1 SOURCE

31 U.S.C. § 1352 – Byrd Anti-Lobbying Amendment

2 CFR part 200, Appendix II(J)

49 CFR part 20, Appendix A

A17.2 APPLICABILITY

Consultants and contractors that apply or bid for an award of \$100,000 or more must certify that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or another award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

Contract Types – The sponsor must incorporate this provision into all contracts exceeding \$100,000.

Use of Provision – Appendix A to 49 CFR Part 20 prescribes language the sponsor must use. The sponsor must incorporate this provision without modification.

A17.3 CONTRACT CLAUSE

CERTIFICATION REGARDING LOBBYING

The bidder or offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

A18 PROHIBITION of SEGREGATED FACILITIES

A18.1 SOURCE

41 CFR § 60

A18.2 APPLICABILITY

The contractor must comply with the requirements of the E.E.O. clause by ensuring that facilities they provide for employees are free of segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin. This clause must be included in all contracts that include the equal opportunity clause, regardless of the amount of the contract.

Contract Types – AIP sponsors must incorporate the Prohibition of Segregated Facilities clause in any contract containing the Equal Employment Opportunity clause of 41 CFR §60.1. This obligation flows down to subcontract and sub-tier purchase orders containing the Equal Employment Opportunity clause.

Construction - Construction work means construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

Equipment – On site installation of equipment such as airfield lighting control equipment meets the definition of construction and thus this provision would apply. This provision does not apply to equipment projects involving manufacture of the item at a vendor’s manufacturing plant. An example would be the manufacture of a SRE or ARFF vehicle.

Professional Services - Professional services that include tasks that qualify as construction work as defined by 41 CFR part 60. Examples include the installation of noise monitoring equipment.

Property/Land - Land acquisition contracts that include tasks that qualify as construction work as defined by 41 CFR part 60. Examples include demolition of structures or installation of boundary fencing.

Use of Provision – The regulation does not prescribe mandatory language, the following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor’s language must fully satisfy the requirements of 41 CFR § 60.

A18.3 CONTRACT CLAUSE

PROHIBITION of SEGREGATED FACILITIES

(a) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

(b) “Segregated facilities,” as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

A19 OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

A19.1 SOURCE

20 CFR part 1910

A19.2 APPLICABILITY

Contract Types – All contracts and subcontracts must comply with the Occupational Safety and Health Act of 1970 (OSH). The United States Department of Labor Occupational Safety & Health Administration (OSHA) oversees the workplace health and safety standards wage provisions from OSH.

Use of Provision – The regulation does not prescribe mandatory language. The following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor’s language must fully satisfy the requirements of 20 CFR part 1910.

A19.3 CONTRACT CLAUSE

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor retains full responsibility to monitor its compliance and their subcontractor’s compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

A20 PROCUREMENT OF RECOVERED MATERIALS

A20.1 SOURCE

2 CFR § 200.322

40 CFR part 247

A20.2 APPLICABILITY

Sponsors of AIP funded development and equipment projects must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. Section 6002 emphasizes maximizing energy and resource recovery through use of affirmative procurement actions for recovered materials identified in the EPA guidelines.

The requirements of § 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

Contract Types – This provision applies to any contracts that include procurement of products where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000.

Construction and Equipment – Include this provision in all construction and equipment projects

Professional Services and Property – Include this provision if the agreement includes procurement of a product that exceeds \$10,000

Use of Provision – The regulation does not prescribe mandatory language. The following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor's language must fully satisfy the requirements of 2 CFR § 200.

A20.3 CONTRACT CLAUSE

Procurement of Recovered Materials

Contractor and subcontractor agree to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the regulatory provisions of 40 CFR Part 247. In the performance of this contract and to the extent practicable, the Contractor and subcontractors are to use of products containing the highest percentage of recovered materials for items designated by the Environmental Protection Agency (EPA) under 40 CFR Part 247 whenever:

- a) The contract requires procurement of \$10,000 or more of a designated item during the fiscal year; or,
- b) The contractor has procured \$10,000 or more of a designated item using Federal funding during the previous fiscal year.

The list of EPA-designated items is available at www.epa.gov/epawaste/consERVE/tools/cpg/products/.

Section 6002(c) establishes exceptions to the preference for recovery of EPA-designated products if the contractor can demonstrate the item is:

- a) Not reasonably available within a timeframe providing for compliance with the contract performance schedule;
- b) Fails to meet reasonable contract performance requirements; or
- c) Is only available at an unreasonable price.

A21 RIGHT TO INVENTIONS

A21.1 SOURCE

2 CFR § 200, Appendix II(F)

37 CFR §401

A21.2 APPLICABILITY

Contract Types – This provision applies to all contracts and subcontracts with small business firms or nonprofit organizations that includes performance of *experimental, developmental, or research work*. This clause is not applicable to construction, equipment or professional service contracts unless the contract includes *experimental, developmental or research work*.

Use of Provision – The regulation does not prescribe mandatory language. The following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor’s language must fully satisfy the requirements of Appendix II to 2 CFR part 200.

A21.3 CONTRACT CLAUSE

RIGHTS TO INVENTIONS

Contracts or agreements that include the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the Owner in any resulting invention as established by 37 CFR part 401, Rights to Inventions Made by Non-profit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements. This contract incorporates by reference the patent and inventions rights as specified within in the 37 CFR §401.14. Contractor must include this requirement in all sub-tier contracts involving experimental, developmental or research work.

A22 SEISMIC SAFETY

A22.1 SOURCE

49 CFR part 41

A22.2 APPLICABILITY

Contract Types – This provision applies to construction of new buildings and additions to existing buildings financed in whole or in part through the Airport Improvement Program.

Professional Services and Construction – Sponsor must incorporate this clause in any contract involved in the construction of new buildings or structural addition to existing buildings.

Equipment – Sponsor must include this provision if the project involves construction or structural addition to a building such as an electrical vault project.

Land – This provision will not typically apply to a property/land project.

Use of Provision – The regulation does not prescribe mandatory language. The following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor’s language must fully satisfy the requirements of 49 CFR part 41.

A22.3 CONTRACT CLAUSE

A22.3.1 Professional Service Agreements for Design

Seismic Safety

In the performance of design services, the Consultant agrees to furnish a building design and associated construction specification that conform to a building code standard which provides a level of seismic safety substantially equivalent to standards as established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their building code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety. At the conclusion of the design services, the Consultant agrees to furnish the Owner a “certification of compliance” that attests conformance of the building design and the construction specifications with the seismic standards of NEHRP or an equivalent building code.

A22.3.2 Construction Contracts

Seismic Safety

The contractor agrees to ensure that all work performed under this contract, including work performed by subcontractors, conforms to a building code standard that provides a level of seismic safety substantially equivalent to standards established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety.

A23 TERMINATION OF CONTRACT

A23.1 SOURCE

2 CFR § 200 Appendix II(B)

FAA Advisory Circular 150/5370-10, Section 80-09

A23.2 APPLICABILITY

Contract Types – All contracts and subcontracts in excess of \$10,000 must address *termination for cause* and *termination for convenience* by the sponsor. The provision must address the manner (i.e. notice, opportunity to cure, and effective date) by which the sponsor’s contract will be affected and the basis for settlement (i.e. incurred expenses, completed work, profit, etc.).

Use of Provision –

Termination for Default - Section 80-09 of FAA Advisory Circular 150/5370-10 establishes standard language for Termination for Default under a construction contract. The sponsor must not make any changes to this standard language.

Termination for Convenience – The sponsor must include a clause for termination for convenience. The following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor’s language must fully satisfy the requirements of Appendix II to 2 CFR part 200.

Equipment, Professional Services and Property – The sponsor may use their established clause language provided that it adequately addresses the intent of Appendix II(B) to Part 200, which addresses termination for fault and for convenience.

A23.3 CONTRACT CLAUSE

A23.3.1 Termination for Convenience

Termination for Convenience (Construction & Equipment Contracts)

The Owner may terminate this contract in whole or in part at any time by providing written notice to the Contractor. Such action may be without cause and without prejudice to any other right or remedy of Owner. Upon receipt of a written notice of termination, except as explicitly directed by the Owner, the Contractor shall immediately proceed with the following obligations regardless of any delay in determining or adjusting amounts due under this clause:

1. Contractor must immediately discontinue work as specified in the written notice.
2. Terminate all subcontracts to the extent they relate to the work terminated under the notice.
3. Discontinue orders for materials and services except as directed by the written notice.
4. Deliver to the owner all fabricated and partially fabricated parts, completed and partially completed work, supplies, equipment and materials acquired prior to termination of the work and as directed in the written notice.
5. Complete performance of the work not terminated by the notice.

6. Take action as directed by the owner to protect and preserve property and work related to this contract that Owner will take possession.

Owner agrees to pay Contractor for:

- a) completed and acceptable work executed in accordance with the contract documents prior to the effective date of termination;
- b) documented expenses sustained prior to the effective date of termination in performing work and furnishing labor, materials, or equipment as required by the contract documents in connection with uncompleted work;
- c) reasonable and substantiated claims, costs and damages incurred in settlement of terminated contracts with Subcontractors and Suppliers; and
- d) reasonable and substantiated expenses to the contractor directly attributable to Owner's termination action

Owner will not pay Contractor for loss of anticipated profits or revenue or other economic loss arising out of or resulting from the Owner's termination action.

The rights and remedies this clause provides are in addition to any other rights and remedies provided by law or under this contract.

Termination for Convenience (Professional Services)

The Owner may, by written notice to the Consultant, terminate this Agreement for its convenience and without cause or default on the part of Consultant. Upon receipt of the notice of termination, except as explicitly directed by the Owner, the Contractor must immediately discontinue all services affected.

Upon termination of the Agreement, the Consultant must deliver to the Owner all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

Owner agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

Owner further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

A23.3.2 Termination for Default

Termination for Default (Construction)

Section 80-09 of FAA Advisory Circular 150/5370-10 establishes conditions, rights and remedies associated with Owner termination of this contract due default of the Contractor.

Termination for Default (Equipment)

The Owner may, by written notice of default to the Contractor, terminate all or part of this Contract if the Contractor:

1. Fails to commence the Work under the Contract within the time specified in the Notice- to-Proceed;
2. Fails to make adequate progress as to endanger performance of this Contract in accordance with its terms;

3. Fails to make delivery of the equipment within the time specified in the Contract, including any Owner approved extensions;
4. Fails to comply with material provisions of the Contract;
5. Submits certifications made under the Contract and as part of their proposal that include false or fraudulent statements;
6. Becomes insolvent or declares bankruptcy;

If one or more of the stated events occur, the Owner will give notice in writing to the Contractor and Surety of its intent to terminate the contract for cause. At the Owner's discretion, the notice may allow the Contractor and Surety an opportunity to cure the breach or default.

If within [10] days of the receipt of notice, the Contractor or Surety fails to remedy the breach or default to the satisfaction of the Owner, the Owner has authority to acquire equipment by other procurement action. The Contractor will be liable to the Owner for any excess costs the Owner incurs for acquiring such similar equipment.

Payment for completed equipment delivered to and accepted by the Owner shall be at the Contract price. The Owner may withhold from amounts otherwise due the Contractor for such completed equipment, such sum as the Owner determines to be necessary to protect the Owner against loss because of Contractor default.

Owner will not terminate the Contractor's right to proceed with the Work under this clause if the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such acceptable causes include: acts of God, acts of the Owner, acts of another Contractor in the performance of a contract with the Owner, and severe weather events that substantially exceed normal conditions for the location.

If, after termination of the Contractor's right to proceed, the Owner determines that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the Owner issued the termination for the convenience the Owner.

The rights and remedies of the Owner in this clause are in addition to any other rights and remedies provided by law or under this contract.

Termination for Default (Professional Services)

Either party may terminate this Agreement for cause if the other party fails to fulfill its obligations that are essential to the completion of the work per the terms and conditions of the Agreement. The party initiating the termination action must allow the breaching party an opportunity to dispute or cure the breach.

The terminating party must provide the breaching party [7] days advance written notice of its intent to terminate the Agreement. The notice must specify the nature and extent of the breach, the conditions necessary to cure the breach, and the effective date of the termination action. The rights and remedies in this clause are in addition to any other rights and remedies provided by law or under this agreement.

- a) **Termination by Owner:** The Owner may terminate this Agreement in whole or in part, for the failure of the Consultant to:
 1. Perform the services within the time specified in this contract or by Owner approved extension;
 2. Make adequate progress so as to endanger satisfactory performance of the Project;

3. Fulfill the obligations of the Agreement that are essential to the completion of the Project.

Upon receipt of the notice of termination, the Consultant must immediately discontinue all services affected unless the notice directs otherwise. Upon termination of the Agreement, the Consultant must deliver to the Owner all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

Owner agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

Owner further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

If, after finalization of the termination action, the Owner determines the Consultant was not in default of the Agreement, the rights and obligations of the parties shall be the same as if the Owner issued the termination for the convenience of the Owner.

b) **Termination by Consultant:** The Consultant may terminate this Agreement in whole or in part, if the Owner:

1. Defaults on its obligations under this Agreement;
2. Fails to make payment to the Consultant in accordance with the terms of this Agreement;
3. Suspends the Project for more than [180] days due to reasons beyond the control of the Consultant.

Upon receipt of a notice of termination from the Consultant, Owner agrees to cooperate with Consultant for the purpose of terminating the agreement or portion thereof, by mutual consent. If Owner and Consultant cannot reach mutual agreement on the termination settlement, the Consultant may, without prejudice to any rights and remedies it may have, proceed with terminating all or parts of this Agreement based upon the Owner's breach of the contract.

In the event of termination due to Owner breach, the Engineer is entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all justified reimbursable expenses incurred by the Consultant through the effective date of termination action. Owner agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

A24 TRADE RESTRICTION CERTIFICATION

A24.1 SOURCE

49 USC § 50104

49 CFR part 30

A24.2 APPLICABILITY

Unless waived by the Secretary of Transportation, sponsors may not use AIP funds on a product or service from a foreign country included in the current list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (U.S.T.R)

Contract Types – The trade restriction certification and clause applies to all AIP funded projects.

Use of Provision – 49 CFR part 30 prescribes the language for this model clause. The sponsor must include this certification language in all contracts and subcontracts without modification.

A24.3 CONTRACT CLAUSE

TRADE RESTRICTION CERTIFICATION

By submission of an offer, the Offeror certifies that with respect to this solicitation and any resultant contract, the Offeror -

- a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (U.S.T.R.);
- b. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the U.S.T.R; and
- c. has not entered into any subcontract for any product to be used on the Federal on the project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

The Offeror/Contractor must provide immediate written notice to the Owner if the Offeror/Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Contractor must require subcontractors provide immediate written notice to the Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to an Offeror or subcontractor:

- (1) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R. or
- (2) whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such U.S.T.R. list or
- (3) who incorporates in the public works project any product of a foreign country on such U.S.T.R. list;

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

The Offeror agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in in all lower tier subcontracts. The contractor may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by U.S.T.R, unless the Offeror has knowledge that the certification is erroneous.

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Owner cancellation of the contract or subcontract for default at no cost to the Owner or the FAA.

A25 VETERAN'S PREFERENCE

A25.1 SOURCE

49 USC § 47112(c)

A25.2 APPLICABILITY

Contract Types – This provision applies to all AIP funded projects that involve labor to carry out the project. This preference, which excludes executive, administrative and supervisory positions, applies to covered veterans (as defined under §47112(c)) only when they are readily available and qualified to accomplish the work required by the project.

Use of Provision – The regulation does not prescribe mandatory language, the following language is acceptable to the FAA and meets the intent of this requirement. If the sponsor uses different language, the sponsor's language must fully satisfy the requirements of 49 U.S.C. § 47112.

A25.3 CONTRACT CLAUSE

VETERAN'S PREFERENCE

In the employment of labor (excluding executive, administrative, and supervisory positions), the contractor and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 U.S.C. 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

Staff Summary Report

MEETING DATE: November 14, 2017
AGENDA ITEM: VIII. CONSENT AGENDA (D)
AGENDA TITLE: Resolution 2017-1066 Surplus

ACTION REQUESTED BY: Library
ACTION REQUESTED: Approval of Resolution 2017-1066
SUMMARY BY: Kathy Lamb

PROJECT DESCRIPTION / FACTS

- The Library, during the normal course of operations, reviews circulation of all materials. Materials which are not circulating or are out of date are pulled from the shelves and become surplus material. These items would have been purchased with city or state library funds or donated to the library. Materials pulled include a large collection of adult and youth books, several DVDs and music CDs.
- Approved library surplus items will be disposed of in a variety of ways to best serve the library and the community. Materials which may have use to Good Sam's, local schools, and/or veteran's programs will be donated. Materials which may have public interest will be packaged and available for sale at the library. Other materials may be packaged and sent to book outlets at no cost to the city. The Public Surplus website has not resulted in interest for library materials, although it will continue to be utilized as well.
- If the items are not sold they will be donated or disposed of according to NM Statute Section 3-54-2 and Procurement Statute 13-6-1. Disposition of obsolete, worn-out or unusable tangible personal property.

FISCAL INPUT / FINANCE DEPARTMENT

- Revenues from auction to be applied to General Fund / Joint Utility Fund

SUPPORT DOCUMENTS:

- Resolution 2017-1066
- Surplus List

DEPARTMENT'S RECOMMENDED MOTION: Move to Approve Resolution 2017-1066 Declaring Certain Municipal Property Not Essential For Municipal Purpose and Directing It Be Sold or Disposed.

**SURPLUS RESOLUTION 2017-1066
NOVEMBER 14, 2017
SURPLUS LIST**

Library Surplus Books

Anne's house of dreams	L.M. Montgomery
Rilla of Ingleside	L.M. Montgomery
Rainbow Valley / L.M. Montgomery ; with a biography of L.M. Montgomery by Caroline Parry	
Anne of Ingleside	L.M. Montgomery
The outlaws of Sherwood	Robin McKinley
Porch lies: tales of slicksters, tricksters, and other wily characters	Patricia C. McKissack
Under the mummy's spell	Kate McMullan
The new kid at school	K.H. McMullan
Revenge of the dragon lady	K.H. McMullan
Class trip to the Cave of Doom	Kate McMullan
A wedding for Wiglaf?	Kate McMullan
Beware! It's Friday the 13th	Kate McMullan
Pig Latin : not just for pigs!	Kate McMullan
Double dragon trouble	Kate McMullan
World's oldest living dragon	Kate McMullan
Re-vamped!	Sienna Mercer
Whatever after: fairest of all	
If the shoe fits	
The intruder	Melinda Metz
The seeker	Melinda Metz
The house at Pooh Corner	A. A. Milne
Winnie the Pooh	A.A. Milne
The last dinosaur	Len Mlodinow & Matt Costello

**SURPLUS RESOLUTION 2017-1066
NOVEMBER 14, 2017
SURPLUS LIST**

Fish

The wolfling; a documentary novel of the eighteen-seventies.

Jip : his story

Katherine Paterson

Island of the Blue Dolphins

The small adventure of Popeye and Elvis

Barbara O'Connor

Nim's island

Wendy Orr

Anne of Avonlea

L.M. Montgomery

Anne of the island

L.M. Montgomery

Anne of Windy Poplars

L.M. Montgomery

Beauty queen

Bad hair day

Cold as ice

Sink or swim

Arthur, high king of Britain

Michael Morpurgo

Come on Seabiscuit.

Natalie's secret

Melissa J. Morgan

Jenna's dilemma

Melissa J. Morgan

TTYL

Melissa J. Morgan

Grace's twist

Melissa J. Morgan

Gentle Ben

Walt Morey

Measle and the Wrathmonk

Ian Ogilvy

Search for the shadowman

Joan Lowery Nixon

The borrowers aloft.

Crystal keepers

SURPLUS RESOLUTION 2017-1066
NOVEMBER 14, 2017
SURPLUS LIST

Oopsy daisy: a Flower power book	
Violet in bloom: a flower power book	
Awesome Blossom: a Flower power book	
Stones in water	Donna Jo Napoli
Bran Hambric: the Farfield curse	
Gay-Neck : the story of a pigeon	
Possibles	Vaunda Micheaux Nelson
It's like this, Cat	Emily Neville
How to disappear completely and never be found	Sara Nickerson
Quidditch through the ages ; special edition	Kennilworthy Whisp
The canary caper	Ron Roy
Harry Potter and the sorcerer's stone	J.K. Rowling
The tales of Beedle the Bard / translated from the ancient runes by Hermione Granger	
The wicked cat	
Harry Potter and the Order of the Phoenix	J.K. Rowling
Fantastic beasts and where to find them ; special edition	Newt Schamander
Marvin Redpost : alone in his teacher's house	Louis Sachar
Camp rock : the junior novel	Lucy Ruggles
Children of Christmas : stories for the season	Cynthia Rylant
The Van Gogh Café	Cynthia Rylant
Harry Potter and the half-blood prince	J.K. Rowling
Higbee's Halloween	Robert Newton Peck
The girl from Boothill	Janet Randall
Pepper & salt; or, Seasoning for young folk	

**SURPLUS RESOLUTION 2017-1066
NOVEMBER 14, 2017
SURPLUS LIST**

Shadowgate	Emily Rodda
Isle of the dead	Emily Rodda
The Sister of the South	Emily Rodda
May B: a novel	
The best Christmas pageant ever	Barbara Robinson
Super scary stories for sleep-overs	Q.L. Pearce
The haymeadow	Gary Paulsen
Spirit Walker	Michelle Paver
Crooked river	
Wolf brother	Michelle Paver
Clementine	Sara Pennypacker
Clementine, Friend of the Week	
The complete tales of Beatrix Potter : the 23 original Peter Rabbit books	Beatrix Potter
Pink and Say	Patricia Polacco
Hatchet	
Nancy Clancy, secret admirer	
The Westing game	Ellen Raskin
Keisha to the rescue	
Three cheers for Keisha	
Ghost ship : a novel	Dietlof Reiche
The haunting of Freddy : book four in the golden hamster saga	Dietlof Reiche
How to eat fried worms.	Emily McCully
The Deltora book of monsters : by Josef, palace librarian in the reign of King Alton	Emily Rodda
Dragon's nest	Emily Rodda

**SURPLUS RESOLUTION 2017-1066
NOVEMBER 14, 2017
SURPLUS LIST**

Horse stories / chosen	Christine Pullein-Thompson
Night creature	Rodman Philbrick & Lynn Harnett
The Littles to the rescue	John Peterson
The night the whole class slept over	Stella Pevsner
Going platinum	Helen Perelman
Heart to heart	Helen Perelman
Hundred Horse Farm	Blanche Perrin
The higher power of Lucky	Susan Patron
Cowpokes and desperadoes	Gary Paulsen
Harry Potter and the Prisoner of Azkaban	J.K.Rowling
Junie B Jones and her Big Fat Mouth	Barbara Park
Junie B Jones and a Little Monkey Business	Barbara Park
Junie B., First Grader: Boo and I Mean It	Barbara Park
Black Beauty.	Anna Sewell
Kiss me tomorrow	Susan Shreve
The invisibility factor	Josepha Sherman
Coyote Canyon	Sharon Siamon
The missing piece meets the Big O	Shel Silverstein
Lafcadio, the lion who shot back	Shel Silverstein
Meet Kirsten, an American girl	Janet Shaw
The best Halloween ever	Barbara Robinson
The little prince	Antoine de Saint
Bang goes a troll	David Sinden, Matthew Morgan, Guy Macdonald
The last leopard	Lauren St. John

**SURPLUS RESOLUTION 2017-1066
NOVEMBER 14, 2017
SURPLUS LIST**

Dolphin song	Lauren St. John	
Wild animals I have known; being the personal histories of Lobo, Silverspot, Raggylug, Bingo, The Springfield fox, The pacing mustang, Wully & Redruff		
Frankenstein	Mary Shelley	
Wildlife rescue	Stephanie St. Pierre	
The adventures of Sherlock Holmes	Chris Sasaki	
The cricket in Times Square		George Selden
The Egypt game. Drawings		Alton Raible
Maniac Magee : a novel		Jerry Spinelli
Wringer		Jerry Spinelli
The bronze bow		
Encyclopedia Brown tracks them down : ten all-new mysteries		Donald J. Sobol
Bug Boy		Carol Sonenklar
The sign of the beaver		Elizabeth George Speare
Smiles to go		Jerry Spinelli
Tentacles		
Menace from the deep		
The Storm Makers		
The captain's dog : my journey with the Lewis and Clark tribe		Roland Smith
Cliff-hanger		Gloria Skurzynski and Alane Ferguson
Deadly water		Gloria Skurzynski and Alane Ferguson
Sasquatch		
Mutation		
Demons of the ocean	Justin Somper	
Minecraft construction handbook		

**SURPLUS RESOLUTION 2017-1066
NOVEMBER 14, 2017
SURPLUS LIST**

The Berenstain bears and the bad habit	Stan & Jan Berenstain
The magic of Merlin	Stephanie Spinner
Otis	
Flying machine	Andrew Nahum
Goosebumps	
Junie B Jones and some Sneaky Peeky Spying	Barbara Park

CITY OF AZTEC RESOLUTION 2017-1066

A RESOLUTION DECLARING CERTAIN MUNICIPAL PROPERTY NOT ESSENTIAL FOR MUNICIPAL PURPOSE AND DIRECTING IT BE SOLD, OR IF THE PROPERTY HAS NO VALUE, DONATE THE PROPERTY TO ANY ORGANIZATION DESCRIBED IN SECTION 501(c)3 OF THE INTERNAL REVENUE CODE OF 1986 OR DISPOSED.

WHEREAS, Sections 3-54-2 and 13-6-1 of NMSA, 1978 Compilation authorizes municipalities to sell personal property which is not essential for a municipal purpose or if the property has no value, donate the property to any organization described in Section 501(c)3 of the Internal Revenue Code of 1986; and

WHEREAS, the City of Aztec owns certain personal property which is obsolete and/or surplus and no longer needed or useful to the City; and

WHEREAS, the Governing Body wishes to declare this property not essential for a municipal purpose so that it can be sold or donated according to statute.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY of the City of Aztec, New Mexico that the personal property described on the attached list which is owned by the City is surplus and not essential for a municipal purpose.

PASSED, APPROVED AND SIGNED this 14th day of November 2017.

MAYOR PRO-TEM SHERRI A. SIPE

ATTEST:

CITY CLERK KARLA SAYLER

Staff Summary Report

MEETING DATE: November 14, 2017
AGENDA ITEM: XI. BUSINESS ITEM (A)
AGENDA TITLE: RFP 2018-630 Interim City Manager Recruitment Services

ACTION REQUESTED BY: Finance Department
ACTION REQUESTED: RFP 2018-630 Award and Contract Approval
SUMMARY BY: Kathy Lamb

PROJECT DESCRIPTION / FACTS

- Due to the September 2017 resignation of City Manager Joshua Ray and municipal elections in spring 2018, the City Commission determined it was prudent to fill the city manager position on an interim basis and allow the new commission to make the decision on the recruitment and selection of the permanent city manager.
- The City Commission directed that the preferred method for recruitment of an interim city manager would be to retain the services of a consultant and RFP 2018-630 Interim City Manager Recruitment Services was issued on October 1, 2017.
- On October 16, 2017, the City Commission appointed Steve Mueller, General Services Director, as Acting City Manager until the City Commission made a decision on interim city manager services.
- A workshop was held on October 24, 2017 to review the results and determine the next step in the procurement. The City Commission decided to delay further action on RFP 2018-630 to consider other options which may be available. The business item on the October 24, 2017 agenda was pulled and no action was taken.
- The City Commission has decided to discontinue the current search for an interim city manager.

PROCUREMENT / PURCHASING (if applicable)

- Request for Proposals (RFP) was published on the city website and advertised in the Daily Times on Sunday, October 1, 2017. One addendum was issued on the RFP. The proposal closing date was Monday, October 16, 2017.
- Three proposals were received. The evaluation committee reviewed and scored the evaluations (summary of evaluation is included as support document).

FISCAL INPUT / FINANCE DEPARTMENT (if applicable)

- None

SUPPORT DOCUMENTS: None

DEPARTMENT'S RECOMMENDED MOTION: Move to REJECT all proposals for Request for Proposals (RFP) 2018-630 Interim City Manager Recruitment Services.
