



**City of Aztec**

**REQUEST FOR PROPOSALS (RFP)**

**DRAINAGE STUDY AND IMPROVEMENT ALTERNATIVES  
BLANCO ARROYO**

**RFP# 2016-536**

**PROPOSAL OPENING DATE/TIME/PLACE:**

Thursday, October 8, 2015, 3:00 P.M.  
City of Aztec Finance Conference Room  
201 W Chaco  
Aztec, NM 87410

**FINAL DATE FOR QUESTIONS**

Wednesday, September 30, 2015 10:00 AM

**Tentative Commission Approval Date**

October 27, 2015

For further information contact:

Kathy Lamb  
Finance Director  
City of Aztec

Phone: 505-334-7653

Fax: 505-334-7649

email: [klamb@aztecnm.gov](mailto:klamb@aztecnm.gov)

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**RFP 2016-536 Blanco Arroyo Drainage Study**  
**ACKNOWLEDGEMENT OF RECEIPT FORM**

In acknowledgement of receipt of this Request for Proposal the undersigned agrees that s/he has received a complete copy, beginning with the title page and table of contents, and ending with APPENDIX C.

The acknowledgement of receipt should be signed and returned to the Procurement Specialist no later than September 30, 2015 5:00 PM. Only potential Respondents who elect to return this form completed with the indicated intention of submitting a proposal will receive copies of all Respondent written questions and the written responses to those questions as well as RFP amendments, if any are issued.

FIRM: \_\_\_\_\_

REPRESENTED BY: \_\_\_\_\_

TITLE: \_\_\_\_\_ PHONE NO.: \_\_\_\_\_

E-MAIL: \_\_\_\_\_ FAX NO.: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

This name and address will be used for all correspondence related to the Request for Proposal.

Firm does/does not (circle one) intend to respond to this Request for Proposal.

Kathy Lamb  
RFP 2016-536 Blanco Arroyo Drainage Study  
City of Aztec  
Purchasing Office  
201 W Chaco, Aztec NM 87410  
Phone: 505-334-7653  
Fax: 505-334-7649  
E-mail: klamb@aztecnm.gov

# QUALIFICATIONS BASED PROPOSALS SUBMITTAL FORM

RFP #2016-536 Drainage Study and Improvement Alternatives for Blanco Arroyo

## REQUIRED INFORMATION

COMPANY NAME/ADDRESS/CITY/STATE/ZIP

CONTACT PERSON

TELEPHONE NUMBER

TITLE

EMAIL ADDRESS

If a corporation, state of incorporation: \_\_\_\_\_

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

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

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

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

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

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

Sealed proposals will be received until **October 8, 2015, 3:00 P.M. MDT** and then opened at the **City of Aztec Finance Conference Room**. The opening of proposals shall be conducted in private in order to maintain the confidentiality of the contents of all proposals during the negotiation process.

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

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

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

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

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

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

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

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

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

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

***To be a valid proposal, Bidder must sign here:***

***Title***

\_\_\_\_\_

**RETURN THIS FORM WITH YOUR PROPOSAL**

NOTICE TO OFFERORS  
City of Aztec, NM  
DRAINAGE STUDY AND IMPROVEMENT ALTERNATIVES FOR BLANCO ARROYO  
RFP # 2016-536  
Closing Date: Thursday, October 8, 2015 3:00 P.M.

The City of Aztec, NM is requesting qualification based proposals for a Drainage Study with Improvement Alternatives. RFP documents may be obtained online by accessing the City's purchasing webpage through [www.aztecnm.gov](http://www.aztecnm.gov) or by contacting Kathy Lamb at (505) 334-7653 or [klamb@aztecnm.gov](mailto:klamb@aztecnm.gov). Sealed proposals will be received by the Purchasing Office at 201 W. Chaco, Aztec, New Mexico 87410, until the hour of 3:00 p.m. on October 8, 2015.

Publication Date: September 20, 2015, Farmington Daily Times  
September 25, 2015, TALON

# **I. INTRODUCTION**

## **A. PURPOSE OF THIS REQUEST FOR PROPOSALS**

The purpose of the Request for Proposal (RFP) is to solicit sealed qualification based proposals to establish a contract through competitive negotiations for the procurement of professional services to provide the City of Aztec a Drainage Study and Improvement Alternatives for the Blanco Arroyo.

## **B. BACKGROUND INFORMATION**

The Blanco Arroyo drains from the southeast to the northwest through residential areas of the city and terminates at the Animas River. There has not been a base flood elevation determination for the drainage. The residential portion traversed by the arroyo has been mostly developed. Historical flows have been altered with the construction of houses, businesses, roads, storm drain and ditches. There have been two recent floods associated with the arroyo, the last being on August 26, 2015. The city remains in the process of cleaning up following the latest event.

## **C. DESCRIPTION OF PROJECT**

The City of Aztec requests that a detailed floodplain analysis be performed to determine the base flood elevation. The City is also requesting an engineering study to select improvement alternatives with associated public involvement. Detailed construction plans and modification of existing FIRM panels are not included in this scope of work.

### **1. Identified tasks include the following:**

- Obtain the current effective data for the community, such as the flood hazard data shown in effective FIS reports and on effective FIRMs, and any other pertinent data.
- Conduct field reconnaissance to determine conditions along the floodplain
- Calculate the peak flood discharge for 2-,10-,25-,50- and 100-year storm events using HEC-HMS. Analysis must include obstructions, structures, storm drains, ditches, roadways, etc.
- Delineate existing 100-year base flood elevation using HEC-RAS. Provide approximate existing floodplain limits on a map.
- Provide two (2) different improvement alternatives for each of the 25-year and 100-year storm event with associated hydraulic analysis and construction cost estimates.
- Provide additional hydrology based on the most recent storm event in Aztec using the data provided by the City. Determine the year-event of the latest Aztec storm event and relate the event to the 25- and 100-year storm events.
- Evaluate land ownership and project impacts caused to private residences and businesses, schools and public agencies by each alternative.
- Determine how many residential and business structures would be removed from the 100-year floodplain for each alternative. Prepare full size (22"x34") exhibits showing plan view and typical cross section of improvements.

### **2. Attend Public outreach for the project with two (2) meetings anticipated. Provide exhibits for the meetings including plan views of each alternatives and typical cross sections which show affected properties.**

### **3. Data to be provided by City**

- LIDAR is currently available
- Field survey identifying buildings, culverts, bridges and other structures within 25 feet on each side of the arroyo.
- Additional items may be identified during the study the City will have surveyed by others.

#### **D. SCOPE OF PROCUREMENT**

The City of Aztec requests that a detailed floodplain analysis be performed to determine the base flood elevation. The City is also requesting an engineering study to select improvement alternatives with associated public involvement. Detailed construction plans and modification of existing FIRM panels are not included in this scope of work.

#### **E. PROCUREMENT SPECIALIST**

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

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

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

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

Name: Kathy Lamb  
 Reference RFP Name: RFP 2016-536 Blanco Arroyo Drainage Study  
 Address: City of Aztec Purchasing Office  
 201 W Chaco  
 Aztec NM 87410

3. **Any inquiries or requests** regarding this procurement should be submitted, in writing, to the Procurement Specialist. Respondents may contact **ONLY** the Procurement Specialist regarding this procurement. Other City employees or Evaluation Committee members do not have the authority to respond on behalf of the Purchasing Office.
4. **Protests of the solicitation or award must be delivered by mail to the Protest Manager.** As A Protest Manager has been named in this Request for Proposals, pursuant to NMSA 1978, § 13-1-172, **ONLY** protests delivered directly to the Protest Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule and this Request for Proposals. Emailed protests will not be considered as properly submitted nor will protests delivered to the Procurement Specialist be considered properly submitted.

## F. DEFINITION OF TERMINOLOGY

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

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

“**Agency**” means the City of Aztec.

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

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

“**Business Hours**” means 8:00 AM thru 5:00 PM Mountain Standard or Mountain Daylight Time, whichever is in effect on the date given.

“**City**” means the City of Aztec.

“**Close of Business**” means 5:00 PM Mountain Standard or Daylight Time, whichever is in use at that time.

“**Confidential**” means confidential financial information concerning respondent’s organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act NMSA 1978 57-3-A-1 to 57-3A-7. See NMAC 1.4.1.45. As one example, no information that could be obtained from a source outside this request for proposals can be considered confidential information.

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

“**Contractor**” means any business having a contract with the City.

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

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

“**Electronic Version/Copy**” means a digital form consisting of text, images or both readable on computers or other electronic devices that includes all content that the Original and Hard Copy proposals contain. The digital form may be submitted using a compact disc (cd) or USB flash drive. The electronic version/copy can NOT be emailed.

“**Evaluation Committee**” means a body appointed to perform the evaluation of Respondents’ proposals.

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

“**Finalist**” means a Respondent who meets all the mandatory specifications of this Request for Proposals and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.

“**Hourly Rate**” means the proposed fully loaded maximum hourly rates that include travel, per diem, fringe benefits and any overhead costs for contractor personnel, as well as subcontractor personnel if appropriate.

“**IT**” means Information Technology.

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

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

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

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

“**Price Agreement**” means a definite quantity contract or indefinite quantity contract which requires the contractor to furnish items of tangible personal property, services or construction to a state agency or a local public body which issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any.

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

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

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

“**Redacted**” means a version/copy of the proposal with the information considered confidential as defined by NMAC 1.4.1.45 and defined herein and outlined in Section II.C.8 of this RFP blacked out BUT NOT omitted or removed.

“**Request for Proposals (RFP)**” means all documents, including those attached or incorporated by reference, used for soliciting proposals.

“**Responsible Respondent**” means an Respondent who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services, or items of tangible personal property described in the proposal.

**“Responsive Offer”** or means an offer which conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to price, quality, quantity or delivery requirements.

**“Sealed”** means, in terms of a non-electronic submission, that the proposal is enclosed in a package which is completely fastened in such a way that nothing can be added or removed. Open packages submitted will not be accepted except for packages that may have been damaged by the delivery service itself. The State reserves the right, however, to accept or reject packages where there may have been damage done by the delivery service itself. Whether a package has been damaged by the delivery service or left unfastened and should or should not be accepted is a determination to be made by the Procurement Specialist. By submitting a proposal, the Respondent agrees to and concurs with this process and accepts the determination of the Procurement Specialist in such cases.

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

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

**“Statement of Concurrence”** means an affirmative statement from the Respondent to the required specification agreeing to comply and concur with the stated requirement(s). This statement shall be included in Respondents proposal. (E.g. “We concur”, “Understands and Complies”, “Comply”, “Will Comply if Applicable” etc.)

**“Unredacted”** means a version/copy of the proposal containing all complete information including any that the Respondent would otherwise consider confidential, such copy for use only for the purposes of evaluation.

**“Written”** means typewritten on standard 8 ½ x 11 inch paper. Larger paper is permissible for charts, spreadsheets, etc.

## **G. PROCUREMENT LIBRARY**

A procurement library has been established. Respondents are encouraged to review the material contained in the Procurement Library by selecting the link provided in the electronic version of this document through your own internet connection or by contacting the Procurement Specialist and scheduling an appointment. The library contains information listed below:

Procurement Library: <http://www.aztecnm.gov/purchasing/office.html>

## II. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the schedule, description and conditions governing the procurement.

### A. SEQUENCE OF EVENTS

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

Action	Responsible Party	Due Dates
1. Issue RFP	City	September 20, 2015
2. Acknowledgement of Receipt Form	Potential Respondents	September 30, 2015
3. Deadline to submit Questions	Potential Respondents	September 30, 2015
4. Response to Written Questions	Procurement Specialist	October 2, 2015
<b>5. Submission of Proposal</b>	<b>Potential Respondents</b>	<b>October 8, 2015</b>
6. Proposal Evaluation	Evaluation Committee	October 12 – 15, 2015
7. Selection of Finalists	Evaluation Committee	October 15, 2015
8. Oral Presentation(s)	Finalist Respondents	October 20, 2015
9. Finalize Contractual Agreements	City/Finalist Respondents	October 26, 2015
10. Contract Awards	City/ Finalist Respondents	October 27, 2015 or November 10, 2015
11. Protest Deadline	City	+15 days

### B. EXPLANATION OF EVENTS

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

#### 1. Issuance of RFP

This RFP is being issued on behalf of the City of Aztec on September 20, 2015.

#### 2. Acknowledgement of Receipt

Potential Respondents should email, hand deliver, return by facsimile or mail the "Acknowledgement of Receipt of Request for Proposals Form" that accompanies this document, APPENDIX A, to have their organization placed on the procurement distribution list. The form should be signed by an authorized representative of the organization, dated and returned to the Procurement Specialist by 3:00 pm MST or MDT on September 30, 2015.

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

### **3. Deadline to Submit Written Questions**

Potential Respondents may submit written questions to the Procurement Specialist as to the intent or clarity of this RFP until September 30, 2015 10:00 AM Mountain Standard Time/Daylight Time as indicated in the sequence of events. All written questions must be addressed to the Procurement Specialist as declared in Section I, Paragraph D. Questions shall be clearly labeled and shall cite the Section(s) in the RFP or other document which form the basis of the question.

### **4. Response to Written Questions**

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

### **5. Submission of Proposal**

ALL RESPONDENT PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT SPECIALIST OR DESIGNEE NO LATER THAN 3:00 PM MOUNTAIN STANDARD TIME/DAYLIGHT TIME ON October 8, 2015. Proposals received after this deadline will not be accepted. The date and time of receipt will be recorded on each proposal.

Proposals must be addressed and delivered to the Procurement Specialist at the address listed in Section I, Paragraph D2. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the RFP 2016-536 Blanco Arroyo Drainage Study. Proposals submitted by facsimile, or other electronic means, will not be accepted.

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

### **6. Proposal Evaluation**

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

### **7. Selection of Finalists**

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

## **8. Oral Presentations**

Finalist Respondents may be required to conduct an oral presentation at a location to be determined as per schedule Section II. A., Sequence of Events or as soon as possible. Whether or not oral presentations will be held is at the discretion of the Evaluation Committee and SPD.

## **9. Finalize Contractual Agreements**

Any Contractual agreement(s) resulting from this RFP will be finalized with the most advantageous Respondent(s) as per schedule Section II. A., Sequence of Events or as soon thereafter as possible. This date is subject to change at the discretion of the City Purchasing Office. In the event mutually agreeable terms cannot be reached with the apparent most advantageous Respondent in the time specified, the City reserves the right to finalize a contractual agreement with the next most advantageous Respondent(s) without undertaking a new procurement process.

## **10. Contract Awards**

After review of the Evaluation Committee Report and the signed contractual agreement, the City Purchasing Office will recommend award as per the schedule in Section II. A., Sequence of Events or as soon as possible thereafter. This date is subject to change at the discretion of the Purchasing Office.

The contract shall be awarded to the Respondent (or Respondents) whose proposals are most advantageous to the City of Aztec, taking into consideration the evaluation factors set forth in this RFP. The most advantageous proposal may or may not have received the most points. The award is subject to appropriate City approval.

## **11. Protest Deadline**

Any protest by a Respondent must be timely and in conformance with NMSA 1978, § 13-1-172 and applicable procurement regulations. As a Protest Manager has been named in this Request for Proposals, pursuant to NMSA 1978, § 13-1-172, ONLY protests delivered directly to the Protest Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule and this Request for Proposals. The 15 calendar day protest period shall begin on the day following the award of contracts and will end at 5:00 pm Mountain Standard Time/Daylight Time on the 15<sup>th</sup> day. Protests must be written and must include the name and address of the protestor and the request for proposal number. It must also contain a statement of the grounds for protest including appropriate supporting exhibits and it must specify the ruling requested from the party listed below. The protest must be delivered to:

Kris Farmer  
Protest Manager  
201 W Chaco  
Aztec NM 87410

Protests received after the deadline will not be accepted.

## **C. GENERAL REQUIREMENTS**

### **1. Acceptance of Conditions Governing the Procurement**

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

### **2. Incurring Cost**

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

### **3. Prime Contractor Responsibility**

Any contractual agreement that may result from this RFP shall specify that the prime contractor is solely responsible for fulfillment of all requirements of the contractual agreement with the City which may derive from this RFP. The City entering into a contractual agreement with a vendor will make payments to only the prime contractor.

### **4. Subcontractors/Consent**

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

### **5. Amended Proposals**

A Respondent may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals must be complete replacements for a previously submitted proposal and must be clearly identified as such in the transmittal letter. City personnel will not merge, collate, or assemble proposal materials.

### **6. Respondent's Rights to Withdraw Proposal**

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

The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations.

## 7. Proposal Offer Firm

Responses to this RFP, including proposal prices for services, will be considered firm for one hundred twenty (120) days after the due date for receipt of proposals or ninety (90) days after the due date for the receipt of a best and final offer, if the Respondent is invited or required to submit one.

## 8. Disclosure of Proposal Contents

- A. Proposals will be kept confidential until negotiations and the award are completed by the City. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for material that is clearly marked proprietary or confidential. The Procurement Specialist will not disclose or make public any pages of a proposal on which the potential Respondent has stamped or imprinted "proprietary" or "confidential" subject to the following requirements:
- a. Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.
  - b. Confidential data is restricted to:
    1. confidential financial information concerning the Respondent's organization;
    2. and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, NMSA 1978 § 57-3A-1 to 57-3A-7.
    3. PLEASE NOTE: The price of products offered or the cost of services proposed **shall not be designated** as proprietary or confidential information.

If a request is received for disclosure of data for which an Respondent has made a written request for confidentiality, the City Purchasing Office shall examine the Respondent's request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the Respondent takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

## 9. No Obligation

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

## 10. Termination

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

## 11. Sufficient Appropriation

Any contract awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations do not exist. Such terminations will be effected by sending written notice to the contractor. The City's decision as to whether sufficient appropriations and authorizations are available will be accepted by the contractor as final.

## 12. Legal Review

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

### **13. Governing Law**

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

### **14. Basis for Proposal**

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

### **15. Contract Terms and Conditions**

The contract between the City and a contractor will follow the format specified by the City and contain the terms and conditions set forth in the Sample Contract Appendix C. However, the City reserves the right to negotiate provisions in addition to those contained in this RFP (Sample Contract) with any Respondent. The contents of this RFP, as revised and/or supplemented, and the successful Respondent's proposal will be incorporated into and become part of any resultant contract.

The City discourages exceptions from the contract terms and conditions as set forth in the RFP Sample Contract. Such exceptions may cause a proposal to be rejected as nonresponsive when, in the sole judgment of the City (and its evaluation team), the proposal appears to be conditioned on the exception, or correction of what is deemed to be a deficiency, or an unacceptable exception is proposed which would require a substantial proposal rewrite to correct.

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

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

If a Respondent fails to propose any alternate terms and conditions during the procurement process (the RFP process prior to selection as successful Respondent), no proposed alternate terms and conditions will be considered later during the negotiation process. Failure to propose alternate terms and conditions during the procurement process (the RFP process prior to selection as successful Respondent) is an **explicit agreement** by the Respondent that the contractual terms and conditions contained herein are **accepted** by the Respondent.

### **16. Respondent's Terms and Conditions**

Respondents must submit with the proposal a complete set of any additional terms and conditions they expect to have included in a contract negotiated with the City. Please see Section II.C.15 for requirements.

## **17. Contract Deviations**

Any additional terms and conditions, which may be the subject of negotiation (such terms and conditions having been proposed during the procurement process, that is, the RFP process prior to selection as successful Respondent), will be discussed only between the City and the Respondent selected and shall not be deemed an opportunity to amend the Respondent's proposal.

## **18. Respondent Qualifications**

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

## **19. Right to Waive Minor Irregularities**

The Evaluation Committee reserves the right to waive minor irregularities. The Evaluation Committee also reserves the right to waive mandatory requirements provided that all of the otherwise responsive proposals failed to meet the same mandatory requirements and the failure to do so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

## **20. Change in Contractor Representatives**

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

## **21. Notice of Penalties**

The Procurement Code, NMSA 1978, § 13-1-28 through 13-1-199, imposes civil, misdemeanor and felony criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

## **22. City Rights**

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

## **23. Right to Publish**

Throughout the duration of this procurement process and contract term, Respondents and contractors must secure from the City written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement and/or City contracts deriving from this

procurement. Failure to adhere to this requirement may result in disqualification of the Respondent's proposal or removal from the contract.

#### **24. Ownership of Proposals**

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

#### **25. Confidentiality**

Any confidential information provided to, or developed by, the contractor in the performance of the contract resulting from this RFP shall be kept confidential and shall not be made available to any individual or organization by the contractor without the prior written approval of the City.

The Contractor(s) agrees to protect the confidentiality of all confidential information and not to publish or disclose such information to any third party without the Purchasing Office's written permission.

#### **26. Electronic mail address required**

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

#### **27. Use of Electronic Versions of this RFP**

This RFP is being made available by electronic means. In the event of conflict between a version of the RFP in the Respondent's possession and the version maintained by the City, the Respondent acknowledges that the version maintained by the City shall govern. Please refer to:

<http://www.aztecnm.gov/purchasing/office.html>

#### **28. Campaign Contribution Disclosure Form**

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

#### **29. Submittal Form**

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

#### **30. Disclosure Regarding Responsibility**

A. Any prospective Contractor and any of its Principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with the City of Aztec for professional services, tangible personal

property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor's company:

1. is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body;
  2. has within a three-year period preceding this offer, been convicted in a criminal matter or had a civil judgment rendered against them for:
    - a. the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract or subcontract;
    - b. violation of Federal or state antitrust statutes related to the submission of offers; or
    - c. the commission in any federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violation of Federal criminal tax law, or receiving stolen property;
  3. is presently indicted for, or otherwise criminally or civilly charged by any (federal state or local) government entity with the commission of any of the offenses enumerated in paragraph A of this disclosure;
  4. has, preceding this offer, been notified of any delinquent Federal or state taxes in an amount that exceeds \$3,000.00 of which the liability remains unsatisfied. Taxes are considered delinquent if the following criteria apply.
    - a. The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge of the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
    - b. The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
    - c. Have within a three year period preceding this offer, had one or more contracts terminated for default by any federal or state agency or local public body.)
- B. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.
- C. The Contractor shall provide immediate written notice to the City Purchasing Office if, at any time during the term of this Agreement, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.
- D. A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Agreement. However, the disclosure will be considered in the determination of the Contractor's responsibility and ability to perform under this Agreement. Failure of the Contractor to furnish a disclosure or provide additional information as requested will render the Respondent nonresponsive.
- E. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and

information of a Contractor is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.

- F. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of this Agreement. If during the performance of the contract, the Contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses named in this document the Contractor must provide immediate written notice to the City of Aztec Purchasing Office. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the City of Aztec may terminate the involved contract for cause. Still further the City Purchasing Office may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the City Purchasing Office.

### **31. New Mexico Preferences**

To ensure adequate consideration and application of NMSA 1978, § 13-1-21 (as amended), Respondents must include a copy of their preference certificate with their proposal. Certificates for preferences must be obtained through the New Mexico Department of Taxation & Revenue

<http://www.tax.newmexico.gov/Businesses/in-state-veteran-preference-certification.aspx>.

#### **A. New Mexico Business Preference**

#### **B. New Mexico Resident Veterans Business Preference**

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

**An agency shall not award a business both a resident business preference and a resident veteran business preference.**

**The New Mexico Preferences shall not apply when the expenditures for this RFP includes federal funds.**

### **III. RESPONSE FORMAT AND ORGANIZATION**

#### **A. NUMBER OF RESPONSES**

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

#### **B. NUMBER OF COPIES**

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

#### **C. PROPOSAL FORMAT**

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

##### **RFP 2016-536 Drainage Study and Improvement Alternatives for Blanco Arroyo**

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

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

#### **D. PROPOSAL OUTLINE**

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

1. Signed Submittal Form, Page 2 of RFP \*
2. Table of Contents \*
3. General Information
4. Project Team Members
5. Respondent Experience

6. Design/Technical Approach
7. Cost Control and Project Schedule
8. Contractual Considerations
9. Other Supporting Material (If applicable)
10. Signed Campaign Contribution Form, APPENDIX A of RFP \*
11. New Mexico Preferences (if applicable) APPENDIX B of RFP \*

\* items do not count towards maximum page limitation

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

The proposal summary may be included by potential Respondents to provide the Evaluation Committee with an overview of the proposal; however, this material will not be used in the evaluation process unless specifically referenced from other portions of the Respondent’s proposal.

## **E. GUIDELINES**

### **1. General Information**

- a. Provide name, mailing and physical address and telephone number of Respondent, and, if a firm, when firm was established.
- b. Provide number of employees, technical discipline, registration, and registration number.
- c. Indicate where the services are to be performed.  
If the work is to be shared among firms and offices at different locations, or a joint venture with sub-consultants, indicate where each office is located, what work is to be performed at each location, and the percentage of work performed compared to the total scope of services. Provide this information using the following format:

Firm Name, Location	Work to be Performed	% of Work Performed Compared to Total Scope
---------------------	----------------------	---------------------------------------------

### **2. Project Team Members**

- a. Provide an organization plan for management of the project. This chart should demonstrate the proposed relationships between the key team members and support staff who are expected to participate on the project. Also include which aspects of the work each person will be responsible for performing.
- b. Identify all consultants to be used on the project and provide summary description of the work to be performed by each consultant proposed for the project.
- c. Provide qualifications of project team members shown in organization plans, including registration and membership in professional organizations. Include each person’s work experience, field or fields of specialization and education.
- d. Provide any unique knowledge of key team members relevant to the project.
- e. Expand on the firm’s participation in and involvement with the New Mexico Floodplain Manager’s Association.

### 3. Respondent Experience

- a. Submit information on at least three (3) successful flood attenuation studies of similar size and demonstrate experience on Flood Insurance Studies.
- b. Demonstrate experience with FEMA processes and requirements, hydrologic and hydraulic analyses, and floodplain modeling and mapping.
- c. Show ability to provide the following certifications:
  - 1. Hydrologic and Hydraulic Analyses and Floodplain Mapping: A Registered Professional Engineer must certify hydrologic and hydraulic analyses and data.
- d. Describe previous projects of similar nature, including client contact (with phone numbers), year services provided, and narrative description of how they relate to this project. Projects described should be projects that were worked on by the people shown on the organizational chart. Specific project responsibilities of these individuals should be discussed.
- e. Provide examples of Project Manager's experience within the past five (5) years that serve to demonstrate the Project Manger's knowledge of state or local government procedures.
- f. Provide the volume of work previously contracted with the City which is not seventy-five percent complete. This information should be in the following format:

Name of Project	Contract Date	Contract Amount	% Completed and Invoiced to Date
-----------------	---------------	-----------------	----------------------------------

### 4. Design/Technical Approach

- a. Describe respondent's understanding of the project scope. Describe what you intend to do.
- b. Describe how respondent plans to perform the services required by the project scope. Include quality control procedures to assure the accuracy and adequacy of the work to be performed including consultants.
- c. Describe specialized problem solving required in any phase of the project.

### 5. Cost Control and Project Schedule

- a. Describe cost control techniques to be used for the project. How will expenditures be controlled for work force, other direct costs and all other costs associated with the basic services fees to be negotiated with the City.
- b. What corrective actions do you take if it appears that the budget will be exceeded or that the project scope can be achieved at a much lower cost than was discussed during negotiations?
- c. Describe project schedule and techniques to be used to maintain schedule.

### 6. Contractual Considerations

All commercial, technical, legal or other conditions or exceptions relating to the provisions of the RFP and the draft Agreement must be explicitly stated in this section of the proposal. Respondents should be aware that any conditions or exceptions are made solely at the risk of the Respondent and the City reserves the right to reject proposals containing any unacceptable conditions or exceptions. Respondents shall use this section to discuss guarantees and warranties that the Respondent will offer the City and the risks it is willing to take.

## IV. EVALUATION

### A. PROPOSAL EVALUATION

All Respondent proposals will be reviewed for compliance with the requirements and specifications stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration. The Procurement Specialist may contact the Respondent for clarification of the response as specified in Section II. B.7.

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

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

### B. EVALUATION CRITERIA

A maximum total of 110 points are possible in scoring each proposal for the shortlist evaluation. The Selection Committee will evaluate the proposals and may conduct interviews with Offerors applying for selection.

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

- 10 Points**      Completeness, originality and creativity of the proposed approach to the project.
- 25 Points**      Specialized design and technical competence of the firm, based on similar experience, including joint venture or association, and qualification of personnel selected to perform the project.  
  
A minimum of three (3) successful flood attenuation studies of similar size and demonstrate experience on Flood Insurance Studies must be included in proposal.
- 15 Points**      Team experience on similar projects including sub-consultants if identified.  
  
The personnel names in the statement of qualifications submitted by your firm, shall remain responsible throughout the period of this project. No diversion or replacement may be made without submission of the proposed replacement with final approval being granted by the City's Project Administrator.
- 25 Points**      Familiarity with FEMA processes and requirements, hydrologic and hydraulic analyses, and floodplain modeling and mapping.  
  
Provide a summary of projects completed by your firm which address the above factors referenced in this criteria.
- 10 Points**      Past record of performance on contracts with government agencies or private industry with respect to such factors as control of costs, quality of work and ability to meet schedules.

Provide a summary of projects completed by your firm which address the above factors referenced in this criteria.

**5 Points** Past performance record on City of Aztec Projects.

**5 Points** The amount of design work that will be produced by a New Mexico business within the State

**5 Points** Current volume of work previously done for the City of Aztec which is not 75% complete with respect to basic professional design services.

The following formula on fees for projects awarded that are less than 75% complete shall be utilized in assessing scores:

\$ 25,000	to	\$ 35,000 .....	1 point deducted
\$ 35,001	to	\$ 50,000 .....	2 points deducted
\$ 50,001	to	\$100,000 .....	3 points deducted
\$100,001	to	\$150,000 .....	4 points deducted
\$150,001	and	over .....	5 points deducted

**Up to 10 Points** In-State Preference OR Veterans Preference

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

Application of In-State/Veterans Preference

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

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

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

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

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

Firm Name, Location Of Resident Businesses  
Firm Name, Location Of Non-Resident Businesses

Work to be Performed  
% of Work Performed Compared to Total Scope

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

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

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

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

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

### **C. EVALUATION PROCESS**

1. All Respondent proposals will be reviewed for compliance with the requirements and specifications stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Procurement Specialist may contact the Respondent for clarification of the response as specified in Section II. B.7.
3. The Evaluation Committee may use other sources of to perform the evaluation as specified in Section II. C.18.
4. Responsive proposals will be evaluated on the factors in Section IV, which have been assigned a point value. The responsible Respondents with the highest scores will be selected as finalist Respondents, based upon the proposals submitted. The responsible Respondents whose proposals are most advantageous to the City taking into consideration the evaluation factors in Section IV will be recommended for award (as specified in Section II. B.8). Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

### **D. ORAL PRESENTATION**

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

**APPENDIX A: CAMPAIGN CONTRIBUTION DISCLOSURE FORM**

## **Campaign Contribution Disclosure Form**

Pursuant to NMSA 1978, § 13-1-191.1 (2006), any person seeking to enter into a contract with any state agency or local public body for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body shall void an executed contract or cancel a solicitation or proposed award for a proposed contract if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

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

The following definitions apply:

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

“Campaign Contribution” means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to either statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

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

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

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

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

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

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

Contribution Made By: \_\_\_\_\_

Relation to Prospective Contractor: \_\_\_\_\_

Name of Applicable Public Official: \_\_\_\_\_

Date Contribution(s) Made: \_\_\_\_\_

Amount(s) of Contribution(s) \_\_\_\_\_

Nature of Contribution(s) \_\_\_\_\_

Purpose of Contribution(s) \_\_\_\_\_

(Attach extra pages if necessary)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title (position)

—OR—

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title (Position)

## **APPENDIX B: RESIDENT VETERANS CERTIFICATION**

# New Mexico Preference Resident Veterans Certification

**Reminder, a copy of Resident Veterans Preference Certificate must be submitted with the proposal in order to ensure adequate consideration and application of NMSA 1978, § 13-1-21 (as amended).**

\_\_\_\_\_ (NAME OF CONTRACTOR) hereby certifies the following in regard to application of the resident veterans' preference to this procurement:

**Please check one box only**

- I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is less than \$1M allowing me the 10% preference on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.
- I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$1M but less than \$5M allowing me the 8% preference on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.
- I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$5M allowing me the 7% preference on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

“I agree to submit a report, or reports, to the State Purchasing Division of the General Services Department declaring under penalty of perjury that during the last calendar year starting January 1 and ending on December 31, the following to be true and accurate:

“In conjunction with this procurement and the requirements of this business' application for a Resident Veteran Business Preference/Resident Veteran Contractor Preference under NMSA 1978, § 13-1-21 or 13-1-22, when awarded a contract which was on the basis of having such veterans preference, I agree to report to the State Purchasing Division of the General Services Department the awarded amount involved. I will indicate in the report the award amount as a purchase from a public body or as a public works contract from a public body as the case may be.

“I understand that knowingly giving false or misleading information on this report constitutes a crime.”

I declare under penalty of perjury that this statement is true to the best of my knowledge. I understand that giving false or misleading statements about material fact regarding this matter constitutes a crime.

\_\_\_\_\_  
(Signature of Business Representative)\*      \_\_\_\_\_  
(Date)

\*Must be an authorized signatory for the Business. The representations made in checking the boxes constitutes a material representation by the business that is subject to protest and may result in denial of an award or termination of award of the procurement involved if the statements are proven to be incorrect.

# APPENDIX C: SAMPLE CONTRACT

## ENGINEERING SERVICES AGREEMENT 2016-536

**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 RFP #2016-536, 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, from

year to year for **x** 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.

## 6. 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 Respondents, 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



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: \_\_\_\_\_  
Burbridge  
Mayor City of Aztec

Date: \_\_\_\_\_ Sally

(SEAL)

ATTEST:

\_\_\_\_\_  
Karla Saylor City Clerk CMC

Date: \_\_\_\_\_

APPROVED TO FORM:

\_\_\_\_\_  
Larry T. Thrower, City Attorney

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Engineer

Date: \_\_\_\_\_

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Title

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Telephone

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NM Taxpayer Identification Number

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Federal Taxpayer Identification or  
Social Security Number