



**Request for Qualifications-Based Proposals
RFQP # 15-0448**

**PROFESSIONAL ENGINEERING SERVICES AZTEC
MUNICIPAL AIRPORT**

PROPOSAL OPENING DATE/TIME/PLACE:

Thursday, November 13, 2014, 2:00 P.M.
City of Aztec Finance Conference Room
201 W Chaco
Aztec, NM 87410

FINAL DATE FOR QUESTIONS

Monday, November 3, 2014 6:00 PM

Tentative Commission Approval Date

December 9, 2014

For further information contact:

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

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BIDDING FORMS AND BIDDING REQUIREMENTS

SECTION 0.01 - ACKNOWLEDGMENT OF RECEIPT FORM

In acknowledgment of receipt of RFQP# 15-0448, Professional Engineering Services for the Aztec Municipal Airport the undersigned agrees that he/she has received the complete proposal document from the City's website. Proposals are due November 13, 2014, 2:00 PM.

The acknowledgment of receipt should be signed and returned to the Purchasing Agent no later than November 3, 2014. Only potential Bidders/Offerors who elect to return this form will receive copies of all future communications, relating to, and including amendments to the Proposal if issued. Returning this form is not mandatory to submit a proposal.

FIRM: _____

REPRESENTED BY: _____

TITLE: _____ PHONE NO.: _____

EMAIL: _____ FAX NO.: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

SIGNATURE: _____ DATE: _____

This name and address will be used for all correspondence related to document this RFQP.

Firm does/does not (circle one) intend to respond to RFQP 15-0448.

If firm does not intend to reply, please give a brief reason for not responding. _____

Return to:
Kathy Lamb
Finance Director
City of Aztec
201 W Chaco
Aztec, New Mexico 87410
Telephone Number: 505-334-7653
Fax Number: (505) 334-7649

Faxed copies of this form will be accepted.
Faxed **BID** responses **will not** be accepted.

SECTION 0.02 - QUALIFICATIONS BASED PROPOSALS SUBMITTAL FORM

RFQP #15-0448 Professional Engineering Services for Aztec Municipal Airport

COMPANY NAME / MAILING ADDRESS / CITY / STATE / ZIP (please print)

CONTACT PERSON (please print)

EMAIL

TELEPHONE

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

Sealed bids will be received until **November 13, 2014, 2:00 P.M. MDT** and then opened at the **City of Aztec Finance Conference Room**. The opening of proposals shall be conducted in private in order to maintain the confidentiality of the contents of all proposals during the negotiation process.

The undersigned declares that the amount and nature of the service to be furnished is understood and that the nature of this proposal is in strict accordance with the conditions set forth and is a part of this proposal, and that the undersigned Offeror has read and understands the scope and conditions of the proposal.

The Offeror further warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. The Offeror certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding Contracting with a public officer or City employee or former City employee have been followed.

The undersigned, in submitting this proposal, represents that Offeror is an equal opportunity employer, and will not discriminate with regard to race, age, religion, color, national origin, ancestry, sex, or physical or mental handicap as specified in Sec. 28-1-7 NMSA 1978 in the performance of this contract.

The undersigned hereby proposes to perform necessary professional services for the amount and upon the conditions stated in this proposal after notice of award. This proposal is subject to the Purchase Order "Terms and Conditions", Proposal Requirements, and Scope of Work.

This contract is not subject to the New Mexico Resident Contractor provisions as the contract is funded in whole or part by federal aid or funds (13-1-21J NMSA 1978).

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

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

To be a valid proposal, Bidder must sign here:

_____ **Title** _____

RETURN THIS FORM WITH YOUR PROPOSAL

SECTION 0.03 - NOTICE TO OFFERORS

NOTICE TO OFFERORS
City of Aztec, NM
Professional Engineering Services for the Aztec Municipal Airport
RFQP # 15-0448
Opening Date: November 13, 2014 2:00 P.M.

The City of Aztec is requesting Qualification Based Proposals for professional engineering services for the Aztec Municipal Airport. RFQP documents may be obtained online by accessing the City's purchasing webpage through www.aztecnm.gov or by contacting Kathy Lamb at (505) 334-7653 or klamb@aztecnm.gov. Sealed proposals will be received by the Purchasing Agent at 201 W. Chaco, Aztec, New Mexico 87410, until the hour of 2:00 p.m. on November 13, 2014.

The City of Aztec, 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.

Mandatory Federal Contract Provisions for Professional Services (A/E) Contracts:

- Civil Rights Act of 1964, Title VI - Contractor Contractual Requirements 49 CFR part 21
- Airport and Airway Improvement Act of 1982, Section 520 49 USC § 47123
- Disadvantaged Business Enterprise 49 CFR part 26
- Lobbying and Influencing Federal Employees 49 CFR part 20
- Access to Records and Reports 49 CFR § 18.36
- Breach of Contract Terms 49 CFR § 18.36
- Rights to Inventions 49 CFR § 18.36
- Trade Restriction Clause 49 CFR part 30

Additional Provisions for A/E Contracts Exceeding \$10,000:

- Termination of Contract 49 CFR § 18.36

Additional Provisions for A/E Contracts Exceeding \$25,000:

- Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion 49 CFR part 29

Publication Date: October 15, 2014

GENERAL CONDITIONS

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

Proposals must include, but are not limited to, the requirements set forth in RFQP Professional Engineering Services for the Aztec Municipal Airport, #15-0448. Proposals deposited with the City may be withdrawn or modified prior to the time set for opening of proposals by delivering written notice on company letterhead.

The opening of sealed proposals shall be conducted in private in order to maintain the confidentiality of the information/data provided. Proposals will remain confidential during the negotiation process.

Offerors submitting proposals may be afforded an opportunity for discussion and revision of proposals. Revisions may be permitted after submission of proposals and prior to award.

The City will open all proposals, assign an evaluation committee and evaluate all proposals; determine the need for, conduct any negotiations; and make a final recommendation to the City Commission for award of the agreement or contract.

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

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

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

BACKGROUND INFORMATION

SECTION 0.01 - INTRODUCTION

The City of Aztec (City) will accept qualifications-based proposals from consultants/engineers (Offeror) to provide professional services as required from time to time in accordance with U.S. Department of Transportation, Federal Aviation Administration Advisory Circular No. 150/1500-14D dated September 30, 2005 for professional engineering, planning and consulting services for airport development projects at the Aztec Municipal Airport.

Projects may include, but not limited to:

- Terminal apron reconstruction
- Automated weather observation system
- Crosswind runway maintenance
- Crosswind runway reconstruction
- Pavement maintenance
- Aircraft Hangers
- Lighting
- Wildlife Hazard assessment
- Wildlife, security and perimeter fencing
- Planning and consulting services
- Annual SWPP Update and Inspections
- Airport Master Plan Updates

These projects may have multiple funding sources such as Federal Aviation Administration (FAA) grants, New Mexico Department of Transportation (NMDOT)-Aviation Division grants and the City of Aztec. Offerors must certify compliance with all applicable federal and state requirements to which the City is obligated as a result of receiving federal and state funding assistance (refer to Contractor Requirements)

SECTION 0.02 - DESCRIPTION

The City is requesting qualifications-based proposals from qualified professional consulting/engineering services for the proposed projects listed. The City may change priority of the project list. This decision, if made, will be in the best interest of the City and allow the Awarded Offeror adequate time to accommodate the change.

SECTION 0.03 - SCOPE OF SERVICES

The scope of services for the proposed projects shall include all necessary professional engineering, architectural, surveying, planning and project management services related to the project, including but not limited to:

1. Site analysis services including easements and environmental studies.
2. Conceptual project planning and/or budgeting.
3. Project schematic design and design development services.
4. Construction documents preparation for bidding. (The City Purchasing Department will facilitate the bidding process.)
5. Construction contract administration services including planning and scheduling of all work.
6. Preparation of funding requests, grant applications and requests for reimbursement to the FAA and or NMDOT.
7. Surveying and mapping.
8. Evaluations (project feasibility studies).

9. Comprehensive planning (preparation of as-built plans).
10. Conceptual designs.
11. Plans and Specifications (Construction plans and specifications will be required to be submitted to the City electronically and on CD.)
12. Drawing Reviews
13. Soils Engineering
14. DBE goals for the period of: FY-2013-2014-2015 – October 1, 2012 through September 30, 2015 is 5.36%. The Awarded Offeror will be required to determine DBE goals for the following three-year period (October 1, 2015 through September 30, 2018). The Awarded Offeror will be required to submit their methodology to the City's Purchasing Officer.
15. Annual SWPP Update (including quarterly inspections/report and annual inspection and report submittal to EPA).
16. Other services directly related to airport operations and management.

For each project, the City will give 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.

SECTION 0.04 - QUALIFICATIONS OF OFFERORS

The Offeror shall submit with each Proposal a qualification statement addressing the specialized design and technical competence of the firm and key personnel, based on similarly sized airport and airfield facilities designed within the last five (5) years.

Key Project Team Members: Personnel listed, as submitted by your firm, shall remain responsible throughout the period of the agreement and be available for anticipated public meetings to be held regarding the proposed projects. No substitution may be made without written submission of the proposed replacement and final approval being granted by the City Engineer.

The Offeror will provide a list of five (5) references of clients who are or have been provided the same or similar type service within the past five (5) years. The reference list shall include current clients and shall provide a contact person, telephone number and if available, an e-mail address. The City reserves the right to contact clients for reference checks.

SECTION 0.05 - INFORMATION PROVIDED BY CITY

Offerors are solely responsible for conducting their own independent research, due diligence or other work necessary for the preparation of proposals, negotiation of agreements, and the subsequent delivery of services pursuant to any agreement. In no event may Offerors rely on any oral statement.

Should an Offeror find discrepancies in, or omissions from, this RFQP and related documents, or should Offeror be in doubt as to meaning, Offeror shall immediately notify the City's designated representative and, if necessary, a written addenda will be emailed to each Offeror who has returned the "Acknowledgement of Receipt" form, included in this document as Page 4.

Each Offeror requesting an interpretation will be responsible for the delivery of such requests to the City's designated representative in writing as outlined in this RFQP. The City will not be bound by, nor responsible for, any explanation or interpretation of the proposed documents other than those given in writing.

SECTION 0.06 - AGREEMENT

A sample agreement is included with RFQP 15-0448. A written contract will be entered into between the City and the successful Offeror.

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 Engineer, City project representative and/or Airport Manager 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 Engineer, City project representative and/or Airport Manager. 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. The City may utilize a 3rd party to perform an independent fee estimate based on task order scope of work and funding requirements prior to acceptance and approval of task order.
4. Approval to begin work on each project shall be evidenced by issuance of a task order by the City Engineer or City project representative. No work shall be performed prior to the issuance of a task order and no changes in the work shall be made without a written change order.
5. The resultant contract shall not be exclusive to the successful Offeror. The City reserves the right to contract with firms not party to this contract for specific projects if it determines this to be in the City's best interest.

SECTION 0.07 - CONTRACT COMPLETION

This Agreement shall remain in full force and effect for one (1) year, 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.

The project completion date shall be included in each project task order. Any alterations in the completion date shall be agreed to in writing by the City and the Offeror.

SECTION 0.08 - RESIDENT VETERANS PREFERENCE

This contract is not subject to the New Mexico Resident Contractor provisions as the contract is funded in whole or part by federal aid or funds (13-1-21J NMSA 1978).

PROPOSAL PROCESS

SECTION 0.01 - INTRODUCTION

Until the final award by the City of Aztec Commission, the City reserves the right to reject any and/or all submittals, to waive technicalities, to re-advertise, or to otherwise proceed when the best interest of the City will be realized.

SECTION 0.02 - PRELIMINARY SCHEDULE

It is the City's intent to adhere to the following schedule. However, the City reserves the right to modify this schedule.

Deadline to Submit Questions and Acknowledgement Form Due	11/3/2014
Response to Written Questions/Amendment	11/5/2014
Proposal Due Date	11/13/2014
Presentations (if required)	Tentatively: 12/1/2014
Recommendations to City Commission	Tentatively: 12/9/2014

SECTION 0.03 - DIRECTIONS FOR SUBMISSION

The Offeror shall provide five (5) identical copies of their proposal and one electronic version in sealed envelopes, plainly marked:

RFQP #: 15-0448

Professional Engineering Services for Aztec Municipal Airport

PROPOSALS RECEIVED AFTER THE DEADLINE WILL BE DEEMED NON- RESPONSIVE AND WILL NOT BE CONSIDERED FOR EVALUATION OR AWARD.

The Offeror shall submit their proposals at the time and place designated on the cover sheet and page 5 of this proposal packet.

The Offeror shall be prepared to respond to requests by the City for personal presentations, oral presentations and other areas deemed necessary to assist in the detailed evaluation process. All expenses associated with this presentation will be borne by the Offeror.

Proposals will be reviewed for completeness and compliance with requirements by the Purchasing Agent. If any proposal submitted is deemed non-responsive by the City Purchasing Agent, the Offeror will be notified in writing of such determination and the method of protesting that determination.

SECTION 0.04 - COST PROPOSALS

Cost Proposals **shall not** be included in the Offeror's proposal, but shall be made available by the top evaluated firm(s) with 48 business hours after the City's request.

1. A Man-hour and Fee Schedule will be used in summarizing the cost proposal, with adequate back-up detail to verify the proposed rates, and shall include the following information. This pricing information shall be used in negotiating the contract price (Ref. NMSA 1978 13-1-120 through 13-1-124).
2. The itemized cost for individual elements, such as studies, reports, etc.
3. The cost of each task or segment of the task shall be itemized.
4. Breakdown of direct labor and labor overhead costs including number of man-hours and applicable actual or average hourly rates, overhead rate and supporting schedule.

5. Travel and per diem or subsistence costs, if any, supported by a breakdown including destination, duration and purpose. Automobile mileage and per diem shall not exceed the amounts authorized by the New Mexico per diem and mileage act. Air transportation shall be coach fare.
6. Breakdown of other expenses such as clerical support, other overhead costs, supplies, etc.
7. Breakdown of fee or profit.

SECTION 0.05 - **PRICING**

The rates proposed shall remain firm for the first two years of the agreement and subject to negotiation and concurrence of the City which then remain fixed for the remaining two years of the agreement. On the two year anniversary date following the Effective Date of the Agreement, escalation of rates proposed may be negotiated for the remaining two years of the agreement. Any fee adjustment shall not exceed the seasonally unadjusted index percentage change in the Producers Price Index as published by the Bureau of Labor Statistics, for Series ID PCU5413, Architectural, Engineering and Related Services. The base month and year for adjustment purposes shall be measured from January of 2015 through December of 2016.

SECTION 0.06 - **INQUIRIES**

Questions and/or clarifications concerning this RFQP will be accepted in writing until **6:00 PM on Monday, November 3, 2014**. Requests may be transmitted via facsimile. Written responses to all written inquiries will be provided and distributed to all recipients of this RFQP. Responses and addenda to this RFQP, if necessary, is scheduled to be issued by 5:00 PM on November 5, 2014. No Offeror may rely upon oral responses made by any City employee or any representative of the City.

Questions and/or clarifications concerning this RFQP shall be directed to:

Kathy Lamb
Finance Director
505-334-7653
505-334-7649 (fax)
klamb@aztecnm.gov

SECTION 0.07 - **PROHIBITED CONTACTS**

The Offeror, including any person affiliated with or in any way related to the Offeror, is strictly prohibited from any contact with members of the City Commission or City staff on any matter having to do in any respect with this RFQP other than as outlined herein. Questions and requests for information regarding this RFQP, site visits or other requirements shall be presented to the City as prescribed in this RFQP.

Failure by any Offeror to adhere to this prohibition may, at the sole discretion of the City, result in disqualification and rejection of any proposal. Offerors shall have no claim against the City for failure to obtain information made available by the City which the Offeror could have remedied through the exercise of due diligence.

SECTION 0.08 - **CONFLICTS OF INTEREST**

Prospective Consultants warrant and covenant that no official or employee of the City, or any business entity in which an official of the City has an interest, has been employed or retained to solicit or aid in

procuring the resulting agreement, nor that any such person will be employed in the performance of such agreement without immediate divulgence of such fact to the City. Prospective Consultant's Qualification Package shall contain a statement to the effect that the Consultant is not currently committed to another project that would constitute a conflicting interest with any project defined in this RFQP.

SECTION 0.09 - FORMAT AND CONTENT

Offerors shall include in their proposal the information and documentation requested in this RFQP in the format described. The failure of an Offeror to adhere to requirements may, at the sole discretion of the City, result in the rejection of the proposal.

SECTION 0.10 - SIGNING OF PROPOSALS AND AUTHORIZATION TO NEGOTIATE

The original proposal shall be executed by a duly authorized officer of the Offeror. The Offeror must also identify those persons authorized to negotiate on its behalf with the City in connection with this RFQP. In addition, the Offeror shall provide evidence, in the form of a duly adopted resolution of its governing body, of the capacity of the person signing the proposal to bind the Offeror should its proposal be accepted by the City.

SECTION 0.11 - PERIOD OF ACCEPTANCE

All proposals must remain valid for a minimum period of one hundred-fifty (150) days after the Proposal Due Date. No proposal may be modified or withdrawn by the Offeror during this period of time unless prior written permission is granted by the City.

The City reserves the right to request additional information from the Offeror at any time during the selection process. The City also reserves the right to extend by sixty (60) days the proposal of any Offeror, at no additional cost to the City, to allow for the completion of the final contract documents. If the notification of selection of a Offeror or request for time extension has not been made by the City after one hundred-fifty (150) days, Offerors may, at their discretion, withdraw their proposals or provide the City with written extensions of time.

SECTION 0.12 - BINDING OFFERS

All proposals submitted by Offeror are required to be binding offers, enabling acceptance by the City to form a binding contract. Proposals are to remain as binding offers for the full period of time of the initial 150-day Period of Acceptance and as such time period may be extended by the City. The City reserves the right to request revisions to proposals in the form of binding best and final offers.

SECTION 0.13 - BUSINESS LICENSE

Offeror's are advised that they should have or obtain a current City of Aztec business license for the goods or services required under this contract before work commences or a Purchase Order issued.

SECTION 0.14 - LAWS AND REGULATIONS

This procurement shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico, and the laws, ordinances, rules and regulations of the City of Aztec. The City also requires that all responses to this RFQP, and any contracts that may arise as a result of this procurement, be in accordance with laws, ordinances, and regulations of the State of New Mexico and the City of Aztec, New Mexico.

- **FEDERAL TERMS AND CONDITIONS**

1. **AUDIT** - The Authority, the Federal Aviation Administration, the Comptroller General of the United States or any other duly authorized representative shall have access to any books, documents, papers, and records of consultants which are directly pertinent to a specific grant program, for the purpose of making audits, examinations, excerpts and transcriptions. The successful offeror shall maintain all records for 3 years after final payment and closure of other pending matters.
2. **TITLE VI ASSURANCES – Contractor Requirements**

SECTION 0.15 - CONFIDENTIALITY

It is understood by the Seller or Offeror 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 and the Public Records Act, Chapter 14 Article 3 NMSA 1978. In the event Seller or Offeror 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 Seller of any third party request for any rates, terms, compensation amounts, or other information documented in the Purchase Order, Agreement, or Contract. To the extent Seller or Offeror provides City with written direction to withhold such requested Confidential Information or Proprietary Information and litigation results, Seller or Offeror agrees that the action would be brought in a New Mexico court of competent jurisdiction under New Mexico law. Seller or Offeror, 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 Seller or Offeror 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. Confidential data are normally restricted to confidential financial information concerning the Offeror's organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, §57-3A-1 to §57-3A-7 NMSA, 1978.

SECTION 0.16 - BRIBERY AND KICKBACKS

By law (Section 13-1-191, NMSA, 1978) the City is required to inform Offerors of the following:

1. 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);
2. it is a third-degree felony to commit the offense of demanding or receiving a bribe by a public officer or public employee (Section 30-24-2, NMSA, 1978);
3. it is a fourth-degree felony to commit the offense of soliciting or receiving illegal kickbacks (Section 30-41-1, NMSA, 1978);
4. it is a fourth-degree felony to commit the offense of offering or paying illegal kickbacks (Section 30-41-2, NMSA, 1978).

SECTION 0.17 - PROTEST DEADLINE

Any protest by an Offeror must be timely and in conformance with Section 13-1-172, NMSA, 1978 and applicable procurement regulations. The fifteen (15) day protest period for responsive Offerors shall begin on the day following the City's written notification to all responding Offerors. Protests must be written and must include the name and address of the protestor and the number assigned to this RFQP by the City. It also must contain a statement of grounds for protest including appropriate supporting exhibits. The timely protest must be delivered to:

Kathy Lamb
Finance Director
City of Aztec
201 W Chaco St
Aztec NM 87410

PROPOSAL FORMAT REQUIREMENTS

SECTION 0.01 - NUMBER OF RESPONSES

Only one proposal may be submitted by each individual entity for the one project, which is the subject of this RFP.

SECTION 0.02 - NUMBER OF COPIES

Offerors shall provide five (5) identical copies of their proposal and one electronic version to the location specified in Proposal Process, Sec 0.03 Directions For Submission on or before the closing date and time for receipt of proposals.

SECTION 0.03 - PROPOSAL FORMAT

The proposal must be limited in format and length. Format will be 8-1/2" x 11" with foldout sheets, allowed up to 11" x 17" in size. All foldout sheets, up to a maximum of 11" x 17" sheets will be counted as two pages and shall be labeled as such. Proposals may be either single-sided or double-sided copying and must be bound. If double sided pages are used, each side shall be numbered and counted as separate pages. Proposals are limited to thirty (30) pages. If there is any question as to format requirements they shall be directed to the Purchasing Agent for clarification, prior to submittal of documents.

Organization of Materials

General Information
Project Team Members
Offeror's Experience
Design/Technical Approach
Cost Control
Contractual Considerations

Mandatory Items to Be Included in Proposals

Qualifications Based Proposals Submittal Form, page 5 of this RFQP
Campaign Contribution Disclosure Form, page 21-22 of this RFQP
Conditions or Exceptions to Draft Agreement
All items identified in this section identified Proposal Format Requirements

Maximum Page Limitation: 30 (Single Sided)

If supplied, the following pages will be excluded from being counted as part of the maximum page limitation

Front and back cover and binding pages
Submittal Form, Page #5 of RFQP
Campaign Contribution Disclosure Form (provided in this RFP)
Resumes
Letter of Introduction
Tables of Contents
Exceptions to Draft Agreement

Divider between proposal information categories

Certificate(s) of insurance, Agreement, other certifications and any contractual considerations

City of Aztec Business License (if available) will be required prior to award but it not necessary to submit a proposal.

ANY SHEETS OR PAGES INCLUDED IN THE PROPOSAL, BUT NOT SPECIFICALLY EXCLUDED AS NOTED ABOVE - SHALL BE COUNTED TOWARDS THE 30 PAGE MAXIMUM.

Any proposal deemed non-conforming by the Purchasing Agent in regard to format will be considered non-responsive. Offerors shall contact the City of Aztec Purchasing Department, to clarify any questions concerning format prior to submission.

REVIEW AND EVALUATION

SECTION 0.01 - PROPOSAL EVALUATION

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

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

SECTION 0.02 - EVALUATION CRITERIA

Selection criteria contained in the FAA Advisory Circular 150/5100-14D will be applied in the following manner:

	Criteria	Points Possible
1	<p>Familiarity with and understanding of NM Aviation and FAA procedures and required documentation;</p> <p>Provide examples of Project Manager's government agency experience within the past five (5) years that serve to demonstrate knowledge of performance on contracts with government agencies.</p> <p>Provide organizational plan for management of the project. Plan or chart should include relationship between key team members, support staff and consultants who are expected to participate on the project.</p> <p>Identify all consultants to be used on the project including description of work to be performed by each consultant.</p>	15
2	<p>Specialized design and technical competence of the firm;</p> <p>Recent experience with similar airport projects including past performance for costs, scheduling, and quality;</p> <p>Include a narrative that describes the team's overall experience, particularly as it relates to the services proposed. Also include information on the specific project size, location, cost, and the scope of work.</p> <p>Projects described should be projects that were worked on by the people shown in the organizational plan. Specific project responsibilities of these individuals should be addressed.</p> <p>Include client contact information and phone, fax and email address and the number of years services provided.</p>	15

3	<p>Capability and capacity to perform airport projects including planning, design, construction management, and construction inspection;</p> <p>Describe how expenditures are controlled within your organization for work hours, direct costs, and other costs associated with direct service fees;</p> <p>Describe how costs are estimated and controlled to construct the project as design progresses compared to the budget for the project;</p> <p>Indicate corrective actions you have taken when it appears the budget will be exceeded or project scope can be achieved at a lower cost than what was negotiated.</p> <p>Provide comparisons of bid award amount to final cost estimate for previous airport/airfield projects designed within the past ten (10) years; include the name of the project, month and year bid, number of bids received, final cost estimate, bid award amount, number of change orders, and final contract amount including change orders. Final cost estimate is the estimate provided to the Client for use at the bid opening including adjustments resulting from addenda issued during bid phase.</p> <p>Provide the volume of work for the City which is not seventy-five percent complete. Include project name, contract date, contract amount and % completed and invoiced to date.</p>	15
4	<p>Understanding of a rural airport's issues and Sponsor's concerns;</p> <p>Describe knowledge and experience in identifying and aiding Sponsors in securing external funding for rural airport operations, maintenance and improvements.</p> <p>Provide a summary of projects ongoing or completed that address rural airport experience and/or airports similar in size to the City's facility.</p>	5
5	<p>Familiarity with or proximity to the geographic location of the airport;</p> <p>Provide a summary addressing projects completed by your firm which address proximity to or familiarity with the area in which the project is located</p>	5
6	<p>Qualifications of key personnel assigned to the projects including professional background, education, specialization(s), experience, and availability;</p> <p>Provide resumes of key personnel including membership in professional organizations and any unique knowledge possessed by team members relevant to the project;</p> <p>Each key member should also include list of relevant projects including client name, project name, project description, role of the individual and project completion date.</p>	15
7	Qualifications of sub consultants and subcontractors.	15

	<p>If sub-consultants or joint consultants are proposed, describe any relevant association with the proposed sub-consultants.</p> <p>Provide examples of past projects on which the lead firm has worked with each sub-consultant. Indicate the percentage of the work allocated for each participating consultant and/or sub-consultant.</p>	
8	<p>Evidence that the consultant has made good faith efforts in meeting Disadvantaged Business Enterprise (DBE) goals (49 CFR, § 26.53).</p> <p>Evidence that Offeror has established and implemented an affirmative action program.</p> <p>Participation and certification as a Disadvantaged Business Enterprise with the State of New Mexico or another agency subject to approval by the City.</p> <p>If Offeror is using an outside DBE firm, offeror to include a copy of outside firm's DBE Certification.</p>	10
9	<p>Completeness, originality and creativity of Offeror's proposed approach to the services requested.</p>	5
	<p>The proposal will be evaluated based on the above criteria. If oral presentations are held, the oral presentations will be based upon re-evaluation of the above criteria.</p>	100 Points Total

This contract is subject to the provisions of Executive Order 11246 (Affirmative Action to Ensure Equal Employment Opportunity) and to the provisions of the Department of Transportation Regulations 49 CFR Part 26 (Disadvantaged Business Enterprise Participation) and to foreign trade restrictions. DBE firms are encouraged to submit.

SECTION 0.03 - INTERVIEWS WITH FINALISTS

For those proposals selected for interview, notices to finalists will include the interview date and time. Interviews are generally held at the City Commission Room, 201 W Chaco, Aztec, New Mexico. The interview location may be changed at the discretion of the Selection Committee. Scoring for the interview will be based on responses to the questions presented at the interview meeting. Interview scoring will total approximately 100 points. The points will be equally divided between the prepared questions and points will be allocated, by each member. Each member's point totals will be translated into a numeric ranking of all interviewed firms. The five individual member rankings will be totaled together to determine the overall ranking of firms for the interview.

SECTION 0.04 - CONTRACT AWARD

Selection of a consultant and placement on the on-call list is not a guarantee that a contract will be awarded to the consultant. Selection of consultant is awarded and entering into a contract is by action of the City Commission and is not in force until fully executed by the Commission.

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to Chapter 81, Laws of 2006, any prospective contractor seeking to enter into a contract with any state agency or local public body must file this form with that state agency or local public body. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

“Applicable public official” means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

“Campaign Contribution” means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official’s behalf for the purpose of electing the official to either statewide or local office.

“Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

“Contract” means any agreement for the procurement of items of tangible personal property, services, professional services, or construction.

“Family member” means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

“Pendency of the procurement process” means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

“Person” means any corporation, partnership, individual, joint venture, association or any other private legal entity.

“Prospective contractor” means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract.

“Representative of a prospective contractor” means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the

prospective contractor.

DISCLOSURE OF CONTRIBUTIONS MADE TO: Mayor Sally Burbridge, Mayor-ProTem Sherri A. Sipe, Commissioner Roberta S. Locke, Commissioner Katee McClure, and Commissioner Sheri L. Rogers

Contribution Made By:

Relation to Prospective Contractor:

Name of Applicable Public Official:

Date Contribution(s) Made:

Amount(s) of Contribution(s)

Nature of Contribution(s)

Purpose of Contribution(s)

Signature

Date

Title (Position)

--OR--

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE to an applicable public official by me, a family member or representative.

Signature

Date

Title (Position)

CONTRACTOR REQUIREMENTS

SECTION 0.01 - ACCESS TO RECORDS AND REPORTS.

(REFERENCE: 2 CFR § 200.326, 2 CFR § 200.333)

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.

SECTION 0.02 - BREACH OF CONTRACT TERMS.

(REFERENCE 2 CFR § 200 APPENDIX II(A))

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. 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.

SECTION 0.03 - CIVIL RIGHTS - GENERAL.

(REFERENCE: 49 USC § 47123)

The contractor agrees that it will 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 handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the 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.

This provision also 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, except where Federal assistance is to provide, or is in the form of personal property; real property or interest therein; structures or improvements thereon.

In these cases the 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.

SECTION 0.04 - TITLE VI CLAUSES FOR COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

(Source: Appendix A of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

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 Statutes 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 Acts and the Regulations, 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 Acts and the Regulations relative to Non-discrimination 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 Acts, Regulations, 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.

SECTION 0.05 - TITLE VI LIST OF PERTINENT NONDISCRIMINATION AUTHORITIES

(Source: Appendix E of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

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 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).

SECTION 0.06 - **CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS.**

(REFERENCE: 2 CFR § 200 APPENDIX II (E))

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) above, 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 above, 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 above.

3. Withholding for Unpaid Wages and Liquidated Damages.

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 any monies 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 above.

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
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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 section.

SECTION 0.07 - DEBARMENT AND SUSPENSION (NON-PROCUREMENT).

(REFERENCE: 2 CFR PART 180 (SUBPART C), 2 CFR PART 1200, DOT ORDER 4200.5 DOT SUSPENSION & DEBARMENT PROCEDURES & INELIGIBILITY)

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

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION (SUCCESSFUL BIDDER REGARDING LOWER TIER PARTICIPANTS)

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 tell a higher tier that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedy, including suspension and debarment.

SECTION 0.08 - DISADVANTAGED BUSINESS ENTERPRISE.

(REFERENCE: 49 CFR PART 26)

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

SECTION 0.09 - FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

(REFERENCE: 29 USC § 201, ET SEQ.)

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
Federal Fair Labor Standards Act (29 USC 201)	U.S. Department of Labor – Wage and Hour Division

SECTION 0.10 - LOBBYING AND INFLUENCING FEDERAL EMPLOYEES.

(REFERENCE: 49 CFR PART 20, APPENDIX A)

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.

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.

SECTION 0.11 - OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

(Reference 20 CFR part 1910)

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
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Requirement	Federal Agency with Enforcement Responsibilities
Occupational Safety and Health Act of 1970 (20 CFR Part 1910)	U.S. Department of Labor – Occupational Safety and Health Administration

SECTION 0.12 - RIGHT TO INVENTIONS.

(REFERENCE 2 CFR § 200 APPENDIX II(F))

All rights to inventions and materials generated under this contract are subject to requirements and regulations issued by the FAA and the Sponsor of the Federal grant under which this contract is executed

SECTION 0.13 - TERMINATION OF CONTRACT.

(REFERENCE 2 CFR § 200 APPENDIX II(B))

- a. The Sponsor may, by written notice, terminate this contract in whole or in part at any time, either for the Sponsor's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice services must be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the Sponsor.
- b. If the termination is for the convenience of the Sponsor, an equitable adjustment in the contract price will be made, but no amount will be allowed for anticipated profit on unperformed services.
- c. If the termination is due to failure to fulfill the contractor's obligations, the Sponsor may take over the work and prosecute the same to completion by contract or otherwise. In such case, the contractor is liable to the Sponsor for any additional cost occasioned to the Sponsor thereby.
- d. If, after notice of termination for failure to fulfill contract obligations, it is determined that the contractor had not so failed, the termination will be deemed to have been effected for the convenience of the Sponsor. In such event, adjustment in the contract price will be made as provided in paragraph 2 of this clause.
- e. The rights and remedies of the sponsor provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

SECTION 0.14 - TRADE RESTRICTION

(REFERENCE: 49 CFR PART 30)

The contractor or subcontractor, by submission of an offer and/or execution of a contract, certifies that it:

- 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 published by the Office of the United States Trade Representative (USTR);
- 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 on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;
- c. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

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 a contractor or subcontractor who is unable to certify to the above. If the contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract at no cost to the Government.

Further, the contractor agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The contractor may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The contractor shall provide immediate written notice to the sponsor if the contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide written notice to the contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

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

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.

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.

SECTION 0.15 - TEXTING WHEN 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), 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.

The Contractor must promote policies and initiatives for employees and other work personnel that decrease crashes by distracted drivers, including policies to ban text messaging while driving. The Contractor must include these policies in each third party subcontract involved on this project.

AZTEC AIRPORT CAPITAL IMPROVEMENTS PLAN

Capital Improvement Program Report

New Mexico Department of Transportation - Aviation Division

AZTEC MUNICIPAL

Report Filter - Types: All, Statuses: All

Year	Project Name	Status	FAA	State	Local	Total
2014						
	N19-14-01 Annual Maintenance Grant – State Only	Funded - State AVI	0.00	3,996.00	444.00	\$4,440.00
		SubTotal:	\$0.00	\$3,996.00	\$444.00	\$4,440.00
2015						
	Annual Maintenance Grant – State Only	CIP	0.00	10,000.00	1,111.00	\$11,111.00
	Crosswind Runway Maintenance	CIP	0.00	90,000.00	10,000.00	\$100,000.00
	Reconstruct Terminal Apron, Phase 2 - construction	CIP	635,310.00	52,942.00	17,648.00	\$705,900.00
		SubTotal:	\$635,310.00	\$152,942.00	\$28,759.00	\$817,011.00
2016						
	Annual Maintenance Grant – State Only	CIP	0.00	10,000.00	1,111.00	\$11,111.00
	Install Automated Weather Observation System (AWOS)	Requested	180,000.00	10,000.00	10,000.00	\$200,000.00
	Mower and Sweeper - State only	CIP	0.00	90,000.00	10,000.00	\$100,000.00
	Reconstruct Terminal Apron, Phase 3 - construction	CIP	450,000.00	25,000.00	25,000.00	\$500,000.00
		SubTotal:	\$630,000.00	\$135,000.00	\$46,111.00	\$811,111.00
2017						
	Annual Maintenance Grant – State Only	CIP	0.00	10,000.00	1,111.00	\$11,111.00
	Construct Crosswind Runway, Phase 1 - environmental	CIP	90,000.00	5,000.00	5,000.00	\$100,000.00
		SubTotal:	\$90,000.00	\$15,000.00	\$6,111.00	\$111,111.00
2018						
	Annual Maintenance Grant – State Only	CIP	0.00	10,000.00	1,111.00	\$11,111.00
	Construct Crosswind Runway, Phase 2- land acquisition	CIP	90,000.00	5,000.00	5,000.00	\$100,000.00
		SubTotal:	\$90,000.00	\$15,000.00	\$6,111.00	\$111,111.00
2019						
	Annual Maintenance Grant - State Only	CIP	0.00	10,000.00	1,111.00	\$11,111.00
	Construct Crosswind Runway, Phase 3 - design	CIP	270,000.00	15,000.00	15,000.00	\$300,000.00
	Wildlife Hazard Site Visit	CIP	9,000.00	500.00	500.00	\$10,000.00
		SubTotal:	\$279,000.00	\$25,500.00	\$16,611.00	\$321,111.00

Year	Project Name	Status	FAA	State	Local	Total
2020						
	Animal Control Fence	CIP	270,000.00	15,000.00	15,000.00	\$300,000.00
	Annual Maintenance Grant - State	CIP	0.00	10,000.00	1,111.00	\$11,111.00
	Construct Crosswind Runway, Phase 4 - construction	CIP	900,000.00	50,000.00	50,000.00	\$1,000,000.00
		SubTotal:	\$1,170,000.00	\$75,000.00	\$66,111.00	\$1,311,111.00
All Projects			\$2,894,310.00	\$422,438.00	\$170,258.00	\$3,487,006.00

SAMPLE AGREEMENT

Exhibit references will be updated prior to execution of agreement

ENGINEERING SERVICES FOR AZTEC MUNICIPAL AIRPORT AGREEMENT 15-0448

THIS ENGINEERING SERVICES AGREEMENT, hereinafter "Agreement", effective as of _____, "Effective Date", is entered into by and between the **City of Aztec**, hereinafter referred to as "City", and **[NAME OF ENGINEER]**, a [Business Entity Type and state in which incorporated], 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 as set forth in Scope of Services RFQP #15-0448, Exhibit 1, 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 hourly rates set forth in the "Rate Schedule," attached hereto as Exhibit 2, 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 **Article 11 "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 _____ (date – mm/dd/yyyy), 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. Termination.

5.1 **Termination by City for Cause.** In the event of a default by Engineer and if City elects to terminate this Agreement and the Services, then City shall give written notice of termination to Engineer specifying the date of termination. City may, at its option, (a) take possession of work performed by Engineer as of the date of termination to maintain the orderly progress of, and to finish the Services; or (b) finish the Services by whatever other reasonable method City deems expedient.

5.1.1 If the unpaid balance of Engineer's compensation under **Section 2 "Compensation"** for Services performed prior to the effective date of termination exceeds the cost of finishing the Services and any other extra costs or damages incurred by City in completing the Services, or otherwise as a result of Engineer's default, such excess shall be paid to Engineer. If such costs exceed the unpaid balance of Engineer's compensation for Services performed prior to the effective date of termination, Engineer shall pay the difference to City. These obligations for payment survive termination.

5.1.2 Termination of this Agreement and the Services in accordance with this **Sub-Section 5.1 "Termination by City for Cause"** shall not relieve Engineer or its surety of any responsibilities for Services performed.

5.1.3 If City terminates this Agreement for default under this **Sub-Section 5.1 "Termination by City for Cause"** and it is later determined the Engineer was not in default, then such termination shall be deemed a termination for convenience pursuant to **Sub-Section 5.2 "Termination by City for Convenience."**

5.2 **Termination by City for Convenience.** The City Manager may, upon advance written notice to Engineer, suspend, abandon or terminate the Services, or any portion of the Services thereof, and terminate this Agreement, for any reason whatsoever including for the convenience of City without regard to whether or not Engineer has defaulted or failed to comply with the provisions of this Agreement. If the City Manager terminates the Services, or any portion of the Services thereof for convenience, City shall pay Engineer for all parts of the Services performed prior to the effective date of termination, including materials provided, in conformity with this Agreement, plus an amount for the Engineer's substantiated, reasonable direct costs necessarily incurred in preparation for the parts of the Services not yet performed and in shutting down its operations; plus an amount for a reasonable part of the profit Engineer would otherwise have earned for the percentage of Services performed prior to such termination, provided that the total sum payable to Engineer upon termination shall not exceed the unpaid balance of Engineer's compensation under **Section 2 "Compensation"**. Engineer shall not be entitled to any other costs or damages whatsoever arising out of Engineer's performance of the Services and the termination by City for convenience. Engineer is, under no circumstance, entitled to unearned or anticipated profits upon termination of this Agreement by City for convenience.

5.3 **Stopping Services.** When City terminates the Services in accordance with **Sub-Section 5.1 "Termination by City for Cause"** or **Sub-Section 5.2 "Termination by City for Convenience,"** 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

5.4 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.

5.5 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 5.4 "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 14 "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 5.4 "Suspension of the Services"**.

5.6 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 "Termination"** 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.

1. Engineer Representations and Corrective Action.

6.1 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.

6.2 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 6 “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.

7. 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.

8. 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.

9. 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 21 "Dispute Resolution."**

9.1 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 21 "Dispute Resolution"**.

10. 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.

11. 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.

12. Liability.

12.1 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.

12.2 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.

12.3 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.

12.3.1 **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.

12.4 **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.

12.5 **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).

13. Insurance.

13.1 **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.

13.2 Minimum Coverage. Without limiting any of the liabilities or other obligations of Engineer under this Agreement, including but not limited to **Section 12 “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).

13.3 Subcontractors. Engineer shall require that each subcontractor comply with the insurance requirements set forth in **Sub-Section 13.2 “Minimum Coverage.”**

13.4 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).

14. 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.

15. 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 15 "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.

16. Conflict of Interest.

16.1 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 24, "Notices"** of this Agreement in the event a conflict with the City's interest is recognized.

16.2 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.

16.3 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.

17. Intellectual Property.

17.1 **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.

17.2 **License.** Subject to the restrictions set out in **Sub-Section 17.1 "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.

17.3 **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.

18. Executive Orders and Utilization of Small Disadvantaged Businesses.

18.1 **Executive Orders.** City is an equal opportunity employer. Pursuant to Executive Orders 11246,

11625, 11701, 11758 and 13201, as amended or superseded, in whole or in part from time-to-time, and all regulations issued thereunder, it is agreed that all applicable laws, rules, and regulations are incorporated by reference in this Agreement and bind Engineer as an Engineer of City.

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. Fair Labor Standards Act. Engineer shall comply with the Fair Labor Standards Act of 1938, as amended, and any regulations issued pursuant thereto by the Department of Labor. It is agreed that all applicable laws, rules and regulations are incorporated herein by referenced in this Agreement and bind Engineer as an Engineer of City.

21. 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 24 "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 21 “Dispute Resolution”** shall affect, restrict, condition, or otherwise limit a Party’s right to terminate this Agreement pursuant to **Section 5 “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

22. 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.

23. 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.

24. 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: Address: [FILL IN "Address"]
 Attention: [FILL IN "Name or Department"]
 Phone: [FILL IN "Phone #"]
 Fax: [FILL IN "Fax #"]
 Email: [FILL IN "Email"]

To City: Address: City of Aztec
 Purchasing Agent
 201 W Chaco
 Aztec NM 87410

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

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 24 "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.

25. Designated Representative and Project Manager.

25.1 **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.

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

Name:
Address:
E-mail:
Telephone:
Cell Phone:
Fax:

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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. Survival of Obligations. In addition to the continuation of confidentiality obligations as specified in Section 15 "Confidentiality," Engineer's representations and warranties under **Section 6 "Engineer Representations and Corrective Action,"** indemnity obligations, including those under **Section 12 "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.

32. 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.

33. **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 13.2 “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.

34. **Lobbying**

The Engineer hereby certifies that:

a) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and 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; b) 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, it will complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” reference Exhibit F, in accordance with its instructions; and

c) It will require that the language of subparagraph d) of this **Section 34 “Lobbying”**, below, of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly; and

d) 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, 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.

35. **Discrimination Prohibited.** In performing the Services required hereunder, the Engineer shall not discriminate against any person on the basis of race, color, religion, sex, national origin or ancestry, age or physical handicap.

The Engineer agrees to comply with title VI of the Civil Rights Act of 1964, as amended 49CFR21 through appendix H and 23CFR710.405(B).

36. **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: _____
Sally Burbridge
Mayor City of Aztec

Date: _____

(SEAL)

ATTEST:

Karla Sayler City Clerk CMC

Date: _____

APPROVED TO FORM:

Larry T. Thrower, City Attorney

Date: _____

By: _____
Engineer

Date: _____

Title

Telephone

NM Taxpayer Identification Number

Federal Taxpayer Identification or
Social Security Number

SAMPLE 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 RFQP).

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.

III. Federal Terms and Conditions

- A. AUDIT - The Authority, the Federal Aviation Administration, the Comptroller General of the United States, or any other duly authorized representative shall have access to any books, documents, papers, and records of consultants which are directly pertinent to a specific grant program, for the purpose of making audits, examinations, excerpts and transcriptions. The successful offeror shall maintain all records for 3 years after final payment and closure of other pending matters.
- B. TITLE VI ASSURANCES – (Exhibit 3)

IV. CPI Adjustment Clause

The rates proposed shall remain firm for the first two years of the agreement and subject to negotiation

and concurrence of the City which then remain fixed for the remaining two years of the agreement. On the two year anniversary date following the Effective Date of the Agreement, escalation of rates proposed may be negotiated for the remaining two years of the agreement. Any fee adjustment shall not exceed the seasonally unadjusted index percentage change in the Producers Price Index as published by the Bureau of Labor Statistics, for Series ID PCU5413, Architectural, Engineering and Related Services. The base month and year for adjustment purposes shall be measured from January of 2015 through December of 2016.